



EASTERN PARTNERSHIP
Civil Society Forum

Monitoring Public Policies in Moldova, 2017

EaP CSF, Moldovan National Platform, Working Group 1

Chisinau, October 2017

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Introduction

This report includes a compilation of the results of monitoring public policies conducted by the members of EaP CSF, Moldovan National Platform, Working Group 1 within various projects since the last EaP CSF in Brussels, 2016.

The evolution of events in the last period denotes worsening of the situation regarding compliance with the democratic principles and the rule of law. A clear example of abusive practices of the ruling party was the initiative of so-called capital amnesty, which could have turned Moldova into a worldwide money laundering machine. With common efforts of the civil society and development partners this initiative was impeded, however the monitoring results show that the trends in other domains raise considerable concerns.

The main findings, conclusions and recommendations are presented in brief summaries on monitoring such domains as EU association agenda, anticorruption, justice sector, media freedom, human rights and electoral standards.

Working Group 1 of the Moldovan National Platform: Activity Report (November 2016 – October 2017)

Even thou the collective actions of the members of WG1 were not particularly conducted under the auspice of this working group, a considerable number of them were initiated by the most active members of this group and latterly supported by other NGOs, including non members of the National Platform.

1. Providing collective multilateral alternative reports on the implementation of various policy programs: a compilation of materials and assessments was prepared by the members of WG1 (ADEPT, Association of Independent Press, Expert-Group, Centre for Independent Journalism, Institute for European Policies and Reforms, Legal Resources Centre, TI-Moldova) “*Monitoring Public Policies in Moldova*” (May, 2017). The report was made public at the meeting of the members of the Working Group in Brussels on 1-2nd of June, 2017. The monitoring report includes 19 materials grouped in 5 chapters dedicated to recent events threatening democracy and rule of law, implementation of the Moldova-EU Association Agreement, anti-corruption, media freedom, human rights and electoral issues.

<http://eap-csf.eu/wp-content/uploads/Moldova-EaP-CSF-monitoring-report-2017.pdf>

The report was passed to the EU Delegation, the office of CoE in Chisinau, the WB, OSCE, several embassies of EU courtiers to Moldova, national and international evaluators of the countries performance, as well as mass-media.

2. Conducting a common study: a joint study “State Capture: the Case of the Republic of Moldova” has been conducted by several members of WG1 (TI-Moldova, ADEPT, IDIS Viitorul and Legal Resource Centre Moldova). According to the study, beginning with 2009, the Democratic Party of Moldova (DPM) headed initially from the shadows, and then officially by the controversial oligarch Vladimir Plahotniuc, imposed its interests in cartel agreements between members of the ruling coalition. Initially, he took control over the anticorruption bodies, further expanding the law enforcement. In spite of the enormous financial, media and administrative resources, DPM obtained modest results in the last parliamentary elections. However, the party with the highest anti-rating according to sociological studies has “converted” by various methods, including blackmail and bribery, MPs from other factions. Parliament has been subject to an unprecedented dictate of political “migration”, with the share of turncoats in various factions accounting for around one third of the MPs. At present, DPM has become the absolute beneficiary of the “migration” phenomenon of deputies and in fact controls the Legislature. Later, using political pressure and control over the law enforcement institutions, the party undertook control over the Judiciary and Executive branch of power.

http://www.transparency.md/wp-content/uploads/2017/06/TI_Moldova_State_Capture.pdf

<http://ipn.md/ro/comunicate/6680>



3. Participation in a Public Hearing at the EU Parliament and a meeting in the NATO HQs: at the invitation of the Euro-parliamentarian Ms. Monica Macovei and with the support of the European Conservatives and Reformists Group and the Expert-Forum a number of active members of the WG 1 participated in two events:

- A meeting with several officials of the NATO HQs, as well as several ambassadors to NATI from NATO members and neutral countries. The discussed issues during the event were NATO’s partnerships & projecting stability, NATO’s emerging security challenges, NATO’s relations with Moldova, NATO allies& partners (8th of February, 2017);

- a Public Hearing of the EU Parliament “Association Agreements, Beyond Rhetoric: Rule of Law, Energy, Europeanization”, where the members of WG1, as well as other active NGOs presented their views on the situation in the country in the fields of justice sector reform, anti-corruption, mass-media freedom, economic performances, energy sector, rule of law and europeanisation (8th of February, 2017).

4. Meetings with representatives of Moldova’s development partners: To bring the attention of country’s development partners and explain the position of CSOs on the inadmissibility of the adoption of a law aiming at legalizing fraudulent money, WG1 organized meetings with the heads of:



- the *IMF Office in Moldova* (19th of December, 2016),
- the *CoE in Moldova Office* (20th of December, 2016),
- the *EU Delegation to Moldova* (21st of December, 2016),
- the *Ambassador of the U.S. to Moldova* (17th of January, 2017).

5. Issuing public appeals and declarations:

On December 9th, 2016 a **public declaration on the disapproval of the lacking transparency appointment of the General Prosecutor** was issued. According to the declaration, the appointment of the candidate to the position of General Prosecutor in a hurry seriously affects trust in the Prosecutor's Office. The NGOs requested the President of the Republic of Moldova to make public the information regarding the verification of the integrity of this holder to the public dignity function provided by the Information and Security Service. The signatories NGOs called on the Prosecutor General to come up with public explanations to exclude any doubt about the legality of the provenance of his assets and the actions linked to the tragic events of April 2009 he was involved in. They also requested the National Integrity Authority, immediately after it becomes operational, to carry out the control of the Prosecutor General's estate. The declaration was supported by 13 NGOs.

<http://www.api.md/news/view/ro-declaratie-dezaprobam-modul-in-care-a-fost-investit-procurorul-general-1389>

<http://crim.org/en/declaratie-dezaprobam-modul-in-care-a-fost-investit-procurorul-general/>

<http://www.ipn.md/ro/societate/80837>

<http://www.moldova.org/13-ong-uri-dezaprobam-modul-care-fost-investit-procurorul-general/>

<http://www.timpul.md/articol/societatea-civila-dezaproba-modul-in-care-a-fost-investit-procurorul-general--101470.html>

Withstanding the attempt of the governors to legalize the money with illegal provenience: In December, 2016 the governors of the country issued the so-called Draft Law on Liberalisation of Capital and Fiscal Stimulation that was perceived as an attempt to legalize the money with fraudulent provenience. The draft law was passed and voted in the first reading in the Parliament breaking the parliamentary procedures and the principles of decisional transparency. Given the USD1 Bill. bank fraud that took place in the Republic of Moldova, the adoption this law would legalize the fraudulent money, deteriorate the efforts of further money recovery, affect the efficiency of re-setting the anti-corruption system in the country and discourage the obedient tax payers. In this regards, several active members of the WG 1 (Expert-Group, TI-Moldova, ADEPT, IDIS "Viitorul", Association of Independent Press, Legal Resource Centre, Institute of Public Policies, PromoLex) came with a public appeal requiring the withdrawal of this Law. The appeal was supported by 29 NGOs and issued on December 12th, 2016.

<http://www.transparency.md/2016/12/12/the-adoption-of-the-law-on-the-liberalization-of-capital-and-financial-incentive-undermines-anti-corruption-efforts-and-discourages-honest-taxpayers-and-state-servants/>

<http://www.transparency.md/2016/12/12/adoptarea-proiectului-legii-privind-liberalizarea-capitalului-submineaza-eforturile-anticoruptie/>

<https://www.juridice.ro/483271/adoptarea-legii-privind-liberalizarea-capitalului-si-stimularea-financiara-submineaza-eforturile-anticoruptie-si-descurajeaza-contribuabilii-si-functionarii-onesti.html>

<https://anticoruptie.md/ro/stiri/doc-societatea-civila-da-alarma-parlamentul-vrea-sa-legalizeze-averile-ilegale-sergiu-sarbu-exista-critici-nimic-nu-este-perfect>

<http://mobi.protv.md/stiri/actualitate/mai-multe-organizatii-ale-societatii-civile-considera-inadmisibile---1712501.html>

<https://www.zdg.md/stiri/stiri-politice/apel-adoptarea-proiectului-legii-privind-liberalizarea-capitalului-submineaza-eforturile-anticoruptie-si-descurajeaza-contribuabilii-si-functionarii-onesti>

<http://crim.org/apel-liberalizarea-capitalului/>

On 12th of January, 2017 members of WG1 made a **public Appeal of the Ambassador of the United States of America** requiring the Government of the U.S. and related official authorities to take attitude and express their opinion vis-à-vis the legal initiative on so-called "capital liberalization" in the Republic of Moldova, through the prism of the Magnitsky Act. The appeal was co-signed by 18 NGOs.

<http://www.transparency.md/2017/01/12/civil-society-appeal-to-the-government-of-the-united-states-of-america/>

<http://www.transparency.md/2017/01/12/apel-al-reprezentantilor-societatii-civile-catre-guvernul-statelor-unite-ale-americii/>

<http://www.api.md/news/view/ro-apel-al-reprezentantilor-societatii-civile-catre-guvernul-statelor-unite-ale-americii-1405>

<http://agora.md/stiri/26908/reprezentantii-societatii-civile-cer-autoritatilor-americane-sa-opreasca-adoptarea-legii-liberalizarii-capitalului>

The actions followed by numerous press-conferences, public debates and interviews for mass-media.

Due to collective actions initiated by the members of WG1 and other NGOs that supporter these actions the international community put pressure on the governors of the country and the *law has been withdrawn after being adopted in first reading*.

On 30th of January, 2017, several members of the WG1 came with the **public request to reformulate the Regulation of the organisation and implementation of the contest for the positions of the Chair and Vice-Chair of the National Integrity Authority**. The public appeal called the authorities to organize a transparent contest, based on concrete evaluation criteria, publication of the evaluation results:

<http://crjm.org/regulamentul-ani-organizarea-si-desfasurarea-concursului-de-suplinire-a-functiilor-de-presedinte-si-vicepresedinte-trebuie-rescris/>

On 13th of February, 2017 a **common declaration of CSOs and mass-media about the tendency of several public authorities to misinterpret the provisions of the Law on Personal Data Protection through unjustified refusals to provide information of public interest to applicants, especially journalists**.

<http://investigatii.md/ro/activitati/declaratii/declaratia-reprezentantilor-mass-media-si-ai-societatii-civile-participanti-la-dezbatare-publica-datele-cu-caracter-personal-intre-protectia-demnitarilor-si-limitarea-accesului-la-informatie>

<http://www.api.md/news/view/ro-declaratia-reprezentantilor-mass-media-si-ai-societatii-civile-participanti-la-dezbatare-publica-datele-cu-caracter-personal-intre-protectia-demnitarilor-si-limitarea-accesului-la-informatie-1434>

<https://anticoruptie.md/ro/stiri/datele-cu-caracter-personal-intre-protectia-demnitarilor-si-limitarea-accesului-la-informatie-expert-actuala-guvernare-are-interesul-ca-jurnalistii-sa-fie-hartuiti-prin-instante>

<http://crjm.org/societatea-civila-ingrijorata-de-ingradirea-accesului-la-datele-cu-caracter-personal/>



On 25th of February, 2017 three members of WG1 came with a **public request to exclude the chapter on civil society organisations from the National Strategy on Integrity and Anti-corruption, perceiving this chapter as an attempt to control the activity of civil society organisations**:

<https://promolex.md/5603-societatea-civila-cere-excluderea-capitolului-ce-vizeaza-osc-urile-si-mass-media-din-proiectul-strategiei-nationale-de-integritate-si-anticoruptie/>

On 3rd of March, 2017 a **common declaration on worsening environment for civil society organizations and mass-media in the Republic of Moldova** was issued:

<http://www.transparency.md/2017/03/03/declaration-on-worsening-environment-for-civil-society-organizations-and-mass-media-in-the-republic-of-moldova/>

<http://www.api.md/news/view/ro-declaratie-cu-privire-la-deteriorarea-mediului-de-activitate-a-organizatiilor-societatii-civile-si-mass-mediei-in-republica-moldova-1445>

<http://crjm.org/en/societatea-civila-alarmata-de-tendintele-de-deteriorare-ale-mediului-lor-de-activitate/>



Opposing to the modification of the election system for the only benefit of compromised political parties: In March 2017, the Democrat and Social Democrat Parties of Moldova came with two draft laws having a single origin aiming at the modification of the electoral system for the only benefit of the compromised governing party that lost its' public support and credibility. Both draft laws presented a threat for the democratic development of the country, breaching the principle of representativity in the Parliament of the Republic of Moldova that is by Constitution a supreme representative body of the nation.

On 10th of March, 2017 a **public appeal to the Speaker of the Parliament, Adrian Candu requiring the withdrawal of the draft law** aiming at the modification of the election system was issued and signed by 18 NGOs:

<http://www.transparency.md/2017/03/10/domnului-andrian-candu-presedinte-al-parlamentului-rm/>

<https://promolex.md/5721-raspunsul-organizatiilor-societatii-civile-semnatare-a-apelului-public-din-7-martie-2017-presedintelui-parlamentului/>

On 23rd of March, 2017 TI-Moldova and its' partner IDIS Viitorul organised a press-conference with the title „The legal framework that regulates the activity of the state enterprises needs substantial modifications based

on corporate governance standards". The partner NGOs came with a package of proposals to improve the draft law on state and municipal enterprises. By present, a part of them has been taken into consideration in the draft law.

<http://ipn.md/ro/comunicate/6497>

<https://www.youtube.com/watch?v=1KP7B5RdAbk>

<https://moldova.eu/ro/intreprinderile-de-stat-sunt-falimentate-mod-intentionat-iar-sefii-isi-pastreaza-salariile-grase-14171.html/>

<http://www.ziarulnational.md/un-fost-ministru-sustine-ca-r-moldova-mai-bate-un-record-unica-tara-din-regiune-cu-patru-placute-auto-valabile/>

<http://tribuna.md/ru/2017/03/23/expert-intreprinderile-de-stat-trebuie-foarte-bine-protejate-si-sa-nu-fie-instrainate/>

<https://monitorul.fisc.md/mic/datoriile-intreprinderilor-de-stat-au-atins-15-mld-lei.html>

<http://independent.md/situatia-intreprinderilor-de-stat-sute-de-terenuri-neinregistrate-si-datorii-de-miliarde-pe-umerii-cetatenilor/#.WNj1P7idV6Y>

<http://www.jurnal.md/ro/social/2017/3/23/intreprinderea-registru-ar-putea-fi-transformata-in-societate-pe-actiuni-initiativa-este-dur-criticata-de-experti/>

http://www.realitatea.md/live-transparency-international-moldova-i-idis-viitorul-conferin-a-de-presa-cu-tema-problemele-cheie-in-activitatea-intreprinderilor-cu-capital-de-stat-i-op-iunile-de-redresare-a-situa-iei_54408.html

<http://radiochisinau.md/activitatea-unor-intreprinderi-de-stat-este-lipsita-de-transparenta-iar-conducatorii-numiti-pe-criterii-politice---47895.html>

<http://radioorhei.info/pierderile-intreprinderilor-cu-capital-de-stat-sporesc-considerabil-experti/>

<http://jurnal.tv.md/ro/news/2017/3/23/reorganizari-cu-interese-quot-10277333/>

<http://evzmd.md/economic/267-economie/57708-intreprinderile-cu-capital-de-stat,-piatra-de-moara-a-economiei.html>

<http://timpul.md/articol/intreprinderile-cu-capital-de-stat-piatra-de-moara-a-economiei-106786.html?action=print>

<https://forum.md/ru/3036082>

<http://curentul.md/stiri/expert-registru-inainte-sa-fie-reorganizat-trebuie-supus-unui-audit-independent.html>

http://www.noi.md/md/news_id/214145

<http://protv.md/stiri/actualitate/intreprinderi-de-stat-cu-sute-de-mii-de-lei-pierderi-dar-cu-sefi---1822771.html>

<http://totul.md/news/ro/expert-intreprinderile-nu-trebuie-sa-fie-un-instrument-de-finantare/>

On 5th of April, 2017 a **public appeal was issued that require the Parliament to modify the election process strictly in line with the recommendations of the Constitutional Court** and the recommendations of national and international election monitoring missions:

<https://promolex.md/8021-mai-multe-organizatii-negubernamentale-solicita-parlamentului-sa-urgenteze-procedurile-de-modificare-a-legislatiei-electorale-in-stricta-conformitate-cu-adresele-curtii-constitutionale-si-recomandaril/?lang=en>

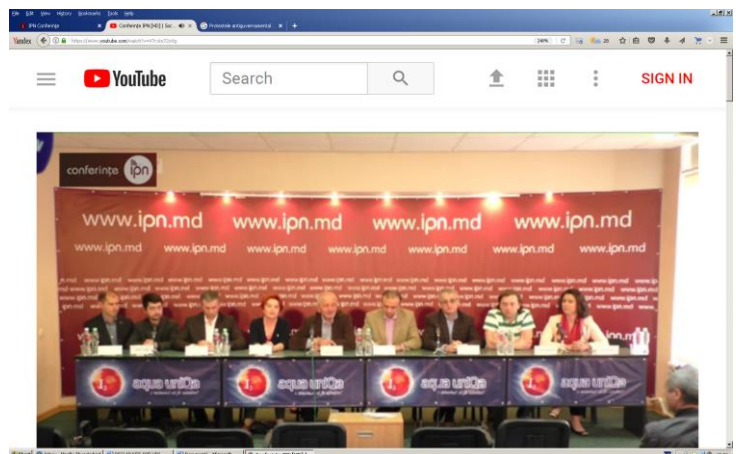
<http://www.api.md/news/view/ro-mai-multe-organizatii-negubernamentale-solicita-parlamentului-sa-urgenteze-procedurile-de-modificare-a-legislatiei-electorale-in-stricta-conformitate-cu-adresele-curtii-constitutionale-si-recomandarile-misiunilor-locale-si-internationale-de-observ>

<http://www.basarabia.md/mai-multe-ong-uri-solicita-parlamentului-retragerea-proiectului-privind-votul-uninomial-si-crearea-unui-grup-de-lucru-pentru-modificarea-codului-electoral/>

On 5th of May, 2017 a **public appeal „The parliamentary majority modifies the electoral system with law infringements, undermining democracy”** that was initiated by many members of the WG1 and signed by 24 NGOs.

<http://crjm.org/en/declarationthe-parliamentary-majority-is-amending-the-electoral-system-by-breaching-the-legislation-and-common-sense-undermining-the-principles-of-democracy/>

<http://www.api.md/news/view/ro-majoritatea-parlamentara-modifica-sistemul-electoral-cu-incalcarea-legii-si-a-regulilor-elementare-de-bun-simt-subminand-democratia-1513>



<http://www.transparency.md/2017/05/05/the-parliamentary-majority-is-amending-the-electoral-system-by-breaching-the-legislation-and-common-sense-undermining-the-principles-of-democracy/>

On 19th of May, 2017 a **public declaration** “*The attack on civil society organizations is inadmissible and erodes trust in state authorities*” was issued:

<http://crjm.org/en/e-inadmisibil-ca-societatea-civila-sa-fie-atacata-deoarece-se-opune-modificarii-sistemului-electoral/>
<http://www.api.md/news/view/ro-declaratie-atacul-asupra-organizatiilor-societatii-civile-deoarece-se-opun-modificarii-sistemului-electoral-este-inadmisibil-si-erodeaza-si-mai-mult-increderea-in-autoritatile-statului-1525>
<http://www.consiliulong.md/atacul-asupra-organizatiilor-societatii-civile-deoarece-se-opun-modificarii-sistemului-electoral-este-inadmisibil-si-erodeaza-si-mai-mult-increderea-in-autoritatile-statului/>

On 30th of June, 2017 a public declaration titled „*The initiative to change the election system can not be improved – it needs to be withdrawn*” (*mixed election system*) was made:

<http://crjm.org/initiativa-de-modificare-a-sistemului-electoral-nu-poate-fi-imbunatatita-ea-trebuie-retrasa/>



Active members of the WG1 conducted studies of the eventual consequences of the adoption of this law, sent their expertise to the Venice Commission, organized round tables, participated in public debates in the Parliament, TV and radio, organized flash mobs and laterly protests in front of the Parliament that have been supported by many opposition parties. Following these actions, the country received a negative evaluation of this draft law from the Venice Commission, all country's development partners emphasized the need to withdraw this law. In spite of these multiple warnings, the Parliament adopted the Law in the final reading, by this ignoring the public opinion and the recommendations of international community to the detriment of democracy and advantage of a narrow group of interests.



On 13th of June, 2017 a **public appeal requiring a transparent employment contest in the National Agency for Solving Contestations and urging to ensure the functionality of this institution** was issued

<http://crjm.org/societatea-civila-cere-asigurarea-unui-concurs-transparent-si-corect-pentru-functiile-cheie-din-cadrul-agentiei-nationale-pentru-solutionarea-contestatiilor/>
<https://promolex.md/9655-apel-privind-desfasurarea-transparenta-a-concursului-pentru-suplinirea-pozitiilor-in-cadrul-agentiei-nationale-pentru-solutionarea-contestatiilor-precum-si-urgentarea-asigurarii-functionarii-efective/>

On 5th of July, 2017 a public declaration with the title „***The Decision of the Superior Council of Magistracy as an act of selective justice***” was issued:

<http://www.transparency.md/2017/07/05/declaration-decision-of-superior-council-of-magistracy-an-act-of-selective-justice/>

<https://promolex.md/9732-decizia-csm-privind-eliberarea-din-functie-a-judecatoarei-domnica-manole-este-un-act-de-justitie-selectiva-si-submineaza-independenta-sistemului-judecatoresc/>

<https://anticoruptie.md/ro/stiri/organizatiile-negvernamentale-reactioneaza-la-decizia-csm-privind-eliberarea-din-functie-a-domnicai-manole-este-un-act-de-justitie-selectiva-si-submineaza-independenta-sistemului-judecatoresc>

<http://www.radionoroc.md/stiri/main/7611>

On 11th of July, 2017 a **public declaration “The attempt to limit foreign funding of NGOs endangers the functioning of democracy in Moldova and cannot, be accepted under any circumstances”**

<http://www.ape.md/en/2017/07/tentativa-de-limita-finantarea-din-exterior-ong-urilor-pune-pericol-functionarea-democratiei-republica-moldova/>

http://eap-csf.md/index.php?option=com_content&view=category&layout=blog&id=1&Itemid=50

<https://irct.org/uploads/media/3db6858b1fc3fd3bb815f11962defbcc.pdf>

<http://www.api.md/news/view/ro-declaratie-tentativa-de-a-limita-finantarea-din-exterior-a-ong-urilor-pune-in-pericol-functionarea-democratiei-in-republica-moldova-si-nu-poate-fi-acceptata-sub-nicio-forma-1587>

<http://www.jurnal.md/ro/social/2017/7/12/mai-multe-ong-uri-au-semnat-o-declaratie-prin-care-acuza-autoritatile-ca-ar-vrea-sa-le-limiteze-finantarea-externa/>

<https://promolex.md/9842-tentativa-de-a-limita-finantarea-din-exterior-a-ong-urilor-pune-in-pericol-functionarea-democratiei-in-republica-moldova-si-nu-poate-fi-acceptata-sub-nicio-forma/>



On 1st of September, 2017 a public declaration with **a request to the public authorities to investigate and punish all persons responsible for the death under suspicious circumstances of the detainee Andrei Braguta**

<https://promolex.md/10256-apel-cerem-autoritatilor-sa-investigheze-si-sa-pedepseasca-prompt-toti-responsabilii-cu-referire-la-decesul-lui-andrei-braguta/?lang=enhttps://www.investigatii.md/ro/activitati/declaratii/cerem-autoritatilor-sa-investigheze-si-sa-pedepseasca-prompt-toti-responsabilii-cu-referire-la-decesul-lui-andrei-braguta>

<http://crim.org/societatea-civila-cere-autoritatilor-sa-investigheze-si-sa-pedepseasca-responsabilii-de-decesul-tanarului-andrei-braguta/>

<http://www.e-democracy.md/files/pr/2017-09-01-apel-caz-braguta.pdf>

<http://www.ziarulnational.md/mai-multe-ong-uri-din-r-moldova-solicita-investigarea-si-pedepsirea-celor-care-se-fac-vinovati-de-moartea-tanarului-din-penitenciar/>

<http://www.ziarelive.ro/stiri/mai-multe-ong-uri-din-r-moldova-solicita-investigarea-si-pedepsirea-celor-care-se-fac-vinovati-de-moartea-tanarului-din-penitenciar.html>

On 4th of September, 2017 members of WG1 issued a **public appeal addressed to the Integrity Council requiring the justification of the admissibility of candidates for positions in the National Integrity Authority and to ensure a transparent process of selection of candidates for the position of the Chair and Vice-chair of this institution:**

<http://www.transparency.md/2017/09/09/solicitam-consiliului-de-integritate-sa-justifice-admisibilitatea-candidatilor/>

On October 2nd, 2017 an **Open letter to the members of the Parliamentary Assembly of the Council of Europe on the occasion of the forthcoming vote of no confidence in the President of the Assembly** was issued:

<http://www.transparency.md/2017/10/03/open-letter-to-the-members-of-the-parliamentary-assembly-of-the-council-of-europe-on-the-occasion-of-the-forthcoming-vote-of-no-confidence-in-the-president-of-the-assembly/>

On October 3rd, 2017 **Moldovan CSO’s address to development partners on the state of some reforms and the rule of law funded by the foreign taxpayer** calling for temporary suspension of unconditionalised financial support of the country, enacting of the Article 18 of the EU-Moldova Association Agreement to investigate financial crimes that affected Moldova and the EU financial systems three years ago, and issue personal sanctions against the ones responsible. The declaration also requires maintaining the condemnation of the decision to change the electoral system as deeply antidemocratic and damaging to pluralism of opinion and of parties. It calls upon the present authorities to put Moldova back on its democratic path, and hold the present authorities accountable for their previous commitments.

<https://www.facebook.com/notes/cpr-moldova-centrul-de-politici-%C8%99i-reforme/moldovan-csos-address-to-development-partners-on-the-state-of-some-reforms-and-t/695259623996177/>

<http://www.transparency.md/2017/10/03/moldovan-csos-address-to-development-partners-on-the-state-of-some-reforms-funded-by-foreign-taxpayers/>

On October 4th, 2017 members of WG came with a **public appeal calling transparency of the activity of the National Commission for the setting of permanent uninominal electoral constituencies**

<http://www.transparency.md/2017/10/04/apel-public-privind-transparenta-activitatii-comisiei-nationale-pentru-constituirea-circumscripțiilor-uninomiale-permanente/>

<http://crjm.org/wp-content/uploads/2017/10/17-10-04-Appeal-transparency-commission-mixed-system.pdf>.

On 9th of October, 2017 a **Public appeal to the Supreme Council of Magistrates was issued stating that the initiative to modify the modality of the publication of law court decisions deteriorates the transparency in justice sector and limits the access to public information**

<http://jurnal.md/ro/social/2017/10/9/apel-catre-csm-semnat-de-70-de-jurnalisti-si-institutii-media-initiativa-de-schimbare-a-modului-de-publicare-a-hotararilor-judecatoaresti-afecteaza-grav-transparenta-justitiei/>

<http://www.api.md/news/view/ro-apel-public-catre-consiliul-superior-al-magistraturii-1686>

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1 EU Association Agreement

1.1 Association of Independent Press - Monitoring the implementation of commitments in the area of media undertaken by the authorities of Moldova in the National Action Plan (NAP) for the implementation of the EU-Moldova Association Agreement (AA)

During the period March 2017 - March 2018 (12 months), the Association of Independent Press (API) is monitoring the fulfilment of commitments in the area of media undertaken by Moldovan authorities in the National Action Plan for the implementation of the EU-Moldova Association Agreement. During six months, API developed and presented two quarterly monitoring reports.¹ For the next period API will elaborate and present another two reports that will include conclusions and recommendations for authorities in order to fulfill more efficiently the commitments in the field of the media, which were made at European level.

The monitoring of implementation of the provisions of the EU-Moldova Association Agreement (AA) on the media, conducted by API, is necessary and timely from a number of reasons, including the following:

- it is a tool for ensuring the accountability of the stakeholders responsible for carrying out the media reform in accordance with the EU good practices and standards;
- it gauges the extent to which the commitments made by RM for the implementation of the AA in the field of media have been fulfilled;
- it provides data/results additional to the official ones, which may be useful for revising, supplementing, and adjusting the commitments, and accelerating the reforms;
- it brings to public attention information about the way in which the commitments are fulfilled, the stage, and the level of their implementation.

A number of internal and external activities have been carried out for monitoring the implementation of the AA provisions on media, and the results have been publicly presented. All monitoring activities without exception have revealed, on the one side, a chronic delay in the implementation of the commitments and, on the other hand, an insignificant impact of the commitments made on the real improvement of the state of media.

API's monitoring, conducted based on a properly developed methodology, presents a comprehensive evaluation of the situation in this field. The authors of the monitoring and the methodology understand that the implementation of the AA provisions on media should result in an independent, pluralist, and good quality media, which operates freely, transparently, in fair competition, and to the benefit of the citizens and the society. Therefore, the actions planned for each stage should be targeted towards the expected result – a truly democratic media. The performance index for each of the planned and implemented action should be the real impact of the latter on the situation of the media.

The monitoring, as well as the NAP, is not a goal in itself but rather a way of improving the general status of the media in Moldova.

The monitoring aims at gauging the extent to which the implementation of the actions set out in NAC bring the objectives of the AA closer, and, depending on the results, formulate recommendations for decision-makers. Normally, the implementation of the AA provisions should secure a real development of the media based on democratic principles.

The monitoring methodology includes two basic indicators set out in a monitoring sheet: a quantitative one and a qualitative one.

There are the conclusions and recommendations of both reports (March 2017-August 2017)^{2,3}

Conclusions:

- the actions planned in the NAP for the years 2014-2016 on the media segment have focused mostly on the audiovisual and did not fully comply with the AA provisions;
- the actions planned were either partially accomplished or not accomplished at all;
- the impact of actions' fulfilment was partial-to-the-expected one and, since not the entire media sector was targeted, these actions were unable to respond efficiently both to AA provisions and the necessity to establish and develop a democratic, pluralist and professional media system;
- while planning actions for the next implementation period (2017-2019), the above provisions were not taken into account, and some irrelevant actions are repeated;
- the formulation of actions and the manner of reporting on their accomplishment generally creates the impression that NAP (on the media segment) represents a goal in itself and not a tool for propelling positive developments in the media sector, based on democratic principles, which are conscientiously undertaken by the authorities;

¹ <http://www.api.md/page/en-2017-311>

² http://www.api.md/upload/files/Raport_de_monitorizare_nr.1_ENG_.pdf

³ http://www.api.md/upload/files/Raport_2-eng.pdf

- the actions planned in the NAP for the period 2017-2019 on the media segment and those planned for the reporting period are insufficient, targeting mostly the audiovisual and not being in full compliance with the AA provisions;
- the actions planned for the reporting period were not fulfilled;
- in the reporting period, two unscheduled actions were fulfilled, but which are appropriate for the stated purpose of the NAP;
- the impact of implementing unplanned activities during the reporting period is partially-to-the-expected one.
- the actions planned in NAP for June - August 2017 in the field of media are insufficient, relate to, with just one exception, the broadcasting field, and are not fully consistent with the AA provisions;
- the actions planned for the reporting period have been either partly implemented or not implemented at all;
- the actions implemented have had the expected impact just partly. Given the fact that the planned actions did not relate to the entire media field, even if they were implemented, they could not be consistent either with the real provisions of AA, or with the needs for creation and development of a democratic, pluralist, and professional media system;
- during the reporting period, a number of unplanned actions but which are useful for the scope of NAP have been implemented;
- the unplanned actions implemented during the reporting period have had the expected result just partly.

Recommendations:

- The NAP, in its part covering the mass-media segment, should be reviewed and complemented, so that the actions: a) include the entire field of mass-media, b) are in full compliance with the AA provisions, c) do not duplicate the duties of responsible institutions, set by law, d) are exact, feasible and measurable;
- The performance indicators must be reviewed in a manner that takes into account the real effects of actions implementation, but not the actions themselves should generate the impact;
- The rhythm of properly fulfilling timely and relevant actions for mass-media development should be accelerated.
- NAP should be revised and supplemented with regard to the media field, in order to take into account, the priority activities set out by the Working Group on the improvement of the media law. Otherwise NAP would become just a formal document as far as the section on the media is concerned.
- The issue on the revision/supplementation of NAP with regard to the media field should be included on the agenda of a meeting of the Working Group on improvement of the media law.
- The pace of implementation of the actions useful and relevant for the media development should be speeded up.

1.2 Foreign Policy Association - European Union common security and defence policy: implication for the Republic of Moldova

The Republic of Moldova and European Union cooperation on CSDP is a relatively new area of engagement that intensified since 2013, and further developed after signing the Association Agreement. In a larger framework of Moldova-EU partnership, the CSDP cooperation remains largely unexplored despite being mutually beneficial for both parties. From European Union perspective, it is a way to project stability and cultivate EU values and principles abroad. CSDP is also an instrument to engage partner countries in cooperative security by participating in joint humanitarian and crisis management operations. Finally, it can help cover capacity shortages in EU-led missions by borrowing partner countries' assets and expertise. From Republic of Moldova standpoint, cooperation on CSDP gives the opportunity to manifest as a security provider and increase its reliability as a partner. It is particularly useful to raise Moldova's profile as a potential EU candidate country and deepen institutional and political links with the Union. Secondly, by participation in CSDP missions, Moldova can acquire operational experience, familiarize with EU procedures and increase interoperability with member states. Finally, by requesting a CSDP mission, Moldova can benefit from tailored EU expertise and assistance in carrying out reforms and developing institutional capacity.

