EaP CSF Moldovan National Platform

EASTERN PARTNERSHIP
Civil Society Forum

Monitoring Public Policies in Moldova

EaP CSF, Moldovan National Platform, Working Group 1

September 2018

This report was compiled within the project „Building the State of Law and Democracy: the Contribution of Civil Society" with the financial support of the Embassy of the Kingdom of the Netherlands in Bucharest, the Responsibility Fund Program. The content is the responsibility of the authors and does not necessarily reflect the view of the donors.

Transparency International – Moldova
31 August 1989 Str., 98, office 205, Chişinău, Moldova, MD-2004
Phone: +373 22 203484, Fax: + 373 22 237876,
Email: office@transparency.md, Web: http://www.transparency.md

Promo-Lex
Ştefan cel Mare Str., 127, Chişinău, Moldova, MD-2004
Phone: + 373 22 450024, Fax: + 373 22 450024,
E-mail: info@promolex.md, Web: https://promolex.md/

Legal Resources Centre from Moldova
Sciusev Str., 33, Chişinău, Moldova, MD 2001
Phone: + 373 22 843601 ext. 109, Fax: + 373 22 843602
E-mail: vladislav.gribincea@crjm.org,
Web: www.crjm.org

Association of Independent Press
Bucureşti 41/5 Str., Chisinau, Moldova
Phone: +373 22 220996, + 373 68 983 983,
E-mail: api@api.md, Web: http://api.md/

Institute for Urban Development
Mihai Eminescu Str, 29/1A, Chişinău, Moldova, MD-2028
Phone: +373 22 211467, +373 22 211467
E-mail: office@idu-moldova.org
Web: http://idu-moldova.org

Association for Participatory Democracy
Vasile Alecsandri Str., 97, Chisinau, Moldova
Phone: + 373 22 213494, Fax: +373 22 212992,
E-mail: adept@e-democracy.md,
Web: http://www.e-democracy.md

Independent Think-Thank "EXPERT-GRUP"
Puşkin Str., 45 , Chişinău, Moldova, MD-2005
Phone: +373 22 929994, Fax: +373 22 212151
Email: info@expert-grup.org, Web: http://expert-grup.org

Centre for Independent Journalism
Sciusev Str., 53, Chisinau, Moldova, MD-2012
Fhone: +373 22 213652, +373 22 227539, Fax: +373 22 226681
Email: ngogu@ijc.md
Web: http://media-azi.md

WatchDog.MD Community
Sciusev Str., 68, Chisinau, Moldova, MD-2012
Email: contact@watchdog.md
Web: https://watchdog.md

Institute for European Policies and Reforms
Bucuresti Str, 90, of. 20, Chişinău, Moldova, MD-2001
Phone : +373 22 788989
Email: info@ipre.md,
Web: http://ipre.md/

Institute for Development and Social Initiatives (IDIS) "Viitorul"
Iacob Hîncu Str., 10/1, Chişinău, Moldova, MD-2005
Phone : +373 22 210932, Fax : +373 22 245714
E-mail: office@viitorul.org
Web: http://www.viitorul.org

Table of contents

Introduction

This report includes a compilation of summaries on monitoring public policies conducted by the members of EaP CSF, Moldovan National Platform, Working Group 1 within various projects since the last Annual Assembly of the Eastern Partnership Civil Society Forum in 2017.

The evolution of events in the past two years proves worsening of the situation regarding compliance with the democratic principles and the rule of law. Adopting the electoral legal framework to the only benefit of the ruling party, ignoring the recommendations of national experts and the Venice Commission; suppressing two initiatives of civil society for a National Referendum against the mixed electoral system; invalidating the results of the local elections in the capital of the country won by the opposition parties; extending the political migrations to an unprecedented scale via financial leverages, corruption and blackmailing; miming the process of resetting the anti-corruption system leaving the National Integrity Authority un-functional for two years; using the law enforcement institutions as tools to suppress the political opponents and business competitors; continuing resonant judicial processes with closed doors; leaving impunity to the persons who conceived and committed the USD 1 bank fraud; coming with multiple initiatives aiming at legalizing the money with fraudulent provenience; manipulating the public opinion via controlled mass-media and constraining the space for the free media; persecuting civic activists, whistleblowers, attorneys; violent oppression of peaceful protests – all the above are clear signs of the phenomenon called state capture.

The main findings, conclusions and recommendations are presented in brief summaries on monitoring such domains as EU association, anticorruption, justice sector, economy, media freedom, human rights, democracy and electoral standards. The report closes with a compilation of public appeals and declarations made by the members of the National Platform.

1. EU Association Agreement

1.1 *Institute for European Policies and Reforms:* Second Shadow Report of the EU-Moldova Association Agreement (Quarter I-III, 2017)

The purpose of this Alternative report is to provide an independent evaluation of the outcomes registered in the implementation of the Association Agreement in line with the objectives set out in the NAPIAA[1] II (2017-2019), in particular during the first quarter of 2017. In this regard, the report includes a quantitative, qualitative evaluation, accompanied by an estimation of the implementation effort, as well as by a qualitative analysis of the key areas with multiplier effect, which refers to each of the five monitored Titles of the NAPIAA. In the qualitative analysis the authors took into account the last developments, which occurred by 15 December 2017.

