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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ROMANIA

**DRAFT LAW ON THE DISMANTLING OF THE SECTION FOR
INVESTIGATING CRIMINAL OFFENCES WITHIN THE JUDICIARY**
(as adopted by the Government)

EXPLANATORY MEMORANDUM

and

**DRAFT LAW ON THE DISMANTLING OF THE SECTION FOR
INVESTIGATING CRIMINAL OFFENCES WITHIN THE JUDICIARY, AS
WELL AS FOR THE AMENDING AND COMPLETING SOME
NORMATIVE ACTS IN THE FIELD OF JUSTICE**
(as adopted by the Chamber of Deputies)

LAW
on the dismantling of the Section for investigating criminal offences within the judiciary
(as adopted by the Government)

The Romanian Parliament adopts this law:

Art. 1 – (1) On the date of entry into force of this law, the Section for investigating criminal offences within the judiciary within the Prosecutor's Office attached to the High Court of Cassation and Justice, hereinafter referred to as the Section, shall be dismantled.

(2) Cases currently being examined at the Section level shall be transmitted administratively, within 5 working days from the date of entry into force of this law, by the Prosecutor's Office attached to the High Court of Cassation and Justice, to the competent prosecutor's offices according to the law, which continues to solve the cases.

(3) The provisions of par. (2) shall apply accordingly to the files in the archives of the Section.

(4) The acts of procedure accomplished in the cases provided in par. (2) and (3), in compliance with the legal provisions in force at the date of their fulfilment, remain valid.

(5) The dismissal, the waiver of criminal prosecution and the indictment solutions ordered by the prosecutors of the Section, which were not subject to the hierarchical control prior to the entry into force of this law, are subject, from the date of dismantling of the Section, to the control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the provisions of art. 335, art. 318, art. 328 and of art. 340 of the Criminal Procedure Code being applied accordingly.

(6) The acts performed and the measures taken by the prosecutors of the Section in the cases provided in par. (2), which were not subject to the hierarchical control prior to the entry into force of this law, are subject, from the date of the dismantling of the Section, to the control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the provisions of art. 304 and of art. 339 of the Criminal Procedure Code being applied accordingly.

(7) From the date of dismantling of the Section, at the trial of the cases and at the settlement of the proposals, appeals, complaints or any other requests formulated in the cases taken over according to par. (2) and (3) participate prosecutors from the prosecutor's offices attached to the courts in whose role they are, unless otherwise provided by law.

(8) Appeals declared by the Section may be withdrawn only by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

Art. 2 - (1) The positions in the scheme of functions and staff of the Section at the date of entry into force of this law remain in the scheme of the Prosecutor's Office attached to the High Court of Cassation and Justice, being redistributed in other sections or in other prosecutor's offices, as needed.

(2) Starting with the date of abolition of the Section, the prosecutors within the Section, including those with leading positions, shall return to the prosecutor's offices where they come from. From the date of returning to the prosecutor's office where they come from, the prosecutors who worked

in the Section shall regain their professional degree of execution and the corresponding salary they had previously or those acquired as a result of promotion, under the law, during the activity within the Section Investigation of Crimes in Justice for investigating criminal offences within the judiciary.

(3) The secondment of the staff seconded to the other categories of positions from those provided in par. (1) shall cease from the date of abolition of the Section.

Art. 3 - (1) From the date of entry into force of this law, the National Anticorruption Directorate is also responsible for the offenses provided in Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and completions, if, regardless of the amount of material damage or the amount or property that is the subject of the crime of corruption, are committed by judges of the High Court of Cassation and Justice, by other judges and prosecutors, including military judges and prosecutors and those who are members of the Superior Council of Magistracy.

(2) From the date of entry into force of this law, also the offenses provided by art. 11 para. (1) of the Government Emergency Ordinance no. 78/2016 for the organization and functioning of the Directorate for the Investigation of Organized Crime and Terrorism, as well as for the amendment and completion of legal acts, with subsequent amendments and completions, committed by judges of the High Court of Cassation and Justice, other judges and prosecutors, including military judges and prosecutors and those who are members of the Superior Council of Magistracy are within the competence of the Directorate of Investigation of Organized Crime and Terrorism.

