

To: European Parliament, Delegation to the EU-Moldova Parliamentary Association Committee
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Re: CSO Recommendations for conditionalities on EU macrofinancial assistance to Moldova

Date: 19 April 2017

Sent by email

Dear Members of the Delegation to the EU-Moldova Parliamentary Association Committee,

The undersigned organizations welcome the EU ambassadors agreement of 12 April 2017 on the Council's negotiating stance regarding the macro-financial assistance to be provided by EU to the Republic of Moldova in an amount of €100 million. We especially appreciate that the EU assistance would be subject to a memorandum of understanding (MOU), including precise and specific conditions, to be agreed by the Republic of Moldova with the Commission.

Having in mind the role of the European Parliament in approving Macro-Financial Assistance programmes to non-EU members (co-decision), we kindly ask you to consider the following conditions for three tranches of the macro-financial assistance to be disbursed to Moldova in 2017 and 2018. Their goal is to ensure that the EU funds will be spent for supporting the sustainable democratic and economic development of Moldova rather than being misused for other purposes. The proposed conditions are based on our analysis of the major issues that Moldova is currently facing, which are briefly outlined in the annex to this letter.

Proposed specific conditions:

1) Independent and accountable judiciary:

- A) Amend the legal framework and practice on ensuring merit-based appointment and promotion of judges, in particular: 1) revise the criteria for selection and promotion of judges in line with international standards and best practices, including criteria for promotion to the Supreme Court of Justice. 2) amend the regulatory framework to ensure that all vacancies in the judiciary are filled in through periodic contests, 2-3 times per year. 3) provide for the priority right of best scored applicants at contests to choose from the list of vacant positions. 4) provide track record of merit-based appointments and promotions of judges.
- B) Amend the legal framework on disciplinary responsibility of judges with a view to strengthening its objectivity, efficiency and transparency.
- C) Ensure full independence and adequate competences for Judicial Inspection.

If adequately and timely implemented, these conditions shall ensure merit-based appointments and promotion of judges and an effective mechanism for disciplinary responsibility of judges.

2) Media freedom:

- A) Adopt the new Broadcasting Code in the final reading, taking into account the EU's Audiovisual Media Service Directive and the national expert recommendations provided during public consultations on the draft code and ensure its entering into force the latest by the end of 2017.

- B) Amend the legal framework on media advertising and on competition in line with the provisions of the new Broadcasting Code, in order to provide fair competition on the media market and reduce the concentration of media ownership.
- C) Strengthen the access to information law and its implementation, including by preventing the misuse by public authorities of the personal data protection legislation.
- D) Provide track record of credible and professional investigations of the Moldovan anti-monopoly agency (Competition Council) on the subject of monopoly in mass media advertising market, including, but not limited to permanent practices of economic concentration, abuse of dominant position, dumping and tying.

If adequately and timely implemented, these conditions shall ensure media pluralism, protection of independent media and effective access to information.

3) Integrity system:

- A) Ensure credible, merit-based and transparent appointment of a politically un-affiliated President and Deputy-President of the National Integrity Authority (NIA).
- B) Ensure credible, merit-based and transparent appointment of the integrity inspectors.
- C) Allocate sufficient funding for the currently underfunded NIA and for preparing the launch of e-integrity system.
- D) Ensure interoperable, operational and publicly available e-integrity system (online submission of income and asset declarations, in machine readable format) by the end of 2017.

If adequately and timely implemented, these conditions shall ensure full and effective operation of the National Integrity Authority (NIA) and the e-integrity system.

4) High-level corruption:

- A) Fully implement the reform of the Anticorruption Prosecution Office (APO) by excluding cases of small corruption from the competences of APO, as well as fully staff and equip the APO. These activities meant to empower APO to effectively fight high-level corruption in line with the 2016 Law on prosecution and commitments under the 2016 Government's Roadmap in response to the EU Council Conclusions of 15 February 2016 regarding Moldova.
- B) Provide track record of professional and non-partisan investigations into high-level corruption cases.

If adequately and timely implemented, these conditions shall ensure effective mechanisms for fighting high-level corruption.