The changing security environment has prompted the need to rethink European and Moldova security agenda. The recently published European Union Global Strategy (EUGS) has outlined the Union's internal and external security challenges and set out as one of its strategic objectives to stabilize EU immediate neighbourhood. In this context, lots of attention was garnered around the Common Security and Defence Policy meant to promote a new cooperation formula and build capacity for partner countries. The Republic of Moldova has also embarked on a comprehensive security sector reform that seeks to enhance existing partnerships, update policy and strategic documents, and develop necessary capacity to respond to internal and external crises. These premises constitute a window of opportunity to deepen and expand Republic of Moldova and the European Union security cooperation through CSDP. In this context, the policy study explores two options. The first option consists in examining possibilities to host a CSDP mission in Moldova. Besides increasing EU engagement, the CSDP mission can provide targeted EU assistance to improve state and societal resilience in Moldova. The second option concerns Moldova's capacity to contribute to EU-led CSDP missions and operations as a way to deepen the Moldova-EU partnership.

1.3 Foreign Policy Association – Information and communication Strategy in the field of national defence and security: analysis and recommendations

An effective communication strategy is an indispensable element of governance to inform citizens and international partners about the country's priorities, national policies and planned activities. The Information and Communication Strategy in the field of National Defence and Security (SICASN) was the first attempt to establish an inter-institutional communication mechanism to inform public opinion on security sector reform, the evolution of Moldova defence partnerships, and the country's contribution to international peace and security.

The study has analyzed the strategy impact and its effectiveness in informing public opinion through the implementation period (2012-2016). The study concludes that the Strategy had a series of shortcomings. First, it has not included all relevant stakeholders in the implementation phase, suffering from lack of engagement and continuity. Secondly, the strategy lacked a proper coordination mechanism, experiencing numerous organizational and administrative shortcomings. Thirdly, it had an inadequate evaluation and forecast mechanism, limiting its ability to adapt to a changing security environment after the Ukrainian conflict and resurgent Russian foreign policy that destabilized the regional stability. Despite its limited impact, the study recommends to renew the information and communication strategy through the prism of strategic communication and broaden its scope to include the component of counteracting misinformation and external propaganda.

1.4 Foreign Policy Association – Security sector reform monitor

Security Sector Reform Monitor is a quarterly newsletter that monitors the reform process to raise public awareness about the security developments in the Republic of Moldova. Security Sector Reform (SSR) concept was designed in the 90's to facilitate the transformation of the former Soviet republics' security sector in line with democratic principles and standards. Since its independence, the Republic of Moldova has engaged in the process of reforming the security sector with varying degrees of enthusiasm and success.

A new phase of the reform started in 2014 and was determined by deepening cooperation with Euro-Atlantic community and a changing security environment after the conflict in Ukraine and resurgent Russian foreign policy. The Republic of Moldova achieved considerable progress by signing the Association Agreement with the European Union which alongside an ambitious development agenda had several aspects of security cooperation. Moldova has stepped up the partnership with NATO by approving the Defence Capacity Building Initiative – a defence assistance package to update Moldova strategic documents and improve national defence capacity. Driven by the need to adapt to a new security environment, Moldova is in the process of updating its security policy, adjusting the institutional and legal framework, and improving national capacity to react and manage internal and external crises. To monitor the reforms, the newsletter utilizes the “*legislative tracking*” tool. It offers the ability to visualize the progress for the full policy cycle – from policy development to implementation and evaluation.

1.5 Institute for European Policies and Reforms: Alternative report on EU Association Agreement

The Institute for European Policies and Reforms (IPRE) presented an Alternative Report⁴ on the implementation of the Association Agreement, stating that “on one hand, the Memorandum with IMF created certain preconditions for the stabilization of the internal situation compared to 2015, and on the other hand, this consolidated the leverage of the development partners over the Moldovan Government in providing an internal agenda focused on the enforcement of the structural reforms, including those related to the Association Agreement. Consequently, on December 21 2016, the European Union resumed the direct budget support to Moldova, transferring a tranche of EUR 45.3 million to the Government of Moldova for the implementation of 4 direct budget support programmes, namely: economic support in the rural areas (ESRA), European neighbourhood program for agriculture and rural development (ENPARD), public finance policies' reform and the reform in the area of vocational education and training. At the beginning of 2017, the European Commission announced the launch of a EUR 100 million macro-financial support programme to Moldova during 2017-2018, out of which EUR 40 million are offered as a grant”.

The main conclusion of the Report is that proper implementation of the Association Agreement with the EU remains the main backlog for the Moldovan authorities. The statistical rate of implementation of the Association Agreement is 63,1%, whilst the majority of implemented measures are of a legislative nature. However, *the qualitative analysis of the Report shows a series of deficiencies and late implementation of the reforms in key areas such as the rule of law, justice, fight against high level corruption, independent mass-media.* A series of reforms adopted during the reference period were implemented either with delays or partially. *Certain enforcement activities, especially at the end 2016 (new amendments or vicious implementation), were against the spirit of the newly adopted legislative framework.*

⁴ http://ipre.md/wp-content/uploads/2017/03/Final_Shadow-Progress-Report_EU-Moldova-AA_IPRE_synthesis-and-recommendations_24.03.2017.pdf

Moldova aligned in the reference period to the majority of the EU Declarations and Conclusions open for undersigning **(in 2016 the rate of alignment was 71% and in 2015 - 75%)**. The main findings are summarized below:

Title II and III of the AA:

- In the context of the presidential elections held in autumn 2016, cases of political parties' and campaigns' financing through intermediaries, without tracing the final sources of financing were registered, which run the risk of originating from off-shore jurisdictions.
- *The appointment and promotion of judges was not improved*, the draft amendments to the Constitution risks being cancelled if not approved by the end of April 2017 by the Parliament in two readings. The procedure of appointment of judges for one term based on objective criteria, merit and in a transparent selection manner is still lacking.
- The reform of the prosecutors' offices was partially implemented, whilst in some instances it was implemented in a vicious manner. *Although a new law on prosecution was adopted, its transitory provisions significantly affected the general purpose of the law, namely in its part related to the procedures of appointment of the prosecutor general.* The General Prosecutor selected by the Supreme Council of Prosecutors was admitted to the selection procedure although the members of the Council were in a subordination relation with the same person holding the position of ad interim General Prosecutor.
- The Integrity Law was not approved by the Parliament in two readings, the framework provisions of the draft law on *the identification of effective beneficiaries, exclusion of the transactions with off-shore jurisdictions*, promotion of integrity in the public and private sector *are still not applicable*.
- The *National Integrity Agency is not yet functional*, whilst the implementation of the integrity review mechanism shall be possible only after the Integrity Council of the Agency will elect the Director and vice-Director of the Agency. The selection process of the members of the Integrity Council within the Agency was cumbersome, the decisions being challenged by some contestants.

Following the growing number of abusive practices of the authorities, the first recommendation refers to ensuring the implementation of an efficient Parliamentary control mechanism *with the participation of the civil society*, aiming at the enforcement of the key laws and reforms adopted. Among the measures proposed by IPRE concerning the political parties is the significant reduction of the financing thresholds from the legal and natural persons in the form of donations for political parties.

Title IV of the AA:

A significant delay is found when it comes to the implementation of economic and sectorial cooperation measures. Out of 747 measures to be accomplished by the end of 2016, only 60.8% were implemented. Although the development partners express concern for the implementation of EU 3rd energy package, *the new Energy law that shall reinforce the independence and efficiency of the National Energy Regulator is pending adoption*. The much-awaited laws to transpose the EU 3rd energy package in area of electricity and natural gas in line with Moldova's commitments in the Energy Community Treaty have been adopted. However, the real effects of the new energy legislation shall be visible only after proper implementation is unfolded.

IPRE repeatedly underlines that the role of civil society is crucial to strengthen the rule of law and make Moldovan public institutions transparent and accountable. *The recommendation to the authorities is to ensure an integrated approach with respect to the central and local public administration reform, and the administrative-territorial reform as well*, since all three have as focus the optimisation and increased efficiency of public authorities, quicker and more efficient interaction with the citizens and with the entrepreneurs, closer authorities to the citizens through the services they provide.

Title V of the AA:

Starting with the 1st of January 2016 the DCFTA implementation was launched on the entire territory of the country, including the left bank. An important arrear that reduces the potential of the DCFTA capitalisation is the low level of accomplishment of the sanitary and phytosanitary measures, standardization and compliance evaluation. Additionally, over 40% of European standards were transposed, but nevertheless there is a very modest progress registered in the practical capitalisation of the European standards by the business operators from Moldova.

On the other hand, one should note the growth of trade with the European Union (over 63% of the exports from Moldova are oriented towards the EU and approximately 50% of imports are originating from the EU). However *Moldova managed to value only partially the tariff quotas offered under the DCFTA*, mainly due to the poor infrastructure for certification and laboratory testing of products offered for export, lack of necessary sanitary measures in place and certain regulatory and institutional impediments.

Title VI of the AA:

During 2014-2016 the European Union offered to Moldova an amount of EUR 310 million in the framework of bilateral financial support programs and EUR 62 million as investment grants through the Neighbourhood Investment Fund

(NIF). However, in the light of the Report of the European Court of Auditors from September 2016, which highlighted a series of issues in the implementation of the EU funds in Moldova, the European Commission will most probably re-think the mechanism of direct budget support.

As for **Title VI**, the most important accomplishment during the reference period is the adoption of the Penal Code amendments setting penalties for the fraudulent use of the EU funds or for any actions causing prejudice to the EU financial interests. Also, the Administrative Agreement between the National Anticorruption Centre (NAC) and OLAF regarding the operational cooperation and data exchange in the anti-fraud area was signed. At the end of 2016, the NAC was assigned by the Government as the national liaison point with OLAF.

1.6 Expert-Grup: Studies/papers on European integration

The signing of the Association Agreement and DCFTA between Moldova and the European Union in 2014 was a strategic political act to deepen the realization of Moldova's 'European choice'. Of all the EU's eastern neighbors, Moldova is objectively the most European on several accounts, including sharing a common history, language, culture and border with its direct neighbor and now EU member state Romania. This signifies highly positive foundations for making a success of the Agreement, notwithstanding the major political and economic challenges that contemporary Moldova faces. Its successful implementation depends on its better understanding and therefore support among different social categories and within the entire society.

Therefore, as part of the efforts of improving the communication and the understanding of the Association Agreement with EU, Expert-Grup together with the Centre for European Policy Studies (CEPS) from Brussels has published the Handbook "[Deepening EU-Moldovan Relations: What, why and how?](http://expert-grup.org/en/biblioteca/item/1347-aprofundarea-relatiilor-ue-rm&category=194)". This is one of the most recent significant contribution, both for communication and advocacy goals, in the field of the European integration in Moldova. <http://expert-grup.org/en/biblioteca/item/1347-aprofundarea-relatiilor-ue-rm&category=194>

The purpose of the Handbook is to make the legal content of the Association Agreement clearly comprehensible. It covers all the significant political and economic chapters of the Agreement, and in each case explains the meaning of the commitments made by Moldova and the challenges posed by their implementation. The Handbook represents a unique reference source for this historic act, and is intended for professional readers, namely officials, parliamentarians, diplomats, business leaders, lawyers, consultants, think tanks, civil society organizations, university teachers, trainers, students and journalists from Moldova and across Europe.

The Handbook is part of a larger international project "Understanding the EU's Association Agreements and Deep and Comprehensive Free Trade Areas with Ukraine, Moldova and Georgia". It involves researchers from the EU, Moldova, Ukraine and Georgia. The project is coordinated by CEPS, with the financial support of the Swedish International Development Agency (Sida).

Within this project, researchers from Expert-Grup and local partnering think tanks have conducted researches that assessed the evolution in different areas of the Association Agreement.

"Evolution of the Moldova-EU trade flows after 2 years of DCFTA implementation" bring out details about the impact produced by trade liberalization with the EU. It underlines that the continuous political instability in the Republic of Moldova, together with the less favorable national/regional economic situation (banking crisis, theft of the billion, MDL devaluation, US dollar appreciation, unfavorable climatic conditions, decrease in the international prices for some products, etc.) had a negative impact on the country's trade performance during the first two years of DCFTA implementation. Despite the existence of a range of constraints, the positive impact of the DCFTA on the trade flows registered by the Republic of Moldova in relation to the EU, shows the viability of assumptions supporting the opportunity to negotiate such a document. It is however a fact that its potential continues to be untapped, which shows the need to strengthen the institutional efforts in implementing all the assumed commitments.

It concludes that the tariffs did not decrease dramatically under DCFTA (except for products subject to quotas falling under entry price and anti-circumvention mechanism), which would have led to a further 'explosion of exports'. On the other hand, all trade benefits obtained over time (GSP, ATP and finally DCFTA) could be fully harnessed with the expansion of commitments, not only in terms of tariffs, but also of all non-tariff components of DCFTA. Nonetheless, adapting to new circumstances needs a longer period of time.

In these circumstances, the official data show a lower value of exports (-2.3%) for 2015 due to the above-mentioned shocks, but after these constraints receded, the exports of the Republic of Moldova to the EU started growing again in 2016, exceeding the level of 2014 by 6.9%. The agri-food products have benefited the most from DCFTA, as expected from the start. The value of their export increased by about 25% during the reference period, managing to compensate to a certain extent the loss of eastern markets. In addition, about 63% of the agrifood exports to the EU increased in terms of quantity.

The comparative paper "[Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms](#)" defines the role of oligarchs in Georgia, Moldova and Ukraine. Thus, the oligarchy in each of three countries represents a

system of governance in which a small and informal group of people, using their vast economic and financial resources, is able to control a state or exert a major or dominant influence on its policy. The research concludes that the oligarchs in Moldova, and other two countries, are symptoms rather than causes of weak political institutions. The remedies to treat this problem need a wide reach, including institutional capacity building, effective anti-corruption bodies, suitable public funding for political parties, effective competition policy, independence of the judiciary and of the media, supported by many features of the Association Agreements and DCFTAs with the EU. One of the main conclusions of the paper is that the modern economies will always need major business leaders and enterprises, but the challenge is precisely to bring the oligarchs into becoming normal business leaders.

The paper **"Moldovan dairy: the difficult way towards the EU market"** analyzes the current situation in the **Moldovan dairy sector in the context of EU-Moldova Association Agreement implementation**. The paper underscores that sector faces growing competitive pressures from the outside world, an increased diversity of products available on the shelves, growing production costs, particularly in the milk-production sector, and a more sophisticated and better-informed consumer. Despite the fact that Moldovan producers are not yet able to fully exploit internal market opportunities, the Moldovan authorities have already set the aim to get authorization for exporting dairy products to the EU already by 2018. As part of the EU-Republic of Moldova Association Agreement, the Republic of Moldova committed to approximate its sanitary and phytosanitary and animal welfare law to that of the European Union. The paper concludes that approximating the EU legislation is not going to be an easy process.

"EU-Moldova DCFTA: assessing the impact of the liberalization of trade in services on the Moldovan economy" evaluates the services play a very important role in the Moldovan economy by contributing to the value added, employment and trade. The EU-Moldova Association Agreement includes a number of commitments for the liberalization of the trade in services. If duly implemented, Moldovan commitments will significantly improve the conditions for import of services in Moldova. The EU, as a whole and as individual member-countries, secured a large number of derogations and reservations. For the sake of objectivity, though, one should not omit the fact that the current EU's level of protection is quite low for the services which Moldova is the most competitive (road transport, computer services, telecommunications). The key factors undermining Moldovan services in the EU market apparently have to do more with intrinsic weaknesses of the Moldovan firms rather than with EU trade policy.

2 Anti – Corruption and Justice Sector

2.1 *TI-Moldova, ADEPT, LRCM, IDIS "Viitorul"* – State capture: the case of the Republic of Moldova

State capture has serious repercussions on the rule of law, it deteriorates the democratic, economic and social development of the country. It affects the moral of the Moldovan society, distorting its image and chances for European integration. It causes a massive depopulation of the country and leads to dictatorial governance – all of the above present a serious threat to national security.

There are multiple ways to define state capture. Some are based on political corruption, others on narrow interest groups (oligarchs, military groups, kleptocrats, etc.), the third ones are rooted in economic interests that penetrate into the political sphere, affecting decision-making in the executive branch.⁵

In this study, has been used use a simple definition, close to that of the World Bank: state capture is an advanced form of endemic corruption, predominantly in the top level of state power, where the interests of a narrow oligarchic group significantly influence the decision making process in the country. The ways of promoting its decisions at a first glance are not always illegal, but the capture of some state institutions in the final form lead to the capture of the entire state system.

The ways to take control over state institutions are multi-dimensional. They differ from one country to another, they are continuously developing and they depend on the concrete domain of public life:

Rule of law: from appointing loyal key actors in the justice system, law enforcement and anti-corruption bodies, to the direct control over these institutions, initiation of criminal investigations against business and political competitors, blackmailing, creating collusion between prosecutors, judges and bailiffs in so-called raider attacks, money laundering and banking frauds, persecuting judges and attorneys of prosecuted persons and whistleblowers - all creating the feeling of uncertainty and loss of public trust in the rule of law.

Political and democratic area: excessive media concentration in the hands of a single owner, manipulation of public opinion to the advantage of a narrow political group, coping and blackmailing politicians, creating parliamentary majorities with the so-called turncoats that do not reflect the citizens' choice and are created to modify the national legal framework to the benefit of a narrow group of interests.

Economic and banking area: creating a system of unloyal competition, selectively offering tax cuts, tax holidays and amnesties to "club members", while applying excessive state control over the competitors, disposal of assets, cartel agreements in public procurement, deliberate devaluation or bankrupting the state enterprises to privatize them at unreasonable low prices, committing frauds in the banking sector, money laundering.

Given the multiple events that have taken place in the Republic of Moldova over the last few years, the country seems to be an eloquent example of the state capture phenomenon. The population is increasingly aware of the danger of this phenomenon for the future of the country. Therefore, in a study conducted by Transparency International – Moldova in 2015, households and business people considered the control of law enforcement institutions by oligarchs as the main cause of corruption in Moldova, which is why one of the most effective ways to fight corruption in their opinion is to remove law enforcement from the control of the oligarchs.⁶

Also, according to the 2016 Transparency International Global Corruption Barometer, 79% of the population considers that the private interests of the oligarch have an excessive influence on the decision-making process.⁷ According to the Public Opinion Survey of Moldovan Residents conducted by the International Republican Institute, 89% of the population believes that the country is governed by the interests of a narrow group of people.⁸ According to the Barometer of Public Opinion of the Institute for Public Policy, about 62.4% of the respondents believe that the tendency for the establishment of a totalitarian regime⁹ has been growing in Moldova.

⁵ Anticorruption in Transition: A Contribution to the Policy Debate, The World Bank, 2000,

https://books.google.md/books?id=gpBvS3O17S4C&pg=PA3&redir_esc=y#v=onepage&q&f=false

Can a Think Tank Help Expose a Captured State? Open Society Foundation, 2014, <https://www.opensocietyfoundations.org/voices/can-think-tank-help-expose-captured-state>

From corruption to state capture: A new analytical framework with empirical applications from Hungary, Corruption Research Center Budapest, 2014, http://www.crcb.eu/wp-content/uploads/2014/11/Fazekas-Toth_State_capture_PP_2014Nov.pdf

[State capture report](http://www.corruptionwatch.org.za/state-capture-report-hearings-pp-must-publish-today/), Corruption Watch, 2016, <http://www.corruptionwatch.org.za/state-capture-report-hearings-pp-must-publish-today/>

⁶ Transparency International – Moldova, Corruption in the Republic of Moldova: Perceptions Vs. Personal Experience of Business People and Households, 2015, http://www.transparency.md/wp-content/uploads/2017/06/TI_Moldova_Cercetare_Sociologica_2015.pdf

⁷ Transparency International, Global Corruption Barometer, 2016, <http://www.transparency.md/index.php/2016/11/16/barometrul-global-al-coruptiei-2016-guvernarea-din-europa-si-asia-centrala-esueaza-la-capitolul-combaterea-coruptiei/>

⁸ International Republican Institute, Survey of public opinion of the residents of the Republic of Moldova, February – March, 2017 http://www.iri.org/sites/default/files/iri_moldova_poll_march_2017.pdf

⁹ Public Policies Institute, Barometer of Public Opinion, April, 2016, http://www.ipp.md/public/files/Barometru/BOP_10.2016.pdf

Taking separate decisions in favor of different groups of interest is corruption and does not necessarily represent the capture of state institutions. However, the frequency and consistency by which decisions are taken predominantly in the interest of a single group demonstrates the transition from endemic corruption - a quantitative process (multiple abuses to the private gain of different actors) to a new qualitative phenomenon - state capture (a main beneficiary dictates the rules in all branches of state power).

The assessment of the National Integrity System carried out by Transparency International - Moldova in 2014¹⁰ sets out the necessary conditions for the prevention of corruption in the Republic of Moldova. The gaps in this system, the lack of political will to counter corruption and the use of the anti-corruption slogans in the fight with political opponents and business competitors have gradually transformed the state system into a captured one.

According to the study „State Capture: the Case of the Republic of Moldova”, over the last few years, the Republic of Moldova has been a "polygon" of sharing state institutions between the ruling parties. During this time, a clear transition from endemic corruption to the politicization of the fight against corruption, culminating in the capture of the three branches of state power by a narrow group of obscure interests.

Beginning in 2009, the Democratic Party of Moldova (DPM) headed initially from the shadows, and then officially by the controversial oligarch Vladimir Plahotniuc, imposed its interests in cartel agreements between members of the ruling coalition. Initially, he took control over the anticorruption bodies, further expanding the law enforcement. In spite of the enormous financial, media and administrative resources, DPM obtained modest results in the last parliamentary elections. However, the party with the highest anti-rating according to sociological studies has "converted" by various methods, including blackmail and bribery, MPs from other factions. Parliament has been subject to an unprecedented dictate of political "migration", with the share of transfections in various factions accounting for around 1/3 of the deputies. At present, DPM has become the absolute beneficiary of the "migration" phenomenon of deputies and in fact controls the Legislature.

As a result of deputies' "migration", the new structure of the Legislature does not reflect the will of the people. Questions regarding its legitimacy, in particular, the legitimacy of decision-making, and in the context, - the legitimacy of the intention to change the electoral system in the Republic of Moldova, are still more pressing.

Anticorruption bodies, due to their hierarchical subordination and lack of individual guarantees and freedoms similar to judges, are more prone to control. The political distribution of functions among political parties, the lack of new names in the anti-corruption institutions, the selectivity of filing files against political opponents and economic competitors, speak of the fact that the institutions are under the influence of this group of interests / oligarchs.

The interest group that controls the Legislature and the anti-corruption bodies extends its control over the judiciary. Reform in the judiciary has involved considerable financial resources, especially from development partners. Expectations from the implementation of the reform were high, but this was largely mimicked by the authorities, as virtually the same actors remained in the system with questions of integrity.

There are multiple examples of abusive use of the function by judges and cases demonstrating the judicial link and bias towards the DPM. It can not be concluded that the entire judiciary is captured because judges benefit from individual independence, and some critical voices are still seen. However, the evidence clearly indicates the bad state of affairs in the judiciary. Relevant cases of persecution of judges, advocates and whistleblowers are relevant. Money laundering schemes, bank frauds, attempts to legalize fraudulent money, which could not be applied in practice without involving the interest group in the sphere of justice, are also eloquent.

By controlling the Legislature and dominating, in large part, the Judiciary, it is very easy to concentrate power in the institutions of the Executive. Starting in 2016, the DPM took de facto power in the Executive. Criminal prosecution bodies and courts have been used by this party as instruments of intimidation and loyalty to political rivals both at central and local level. This practice is particularly noticeable with regard to local councilors and mayors who are blackmailed to join the DPM. The central government and, to a large extent, the local government are controlled by this party that uses state institutions for their own benefit. An eloquent example is the allocation of financial resources for infrastructure projects on a client basis, a priority being given to the local authorities headed by DPM representatives.

The aforementioned prove that Moldova is seriously affected by state capture. Control established over the main state bodies and agencies is based on patron-clientelle relationships, rent-seeking and a sophisticated mechanism of sanctioning dissent or autonomy from the dominant power-coalitions. As Conolly has been substantiated in his writings,¹¹ this sort of government leads to the merge between organizational boundaries of economic and political organizations into personal unions, based on safeguarding individual benefits or shelter from eventual prosecution. Thus, extraction of rents (resources) do not target specific groups, but particularly state institutions as carriers of authority and rent-multiplication in a closed political order.

¹⁰ Transparency International – Moldova, National Integrity System, 2014, http://www.transparency.md/wp-content/uploads/2017/02/TI_Moldova_Sistemul_national_de_integritate_2014.pdf

¹¹ Conolly R, The economic sources of social order in post-socialist Eastern Europe, London, Routledge.

An effective way to redress the situation would be to initiate independent international investigations of the money laundering, bank fraud, attempts to legalize fraudulent money. If there is no urgency to carry out such investigations, the Republic of Moldova risks becoming a zone for regional instability creating risks of various international criminal schemes, including money laundering and legalization of fraudulent capital.

2.2 Transparency International – Moldova: Monitoring the process of resetting the anticorruption in January-September 2017

For the reference period, in the anti-corruption field, there are several key issues to be tinted:

- the process of setting up the National Integrity Authority (NIA) by reorganizing the National Integrity Commission (NIC);
- approving the National Integrity and Anti-Corruption Strategy for 2017-2020 (NIAS);
- adoption of the Law on Integrity (Law No 82/2017);
- starting the process of the implementation of the Law no. 325 of 23.12.2013 on the assessment of institutional integrity (Law No 325/2013).

Setting up the National Integrity Authority (ANI) by reorganizing the National Integrity Commission

In January-September 2017, the process did not go too far. The reform is triggered by the lack of predictability, efficiency and timeliness of the Integrity Council (IC). Despite the art. 12 paragraph (7) lit. h) of Law no. 132 of 17.06.2016 on the National Integrity Authority (Law No. 132/2016), the IC did not approve the Regulation on its organization and functioning. The IC seems unpredictable, including in its' communicating with the stakeholders. The IC has not shown enough efficiency, many meetings being postponed due to lack of quorum. Likewise, in organizing the competition to fill the positions of the Chair and Vice-Chair of the NIA, the IC unduly prolongs the competition procedures.

Under Art. 44 par. (4) of the Law no. 132/2016, within 2 months of the date of its first meeting, the IC was to organize the contest for the appointment of the Chair and Vice-Chair of NIA. This term has not been met and the Regulation was adopted only on February 20, 2017¹², the Regulation having a questionable quality¹³. The normative act, following the legal expertise carried out by the Ministry of Justice, is published in the Official Gazette of the Republic of Moldova only on April 7, 2017, when the announcement regarding the launching of the contest was published. According to the announcement, the applications for the participation in the competition could be filed from April 10 until May 3, 2017. At this stage, four persons applied, but their applications were not examined by the IC. Instead, on May 4, 2017, for no legitimate reason, the CI extended the deadline for submitting files until May 15, 2017.¹⁴

Meanwhile, one IC member, (the government-appointee) was also appointed by the Government as a judge to the Constitutional Court and submitted a request for resignation as a member of the IC. On May 31, 2017¹⁵, taking note of the resignation request, the Government noted the termination of this member's mandate, but appointed a new representative only on June 28, 2017¹⁶. The new appointed representative is an advocate (attorney)¹⁷. Thus, neither in this case, IC did not get the opportunity to effectively promote the NIA's needs at Government level, particularly the need to improve the legal framework in the field. Starting from the fact that the representative appointed by the Parliament is only a person from the associative environment, the IC is deprived of any mechanisms to influence the quality of the legal framework in the field.

On July 31, 2017¹⁸, again in a confusing way, the deadline for submission of files was extended, the announcement being published in the Official Gazette of the Republic of Moldova on August 4, 2017¹⁹, the deadline being 14 August 2017. It was argued that the examination of the files, three of the four files were incomplete, the candidates not confirming by signing the information in the statements of assets and personal interests. It should be noted that, under Art. 10 of the Law no. 132/2016, submission of the statements does not constitute an eligibility condition for the candidates. Also it is not clear to what extent these statements can be verified / controlled, this attribution going beyond the limits of competence of the IC provided by art. 12 paragraph (7) of the Law no. 132/2016.

¹² <http://ani.md/ro/node/168>

¹³ <http://www.moldovacurata.md/news/view/regulamentul-de-alegere-a-conducerii-ani-contestat-de-societatea-civila>

¹⁴ <http://ani.md/ro/node/183>

¹⁵ Government Decision nr. 358 from 31.05.2017 on termination of the mandate of the member of Integrity Council

¹⁶ Government Decision nr. 475 from 28.06.2017 on assigning a member of the Integrity Council.

¹⁷ Initially the Government appointee was from the notary circle.

¹⁸ <http://ani.md/ro/node/195>

¹⁹ <http://ani.md/ro/node/196>

In the extended period, the same three people applied again, insisting on participating in the contest. In total, four candidates took part in the competition. On September 4, 2017²⁰, the IC examined three out of four applications. The meeting was interrupted to request and examine additional information about one of the candidates, Anatolie Donciu. Donciu's candidacy was rejected on September 12, 2017²¹, with the vote of two members of the five attendees despite the provisions of Art. 12 paragraph (9) of the Law no. 132/2016, which stipulate that the decisions of the IC shall be adopted by the vote of the majority of the designated members. We can not expose ourselves to the legal reason for rejecting the candidacy, and that decision is incomplete in this respect²². Also on September 12, 2017²³, the IC decided to extend the 10-day filing period for the position of ANI vice-president, starting from the fact that only one candidate (Lilian Chișcă) was running for this post after the exclusion of Anatolie Donciu. The actual announcement about the extension of the deadline for the application for the position of ANI Vice-Chair was published in the Official Gazette of the Republic of Moldova on September 15, 2017²⁴.

As for the candidates for the presidency, Teodor Cărnaț and Victor Strătilă²⁵, they supported the written test on 21 September 2017²⁶, both candidates being admitted for the interview²⁷, held on 26 September 2017²⁸. At the moment, candidates will be subjected to the simulated behavior (polygraph) test.

Thus, more than one year after the adoption of the laws from the Integrity Package, their implementation did not go further than organizing the competition to fill the positions of Chair and Vice-Chair of the NIA, the procedures not yet being finalized. Obviously, the delaying the reorganization of this institution jeopardizes the process of control of wealth and personal interests.

Starting from the phrase "during the fiscal year", the text of art. 19 (a) and (d) of Law no. 132/2016 could be interpreted as limiting that control, but also its possible consequences, can only be applied for a period identical to that of the previous fiscal year. Similarly, due to the delays in the reorganization process, certain prescription terms may pass, particularly the terms of prescription terms for contravention liability.

It should be noted that, according to the information provided by NIA²⁹, in the first semester of 2017, 74 petitions were submitted to the authority, with another 84 petitions of this type coming in 2016, after the entry into force of the new provisions all of which will be examined by integrity inspectors. Also 75 uncompleted control procedures from NIA's management are to be added, procedures that can be continued by integrity inspectors as well. Also, 55,710 declarations of assets and personal interests filed in the first half of 2017 remain to be checked by integrity inspectors, while the other 3,994 will come in 2016 after the entry into force of the new legal provisions.

Approval of the National Integrity and Anti-corruption Strategy (NIAS)

On March 30, 2017 the SNIA was approved by Parliament, the document being published only on 30 June 2017. The authorities also in this exercise replicate some of the vulnerabilities found in the process of evaluating the level of implementation of the National Anticorruption Strategy for 2011-2015³⁰, such as delaying the process of adopting the strategy and action plans for its implementation, complex strategy architecture, poor strategic planning.

Adoption of Law no. 82/2017

On May 25, 2017, Law 82/2017 was adopted, which was published on July 7, 2017. Among the most controversial provisions of this law are those contained in Art. 13 par. (4). According to them, in order to ensure the professional integrity specific to the anticorruption authorities, the declarations of assets and personal interests of the public agents in these entities may be subject to additional verifications within the public entity they belong to, applying the consequences provided by the special legislation regulating the activity of the respective category of public agents.

In this case, according to the cited rules, the consequences imposed can not be less serious than the consequences imposed by the general rules. Obviously, through these rules, all anti-corruption authorities are attributed powers similar to those held by NIA. It is noteworthy that, for the purposes of Art. 3 of the Law no. 82/2017, anticorruption authority, in

²⁰ <http://ani.md/ro/node/200>, NIA, press-release, Members of the IC accepted the application of three candidates, the fourth candidate will be discussed in the next meeting.