Art. 4 – On the date of entry into force of this law, Section 2¹ - “Section for investigating criminal offences within the judiciary” of Law no. 304/2004 regarding the judicial organization, republished in the Official Gazette of Romania, Part I, no. r. 827 of September 13, 2005, with subsequent amendments and completions.

EXPLANATORY STATEMENT

Section 1– Title of the draft legislative act

Law on the dismantling of the Section for investigating criminal offences within the judiciary

Section 2 – The reason for issuing the legislative act

1. Description of the current situation

By Law no. 207/2018 for the amendment and completion of Law no. 304/2004 on the organization of the judiciary, the Section for investigating criminal offences within the judiciary (hereinafter, the Section) was established, as a structure without legal personality within the Prosecutor's Office attached to the High Court of Cassation and Justice (POHCCJ) which has exclusive competence to prosecute offences committed by judges and prosecutors, including military judges and prosecutors and those who are members of the Superior Council of Magistracy. The law established the principles of functioning of the Section, the arrangements of appointing the management of the Section and its prosecutors.

In order to operationalise the Section starting with the date established by the legislator – October 23, 2018 - the Government Emergency Ordinance no. 90/2018 regarding some measures for the operationalisation of the Section for investigating criminal offences within the judiciary was adopted.

The personnel structure of the Section provides for 43 positions, of which 32 are occupied (7 prosecutors, 15 judicial police officers, seconded, 10 positions of specialized and related auxiliary personnel, occupied by secondment).

Although the establishment of such a section is an approach that, in itself, was recorded as constitutional, the parameters in which it operates contradict the organisation of the prosecutor's offices in Romania and the principle of hierarchical control.

Thus, the reconsideration of the legal provisions governing the activity of the Section results in the following:

- The mismatch of the legal provisions in force regarding the organization of the Section, as a structure without legal personality within the Prosecutor's Office of the High Court of Cassation and Justice, with the concrete powers of the Head of Section, which seem rather similar to the specialized structures with legal personality (National Anti-corruption Directorate - NAD, Directorate for investigation of organized crime and terrorism - DIOCT); in this respect, for example, the regulation of the appointment of judicial police officers and officers and specialists by a chief prosecutor of a prosecutor's office is atypical;

- Infringement of the principle of separation of careers, enshrined in Article 1(2) of Law No 303/2004 on the status of judges and prosecutors, by the fact that in the competition commissions for the selection of the management and of the prosecutors of the Section, the prosecutors constitute a minority, the selection of which will be carried out in particular, by judges and the appointment and dismissal of the management of the Section is made by the Plenum of the Superior Council of Magistracy (SCM), which also includes judges;
- the existence of a *de facto* immunity from criminal jurisdiction of prosecutors of the Section, in some cases;
- the regulation and functioning of the Section, related to the definition of the notion of hierarchically superior prosecutor, involves discussions from the perspective of the constitutional principle of hierarchical control.

In this respect, it should also be noted that by Decision No 547/2020 concerning the exception of unconstitutionality of the provisions of Articles 881 to 889 of Law No 304/2004 on the organization of the judiciary, as well as the Government Emergency Ordinance no. 90/2018 regarding some measures for the operationalization of the Section for investigating criminal offences within the judiciary, published in the Official Gazette of Romania no. 753 of August 19, 2020, The Constitutional Court has found the unconstitutionality of the provision according to which " Every time the Code of Criminal procedure or other special laws refer to the "superior hierarchical prosecutor" in the case of offences under the Section for investigating criminal offences within the judiciary, it means the chief prosecutor of the Section, even in the case of solutions ordered before its operationalization", provision applicable to the functioning of the Section. The Court noted that:

"69. (...) considering the moment when solutions are ordered by reference to which the chief prosecutor of the Section exercises his position as a superior prosecutor - prior to the operationalization of the Section, thus before it became operational, the rule becomes a manifestly transitional one, regulating the situation of cases taken over by the Section from other prosecutors' offices.

(...) The Court finds that it infringes the principle of hierarchical control by establishing within the competence of the Chief Prosecutor of the Section the control over the activity of prosecutors outside that Section in respect of acts ordered by them in cases subsequently transferred to jurisdiction of the Section. It is obvious that, by establishing the hierarchical structure within the Prosecutor's Office attached to the High Court of Cassation and Justice, the law can create

management/subordination relationships only in the vertical plane, and not in the horizontal plane between the various sections/departments of the Prosecutor's Office attached to the High Court of Cassation and Justice. The principle of hierarchical subordination is applicable within each structure, the prosecutors are being subject to the control of the superior prosecutor, all these structures are subordinated to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice”.