Therefore, this report has looked at **390 measures of the NAPIAA, monitored during Quarters I-III of 2017** as follows: **212 measures** with the deadline in Quarter III, 2017 and **150 measures** with continuous implementation (2017-2019). It has also taken stock of **28 measures,** whose deadlines went beyond Quarter III of 2017, but which were implemented before the deadline.

Implementation Rate of the NAPIAA (Quarter III, 2017) - 34.1% - Implemented measures

	Nr. of measures	implemented		In course of implementation	Not implemented
Total measures assessed during the reporting period	**390**	**161**		**119**	**110**
Measures to be implemented by Q III	212	78		86	48
Measures with continuous implementation	150	55		33	62
Measures implemented before the deadline	28	28		-	-
PNAIAA II (2017 – 2019)		*1411*	*161*	*119*	*110*

The results of the quantitative evaluation show a 34.1% implementation rate of the NAPIAA, which indicates that only a little more than 1/3 of the planned actions were fulfilled within the reference period. The most results are noted in the implementation of measures corresponding to Title V (DCFTA), with the implementation rate of 43.6%, followed by Title VI (Financial assistance and anti-fraud provisions) – with a rate of 34.5% and Title IV (Economic and sector cooperation) – with a rate of 33.9%. The fewest results are noted in Title III (Justice, freedom and security).

The statistic evaluation is complemented by the **implementation effort index,** which aims at measuring the level of engagement and efficiency of the authorities in implementing the NAPIAA.

According to the authors' estimations, **the national authorities have undertaken efforts which are half of the planned potential, registering an index of 53%.** The biggest effort was made in accomplishing the measures provided for in Title V, which has set out issues like trade and establishment of a Deep and comprehensive free trade area with the EU (DCFTA). The least effort was made to accomplish the objectives of Title II of the NAPIAA, that refers to Political dialogue and reforms.

General Appreciations – PNAIAA II – Limited progress (Nota 3):

Making a synthesis of the **conclusions of the qualitative analysis** through the light of the results achieved in relation to the key areas relevant to the 5 Titles of the NAPIAA, **the authors of the report have identified that in the reference period the national authorities have registered limited progress in implementing**

[1] National Action Plan for the Implementation of the EU-Moldova Association Agreement

the objectives, set out in the NAPIAA, which is confirmed, to a large extent, by the quantitative evaluations. Therefore, in spite of a moderate progress in the implementation of actions planned in Title V (DCFTA), which sets out certain actions relevant to the capitalization upon free deep trade with the EU, there is significant limited progress or lack thereof (Title III) in other Titles of the NAPIAA. Below are the **main findings and assessments following the qualitative analysis** of the five evaluated titles of NAPIAA.

The results achieved in **Title II indicate a limited progress**:

- There are some important results in the area of **Foreign and Security Policy** in particular by singing the Agreement with the EU on security proceedings for the exchange and protection of classified information.
- In the area of **Regional stability** there are developments in the negotiation process in "5+2" format, expansion of the EUBAM mandate and the initiation of joint control of the Moldovan-Ukrainian border on the Transnistrian segment.
- In **Political dialogue,** even if the political Moldova-EU relations show more intensity during the reference period as compared to 2016, along with the promotion of the Action plan on the implementation of the Strategy for consolidating interethnic relations, however, there are involutions voiced by some civil society organizations in relation to the **electoral reform,** which, as a matter of fact has not been planned, in the NAPIAA and might impact the functioning of the democratic institutions in the context of parliamentary elections in the autumn of 2018.
- Moreover, as regards **Domestic reform** there are some regresses related to the **failure to promote the new law on non-commercial organizations,** that have added even more to the worsening of the cooperation with the civil society.
- With regard to **Human rights** there are delays in the approval of the new NHRAP III, although it had been already developed.
- In the **Prevention of corruption** there are no significant developments related to the enforcement of the new package of laws on integrity, as there is no functional NIA. On the other hand, non-transparent procedures for promoting new members in the SCM and SCP show limited political will in advancing the **justice sector** reform.

Although some actions per sub-domains within **Title III** had been undertaken, **in general there is a lack of progress**:

- The area of the **Rule of law did not advance**, thus missing the opportunity of reforming the judiciary and the Constitutional court, by not approving the draft laws on amending the Constitution. A new draft with similar contents to the draft of 2016 for the judiciary was registered in the Parliament early December 2017.
- **The roles of the SCM and SCP was not strengthened**, while the elections of the members of SCM and SCP took place without a comprehensive process of debates and presentation of programs by the candidates. **The Parliament ignored the requirements of transparency and public debates on SCM and SCP** by the academia/civil society.
- There are several initiatives on the agenda of the Ministry of Justice that refer to the simplification of the procedures of looking into civil matters and building the functions of judicial inspection, but which are, yet, at the approval stage.
- **No progresses were registered in promoting public policies that refer to personal data protection**. The area of **fight against corruption registered progresses in adopting public policies and planning documents – NACS and the Integrity Law.** In spite of these, no demotivating sanctions for acts of corruption were promoted, being returned to the NACC for improvements.
- **Whistleblowers' protection has not had new public policies approved.**
- **The draft Law on preventing and combating money laundering was not adopted,** neither the department level implementation acts.