²¹ <http://ani.md/ro/node/202>

²² <http://ani.md/sites/default/files/documente/Hotararea%20nr%205%20-%20201.pdf>,

<http://ani.md/sites/default/files/documente/Hotararea%20nr.%205%20-%20202.pdf>

²³ <http://ani.md/ro/node/204>

²⁴ <http://ani.md/ro/node/205>

²⁵ Lilian Cisca withdrew from the application of the position of the Chair and maintained the application for the Vice-Chair of NIA.

²⁶ <http://ani.md/ro/node/206>

²⁷ <http://ani.md/ro/node/210>

²⁸ <http://ani.md/ro/node/213>

²⁹ <http://ani.md/ro/node/147>

³⁰ http://cna.md/public/files/sna_rapoarte/Evaluarea_implementrii_SNA_2011-2015.pdf, NAC and Hanns Seidel Foundation, Evaluation of the Implementation of the National Anti-corruption Strategy for 2011-2015, 2016, p. 4.

addition to ANI, is the National Anticorruption Center, the Anticorruption Prosecutor's Office, the Intelligence and Security Service, the Ministry of Internal Affairs (MIA).

Besides, the reasons why MIA is included in the list of anti-corruption authorities, Law no. 82/2017 is not explicit in this respect. Certain is *the attribution of parallel competences to several anti-corruption authorities, which proves once again that there has been no genuine resettlement of the national anticorruption system.*

Starting the implementation process, following the amendments made to the Law no. 325/2013

In order to execute the Law no. 325/2013, on January 6, 2017, in the Official Gazette of the Republic of Moldova, the Regulation on the selection and designation of judges specialized in judicial control on professional integrity testing was approved, approved by the Decision of the Superior Council of Magistracy (SCM) no. 829/33 of 29.11.2016³¹. Subsequently, on February 28, 2017, the *SCM appoints judges specialized in judicial control over professional integrity testing*³², *including several magistrates with integrity issues, previously targeted in journalistic investigations*³³. Obviously, *this compromises the instrument, which has been challenged by several civil society organizations from the start.*

Final statements:

- the authorities did not succeed to reset the national anti-corruption system. Moreover, the mechanisms become even more confusing by assigning the authorities of anticorruption (other than the NIA) the right to carry out additional checks on the declarations of assets and personal interests filed by their employees;
- the reform process of the NIA is slow, jeopardizing the potential effectiveness of controlling personal assets and interests in the public service;
- no matter how large the authorities expect from applying professional integrity tests, the impact will not be credible if people with integrity problems are involved in the process;
- delays in adopting and publishing the anti-corruption policy document indicate that the authorities do not succeed in becoming more effective in planning, which compromises the effectiveness of implementation.

2.3 Transparency International-Moldova: Radiography of the banking fraud and money laundering

The report elaborated by Transparency International Moldova states that the banking sector of Moldova is the element that made possible since 2005 the transformation of the country into a regional laundering machine for money with doubtful provenience³⁴. The problems of the financial sector in general, and particularly the banking sector, have been accumulated in Moldova regardless of the regime and governing parties. This sector was used to squeeze financial resources from the reserves of the National Bank of Moldova (BNM) in 2014, apparently used to cover the financial gap of three banks after the massive theft of 13.5 billion MDL, converting later the lacking money into the state debt. All the above mentioned issues generate major risks for the state security, its' financial system and citizens. The analysis of banking frauds distinguishes two visible stages of erosion looming over its safety, which at a given instance of time have interleaved:

- 2005-2014 – money laundering of funds of illegal and doubtful provenance within the region through banking system propped up by the judicial system and under the protectorship of those vested with power;
- 2014-2016 – theft of billions from the banking system, including from the National Bank of Moldova (NBM), by converting created gaps into public debt, thus placing the burden of billions' recovery onto the shoulders of simple citizens, while the theft was devised and perpetrated by the certain interest groups supported by the political elite actors at the background of captive state institutions, headed by rather vulnerable and corruptible management.

The authors mention a set of **key elements that have determined and converted Moldova into a regional large scale laundry:**

- substantial changes and amendment to the legislative framework governing the banking sector activity, amendments to the Tax Code and income tax abolition, made effective in 2007; the banks were not obliged to report on the origin of proceeds generated by the billions-worth financial flows intended for transiting Moldova;
- abolishing from the Criminal Code the provisions referred to collateral transactions and criminal liability of bank managers for the absence and understating of the value of collateral, made effective in 2008;

³¹ http://csm.md/files/Acte_normative/Legislatia/Interne/RegulamentSDJ.pdf

³² <http://csm.md/files/Hotaririle/2017/08/155-8.pdf>

³³ <https://anticoruptie.md/ro/stiri/judecatori-cu-probleme-de-integritate-printre-magistratii-specializati-in-controlul-judiciar-asupra-testarii-integritatii-profesionale-desemnati-de-csm>

³⁴ <http://www.transparency.md/index.php/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/>

- abolishing the state tax set ad-valorem and capping of payments, thus facilitating legalization within the institutions of the billions transited, made effective in 2010;
- taking control over the BEM (Moldovan Savings Bank), initially targeted against minority shareholders and subsequently against the state. In September 2013 the bank was definitely included into the regional laundry, when the state voluntarily ceded its legally held majority stake of 56.1% in favour of the interest groups' representatives.

The BEM case (a bank having the state as its majority shareholder) is a classic case of raider attack, of plundering and decapitalization conducted by a number of interest groups, due to tacit interaction and approvals on behalf of the state institutions, including NBM. Moreover, in the correspondence with the authorities of the Republic of Moldova was corroborated the implication of Moldovan banking and judicial systems in laundering the financial means resulting from misappropriation of budgetary funds of Russian Federation (Magnitsky case). The concession of the majority stake in BEM and creation of a nucleus of large scale laundering scheme was halted in view of some **internal investigations launched by the Russian Federation in 2014**, accompanied by detention of a number of influential persons from political and banking environment, that were connected to the regional laundry and schemes applied in the Republic of Moldova. **Since June 2014 noticed was a process of crossing over from the regional money laundering schemes to the theft of billions from the local banking sector.**

The embezzlement of billions from the banking sector of the Republic of Moldova with implication, support and coordination of institutions, their management and political figures was triggered by **certain decisive elements**, and mainly:

- BEM lost its attractiveness as a part of the laundry and became a "hot ball" in the hands of its shareholders. Since June 2014, in lack of special supervision that NBM failed to timely institute, BEM launched an aggressive attraction of bank deposits from population, offering highest interest rates possible within banking system;
- in July and September 2014 were created legal grounds for emergency lending to commercial banks by the NBM under government guarantee, after Leanca Cabinet has undertaken several amendments to the legislation governing banking and financial domain;
- in November 2014, at a secret sitting, **the Government decided to issue a state guarantee in favour of NBM**, thus allowing the allocation of MDL 9,6 billion to the three banks (BEM, Banca Sociala and Unibank). **The decision was taken contrary to the legislative provisions**, since no authority has been instituted and/or vested with the competencies of making a statement on systemic crisis and no official statement of crisis outbreak ever followed. Moreover, through its **second secret decision** taken in March 2015, Gaburici Cabinet allocated another MDL 5,4 billion for customer deposits coverage and paying out;
- it is worth mentioning **the complicity and coordination of decisions by the three autonomous institutions on the same day of 27 November 2014**: the NBM took decision on establishing special administration; the Supreme Court of Justice ruled that the issue of shares through which the state has lost its majority shareholding position and remained with 33% (September 2013) was illegal and the state resumes its majority shareholder's position; the Competition Council decides on launching investigation on the assistance granted by the state, i.e. NBM lending to the 3 banks. Actually, **through these concerted actions the state ended up with the accumulated debt** and the financial gap created by the BEM.

NBM report shows clearly that **less than half of the emergency credits** offered during 2014-2015 to the three banks **were used according to destination**, i.e. for customer deposits coverage.³⁵ The rest was used for covering other issues, including for creation of undeserved profit on currency speculation during the first 6 months of 2015. On 26 September 2016, by assuming the responsibility, the government decided on putting the burden of the accumulated debt onto the shoulders of taxpayers. The authors conclude that **thus was actually completed the scenario devised by the governance in 2014**, when the laws were amended to allow the theft to take place, then bearing on the secret decisions on loans disbursement by the NBM while being aware that that the commercial banks will never repay the loans to the NBM – kind of billion-worth nonperforming loans offered by the NBM.

The lack of transparency with regard to the beneficial owners of the banks is obvious, as well as the large exposures to certain customers, loans extended to affiliated persons in banks portfolio and high level of nonperforming loans accumulated as a result. **The experts believe that the risks incurred with contamination of financial system are still persisting.** A number of other financial institutions could follow on the same scenario in the future and not in the banking sector alone. Same could happen with the insurance and leasing companies as well as with loan and saving associations. The money entrusted by the citizens to these entities are in danger, mainly because of complicity of the government authorities with different interest groups managing the financial flows in the Republic of Moldova.

³⁵ <http://bnm.org/en/content/information-banca-de-economii-sa-bc-banca-sociala-sa-and-bc-unibank-sa>

2.4 Transparency International-Moldova: The new amendments to the Citizenship Law – a risk of legalizing fraudulent financial means

In December 2016, a group of MPs headed by Andrian Candu, the Speaker of the Parliament of the Republic of Moldova, had a legislative initiative concerning the liberalization of the capital and fiscal stimulation, known as the “illegally obtained capitals amnesty”. The representatives of the civil society have condemned this new law draft initiative, believing that it would lead to the legalization of the illegally obtained money and would compromise the anti-corruption fight in the Republic of Moldova.^[1] By a common civil society, experts and development partners effort, this draft law was blocked and in February 2017 - it was removed from the parliamentary agenda, even if it was voted in the first reading. At the same time, the anti-corruption expertise conducted by the National Anti-corruption Center has concluded “.... the capital liberalization concept becomes thus equal to the legalization of illegal capital, being closer to the illegal money laundering concept”. Thus, this intention to legalize certain dubious funds has failed.

In parallel to this legislative “initiative”, amendments to the **Citizenship Law of the Republic of Moldova** no. 1024 - XIV of June 2 2000 were pushed forward.^[2] The initiative registration date, as well as the authors/signatories of the project are the same as in the case of the capital liberalization/ fiscal stimulation project. Through these amendments the opportunities of receiving Moldovan citizenship have increased. Thus, as of 27.06.2017 the following provisions are in effect^[3]:

“Notwithstanding par. (1), the citizenship of the Republic of Moldova can be granted upon request to a foreign citizen or a stateless person, who knows and observes the Constitution and meets the following conditions:

- *Has a good economic and financial reputation;*
- *Does not present any danger or risk to public order and state security;*
- *Contributes to the public investments fund for sustainable development or has performed and maintains for a period of 60 months investments in at least one of the strategical development areas of the Republic of Moldova, as approved by the Government”.*

The amended law also foresees that the granting of the Republic of Moldova citizenship, according to the conditions specified above, shall be limited to 5000 persons, however it does not clarify if this refers to the total number or to a number of persons within a given period of time.

These legal provisions create major direct or indirect, personal or through intermediaries legalization risks of dubious financial means.

In order to implement these new provisions, the Ministry of Justice has drafted a Governmental Decision Bill on the granting of citizenship by investment.^[4] Besides the fact that the drafted bill has deviated from certain provisions of the above mentioned law (including deadlines), it could also legalize dubious financial flows, dragging the state institutions and the citizens of the Republic of Moldova in new extortion schemes by issuing internal public debt instruments.

Thus, this Governmental Decision draft determines, among other things, that “foreign citizens or stateless persons, who apply for the acquisition of Moldovan citizenship by investment, according to art. 17 par. (11) provisions of the Citizenship Law no. 1024 - XIV of June 2 2000 has to meet the following conditions:

- *To deposit in local currency or in freely convertible currencies on the territory of the Republic of Moldova a non-refundable contribution worth at least 100 (one hundred) thousand EURO in the Public Investment Fund for sustainable development through ESCROW type bank accounts of the public institution “The Sustainable Development Fund of Moldova” OR*
- *Has made and maintains an investment in at least one of the strategic development areas of the Republic of Moldova, based on a business plan accepted by the citizenship application Examination Board by participating in the investments program in the Republic of Moldova (hereinafter the Board) for a period of at least 60 months, amounting to at least 250 (two hundred fifty) thousand EURO.*

At the same time, in this draft, the authors have identified the following “areas of strategic development”:

- **the development of the real estate sector** by owning uninterruptedly for a period of 60 months one or more buildings of a total market value of at least 250 thousand EURO, and
- **the development of the public financial sector and of the public investments by purchasing and owning state securities** for a period of 60 months of a total value of at least 250 thousand EURO.
- To be mentioned that these two areas don't have strategic importance for Republic of Moldova; these are sectors described by financial speculations. Both sectors would allow only a temporary allurements of free foreign financial resources, representing a form of legalizing resources, and subsequently removing them [from the country].

Currently the real estate sector is oversaturated by real estate offers, which are not absorbed due to the low buying capacity and the decreasing economic activity in the Republic of Moldova. Some developers and investors are confronted with reduced return on investments and they are interested to receive any type of support through different formula, including financial engineering with the involvement of the state, so that the price trend could be reversed so that it could grow again. Acquiring Moldovan citizenship by purchasing goods in the country wouldn't represent anything

else but a form of temporary absorption of foreign financial resources, aiming at distorting the internal market, benefiting investors and inefficient construction companies, and respectively, forcing the citizens of the Republic of Moldova to massively migrate abroad.

To be mentioned also that the state securities purchase in the context of granting citizenship doesn't represent an investment, but, actually, a loan imposed on the state of the Republic of Moldova. According to the Governmental Decision draft, the owners of foreign financial resources could acquire the citizenship of the Republic of Moldova if they lend 250 thousand EURO to the state Republic of Moldova for a period of five years. And the Republic of Moldova, all the taxpayers, legal citizens, is forced to return to this foreigner ("fresh citizen") the entire sum and also the interests when the five years expire. Thus, this mechanism could be seen more as a form of extortion planned by a group of citizens, who have financial resources and who, through intermediaries (who are offered the citizenship, meaning the protection of the Moldovan authorities) want to continue to extort clean and legal money from the state budget.

Unfortunately the Government disregards the traditional sectors, truly important for the strategic development of the Republic of Moldova, e.g. education, informational technologies, agriculture, food industry, energy efficiency, etc. and which need real direct investments. Thus, the Moldovan authorities identify as "strategic" those sectors which can be easily integrated within the international money laundry schemes.

In this context, a situation when the "citizenship by investment" applicants will prefer to, mainly, lend to the state and not revert to the non-refundable contributions to the Public Investment Fund for sustainable development is predictable. Apparently, the authorities intentionally create utopic options to divert [the attention] and support their arguments to easily approve group interest bills.

Transparency International – Moldova (TI-Moldova), as well as other NGOs have underlined often the risks and the consequences of promoting and adopting norms and laws detrimental to the public interest, and supporting the interests of a small group of beneficiaries, who look for ways to legalize in the Republic of Moldova fraudulently acquired financial resources^[5]. These projects undermine the efforts of fighting grand corruption, of investigating bank sector frauds, as well as block the justice and integrity system reform.

Based on the above mentioned, TI-Moldova expresses their concern that the new provisions of the Citizenship Law of the Republic of Moldova, promoted and adopted in December 2016, as well as the Government Decision draft, launched by the Ministry of Justice, *could represent a new attempt of legalizing dubious financial means*.

In this context, TI-Moldova brings notice to the Moldovan society, development partners and especially to the European Union, the governments of the United States of America, Germany, Romania, as well as to the International Monetary Fund and to the World Bank on the inadmissibility of the legalization under any form or shape of the illegally acquired capitals, covered by some laws and Governmental Decisions deviating from the constitutional provisions, against the public interest and the international commitments of the Republic of Moldova, especially of the Association Agreement with the European Union.

Also, TI-Moldova calls upon the development partners to take a stand concerning the intentions of the officials to make state securities available to investors, who access fraudulent financial means and who could subsequently enter the international and regional financial circuit.

2.5 Transparency International – Moldova, Institute for Development and Social Initiatives "Viitorul": Monitoring the developments in the financial and banking sector (December 2016 - September 2017)

The December 2016 - September 2017 period was full of events in the financial and banking sector. Following the Filip Government's decision in September 2016 to convert into internal state debt the guarantees issued in November 2014 and March 2015 (intended to cover the "holes" created following the frauds from three banks: the Savings Bank, the Social Bank and Unibank), series of initiatives to amend financial-banking legislation were launched. These changes were to meet the conditions and commitments of the Moldovan authorities towards the International Monetary Fund (IMF) and other development partners.

Thus, with the assistance of development partners, new laws have been developed and adopted, including the Law on Bank Recovery and Resolution³⁶ and the Law on Central Securities Depository³⁷. It is noteworthy that in less than one year since adoption, the first law has been amended twice, and the second one - once, which proves the hurry admitted at the time of their adoption. At the same time, the Executive Committee of the National Bank of Moldova (NBM) has approved and amended several regulations, one of the most important ones concerning the requirements to the

³⁶ Legea Nr. 232 din 03.10.2016 privind redresarea și rezoluția băncilor,
<http://www.lex.justice.md/index.php?action=view&view=doc&lang=1&id=366942>

³⁷ Legea Nr. 234 din 03.10.2016 cu privire la Depozitarul central unic al valorilor mobiliare
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366946>

commercial banks' directors, and aims to promote to their leading positions competent and reputable persons, which would improve the corporate governance of banks.

During this period, *several legislative initiatives considered by civil society and development partners to be harmful and contrary to the commitments assumed by the governors, as it increases the risks of legalizing means of fraudulent origin*^{38, 39}. One of these initiatives, the draft Law on legalization of capital and tax incentives, adopted by the Parliament in the first reading in December 2016, avoiding public discussion and without informing development partners, is the most eloquent example. Another draft relates to the amendments to the Citizenship Law and offers, by way of derogation from the legal norms, the right to citizenship of the Republic of Moldova for third persons, foreign citizens or stateless persons, against contributions called "investments". *Both drafts had as authors the same group of MPs, headed by the Chair of the Parliament. The regulation on the implementation of the law on "citizenship for investment", drafted by the Ministry of Justice and approved by the Government in September 2017, sparked contradictory reactions in society, as it offers possibilities to legalize the financial means of dubious origin in the Republic of Moldova*⁴⁰. The Head of the EU Delegation Pirkka Tapiola stated in an interview that "there are other, more effective, ways to attract foreign investment in a country than this way with citizenship offered in exchange for money"⁴¹.

In this context, it is worth mentioning the expertise reports of the National Anticorruption Center (NAC) on both projects, the "amnesty / capital liberalization" and "citizenship versus investments". In the first case, the NAC indicated that in the draft law "... the concept of capital liberalization becomes equivalent to the legalization of capital outside the legal circuit, approaching a concept of money laundering", and in the second case it found that "the interests promoted are detrimental to the public interest and to the major risks to the safety and security of the citizens and the state of the Republic of Moldova". Despite this fact, the second draft was approved and the law entered into force in June 2017.

It is also important to note in the list of legal initiatives, the adoption in September 2017 of the *National Action Plan on Risk Reduction in the field of Money Laundering and Terrorism Financing for 2017-2019*. Although it contains important provisions on the harmonization of the Moldovan legislation to the *acquis communautaire*, a large part of the activities included in the plan are aimed at strengthening the capacities of the public authorities, as this process was to start ten years ago with the entrance in force in 2007 of the Law on prevention and combating money laundering and terrorism financing. Moreover, *this plan does not include such vulnerabilities in money laundering as the energy sector, which is a "black hole" in country's economy and brings considerable damage to society*.

At the same time, a new Law on combating money laundering, which is also a requirement of the European Union, is still pending, according to the Association Agreement signed with the Republic of Moldova.

The inadequacy of the legal provisions to meet specific, complex, multidimensional and litigious situations in the banking sector, particularly in the three banks supervised by the NBM, does not solve such problems as *lack of transparency of the shareholders, high investments risks for potential honest investors*.

At the same time, analyzing the events of 2016-2017, we can see that *the Republic of Moldova, after a period when it was an important element of the regional laundering of fraudulent money (laundromat), and a period of "the fraud of the century", when 13% of GDP has been taken out of the domestic banking system, risk to transform the country in an offshore zone*. A retrospective in time shows that after Latvia's exit from the laundromat area under the supervision of the European Union, the money-laundering schemes were imported into the Republic of Moldova. At present, while the EU is putting pressure on Cyprus to eliminate the channel of money with obscure provenience, the Republic of Moldova is becoming a fertile field to attract such means through various methods (including capital liberalization, citizenship against "investment", secrecy of relevant people's data both in the banking sector and in the courts of law, the tax changes initiatives typical for offshore zones).

These developments create impediments for an independent and genuine investigation of bank fraud, block implementation of laws and rules agreed with development partners, diminish the importance of the Kroll report, but also impede the functionality of institutions and the prospect to recover fraudulent funds.

During this period, the banking sector is in a difficult recovery phase after the 2014-2015 crisis. The NBM has considerably tightened bank supervision and reporting standards, including against compromised loans. However, a number of systemic problems persist, among them: *lack of transparency of shareholders and effective beneficiaries, poor corporate governance and inefficient management, weak internal control procedures and audits*. Although the NBM stopped the creation of new dubious and compromised loans, the solution of the existing ones is difficult.

³⁸ <http://www.transparency.md/2016/12/12/the-adoption-of-the-law-on-the-liberalization-of-capital-and-financial-incentive-undermines-anti-corruption-efforts-and-discourages-honest-taxpayers-and-state-servants/>

³⁹ http://www.transparency.md/wp-content/uploads/2017/07/TI_Moldova_IDIS_Monitorizarea_Evolutiilor_in_Sectorul_Financiar_Bancar_2017.pdf

⁴⁰ <http://www.transparency.md/2017/08/22/position-paper-the-new-amendments-to-the-citizenship-law-a-risk-of-legalizing-fraudulent-financial-means/>

⁴¹ <http://unimedia.info/stiri/video-pirkka-tapiola--despre-regretele-de-la-final-de-mandat-si-intalnirea-cu-plahotniuc-moldova-a-ratat-60-din-fondurile-europene-138410.html>

On the other hand, NBM's intervention in the three monitored commercial banks (Moldova-Agroindbank, Moldindconbank and Victoriabank) highlighted a series of vulnerabilities, mainly related to the relatively high portfolio of bad loans, as well as increased risks of money laundering and terrorist financing.

Together with the banking sector, other non-banking financial sectors are also exposed to fraud risks, particularly the insurance sector - a less regulated and monitored by public authorities area in which standards of activity and prudential rules are less respected.

At the same time:

- *investigating bank frauds in the Republic of Moldova is slow, without clear treatment of various types of frauds in the banking system* (money laundering, bad loans, distraction of money from the banking sector);
- national authorities have concluded a series of agreements with various countries / international institutions that could facilitate the obtaining of relevant information for possible money recovery. *The creation of the Criminal Assets Recovery Agency should have given impetus to the process of identifying and recovering fraudulent resources, but more than 7 months after its creation, it seems to be virtually inoperative;*
- *the financial means extracted from the banking sector as a result of the "fraud of the century" are not recovered.* Authorities create a false perception of recovery of the "billions", invoking, in fact, the amounts collected from insolvency proceedings of the three bankrupt banks;
- *no investigations have been initiated and no decision has been taken against decision-makers who have facilitated the "fraud of the century" by changing the laws and taking decisions and those in charge to prevented this fraud;*
- *the Kroll report remains neglected by the competent bank fraud investigation authorities, and the second Kroll report is on hold;*
- *there are risks that due to lack of actions by the insolvency administrators delegated by the NBM, the prescription terms for loans granted to Shor Group companies (specified in the Kroll report) from the three banks involved will expire and the billions will not be recovered.*

Restoring the credibility of financial and banking institutions depends on the successful implementation of the new legal framework in the field adopted at the insistence of international financial institutions in 2016. Transparency of shareholders and new models of corporate governance imposed on commercial banks could re-establish credibility, ensure transparency and predictability in their work.

In this context, *the statement and recommendations of the EU-RM Parliamentary Association Committee of May 22, 2017 remain very current, through which the Committee*⁴²:

- „- reminds of the high expectations of citizens regarding the judicial proceedings related to the banking fraud and of the need to bring all those responsible to justice;
- expresses therefore disappointment at the lack of progress in the prosecution of cases following the publication of the results of the first phase of the Kroll investigation;
- urges the relevant authorities to publish the Kroll report on the second- phase of investigation as soon as it is available;
- stresses that all trials should be held in line with international standards and should be transparent”.

2.6 Legal Resources Centre from Moldova: Investigating high-level corruption in Moldova – progress or illusion?

Corruption is one of the most significant impediments for the economic recovery of the Republic of Moldova, as along with being the main cause for the deep political and social-economic crises in the country since 2013. Additionally, it is cited by the Moldovan people as the primary reason for their disappointment with the political class and reforms announced after 2009, when the governance in Moldova changed.

Combating corruption has been one of the top priorities of all Moldovan Governments since 2009, and is one of the main priorities of the 2014 EU-Moldova Association Agenda. Moderate reforms, mostly legislative, were put in place up until 2016. In 2016 the Moldovan Parliament adopted important legislation aimed at combating corruption; however, it was not sufficient to ensure that corruption is effectively prosecuted in Moldova. Proper implementation of this legislation is more important and recent events suggest that implementation remains a very serious problem.

This brief aims to address the measures taken by the Moldovan authorities to ensure that high-level corruption is adequately investigated. It is recommended that the Republic of Moldova increase funding for prosecution services and intensify its efforts for eradication of corruption within the prosecution service and judiciary. The leadership of the

⁴² <http://www.parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/3091/Page/1/language/ro-RO/Default.aspx>,
http://www.europarl.europa.eu/cmsdata/119821/recommendations_4th_MD_PAC_22052017_en.pdf

prosecution service must be appointed on merits and in a transparent manner. The legislation shall also be amended to exclude from the competence of the Anticorruption Prosecution Office the petty corruption cases and be adequately staffed. The European Union is also called to closely monitor the fight against corruption in Moldova and adequately react in case of deviations, using both diplomatic and financial tools available.

Introduction

Republic of Moldova is one of the poorest European nations, with a per capita GDP eleven times lower than Romania and ten times lower than Bulgaria. Corruption is one of the most significant impediments for the economic recovery of the country. This has been recognized both by the Government of Moldova, as well as foreign Government and international organizations working with Moldova.

Combating corruption has been among the announced top priorities of all Moldovan Governments since 2009. The 2014 EU-Moldova Association Agenda also provides that Moldovan authorities shall ensure the independence, impartiality, professionalism and efficiency of prosecution service and intensification of the prevention and fight against corruption in all its forms and at all levels, especially against high-level corruption.

In 2016 the Moldovan Parliament voted a new Law on prosecution service and the “Integrity Package”, which are of crucial importance for fighting corruption in Moldova. The new Law on prosecution service strengthens prosecutor independence in addition to doubling their salaries. In 2015-2016, a number of high-profile corruption cases were initiated, however, the population perceives these reforms as in name only, with state institutions being corrupt and the majority of high profile cases being politically motivated. According to the most recent public surveys, the Moldovan people consider corruption and poverty as the top problems of their country. In October 2016, public trust in the justice system was 8%, compared to 37% in October 2008.⁴³ The Transparency International 2015 Corruption Perceptions Index ranks Moldova on 109th place out of 167 countries, with a negative trend since 2012.⁴⁴ The 2016 Rule of Law Index ranks Moldova on 77th place out of 113 evaluated countries, corruption, civil and criminal justice being the lowest scored domains.⁴⁵

This policy brief covers the main anticorruption reforms implemented in 2016 by Moldovan authorities, as well as the problematic aspects in combating high-level corruption in Moldova.

Reforms and faults in investigating high-level corruption

• The new Law on prosecution service

The Moldovan prosecution service was the only law-enforcement agency that has not been reformed since the Soviet era, with politicians preferring to have prosecution service under political control. It was an institution with extensive powers, strong hierarchical subordination, and a leadership appointed on political considerations. As a result, the prosecution service was generally perceived as politically subordinated.

The 2011 the Moldovan Parliament adopted the Justice Sector Reform Strategy,⁴⁶ intended to provide meaningful reform of the prosecution service. On 25 February 2016, the Parliament adopted the new Law on prosecution service. Its scope is to narrow the powers of prosecution service in non-criminal fields, limit the political involvement in the appointment of the Prosecutor General, transfer important powers of the Prosecutor General to an independent self-management body, and reduce hierarchical subordination of prosecutors. The Venice Commission of the Council of Europe found the new law, which entered into force on 1 August 2016, as a big step forward. To ensure the full effect of the new law and a non-political procedure of selection of the Prosecutor General,⁴⁷ in November 2016 the Constitution was amended.

Adoption of the new Law on prosecution service and the amendment of the Constitution are important steps aimed to ensure an independent and efficient prosecution service. These efforts should also be followed by consistent internal changes within the prosecution service, empowerment of the structures of self-administration of prosecutors, increased funding for prosecution service, and eradication of corruption within the prosecution service itself.⁴⁸

Some actions of the Prosecutor General’s Office (PGO) raise questions regarding its willingness to follow the spirit of the Law on prosecution service. Under the new Law, the PGO has limited prosecutorial powers and should act as a managing authority. In May 2016 the interim Prosecutor General approved the new organizational chart of the PGO. It

⁴³ Barometer of Public Opinion, October 2016, available in Romanian at <http://www.ipp.md/libview.php?l=ro&idc=156&id=804>

⁴⁴ Corruption Perception Index, available at: https://en.wikipedia.org/wiki/Corruption_Perceptions_Index

⁴⁵ Rule of Law Index 2016, available at: <http://data.worldjusticeproject.org/>

⁴⁶ Available in Romanian at: <http://www.legis.md/cautare/rezultate/50463>.

⁴⁷ According to the new Law, the Prosecutor General is selected by the organ of self-administration of prosecutors at a public contest and is appointed by the President. The President can refuse the candidate only if the procedure of selection was breached. The organ of self-administration of prosecutors can overrule the refusal of the President by vote of 2/3 of its members.

⁴⁸ The prosecution service is perceived by the society is very corrupt. In 2015, several prosecutors have been prosecuted for corruption or abuse of power and two cases were sent to court. In 2016, two former Deputy General Prosecutors have been criminally charged for abuse of power.

provides that in the PGO there should be divisions of prosecutors dealing with issues that, under the new Law on prosecution service, are the exclusive areas of specialized prosecution offices. It also states that the staff of the PGO consists of 90 prosecutors, i.e. 13% of all prosecutors. This structure of the PGO creates a high risk that, contrary to the new Law on prosecution office, the PGO will unofficially continue to control the prosecution service in its entirety, which would undermine the independence of the lower prosecutors and preserve the status quo.

- ***Appointment of the new leadership of the prosecution office***

An independent leadership of the prosecution office is crucial to ensure an efficient fight against corruption. It is equally important to ensure that all appointments in the prosecution service are merit based and that no candidate with doubtful reputation is promoted. A series of appointments, however, including the way the new Prosecutor General was appointed in December 2016, raise concerns about the system's ability to appoint those with unquestionable reputations to leading positions in the prosecution service, which ultimately undermines the very purpose of the prosecution reform.

On 26 February 2016, several days after the new Law on prosecution service was adopted by the Parliament, the Prosecutor General resigned. The Law on prosecution service provides that the new Prosecutor General is selected by the Supreme Council of Prosecutors (SCP)⁴⁹ and appointed by the President. After a contest for selection of Prosecutor General was announced by the SCP on 7 December 2016, the first Deputy Prosecutor General, Eduard Harunjen, was selected by the SCP from of six total applicants. The press reported that Mr. Harunjen, who is a career prosecutor, lives in a luxury house that could not be purchased/built on the income legally earned by his family. This aspect was not discussed during the contest. In 2013-2015, Mr. Harunjen was the Chief Anticorruption Prosecutor. Under his leadership the Anticorruption Prosecution Service did not deal with important corruption cases. He also did not ensure the prompt initiation of the investigation into the EUR 1 billion fraud from the Moldovan banks.⁵⁰ On 8 December 2016, the next day after being selected, the President appointed Mr. Harunjen as Prosecutor General and Mr. Harunjen was sworn into office the same day, behind closed doors. The press was only informed about the appointment after.⁵¹ The speed and manner of appointment of Prosecutor General suggests that it followed a hidden agenda.

Appointment of the Prosecutor General is not the only negative example of questionable appointment contests. As a result of adoption of the new Law on prosecution service, more than 50 positions of senior prosecutors should be filled-in through public contests. Among other, on 14 July 2016, SCP selected a deputy chief anticorruption prosecutor who had not previously declared his wealth and whose score placed him third among the five candidates.⁵²

- ***Efficiency of the authority in charge of investigating high-level corruption***

The fight against corruption must start with an efficient investigation of high-level corruption cases. The best practices from the region confirm that it is critical to have a single independent specialized anticorruption agency with exclusive competence to fight high-level corruption.

Until 1 August 2016, when the prosecutorial reform entered into force, most of corruption cases were investigated by the National Anticorruption Centre (NAC). The current director of NAC has led the institution since 2009 and is a political appointee from the Moldovan Democratic Party⁵³, the leading party of the current governing majority. In recent years, the NAC did not bring any charges against important figures from the Democratic Party while bringing numerous charges against important figures from other political parties.