From the perspective of opportunity, in relation to the real needs of the judiciary and as a result of the Section's activity from the date of its operationalization (October 23, 2018) until now, relevant conclusions are drawn on the need to abolish this structure. Thus, since its operationalization, the Section has not produced any particular results, on the contrary, its activity questioned its role in the fight against corruption (e.g. inexplicably withdrawn remedies in cases of high corruption).

Also from the statistical point of view, we mention that on 01.12.2020 there were 5,790 files in the Section. In the first half of 2020, 212 cases were solved, one by indictment and 211 by dismissal.

Opinions on the abolition of the section were also expressed during consultations on the implementation of the European recommendations, views have been requested to the High Court of Cassation and Justice, Superior Council of Magistracy, Prosecutor's Office attached to the High Court of Cassation and Justice, National Anti-corruption Directorate, Directorate for investigation of organized crime and terrorism, Section and magistrates' associations. As arguments put forward by the entities consulted in favor of abolition, we can illustrate the following:

- the regulation and functioning of the Section, compared to paragraph 6 introduced by Article 881 of Law No 304/2004, which defines the notion of hierarchically superior prosecutor illegally sets an exception to the constitutional principle of hierarchical control;
- the organization and functioning of the section has created de facto a category of citizens who enjoy immunity from full criminal jurisdiction, namely the prosecutors of the Section; The Section departs from any kind of hierarchical control, but also from an efficient judicial control - in the case of dismissal solutions - is made up of a very small number of prosecutors who may themselves give each other any dismissal solution regardless of the legal or factual situation and of what abuse they might be able to do, on the basis that the courts cannot force a colleague, a member of that section, to be sued;

- the absence of specific provisions providing for the possibility for the prosecutors of this section to attend court hearings in cases in which the Section is competent to take preventive measures, precautionary measures, to solve the requests for special supervisory measures, etc., as well as the trial in substance and appeals against such cases (a lack which has already created major difficulties in practice);
- the material and territorial competence assigned to this section from a functional point of view creates difficulties and does not ensure the use of specialized prosecutors in the necessary situations (fighting corruption, organized crime and terrorism);
- the appointment of judicial police officers and officers and specialists within the Section is made by the chief prosecutor of the Section (structure without legal personality), although their appointment / secondment should be ordered by the head of the institution.

Also, on November 25, 2019, the Ministry of Justice asked the courts, the prosecutor's offices attached to them, as well as the associations of magistrates for their views on some expected legislative changes regarding the laws of justice, including the Section for investigating criminal offences within the judiciary.

The centralization of the views of the courts and prosecutors' offices revealed that 85,47% of the prosecutors in question and 72,22% of the judges in question had decided to repeal the provisions on the Section.

On December 27, 2019, the Romanian Government approved the Memorandum on the subject "evaluation of the legal framework on the organization and functioning of the Section for investigating criminal offences within the judiciary and proposals".

According to the memorandum, the position of the Justice Ministry, approved by the government, is in the sense of the solution of the abolition of the Section for investigating criminal offences within the judiciary.

In this memorandum, a number of European documents have been mentioned in which numerous criticisms have been raised about the functioning and organization of the Section, which we reiterate:

1. The Group of States against Corruption (GRECO) - Council of Europe

In the ad hoc report adopted on 23 March 2018 (plenary meeting 79), in accordance with Rule 34 of the rules of procedure of the Council of Europe's anti-corruption body and in the follow-up report on the ad hoc report, adopted on 21 June 2019 (plenary meeting 83), GRECO concluded that the recommendation to abandon the creation of a new special

section for investigating criminal offences within the judiciary has not been implemented by Romania.

2. European Commission for Democracy through Law of the Council of Europe (Venice Commission)

In opinion No 924/2018, the Venice Commission recommended that Romania reconsider the establishment of a separate prosecution office for the investigation of offences committed by judges and prosecutors; recourse to specialized prosecutors, accompanied by effective procedural guarantees, could appear as a more appropriate alternative solution.