THE QUALITATIVE ANALYSIS OF THE ACTIONS PLANNED FOR TITLE IV INDICATE LIMITED PROGRESS:

- *THE REFORM OF THE PUBLIC ADMINISTRATION WAS INITIATED **BY ADOPTING A NEW LAW ON THE GOVERNMENT AND BY REFORMING THE MINISTRIES, THEIR NUMBER BEING REDUCED FROM 16 TO 9. AT THE***

MOMENT, THE REFORM OF PUBLIC AUTHORITIES AND PUBLIC INSTITUTIONS SUBORDINATED TO THE MINISTRIES IS BEING CARRIED OUT.

- *CERTAIN AMENDMENTS TO THE LEGAL FRAMEWORK, THAT REFER TO THE COMPANY LAW HAVE BEEN INITIATED**, INCLUDING IN RELATION TO BOOK-KEEPING, AUDIT OF FINANCIAL SITUATIONS, LISTING OF TRADING COMPANIES ON THE STOCK EXCHANGE, MERGER OF COMPANIES, REORGANIZATION AND LIQUIDATION OF LEGAL ENTITIES, AS WELL AS THE TRANSPOSITION OF EU REGULATIONS THAT REFER TO LIMITED LIABILITY COMPANIES.***
- *THE LAWS ON THE OPERATION OF BANKS AND NON-BANKING FINANCIAL COMPANIES **WHICH BELONG TO A FINANCIAL CONGLOMERATE** HAD BEEN ADOPTED**, AS WELL AS ACTS WHICH TRANSPOSE PROVISIONS ON ADDITIONAL STANDARDS FOR BANK ADMINISTRATORS AND HOW BANKS ARE ADMINISTERED HAD BEEN APPROVED. ALL THESE MEASURES WERE FAVORABLY APPRECIATED IN THE CONTEXT OF THE IMF PROGRAM.***
- *IT HAD NOT BEEN MANAGED TO PASS THE LAW ON PREVENTING AND COMBATING MONEY LAUNDERING AND TERRORISM FINANCING**, THAT HAD TO BE PASSED ON THE BASIS OF THE NAPIAA BEFORE, AS EARLY AS 2015.***
- *THE PROCESS OF TRANSPOSING **INTO THE PRIMARY LEGAL FRAMEWORK OF THE ENERGY PACKAGE III** HAD BEEN FINALIZED. **NEVERTHELESS, THE ELECTRICITY PROCUREMENT PROCEDURES IN 2017 DID NOT FULLY COMPLY WITH THE ENERGY PROCUREMENT STANDARDS. FOR 2018, THE ADVANCEMENT OF ELECTRICITY INTERCONNECTION PROJECTS WITH ROMANIA AND THE NATURAL GAS PIPELINE UNGHENI-CHISINAU REMAINS A PRIORITY.***
- ***THE ACTIONS RELATED TO THE PROMOTION OF RURAL AND REGIONAL DEVELOPMENT** HAD NOT ADVANCED SIGNIFICANTLY.*
- *THE COOPERATION WITH THE CIVIL SOCIETY DECLINED **DUE TO THE FAILURE TO PROMOTE THE LAW ON NON-COMMERCIAL ORGANIZATION AND THE ATTEMPTS TO IMPOSE RESTRICTIONS ON THE PARTICIPATION OF THE CIVIL SOCIETY IN DRAFTING AND PROMOTING PUBLIC POLICIES, AS WELL AS POLICIES RELATED TO THE FINANCING CIVIL SOCIETY ORGANIZATIONS FROM ABROAD. THE LANGUAGE OF THE POLITICAL RHETORIC TOWARDS THE CIVIL SOCIETY ORGANIZATIONS WAS INTIMIDATING AND RESTRICTIVE. A NUMBER OF CIVIL SOCIETY ORGANIZATIONS SIGNALED ISSUES RELATED TO THEIR ACTIVITY, INCLUDING VIA MULTIPLE OPINION POLLS, WHERE THE QUESTIONS RELATED TO THE CIVIL SOCIETY WERE BIASED. THOUGH THE PARLIAMENT HAD PUT FORWARD A DRAFT STRATEGY OF CIVIL SOCIETY DEVELOPMENT IN MOLDOVA, THE DRAFT HAD NOT BEEN APPROVED WITHIN THE REFERENCE PERIOD.***

The most qualitative results were registered in the implementation of the measures within **Title V, which indicates, in general, moderate progress:**

- Exports to **the EU slightly increased** compared to the same period of 2016, while for certain product chapters, which are limited by tariff quotas (in particular fruit), there were significant exceeding of the limits set out in the AA/DCFTA.
- At the same time, **it had not been, however, succeeded to promote exports of food products such meat products, dairy products and eggs,** due to lack of a significant progress in implementing **commitments in sanitary and phytosanitary measures**, in spite of undertaking actions, such as (1) transposition of a set of technical regulations on fighting against avian influenza, (2) enforcement of the rapid alert system for cases of identifying diseases in the livestock sector and creation (3) of a sanitary and phytosanitary inspection post, that was opened at Leuseni border crossing point.
- **A new e-procurement system** (MTender) **was launched** in April 2017 **as a pilot**, **however, it refers only to low value public procurement.** At the same time, **there were legal initiatives which try to promote waivers from the public procurement rules** for some public institutions. For instance, the initiative to waive procurements for the Public services agency, which affects the transparency and competitive basis of public procurement.
- In a different context, **the National Program on Competition and State Aid for 2017-2020** (NPCSA) **was approved,** amendments to the Criminal code regarding the **exoneration from criminal liability of entrepreneurs which cooperate with the Competition Council within leniency programs** had been drafted, **however, these had not been approved yet.**