5) Financing of political parties:

- A) Significantly reduce the threshold of donations from private and legal persons to 20 and 40 average salaries respectively.
- B) Allow private donations from Moldovan citizens living abroad on equal grounds with Moldovan citizens residing in Moldova.
- C) Reduce the ceiling of membership fees and donations collected annually by parties from 0.3% of the state budget revenue to 0.2%.
- D) Amend the legislation to include the presidential elections among eligibility criteria for state funding of political parties.

If adequately and timely implemented, these conditions shall reduce political corruption and financing from obscure sources of political parties.

6) Political parties and pluralism:

- A) Amend the Electoral code and election-related legislation in order to address previous recommendations of the OSCE/ODIHR and Venice Commission regarding out-of-country voting, women representation, transparency of campaign finances, impartial coverage of campaign, election-dispute resolution system etc.

- B) Any amendment to the electoral system shall be carried out in strict conformity with the Venice Commission standards, with a broad consensus amongst political forces, including opposition and the main extra-parliamentary parties. If the electoral law is amended, the current system, prior to the amendments, will apply to the next parliamentary elections.

If adequately and timely implemented, these conditions shall enhance the democratic processes and the multi-party system in the country.

7) Financial sector:

- A) Implementation of Basel III standards in the national regulatory system.
- B) Improve the quality of banks' shareholders by implementing fit&proper standards and by restricting the participation of off-shore entities in banks' ownership.
- C) Address the management misconduct by developing a corporate governance code, and adjusting administrative fine levels to reflect the gravity of non-compliance with the law.
- D) Develop a strategy for increasing the deposit guarantee fund to at least 100,000 MDL till 2020.
- E) Create an independent monitoring committee to closely supervise the progress of the asset recovery stage of the 2014-2015 bank fraud investigation.

If adequately and timely implemented, these conditions shall ensure the resilience of the financial sector.

8) Energy sector:

- A) Adopt the new energy law in a maximum transparent manner, with the effective participation of the civil society.
- B) Reform the energy regulatory body, under the supervision of Energy Community, civil society and other relevant stakeholders.
- C) Develop an action plan, with clear deadlines, concerning the implementation of the unbundling principle in gas sector.
- D) Improve the new rules on electricity supply procurement, based on the report of the Group of Observers on electricity procurement, and transfer the rules into the primary legislation.

If adequately and timely implemented, these conditions shall ensure more robust energy regulatory and legal framework and, consequently, improve Moldova's energy independence.

9) E-tender system:

- A) Amend the legal framework to ensure that all documents regarding the public procurement should be publicly available, free of charge.
- B) Embed the electronic system of the DSA (Dispute settlement authority) into general electronic procurement system.
- C) Amend the Public Procurement Law to include the state-owned enterprises into the remit of the Public Procurement Law, to provide an obligation publish full versions of complaints and of the dispute resolutions, to extend the number of evaluation criteria of tenders and adjust the national timeframes for submission of tender applications in line with those stipulated in GPA standards (Article XI).

If adequately and timely implemented, these conditions shall ensure transparent, efficient and fair public procurement system.

10) Budgetary transparency and accountability:

- A) Establish a parliamentary committee required to analyze the audit reports produced by the Court of Accounts, and present a progress reports on the implementation of the recommendations issued by the Court on a half yearly base.
- B) Oblige the Government to present the Parliament an annual report the execution of the recommendations of the Court of Accounts.

- C) Conduct hearings and public debates on the most important reports of the Court of Accounts.
- D) Reduce the government discretion regarding the reallocation of budget resources approved by the Budget Law, from 10% to 3%.
- E) Conduct hearings and public debates in the Parliament, prior approval, on the annual budget laws for the State Budget, the State Social Insurance Budget, and Mandatory Health Insurance Fund.

If adequately and timely implemented, these conditions shall increase budgetary transparency and accountability.

- 11) Public Private Partnership. Transfer the competencies on Public Private Partnership from the Ministry of Economy to the Ministry of Finances. This shall contribute to increasing public management and reducing fiscal risks.