Recital 89 of the opinion states that 'in these circumstances, although the choice of means of combating crime lies with the national legislator, existing concerns that the new structure will (still) be an instrument of intimidation and pressure on judges and prosecutors – especially if it is combined with other new measures envisaged in relation to them, such as the provisions on the material liability of magistrates - they can be considered legitimate and should not be ignored'.

3. Report of the CVM

The conclusion of the report from the Commission to the European Parliament and the Council on the progress made by Romania under the Cooperation and Verification Mechanism of 22 October 2019 on the recommendation related to the Section for investigating criminal offences within the judiciary is that 'these recommendations have not been implemented by the Romanian authorities, which also argued that the laws of the justice produced legal effects which could not be stopped'.

The European Commission's assessments noted the following: "The changes related to the acceleration of the establishment of the Section for investigating criminal offences within the judiciary and the extension of its competence (...) have further fueled concerns and lack of confidence in these changes.

In particular, some of the proposed amendments to the laws seemed to serve the interests of certain individuals. These emergency ordinances prompted very negative reactions, which helped to crystallize the specific position expressed by the public in the referendum on 26 May 2019 on the modification of the justice laws by emergency ordinances.

The implementation of the amended justice laws also confirmed the concerns expressed in the November report on damage to the judiciary. In particular, the functioning of the Special Section for the Investigation of Magistrates confirmed the fears expressed both in Romania and abroad that the respective Section could be used as an instrument of political pressure. There have been several situations in which the Special Section has intervened to change the course of criminal investigations in a way that raises serious doubts about

	<p>its objectivity. These include cases where the Special Section has initiated investigations against judges and prosecutors who have opposed the current changes in the judiciary, as well as sudden changes in the approach taken in court cases, such as the withdrawal of appeals. previously introduced by the National Anti-corruption Directorate in high-level corruption cases. The appointments to the management positions in the Special Section also aroused controversy. Against this background, many voices in Romania demanded the abolition of the Special Section.</p> <p>The Venice Commission adopted an opinion on the emergency ordinances in June 2019, confirming the growing concern about the new changes and the functioning of the Special Section. In its two new reports in June 2019, GRECO expressed similar concerns. " (CVM Report of October 2019, pages 5-6, benchmark one).</p> <p>The arguments for national legislation are complemented by the aspects of compliance of the national regulations establishing the Section with European requirements – the Council of Europe, the European Union (including future decisions to be taken by the CJEU in pending cases). In this context, the Governmental Agent for the Court of Justice of the European Union and for the Court of Justice of the European Free Trade Association presented the intention of the Romanian Government to dissolve the Section in the pleas before the Grand Chamber on January 20 and 21, 2020.</p>
1 ¹ . In the case of draft laws transposing Community legislation or creating the framework for its direct application, only the Community acts concerned shall be specified, together with their identifying elements.	N/A
2. Expected changes	<p>This draft law proposes the abolition of the Section for the Investigation of Criminal Offences within the Judiciary on the date of the entry into force of the law. It is also proposed to repeal the section regarding the organization, operation and competence of the Section for the Investigation of Criminal Offences within the Judiciary of <i>Law no. 304/2004 on the judicial organization</i> and the establishment of transitional provisions regarding the situation of the personnel and of the files pending before the Section at the date of entry into force of this law.</p> <p>Thus, cases pending before the Section at the time the law came into force, as well as the completed files kept in the Section's archives at that time, are sent by administrative means, within 5 working days from the date of the law's entry into force, to the prosecutor's offices competent under the law,</p>

by the care of the Prosecutor's Office of the High Court of Cassation and Justice.

Procedural acts performed in these cases prior to the entry into force of the law, in compliance with the legal provisions in force on the date of their fulfillment, remain valid.

In order to comply with the constitutional principle of hierarchical subordination of prosecutors within the public Ministry and taking into account the case law of the Constitutional Court concerning its reflection in the infra-constitutional regulations (for example, we mention the decision of the Constitutional Court No 547/2020, previously cited), the draft stipulates (Article 1 para. 5) that solutions ordered by the prosecutors of the Section, which were not subject to hierarchical control prior to the law's entry into force, are subject after this date to the control exercised by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, this rule being incident in both the ex officio control and in the case of the control exercised at the notification (complaint).