There is limited progress in Title VI:

- **The EU multiannual framework of assistance for 2017-2020** had been negotiated and approved.
- The management of the **Asset recovery agency** was appointed, however, one tried to transfer the new authority under the Ministry of Finance, which affected the full operationalization of the ARA in the shortest period of time.
- NACC was appointed as the institution responsible for the cooperation with **OLAF**. Also, a number of **investigations on frauds involving European funds** were initiated.
- The Memorandum of understanding with the EU, Loan and grant agreements on **providing macro-financial assistance to the Republic of Moldova** amounting to 100 mln. euro had been signed. Nevertheless, the negotiation process was **influenced by the promotion of electoral reform,** disregarding the urges from a number of civil society organizations and European institutions to postpone it due to the lack of wide consensus on this reform and it risk to impact the functioning of the democratic institutions.
- For the first time, the **disbursement of the macro-financial assistance installments will be conditioned by an evaluation of the state of the art in relation to the functioning of the multi-party system, the rule of law and human rights,** on top of the 28 technical and legal conditions.
- Within the reference period, the Republic of Moldova go no installment within the budget support programs. Moreover, the European Commission, for the first time, **cancelled the last installment of the budget support** for the justice sector. Still, according to the last announcement of the European Commission, the Republic of Moldova shall receive payments for the budget support programs active in 2017 amounting 36.3 mln. Euro (out 47 mln EUR planed) by the end of this year.

Following these findings, the authors of the report provide a set of **Recommendations** relevant to each evaluated Title, in particular taking into account the process of NAPIAA II update, planned for the following period by the authorities to include the priorities agreed upon within the new EU-Moldova Association Agenda (2017-2019).
http://ipre.md/2017/12/22/al-ii-lea-raport-alternativ-privind-implementarea-acordului-de-asociere-cu-ue-trimestrul-i-iii-2017/?lang=en

1.2 *Legal Resources Centre from Moldova*: Shrinking Space for Civil Society in Moldova

This briefing paper analyses the extent to which Moldova implemented its commitments under the EU-Moldova Association Agreement on ensuring an enabling environment for civil society and the Civil Society Organizations (CSOs) participation in the decision-making process.

A worsening situation in civil society resulted from several legislative initiatives that put the operational environment at risk for Moldovan CSOs. Of particular concern is the attempt to introduce legislation that would prohibit political activities and legislative advocacy by the NGOs that receive foreign funds. The controversial provisions were dropped in the draft law approved by the Government at the end of March 2018, which looks similar to the version drafted together commonly with the civil society. However, this delayed the legal changes necessary to improve the conditions for civil society. The draft law needs to be adopted by the Parliament in order to enter into force. The re-introduction of the controversial amendments in the Parliament cannot be fully excluded. The current legislation on non-commercial organizations is outdated and grants the Ministry of Justice substantial powers to interfere in all aspects of any NGO's activity. The Ministry of Justice has made it clear that they intend to maintain this prerogative.

In addition, the new Civil Society Development Strategy for 2018-2020 was only adopted at the end of March 2018, potentially undermining the implementation of activities for the first year. The new 2018-2020 Civil Society Development Strategy was developed by mixed working groups and a group of MPs registered the draft in the Parliament on 22 December 2017. Importantly, the civil society contributed to most of the recommendations reflected in the final text of the document. However, there is no budget support for a series of actions. Unity at the level of the State Chancellery responsible for coordination of the activities related to civil society raises questions about its real functionality taking into account the reform of the central public administration conducted by the government since 2017.

After opposing the controversial amendment of the electoral system, Moldovan CSOs are under constant attacks from public officials, and other entities affiliated with the ruling party, including mass media, bloggers and online trolls. Several Moldovan CSOs reported the attacks against CSOs, in a chronological order, undertaken between 2016 and 2017.

Inclusion of the civil society in the legislative process has gradually improved in the last years. However, the final impact on policy-making remains limited. In many cases, the draft laws and regulations, brokered between CSOs and government, are approved in the Parliament with significant changes from the initial draft. The Regulation of the Parliament does not provide clear provisions about public consultations of draft legislation with the participation of civil society. Moreover, it does not provide rules for the procedure of adoption of draft legislation in the emergency procedure. Last but not least, the amendments of MPs for the second reading are not published on Parliament's webpage, which restrains CSOs from intervening in a timely manner in the decision-making process.
https://crjm.org/wp-content/uploads/2018/08/2018-Civil-Society-Macrinici.pdf

1.3 *Expert-Grup, ADEPT, LRCM*: Monitoring Report on the Implementation of the Priority Reform Action Roadmap (July - December 2017)

The deadline for implementation of the Priority Reform Action Roadmap for the second semester of 2017 expired at the end of 20171 . It was signed on 5 July 2017 by the Government and the Parliament of the Republic of Moldova. As stated by its authors, this document was designed to synchronize the efforts of both institutions to implement a series of urgent commitments under the EU-Moldova Association Agreement, as well as to boost some reforms in order to strengthen relations with the International Monetary Fund and other development partners. As a matter of fact, the Roadmap aims to increase the confidence of development partners and the citizens in the government by promoting a number of priority policies in two core areas: (i) development of good governance and rule of law, with a focus on the public administration reform, justice and anti-corruption; and fundamental rights and freedoms; and (ii) economic development and functioning market economy, with a focus on the governance of the financial and banking sector; investment and business climate; agriculture and food safety; education, culture, science; and social programs.