Prior to 1 August 2016, the law made no clear distinction between lower level and high-level corruption and no agencies were specialized to investigate high-level corruption. The 2016 prosecutorial reform makes a distinction between petty and high-level corruption and provides that high-level corruption cases should be investigated by the Anticorruption

⁴⁹ The Supreme Council of Prosecutors is currently composed of 12 members. 6 of them are prosecutors elected by their peers, 3 - law professors elected by the Parliament, Minister of Justice, Prosecutor General and the President of the Supreme Council of Magistracy (the self-management body of judges).

⁵⁰ In 2014, \$1 billion disappeared from three Moldovan banks: Savings Bank, Unibank and Banca Sociala. The money was transferred abroad based on fictive credit contracts. The total loss from the scheme is equivalent to 12% of Moldova's GDP. An investigation started several months later, even though the information about the scheme was known by the authorities from the very beginning. Anticorruption Prosecution Service was leading the investigation.

⁵¹ The Law on prosecution service offers the President three weeks to take a decision, i.e. until 28 December 2016. The Mandate of the former President, Mr. Timofti, expired on 23 December 2016 and the newly elected President declared publicly that he would not appoint Mr. Harunjen as Prosecutor General.

⁵² The appointment decision is available at: http://procuratura.md/file/2016-07-14_175%20numire%20proc%20sef%20adj%20Anticoruptie.pdf.

⁵³ In 2009-2013 several agreements creating the ruling majorities in Moldova were signed. All of them contained secret annexes, establishing the parties empowered to nominate the leadership of the public institutions, including NAC and Prosecutor General's Office (PGO). The 2010 agreement established that the leadership of NAC and PGO should be nominated by the Democratic Party. The agreement was leaked to press in 2013 and is available at: <http://unimedia.info/stiri/doc-acordul-aie2--mina-care-a-desfiintat-alianta-cum-s-au-partajat-functiile-57321.html>. The 2013 Government's attempt (led by Liberal Democrats) to dismiss the Director of NAC led to the amendment of the legislation, appointment/dismissal of NAC leadership being transferred from the Government to the Parliament. This amendment was initiated by Democratic Party and was voted by the Democratic Party and opposition MPs.

Prosecution Office (APO). The APO is organized similarly to the Romanian Anticorruption Directorate. It is led by a chief prosecutor subordinated directly to the Prosecutor General with a separate budget and personnel. These are important safeguards of independence.

The mandate of the agency to deal with high-level corruption should not include cases that can distract from the investigation of high level corruption. Otherwise, there is a risk that the agency will avoid concentrating on high-level corruption cases, which are harder to investigate and may present career risks for prosecutors. Despite the fact that, according to the law, the APO should deal with high-level corruption, the law also provides that the APO should lead the investigations in petty corruption cases conducted by NAC and to present those cases in courts. In October 2016 there were some 300 high-level corruption cases at the APO and another 1,100 petty corruption cases at NAC. In practice, more than 75% of cases dealt with by anticorruption prosecutors are petty corruption cases. These cases can be easily investigated by ordinary prosecutors or other agencies. As a matter of urgency, the petty corruption cases should be excluded from the competence of the anticorruption prosecutors, which will make them concentrate on higher-level corruption cases.

On the other hand, the APO shall have sufficient staff assisting them to ensure adequate investigation of cases. Currently, contrary to the new Law on prosecution service, it does not have criminal investigators, police officers, and experts. This is because the APO did not have a budget for 2016 nor resources to hire its staff. The 2017 budget shall provide for adequate funding of the APO.

- ***Illustrative cases of selective injustice***

The fight against corruption is a complex and long-lasting exercise. Effective investigation is irrelevant if it does not lead to fair, prompt, and adequate sanctions. The activity of the Moldovan courts is well below peoples' expectations, with there being virtually no verdicts delivered against the representatives of the ruling majority. However, there were cases when judges delivered bizarre rulings which ensured that Democratic Party associates are not sanctioned. At the same time, the persons who opposed the Democratic Party were often investigated on trumped up charges. High profile cases are usually heard behind closed doors and court judgments are not published.

One of the most prominent examples is the case of ex-Democratic Party MP Mr. Valeriu Guma. In 2013 he was sanctioned by the Romanian Supreme Court of Justice to four years of incarceration for corruption, with the Romanian authorities asking the Moldovan authorities to enforce this judgment. On 20 November 2015, the Buiucani District Court of Chisinau acknowledged that the 2013 verdict was legal and that it can be enforced in Moldova. However, contrary to the spirit of the Moldovan law, it changed the sanction from incarceration to suspended imprisonment, with the judge arguing that the sanction imposed by the Romanian court was excessive, in spite of the fact that the arguments advanced in the Moldovan court were also advanced in proceedings from Romania and dismissed by Romanian judges. On 15 December 2015, the Chisinau Court of Appeal dismissed the appeal of the prosecutor. The court noted that it cannot examine the appeal, because, in such cases, it can only be filed by the Ministry of Justice. The Ministry of Justice (led by a minister promoted by the Democratic Party) did not appeal. As a result, the sanction imposed by Romanian judges cannot be enforced anymore in Moldova and an ex-Democratic Party MP is set free.

In February 2013, the NAC announced that three ministers are criminally charged for abuse of power. One of them is the Minister of Culture, Mr. Boris Focsa, a member of the Democratic Party, who was accused of the illegal selling of state property. The other two are the Ministers of Finances and Health, both nominated by the Liberal Democratic Party. The cases of the last two ministers were quickly sent to court. It appears that the case against Mr. Focsa was discontinued. In May 2013, the accountant of the Minister of Culture wrote a letter accusing Mr. Focsa of corruption and abuse of office. This letter, accompanied by supporting documents, was published by the press. No criminal investigation into these facts has been launched.

On 4 April 2016, the Cahul Court of Appeal banned from office the mayor of the town of Taraclia, Serghei Filipov, overturning the first instance court acquittal. Mr. Filipov was accused of organizing the illegal cutting of 31 old trees from the courtyard of Taraclia town hall, without an agreement from the Ecological Inspection. The mayor of Taraclia maintains that he did not order the cutting of trees, and it is the responsibility of a specialized service of the municipality. In August 2016, the Supreme Court of Justice quashed the conviction and sent the case to retrial. Mr. Filipov, a former Communist Party member turned independent, publicly stated that the criminal case is politically motivated, as he had refused to join the Democratic Party in the 2015 local elections.

On 27 June 2016, ex-Prime Minister Vlad Filat was convicted by the Buiucani District Court of Chisinau to nine years of imprisonment for corruption. This is a high-profile case and is the first case against a former Prime Minister with the charges being linked to the EUR 1 billion fraud from the Moldovan banking system. At the request of the prosecutor and contrary to the position of the defense, the entire case was heard behind closed doors. Only the parties in the proceedings could attend the hearings. The judges concluded that the prosecution is investigating a related case and that the examination of the Filat case in an open hearing would complicate the collection of evidence and harm the confidentiality of that investigation. Under Moldovan legislation, the judgments in criminal cases shall be published on the website of the court. On 21 June 2016, six days before the judgment in the Filat case, the Supreme Council of Magistracy changed the rules on publication of court judgments on the web-page, providing that the judgments on the

cases examined in the closed hearing should not be published on the web. As a result, the full judgment on the Filat case was not published, leaving society unaware of the reasons for his conviction. Lack of transparency raises doubts about the fairness of the trial. The same flaws have been repeated in the Chisinau Court of Appeals. The case was quickly examined behind closed doors and the decision of the appeal court, delivered on Friday, 11 November 2016, on the eve of presidential elections was also not published.

The cases of the other two persons accused of bank fraud, Mr. Shor and Mr. Platon, are also being heard behind closed doors. Mr. Platon publicly declared that the leader of the Democratic Party, Mr. Plahotniuc, is involved in the bank fraud. He declared that he was ready to give details to that respect and, also, called Mr. Plahotniuc as witness in his case. It appears that the prosecutors never heard Mr. Platon about the alleged involvement of Mr. Plahotniuc in the bank fraud, while judges refused to hear Mr. Plahotniuc as witness.

All of the above cases confirm that judges and prosecutors are not sufficiently courageous when it comes to procedures against the representatives of the leading political party in Moldova and can disregard basic rules of fairness in the cases of opponents of the Democratic Party leaders. This is a clear sign of the lack of sufficient independence of judges and prosecutors.

Conclusion and recommendations

In 2016, the Moldovan Parliament adopted an adequate legislation package aimed at combating corruption. However, this is not sufficient to ensure that the corruption is effectively prosecuted in Moldova. Proper implementation of this legislation is more important. The manner in which the leadership of the PGO was elected in 2016 and the numerous cases of selective justice make us less optimistic in that respect. Urgent legislative amendments are also needed to ensure that the APO is focused solely on high-level corruption.

The Republic of Moldova shall:

- increase the funding for prosecution service, especially Anticorruption Prosecution Office, as well as for the structures of self-administration of prosecutors;
- intensify efforts for the eradication of corruption within the prosecution service and judiciary. Both criminal, integrity, and disciplinary procedures shall be used;
- ensure that the implementation of the reform of the prosecution service is in line with the spirit of the Law on prosecution service, especially with respect to the independence of prosecutors and the limitation of powers of the PGO;
- organize transparent recruiting contests that ensure merit-based appointment of the leadership of the prosecution service, making sure that no candidate with integrity issues is promoted;
- amend the Criminal Procedure Code and remove from the competence of the Anticorruption Prosecution Office the petty corruption cases. These cases shall be assigned to ordinary prosecutors or other agencies;
- ensure that Anticorruption Prosecution Office is adequately staffed, both with prosecutors and assisting staff, such as criminal investigators, police officers, and experts;
- ensure that the independence of judges and prosecutors is respected and that a fair trial is guaranteed to everyone, regardless of political affiliation or belief;

We also call the European Union to closely monitor the fight against corruption in Moldova and properly react through political channels in case of deviations. The direct budgetary support committed for the implementation of the Justice Sector Reform Strategy can be also reconsidered in such situations. The fight against corruption may become the main focus on the next EU-Moldova Association Agenda, which is currently in the process of negotiation.

2.7 Legal Resources Centre from Moldova: Independence and accountability of Moldova's judiciary under threat

Justice sector reform has been on Moldova's agenda since the political changes in 2009. The Justice Sector Reform Strategy (JSRS) for 2011-2016 was adopted only in 2011 and its implementation is also a part of the Association Agreement Agenda signed with Moldova in 2014. At the same time, the level of trust of Moldovan population in judiciary is decreasing, in spite of implementing the SRSJ, with 74.5% of the population not trusting judiciary in November 2011 to 89.6% in October 2016. The absence of reforms in the judiciary will undermine all the other reforms, especially economic and anti-corruption reforms.

There were several important legislative amendments adopted in 2012-2013 in the context of JSRS implementation, which laid the necessary ground for improvements in justice delivery. However, they were of a rather technical character. Many legislative amendments were ignored or misinterpreted by the competent authorities, in particular the Superior Council of Magistracy (SCM) and the Parliament. The main issues faced by the Moldovan judiciary refer to the following:

- Selection and promotion of judges raised concerns due to disregard of procedures, selective approaches, issues with candidates' integrity and lack of reasoning in the SCM decisions related to judges' career. Judges with integrity issues make the system vulnerable to third party inappropriate influence, impeding real anticorruption reforms.

- Lack of transparency and deficient decision making process of the SCM. The SCM takes most of its decisions behind, including on matters of judges' career, courts' budgets, training and legal opinions on draft laws, which only reinforces the suspicion of corporativism and selective approach of the SCM. SCM shall adopt decisions in open sittings, except when acting as a quasi-judicial body.
- Use of criminal justice against some judges. In May 2016, a criminal investigation was initiated against a judge for the mere interpretation of the constitutional provisions on referendum, in circumstances when no court precedent existed on the matter and the Constitutional Court had clearly indicated that the Parliament should amend the contested provisions. This case sets a dangerous precedent of using the criminal system to pressure the judiciary.
- Decreased transparency of courts. The recent tendencies of declaring court hearings closed in cases of high social resonance and the adoption of regulations that limit public's access to courts will undermine any reform efforts, not only in the justice sector. Open court hearings and publication of court decisions are crucial elements for ensuring judiciary's accountability. When such access is closed, judiciary remains outside of any oversight, except for the improper third party influences. If these trends continue, selective justice will become the rule and not the exception, compromising significantly the rule of law in Moldova.

Recommendations:

Moldovan authorities do not show sufficient will for justice sector reform. Continuous external pressure is crucial. We call on the European Union to:

- Maintain Justice Sector Reform as a priority in EU-Moldova dialogue;
- Include strict conditionalities aimed at ensuring rule of law in Moldova for any financial support provided;
- Monitor the individual cases that expose significant disfunctionalities of the entire system.

3 Economic Development

3.1 *Transparency International-Moldova*: Monitoring the transparency of state companies and joint-stock companies with state capital

Transparency International - Moldova presented its Report on Monitoring the Transparency of State Companies and Joint Stock Companies with State Capital.⁵⁴ **The subject** of the monitoring were the transparency of the policies of appointing the Board members and of the managers of the state companies; budget planning and execution; procurement procedures; policy on conflict of interests; implementation of recommendations made within audits and state controls; reporting on the activity of the companies. **The object** of monitoring were 67 companies managed by 14 central public authorities (CPA). The main findings are presented below.

About 1/3 of the central public authorities provided the requested by TI-Moldova information beyond the deadlines set by the Law on Access to Information. Some authorities initially censured information provided by their enterprises/companies.

Business administrators and their remuneration: in their answers to TI-Moldova, about ¼ of the monitored enterprises provided evasive response or even refused to indicate the remuneration of their managers, invoking the personal nature of the data (note: the remuneration of the administrators of state enterprises is not personal information). **The remuneration of the managers of the state companies remained unproportionally high despite the chronic net losses** registered by the companies (eg, "Air Moldova", "Railway Moldova", "Ungheni River Port", "Moldaeroservice", "Cricova Winery", "Milestii-Mici" Stone Mine, "Vestmoldtransgaz"). Contrary to the legislation, the Boards of Directors of some enterprises include an exaggerated number of representatives of the founder. Such an over-representation seems to be rather a form of loyalisation of Board members than increasing control over the state companies.

Staff employment procedures: Only 1/3 of companies claim to have posted job vacancies and qualification requirements for candidates, and only half of them have organized competitions for this purpose. Insufficient transparency of employment procedures, decision-making in conflicts of interest situations lead to the **transformation of companies into "incubators" for the relatives of state officials**. Although the public authorities organize competitions for the position of the manager of state enterprises, they are often mimicked, transparency being apparent.

Companies' Incomes and Expenses: Following the request of TI-Moldova, about one quarter of enterprises did not provide information on their income and expenditure, in some cases the information was censored by the founding authorities. Some companies indicated that they did not make such estimates, even though the legislation requires the approval of the annual estimate of incomes by the Board of Directors.

Procurement procedures: Although companies are required by law to ensure transparency in procurement, only 1/8 of them presented their procurement plans or indicated the source where such information may be found. About 40% of companies did not indicate, as required, the value of their total procurements. Only about 40% of enterprises have published ads or invitations to bid, and only one enterprise has published detailed data on the results of selection. Confuse stipulations in the Law on State Enterprise vis-a-vis the procurement procedures and **lack of concrete requirements on the information to be published**, provide businesses with an opportunity to avoid transparency in the procurement process.

Audits and controls at the monitored companies: The requirements for the audit of the annual financial statements set out in legislation create opportunities to avoid this procedure by loss-making or "floating-off" companies due to ineffective or fraudulent management. According to the Agency for Public Property, in 2016 about 2/3 of the public enterprises included into the Public Property Register do not meet the criteria according to which they would be obliged to carry out the audit of the annual financial reports. About 60% of audited / controlled enterprises noted that the deviations and irregularities identified were removed, with recommendations being implemented. However, **no enterprise published data on the results of controls / audits**, nor did it disclose information about the measures taken to implement the recommendations.

Problems in the activity of state companies are also generated by the influence of political / group interests on businesses, including the appointment of directors and board members, procurement (including affiliated off-shore companies), employment and promotion of affiliated persons, etc. Over the past 20 years, state assets have not been revalued, which, along with the poor economic and financial results caused by the fraudulent management of many businesses, could lead to their privatization at ridiculous prices. **The causes of the deplorable situation** in the field are in particular the lacunar legal framework that tolerates the irresponsibility of the members of the management bodies, control and corporate directors, restricting the disclosure of information by businesses. Even though a number of amendments have been made to the Law on State Enterprise and related legislation in recent years, radical changes in the management of state companies have not occurred.

⁵⁴ <http://www.transparency.md/index.php/2016/12/08/rezultatele-monitorizarii-transparentei-intreprinderilor-de-stat-si-societatilor-pe-actiuni-cu-capital-de-stat/>

Starting from the above, the State must strategically address the activity of state-owned companies, and mainly:

- identify the strategic areas where the presence of the state is necessary; to specify the form of its presence;
- either through public-private partnerships or through state-owned companies, clearly define the types of activity in order not to affect the competitive environment;
- analyse the activity of the state enterprises, re-value the public patrimony and proceed to the privatization or liquidation of the inefficient and unnecessary companies;
- ensure the privatization of companies in transparent and fair auctions.

A new law is needed that will regulate both the activity of state owned and municipal companies. The general principles of founding, operating and liquidating municipal companies should be the same as for state-owned companies. The existence of such enterprises must be well argued and they should exist only in areas where there is no private competition. International corporate governance standards with professional management must be applied, with performance criteria set by law and with efficiency indicators included in business plans for average and yearly periods.

Must be restricted the transactions and acquisitions of enterprises with offshore jurisdictions and those with a high risk of dubious transactions, given the problem of investigating such transactions and the difficulties with information exchange between AML supervisory bodies.

In the context of disclosure of public information, the law should be harmonized with OECD standards, regulating the **list of information to be published**, particularly the financial aid, financial guarantees and commitments assumed by the state, acquisitions made, the activity of subsidiaries / representations, data on the personnel of the company and the created jobs, results of controls and audits.

3.2 *Transparency International-Moldova: Investing in construction of apartments and associated risks*

The analysis show that the problems in the domain of construction from the means of citizens worsened in the last years and over 30 construction companies bankrupted failing to fulfill their obligations vis-à-vis their investors (population), causing huge prejudices, many of them (people) remaining without both apartments and financial sources. By the 1st of April, 2016, practically each fifth constructed apartment building monitored by the State Inspection for Construction. According to this Inspectorate the construction of 88 out of started 454 apartment buildings did not even start, the works have been stopped, preserved or abandoned.

To identify potential respondents for the survey, TI-Moldova expert followed the information on eventual litigation on insolvency on the web-sites of law court, addressed lawyers that defended such people in courts, addressed administrators of insolvency and investigative journalists. In total the contact information of more than 100 of people was collected for interviews. Of them 75 accepted being interviewed, the other refused under the motivation of potential persecutions from the side of construction companies and law enforcement institutions. As the result, the interviews were taken from 72 people that invested their money in the following 13 construction companies: „Rom Prim”, „Romanta Plus”, „Locuințe pentru toți”, „Supersonic”, „Compromis”, „Melconic”, „Tivali-Com”, „LZ Fruct”, „Vis Urban”, „Altranscon-Grup”, „Galsam Service”, „Neo Mansarde”, „Neoimobiliare”.

The results of the survey show that about ¼ of respondents were insufficiently informed about the activity of the construction companies they entrusted their money. Majority of respondents found the info about these companies from publicity that did not include any info on the license, registration state number, etc. About half of the respondents who addressed their problems to various state institutions did not succeed to solve them, invoking the lack of legal provisions that would defend their rights vis-à-vis the construction companies, corruption in constructions, particularly in the process of issuing construction authorizations, urbanism certificates, in the process of commissioning of constructions, criminal schemes of misuse of the money invested by population, re-sale of the apartments that have been prepaid. Also, the respondents consider that the owners of some construction companies are protected by high rank public servants. The 72 interviewed people invested EUR 2.4 Million in the construction of their apartments; those of them who addressed their problems spent additionally EUR 33 thousand in total. About half of them, while losing their money, needed to rent apartments, spending another EUR 376 thousand. The calculation does not include the interest rates for bank credits, the state tax, the costs of the services provided by the insolvency administrators and court decision executors. Taking into consideration that the finalization of the constructions in positive cases needed from 10 to 50% additional investments, *the costs and risks of investing in construction of apartments is very high.*

To identify the potential solutions to improve the situation in this sector, TI-Moldova **organized a focus-group** discussion with the participation of lawyers that participate in insolvency litigations, administrators of insolvency, representatives of the Ministry of Justice, the State Construction Inspectorate, the Ministry of Construction and the Agency of Consumer Right Protection.

As the result of the discussion in focus-group, there were proposed the following actions for improvement: urgent improvement of the legal framework that regulates this sector; punishing the companies that misuse the invested money; introducing rigorous requirements for licensing construction companies; creating guarantee funds in the bank system; obliging all payments to be made only via bank transfers; introducing compulsory insurance of constructions; establishing concrete requirements towards the publicity of construction companies and prohibiting the publicity of

compromised companies. Also, the participants proposed a state company to supervise the activity of the construction companies, particularly the terms of construction foreseen in contracts. Another need to cover is increasing the public awareness about the problems they may face while investing in this sector and modalities to solve their problems via state institutions.

Elaborating a draft law that would regulate the contracts on investments into the apartments, including protection of consumer's rights in this field;

The draft law was elaborated by the expert of TI-Moldova taking into consideration the proposals made by participants in the focus group. The draft Law is to regulate the social, economic and legal relationships, connected to the investments of citizens in construction of apartments, as well as creation of guarantees to protect the interests of the contractual parts in investment contracts. The draft law includes such chapters as Regulation and supervision of apartment construction; Entrepreneurship activity in this field; Signing and executing investment contracts; Guarantees for the execution of contracts, Final and transitory dispositions.

Being adopted this law would regulate the activity of construction companies when concluding and executing investment contracts in the construction of apartments from means invested by citizens: Setting special conditions for licensing the activity of companies building apartments with citizens' investments; The establishment of a minimum social capital adequate for construction companies; Establishing requirements for the provision by the construction companies of guarantees for the good execution of investment contracts - eg, the insurance of risks; Making settlements with the company only through bank accounts; Establishing requirements for step-by-step access/capitalization of money deposited by citizens in connection with the progress of construction works; The establishment of a supervision mechanism for both construction works and the use of financial means by construction companies; Construction works only by specialists/qualified personnel; Establishing requirements for disclosure of information by the construction company.

Elaborating proposals for the modification of the Law on insolvency nr.149 from 29.06.2012; Elaborating proposals on adjusting the connected legal framework (the Law on Cadastre of real estate 1543/25.02.98, introducing criminal responsibility in the domain of construction by attracting investments from citizens)

Given the difficulties to promote draft laws, the decision was made to elaborate a draft law that would compile all the above mentioned ideas, namely modification of the Law on Insolvency, Law on protection of consumers; Law on the regulation via licensing of the entrepreneurial activity, Penal Code.

In particular, the amendments for the Real Estate Cadastre Law no.1543 of 25.02.98 include: Introducing conditions for invoking and declaring construction investment contracts null and void only at the consumer's request; prohibition or conditioning of the registration of the entrepreneur's right on the unfinished goods (premises) built on construction investment contracts; clearer regulation of the sequencing of the registration of the transfer of ownership of constructions financed by individuals.

The amendments to the Insolvency Law no.149 of 29.06.2012 include: completing of the law with a separate chapter on the insolvency of construction companies with the participation of individuals as investors; providing the investor with the right to apply for recognition as a guaranteed creditor in relation to the contracted and funded property (s), including where the contract has terminated until the insolvency proceedings have been initiated; the need to participate in the insolvency process of construction companies, the public authority responsible for supervising the activity of construction companies - State Inspection in Construction.

The amendments to the Criminal Code include tightening the responsibility of decision-makers in construction companies, which develop housing projects from citizens' investments (widening the range of violations, which should be considered contraventions; awarding the State Inspection in Construction the competence to find contraventions; Imposing criminal liability for deceiving or prejudicing citizens, as well as for fictitious insolvency of construction companies.

3.3 Expert-Grup: The most important provisions of the fiscal-customs policy for 2018

The Tax and Customs Policy Proposal for 2018, recently published by the Ministry of Finance contains amendments to more than 130 articles of 11 codes and laws, most of them referring to the Fiscal Code and the Customs Code. At the same time, most of the changes have a redactional character, harmonization with the requirements of the Association Agreement, or administration, which ultimately does not affect the level of taxation. Below are the most important proposals, especially those that have a greater impact on the level of taxation, budget revenue or administration costs.

- Increasing the tax threshold and exemptions with the projected inflation level. In 2018, it is proposed to raise the tax threshold to 7% from 31140 lei to 33000 lei, as well as personal and for kept persons, with the estimated inflation rate of 6% for 2018. It is a necessary measure to protect low-income people and, with some exceptions, has been applied in previous years.
- Calculation of amortization for tax purposes based on the straight line method. The proposed measure makes it easier for accountants to work and is likely to be advantageous for some types of business. At the same time, it will seriously affect some economic agents who want to invest in fixed assets with a useful life of more than 3

years. It is a measure that will become a major impediment to making investments from their own sources and will therefore further reduce the level of private investment. The proposal does not contain a substantiation or impact on new investment, business development, and cannot be applied without broad consultation of business circles.

- Material aid granted by trade unions. In order to reduce the risk of masking the wage payments by paying the material aid granted by the (trade union) organizations in the project, it is proposed to limit the granting of aid per employee to the size of an average salary in economy approved by the Government. It is a measure that basically legalizes obtaining a non-taxable income (partly for transfers to trade unions if they exceed 0.15% of the salary fund) in the amount of an average salary per economy approved by the Government, under the conditions of the payment of (through) trade unions. Thus, indirectly is a measure to support trade unions. In our view, a more correct approach would be to more accurately regulate the material aid, so that the receipt of "material aid" cannot be used only for tax avoidance reasons. It is worth mentioning that the economic agents can also provide material support within the limit of an average salary approved by the Government from which no social contributions are paid, so there is the possibility of granting 2 average salaries to the economy without paying the social contributions.
- Increase of income tax on individuals who sell agricultural products to economic agents. The project proposes to increase the tax on the income of individuals from the delivery of agricultural production to economic agents, from 3% to 5%. It is a justified measure, but in order to achieve the stated objective of fiscal equity, its application should be extended to the part of the right of declaration. The normal share of this revenue in accordance with art. 15 of the Fiscal Code should be 7%. At the same time, in this situation, it is necessary to grant the persons concerned the right to present the income statement in order to benefit from the return of the income if the amounts retained will exceed the calculated tax.
- Tax on wealth. For this tax it is proposed to extend the taxable base by including cars worth more than 1.5 mil MDL, and excluding from the list of criteria the taxable objects the surface of the buildings of 120 sq m. Thus, "the object of taxation is the property regulated by this title whose cumulative value amounts to 1.5 million lei and more, consisting of:

a) motor vehicles the unit value of which amounts to 1.5 million lei or more and the production year of which represents 2 tax periods prior to the current tax period; and / or

(b) all immovable property (including parcels) for residential use, including holiday homes (excluding land). "

In principle, taxation of luxury is an acceptable matter, and in Moldova it is even necessary. Unfortunately, the results and lessons learned from the application of this tax have not been presented so far and not all the impediments to its application are known. The main problem of this tax is its administration and the establishment of the limit that would really mean luxury. With regard to homes, we believe that the amount of 1.5 million lei is not a luxury location, while cars worth 1.5 million lei could serve as a threshold to be considered a luxury vehicle.

- VAT exemption for transport services to the Port of Giurgiulesti and Marculesti Airport. It is necessary to mention the proposal regarding the Giurgiulesti International Port and Marculesti International Airport, which aims to exempt from VAT the transport services delivered in these locations from the rest of the customs territory of the Republic of Moldova, as well as those delivered by the residents of different free economic zones The Republic of Moldova, the International Free Port of Giurgiulesti, the Free International Marculesti Airport to each other. It is a measure of high risk of traffic of influence and does not contribute to the development of a business environment with uniform conditions of competition.
- Taxation of technical and investment assistance projects. It is proposed to clarify the cases in which the technical / investment assistance projects will benefit from exemption of VAT, excise duties, customs duties and the tax for the performance of customs procedures. Thus, it is proposed that the facilities be applied in full if donor resources are 60% or more, and for the rest of the cases only apply to the donor's contribution. It is important to note that the term "donor" is not defined and will create confusion in the application. Also, for better public debt management, it is good to grant these facilities on well-established and pre-established criteria (prior to the signing of the agreements).
- Incorrect functions for the Ministry of Economy. According to the current provisions of the Fiscal Code (Article 104, letter g), the services provided by the light industry enterprises on the territory of the Republic of Moldova under the processing contracts under the customs procedure of inward processing are deliveries taxed with VAT at zero rate (VAT exempt with VAT right of deduction in the proposed editorial). The type of services covered by this point and the manner in which these services are administered are set by the Government and the list of economic agents is approved by the Customs Service. The proposal in the draft in question calls for the approval of this list to pass from the Customs Service to the Ministry of Economy. We believe that this is improper for a minister. In this respect it is necessary to amend the provisions of the Government Decision no. 519/2004 with the transfer of this function from the Ministry of Economy to the Fiscal Service and consequently the amendment in this article would replace the Customs Service with the State Tax Service.

- **Excises.** With regard to excise duties, it is foreseen to set the level of the tax for 2020 for excise goods fixed in fixed amounts (alcoholic beverages, oxygen, nitrogen, jewelry, other manufactured tobaccos and substitutes) by adjusting to the projected inflation rate for 2020 (5% versus 2019). Also, fuel prices have increased (by 2020) by about 9% compared to the one approved in the fiscal code for 2019. An important step towards equalizing the taxation of non-filter and filter cigarettes is the change in the level of excise duties and the way excise calculation for non-filtered cigarettes as early as 2018. For 2018, it is proposed to apply a flat-rate excise duty to 1000 cigarettes without a filter of 350 lei plus 3% ad valorem, 460 lei plus 6% for 2019 and respectively 540 plus 9% for 2020.
- **Prohibition of duty-free shops when entering the country.** The draft contains the necessary changes to prohibit the activity of duty-free shops located before the passport control point in the area of entry into the territory of the Republic of Moldova. A very good measure that comes to correct an obviously abnormal situation. The project also includes the exclusion of duty-free shop activity for serving the diplomatic corps.
- **Taxation of management consultancy activities.** Exclusion from the category of tax subjects of the tax regime of the economic agents subject to the small and medium enterprises sector, which obtained over 70% of management and / or consultancy services in the previous year. This category of economic agents is to pay the income tax according to the general rules established. The objective stated in the informative note of this measure is to prevent tax optimization cases in the income tax part of the entrepreneurial activity.

As a general conclusion it can be mentioned that the fiscal-customs policy for 2018 contains for the most part provisions that make the legal framework clearer, come to harmonize the provisions of different acts of the national legislation, as well as to transpose some provisions of the EU directives. At the same time, for some of the provisions, additional discussions with stakeholders are needed and the presentation of rigorous arguments for finding the best solutions.

3.4 Expert-Grup: How to lose public money: Monitoring the execution of the Court of Accounts' recommendations for 2016

The study revealed that their level of implementation remains extremely low. Among the causes that lead to the low level of implementation of the Court of Accounts' recommendations are the lack of adequate parliamentary control, insufficient accountability and involvement of hierarchically superior institutions, the Government, the lack and low qualification of staff, and the low authority of the Court of Accounts.

In the years 2015 and 2016, the Court of Auditors submitted to the institutions concerned approximately 1446 recommendations, the deadline of which expired on 1 June 2017. The recommendations' quality is good and their fulfillment would lead to a considerable improvement of public management and of the efficiency of the use of public money. For the mentioned period, only 36.4% of all recommendations are executed. The operational recommendations have the highest execution rate of over 68%, up 18% over the past years. The complexity of the issues addressed by the audit institution has increased the number of recommendations to modify the legal framework (20% of the total recommendations). This type of recommendation had the lowest level of implementation (35%), and the extension of the execution period, up to 18 months, did not lead to major changes.

Regarding the level of implementation of the Court of Auditors' recommendations at institutional level, the expert notes that Central and Local Public Authorities record similar performance. Almost 50% of the authorities respond in time and offer quality responses. At the same time, only 20% of the solutions offered by the authorities offer real changes for a performing public sector.

The author of the study considers that Parliament, through a committee, should analyze the most important reports of the Court of Auditors and present the results to Parliament's plenary to approve measures to implement the recommendations. It is also important to establish a practice whereby the Government will submit to Parliament an Annual Report on the measures implemented by the Central Public Administration Institutions in the implementation of the Court of Auditors' recommendations, simultaneously with the submission of a similar report by the Court of Auditors.

3.5 Expert-Grup: Efficiency and transparency of the National Fund for Regional Development

The study analyzes in detail the institutional framework of the regional development policy, the way of allocating the funds in the regional profile and the typology of the projects. It also attempted to estimate the impact of investment projects at local and regional level. A separate chapter was devoted to the budgetary transparency of the FNDR. The decision to allocate a separate chapter has emerged from the worrying situation in this chapter identified in the work on the report. Finally, a set of recommendations was formulated based on the findings of the report. The main recommendations are to redefine the current model of regional development policy funding, concentrating the financial effort towards the regional projects in particular, but not local ones, as has been the case so far.