For the same reasons, the draft provides (art. 1 para. 6) that the acts performed and the measures taken by the prosecutors of the Section in pending cases, which prior to the entry into force of the law were not subject to hierarchical control, are subject to control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice after that date (ex officio or, as the case may be, upon notification).

The acts and measures that will be carried out after the dissolution of the Section (by the prosecutors of the competent prosecutor's offices that will take over these cases) will be subject to hierarchical control according to the rules established in the Code of Criminal Procedure (exercised by the head of the prosecution's office or, if he has carried them out, exercised by the prosecutor the hierarchically superior prosecutor). This is the reason for which the project does not include rules regarding them.

Starting with the date of dissolution of the Section, the representation of the Public Ministry in the cases taken over from the Section will be ensured by prosecutors from the prosecutor's offices attached to the courts before which these cases are pending, unless otherwise provided by law.

Also, in order to respect the principle of hierarchical subordination, the remedies exercised by the Section may be withdrawn only by the general prosecutor of the PHCCJ (art. 1 para. 8).

The positions in the scheme of functions and staff of the Section at the date of entry into force of the law remain in the scheme of the Prosecutor's Office attached to the High Court

of Cassation and Justice, being redistributed in other sections or in other prosecutor's offices as necessary.

Prosecutors in the Section, including the Deputy Chief Prosecutor, return to the prosecutor's offices where they come from. From the date of returning to the prosecutor's office where they come from, the prosecutors regain their professional degree of execution and the corresponding remuneration they had previously or those acquired as a result of promotion, under the law, during the activity within the Section for Investigating Criminal Offences within the Judiciary.

Personnel seconded to other categories of posts in the Section shall cease to be seconded from the date of the Section's dissolution.

The draft also contains texts on the competence to prosecute in cases that are currently within the competence of the Section.

According to art. 13 para. (1) lit. b) of the Government Emergency Ordinance no. 43/2002 on the National Anticorruption Directorate, with subsequent amendments and completions, the offenses set out in Law no. 78/2000, with subsequent amendments and completions, fall within the competence of the National Anti-corruption Directorate if, regardless of the value of the material damage or the value of the amount or property that is the subject of the corruption offense, are committed by the judges of the High Court of Cassation and Justice, other judges and prosecutors, as well as by the members of the Superior Council of Magistracy.

The provisions of art. 13 para. (1) lit. b) of GEO no. 43/2002 were implicitly amended by Law no. 207/2018. The effect produced by the entry into force of Law no. 207/2018 on the provisions of art. 13 of the O.U.G. no. 43/2002, in the sense of restricting the competence of DNA in cases regarding crimes committed by magistrates (these becoming the competence of the Section), was also retained by the Constitutional Court. In paragraphs 126-128 of Decision no. 33/2018 the Constitutional Court states that "The fact that, following the establishment of this new structure with its own investigative powers, a pre-existing prosecutor's office structure loses some of its legal powers does not constitute a matter of constitutionality".

Thus, since by repealing Section 2¹ of Law no. 304/2004 - which establishes the exclusive competence of the Section for the Investigation of Criminal Offences within the Judiciary to carry out criminal prosecution in cases of crimes committed by judges and prosecutors - and in the absence of express legislative intervention, the offenses provided in Law no. 78/2000 committed by judges or prosecutors would have to be resolved by prosecutor offices other than National Anti-corruption Directorate (respectively by the prosecutor offices