The Independent Think Tank 'Expert-Grup', the Association for Participatory Democracy 'ADEPT' and the Legal Resources Centre of Moldova, with the support of USAID, initiated the process of monitoring the implementation of the Roadmap in order to provide the general public with an independent opinion on the progress of priority reforms undertaken by the Government and the Parliament, and to enhance the accountability of the Government in this respect.

The Report provides an independent evaluation of the implementation of Roadmap provisions for the entire period set in the document, 5 July – 31 December 2017. The document covers eight policy areas, with a summary of developments for each of the actions, comments on the main concerns and achievements, and a list of relevant policy recommendations.

Only half of the actions covered by the Priority Reform Action Roadmap were implemented. By the deadline for implementation of the Roadmap, its level of implementation was estimated to about 55% (Figure 1). Of the 51 planned actions, only 28 were achieved. Furthermore, 10 of these were rated as 'achieved with concerns', with reasons ranging from nonobservance of the decision-making transparency to content-related issues requiring substantial improvements. At the same time, 22 actions, or 43% of the total, were initiates, but not finalized. Therefore, the risk highlighted in the interim assessment report published on 1 December 2017 regarding the delayed implementation of various actions, materialized. Like in the previous report, we state that the main reasons for breaking deadlines are too ambitious timeliness, as well as the effects of the public administration reform that temporarily affected the pace of reforms in general and the implementation of measures set out in the Roadmap in particular.

The highest level of implementation was estimated in the field of 'Governance in the financial and banking sector', and the lowest level was registered in the area of 'Justice and fighting corruption'. Thus, of the 8 actions planned in the field of 'Governance in the financial and banking sector', 6 actions were achieved without concerns, 1 – with concerns and 1 – initiated but not finalized. The high level of implementation is the result of the pro-active orientation of the institutions from this sector (particularly the NBM), including in the context of the Memorandum with IMF. In contrast, the field 'Justice and fight against corruption' registered

weak progresses – 9 of 10 planned actions were initiated but not finalized. The causes of such a negative performance are related to the poor institutional capacity, weak political will and too ambitious timeliness. We must also note the field of 'Public administration reform', where 5 of 6 planned actions were achieved with concerns. The main reason for this is that the reform, although implemented at a relatively high pace (such reforms are complicated, and usually are implemented slowly if are evidence-based and the aim is to improve the public administration activity), is not based on functional reviews and empirical evidences. Hence, it is perceived rather a political reform than one to improve public policies, and is not implemented in a transparent and predictable way.
https://crjm.org/wp-content/uploads/2018/02/Raport-final_Monitorizarea-foii-de-parcurs_EN.pdf

2. Anti – Corruption and Justice Sector

2.1. Institute for Urban Development and Transparency International-Moldova: Monitoring the Implementation of the Public Administration Reform and Resource Distribution

The scope of this study is to monitor the implementation of the Action Plan for 2016-2018 for the implementation of the Public Administration Reform Strategy for 2016-2020 (AP of the PAR Strategy), to follow up on the progress, identify difficulties in the implementation of this reform and to work out recommendations for improvement.

The study monitored the planned reform of the public administration for the period June 2017 - May 2018, evaluating the level of achievement of the result indicators.

Monitoring the implementation of the AP of the PAR Strategy during the reference period reveals the following general findings:

Public administration reform is a priority assumed by the Government as a prerequisite for reforming other sectors. The reform is based on the PAR Strategy developed with support and international expertise. Although the Public Administration Reform Strategy is broadly a good document, the Action Plan of the PAR Strategy does not always correspond to the problems identified by it. A number of result indicators are confusing, unclear and do not meet general and specific objectives. The Action Plan was developed in a hurry without sufficient consultation of the associative and academic environment.

The PAR Strategy provides for a monitoring of its implementation at government level and includes procedures, terms, responsibilities and forms of half-yearly and annual reporting. *However, over two years after the Strategy was approved, the authorities did not publish any official report on the results of its implementation.*

Implementation of planned actions is made with delays and deviations from the Action Plan. For the period June 2017 - May 2018 in the AP of the PAR Strategy, 20 actions were planned with 47 result indicators. Out of these indicators almost half are still under way, 1/3 - they have not been achieved and only a little over 1/5 of them have been achieved within the deadline and beyond the set deadline.

During the monitoring process there were multiple cases when the authorities avoided responding to formal requests for public information, provided evasive answers, or provided similar answers to several different indicators. This rather speaks of a possible lack of awareness on the implementation status of these actions, an insufficient co-operation between authorities and their partners, or an eventual loss of institutional memory as a result of the reorganisation of public authority. In some situations, the partner authorities noted that they were not at all contacted or involved by the responsible institution in any joint action.