According to experts, the efficiency of the use of public funds at the regional level is undermined by the conceptual weakness of the projects and of the technical documentation. This leads to delays in their implementation and to additional costs. In order to increase the quality of projects, it is imperative to widen the participative framework of their development by involving more actively the private environment and other regional and national actors.

Transparency is another key shortcoming of the FNDR, starting with the development of the national policy framework, project preparation and finalizing the reporting of public funds for regional development. Analysts believe that the authorities responsible for managing the Fund and strategic decision-makers did not ensure the publication of a critical set of documents explaining how to use money from the NFRD. This undermines the transparency in the spending of the Fund's money and does not allow to identify the key problems faced by the regional development in the Republic of Moldova.

In order to increase the efficiency and impact of NDF investments, it is necessary to modify the paradigm for regional development by reviewing the current policy framework. Also, greater emphasis should be placed on the impact assessment of regional development projects. In order to increase transparency in this area, it is advisable to extend the transparency provisions of the Operational Manual on how to use NFRM resources by including information, consultation and involvement elements. It is also important for the Ministry of Regional Development and Construction to ensure compliance with the principles of transparency in capitalizing the Fund.

4 Media Freedom

4.1 Association of Independent Press: Capturing the media and other means of public communication in Moldova

In the Republic of Moldova different experts and credible NGOs have previously reported and continue to report worrying tendencies on media market, generated by the lack of structural reforms and climbing dominant positions, against a background of unfair competition.

In this draft report, the Association of Independent Press (API) has researched objectively the current situation on media market and related systems of information and communication (electronic blogs, social networks), in order to identify the potential elements of capturing the media institutions, in sense of subordinating them to hidden purpose of interest groups to capture state institutions.

In any democratic society, media outlets play an extremely important role in monitoring the actions of the governance and of other political and social players that manage the power or benefit from public sources or sources that can be associated with public money. At the same time, the press and the journalists have the responsibility to act as a watchdog of democracy, in the broadest sense of this expression, to signal democratic side-slips and any other abuses and attempts at human rights, embezzlement of public funds and assets, public affair decisions made in a non-transparent manner or in the private/group interest of certain persons or groups of persons, etc. For the exact reason that the media perform or should perform these social functions of great importance and major public interest, press and journalists freedom is protected and facilitated in the entire democratic world. If, however, the media work, in full or in part, as a tool of influence and systemic manipulation of the public opinion in the interest of officially known persons or groups, or that act 'in the shadow', including businesspeople, parties and other political entities, groups of politicians and/or other groups of persons that pursue the goal of capturing the public institutions by subordinating them to their private or group interests, this proves that the respective media outlets are themselves captured. Thus, the captured media do not fulfill their social functions i.e. do not inform objectively the society but deliberately and systematically manipulate and distort the reality to justify their actions of having public institutions captured by certain interest groups and in order to inoculate to the public at large the conviction that such actions are necessary and beneficial.

In Moldova, various credible experts and nongovernmental organizations have been signaling concerning trends on the media market, an excessive concentration of ownership and audience, which favors the creation of dominating positions in forming the public opinion and leads to unifying the media content, which are generated by the lack of structural reforms and by the accentuation of dominating positions, on the background of unfair competition. According to the "World Press Freedom Index" of the international organization "Journalists Without Frontiers"⁵⁵, **"editorial policies of Moldovan media outlets is influenced by the political interests of their owners"**, and the major challenges are journalist independence and transparency of media ownership."

The Association of Independent Press (API) has objectively and pertinently studied the current situation on the media market and of the related systems of information and communication (electronic blogs, social media) to identify the potential elements of capturing of media outlets in the sense of having them subordinated to the declared or hidden goals of the groups interested in capturing the institutions of the state. In particular, API studied the cases and forms of manifestations of the subordination of the editorial policies of media outlets to the personal, political and/or economic interests of persons and groups potentially interested in manipulating the public opinion to support informational, promote and justify before the public the process of capturing of the state.

General findings of the report are presented below:

- The Moldovan legislation does not assure efficient measures for preventing and counteracting the dominating positions on the media market.
- The state authorities (Parliament, Government, ruling parties) tolerate and encourage such a situation either through mimed actions aimed at redressing the state of affairs, or through the lack of actions. The important political parties of opposition try to lay hands on media outlets, as the ruling ones do, rather than fight for recovering the area for the benefit of the entire society.
- The current situation of media ownership presents dominating positions on the broadcast market, an area that, according to the opinion surveys of the past years, has the biggest impact on the consumers.
- The Broadcast Coordinating Council practically does not contribute to preventing and/or counteracting the dominating positions on the media market. Frequencies and licenses are distributed in the absence of clear, exact and measurable criteria for appointing the winners in the contest.
- On the publicity market, which is underdeveloped, one attests dominating positions that, in their turn, maintain and support the monopolies on the media market.

⁵⁵ <https://rsf.org/en/ranking/2017>

- The televisions that are part of the GMG group – Prime TV, Publika TV, Canal 2 and Canal 3 – especially in the past years have been serving as tools for: preparing the public opinion for questionable actions of the governance; media lynching of the opponents; legitimating actions of the governance that are challenged by a part of the society; propagating messages claiming that our country is prosperous and corruption is successfully fought against after the establishment of the Filip Government; distracting attention, through irrelevant content, from reprehensible actions of the governance.
- The content of the manipulations is aired both in news programs and in talk shows. Information manipulation techniques have especially been used in covering events and topics: the mass protests of 2016 and the vesting of the Pavel Filip government; investigation of the bank fraud; election campaigns; the state of affairs and the justice system reform; the election of the prosecutor general.
- A number of information portals, alongside some blogs, serve as a primary source for disseminating the manipulative content and, in some cases, of media fakes that are subsequently taken over by televisions and disseminated as credible information.
- The NTV and Accent TV stations that, through their editorial contents, denote a strong political partisanship to the PSRM, are media tools for promoting the party's image and for attacking the opponents.
- Blogs and social media are intensively used as means for influencing the public opinion and for supporting/reasoning the actions of interest groups that aim at managing and controlling the public institutions. The public, in its turn, is urged/convicted to accept this state of affairs *ex officio*, because other political actors are alleged by the interest groups supported to be inadequate/incapable and/or unworthy of ruling.
- Tens of news portals have appeared in the information space of Moldova that, through their editorial policies, are affiliated to interest groups. Most of them seem to be close to the Democratic Party of Moldova (PDM). They often play the role of primary source for publishing compromising stories about certain politicians or public persons that criticize the governance or the leader of the political entity and subsequently such texts are taken over by the press that officially is part of the media trust of the PDM president.

4.2 Centre for Independent Journalism: Media Situation Index (MSI) in Moldova for 2016

The study indicates a **serious situation** for the media in Moldova. The most affected areas identified by the MSI are the political context followed in terms of severity by the economic environment and the security of media space as part of the security of national information space.

Indicator I: Legal framework regulating media activity. During the reporting period, no improvement in the legislative framework was noted; the only act amended was the Law on Access to Information. Despite the commitments assumed by the government, a new audiovisual code has not been adopted. Currently there are no separate regulations that distinguish generalist from thematic services in audiovisual programming. In addition, there are no special regulations for local/regional radio and TV broadcasters, for community media, for online media or for the press and that can be adjusted to current realities. Some current legislation is not consistent with international standards, and the legal framework is applied selectively.

Indicator II: Political context. An extremely serious situation for the media. The main reasons are the **extensive involvement of politicians in media** as a result of major political events during the reporting period (elections in Chisinau, Comrat and Tiraspol); the involvement of political forces in the work of audiovisual regulatory authorities; the ownership of important and influential media outlets—mainly audiovisual institutions—by politicians; the actual imposing of a political agenda on a large number of media outlets and using the media for political purposes among others.

Indicator III: Economic environment. The media is in a serious situation in this domain. Neither the legislation, nor the economic situation fosters the financial independence of the media that would ensure their editorial independence as well. **The legislation does not provide for limiting the concentration of ownership in media** or for accessing commercial advertising by media outlets. In addition, **there are dominant positions in the media and advertising markets** that create unfair competition, but the authorities actually responsible accept this state of affairs. Media funded by a political party have the best financial situations. In such cases, editorial independence is impossible.

Indicator VI: Information security from a media perspective. A serious situation. An avalanche of outside information was able to erode state security, but this avalanche is accepted and even supported by government institutions. From inside, threats come from media disseminating manipulative information or when major outlets are owned by politicians. Such hazards make lack of security unavoidable. Information security from a media perspective can be efficiently ensured through quality journalism and media consumer education. During the reporting period, however, the state did not demonstrate a desire to secure nation's information space.

Indicator VII: Safety of journalists. This is a situation affected by serious problems. Although journalists largely perform their missions in safety, there were several cases when journalists were either threatened or assaulted verbally or physically or when their equipment was damaged or when court cases were instituted against them. Such actions, in

the opinion of the experts, have a single purpose: to intimidate the media to make them more obedient especially of the authorities. The challenging behavior of some journalists was taken into account.

The authors recommend to improve and supplement the existing legal framework with provisions consistent with international standards, particularly concerning the status of online media, local/regional broadcasters. **Additional regulation and enforcement are required to depoliticize the media and to prevent dominant positions.** Responsible parties should enforce the existing framework and the improved and supplemented framework efficiently and in good faith. An important condition is to abandon the political interference in the media that is obvious in the appointment of members of the regulatory and supervisory authorities based on political criteria and in politicians owning/subordinating important/influential media outlets.

Recommendations refer also to the necessity to increase the safety of journalists by monitoring all occasions when they are prevented from performing their duties centrally, locally or regionally; by thoroughly covering and widely circulating the coverage of each case and by carefully monitoring settlements by competent authorities.

4.3 Centre for Independent Journalism – Elements of propaganda, information manipulation and violation of journalism ethics in the local media space

- **Monitoring report No. 6 (April 1, 2017- June 1, 2017)**

From 1 April 2017 to 1 June 2017, the Independent Journalism Center continued monitoring 11 media institutions – news portals and TV channels, to find out whether the broadcast news stories contained violations of deontological rules and elements of informational manipulation. The monitoring team analyzed the way these media institutions covered events of public interest in politics, economy, foreign policy, and other fields. As well, it was analyzed whether journalists observed the rules on verification of information from several sources, on opinion pluralism, on balance in news about conflicts, and so on. Manipulation methods and techniques employed by Moldovan media to influence the audience were identified by referring to the Journalist's Ethical Code and relevant scientific works in this field.

The Purpose of Monitoring

The monitoring aimed at finding whether media observed professional ethics in addressing issues of public interest, and used any manipulation techniques. Specifically, the monitoring focused on exposing the mistakes made by journalists intentionally or unintentionally when reporting facts, so that case studies and reports would serve an educational purpose. Another objective of the monitoring was to help increase media consumers awareness of risks involved by relying on unsafe information sources. Thus, the monitoring helps consumers understand how media can manipulate, and enables them to distinguish between a manipulative journalistic story and a one that covers reality in an unbiased manner.

The selection criteria of the media outlets monitored were:

- Coverage area – national;
- Language – Romanian and Russian;
- Impact – circulation and audience.

Audiovisual: Publika TV (news on the website Publika.md), Prime TV, Jurnal TV, Accent TV, RTR (newscasts produced in Republic of Moldova), REN TV;

Online press: Ziarulnational.md, Gagauzinfo.md, Novostipmr.com, Sputnik.md, Deschide.md.

Main subjects monitored between 1 April 2017 and 1 June 2017:

- Veaceslav Platon sentenced to 18 years of imprisonment (20 April);
- Liberal MP Lilian Carp left the ruling majority (28 April);
- Approval, in the first reading, of the bill on election system amendment (5 May);
- "Without Fear!" Solidarity March (21 May).

General trends

Monitoring data shows that some stories were made with deviation from deontological rules, and elements of manipulation techniques were employed. The following elements characteristic of information manipulation and infringements of the Code of Ethics were identified:

Selective presentation of facts: Publika TV, Prime TV, Accent TV, Sputnik.md (in news stories about the conviction of Veaceslav Platon; Lilian Carp leaving the ruling majority; approval of bills on elections system amendment);

Truncation of source statements and taking quotes out of context: Accent TV (in news report about Lilian Carp leaving the ruling majority)

Distortion of quoted messages by interpreting or by removing from the context: Publika TV, Prime TV, Accent TV, Sputnik.md (in news stories about the conviction of Veaceslav Platon; Lilian Carp leaving the ruling majority);

False statements/information: Publika and Prime (in the news story about the conviction of Veaceslav Platon);

Mixture of truth and lie: Sputnik.md, Accent TV (in the news report about Lilian Carp leaving the ruling majority)

Labeling: Publika TV, Prime TV, Deschide.md (in the news story about the conviction of Veaceslav Platon);

Ignorance of relevant details in the news story: RTR Moldova, Gagauzinfo.md (in the news story about the conviction of Veaceslav Platon);

Exaggeration of facts: Accent TV (in the news story about the approval of bills on elections system amendment);

Employing irony to subdue a person's authority - Publika and Prime (in the news story about the "Without Fear!" Solidarity March);

Elements of bias: Accent TV (in the news story about the approval of bills on elections system amendment).

Conclusions

TV channels Publika TV and Prime, with few exceptions, broadcast similar content in their news stories on events of major public interest. Reports on political subjects favored the Democratic Party by employing various manipulation techniques, selective presentation of facts being the most frequent one. Also, these channels distorted messages of the quoted persons, going as far as to falsify their statements, and resorting to labeling.

TV channel Accent TV was biased in favor of the Socialist Party, which was particularly obvious in the news story about the approved bill on introducing mixed voting system. In addition, Accent TV exaggerated facts and distorted the messages of their sources by truncation of statements. Sputnik.md used discriminatory language towards sexual minorities in news stories, thus imposing an attitude of condemnation of this social group.

Monitoring data revealed that certain journalists are biased when writing news stories, showing their support for a political party in news texts.

Several newsrooms breached both the Ethics Code in terms of accuracy and balance, and the Broadcasting Code provisions that forbid distorting the sense of reality "by editing tricks, comments, and the formulation of headlines."

Other media institutions besides the ones mentioned above showed no significant deviations from ethical norms in covering monitored subjects; or, depending on their specific focus and area of coverage, they did not include these subjects in their news.

Recommendations

Media institutions and journalists in particular should give up on selective choice of facts / cherry picking in news stories according to their owners' interests. They should inform the public in a balanced and neutral way, and not protect or promote the image of a certain party or political leader.

The TV newsrooms that truncate statements of sources, distorting their messages and misleading media consumers, should be penalized according to the Broadcasting Code provisions.

We recommend members of the Broadcasting Coordinating Council to watch newscasts on TV channels produced in the Republic of Moldova and make inquiries in order to penalize falsehood and other manipulative actions committed by journalists that breach Broadcasting Code.

The Council for Prevention and Elimination of Discrimination and Ensuring Equality should monitor the way press covers events related to social groups vulnerable to discrimination, and penalize infringement of rules that prohibit propaganda of stereotypes and defamatory language.

Media consumers are recommended to seek information from several media sources, in order to avoid the risk of receiving erroneous and manipulative information.

• Monitoring report No. 7 (June 1, 2017- August 1, 2017)

From 1 June to 1 August 2017, the Independent Journalism Center monitored 12 media institutions – news portals and TV channels – to identify whether their media content breached ethical norms and comprised elements of information manipulation. Monitoring team analyzed the way these media institutions covered public interest events in politics, economy, foreign policy, and other fields, and, also, if journalists observed professional and ethical norms, such as fact-checking with several sources, diversity of opinions, and balance in news about conflicts, etc. Thus, taking the Journalist Code of Ethics and other specialized academic works as reference, it was possible to identify information manipulation processes and techniques.

The analysis was based on the assumption that news stories are the primary media product used by media consumers as a source of information in their daily life. Therefore, irrespective of media owners' views on political or economic matters, news stories must contain exclusively facts and not journalists' opinions, should be written in a neutral and accessible language, and should reflect reality as accurately as possible, and observe balance of sources.

The Purpose of Monitoring

The monitoring aimed at finding whether media observed professional ethics in addressing issues of public interest, and used any manipulation techniques. Specifically, the monitoring focused on exposing the mistakes made by journalists intentionally or unintentionally when reporting facts, so that case studies and reports could serve an educational

purpose. Another objective of the monitoring was to help increase media consumers awareness of risks involved by relying on unsafe information sources. Thus, the monitoring helps consumers understand how media can manipulate, and enables them to distinguish between a manipulative journalistic story and a one that covers reality in an unbiased manner.

The selection criteria of the media outlets monitored were:

- Coverage area – national;
- Language: Romanian and Russian;
- Impact – circulation and audience.

Broadcast media: Publika TV (news on the website Publika.md), Prime TV, Canal 2, Jurnal TV, Accent TV, RTR Moldova (newscasts produced in Republic of Moldova), NTV Moldova;

Online press: Ziarulnational.md, Noi.md; Gagauzinfo.md, Sputnik.md, Deschide.md.

Main subjects monitored between 1 June 2017 and 1 August 2017:

- Publication of the Venice Commission Report on the draft law introducing the mixed election system in the Republic of Moldova (19 June 2017);
- Conviction of Ilan Șor, Mayor of Orhei (21 June 2017);
- Extension of arrest warrant for Chisinau Mayor Dorin Chirtoacă (22 June 2017);
- European Parliament's decision to provide up to €100 million in macro-financial assistance to the Republic of Moldova (4 June 2017);
- Approval in final reading of the legislative changes for Republic Moldova to switch to mixed election system (20 June 2017).

General Trends

Monitoring data showed that journalists from several of the monitored media institutions continued breaching ethical norms when producing their news stories. Both elements indicative of information manipulation and propaganda, and infringements of the Code of Ethics were identified:

Omission of facts in news stories – NTV Moldova (in the news item about the Venice Commission Report);

Omission of stories in newscasts – RTR Moldova (the Venice Commission Report and the conviction of Ilan Șor news stories), Sputnik.md (the Venice Commission report news story), NTV Moldova (the news on European Parliament's decision to provide financial assistance to the Republic of Moldova);

One-sided presentation – NTV Moldova, Accent TV (in news story about the Venice Commission Report), Publika TV (in the news story about European Parliament's decision to provide financial assistance to the Republic of Moldova);

Selective presentation of facts and opinions – Publika TV (in the news story about the Venice Commission Report); NTV Moldova, Sputnik.md, Noi.md (in the news story on the extension of the arrest warrant for Dorin Chirtoacă), Jurnal TV, Publika TV (in the news story about European Parliament's decision to provide financial assistance to the Republic of Moldova and the approval of mixed electoral system), Canal 2, NTV Moldova, Accent TV (in the news story on the approval of mixed electoral system);

Lack of the right to reply – Canal 2, Sputnik.md, Noi.md (in the news story about the extension of arrest warrant for Dorin Chirtoacă), Publika TV, Canal 2, Jurnal TV (in the news story about mixed electoral system);

Mixture between facts and opinions – Publika TV, Canal 2, Accent TV (in the news story about the approval of mixed electoral system);

Reference to sources that are impossible to verify – Canal 2 (in the news story about the approval of mixed electoral system);

Spread of false information – NTV Moldova (in the news story about opposition's protest against the approval of mixed electoral system), Sputnik.md (in one of the news stories on the approval of mixed electoral system);

Emphasis on details at the expense of essence, along with blurring – NTV Moldova (in the news story about opposition's protest against the approval of mixed electoral system);

Mockery at the opponent – Accent TV (in the news story about opposition's protest against the approval of mixed electoral system).

Conclusions

Many of the monitored media continue to ignore news writing and reality coverage norms, providing public with incomplete, biased and one-sided information. Thus, both elements of information manipulation and breaches of Journalist's Code of Ethics were recorded.

The channels Publika TV, Prime TV and Canal 2 disseminated, with small exceptions, the same content in their news stories on major public interest events, and especially on political subjects, presenting facts from a single standpoint favoring the Democratic Party. News stories broadcast on these channels featured manipulation techniques and

breaches of Journalist's Code of Ethics – **selective presentation of facts, ignorance of the right to reply, mixing facts and opinions.**

Accent TV and NTV Moldova covered part of the analyzed events in a biased and one-sided manner from Socialist's Party perspective, presenting facts in a selective way, omitting relevant information in the news story, mixing facts with opinions, employing irony towards opponents. In one case, NTV Moldova communicated false information, and in another omitted an important subject in the newscast.

Jurnal TV displayed elements of selective presentation of facts, lack of balance and right to reply.

Sputnik.md and RTR Moldova omitted several relevant subjects from their daily agenda, failing to cover them in their news. Sputnik.md and Noi.md failed to provide a right to reply.

Generally speaking, certain portals and TV channels tend to ignore journalist's duty to grant the right to reply to persons featured in a negative context.

Recommendations

Broadcasting Coordination Council, pursuant to article 4 of the Broadcast Code, should report on and initiate monitoring of TV channels whose content disseminates manipulative information, to find breaches and apply sanctions.

Editors at TV channels are encouraged to verify that editorial content complies with the mission of the press to report truthfully on reality rather than following the desires of politicians to promote their interests and destroy the opponent.

Reporters are encouraged to cover on site all relevant facts in a balanced manner, with fact-checking, not in a selective and one-sided way.

Media consumers are recommended to consume news content from several media sources, in order to avoid the risk of receiving erroneous and manipulative information.

5 Human rights

5.1 *Legal Resources Centre from Moldova* – The national anti-discrimination mechanism, hate crimes and hate speech in Moldova: challenges and opportunities

The briefing paper issued by the LRCM states that the Equality Council should play the leading role in promoting a more inclusive and diverse society in Moldova. Opinion surveys show **alarming rates of intolerance** towards certain groups in Moldova, especially LGBT persons, ex-detainees, persons living with HIV, persons with mental impairments, persons of Muslim and African origin and Roma people. At the same time, discrimination is not yet perceived and identified by the population at large, mostly due to **priority given to issues related to economic development**. This shows a lack of understanding of discrimination and its negative effects and calls for intensified awareness raising measures and education on equality and non-discrimination, as well as provision of effective remedies for discriminated persons.

The authors conclude that the Moldovan Equality Council has a limited mandate to effectively carry out the prevention and combating discrimination due to lack of competencies to apply sanctions and a weak enforcement of its decisions. When examining individual cases, the Equality Council can only acknowledge discrimination, provide recommendations and if the discrimination act amounts to misdemeanour, the Council can apply to court to sanction the perpetrator. The procedure is cumbersome and ineffective. These limitations lead to the failure of the Council to provide an effective remedy to victims of discrimination. The EU acquis in the field of equality and non-discrimination requires the enforcement bodies to have at minimum effective, proportionate and dissuasive sanctioning powers. At present Moldova is in violation of these basic principles. In addition, with a **weak enforcement mechanism** and lack of sanctioning powers, **the Equality Council may soon lose the trust of victims of discrimination** and become an obsolete institution.

Not better is the situation in other areas. **Hate crimes are severely underreported and overlooked** in Moldova. One of the first steps that are required to improve reporting and investigations of hate crimes in Moldova is the amendment of the Criminal and Contravention Codes to provide an adequate legal basis for qualifying hate crimes. If hate crimes are continuously overlooked, this may lead to a continuous increase in such incidents. Politicians, religious, community leaders and other persons in public life have a particularly important responsibility in preventing and combating the use of hate speech, due to their capacity to exercise influence over a wide audience. During the presidential election campaign of October-November 2016 representatives of the Moldovan Orthodox Church and political parties used hate speech with no reaction on behalf of public authorities. In 2018, Moldova shall hold parliamentary elections. **There is a high risk that hate speech will be used again to manipulate voters** and shift public attention from real problems. Therefore it is particularly important that all relevant authorities consult and adopt a strategy of preventing and combating hate speech.

The briefing paper brings recommendations to the Parliament to grant sanctioning powers to the Equality Council and establish a single venue for challenging the Council's decisions, as well as to grant legal standing for the Equality Council before the Constitutional Court. On its turn, the Equality Council shall initiate a dialogue among the relevant national authorities, in particular the Ministry of Justice, the Audio-Visual Council, the Press Council, the Central Electoral Commission, the Ministry of Internal Affairs (police), on hate speech and the responsibilities of national authorities to tackle it. The police and prosecution shall be prioritize training on recording and investigation of hate crimes.

All these actions must be accompanied by extensive support from European Union through maintaining equality and non-discrimination as a priority in EU-Moldova dialogue. An efficient mechanism proved to be the setting of conditionalities for any financial support provided to Moldova.

5.2 *Legal Resources Centre from Moldova*: Anti-discrimination and equal treatment in Moldova

This briefing paper refers to Moldova's engagement under EU-Moldova Association Agenda to ensure the full application and regulations against discrimination on all grounds, including the Law on Ensuring Equality, and strengthen the capacity of the Council for Preventing and Eradicating Discrimination (Equality Council).

The authors argue that Moldova has done a significant progress by adopting the Law on Ensuring Equality (Law no. 121) and by setting by the Equality Council, even if the latter was done with significant delay. The Equality Council has effectively started working only in September 2013, while the Law no. 121 entered into force in January 2013. This delay has not impeded the Equality Council to actively pursue its mandate in all three main directions: public policies and advocacy, prevention and awareness raising and examination of individual complaints.

However, in two of these main directions the Equality Council is severely impeded by the competences as provided by current legislation to effectively carry out its mandate. Firstly, the Equality Council cannot directly submit to the Constitutional Court a request for a constitutional review of legislative provisions that raise issues of discrimination. This severely impedes its ability to effectively ensure that the legal framework of Moldova is in line with equality and non-discrimination principles. Secondly, while examining individual complaints, the Equality Council cannot provide an

effective and dissuasive remedy to victims of discrimination. The Equality Council can only find discrimination, provide recommendations and if the discrimination act amounts to misdemeanour, the Council can go to court to ask it to find that the perpetrator committed a misdemeanour and sanction him/her. The procedure is cumbersome and ineffective. In view of this, Moldova cannot be said that created an enforcement equality body with at minimum effective, proportionate and dissuasive sanctioning powers, as required by art. 15, 2000/43EC, art. 27 2000/78EC and the European Commission Against Racism and Intolerance (ECRI), General Policy Recommendation no. 2.

In addition to the Equality Council, the victims of discrimination can go directly to court to ask for a finding on discrimination, as well as damages. In this context, the judicial practice is extremely important and relevant for effectively ensuring equality and non-discrimination in Moldova. The judicial practice is not yet very large, but there are certain important decisions. A recent judgment of the Supreme Court of Justice is raising serious problems regarding the understanding by judiciary of the European standards on equality and non-discrimination. In the respective judgment, the highest court of the country ruled that a priest's declaration did not amount to hate speech and incitement to discrimination, but was an exercise of his freedom of expression. The priest, among other, stated that 92% of homosexuals are HIV infected and should not be allowed to be hired in education, public health and public food institutions. In its ruling, the highest court has made lengthy references to the role of Orthodox teachings in Moldovan society. This judgment annulled the first and appeal instances judgments, who rightly found that the priest's declarations amounted to hate speech and incitement to discrimination. In this context, the precedent set by the Supreme Court of Justice is a rather dangerous one and appropriate actions should be taken to prevent its further use.

The briefing paper provides specific recommendations for amending the legal framework, as well as actions for strengthening the Equality Council's capacity to carry out its mandate. The paper also provides recommendation for strengthening courts' capacity to properly examine cases of discrimination.

• Introduction

One of the priorities of EU-Moldova Association Agenda includes the following:

„ Ensure the full application of laws and regulations against discrimination on all grounds, including the Law on Ensuring Equality, and strengthen the capacity of the Council for Preventing and Eradicating Discrimination ('Equality Council')”.⁵⁶

Moldova adopted the Law on ensuring equality on 25 May 2012 (Law no. 121),⁵⁷ which is the main legal instrument on anti-discrimination in the country. The adoption of the law was one of the conditions included in the Action Plan on visa liberalization, within EU – Moldova visa dialogue. The law was adopted with serious deficiencies, the final version including a series of serious concessions to the pressure exercised by groups that were against the law, in particular the Orthodox Church. As a result, the law no. 121 includes some exceptions that may be misinterpreted in practice and has awarded insufficient competences to the national mechanism set up by the Law – Council for preventing and combating discrimination and ensuring equality (Equality Council). The capacity of the Equality Council to effectively carry out its mandate is limited and needs strengthening.

Regarding international standards, Protocol no. 12 of the European Convention on Human Rights, European Charter for Regional or Minority Languages and the Optional Protocol for the European Revised Social Charter have not yet been ratified by the Parliament of Moldova.

Since adoption, no action was taken by public authorities to assess the effectiveness of the institutional framework. The current briefing seeks to raise attention of the relevant stakeholders regarding Moldova's failure to fully fulfil the Association Agenda priority related to full application of laws and regulations against discrimination on all grounds and strengthened capacity of the Equality Council.

• Analysis

Set up and competences of the Equality Council

Equality Council was established in 2013, pursuant to Law no. 121. According to the law, the Equality Council is a collegial body, established with the purpose to ensure protection against discrimination and ensure equality for all victims of discrimination. The Equality Council is composed of 5 members, who should not be politically affiliated, are appointed by the Parliament for a period of 5 years. Out of 5 members, 3 should come from civil society and at least 3 should be licenced in law. Only the Chair of the Equality Council is a full time employee, having the position of a public employee of high dignity /rank. The other 4 members are not employed, they are remunerated only for the sittings of the Council and hence have their jobs somewhere else.

⁵⁶ See p. III of para 2.1. Political dialogue and reform.

⁵⁷ Law on Ensuring Equality no. 121 from 25 May 2012, Official Gazette from 29 May 2012. The law is in force since 1 January 2013.

The members of the Equality Council were selected pursuant two public competitions, organized between 14 February and 29 May 2013 by the Special Commission for selecting the Equality Council.⁵⁸ The members were selected according to the Regulation on public competition for selecting the members of the Equality Council, adopted by the Special Commission. The respective regulation was a positive precedent for Moldova, providing reasonable requirements for the candidates, a reasonable deadline for application, publication of candidates' CVs on Parliament's website, as well as consultation of candidates with interested parties. The Special Commission respected these procedural stages of the competition. The respective Commission has also invited representatives of civil society to the interviews of the shortlisted candidates. The Commission, regrettably, did not respect the request of civil society to provide reasons for each selected or rejected candidate (this was not included in the regulation either). The first competition resulted in the selection of two members only, who were then appointed by the Parliament.⁵⁹ The Special Commission organized a second competition, which resulted in the selection of the other 3 members. Although several NGOs have raised the problem that only two members of the Equality Council were licensed in law, as required by Law no. 121, the Special Commission proposed all those members to the Parliament, who appointed them on 6 June 2013.⁶⁰ Consequently, only two members of the Equality Council are currently licensed in law.

The Equality Council has started to work immediately after all its members have been appointed, although the necessary financial resources have been allocated much later.⁶¹ The law no. 298 regarding the activity of the Equality Council provides that it should have an administrative staff of 20 position.

According to Law no. 121, the Equality Council has competencies in three main areas:

- **Advocacy and public policies**, ensuring that equality and non-discrimination principles are entrenched in the national legislation and policy-making. In this respect, the Council can carry out analysis of compatibility of national legislation with international standards on equality and non-discrimination, can initiate proposals for amending the legislation (as provided by Law r. 121, but the Council does not have the right to legislative initiative, so any proposal should be backed up / taken up by the Government, MPs or the President), can issue consultative opinions on draft laws and monitor the implementation of the legislation regarding non-discrimination (art. 12 let. a)-d) of the Law no. 121).

These competences are sufficiently large and provide important tools to the Equality Council to contribute to a legislative framework based on equality and non-discrimination, as well as coming up with solutions to some forms of structural discrimination identified via realized analysis. The Council is making use of these competencies. For example, in 2014 the Council has examined 10 legislative and normative acts from the perspective of non-discrimination, covering the following fields: social protection, health, education, accessibility of information and services for disabled persons and has drafted 11 opinions regarding the draft laws, formulating recommendations for bringing them in line with the principle of equality and non-discrimination.⁶²

However, the Council lacks an important function to help it effectively carry out its mandate regarding public policies, namely lack of the competence to request for a constitutional review of those normative acts that raise issues of discrimination.

- **Prevention of discrimination, including raising awareness of the population regarding the importance of equality and non-discrimination.** The Equality Council has important functions regarding the analysis of discrimination phenomenon in the country, drafting thematic studies and reports, providing recommendations to public authorities to take certain measures for combating discrimination, providing training on equality and non-discrimination and awareness-raising among the society.

In less than two years since it is operation, the Equality Council has managed to set up successful collaborations with various civil society groups and to publish reports and non-discrimination guides for the general public. For example, in 2014 the Council organized 27 training activities for judges, prosecutors, staff of local public administration, representatives of civil society and the media from across the country. These activities were carried out in collaboration with local and international organizations.