	<p>attached to courts of appeal or, as the case may be, by the Prosecutor Office attached to the High Court of Cassation and Justice), in order to return to the previous regulation of National Anticorruption Directorate's competence, a legislative intervention is necessary to expressly provide that "from the date of entry into force of this law, the National Anticorruption Directorate also has competence for investigating offenses provided in Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and completions, if, regardless of the amount of material damage or the amount or property that is the subject of the crime of corruption, they are committed by judges of the High Court of Cassation and Justice , by the other judges and prosecutors, including military judges and prosecutors and those who are members of the Superior Council of Magistracy".</p> <p>For the same reasons, applicable <i>mutatis mutandis</i>, express legislative intervention is also required with regard to the competence of the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT). Thus, the draft expressly provides that "from the date of entry into force of this law, the competences of Directorate for the Investigation of Organized Crime and Terrorism also includes the offenses provided by art. 11 para. (1) of the Government Emergency Ordinance no. 78/2016 for the organization and functioning of the Directorate for the Investigation of Organized Crime and Terrorism, as well as for the amendment and completion of normative acts, with subsequent amendments and completions, committed by judges of the High Court of Cassation and Justice, the other judges and prosecutors, including military judges and prosecutors and those who are members of the Superior Council of Magistracy".</p>
3. Alte informații	
Secțiunea a 3-a – Impactul socioeconomic al proiectului de act normativ	
1. Impactul macroeconomic	Nu este cazul.
1 ¹ . Impactul asupra mediului concurențial și domeniului ajutoarelor de stat	Nu este cazul
2. Impactul asupra mediului afaceri	Nu este cazul
3. Impactul social	Nu este cazul
4. Impactul asupra mediului	Nu este cazul
5. Alte informații	
Secțiunea a 4-a – Impactul financiar asupra bugetului general consolidat, atât pe termen scurt, pentru anul curent, cât și pe termen lung (5 ani).	
- mii lei -	

Indicatori	Anul curent	Următorii 4 ani				Media pe 5 ani
		3	4	5	6	
1	2	3	4	5	6	7
	2020	2021	2022	2023	2024	
1. Modificări ale veniturilor bugetare, plus/minus, din care:						
a) buget de stat, din acesta:						
(i) impozit pe profit						
(ii) impozit pe venit						
b) bugete locale:						
(i) impozit pe profit						
c) bugetul asigurărilor sociale de stat:						
(i) contribuții de asigurări						
2. Modificări ale cheltuielilor bugetare, plus/minus, din care:						
a) buget de stat, din acesta:						
(i) cheltuieli de personal						
(ii) bunuri și servicii						
b) bugete locale						
(i) cheltuieli de personal						
(ii) bunuri și servicii						
c) bugetul asigurărilor sociale de stat:						
(i) cheltuieli de personal						
(ii) bunuri și servicii						
3. Impact financiar, plus/minus, din care:						
a) buget de stat						
(i) cheltuieli de personal						
b) bugetele locale						
4. Propuneri pentru acoperirea creșterii cheltuielilor bugetare						
5. Propuneri pentru a compensa reducerea veniturilor bugetare						
6. Calcule detaliate privind fundamentarea modificărilor veniturilor și/sau cheltuielilor bugetare						
7 Alte informații						

Secțiunea a 5 –a – Efectele proiectului de act normativ asupra legislației în vigoare	
1. Măsuri normative necesare pentru aplicarea prevederilor proiectului de act normativ: a) acte normative în vigoare ce vor fi modificate sau abrogate, ca urmare a intrării în vigoare a proiectului de act normativ; b) acte normative ce urmează a fi elaborate în implementării noilor dispoziții.	Nu este cazul.
1 ¹ . Compatibilitatea proiectului de act normativ cu legislația în domeniul achizițiilor publice	Nu este cazul
2. Conformitatea proiectului de act normativ cu legislația comunitară în cazul proiectelor ce transpun prevederi comunitare	
3. Măsuri normative necesare aplicării directe a actelor normative comunitare	Nu este cazul.
4. Hotărâri ale Curții de Justiție a Uniunii Europene	Nu este cazul.
5. Alte acte normative și/sau documente internaționale din care decurg angajamente	
6. Alte informații.	Nu este cazul.
Secțiunea a 6-a – Consultările efectuate în vederea elaborării proiectului de act normativ	
1. Informații privind procesul de consultare cu organizații neguvernamentale, institute de cercetare și alte organisme implicate	Nu este cazul
2. Fundamentarea alegerii organizațiilor cu care a avut loc consultarea, precum și a modului în care activitatea acestor organizații este legată de obiectul proiectului de act normativ	Nu este cazul
3. Consultările organizate cu autoritățile administrației publice locale, în situația în care proiectul de act normativ are ca obiect activități ale acestor autorități, în condițiile Hotărârii Guvernului nr. 521/2005 privind procedura de consultare a structurilor asociative ale autorităților administrației publice locale	Nu este cazul