Ministerial reorganisations made in the first stage of implementing the reform have not yet delivered the expected effect and have no expected impact on the other planned strategy actions. Thus, in the reorganisation and merging of ministries, some areas with counterbalance competencies (eg agriculture and the environment, medicine and social protection) have come to be managed by a single ministry, which generated conflicting functions/attributions. The mechanism for assessing needs and costs that would argue for the creation and reorganisation of public authorities and institutions has not been developed. The methodology of self-evaluation of public authorities and institutions has not been developed. In the context of the reorganisations, a number of new entities have been created, the activity of which is invisible to the general public (eg the Reform Implementation Centre, the Prime Minister's Control Corps).

Actions to improve the strategic planning and policy-making system aligned with the budget process and connected to the SIGMA principles of public administration are stagnating. The methodological documents on the decision-making process, the drafting, approval, monitoring and evaluation of public policy documents have not been elaborated. Even if some strategic documents of the new ministerial structures have either been elaborated or are in the process of elaboration, the process is carried out based on old methodological approaches. The State Chancellery has started the procedure for improving the system of planning, monitoring and recording of policies, but the process has not yet finished.

The quality of some normative acts elaborated for the implementation of the PAR Strategy is poor, particularly those related to the delimitation of public property, desirable.

Although in the context of reform it is extremely important to ensure access to information and compliance with the rigors of decisional transparency, the existing situation shows deviations from these requirements. The monitoring results reveal that some of the draft legal acts, policy documents, methodologies were not subject to public consultations and debates. The web sites of the central public authorities have not been sufficiently up-to-date; they often do not publish mandatory information such as: planned and executed budgets; public procurement results; anti-corruption activities; the results of the controls carried out in the authorities. The vacancies are contained in the abrogated normative acts.

Focusing the attention of public authorities only on reforming the central administration structures has led to arrears in the area of decentralization actions and the consolidation of local autonomy. One of the most sensitive and long-awaited actions - administrative-territorial reform, remains a topic that generates speculation and controversial exchange of views. Although it was planned for completion by the end of 2017, it is still unclear what is planned and how the administrative-territorial reform will be carried out. The working group on the subject of reform activates non-transparently. Public consultations with key actors are conducted without a clear concept and without conclusive predictions and approaches. The Study and the Roadmap on Administrative –Territorial Reform are not known to the public. All this amplifies the lack of consensus on the implementation of administrative-territorial reform.

The actions to develop the normative and methodological framework for the delimitation of competencies, the modernization of the public services, the increase of their efficiency, the increase of the accessibility and the implementation of the quality and cost standards, the elaboration of the tariff calculation methodologies are still in the process of extensive examination within the different CPA structures.

The process of strengthening institutional and professional capacities at the level of CPA and LPA that could ensure the effective implementation of the reform and the provision of public services is achieved with syncope. Although it has been planned to develop several training programs for civil servants from the CPA and LPA and to conduct training courses, these have been accomplished only partially. There is insufficient communication between the State Chancellery and the Academy of Public Administration in carrying out actions to strengthen professional capacities.

Over the past two years, the phenomenon of political migration in the Moldovan public administration has reached unprecedented proportions. Expansion of this phenomenon would be explained by corruption or "buying political support", as well as by amplifying the practices of threatening and intimidating local elected representatives. Hundreds of mayors and members of local councils have left their parties, many of them claiming they have been harassed by justice or lacking resources. This phenomenon destroys the "check and balance" mechanism from the side of society and erodes the possibilities of the population to punish local elected officials who have not justified the expectations.

Despite improvements generated by the implementation of a new system of inter-budgetary relations, the allocation of financial resources from the state budget and existing government funds is still used as a means of agreeing "political loyalty" and stimulating "political migration" of local elected representatives. Even more alarming are the media signals that the results of collecting signatures in the list of donations in favour of the ruling party (PDM) serve as a base for the distribution of funds. Thus, by falsifying the lists of political party donors, the means of important projects for localities are put in place.

In addition to the technical recommendations set out for each of the monitored actions (see the annex|), the following **general recommendations** were formulated in the study:

- Updating the Action Plan content of the PAR Strategy, reviewing planned actions and outcome indicators to adjust them to the problems identified in the Strategy;
- Synchronising the planned actions in the PAR Strategy and National Decentralization Strategy, especially on such components as decentralization of patrimony, skills, services;
- Organising broad consultations on Action Plan adjustments to the PAR Strategy with CPA and LPA representatives, associative and academic environment to correlate the issues identified in the Strategy with planned actions, progress indicators and specific objectives;
- Ensuring genuine process of public consultations and debates on draft normative acts (laws, government decisions) implementing the implementation of reform actions;
- Ensuring transparency over the implementation of the PAR Strategy, in particular the publication of semestrial and annual reports on its implementation;

- Ensuring transparency of the work of public authorities, especially newly created entities under the reform (Centre for the Implementation of Reforms, Prime Minister's Control Body, etc.), updating the public authorities' web pages;
- Finalising the conceptual documents (studies, reforming models, etc.) and starting as soon as possible wide consultations on the subject of the administrative-territorial reorganization of the Republic of Moldova;
- Strengthening and expanding in Action Plan of the PAR Strategy of the LPA capacities building component, particularly on public property management, sustainable development, writing application for funds, elaboration of sustainable development strategies, etc;
- Eliminating the practice of resource allocation from the state budget and government funds on political criteria. Taking by the law enforcement bodies a proper attitude towards the cases of fraudulent distribution of funds reported by the media[2].