Annex: outline of the major current issues affecting democracy and rule of law in the Republic of Moldova

1) Electoral reform and political party funding

On 14 March 2017, the ruling party Democratic Party of Moldova (PDM) submitted a bill to the Moldovan parliament with the aim to change the existing proportional electoral system into a majoritarian one, arguing that the reform will reduce the political corruption, create stronger connections between voters and policymakers and restore the citizens' trust in politicians. However, the bill does not include any amendments to the Electoral code addressing the OSCE/ODIHR and Council of Europe recommendations. On the contrary, the bill introduces the imperative mandate, thereby going against Moldovan constitution, and fails to ensure fair representation of women, national minorities, and citizens residing in the Transnistrian region or abroad. The initiative is heavily promoted in a nationwide information campaign supported by a PDM-owned media holding to obtain favourable public opinion. The argument that PDM informally used to promote the bill, i.e. that it would prevent the victory of the anti-western Party of Socialists of the Republic from Moldova (PSRM) in the 2018 parliamentary elections, is not supported by any evidence. Moreover, analysing the present political spectrum or parties likely to access the Parliament after 2018 elections, PSRM is PDM's most likely, if not the only, possible coalition partner after the 2018 elections.

2) Systemic corruption: High-level corruption and public integrity

Corruption is endemic in Moldova. It is among the five top concerns of Moldovan citizens. Moldova score in the Transparency International Corruption Perception Index has fallen from 36 in 2012 to 30 in 2016. This results in an unprecedented public distrust in state institutions, represented by compromised pro-European parties and continuous decline of public support for EU integration. The implementation of anti-corruption legislative measures adopted in 2016 is lagging behind. Corruption is the main impediment to the economic recovery of the Republic of Moldova, the falling pro-EU sentiment, and the main cause of deep political and social-economic crises in the country.

3) Media freedom and regulation of mass-media institutions

In the last three years, the situation in the media sector in Moldova has worsened significantly. The Freedom House report on Freedom of the Press in 2016 listed Moldovan media as "partly free". The World Press Freedom Index 2016 by Reporters Without Borders ranked Moldova 76th out of 180 countries, compared to 55th in 2013. The main reasons for this downfall are the country's political instability and challenges confronting the media sector, such as media concentration; the close link between media outlets and the political and business interests of their owners; an obsolete legal framework; external and internal propaganda; the political control of regulatory bodies; and the monopoly of the advertising market. In the same period, the Moldovan authorities have failed to see their role in ensuring and protecting mass media freedom and have often stood idle, or contributed to exacerbating the situation. It is the role of the institutions to put in place premises and incentives for pluralism to flourish and develop, and we believe our authorities need to be reminded this.

4) Judiciary independence and accountability

Moldova has been implementing a Justice Sector Reform Strategy since 2011, including with EU budgetary support. At the same time, the Moldovan population's level of trust in the judiciary has decreased significantly, from 74.5% mistrusting the judiciary in November 2011, to 89.6% in October 2016. The major concerns refer to the phenomenon of selective justice, particularly demonstrated by the selective approach to appointment and selection of judges; the examination of cases of high social resonance behind closed doors; the use of criminal justice against some judges; and the selective approach in applying disciplinary procedures. The appointment and promotion of judges with integrity issues leave the system vulnerable to further inappropriate third party influences. The use of criminal justice against judges for the merits of taken decisions instils fear and self-censorship among judges. A vulnerable and weak judicial system will impede any real anti-corruption or economic reforms, while the population's distrust in the system will remain low.

5) Financial sector

The fundamental vulnerabilities that caused the „1 billion USD” frauds and banking crisis are still relevant. Namely, the banking sector is plagued by poor corporate governance, which is induced, in many cases, by non-transparent and not fit-and-proper shareholders. Moreover, the financial non-banking sector experiences similar issues, which, coupled with a weak regulator, makes it even more exposed to similar frauds and crises as in the banking sector. The ongoing investigations about the „1 billion USD” frauds in the banking sector are slow and non-transparent, which undermines even more the public trust into the state institutions.