la elaborarea proiectelor de acte normative	
4. Consultările desfășurate în cadrul consiliilor interministeriale, în conformitate cu prevederile Hotărârii Guvernului nr. 750/2005 privind constituirea consiliilor interministeriale permanente	Nu este cazul
5. Informații privind avizarea de către: a) Consiliul Legislativ b) Consiliul Suprem de Apărare a Țării c) Consiliul Economic și Social d) Consiliul Concurenței e) Curtea de Conturi.	Proiectul va fi avizat de Consiliul Superior al Magistraturii și Consiliul Legislativ.
Secțiunea a 7-a – Activități de informare publică privind elaborarea și implementarea proiectului de act normativ	
1. Informarea societății civile cu privire la necesitatea elaborării actului normativ	
2. Informarea societății civile cu privire la eventualul impact asupra mediului în urma implementării proiectului de act normativ, precum și efectele asupra sănătății și securității cetățenilor sau diversității biologice	Nu este cazul
3. Alte informații	Nu este cazul
Secțiunea a 8-a - Măsuri de implementare	
1. Măsurile de punere în aplicare a proiectului de act normativ de către autoritățile administrației publice centrale și/sau locale – înființarea unor noi organisme sau extinderea competențelor instituțiilor existente	Nu este cazul
2. Alte informații	Nu au fost identificate

LAW**on the dismantling of the Section for investigating criminal offences within the judiciary, as well as for the amending and completing some normative acts in the field of justice
(as adopted by the Chamber of Deputies)****The Chamber of Deputies adopts this law:**

Art. 1 – (1) On the date of entry into force of this law, the Section for investigating criminal offences within the judiciary within the Prosecutor's Office attached to the High Court of Cassation and Justice, hereinafter referred to as the Section, shall be dismantled.

(2) Cases currently being examined at the Section level shall be transmitted administratively, within 5 working days from the date of entry into force of this law, by the Prosecutor's Office attached to the High Court of Cassation and Justice, to the competent prosecutor's offices according to the law, which continues to solve the cases.

(3) The provisions of par. (2) shall apply accordingly to the solved cases whose files are in the archives of the Section.

(4) The acts of procedure accomplished in the cases provided in par. (2) and (3), in compliance with the legal provisions in force at the date of their fulfillment, remain valid.

(5) The dismissal, the waiver of criminal prosecution and the indictment solutions ordered by the prosecutors of the Section, which were not subject to the hierarchical control prior to the entry into force of this law, are subject, from the date of dismantling of the Section, to the control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the provisions of art. 318, 328, 335 and art. 340 of Law no. 135/2010 on the Criminal Procedure Code, as subsequently amended and supplemented, applying accordingly.

(6) The acts performed and the measures taken by the prosecutors of the Section in the cases provided in para. (2), which were not subject to the hierarchical control prior to the entry into force of this law, are subject, from the date of the dismantling of the Section, to the control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the provisions of art. 304 and of art. 339 of Law no. 135/2010, as subsequently amended and supplemented, being applied accordingly.

(7) From the date of dismantling of the Section, prosecutors from the prosecutor's offices attached to the courts in whose role they are, unless otherwise provided by law, participate at the trial of the cases and at the settlement of the proposals, appeals, complaints or any other requests formulated in the cases taken over according to par. (2) and (3).

(8) Appeals declared by the Section may be withdrawn only by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

Art. 2 - (1) The positions in the scheme of functions and staff of the Section at the date of entry into force of this law remain in the scheme of the Prosecutor's Office attached to the High Court of Cassation and Justice, being redistributed in other sections or in other prosecutor's offices, as needed.

(2) Starting with the date of abolition of the Section, the prosecutors within the Section, including those with leading positions, shall return to the prosecutor's offices where they come from. From the date of returning to the prosecutor's office where they come from, the prosecutors who worked

in the Section shall regain their professional degree of execution and the corresponding salary they had previously or those acquired as a result of promotion, under the law, during the activity within the Section Investigation of Crimes in Justice for investigating criminal offences within the judiciary.

(3) The secondment of the staff seconded to the other categories of positions from those provided in par. (1) shall cease from the date of abolition of the Section.

Art. 3 - (1) From the date of entry into force of this law, the National Anticorruption Directorate is also responsible for the offenses provided in Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and completions, if, regardless of the amount of material damage or the amount or property that is the subject of the crime of corruption, are committed by judges of the High Court of Cassation and Justice, by other judges and prosecutors, including military judges and prosecutors and those who are members of the Superior Council of Magistracy.