http://www.transparency.md/wp-content/uploads/2018/07/STUDIU-FINAL-2018_07_17.pdf

2.2 *Transparency International – Moldova:* Monitoring the Process of Re-setting the Anticorruption System (October 2017 - June 2018)

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

- The appointment of the Chair and Vice-Chair of the National Integrity Authority (ANI);
- The appointment of integrity inspectors into service;
- The appointment of the Director and Deputy Director of the National Anti-Corruption Center (NAC);
- The declaration of the unconstitutionality of certain provisions of Law no. 271/2008 regarding the verification of the holders and candidates for public positions (Law 271/2008);
- The declaration of the unconstitutionality of certain provisions of Law no. 132/2016 on the National Integrity Authority (Law No 132/2016);
- The implementation of policy documents in the field.

Appointment of the Chair and Vice-Chair of the National Integrity Authority (NIA)

The competition for the appointment of NIA Chair and Vice–Chair continued with difficulties[3]. On October 9,[4] due to the failure to pass the polygraph test by the candidates Victor Strătilă and Teodor Cârnat, the Integrity Council (IC) decided to announce a new contest to fill the position of the Chair of NIA[5]. Later, on November 27,[6] candidates Rodica Antoci, Francisco Talmaci and Lidia Chireoglo were admitted to the competition. The results of the competition have been validated on December 22[7], but on December 29, [8] Rodica Antoci was appointed as the Chair of the NIA.

As for the position of Vice Chair of NIA, on October 23, 2017[9], Lilian Chisca and Francisco Talmaci were admitted to the contest. The results of the contest were validated on December 6[10], and Lilian Chisca was appointed as vice-president of ANI on December 21st[11].

---

[2] http://www.jurnaltv.md/news/46e0216550fa782f/munca-de-partid-a-lui-veaceslav-burlac.html

[3] See for details the 2018 PromoLex, https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf.

[4] Decision of the Integrity Council on the results of polygraph tests, nr. 6 of 09.10.2017, http://ani.md/sites/default/files/documente/Hotarire.pdf.

[5] Announcement on the repeated contest for the position of Chair and Vice-Chair of NIA published on October 10, 2017 , deadine for the application being November 6, 2017, http://ani.md/ro/node/26.

[6] Minutes of the meeting of Integrity Councyl, nr. 35 of 27.11.2017, http://ani.md/sites/default/files/documente/Proces-verbal%20nr.%2035%20%C8%99edin%C8%9B%C4%83%20Consiliu%2027.11.2017.pdf.

[7] Minutes of the meeting of Integrity Councyl, nr. 38 din 22.12.2017, http://ani.md/ro/node/30.

[8] Decree of the President nr. 543 din 29.12.2017 on appointing Ms. Rodica Antoci in the function of Chair of the NIA, Monitorul Oficial al RM, 2017, nr. 471-472, art. 821.

[9] Minutes of the meeting of Integrity Councyl on the admission of the candidates to the contest for the position of Vice-Chair of the NIA, nr. 8 din 23.10.2017, http://ani.md/sites/default/files/documente/Hotararea%208%20din%2023.10.2017.pdf.

[10] http://www.realitatea.md/ultima-ora--lilian-chisca-a-trecut-testul-la-poligraf-si-va-fi-propus-presedintelui-tarii--pentru-a-fi-numit-in-functia-de-vicepresedinte-al-ani_68398.html.

[11] Decree of the President nr. 507 of 21.12.2017 on appointing Lilian Chișca in the function of Vice-Chair of the NIA, Monitorul Oficial al RM, 2017, nr. 451-463, art. 784.

In addition to the fact that the contest lasted for a year, it is worth noting that, despite the regulations in force, the applicants were not checked by the Security and Intelligence Service (SIS) for appointment to office. It is also worth mentioning that the appointments were made despite the inconclusive results of the polygraph test.

The appointment of integrity inspectors into service

By the decision of the CI nr. 02 of February 21, 2018, the Regulation on the contest for filling the position of integrity inspector was adopted[12]. The regulation became applicable on April 2, 2018, the date of its publication in the Official Gazette of the Republic of Moldova. The normative act establishes the procedure for organising and conducting the contest, the way of setting up, the composition and attributions of the competition commission, as well as the attributions of other subjects involved in the process of organising and conducting the contest. The contest itself was launched on April 12th[13], the deadline for submission of applications was May 4th. The contest was announced for 9 positions, to which 43 submissions were submitted[14]. During the meeting of May 15th, the Commission for organising and conducting the competition to fill the role of integrity inspector did not admit 11 of the 43 candidates. The reason given was the inappropriateness of the persons concerned to apply for the integrity inspector[15].

The written test for candidates was held on May 21, with 30 candidates being presented, of which only 10 passed it[16]. Latterly, on May 28, six candidates passed the interview[17]. The results of the contest were announced on June 11, 4 candidates being announced as winners[18].

