

**Summary of the CAPC Opinion on the draft amendment to the Law
on the National Integrity Authority**

September 2021

The Center for Analysis and Prevention of Corruption (CAPC) examined the draft amendment to Law no. 133/2016 on the National Integrity Authority, Law no. 133/2016 on Declaring Wealth and Personal Interests, and other normative acts. Amendment no.169, which was officially registered on August 4, 2021, represented a legislative initiative brought forward by a group of parliamentary deputies.

This legal project aims to improve the regulatory framework to solve serious problems regarding the declaration, verification, and investigation of assets of those who are legally compelled to declare these assets. It further addresses other aspects related to the activity of integrity inspectors and the National Integrity Authority (NIA).

According to CAPC's Opinion submitted to Parliament on September 8, 2021, several tools and mechanisms proposed by the authors of this legislative project will:

- not solve the problems in the system;
- create difficulties, including legal uncertainties, in the asset verification process;
- burden those subject to the declaration of their assets with obligations that are difficult to achieve or that involve considerable effort;
- risk violating the rights and freedoms of third parties.

The main risks and difficulties identified in the CAPC Opinion may be summarized as follows:

1. Acceptance of anonymous complaints by the NIA and the reversal of the burden of proof for individuals under investigation are contrary to the jurisprudence of the Constitutional Court.
2. The imposition of obligations (mandatory presentation of the requested information and documents and investigation by the NIA of the assets of third parties) on third parties who are not subject to the declaration of their assets involves risks that may affect human rights and freedoms and may lead to abuses and violations.
3. Carrying out asset valuations will, on the one hand, require budgetary expenditures not provided for in the budget by the authors of the draft law, and, on the other hand, involve major expenditures for the subject of the appraisal (de facto obliged to these actions to demonstrate innocence), without a mechanism to recover them in case of errors or abuses
4. Declaring the market value of goods in the absence of existing specific knowledge in the field or clarity on how to indicate the value of the goods obtained in the past will create confusion and chaos in the declaration process and put enormous pressure not only on those who currently declare their assets at modest values, but also on all subjects of the declaration. In addition, the declaration process will create "confusing" and "conflicting" legal situations in cases where there is a discrepancy between the cadastral value of the goods (real estate) and the contractual value of the goods.

5. The performance of assessments and asset valuations by integrity inspectors and the application of measures to ensure the execution of the decision of confiscation of unjustified assets or encashment of its value by the NIA are unrealistic expectations which go beyond the purview of the NIA.
6. The draft law does not allow for an integrity inspector to contest the logic behind a court's refusal to initiate an investigation even in the event there were justified grounds for the initiation of an investigation.
7. Suspending investigations into those who have been found to be in violation of legislation pertaining to the declaration of wealth and personal interests will not only further delay the process, but also overload integrity inspectors.

CAPC recommended that these provisions be improved, revised, or excluded from the draft legislation to eliminate any risk factors. In addition, it recommended that the authors of the project consider merging the two related laws on the activity of the NIA into a single law and pay more attention to the profiles of current and prospective integrity inspectors, so that the new legal provisions proposed in the draft law may be adopted in practice.

The Romanian version of the CAPC Opinion can be found on the web page, www.capc.md, at the following link: <https://www.capc.md/noutati/capc-expediat-parlamentului-opinia-sa-asupra-proiectului-de-lege-privind-functionarea-ani/>.