(2) From the date of entry into force of this law, the offenses provided by art. 11 para. (1) of the Government Emergency Ordinance no. 78/2016 for the organization and functioning of the Directorate for the Investigation of Organized Crime and Terrorism, as well as for the amendment and completion of some legal acts, approved with amendments by Law no. 120/2018, committed by judges of the High Court of Cassation and Justice, other judges and prosecutors, including military judges and prosecutors and those who are members of the Superior Council of Magistracy are also within the competence of the Directorate of Investigation of Organized Crime and Terrorism.

Art. 4 Article 95 of Law no. 303/2004 on the status of judges and prosecutors, republished in the Official Gazette of Romania, Part I, no. 826 of September 13, 2005, as subsequently amended and supplemented, is amended and shall have the following content:

„Art. 95. - (1) Judges and prosecutors may be searched, detained, arrested or arrested at home only with the approval of the Section for Judges or, as the case may be, of the Section for Prosecutors of the Superior Council of Magistracy.

(2) Judges and prosecutors may be sent to court for offences against justice, corruption offences, service offences or offenses assimilated to corruption offenses, only with the approval of the Section for Judges or, as the case may be, of the Section for Prosecutors of the Superior Council of Magistracy.

(3) In case of flagrant crime, judges and prosecutors may be detained and searched according to the law, the Section for Judges or, as the case may be, the Section for Prosecutors being immediately informed by the body that ordered the detention or search.”

Art. 5 – On the date of entry into force of this law, Section 2¹ - “Section for investigating criminal offences within the judiciary” of Law no. 304/2004 regarding the judicial organization, republished in the Official Gazette of Romania, Part I, no. 827 of September 13, 2005, with subsequent amendments and completions, shall be repealed.

Art. 6. – Law no. 317/2004 on the Superior Council of Magistracy, republished in the Official Gazette of Romania, Part I no. 628 of September 1, 2012, as subsequently amended and supplemented, is amended and supplemented as follows:

1. In Article 28, paragraph (2) is amended and will have the following content:

"2. The President of the High Court of Cassation and Justice, the Minister of Justice and the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice shall not have the right to vote in cases where the SCM Sections rule in disciplinary matters, solve complaints concerning the good repute of judges and prosecutors, requests for the approval of search, detention, pre-trial detention or house arrest for judges, prosecutors or

assistant magistrates, as well as requests for the approval of sending to court the prosecutors and judges for committing an offense against justice, corruption offences, service offences or offenses assimilated to corruption offenses."

2. In Article 42, four new paragraphs are inserted after paragraph (4), para. (5) - (8), with the following content:

"(5) The section for judges of the Superior Council of Magistracy approves sending to court the judges for committing a crime against the justice, corruption offences, service offences or offenses assimilated to corruption offenses.

(6) The Section for prosecutors of the Superior Council of Magistracy approves sending to court the prosecutors for committing a crime against the justice, corruption offences, service offences or offenses assimilated to corruption offenses.

(7) If the request for approval of the sending to court concerns a magistrate member of the Superior Council of Magistracy, he/she shall not have the right to vote. The provisions of this paragraph shall apply *mutatis mutandis* to requests for search, detention, pre-trial detention or house arrest.

(8) In analyzing the request to approve the sending to court, the SCM Section cannot rule on the merits nor on the opportunity of the accusation, on the legality of taking of evidences and of other prosecutorial acts. The SCM Section pronounces a decision within 15 days from receiving the request. The SCM Section may, by reasoned decision, reject the request."

Art. 7. – Law no. 303/2004 on the status of judges and prosecutors, republished in the Official Gazette of Romania, Part I, no. 826 of 13th September 2005, as amended and supplemented, Law no. 304/2004 on judicial organization, republished in the Official Gazette of Romania, Part I, no. 827 of 13 September 2005, as amended and supplemented, Law no. 317/2004 on the Superior Council of Magistracy, republished in the Official Gazette of Romania, Part I, no. 628 of 1 September 2012, as amended and supplemented, as well as the amendments made herein will be republished in the Official Gazette of Romania, Part I, giving the texts a new numbering.

The bill was adopted by the Chamber of Deputies at its meeting of 24 March 2021, in accordance with article 76 para. (1) of the Romanian Constitution, republished.