Another important function of the Council includes data collection on the magnitude, state and tendencies of discrimination at national level. In this respect, the Council has managed to carry out, in collaboration with a local non-governmental organization, a national survey regarding the perception of discrimination in Moldova.⁶³

So far the Council has been active in fulfilling its mandate regarding prevention and awareness raising about discrimination. But, it has to be emphasized that these activities were mostly carried out in partnership with local or international civil society groups / donors. The partnerships included both human and financial resources provided

⁵⁸ The Special Parliamentary Commission for organizing the competition for selecting the candidates for the position of members of the Equality Council was created pursuant the Parliament's decision of 30 December 2012.

⁵⁹ On 7 March 2013 the following two members were selected: Doina Ioana Străisteanu și Oxana Gumennaia.

⁶⁰ On 6 June 2013 the Parliament appointed Andre Brighidin, Ian Feldman, Lucia Gavrilă as members of the Equality Council.

⁶¹ For example, the office space was provided only in September 2013.

⁶² See for details the Equality Council's annual report for 2014, available here: <http://www.egalitate.md/index.php?pag=page&id=850&l=ro>.

⁶³ The survey is available here: <http://www.egalitate.md/index.php?pag=news&id=837&l=ro>.

by Council's partners. It is doubtful that the Council would be able to carry these activities on its own. Therefore external support for the next few years is crucial, both in terms of financial and human resources.

- **Examining individual complaints and issuing recommendations on them (acting as a quasi-judicial body, but with significantly limited powers).**

The Equality Council can examine individual complaints submitted by the alleged victims of discrimination and can find misdemeanors according to Misdemeanors Code (art. 12 para. (1) let. i și k) of the Law no. 121). Also, the Council can request initiation of disciplinary proceedings against the persons with decision-making powers that have committed discriminatory acts in their service. The Council should also contribute to amicable solution of conflicts that appeared as a result of discriminatory acts by mediating among the parties and looking for a mutually acceptable solution (art. 12 para. (1) let. j) and m) of the Law no. 121). If the discriminatory act includes the elements of a crime, the Council shall inform the criminal investigation bodies (art. 12 para. (1) let. l) of the Law no. 121).

If the Equality Council found discrimination, it can issue recommendations according to art. 15 para. (4) of the Law no. 121. According to art. 15 para. (5) of the Law no. 121, the Equality Council shall be informed within 10 days about the measures undertaken following its recommendations. According to Law no. 121 and provisions of art. 71² and 423⁵ of the Misdemeanors Code, it follows that the Equality Council's recommendations are mandatory and the persons that committed acts of discrimination shall implement them. However, the mere term of „recommendation”, suggests that it has a recommendatory and not a binding force.

The fact that the Equality Council can only find discrimination and cannot apply any sanctions limits significantly the efficiency of its work. These problems are described in more detail in the text below.

Examination of individual complaints without the power to apply sanctions

Since its establishment in 2013, the Council has delivered decisions for over 200 complaints,⁶⁴ one third of which came back with a finding of discrimination.⁶⁵

These numbers appear to indicate that the Council offers a quick and accessible remedy for the potential victims. However, there are serious concerns as to the effectiveness of this remedy since the Council cannot sanction the perpetrators. The Council is only mandated to issue recommendations and/or draw up a protocol regarding a misdemeanour, which the Council needs to bring to court in misdemeanour proceedings (*proces contravențional*), the court being the only body entitled to decide over the sanctions.⁶⁶

As explained above, the recommendations issued by the Council are legally binding in a very strict legal interpretation of this term, given the fact that there is a provision in the Misdemeanor Code that allows courts to sanction the persons (individuals and legal entities) for not implementing the Council's decisions. However, for this to take place the Council needs first to issue recommendations, then monitor their application and if the recommendations are not implemented, the Council needs to draw up a misdemeanour protocol and bring it to court for the court to establish a sanction. This is a highly ineffective mechanism.

Besides the cases regarding the non-enforcement of the Council's recommendations, the Council can issue misdemeanour protocols when they consider that the act of discrimination constitutes a misdemeanour. Based on the Council's 2014 activity report, 8 out of 15 misdemeanour protocols (53%) prepared by the Council were annulled by courts in misdemeanour proceedings. The Council reported that the primary reason for these decisions was due to lack of mandate. However, upon closer scrutiny, the actual reason for annulling the vast majority of these decisions was the presence of procedural flaws relating to the Council's failure to respect formal requirements set by the Moldovan Misdemeanors' Code on misdemeanour protocols. For example, protocols were not signed by all of the members of the Council; did not state details regarding the respondent's home address, profession; or were not signed by the respondent/alleged perpetrator.⁶⁷ Current legislation likens the Council to agents empowered to find misdemeanours (similar to police officers). It does not establish the Council as a specialized body entitled to prevent and eliminate discrimination by actually sanctioning and providing adequate remedies.

The Council finds discrimination and issues misdemeanour protocols in a special quasi-judicial procedure, which includes a hearing of the parties. Law no. 121 establishes, rightly, an important provision that is crucial for anti-discrimination cases, namely the right of the Council to draw negative inferences from the failure of the alleged

⁶⁴ Council annual reports from 2013 and 2014 available here: <http://www.egalitate.md/index.php?pag=page&id=850&l=ro>

⁶⁵ In 2013 – 2014, Council delivered 72 decisions regarding at least 101 complaints. Some of the complaints were joined due to the similarity of complaints.

⁶⁶ According to Council 2014 annual report, in 2013-2014 the Council issued 15 protocols for misdemeanours, which is 23% of the total number of decisions (65 in 2013-2014).

⁶⁷ Legal Resource Centre from Moldova/ Euroregional Centre for Public Initiatives, “Analysis of the compatibility of Moldovan legislation with the Acquis on equality and non-discrimination” 2015 p. 147 (unpublished).

perpetrator to provide the requested information. Hence, in cases where the alleged perpetrator ignored the Council and does not provide any reasonable justification, the Council has the right to examine the case and adopt a decision in the absence of the perpetrator. However, according to the Misdemeanors' Code, it is required that the misdemeanour protocol is drawn up in the presence of the perpetrator, which is simply impossible in anti-discrimination cases when the respondent/alleged perpetrator is not present at the hearing.

The above limitations lead to deficient practices and failure of the Council to provide an effective remedy. The acquis in the field of equality and non-discrimination requires the enforcement bodies to have at minimum effective, proportionate and dissuasive sanctioning powers.⁶⁸ The Court of Justice of the EU stated that a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of EU directives.⁶⁹ At present Moldova is in violation of these basic principles.

Multiple venues lead to arbitrary application of fundamental principles

In 2014, about 25% of the decisions issued by the Council were challenged in courts.⁷⁰ This percentage includes both decisions where the Council submitted misdemeanour protocols to the courts for sanctioning in misdemeanour proceedings and decisions in which the Council made recommendations that were challenged by the parties in administrative court proceedings. The percentage of appeals against the decisions appears to be relatively low, which could mean either that the parties trust the Council's findings or that the lack of penalties results in a disinterest on the part of the parties. Another reason for this appeal rate could be that national legislation and practice are not clear regarding the procedure for examining appeals against Council decisions.

Potential victims of discrimination can address their concerns to courts filing civil actions or through administrative procedures (*contencios administrativ*) either against discriminatory legislation or against individual acts issued by the central bodies and/or local administration that are considered discriminatory. Alternatively, cases of discrimination can be brought before the Council. Theoretically, all venues can be explored simultaneously. Furthermore, for those who opt for the Council there is a risk that the action for the proposed sanctions will result in two different venues: one action for the proposed sanctions (misdemeanours procedure) and one action against the Council recommendations (administrative procedure, which requires a preliminary complaint to the Council). This duality might lead to conflicting decisions in the same case.

The above limitations lead to deficient practices and risks, creating a double burden for the applicants to have exhausted different venues for the same decision. Moreover, there is not yet a unified practice established for courts on verifying the legality of the Council's decision in the current legal framework through administrative procedure. Some courts have examined the merits of the case, while others only examined legal compliance based on the preliminary complaint and if there was not violated any right of the applicant to the Council.⁷¹

Limitations of the Council's capacities

Through individual complaints, the Council is in the position to discover not only individual cases of discrimination, but also potentially discriminatory legislation. In a significant number of cases, however, in individual cases filed by petitioners or initiated *ex officio*, the Council solves the case without providing a remedy for the person concerned, and instead they are only making general recommendations for authorities to amend legislation.⁷²

⁶⁸ Art. 15, 2000/43EC; Art. 27 2000/78EC; European Commission Against Racism and Intolerance (ECRI), General Policy Recommendation no. 2; 1997

⁶⁹ European Court of Justice, *Accept v. CNCD* case, para. 64

⁷⁰ Legal Resource Centre from Moldova/ Euroregional Centre for Public Initiatives, "Analysis of the compatibility of Moldovan legislation with the Acquis on equality and non-discrimination" 2015 p. 132 (unpublished).

⁷¹ Legal Resource Centre from Moldova/ Euroregional Centre for Public Initiatives, "Analysis of the compatibility of Moldovan legislation with the Acquis on equality and non-discrimination" 2015 p. 132 (unpublished).

⁷² For example, in decision no. 008/13 of 17 February 2014, initiated *ex-officio*, the Council analysed the legislation that regulates work-related conflicts of employees in law enforcements authorities. The Council found that lack of the State Labour Inspectorate competences over these institutions or lack of access of these employees to an independent and specialised mechanism for labour protection puts them in a disadvantaged position compared to other state employees. Similarly, in case no. 060/14 of 17 April 2014, initiated on a complaint submitted by a group of lawyers and *ex-officio* by a member of the Council, the Council, among others, found that women lawyers are discriminated against because they do not have equal access to medical insurance services during the leave period for taking care of their child(ren). In another case, case no. 110/14 of 9 September 2014, initiated at the complaint of an individual against the National Agency for Employment, Ministry for Labour, Social Protection and Family and the National Council Determining Disability and Work capacity, the complaint concerned alleged discrimination for access to continuous professional development. The applicant did not have a new type of certificate needed for enrolling in such courses. To obtain such a certificate, she needed to undergo a repeated control at the National Council for determining Disability and Work Capacity. This, in fact, would have meant that all disabled persons in the country would need to undergo a repeated control, which would affect them disproportionately and could have blocked the activity of the respective institution. Hence, as the Council rightly noted, special legal provisions should have been adopted for transitioning from old to new certificates in order to avoid this situation. Lack of such provisions have disproportionately affected only the persons with disabilities that did not have the new

The recommendations formulated by the Council in cases that raise legislative issues are, in fact, legislative proposals. Moreover, such cases unnecessarily put the Council in a confrontational situation with other public authorities, calling them for explaining the legislation from the position of defendants, rather than for the purpose of providing expert guidance and working with them on finding the right solution for amending the legislation. Such cases are additionally problematic when initiated *ex officio* by the Council, who calls the authorities for providing explanations on the current laws instead of analyzing the legislation from the perspective of equality and putting forward proposals for amendments in a collegial, institutional manner.

The emphasis of the Council on general recommendations and legislative amendments raises the question as to whether the provided remedy is effective, proportionate and dissuasive in relation to victims of discrimination. Identifying discriminatory legislation and providing expert advice to the authorities is crucial for the Council's activity. A pro-active approach is in this way commendable. As mentioned above, a solution would be for the Council to be able to seize the Constitutional Court in cases of discriminatory legislation. At the moment, the Equality Council can resort to the Constitutional Court review via the Ombudsman Office. In addition, as mentioned above, the Council has the competences to examine the compatibility of legislation, make proposals for amending legislation and monitor the implementation of legislation. Hence, the Council should make more use of these competences instead of focusing on its competencies of examining individual complaints.

Another important aspect of the Council's activity is the quality of the legal reasoning in its decisions. The Council is generally trying to reason well in its decisions. However, there is room for improvement. In particular, the way in which the Council interprets and applies the protected ground of "opinion" in some cases is problematic, as it does not limit the protection to some core values of the alleged victims, a part of the identity of the plaintiff, but extends it to practically any opinion, including a disagreement with a superior. Such broad interpretation increases the likelihood of qualifying any labour conflict as discrimination and wrongfully applying the discrimination form of harassment.⁷³

Another challenge is that in some cases, especially those with multiple alleged perpetrators, the Council is not specific enough in its decisions regarding the level of responsibility of each party.⁷⁴ General findings and recommendations fail to have any impact if they lack comprehensive reasoning and are not specific enough.

Procedurally, the Council is trying to organize fair hearings of the parties, even if the current legislation does not provide sufficient details regarding hearings in individual cases. Still, in cases initiated *ex officio*⁷⁵ by a Council member, concerns regarding impartiality arise given that currently the member who filed the complaint does not abstain from voting and the principle of sharing the burden of proof is not fully observed. The law does not provide for the respective member's obligation to abstain, nor do members who initiate cases *ex officio* abstain from participating in the decision on the case.

The Council is also facing issues of inadequate office facilities and infrastructure. In this regard, the state authorities should be encouraged to provide the Council with an appropriate office, accessible and adequate for carrying out its mandate, as well as an adequate budget to allow effective implementation of its mandate. The Council has done a particularly good job in ensuring its transparency by posting its decisions, newsletters and activity reports on its website. After the initial period of work and with a growing volume of cases, the Council will need to improve its website and to establish an accessible and coherent database for its decisions.

The text of the law – limitations as a result of the concessions to the Orthodox Church

The Law no. 121 provides specific exceptions to discrimination, exceptions that are not grounded on international standards. Namely, art. 1 para (2) of the Law nr. 121 provides the following:

"(2) The provisions of this law does not apply and cannot be interpreted as infringing upon:

type of certificate and who wanted to enter the labour force through professional development courses. The Council found discrimination in the respective case, but did not offer any individual remedy to the applicant.

⁷³ For example, in case no. 001/13, the Council found that a policeman was harassed by its superiors, but used as protected ground the disagreement of the respective policeman with the decision of his superiors to conduct searches and seizures in the police commissariat where he was working.

⁷⁴ For example, case no. 052/14 from 29 April 2014: alleged negligence in providing legal services to people with mental disabilities, initiated *ex-officio* by the Council. Explanations were presented by the 22 lawyers. Unfortunately, the Council did not take the opportunity of explaining what exact actions/inactions raised questions about possible acts of discrimination and if the actions / inactions were justified. The reasoning part of the decision suggested that all the lawyers were responsible for restricting the rights of people with disabilities even if some responsibilities were under other authorities' competence (e.g., bringing the beneficiary to the courtroom). Also, the responses of some lawyers showed evident prejudice and inaction regarding persons with mental disabilities, while others seem to have taken some appropriate measures of defence. The Council did not differentiate in its conclusions and noted simply that "the facts of the complaint amount to discrimination."

⁷⁵ Examples of cases initiated *ex-officio*: case 002/13 from 30 October 13; Case 008/13 from 17 February 2014; Case 048/14, 041/13 from 24 February 2014; Case 052/14 29 April 14; Case 108/14 from 28 July 2014; Case 159/14 from 13 October 14; Case 118/14 from 16 October 2014; Case 160/14 from 11 December 2014; Case 180/14 from 16 December 2014; Case 182/14 from 18 December 2014.

- a) family that is based on a free marriage between a man and a woman;
- b) relations of adoption;
- 3) religious denominations and their constituting parts regarding religious beliefs.”

The exceptions regarding the religious denominations and their constituting parts are detailed in art. 7 and 9 of the Law no. 121, which are essential and determinant requirements provided for religious groups under EU Directives as well. These should be interpreted in a strict sense. As to the exceptions regarding adoption and family, these exceptions do not have any basis in international law and should be abolished.

To date there is no case examined by the Equality Council or the courts that analyzed or took into account the exceptions provided by art. (1) para (2) of the Law no. 121. However, for the sake of clarity and previsibility, these provisions should be abolished, either at the initiative of the Parliament or as a result of their constitutionality review.

Dangerous precedent set by the Supreme Court of Justice (SCJ) on limits between hate speech and freedom of expression involving a priest and his remarks regarding LGBT community

The Supreme Court of Justice (SCJ) is the highest court in the country. On 16 September 2015 it has ruled on a case that was initiated by an NGO that works on LGBT rights, GENDERDOC-M.

On 19 December 2012 GENDERDOC-M submitted a complaint to a first instance court against Marchel, the Bishop (Episcop) of Balti and Falesti of the Orthodox Church. The NGO requested the court to rule that Marche's declaration was hate speech and incitement to discrimination of homosexual persons, requesting the court to oblige him to bring public apologies and to refute the spread information as untrue, to repair the moral damages caused by the offence brought by hate speech and incitement to discrimination and to compensate court fees supported by the applicant. The applicant NGO based their complaint on the following statements made by Marchel on a TV post on 30 September 2012:

“The Law on equality has opened the door for, I would say, creating in this sense conditions for an Edem, a paradise for homosexuals, to stop them a bit, not to allow them to be hired in educational institutions, in health and public food institutions, imagine that a homosexual, 92% of which are HIV carriers are infected with HIV positive are employed at a station for blood transfusion, this would be a catastrophe”.

Although the first and the appeal instances have satisfied the applicant's requests, the SCJ annulled the first and appeal judgments and pronounced a new judgment. In their judgment, the SCJ has ruled that Marchel did not infringe any rights, as he exercised his freedom of expression when making the contested declaration. The SCJ relied on several arguments in their decision, in particular the following. Firstly, Marchel had a special status of a religious figure that in his speech promoted the Orthodox teachings that he shares. In this sense, he has emphasized that according to the Bible “homosexuality is a sin” and the church does not condemn the sinner but the sinning way of living of the person. Hence the SCJ concluded that Marchel's declarations did not contain an incitement to discriminate, but an encouragement not to lead a sinning way of living. SCJ stated that these declarations are perfectly within the limits of the Law on freedom of expression Marchel was entitled to make this declaration based on the role he has in a society “based in an absolute majority on Christian-Orthodox teachings”.

Secondly, the SCJ dismissed the first and appeal instances' conclusions that Marchel's statements were false. The SCJ concluded Marchel did not spread the information about HIV status of homosexual persons, but relied on the information published in mass-media (here the SCJ included a link of a Russian outdated website that makes reference to some irrelevant research of 1981 carried out in the US). Making reference to *Handyside v. UK*, the SCJ mentioned that freedom of expression includes expressions that offend, shock and disturb the State or any part of the community. Hence, the SCJ concluded that the judgments of the first and appeal courts that obliged Marchel to bring public apologies were in fact an attempt to limit and discourage anyone that, either because of religious or civic attitude reasons, disagree with the policies promoted by GENDERDOC-M and to set up a judicial precedent.

The SCJ went on and used some procedural reasons, which are less relevant for this brief.

To conclude, the SCJ has set up a very dangerous precedent for the Moldovan judiciary, overruling the very well reasoned judgments of the first and appeal instance. In such a context, professional critiques of the respective judgments are very important for preventing that this decision becomes a precedent in the country.

Conclusions and recommendations

Moldovan Government has undertaken several important steps for creating a national legal instrument to protect against discrimination on all grounds – the Law on ensuring equality - and created a national anti-discrimination mechanism – the Equality Council. However, there are important limitations in the Law on equality and regarding the competences of the Equality Council. Judiciary on the other hand also seems to lay behind the standards on equality and non-discrimination. If the lower courts seem to have understood the general norms, the Supreme Court of Justice set a dangerous precedent in a case involving a representative of the Orthodox church that has made discriminatory statements regarding homosexuals.

In this context, the following recommendations are provided to Moldovan Government and Judiciary:

- Prioritise capacity building of the Council as well as of the judiciary by ensuring adequate resources and continued professional development in the areas of equality and non-discrimination;
- Amend the Moldovan legal framework by introducing the possibility of the Council to apply sanctions and by establishing that decisions of the Council are binding, as well as by establishing a single venue for challenging the Council's decisions (administrative procedures, with no requirement to use the preliminary complaint stage, similar to the regulations regarding the Audio-Visual Council);
- Further amend the law by adding provisions to Law no. 121 regarding procedural aspects that are currently missing (application of Civil Procedure Code provisions, abstention of members in cases initiated at their request);
- Amend the Law no. 121 by excluding the exceptions included in art. 1 para (2);
- Amend the Law no. 121 and Law no. 317 on the Constitutional Court and the Constitutional Jurisdiction Code to provide legal standing for the Council so that it can bring cases before the Constitutional Court;
- Provide specific training to Supreme Court of Justice on limits between freedom of expression and hate speech, involving experts from EU countries that would also be able to provide professional critique over the SCJ judgment of 16 September 2015. Conduct similar trainings for lower court judges;
- Recommend that the Supreme Court of Justice develops guidelines for the courts, prescribing single procedural standard and special procedural guarantees in cases of discrimination. This will simplify the appeal procedure against Council decisions and prevent the use of multiple venues;
- Provide the Council with adequate office facilities and sufficient funds for an adequate database of decisions and an improved website.

6 Electoral standards

6.1 *Transparency International* – *Moldova*: Assessment of the functionality and impact of draft laws on the modification of the electoral system

Following multiple resonance scandals, caused in particular by USD 1 Billion bank fraud and the attempt to legalize the fraudulent incomes through the so-called "capital liberalization law", the Democratic Party of Moldova (PD) was compromised and lost its credibility, recording in the polls 2-4% of population support. To escape responsibility, the oligarch who leads the DP and captured the three branches of state power, tends to remain in power at all costs. After testing the vote system in Gagauzia (in the local legislature in Gagauzia), managing to "persuade" the bulk of local elected representatives to pass the Democrats' camp through corruption and blackmail, the oligarch tries to apply this experiment on a national scale.

To guarantee success and maintain the power, the DP came with the initiative to change the electoral system before the elections. Although DP apparently insists on a uninominal system of election of MPs in Parliament, the party would be satisfied with the introduction of a mixed system of elections. To this end, it seems that the PD has come to a hidden agreement with the Party of Socialists (PSRM), which is the initiator of the establishment of the mixed electoral system. Both parties have imitated an intense political struggle on the projects, but they are very close in structure and content, except for the name of the electoral system.

*Simulating contradictions, both parties require the population and development partners to choose one of two options: either the current corrupt governance headed by a pretended pro-European oligarch, or PSRM headed by a pro-Russian leader. **Neither option satisfies the population with pro-European aspirations.***

In March-April 2017, two draft laws on the modification of the electoral system were passed in the Parliament of the Republic of Moldova: the draft law stipulating the changeover to the system of Parliamentary election based on uninominal constituencies submitted by the parliamentary faction of the Democratic Party (DP) and the draft law on a mixed electoral system (where half of the deputies will be elected according to the existing system from pre-established party lists in a national constituency and the other half - on uninominal constituencies) submitted by the Socialist Party (SPRM).

The SPRM project repeats the structure of the DP project, the wording for the terms being the same, a series of articles and technical modifications being similar, only referring to a mixed system. The new version of Title III of the Electoral Code, proposed by the PSRM, repeats about 70% of the content of the DP project. *In spite of the similarities in these projects, both parties have imitated an intense political battle over the projects.*

At the beginning of May, with no expertise of the Government, parliamentary commissions, assessment of the impact of these laws, anti-corruption expertise of projects (as required by the legislation), Venice Commission opinion, the Speaker of the Parliament proposed including the first draft law on the agenda of the Parliament. On the same day, following a negotiation with PSRM, the inclusion on the agenda and the PSRM project was voted. Both projects were endorsed by the Parliament's Legal Committee in just half an hour and both were voted on in the first reading. Subsequently, with the Parliament's decision, the projects were to be merged into one, based on the joint PSRM project.

Specialized civil society organizations condemned the arrangements between the PD and the PSRM, the manipulation of public opinion, as well as the flagrant violation of the legal norms that have led to this decision, requiring the withdrawal of both initiatives, soliciting the development partners of the Republic of Moldova to condemn the above mentioned actions and to cease support if the Parliament adopts it in final reading⁷⁶.

The proposals to modify the election system violate the recommendations of Venice Commission

Having the fact that both projects are identical in defining the principles of election of deputies on constituencies (obviously the PSRM project was part of a common scenario with the DPM), it is clear which will be the provisions of the final draft. Given that, it is quite obvious that the authors and promoters of these projects have no intention to follow the principles, norms and recommended procedures of the Code of Good Practices in Electoral Matters of the Venice Commission⁷⁷.

The proposals violate the fundamental principles of the European electoral heritage, namely the principle of universal and equal suffrage

The principle of **universal suffrage** is violated by limiting the right to vote only to those citizens, who have a legal domicile within the electoral constituency. This limitation will limit the right to vote for over one million citizens living abroad, because they have a legal domicile in Moldova. It will affect as well the hundreds of thousands of citizens living in other localities than those in which they are domiciled, and also those who do not have a legal domicile. Overall, it will

⁷⁶ <https://anticoruptie.md/ro/stiri/doc-reprezentanti-notorii-ai-societatii-civile-schimbarea-sistemului-electoral-este-o-lovitura-pentru-statul-de-drept-si-un-regres>

⁷⁷ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

be impossible to participate in elections to almost half of all citizens entitled to vote according to the Constitution. The cause of this unprecedented situation is the provision regarding the voter lists creation. They are not formed as recommended by the Venice Commission - according to the place of residence, but on the basis of the State Register of Identity Documents.

The **principle of equal suffrage** is violated mainly by the admissibility, in the draft law no. 123, of the possibility that an elector can vote only for candidates in the national constituency, not in the uninominal one. This is a clear violation of equal suffrage, contrary to recommendations of the Venice Commission. The proposed regulation cancels the principle of equal voting by the way of creating uninominal constituencies. The authors propose that the constituencies will be formed only on the basis of the number of voters in the basic electoral lists. Moreover, the proposal of the authors (it is identical in both projects) leaves room for abusive delimitation. In a constituency may enter localities that are not even neighbours, even from multiple districts of the country. But most importantly, the real number of citizens with the right to vote within each constituency differs greatly from the number of those on electoral lists. Thus, in Chisinau there are more citizens living than they are domiciled, and in the predominantly rural districts up to 50% of the citizens with voting rights are abroad or live in Chisinau. We must mention that the recommendations of the Venice Commission are seriously violated on the provision regarding the review of the boundaries of a constituency, the fundamental criteria for delimitation.

We will also present a small part of the **recommendations of the Venice Commission that are violated** by the draft amendment to the Electoral Code.

- The specific provisions for the formation of uninominal constituencies and their limits shall be decided on the basis of a regulation approved by the Central Electoral Commission (CEC), while the Venice Commission recommends to include them at a higher legislative level, even constitutional on some aspects.
- Revision of the boundaries of constituencies may be made by the CEC less than one year before the election, while the recommendation is that such decisions can be taken no later than one year before the election, based on the expertise of a special independent commission. Moreover, the draft law compels CEC to delimit each constituency within 6 months from the date of entry into force of the new law. It means that even the first delimitation will be done less than a year before the 2018 parliamentary elections. The Venice Commission considers the boundaries of electoral constituencies a fundamental element of electoral law, and they cannot be amended on the eve of elections.
- The authors of both projects insist on the application of the new system for the next elections already in 2018, although the recommendation is to apply any substantial change after one electoral cycle, i.e. for elections in 2022.
- The system for examining appeals and judging electoral cases must be very clear and the jurisdiction of each court must be precise, with conflicts of jurisdiction being inadmissible. On the other hand, the authors propose that the district courts should examine the electoral causes. Given the map of judicial organization⁷⁸ and the proposed way of forming constituencies, it is clear that in some constituencies will enter localities from the jurisdiction of different courts, thus creating an inadmissible conflict of jurisdiction. We can add that the district courts have neither the level of knowledge, nor the integrity or trust of the citizens in order to become an important actor in the electoral process. Generally it would be advisable for the Republic of Moldova to exclude common law courts from the electoral process. The examination of appeals and their judgement must be carried out by the election councils, CEC and the Constitutional Court.
- The Venice Commission explicitly requests the access for all electoral contestants to the public and private press. Instead, the authors propose to exclude all media obligations, keeping only the obligation of the local press to organize debates, in the case of constituency candidates.
- The boundaries of electoral constituencies will be formed according to some totally vague criteria. Moreover, from the recommendations of the Venice Commission and worldwide practices, we clearly understand that a constituency cannot include localities from different administrative regions. In the case of the Republic of Moldova, it is not possible to comply with this criterion until the implementation of the territorial-administrative reform.

It should be mentioned that the public opinion is excessively manipulated by vehiculating that the recommendations of the Venice Commission are not relevant and every state is free to choose its electoral system. That is why we will quote clearly the provision of the Code of Good Practices in Electoral Matters of the Venice Commission: **"Within the respect of the above-mentioned principles, any electoral system may be chosen."** Given that, the authors of the mentioned law drafts are obliged to adjust any modification of the Electoral Code to the recommendations of the Venice Commission, following the international obligations of the Republic of Moldova. We would like to remind you that the

⁷⁸<http://www.instante.justice.md/>

violations described above represent only a small part of the inconsistencies which do not comply with the recommendations of the Venice Commission.

Changing the electoral system under the current conditions will have disastrous effects on democratic development of the Republic of Moldova

Moving to any form of election of deputies on uninominal constituencies will have many negative effects. The Republic of Moldova simply is not ready for such a system. Below we will refer to just three of the most important negative effects: **weakening Parliament's legitimacy, increasing discrimination and corruption in the management of public funds and the disproportionate role of justice in the electoral process.**

In the case of the election of the deputies according to the proposed constituency formation system, the actual number of voters in each of them will vary a lot. In view of the election of deputies by the system *First Past The Post (FPTP)*, in some constituencies will win the candidates with 3-4 thousand votes, in others – with 15-20 thousand. This will create an inadmissible discrepancy of representativeness. Moreover, the deputies will generally represent a maximum of 25-30% of those who participate in the vote. For comparison, so far, the parties that came to Parliament were representing the vote of over 85% of the electorate. Due to FPTP system, the presence in elections will not count so much and it will decrease, especially in Diaspora. If the domicile restriction is applied (and until the next election is impossible to change the way election lists are made), then about half of voters will not be able to exercise their right to vote. Finally, the members of the future Parliament will represent a maximum of 15% of the voters with the right to vote. And these are just some aspects of the decline in the legitimacy of Parliament.

Under the existing legal framework, the Parliament approves the investment and development budgets of localities. In the case of deputies who will come to the government being elected on constituencies, they will direct all funds only to their constituencies. Thus the localities from the constituencies represented by opposition deputies will be discriminated. Moreover, the deputies elected on constituencies will not be able to remain in opposition, as they will affect the financing of local budgets. Besides that, the constituency deputies will provide financing directly, or through the Government elected by them, to the local economic clientele who supported them in the elections (contracts, subsidies, grants). Election campaigns on constituencies are very expensive, which will catalyze the formation of local political and economic groups, preoccupied on the management of public money flow, just as it happened in Ukraine. Until the finalization of financial decentralization, so that each community would receive funding without the major influence of Parliament or the Government, we cannot admit a change in the electoral system. Another obvious precondition is the territorial-administrative reform and the decentralization of political life by forming political parties' nuclei in each future constituency.

Under conditions when the Moldovan justice is corrupt, politically controlled, suffer from a quasi-total mistrust on the part of the citizens, the authors of the law projects propose to increase its role in the electoral process. Without going into detail, we must emphasize the danger of excluding candidates who are uncomfortable to the government by discretionary decisions of district courts. The Moldovan justice has repeatedly been involved in electoral processes in the interest of government. It decided abusively to exclude an important party just three days before the election date, banned the organization of national and local referendums, maintained in the electoral race the parties that misused the symbols of other parties. Given the situation when the press has neither access, nor capabilities to monitor the actions of district judges, the exclusion of some candidates uncomfortable to the power shortly before the elections on invented or irrelevant grounds is absolutely possible. Until the justice in the Republic of Moldova is not fully reformed and its independence and integrity is assured, we cannot discuss about its admissibility in the electoral process, particularly in the case of constituencies.

The attempt to modify the electoral system is a biased manipulation

The Venice Commission clearly refers to any change in the electoral system “*care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation*”. From the analysis of both bills, we can deduce without any doubt that the project of modification of the electoral system aims to favour two parties to a different extent at the next elections.

The most favoured party is the Democratic Party that controls the judiciary, the executive, the enforcement institutions, the majority of local administration, media and unlimited financial resources. All these leverages were obtained abusively, through blackmail and corruption. Under these conditions, the DPM will be able to benefit from full control over the electoral process, will be able to eliminate competitors through controlled justice. In another train of thoughts, under the current electoral system, most opinion polls do not give the DPMs a chance to pass the electoral threshold of 6%.

In the case of PSRM, the election of MPs by the FPTP system is a guarantee of the victory of the candidates of this party in most of the constituencies, even if at national level they would accumulate only 30%. Given the proposed election system, the PSRM score in each constituency will allow its candidates to rank first.

There is a visible backward understanding between the two parties, namely they would benefit to the detriment of its opponents - the right-wing pro-European parties. By manipulating the electoral system and using obscure financial resources and controlled and justice, these two parties have the opportunity to share their seats in the next Parliament.

Even the categories of citizens who will be deprived of the right to vote (the Diaspora and the citizens of Chisinau) are those who vote in the majority proportion for pro-European parties.