6) Energy sector

The energy sector remains underdeveloped and highly vulnerable to external influence, given the high direct dependence on energy imports from Russia (natural gas) or Russia-controlled companies in the Transnistrian region (Cuciurgan Power Plant owned by Inter RAO UES). Some moderate progress was achieved with the interconnection projects with Romania. Nevertheless, implementation in practice can face additional challenges due to strong vested interests, lacking financial sources (in the case of electricity) and technical difficulties to effectively connect with the existing key infrastructure (in the case of natural gas). The main difficulties in this sector stem from a few of systemic shortcomings: the weakness of a regulatory body with problematic level of transparency and accountability; the low level of enforcement of the legislation and poor management of energy enterprises with state participation; the growing debts to Russia; and the interference of vested interests, both from the right and left bank of Dniester River. Currently, the most pressing issue is the lack of multiple reliable suppliers of electricity to Moldova, which can expose the country to risks of electricity shortages that would boost offshore companies and shady schemes, as it was the case in November 2014.

7) Public procurements

The volume of public procurements in Moldova accounted for about 5.6% of GDP, or about 7.5 billion lei for 2016. At the same time, the system is negatively affected by lack of transparency and corruption. The Law on public procurement needs several improvements to reduce the opportunities for corruption. In particular, the law shall institute an obligation to all procuring entities to publish or give full access to all procurement documents, include provisions concerning the conflict of interest, corruption and fraud and coverage of the state-owned enterprises.

The ongoing reform of the current electronic system is essential both from quantitative and qualitative points of view. It currently includes only 311 procuring entities out of more than four thousands. Qualitatively it also needs improvement since it is mainly used as a register of tenders rather than a fully-fledged electronic procurement system (it is impossible for applicants to submit completely electronic offers and not all tenders documents are available online after the finalization of the procedure). The recent efforts to modernize the electronic procurement system seriously modified the schedule of legislation adjustments stipulated in the AA. Since such radical requirements do not correspond to stipulations of existing Public Procurement Law, Ministry of Finance will have to amend or write a new law in the foreseeable future, also including the latest provisions of 2014 EU Directive.

8) Development of Public Private Partnerships

Public Private Partnership (PPP) offers great opportunities for development of public services and infrastructure, but at the same time involves great fiscal risks. The development of PPPs in the Republic of Moldova occurs with great difficulty, see e.g the concession of the Airport, with deviations from the legal framework and best practices. The major cause of this situation is that the authority empowered with managing the PPP competencies, is the Ministry of Economy, while the main responsibility for managing public finances is the Ministry of Finances.

9) Budgetary transparency

The low level of public spending control is a permanent subject in the Court of Accounts reports' and reported with the same insistence by different NGOs. The irregularities' scale, estimated by the Court

exceeded 5 billion lei in 2016. The audits have discovered both technical and operational issues in the institutions audited, and gaps in the legal framework which prevent an efficient administration thereof. Meanwhile, almost 65% of the Court of Accounts recommendations, which aim to remedy the situation, were not implemented. Despite this, the reaction of the authorities and measures taken to correct the situation is unacceptably long delayed. This situation rests mostly with the inadmissible passive role of the Parliament regarding the low level of budget transparency and lack of control of the budgetary process. Any financial assistance provided to Moldova by international partners risks being mismanaged without a proper functioning of the Court of Accounts, including full implementation of its reports.

Signatories:

- Association for Participatory Democracy (ADEPT), www.e-democracy.md
- Association for Independent Press (API), www.api.md
- Association for Efficient and Responsible Government (AGER), www.ager.md
- Expert-Grup, www.expert-grup.org
- Foreign Policy Association (APE), www.ape.md
- Legal Resources Centre from Moldova (LRCM), www.crjm.org
- Center Partnership for Development, www.progen.md
- Center for Policies and Reforms (CPR-Moldova)
- Institute for Development and Social Initiatives (IDIS) 'Viitorul', www.viitorul.org
- Institute for Public Policy (IPP), www.ipp.md
- Institute for European Policies and Reforms (IPRE), www.ipre.md
- Promo-LEX, www.promolex.md
- Transparency International – Moldova, <http://www.transparency.md>