Recommendations

- Withdrawal of the draft law voted in the first reading;
- Re-launching the discussions on the modification of the election system only in the conditions when the legitimacy of the Parliament will be restarted – after the next Parliamentary elections;
- Launching a transparent and inclusive debate among the representatives of all political forces until a veritable agreement is achieved on the need, format and general principles of an eventual new electoral system.

6.2 ADEPT: Party funding transparency as a means for reducing political corruption

The Association for Participatory Democracy (ADEPT) issued a policy brief⁷⁹ emphasizing political corruption and challenges related to party funding transparency. Corruption is the main cause of the deep political and social-economic crises the Republic of Moldova is passing through since the end of 2014. The Association Agreement between European Union and the Republic of Moldova establishes in Article 4 the necessity of domestic reforms, fighting corruption and consolidating the stability, effectiveness of democratic institutions and the rule of law. As stated in the Priority Reform Action Roadmap elaborated by the Government in February 2016, **enhancing transparency of political parties financing and accountability of elected candidates was identified as an essential element of combating corruption**. Accordingly, the Government had to secure in the 2016 Budget Law funds for political parties financing, while the Central Electoral Commission (CEC) had to develop mechanisms for public monitoring and evaluation of compliance with the regulatory framework by those responsible for financing political parties and electoral campaigns.

The transparency of political party funding aimed to eliminate the use of funds from sources that hide obscure interests. Among the positive effects were the allocation by the Government of 0.13% from of the state budget incomes for political parties funding. Presidential elections of October 30, 2016 presented a test for Moldovan authorities' commitments concerning parties' funding and other aspects ensuring the adequate conditions for free and fair elections was the. According to the preliminary OSCE observation mission the electoral process "was marred by widespread abuse of administrative resources, lack of campaign finance transparency, and unbalanced media coverage". Hence, **the governmental efforts to regain citizens' trust failed**. The danger of parties' funding from obscure sources became very acute after the so called twitter revolution of 2009, when influential businessmen entered politics and power as parties' leaders. It was the moment when the concretion of business and politics de facto took place. The consequences of that concretion were the disappointment of citizens and the increasing corruption index⁸⁰ accompanied by the deep crises provoked by criminal schemes, money laundering and the "stolen billion" from the banking system.

The application of the modified legislation on parties' finance and its impact

On 9 April 2015, the Parliament approved amendments to the Electoral Code and to other related codes and laws (Criminal Code, the Contraventions Code, the Broadcasting Code, the law on the Court of Accounts and the law on political parties) referring to parties' activities and other electoral subjects. The majority of amendments were in compliance with the mentioned GRECO recommendations, but some of them were inopportune, especially those related to the dramatic increase of donation ceiling.

According to the Moldovan legislation funding of political parties and electoral campaigns it is **prohibited for citizens of Moldova** to provide funding for the activities of political parties, electoral campaigns/electoral contestants **from the income that they obtained abroad**. This huge segment of Moldovan citizens who work abroad (~1/3) is keeping Moldova afloat with their remittances, is invited to participate in voting but **cannot use their financial resources that they earned from legal activities abroad in order to pay membership fee or eventually to support a political party** or fund their own campaigns.

According to the modified legislation for an electoral campaign, donations from individuals and legal entities shall constitute 200 and 400 nationwide average monthly salaries set for the year in question. **The allowed private funding of electoral campaigns is measured in hundreds of minimum salaries**, while punishments for eventual violations of funding rules are measured in hundreds of conventional units, which are tens of times smaller. This is some kind of **encouragement of fraud**. The parties' financial reports for the first half of 2016 confirmed that money from obscure sources are distributed confidentially among parties' members and proponents who in their turn should "donate" them to parties. The sources of obscure parties' financing could be different but the mechanism of getting money by parties is the same - excessive threshold for donations. In order to overcome this problem it would be necessary to **decrease the donation ceiling for private and legal entities**.

⁷⁹ <https://www.soros.md/files/publications/documents/Implementation%20of%20the%20Association%20Agreement.pdf>, page 18.

⁸⁰ Transparency International. Moldova Corruption Rank. Available at: <http://www.tradingeconomics.com/moldova/corruption-rank>

The author concludes that the legislation modification and its implementation on the examples of parties financing demonstrates that the **Moldovan authorities failed to honor their commitments** fixed in the Association Agreement and Association Agenda. Consequently, it should be a strong rule that EU financial support for the Republic of Moldova could be resumed only under the **strong conditionality that commitments are strictly respected**.

The parties' control over mass-media is an instrument for getting obscure funding, above their use in propagandistic scopes. The ruling Democratic Party and the so-called geopolitical opposition – Party of Socialists of the Republic of Moldova, are controlling about 90% of TV channels with full coverage of the territory of the country and respectively they control the advertising market, obtaining substantial incomes for parties' financing. **A positive aspect** is that the modified legislation on parties' finance motivated the newly emerging from the protest movement parties to display a disclosure in their financial activity and succeeding in attracting small donations from a large segment of supporters.

The recommendations of the policy brief state that the vicious circle of corruption could be broken by sustained and assertive measures to enhance transparency in parties' financing:

- Revise the legislation on parties funding in order to insert all GRECO recommendations;
- Cap annual donations to political parties so that individuals can donate no more than 4-5 average salaries, and legal persons around 20 average salaries, in accordance with international practices;
- Permit small donations through banking transfer from Moldovans abroad;
- Amend the Law on political parties to include the provisions of CEC Regulation on the financing of political parties that refers to donations and sanctions for non-compliance with the Regulation. These provisions are subjected to disputes, being considered new rules but not regulations for the application of the existent legal norms.

6.3 *Promo-Lex*: Monitoring and advocacy around electoral reform in Moldova

During 2017 *Promo-LEX* Association has been actively involved in the discussions and debates, on different platforms, around the issue of electoral reform. The discussions with regard to the amendment of the electoral law were initiated by *Promo-LEX* Association and other the civil society organizations (mostly organizations dealing with issues like democratization, election observation, rule of law, civic engagement, media organizations and others) through a public appeal⁸¹ addressed to the Parliament, with the request to establish a working group that would be responsible for developing proposals on modifying the Electoral Code and related legislation, according to the mandatory requests of the Constitutional Court, in addition to the recommendations of local and international observers, formulated after the 2016 Presidential elections.

Although on February 28, 2017 Mr. Andrian Candu, the Speaker of the Parliament informed the signatory organizations that a working group for the amendment of the electoral law would be established, and invited the organizations to nominate their representatives, on March 1, 2017, during a briefing, the Speaker mentioning inter alia that the Republic of Moldova needs to amend the electoral system. Meanwhile, the leader of Democratic Party, Mr. Plahotniuc announced that his party would propose a draft law for the introduction of the majoritarian electoral system (FPTP system), instead of the proportional one. About a month later, the President of Moldova, Mr. Dodon has also announced that he would propose the introduction of a mixed electoral system in Moldova, which was actually submitted soon by the Party of Socialists from Moldova (Mr. Dodon was the leader of the PSRM before becoming President).

In that context, the above mentioned CSOs reiterated the urgent need to amend the electoral law starting from the findings and recommendations of national and international observers, as well as of the mandatory requests of the Constitutional Court, and declared that the electoral system could be modified only after the deficiencies observed during the Presidential elections would be solved. Moreover, the organizations opinioned that any initiative to modify the electoral system would require first of all a complex and independent analysis of the existing system, which will (1) determine the necessity for a reform of the electoral system and (2) the alternative solutions to be proposed with pros and cons based arguments.

Given the period remaining until the next ordinary Parliamentary elections, *Promo-LEX* and other organizations stated that the remained time cannot be sufficient to ensure an adequate, fair, inclusive, substantiated and complex process of assessing the need for such a deep electoral reform, as well as for the public discussions on the advantages and disadvantages of possible alternative electoral systems. Also, any predefined solution that wasn't properly initiated and discussed within the society with different stakeholders was assessed as posing risks and minimizing the legitimacy of the reform process. Still, in the event that the draft laws for the change of the electoral system would be registered in the Parliament, the organizations reserved the right to participate in public debate on this issue without getting involved deeper in the process of drafting the respective laws.

⁸¹ <https://promolex.md/4939-apelul-public-al-organizatiilor-semnatare-cu-privire-la-necesitatea-crearii-unui-grup-de-lucru-responsabil-de-elaborarea-propunerilor-de-modificare-a-codului-electoral-si-a-legislatiei-conexe/?lang=en>

Unfortunately, nor the Parliament or the above mentioned political parties took into consideration the concerns of the civil society organizations. Under such circumstances, on May 5, 2017 the Party of Democrats from Moldova, Party of Socialists from Moldova and with the support of some other MPs (that have recently left the factions of the Liberal Democrats, Party of Communists) have voted in the first reading both for draft law on introducing the majoritarian system as well as for the adoption of the mixed system, with the decision to further cumulate the respective draft laws for the adoption in the second reading, taking as a basis the mixed system proposed by the Party of Socialists from Moldova. These decisions determined the above mentioned civil society organizations to start protesting in front of the Parliament. The protest became even more intense after the public presentation of the review of the Venice Commission on the draft law for the amendment of the electoral system in Moldova. It should be mentioned in this regard that the Venice Commission's Opinion on the draft law for the amendment of the electoral code is quite disapproving. Specifically, the Commission stated that "While the choice of an electoral system is a sovereign decision of a State, the amendments proposed in the draft aimed at shifting from a proportional to a mixed system, raise significant concerns"⁸²...". Thus, "In light of these concerns and in view of the lack of consensus on this polarizing issue, such a fundamental change, while a sovereign prerogative of the country, is not advisable at this time"⁸³.

Along with the above mentioned developments, in order to contribute to a discussion based on arguments, during March – May 2017 Promo-LEX commissioned two international experts to elaborate a comprehensive Study on the current electoral system in Moldova. The overall objective of the Study "Electoral System Design in Moldova"⁸⁴ was to provide input to the active debates held in the society, and taking into consideration the political, economical, social, historical and cultural landscape of the country, but also the advantages and disadvantages of different electoral systems, to answer the question: What is the best electoral system for Moldova? The draft of the respective study was also shared with the Venice Commission in the eve of the Commissions' expert visit to Chisinau for the assessment of the draft laws on electoral system change.

As a result, besides the conclusions provided in the Study, the experts have also produced a series of important recommendations:

- Moldova would do well in avoiding any reform towards a full-blown FPTP system. Furthermore, at this point in time, Moldova ought to resist moving to a mixed system, especially to a mixed-parallel one;
- Minor changes, on the other hand, may offer an avenue for addressing key problems as experienced under existing rules. The best solution would consist of improving the current electoral system, the List-PR system, by organizing elections in 10-12 constituencies and by replacing the closed party lists with open lists to provide voters with a possibility to influence or even decide on who is elected at the individual candidate level;
- At 6 percent for individual political parties, the threshold for access to the parliament is among the highest in the world. Thus, the legal threshold for political parties should be reduced – to 3 or 4 percent – for single parties;
- The legal threshold for independent candidates should be removed. A natural threshold – resulting from other mathematical properties (electoral formula, district magnitude) of the electoral system – should apply;

Despite the protests held in front of the Parliament, contrary to the opinion of the Venice Commission and without taking into consideration the efforts of Promo-LEX Association and other CSOs, on July 20, 2017 the Parliament adopted the mixed (parallel) electoral system in one round. On the same day, the Law was promulgated by the President of the Republic Moldova and it entered into force on 21 July 2017 by publication of the Law No. 154 in the Official Gazette. In this context, in a public statement⁸⁵ Promo-LEX draw the attention that the electoral system was amended without taking into account the main recommendation of the Venice Commission, nor the request of the non-governmental organizations to adopt any amendments to the electoral system from the perspective of its implementation at the parliamentary elections of 2022, i.e. over one ordinary electoral cycle.

Promo-LEX Association believes that the said Law still contains a series of important deficiencies. The biggest problems of the adopted mixed system were also mentioned in the "Statement on the amendment of the electoral system in the Republic of Moldova"⁸⁶ presented by Promo-LEX and other civil society organizations at the Human Dimension Implementation Meeting held by OSCE/ODIHR in September 2017:

- The election of the MPs through a single round election, as it is provided in the adopted law, will ensure a lower representativeness of the Parliament, compared to the election of the President and of the mayors, which take place in two rounds. Under such circumstances, the signatory organizations consider that the Parliament has infringed the Article 60 of the Constitution that establish the Parliament as a supreme representative body;

⁸² [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e) pct.14

⁸³ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e) pct.15

⁸⁴ <https://promolex.md/8936-studiul-proiectarea-sistemului-electoral-in-republica-moldova/?lang=en>

⁸⁵ <https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/?lang=en>

⁸⁶ <https://promolex.md/10276-declaratie-privind-modificarea-sistemului-electoral-in-republica-moldova-ridu-2017/?lang=en>

- The CSOs are very much concerned with the violation of the principle of equality of votes provided in the recently adopted law. This observation is based on the fact that, the minimum threshold to enter the Parliament on the basis of the list of candidates submitted by the political parties in the nationwide constituency will be higher than that to be recorded in certain single-member constituencies. For example, at a minimum electoral score of 6% and a participation rate of 50% of voters, a political party will be able to delegate only 3 members to the Parliament from the nationwide list of candidates, which equals about 28,000 votes per mandate. In the same time, in the single-member constituencies, at the same participation rate, an MP would be elected with only about 3-5 thousand votes; A special concern also resides in the fact that the principle of equality of votes wouldn't be possible to be enforced in the constituencies created on the territory of Gagauz autonomy, Transnistrian region as well as for the voters residing abroad;
- In the light of the above mentioned deficiency, the signatory organizations regret that the Moldovan Parliament ignored the recommendation of the Venice Commission on the lowering of the electoral threshold from the 6% barrier. It should be underlined that, under the adopted mixed electoral system, the threshold for political parties to enter the Parliament was actually doubled. Thus, compared to the previous proportional system, under the new electoral system, a political party with 6% popular support at the national level will be able to delegate only 3 MPs;
- The organizations are extremely concerned with the fact that the adopted law excludes from the electoral process about 5% of the voters which equals approx. 158,000 voters who have neither domicile nor residence;
- The last significant deficiency I want to bring to your attention refers to the ignorance of the Venice Recommendation which called the Parliament to establish an independent commission for drawing the boundaries of the single-mandate constituencies. On contrary, the Parliament empowered the Government, which is a political body subordinated to the Parliamentary majority, to set up the commission for the establishment of the single-member constituencies. Unfortunately, the Parliament also failed to include the boundaries of the single-member constituencies in the Electoral Code, as it was recommended by many civil society organizations.

In more details, some of the above mentioned deficiencies were explained in two case studies recently elaborated and publicly presented by Promo-LEX ("The effects of the mixed-member electoral system: Limitation of the Constitutional Right to Elect of the Voters with no Domicile or Residence"⁸⁷ and "The effects of the mixed-member electoral system: Students' and Pupils' Vote can be fate-changing at the elections in some single-member constituencies"⁸⁸).

In conclusion, given the infringement of the above mentioned principles and standards, as well as the vicious process for the adoption of the mixed system, Promo-LEX has requested the Moldovan authorities to withdraw the law on the amendment of the electoral system and return to an improved proportional electoral system.

Promo-LEX also addressed the international stakeholders with the recommendations to concede and support any legal request initiated within the country for the abolition of the mixed voting system and the return to a proportional voting system, as well as to monitor the implementation of the recommendations of the Venice Commission and OSCE/ODIHR produced in connection with the recently held elections and the amended electoral system.

⁸⁷ <https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitucional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en>

⁸⁸ <https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitucional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en>

7 Declarations and Appeals

Declaration: The Adoption of The Law on the Liberalization of Capital and Financial Incentive Undermines Anti-Corruption Efforts and Discourages Honest Taxpayers and State Servants

December 12, 2016

The civil society organizations draw the attention of the Parliament, the Government, the general public and Moldova's development partners to the legislative initiatives [no. 451](#) and [no. 452](#) registered in the Parliament on 1 December 2016. These initiatives provide for "capital liberalization", i.e. exemption from any liability of individuals and companies that have not declared their properties in return for their declaration by 15 April 2017 and subsequent payment of 2% from the value of undeclared property to the state budget. The above-mentioned initiatives also introduce a ban on sanctioning of the public servants for not having declared these properties.

Our reaction is determined by the sensitive and dual nature of the foregoing initiatives, insufficient approach to the subject and foremost by their impact on society. Besides the effects reflected in the informative notes, which are not grounded and do not foresee economic, administrative and fiscal impact, we express our strong concerns that such initiatives would lead to a total amnesty of those who have illegally acquired their property, especially of the state servants.

Fighting corruption is the first priority of Filip Government Program. In 2016, important laws have been adopted aimed at strengthening the fight against corruption. Development partners have heavily invested in justice sector reforms, preventing and combating corruption in Moldova and strengthening anti-corruption authorities. It would appear logical under such circumstances for the Government to be concerned with the efficient operation of the relevant authorities so as to hold accountable those state servants who have illegally acquired their properties.

If the legislative initiatives no. 451 and no. 452 are adopted, it will be impossible to sanction the companies and the individuals, especially state servants, who have not declared or declared at reduced values their properties. On the other hand, these initiatives reduce to zero the efficiency of the legislative amendments known as "Integrity Package", adopted by the Parliament a few months ago and reported by the authorities as a great success in fighting corruption. Moreover, it will allow corrupt officials to keep their public functions and will discourage honest taxpayers and state servants. Additionally, the draft laws do not contain a sufficient reasoning.

We point out that between 2007 and 2008, the Government granted a tax and capital amnesty, draining the state budget of 4 billion lei. In the period 2012-2016, through several theft and embezzlement schemes, many Government representatives became, either directly or through intermediaries, beneficiaries of such irregularities. Among them – the one billion dollars theft, the airport concession, the money laundering schemes through the banking system, acquisitions through affiliated companies, trading operations through phantom companies in the energetic sector, property takeover through raider attacks etc. Since 2013 a law on indirect methods of taxation is in force, which has not been applied so far. This has not allowed investigating the undeclared income and properties, as well as has drained the state budget of considerable revenues.

The signatory organizations consider inadmissible the adoption of draft laws no. 451 and no. 452, as they legalize irregularities and undermine the efforts of fighting corruption and building rule of law in Moldova.

Signatories:

Small Business Association;
Association for Participatory Democracy "ADEPT";
Association for Efficient and Responsible Governance;
Foreign Policy Association;
Association of Independent Press;
BIOS Public Association;
Business Consulting Institute;
Centre for Journalistic Investigations;
Center for the Analysis and Prevention of Corruption;
Centre for Legal Assistance for People with Disabilities
Centrul de Reabilitare a Victimelor Torturii „Memoria”;
DIALOG-Pro;
Legal Resources Centre from Moldova;
National Environmental Center;
Center For Health Policies and Studies;
The Regional Environmental Centre Moldova;
National Trade Union Confederation of Moldova ;
National Youth Council of Moldova;
Eco-TIRAS;
Expert-Grup;

East Europe Foundation;
Institute for Development and Social Initiatives "Viitorul";
Institute for Urban Development ;
Development Institute "Millenium";
Institute for Public Policy;
Ecological Movement of Moldova
Promo-Lex;
TERA1530;
Transparency International – Moldova.

Civil Society Appeal To The Government Of The United States Of America

January 12 , 2017

Your Excellency Ambassador James Pettit,

Representatives of civil society organizations in Moldova consider the adoption of the so-called draft Law on Capital Liberalization and Fiscal Stimulation inadmissible. [The Law would legalize illegalities, would present a legalized form of money laundering, compromise anti-corruption reform and the process of consolidation of the rule of law in the Republic of Moldova.](#)

This draft Law releases from liability any physical person and legal entity that illegally gained their property and assets, including the billion-dollar banking system fraud in the Republic of Moldova, in exchange for a 2 percent fee to the state from the total value of the undeclared assets.

In addition, other amendments to the legislation would follow, including those that prevent the newly established National Integrity Authority from verifying legalized property that belongs to public servants and persons with public dignity.

We express our deep concern that this Law would undermine anti-corruption efforts, and would result in amnesty for public servants, particularly those in the justice sector and other relevant domains, who gained their property in an illegal manner.

[Business associations in Moldovan also voiced their concern, as the adoption of this Law would have a negative impact on the business environment and would discriminate/deter entrepreneurs who honor their fiscal obligations vis-à-vis the state.](#)

[Following meetings with civil society organizations, officials from the International Monetary Fund, the World Bank and the Delegation of the European Union to Chisinau also expressed their positions on the draft Law, drawing particular attention to the integrity risks that the law would impose.](#) This determined the temporary suspension of promoting this law, after being voted in a first reading in the Parliament.

Your Excellency,

Taking into consideration that the United States Congress recently supported the proposal of the President of the United States to globally extend the applicability of the Magnitsky Act towards persons and governments that admitted and benefited from corruption acts, **we are asking the Government of the United States of America and related official authorities to take an attitude and express their opinion vis-à-vis the legal initiative on so-called "capital liberalization" in the Republic of Moldova** (that is in fact an amnesty of illegalities that followed from corruption acts), **through the prism of the Magnitsky Act.** This is especially important, as the adoption of such a law could transform the Republic of Moldova into an attractive place for those interested in the legalization of illegally obtained funds, not only regionally, but also on a global level, obstructing in this manner the application of the Magnitsky Act.

The entire society of the Republic of Moldova is deeply affected by the bank fraud that was admitted and tolerated by decision makers. In the conditions of a mimed investigation into this fraud, we consider promoting such an initiative an unpardonable defiance of the public opinion and the rule of law that was committed by our governors. We consider that a clear and transparent statement from U.S. authorities through the prism of its own principles and laws would deter authorities in the Republic of Moldova from promoting harmful laws that aim at legalizing illegalities, protecting the beneficiaries of these illegalities and undermining reforms, including in justice sector.

With highest considerations,

ADEPT

APE

API

Eco-TIRAS

BIOS

Business Consulting Institute

Centre for Journalistic Investigations

Centre for Legal Assistance for People with Disabilities

Centre for Independent Journalism
Ecological Movement of Moldova
Expert-Grup
HABITAT
IDIS Viitorul
Institute for Urban Development
Legal Resource Centre – Moldova
PromoLex
TERRA-530
Transparency International – Moldova

Declaration on the worsening environment for civil society organizations and mass-media in the Republic of Moldova

March 3, 2017

The undersigned organizations, members of the National Platform of the Eastern Partnership Civil Society Forum (hereinafter – Platform), express their concern about worsening environment for civil society organizations and respect of fundamental the rule of law principles in the Republic of Moldova. In particular, we observe systematic actions designed to divide and discredit the civil society organizations, including by setting them against some quasi-nongovernmental organizations. Moreover, we note a general climate of increased intimidation of independent media by public authorities.

For this purpose, we consider important to communicate to the general public, development partners and the Moldovan state authorities the Platform's position on some of the above-mentioned trends with the view to discourage them and prevent further deterioration of the situation in these areas.

We are witnessing increasingly some representatives of the public authorities “penalizing” the civil society organizations and non-affiliated media representatives for critical opinions expressed against the activity carried out by such authorities, being unduly accused of promoting a “poor image” of public institutions or promoting partisan political views. Moreover, some non-governmental organizations and media institutions have become “undesirable” for some authorities and are excluded from their dialogue with civil society. All these things take place while the representatives of the legislative, executive and judicial powers launch various declarative initiatives of openness and cooperation with the civil society in the Republic of Moldova.

Another worrying phenomenon observed lately is the attempt of some non-governmental organizations to promote an allegedly civil society representative agenda, applying different non-transparent and non-inclusive actions and approaches, making use of and even abusing certain platforms or venues established by the civil society. The most recent example of this took place on 22 February 2017 when the Civic Forum on Monitoring the Implementation of the Moldova-EU Association Agreement was organized. During this event the organizers were to present three thematic reports on monitoring the implementation of the Moldova-EU Association Agreement in terms of environment, justice and energy. CReDO (Resource Centre for Human Rights) had to present its reports dedicated to justice and energy sectors, but regrettably the report on justice has not been published or submitted to the Platform members so far. Moreover, the draft declaration on justice sector reform, proposed to be adopted by the participants at the event, was not consulted in advance with the representatives of the Platform, while its content did not cover many serious and evident problems existing in this area. In this context, the signatory members of the Platform reject any association of the National Platform of the Eastern Partnership Civil Society Forum with the opinions and presentations made by CReDO at the event dated 22 February 2017.

Another regrettable situation was created by the opportunity to promote Pillar VIII (invisible), as part of the draft National Integrity and Anticorruption Strategy (NIAS), dedicated separately to the civil society and media integrity. This proposal was sent to the National Anticorruption Centre during the last stage of the consultation process by three civil society organizations, which argued the need to include such provisions in the new draft NIAS. Pillar VIII promoted the idea that there were serious integrity concerns in the non-governmental sector. However, the authors of this “statist” concept referred exclusively to the non-governmental organizations playing active civic role, omitting a vast network of religious organizations and trade unions. It is worth mentioning that the draft NIAS prohibited any “political affiliation” of members of the non-governmental organizations managing bodies. On the other hand, in the signatories’ opinion, inclusion in the draft NIAS of a pillar dedicated to civil society would “relativize” public authorities’ integrity, introducing the idea of an additional attribution to the state to determine what kind of and how much integrity should be vested with the non-governmental sector. Thus, although there is general understanding within the civil society organizations about the importance of respecting the principles of integrity and transparency, still, the integrity standards should be subordinated to an internal process of self-regulation within the associative sector, in order not to prejudice the fundamental constitutional principles of freedom of association and freedom of opinion. Consequently, as a result of additional consultations, the National Anticorruption Centre, the author of the draft NIAS, gave up promoting Pillar VIII, which we welcome. At the same time, we encourage all stakeholders to pay special attention within public debates to the

importance of respecting the opinions of all participants to the consultations in the spirit of a constructive dialogue, avoiding accusatory and personalized rhetoric.

Additionally, we point to the fact that lately several incidents of direct and indirect intimidation of independent media institutions and investigative journalists were registered, in a context of continuing vicious practice of monopolizing media by groups subordinated to political oligarchies. Thus, by the end of 2016, the investigative journalist Mariana Rata was invited by prosecutors to give explanations in a criminal investigation. The journalist was suspected that by publishing a journalistic investigation about the assets of a former police commissar, she disseminated information about his private life. Although it was clear from the start that no criminal offence was committed and the case should be dismissed, the prosecutor invited the journalist for testimonies. Only after the case drew public attention, it was dismissed. Another symptomatic case is the one of [21 February 2017, when the weekly investigative newspaper „Ziarul de Gardă” reported about the appearance of a phantom website](#) named [ziaruldegarda.com](#), which used the name „Ziarul de Gardă” and disseminated information written by anonymous authors or taken over from other web pages. The portal resembled other anonymous websites that promote anti-opposition and pro-government content. Several civil society organizations have urged the authorities to investigate this incident. The website disappeared shortly after the statement. On the other hand, over the past few months, more public institutions unduly refused to provide the journalists with information of public interest, citing protection of personal data. In February 2017, based on the protection of personal data, all decisions from the courts web pages were anonymized, making it impossible to find judgments in high profile cases. These are serious obstacles to investigative journalism.

In conclusion, we express our disappointment that the dialogue between national authorities and civil society is strongly affected by mistrust, inconsistency and harmful rhetoric. The cases when collaboration with civil society is being used by the government as a facade for legitimization of its own actions are on the increase. In this respect, in their interaction with public authorities are favored those organizations that promote a more convenient and/or closer position to them and their decision makers. It is important that public authorities to promote an inclusive and non-discriminatory approach in their relationships with all civil society organizations and the community of experts, including with the ones with critical voices or civil society representatives who decide to publicly express their political preferences.

In light of the above-mentioned, the signatories to this Declaration:

- Reiterate that, in a state based on the rule of law, civil society and media play a key role in increasing transparency and accountability of public institutions. It is particularly important for all civil society organizations and media to be guided in their work by and respect the principles of transparency, fairness, professionalism and professional ethics;
- Call on the public opinion and development partners to closer monitor, prevent and disapprove all actions that come to undermine freedom of association, freedom of opinion and expression in the Republic of Moldova;
- Urge the Moldovan public authorities to an open, non-discriminatory and honest dialogue on issues of public interest, involving representatives of all non-governmental organizations and media, irrespective of their expressed opinions.

The undersigned organizations, members of the National Platform of the Eastern Partnership Civil Society Forum:

Association for Participatory Democracy „ADEPT”
 Association of Professional and Business Women from Moldova
 Association of Women for Environment Protection and Sustainable Development
 Alliance of NGOs active in the field of Social Protection of Child and Family
 Association for Foreign Policy
 Association of Independent Press
 Eco-TIRAS International Environmental Association of River Keepers
 BIOS
 Business Consulting Institute
 Independent Journalism Center
 Legal Resources Centre from Moldova
 National Environmental Center
 Institute for Development and Social Initiatives (IDIS) “Viitorul”
 Institute for Urban Development
 Institute for Public Policy
 Institute for European Policies and Reforms
 Ecological Movement of Moldova
 Promo-Lex
 TERRA153
 Transparency International – Moldova
 Alliance of organizations working with people with disabilities

The parliamentary majority is amending the electoral system by breaching the legislation and common sense, undermining the principles of democracy

May 5, 2017

We are dismayed by today's joined actions of the deputies from the parliamentary parties: Democratic Party (PD), the Socialist Party (PSRM) and the European People's Party of Moldova (PPEM). They have supported the inclusion in the additional agenda of today's Parliamentary session of two draft laws that introduce crucial changes in the electoral system. Thus, on the agenda of the Parliament session were introduced to be voted at the first reading the draft no. 60/2017, promoted by PD, and draft law no. 123/2017, promoted by PSRM. The draft law no. 60 proposes the election of 101 deputies within uninominal constituencies (the uninominal system), while draft law no. 123 provides for the introduction of the mixed system (50% on party lists and 50% according to the uninominal system). Both draft laws were voted at first reading and their merging was announced, taking as primary the draft law suggested by PSRM on the mixed electoral system.

None of these draft laws appeared on the Parliament's agenda yesterday, 4 May. None of the draft laws is accompanied by Government's opinions or the opinions of parliamentary committees – mandatory requirements imposed by law. After the decision on the introduction of the draft laws in the agenda, the Speaker of the Parliament offered an hour to the parliamentary Legal, Appointments and Immunities Commission to analyze the draft law no. 123. The Government's opinion is missing from both draft laws.

The today's voting in the first reading takes place on the eve of the visit to the Republic of Moldova of the representatives of the Venice Commission. Next week, they will come to Chisinau for a fact-finding visit in view of drafting an opinion on the two draft laws, an opinion that was demanded by the Speaker of the Parliament and the former PSRM chairman. **After the adoption of the drafts in the first reading, they can no longer be changed conceptually, even if these changes are recommended by the Venice Commission.**

Independent opinion polls confirm the lack of popular support for the initiative to change the electoral system, the current electoral system being preferred by most people, despite massive propaganda to change it. Earlier, several [civil society organizations have called for withdrawal of the drafts to modify the electoral system](#). The change of the electoral system is a blow to the rule of law and a significant regression regarding the commitments made by the Republic of Moldova towards the Council of Europe.

The hurry with which the two draft laws, which radically change the way the country is governed, have been introduced into the agenda of the Parliament's sitting, show only one thing: they aim to promote political interests at any cost, even if this means breaking the law, the democracy and the common sense.

We call on:

- **The Parliament – to respect the law and common sense and to stop promoting the interests of some groups or parties and to act in the public interest according to democratic norms.**
- **The development partners of the Republic of Moldova to firmly condemn the above actions and to cease any support of the initiatives/requests of the current Government if the Parliament adopts one of the two draft laws.**

Signatories:

Association for Participative Democracy (ADEPT)
Association for Efficient and Responsible Governance (AGER)
Amnesty International Moldova
Foreign Policy Association (APE)
Association of Independent Press (API)
Community "WatchDog.MD"
Center for Analysis and Prevention of Corruption (CAPC)
The Human Rights Information Centre (CIDO)
GENDERDOC-M Information Centre
Journalistic Investigation Centre (CIJ)
Policy and Reform Centre (CPR)
Legal Resources Centre from Moldova (CRJM)
Center Partnership for Development (CPD)
Independent Journalism Centre (CJI)
IDIS Viitorul
Institute for European Policies and Reforms (IPRE)
Public Policies Institute (IPP)
PROMO-LEX
Transparency International – Moldova
Union of Journalists from Moldova
Veronica Mihailov-Moraru, attorney at law
Eduard Digore, attorney at law
Natalia Morari, journalist
Virgil Zagaievschi, journalist

The attack on civil society organizations is inadmissible and erodes trust in state authorities

May 19, 2017

Supporting democratic institutions and expressing opinions on issues related to the electoral system do not represent political affiliation. We invite the representatives of public authorities, political parties and media institutions to refrain from attacks on civil society organizations that are active, independent and have critical views on the initiatives of the authorities. We call for a return to an open dialogue with all civil society organizations in order to promote the rule of law and the reforms that are really necessary in the society.

On 5 May 2017, several civil society organizations condemned (declaration available in [Romanian](#), [Russian](#) and [English](#)) the manner in which the draft law no. 60 (proposing the introduction of the uninominal system in the parliamentary elections) and the draft law no. 123 (which envisaged the introduction of the mixed system) (50% on party lists and 50% according to the uninominal system) were adopted in the first reading. Both draft laws were voted with serious procedural violations and without the Venice Commission's opinion, although this was requested, while the promoted amendments are crucial to the functioning of democratic institutions in the country. Between 5 and 14 May 2017, protests were held daily in Chisinau, attended by representatives of civil society. Protests were organized to raise public and Parliament's awareness about the serious consequences for democracy of the adoption of these draft laws.

On 15 May 2017, during the TV show "[Punctul pe Azi](#)" from TVR Moldova, the Speaker, Andrian CANDU, mentioned that the electoral system will change from the proportional into the mixed one regardless of the views against this change and that now the discussions are being held only about the improvements to the draft laws. Mr. Andrian CANDU has also labelled the organizations that publicly opposed the initiative to amend the electoral system as "politically affiliated organizations". According to the Speaker, the statement that an electoral system is bad for the country is a political decision and a political discourse which NGOs should not have. Some media sources affiliated to political parties made similar assertions. Moreover, the day before, on 14 May 2017, the authorities undertook a series of measures to discourage citizens from participating at a protest. Numerous local bus routes to Chisinau have been cancelled and local train services have been stopped throughout the country. Also, there have been reported symptomatic cases imposing fines to several drivers who were transporting citizens to Chisinau.

At the same time, Speaker's statement that the decision to change the electoral system in the mixed system has already been taken before the Venice Commission's opinion is worrying, because this opinion might be a negative one. Democracy does not mean the right of the government to make decisions at the expense of democracy, through unilateral measures and manipulation of the public opinion. The draft law on the introduction of the mixed electoral system in general has not been subject to public hearings and debates. It was suddenly introduced on Parliament's agenda on 5 May 2017 in the absence of the approval of the Government and of the parliamentary committees and was voted on the same day.

The signatory organizations underline the importance of plenary involvement of the society in the debate on proposed reforms, especially when it comes to changing the electoral system, and especially when in the neighbouring countries the proposed system proved to be detrimental to democracy and encouraged corruption. The change of the electoral system has direct consequences on the functioning of the state. It depends on the electoral system to what extent the elections will truly reflect the will of the people. Changing the electoral system is not a decision that belongs only to the governing parties, but is a decision of high public interest which determines the manner in which the state functions further, and therefore is an issue which must be widely debated in the society.

Civil society organizations have not only the right, but also the responsibility to engage when reforms that endanger the rule of law and democracy are promoted. That is why expressing opinions on the change of the electoral system is not political affiliation, but the civic responsibility of every citizen and of every civil society organization in the Republic of Moldova. Organizations that criticized the initiatives to change the electoral system have operated with valid arguments and have exemplified the relevant experiences of neighbouring countries. Their arguments have not been followed by adequate answers. Instead, they are being attacked in a manipulative manner. Attacks against active civil society organizations lead to the division of the civil society, through the use of different methods, including trolls and organizations affiliated to the power. Tolerance of aggressive rhetoric of political leaders with high positions in the legislative branch can stimulate the reaction of affiliated political structures to launch a 'witch hunting' to demonstrate their political utility, reverting to the tools of intimidation and harassment used during the ruling of PCRM.

From the above-mentioned considerations, labelling of political affiliation of organizations that do not share the point of view of governing parties is an attempt to silence these organizations and limit their involvement in the decision-making process. Such behaviour is inadmissible in the process of debating such an important initiative as changing the electoral system. Such speeches are not suitable for state officials and erode public confidence in state authorities.

We therefore ask the representatives of public authorities and political decision-makers:

- **to immediately cease attacks against civil society organizations that have different or critical views regarding actions or initiatives of the government;**

- to engage in an open and inclusive dialogue with all civil society organizations on the real priority reforms for the country (e.g. poverty reduction, central and local public administration reform, fighting corruption, political party financing, justice reform, education, etc.).

We also appeal to all media and opinion-makers to abide by deontological and common sense norms, as well as provide an equally balanced reflection of the debates taking place in the society on initiatives to change the electoral system and other issues of public interest.

Signatories (in Romanian alphabetical order):

Amnesty International Moldova
Association for Participatory Democracy (ADEPT)
Association for Efficient and Responsible Governance (AGER)
Foreign Policy Association (APE)
Association of Independent Press (API)
Association of Independent Tele-journalists
Expert Group Independent Think-Tank
Centre for Analysis and Preventing Corruption (CAPC)
Women Law Centre
Child Rights Information Center (CIDDC)
GENDERDOC-M Information Centre
Centre for Investigative Journalism (CIJ)
Centre for Politics and Reforms (CPR-Moldova)
Legal Resources Centre from Moldova (CRJM)
International Center for Women Rights Protection and Promotion "La Strada"
Center for Health Policies and Studies (Centrul PAS)
„WatchDog.MD” Community
Institute for Public Policy (IPP)
Institute for European Politics and Reforms (IPRE)
Institute for Development and Social Initiatives (IDIS)
PROMO-LEX
Transparency International Moldova

Civil society organizations are concerned about the SCM decision on declaring the judge Manole, as being incompatible with the position

July 5, 2017

The undersigned civil society organizations express their concern about the Superior Council of Magistracy (SCM) decision of 4 July 2017 on declaring the judge of Chisinau Court of Appeals, Domnica MANOLE, as being incompatible with the position. The signatories ask the President of the Republic of Moldova not to promulgate the decree ordering the dismissal of judge MANOLE, and the SCM to respect the law and truly become a guarantor of judicial independence.

On 24 May 2016, at the request of the Prosecutor General, the SCM gave its consent to criminal prosecution against judge Domnica MANOLE of the Chisinau Court of Appeal for her decision to compel the Central Election Commission to hold a referendum on amending the Constitution of the Republic of Moldova. The judge is accused under art. 307 of the Criminal Code, for willful issuance of a decision contrary to the law. The examination of the acceptance of the request to initiate criminal investigation was held behind closed doors, despite the fact that judge Manole and her lawyer requested a public hearing. [The consent](#) to start criminal investigation was given by the SCM without any reasoning. For more than a year the case is before the Anticorruption Prosecutor's Office and it is still not clear when or generally whether it is to be referred to a court. In July 2016, the Anticorruption Prosecutor's Office resumed the investigation against judge Manole in another case on the alleged failure to declare properties, which was quashed in February 2015 after the National Anticorruption Center (NAC) found that the judge had not committed this infringement in 2014.

On 4 July 2017, the SCM decided to dismiss Ms. Manole, apparently, on the basis of an opinion issued by the Intelligence and Security Service (ISS). The ISS opinion notes that in several cases examined by panels of judges with the participation of judge Manole, including the case underlying criminal prosecution consent from May 2016, the magistrate allegedly permitted certain irregularities that ascertained for the presence of risk factors in her activity. Again, the opinion was examined behind closed doors, although judge Manole asked for a public hearing. This issue was part of the SCM agenda a few weeks ago, but was postponed at the SCM's initiative.

The civil society organizations are deeply concerned about the SCM ruling on the dismissal of judge Manole. The decision taken yesterday by the SCM is contrary to its previous practice where [members of the SCM determined](#) that the ISS cannot assess the work of judges in examining specific cases, mainly in terms of questioning the merits of the cases examined by the judge. Moreover, the issue of dismissal of a judge was held behind closed doors, even if the

judge requested a public hearing. At the same time, the Law on the Status of Judges does not allow the SCM to dismiss a judge based upon an ISS opinion without a disciplinary procedure, which was not the case.

According to the operative part of the ruling, read in the SCM sitting, judge Manole even violated the obligation to communicate with the press. It seems that neither judge Manole was aware of this accusation. It is not clear who formulated such a complaint and it was not on the SCM agenda. However, breaching of such obligation hardly justifies application of the most serious penalty – dismissal of a judge.

The decision to dismiss judge Manole is fueling suspicions of the lack of independence of the SCM towards other state powers, non-uniform application of the law and application of selective justice against a magistrate for the decision given in the referendum case. Examination of the issue behind closed doors, further reinforces this suspicion, taking into account that other cases against the same judge were resumed in 2016. Yesterday's decision of the SCM is a very dangerous precedent for the independence of judges in the Republic of Moldova and is likely to send a signal to other judges not to oppose the governance. Such decisions undermine the independence of judges. Moreover, such conduct is inadmissible for the SCM, which, according to the law, must be the guarantor of the independence of all judges.

We call on:

- the President of the Republic of Moldova not to promulgate the decree ordering dismissal of judge Manole;
- the SCM to publicly present reasons for examination of cases in closed hearings in order to avoid further impairment of citizens' confidence in justice and to examine cases in closed hearings only when strictly necessary;
- the judges to join forces in order to ensure independence of the judiciary;
- the SCM to truly become the guarantor of the judges independence;
- the development partners to monitor with utmost care the state of justice in the Republic of Moldova and to properly react whenever the situation so requires, conditioning their assistance by ensurance of an independent judiciary in Moldova.

The signatories:

INFONET Alliance

Human Rights Embassy

ADR Habitat Association

Amnesty International Moldova

Association of the Entrepreneurs with Disabilities in Moldova "EUROPEAN ABILITIES WITHOUT LIMITS"

The Association „MOTIVAȚIE” of Moldova

Association for Participatory Democracy (ADEPT)

Association for Efficient and Responsible Governance (AGER)

Promo-LEX Association

„Synergetica Eur/Est” Association

Independent Analytical Center Expert-Grup

Journalistic Investigation Centre (CIJ)

CPR-Moldova

Child Rights Information Center

Legal Resources Centre from Moldova (CRJM)

Lawyers Women Association from Republic of Moldova

National Law Center „AD LEGEM”

Center Partnership for Development

"WatchDog.MD" Community

Eco-TIRAS

Est Europe Foundation

Institute for Public Policy (IPP)

Rehabilitation Centre for Torture Victims "Memoria"

Terra-1530

Transparency International Moldova

Union of Organizations for Disabled from Moldova

The attempt to limit foreign funding of NGOs endangers the functioning of democracy in Moldova and cannot, under any circumstances, be accepted

July 11, 2017

The legislation of the Republic of Moldova on non-governmental organizations is obsolete, failing to provide sufficient protection against abuses. In spring 2016, the Minister of Justice, Mr. Vladimir CEBOTARI, accepted the proposal of several civil society organizations to improve the legislation on non-governmental organizations and established a working group to this end, composed of representatives of non-governmental organizations and the Ministry of Justice.

The group worked for more than a year and prepared a draft law intended to replace the Law on Public Associations and the Law on Foundations. This draft is in line with the best international standards and practices and may represent, if adopted, a step forward in ensuring a sustainable and independent associative sector in the Republic of Moldova. The draft was endorsed by international experts and [subjected to public consultations](#) with participation of non-commercial organizations held on 14 September 2016 by the Ministry of Justice. During its activity, the working group enjoyed independence and was not subject to undue influence by the leadership of the Ministry of Justice or any other authorities. The draft Law on non-governmental organizations is ready to be promoted for adoption.

Last week, the representatives of NGOs, members of the above-referenced working group, received from the representatives of the Ministry of Justice, part of the same group, a proposal to complete the draft with three additional articles (Articles 28-30) presented by the Minister of Justice.

The additions include "special provisions on political activity of non-governmental organizations", which significantly limit the activity of non-governmental organizations and establish prohibitions for their direct or indirect foreign financing. These restrictions refer to organizations that contribute to development and promotion of public policies intended to influence the legislative process. At the same time, these restrictions apply to the organizations that, according to the initiative, could participate or intervene in political activities, electoral campaigns, electoral programs, support political parties, their leaders or candidates, promote them or any other actions undertaken by them, either jointly or separately, both, in elections within the meaning of the Electoral Code or matters subject to a referendum, or beyond elections. These organizations will be prohibited even from accessing the 2% mechanism.

The adjustments also aim at additional financial transparency rules for all organizations that benefit from financing outside the Republic of Moldova. They should submit to the Ministry of Justice quarterly and annual financial reports, even though such reports are submitted monthly and annually with the Tax authorities of the Republic of Moldova. Moreover, the NGOs should publish other reports confirming the origin of the organization's funds and revenues, and of the members of its management bodies as well. Additionally, organizations will have to submit a written declaration on incomes and expenditures ratio for "political activities" to the Ministry of Justice and the Central Electoral Commission and publish it on their website.

For breach of the above requirements, the Ministry of Justice will apply sanctions to the non-governmental organization and to the members of its management bodies. Some of the provided sanctions are a financial penalty in the amount of the monthly salary fund of the organization or in the amount of the material value of which the financial organization benefited in committing the breach, whichever is greater, as well as the liquidation of the organization, based on a court decision.

On 6 July 2017, the members of the working group convened in a meeting with the Minister of Justice. At this meeting, Mr. Cebotari mentioned that the proposed additions are designed to avoid the external influence on the policy of the Republic of Moldova, which is exercised, including by means of external financing of non-commercial organizations which are focusing on state policies or are supporting, directly or indirectly, initiatives of political parties. The Minister suggested to improve the text proposed by him. The representatives of the Ministry of Justice in the working group informed the representatives of NGOs from the working group that the final version of the draft to be promoted will be decided by the Ministry of Justice.

The signatory organizations consider that the proposals of the Minister of Justice cannot be supported in any way, because they are contrary to the international standards and are endangering the entire associative sector and democracy in the Republic of Moldova.

This initiative is contrary to the international standards, which do not allow such limitations for the NGOs activities. [A recent analysis](#) by the Venice Commission reveals that such limitations exist only in three member states of the Council of Europe - Russia, Hungary and Azerbaijan. Recently, [the Venice Commission had a critical attitude](#) on Hungarian law. The limitations proposed by Mr. Cebotari are even more restrictive than those in Hungary, a country that does not impose an absolute ban for foreign funding of NGOs. Moreover, the minister's initiative is contrary to the very purpose for which the drafting of new legislation was initiated. The working group was created to improve and not to worsen the working environment of non-governmental organizations. If Minister's intention was communicated from the outset, no non-commercial organization would have accepted to get involved in drafting such a draft Law. Furthermore, this initiative was announced at the latest possible moment, despite the fact that the same Minister created the working group more than a year ago.

The proposals represent an attack on non-governmental organizations that are active in promoting public policies or any other activities to develop participatory democracy. The absolute majority of Moldovan NGOs benefit from funds provided by development partners. Such measures will deprive the majority of active NGOs in the country of financing and the foreign political organizations and foundations working in the Republic of Moldova would be forced to cease their activity. Therefore, this will affect thousands of people directly benefiting from the NGOs activity and the functioning of democracy itself in the Republic of Moldova.

The proposed provisions are contrary to the Association Agreement between the Republic of Moldova and the European Union, which encourages the involvement of all relevant stakeholders, including civil society organizations, in developing policies and reforms in the Republic of Moldova. We must recall that the state of the Republic of Moldova itself benefits from continuous financial support from the development partners. Thus, restricting external financing for the non-governmental sector is at least disproportionate.

Furthermore, for 20 years the legislation of the Republic of Moldova has not provided for such prohibitions. Due to the fact that legislation had not provided for such bans, the associative sector in Moldova developed considerably over the past two decades. This confirms that the danger invoked by the Minister of Justice as an argument for promoting the initiative does not exist. The draft law elaborated by the working group already sets limits to the NGOs' involvement in elections in line with best international practices. The proposed additions go much further, excessively limiting the activity of NGOs both during and after elections.

This initiative comes at a time when we are witnessing a regress in the environment of non-governmental organizations activity, including due to attacks against several civil society activists. Also, [the statement made by the President Igor DODON on 26 May 2017](#) on the usefulness of promoting provisions limiting foreign funding of NGOs, similarly to Hungary, cannot be ignored. We would like to believe that this incident does not represent the policy promoted by the government regarding NGOs.

In the light of the foregoing, the signatory organizations call on:

- the Minister of Justice, to give up the initiative to limit financing of the activity of NGOs from outside, as well as any other initiatives aimed at limiting their activity, and to send the draft Law drafted by the working group to the Government for approval as soon as possible;
- the Government and Parliament to vote the draft law on non-governmental organizations drafted by the working group without introducing provisions that will limit the activity of NGOs. Any delay in promotion of this draft will be treated by us as an implicit confirmation of a policy of limiting the activity of the associative sector;
- diplomatic community and development partners of the Republic of Moldova to closely monitor the situation of civil society in the Republic of Moldova and the initiatives to suppress the activity of the associative sector in the Republic of Moldova, and to take all measures to ensure that the civil society organizations working environment and freedom of the press do not worsen.

Note: The draft law, with the additions proposed by the Minister of Justice (Art. 26-28) was published in the afternoon of 11 July 2017 after the above declaration was issued, and is available [here](#).

The signatory organizations:

Alliance INFONET

Alliance of NGOs active in the field of Social Protection of Child and Family*

Alliance Organization for People with Disabilities from the Republic of Moldova

Students Alliance of Moldova

Human Rights Embassy

Amnesty International Moldova

"Pilgrim-Demo" Public Association

Certitudine Association

Women`s Association for the Environment Protection and Sustainable Development

Association of Professional and Business Women

Association of Environment and Ecological Tourism Journalists *from Republic of Moldova*

Small Business Association

"Home of Hope" Public Association

Association "Positive initiative"

"For the Present and Future" Public Association

"Pro-Trebujeni" Public Association

"QNA Moldova" Public Association

Youth for the Right to Live, Bălți

ADR „Habitat" Public Association

Helsinki Citizens Assembly of Moldova

BIOS Public Association

"SocioAcces" Public Association

Young Women Cernoleuca Public Association
Association for Participatory Democracy (ADEPT)
Association for Efficient and Responsible Governance (AGER)
Foreign Policy Association (APE)
Association of Independent Press (API)
Promo-Lex Association
Association of Young Artists "Oberliht"
"EuroPass" Center
Center Partnership for Development (CPD)
Independent Analytical Center Expert-Grup
Legal Assistance Center for Persons with Disabilities
Center for Economic Development
Women`s Law Center
The Human Rights Information Centre (CIDO)
The Child Rights Information Center (CIDDC)
"GENDERDOC-M" Information Centre
Journalistic Investigation Centre (CIJ)
Rehabilitation Centre for Torture Victims "Memoria"
Legal Resources Centre from Moldova (CRJM)
International Centre "La Strada"
National Law Centre „AD LEGEM"
National Environmental Center
National Roma Center
National Center for Child Abuse Prevention (CNPAC)
Centre for Independent Journalism (CJI)
Center For Health Policies and Studies (Centrul PAS)
Pro-Europa Center from Comrat
The Regional Environmental Centre (REC Moldova)
Balti University Legal Clinic
Nondiscrimination Coalition
MD Community
National Youth Council of Moldova (CNTM)
CPR-Moldova
Eco-Contact
Eco-TIRAS
Est Europe Foundation
Freedom Moldova Foundation
Foundation for Development
Terre des hommes Moldova Foundation
The Group of Youth for Interetnical Solidarity
Soros Foundation-Moldova
Gutta Club
HOSPICE Angelus Moldova
Development Institute "Millenium"
Institute for Public Policy (IPP)
Institute for European Policies and Reforms (IPRE)
Labour Institute
Institute for Development and Social Initiatives "Viitorul"
Ecological Movement from Moldova
Non Commercial Partnership for Medical and Social Programs
RISE Moldova
Association for Protection of the Birds and Nature
Terra-1530
Transparency International Moldova (TI-Moldova)
Union of Organizations for Disabled from Moldova
Union for HIV Prevention and Risk Reduction

Open letter to the members of the Parliamentary Assembly of the Council of Europe on the occasion of the forthcoming vote of no confidence in the President of the Assembly

October 2, 2017

We, civil society organizations members of the Moldovan National Platform of the Eastern Partnership Civil Society Forum, welcome the recent motion of no confidence in the President of the Parliamentary Assembly of the Council of Europe (PACE) put forward by 158 members of the Assembly. We urge all its members to overwhelmingly support this motion at the forthcoming meeting of the Assembly on the 9th of October 2017.

The no confidence motion, marks a historic opportunity to start the process of rebuilding PACE's reputation as a defender of human rights and the rule of law.

The Assembly has, for far too long, tolerated misbehavior by some of its members, as reported by the Organized Crime and Corruption Reporting Project (OCCRP), which has damaged the standing of the Council of Europe.

The Assembly has allowed corrupt practices by certain member governments to undermine its commitment to uphold fundamental values throughout the Council of Europe's member states. It has, at times, dismayed human rights defenders in the Eastern Partnership states and beyond who looked to PACE and other representative bodies such as the European Parliament for support in defending these values.

The recent establishment of an „Independent External Investigation Body” by PACE gives hope that the much needed renewal of the Assembly will not stop with the departure of the President. It also serves notice to all the members of PACE that corrupt practices will no longer be tolerated within its ranks. This is a process which must continue after the end of 2017 when the Independent Body is due to report.

The OCCRP investigation shows that democratic parliamentary assemblies in the free world must remain vigilant against threats to their integrity from unscrupulous and cynical governments. Otherwise the hope and support that these assemblies can extend to political prisoners and to democrats who are working for free and fair elections and the rule of law in Eastern Partnership countries and elsewhere will continue to be undermined.

The signatories:

Association for Participatory Democracy
Institute of Public Policies
AO RC "Gutta-Club"
Legal Resource Centre of Moldova
Association of Independent Press
BIOS
National Patronate Confederation of Moldova
BPW Moldova
Promo-LEX
Centre for Independent Journalism
REC Moldova
Centre for Politics and Reforms
Small and Medium Business Association
Transparency International – Moldova
WatchDog Community
Institute for European Politics and Reforms
EcoContact
Terra-1530
National Youth Council

Moldovan CSO's address to development partners on the state of some reforms and the rule of law funded by the foreign taxpayer

October 3, 2017

Donald TUSK, President of the European Council
Jean-Claude JUNCKER, President of the European Commission
Antonio TAJANI, President of the European Parliament
Pedro AGRAMUNT, President of the Parliamentary Assembly of the Council of Europe
Thorbjørn JAGLAND, Secretary General of the Council of Europe
Federica MOGHERINI, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission
Johannes HAHN, Commissioner for European Neighbourhood Policy & Enlargement Negotiations
Sven MIKSER, Minister of Foreign Affairs of Estonia, Presidency of the Council of the European Union
Peter MICHALKO, Ambassador, Head of the European Union Delegation to Moldova
Eva GUTJAHR, Council of Europe Office in Moldova, Deputy Head of Office
Michael SCANLAN, Head of the OSCE Mission to Moldova
Anna AKHALKATSI, World Bank Country Manager for Moldova
Volodymyr TULIN, Resident Representative of the International Monetary Fund in Moldova
Dimitri GVINDADZE, Head of the EBRD Office in Chisinau
Karen HILLARD, Director of the United States Agency for International Development (USAID)
Dafina GERCHEVA, UN Resident Coordinator and UNDP Resident Representative
James PETTIT, Ambassador of the United States of America in Moldova
Julia MONAR, Ambassador of the Federal Republic of Germany in Moldova
Lucy Joyce OBE, Ambassador of the United Kingdom of Great Britain and Northern Ireland in Moldova
Signe BURGSTALLER, Ambassador of the Kingdom of Sweden in Moldova

Dear friends of Moldova,

Three years ago, Moldova was ravaged by money laundering and banking frauds. The authorities have not yet produced a credible investigation. Nor have they duly informed the public about the efforts made, and there is no public oversight of the way Moldova responded to this crisis.

After failed attempts to legalize proceeds from these crimes with the so-called fiscal amnesty, the present authorities have changed the electoral system to their own benefit and against the common good.

Now, to survive and maintain power, an illegitimate and unpopular government applies its remaining tool— fear and intimidation.

We, the undersigned, reflecting an important part of the public opinion, have spoken out repeatedly, condemning these abuses.

In defying the peaceful protests that erupted in 2017, the Moldovan authorities retorted to persecution, intimidation and outright lies – by providing “official”, yet false information -and violated the basic human rights of peaceful citizens, such as the freedom to peaceful assembly and freedom of expression.

The arrest of Alexei Alexeev is the most recent in this worrying string of events. We saw Police forces, pro-government politicians, and their politically affiliated media engaged in an open campaign to misinform the population about the protests, and denigrate an innocent person. The claim that Alexeev has attempted to run into lines of police with his van is groundless and cameras that filmed the scene from many angles can confirm that. Despite that, Alexeev is still under arrest. His sentence was changed to house arrest last week, yet this does not diminish the injustice made to this person by the authorities, which apply brutal antidemocratic measures.

On the 7th of April 2009, Moldova has learned a painful lesson about where politicized law enforcement can lead. Which is why reform was important. Fabricated cases, like the one mentioned above, cast serious doubt over the quality of the Police reform.

Reforming the Ministry of Interior, was part of the EU-Republic of Moldova Visa Liberalization Dialogue in 2010, as was the National Human Rights Action Plan, the results of which are visibly under threat in 2017.

With great concern we witness a roll-back of the Justice sector reform. After having consumed substantial funds, the Government is cutting back on transparency and access to information; investigation journalists have ever more barriers in doing their honest and necessary work.

Precious progress is being undone in crucial sectors. As a result, authorities do not fight high level corruption – such measures rather help protect it and conserve it.

Tens of millions of Euros have been spent to produce very little visible result, and this puts the effectiveness of the financial support offered to Moldova in these sectors, under question. We would like to express our deep conviction that this is not the best use of taxpayer money from the European Union, the United States of America, or elsewhere.

It is our opinion that the money directed in these fields do not produce positive and long-lasting effects for our population, and in these conditions, we see no reason or necessity in supporting these costs (part of them – loans), which is why we would encourage temporarily stopping financial support in these fields, until clear assessments of the money spent are made, and more rigid, clear and verifiable performance indicators are imposed on existing and future financing.

Help should come in those areas where authorities show commitment to reform, which should be proven with honest action.

- We encourage to continue and to increase the support to Moldovan entrepreneurs, and business support infrastructures, thus helping the Moldovan businesses (existing, and the ones still to be established) benefit to the fullest from the opportunities offered by DCFTA.

- We encourage more support to civil society, especially free and transparent mass media, thus helping shed a light on reality. What we see in the last year is a frontal attack on free independent media.

The European Union is in a unique position to request a more credible investigation of the financial crimes that hit the Moldovan and the EU financial systems. These crimes have affected the EU and it should act in the best interests of its citizens and its members. Keeping this investigation in Moldova for three years produced no results.

According to the Article 18 of the Association Agreement between the EU and Moldova, both parties agree that, in the event of money laundering involving both Moldovan and the EU financial systems, an international investigation task force and asset recovery shall be put in place. We believe the European Union has the duty in front of its citizens to step in and investigate these crimes, bringing to justice everyone that made these crimes possible by providing their political or administrative support. Personal sanctions against concrete individuals could be a way to start the process.

The change of the electoral system was a process in which the Moldovan Parliament has defied the national and international recommendations, coming from the Venice Commission, European institutions, Moldovan and European political parties, civil society and media, and their opposing arguments, concerns as well as pure facts. As happened in all neighboring countries, this reform alone stands to negatively affect pluralism and multi-party system, consolidate, not diminish, political corruption. The opinion of the Venice Commission and other independent evaluations offer multiple details and arguments against this decision, but our government ignored all of them.

We are deeply concerned that substantial financial reserves amassed by corrupt politicians might be put into use at the next elections. Among others, dirty money will provide hidden financing to politically affiliated media, politicized administration and law enforcement, online and offline activists, artists, and others. Nontransparent party financing will make it easier for illegal money to win the elections in Moldova, and this is another threat for democracy. Democracy cannot be about whoever has more money, regardless of their provenience.

We believe that Moldova is close to a point of no-return in its path to authoritarianism and it is our concern that both the trust of our people and the trust of our partners has been betrayed and abused to bring us here.

This is why we urge you to act in order to:

- Temporarily stop the financing of reforms, which produce no visible and sustainable results until commitment to reform is visible, and support those areas where such commitment exists. Financial support in any sector must come against very clear conditionalities and performance indicators.
- Enact the Article 18 of the EU-Moldova Association Agreement to investigate financial crimes that affected Moldova and the EU financial systems three years ago, and issue personal sanctions against the ones responsible.
- Maintain the condemnation of the decision to change the electoral system as deeply antidemocratic and damaging to pluralism of opinion and of parties.
- Call upon the present authorities to put Moldova back on its democratic path, and hold the present authorities accountable for their previous commitments.

We thank you for your continued support,

Signatory organizations:

Association for Efficient and Responsible Governance (AGER)

Association for Participatory Democracy (ADEPT)

Center for Policies and Reforms (CPR Moldova)

Foreign Policy Association (APE)

Institute for Public Policies (IPP)

Legal Resources Centre from Moldova (CRJM)

Transparency International Moldova

WatchDog.MD Community

Public appeal on the transparency of the activity of the National Commission for the Establishment of Permanent Uninominal Constituencies

October 4, 2017

Civil society organizations from the country and abroad are concerned about the lack of transparency of the activity of the National Commission for the Establishment of Permanent Uninominal Constituencies. Given that there are suspicions of political interference on this Commission, its activity has to be as transparent as possible to ensure permanent access to the information about adopted decisions, as well as open and impartial public consultation of the draft decision on the establishment of uninominal constituencies.

On 20 July 2017, the Parliament of the Republic of Moldova approved Law no. 154 on the switch from the proportional electoral system to a mixed system, despite the lack of a social and political consensus and contrary to the recommendations of the Venice Commission.⁸⁹ The law stipulated, among others, the creation of an independent Commission for establishing permanent uninominal constituencies (hereinafter "the Commission") within 30 days from the entry into force of the law. On 6 September 2017, with a delay of more than two weeks, the Government created the Commission.

Previously, on 23 August 2017, the Government approved the Commission's Regulation, although the Electoral Code provided that the Commission would act on its own regulation approved by the Government. This was criticized by several civil society organizations in Moldova because it is a direct interference with the Commission's work and violates its independence.⁹⁰ The risk of political influence in the process of creating uninominal constituencies was also underlined by the Venice Commission in its opinion on the amendment of the electoral system in the Republic of Moldova in June 2017.⁹¹

According to the Commission's Action Plan,⁹² it will hold 6 meetings and subsequently on 24 October 2017 it will approve the decision on the establishment of uninominal constituencies to be submitted to the Government. Out of the 6 meetings envisaged, 3 have already taken place. So far, no minutes of the meetings have been published on the website of the State Chancellery, which according to point 14 of the Commission's Regulation, is the institution that provides its Secretariat. Moreover, the information on discussions about the meetings and decisions adopted by the Commission is not available for the interested public.

According to Law no. 239 on transparency in the decision-making process of 13 November 2008 and Government Decision no. 967 on the public consultation mechanism with civil society in the decision-making process of 9 August 2016, the public authorities are obliged to ensure the transparency of the decision-making process at all stages, to ensure the access to information and to ensure the public consultation on the draft decisions.

In view of the above, namely the context in which the electoral system was changed and in which the Commission was created, the way in which the Commission's Regulation was adopted, the Commission lacks already public confidence. This is why the transparency and professionalism requirements to the work of this Commission are even stricter. Otherwise, the suspicions that it was created for the benefit of the parties which voted for the change of the electoral system, will be confirmed.

In view of the above, as well as of the importance and impact of the decisions adopted by this Commission and the short time limits for its activity, we call on the Commission for the Establishment of Permanent Uninominal Constituencies and the State Chancellery to:

- urgently publish the minutes of all Commission meetings and any other information relating to the Commission's work on the State Chancellery website;
- publicly consult the draft decision on the constitution of uninominal constituencies by publishing an announcement for submission of comments on the draft decision before its adoption within a reasonable deadline;
- publish the summary of comments and objections, as provided by the legislation on decisional transparency.

⁸⁹ Venice Commission, OSCE/ODIHR, Opinion on the electoral system for the election of the Parliament, CDL-AD(2017)012, 19 June 2017, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e).

⁹⁰ Promo-LEX, Legal Resources Centre from Moldova, Declaration: The implementation of the mixed electoral system starts late, in violation of the law and undermines the independence of the Commission for the constitution of uninominal constituencies (Romanian only), 21 August 2017, <https://promolex.md/10189-opinia-asociatiei-promo-lex-cu-referire-la-proiectul-regulamentului-initiat-de-ministerul-justitiei-privind-activitatea-comisiei-de-delimitare-a-circumscripțiilor-uninominale/>.

⁹¹ Venice Commission, OSCE/ODIHR, Opinion on the electoral system for the election of the Parliament, CDL-AD(2017)012, 19 June 2017, page 5, p. 14.

⁹² http://brd.gov.md/sites/default/files/planul_de_actiuni_calendaristic.pdf.

Signatures:

Association "AssoMoldave", Rome, Italy
Association "Baștina - Comunitatea Cetățenilor Moldoveni și nu numai", Padova, Italy
Association "Dacia", Venice, Italy
Association "Gente Moldava", Venice, Italy
Moldovan-Italian Volunteer Association "Renașterea", Parma, Italy
Association for Participatory Democracy (ADEPT)
Association for Efficient and Responsible Governance (AGER)
Promo-LEX Association
CPR-Moldova
Legal Resources Centre from Moldova (CRJM)
Center Partnership for Development (CPD)
Community of Bessarabians in Ireland "Moldova Vision", Dublin, Ireland
Institute for Public Policy (IPP)
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