It is noteworthy that NIA has 76 positions/units (integrity inspectors, civil servants, technical personnel). The staff limit and the structure of NIA was set on February 8, 2018, by Parliament's Decision no. 09[19]. It is not clear why the contest was only launched for 9 integrity inspector functions. The staff of the Integrity Inspectorate (ANI subdivision invested directly with control functions) consists of 43 units (integrity inspectors)[20]. An eventual cause could be a budget inappropriate for the wage conditions of integrity inspectors, and the budget is not revised by Parliament. According to the annual budget plan 2018, NIA was allocated 5 573.2 thousand lei, which is by 327.4 thousand lei less than the 5 900.6 thousand lei allocated for 2017[21]. Obviously, the 4 employed Integrity Inspectors can not meet the needs of the NIA is not met and the perspective of efficiently verifying the declarations of wealth and personal interests is seriously jeopardized. We recall that the control activity was suspended from August 2016, with ANI remaining virtually inoperative for two years.

Appointment of the Director and Deputy Director of the National Anti-corruption Centre (NAC)

The competition to fill the position of director of the NAC was organized and carried out by Parliament's Legal Commission, Appointments and Immunities[22]. It is worth mentioning that, in fact, the legal provisions regarding the competition have not been developed[23]. Regulation on the competition for the selection of the candidate for the position of director of the National Anticorruption Centre, approved by the Decision of the Legal Commission, appointments and immunities of Parliament, CJ no. 197a of 18.10.2017[24], contains only two

---

[12] Minutes of the meeting of Integrity Councyl nr. 2 of 21.02.2018 on the adoption of the Regulation on the contest for filling the position of integrity inspector, Monitorul Oficial al RM, 2018, nr. 113-120, art. 488, http://ani.md/ro/node/168.

[13] NIA announces a contest for filling the position of special public function of integrity inspector starting with April 12, 2018, http://ani.md/ro/node/307.

[14] http://ani.md/ro/node/319.

[15] http://ani.md/ro/node/328.

[16] http://ani.md/ro/node/329.

[17] http://ani.md/ro/node/334.

[18] http://ani.md/ro/node/342.

[19] Decision of the Parliament nr. 09 din 08.02.2018 on the adoption of the structure and number of staff members of the NIA, Monitorul Oficial al RM, 2018, nr. 48-57, art. 125.

[20] NIA organigram, http://ani.md/ro/node/14.

[21] NIA,Activity Report of NIA for January – March 2018, p. 7, http://ani.md/ro/node/147.

[22] Report PromoLex 2018, pp. 33-34, https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf.

[23] Provisions regarding the appointment of the director and deputy director of the CNA are in Art. 8 of the Law no. 1104/2002 on the National Anticorruption Center.

[24] Decision of the Legal Commission, Appointments and Immunities "On the announcement of the contest for the selection of the candidate for the position of director of the National Anticorruption Center", CJ no. 197a of 18.10.2017,http://www.parlament.md/LinkClick.aspx?fileticket=0YeX3pU9UUc%3d&tabid=248&language=ro-RO.

points. These refer to the requirements submitted to the candidate as well as the procedure for submitting the dossiers.

The contest was announced on October 19[25], the deadline for submission of the files was November, 29. There were 6 participants in the contest[26], the winner being Bogdan Zumbreanu, who is appointed on 15 December 2017 as Director of the NAC by the Parliament Decision no. 286[27]. It is worth mentioning that Parliament's webpage practically does not contain information about this competition. Applicants were exempted at the filing stage of their presentation of the vision of the NAC development strategy. Similarly, the written test was dropped. Regardless of the regulations, neither the civil society representatives, nor the representatives of the academic media were involved in organising and conducting the contest.

Regarding the Deputy Director of the CNA, Lidia Chireoglo was appointed to this position on May 11, 2018. The nomination was made on the proposal of the Director of NAC, following the contest organized and carried out by this institution.

Declaring the unconstitutionality of certain provisions of Law no. 271/2008

By the Constitutional Court's Decision no. 32 of December 5, 2017[28], some provisions of Law no. 271/2008 (Articles 5 (e) and 15 (2), (4) and (5)) were declared unconstitutional in the part relating to the examination of candidates for the position of judge and judges who are already holding these positions. In our opinion, the arguments of the Constitutional Court are not sufficiently convincing.[29] We will only refer to one - the political dependence of the verification body, information and security service (ISS). It is noteworthy that, whenever it is convenient, the national institutions resort to this argument - the lack of political independence of an authority. With reference to this argument, starting from appointment, political dependence can equally be accused of judges, vice-presidents and the president of the Supreme Court of Justice. These, also, are appointed by the Parliament. In the same way, the independence of the Constitutional Court could also be disputed. We recall that two of the six members of the Constitutional Court are also appointed by the Parliament.

Law no. 271/2008 has deficiencies, including the advisory Vs. compulsory nature of ISS opinions or the mode of contesting the actions of ISS. The imperfections of the legal provisions are also proven by the many cases of appointment of judges, or their promotion despite the risk factors identified by the ISS[30]. However, legislative shortcomings could be overcome by legislative amendments[31].

In our opinion, in the case of judges and candidates for the position of judge, checking their past is justified and timely. This was also one of the issues assessed in the year 2016 by the Group of States Against Corruption (GRECO) in the fourth round of evaluation. GRECO was deeply concerned about the fact that some of the candidates for whom risk factors have been identified are called judges.

In this context, GRECO recommended that actions be taken to ensure that persons who pose risks of integrity are not appointed or promoted to the office of judge[32]. The RM is to comply with the recommendation and communicate the GRECO activities by January 31, 2018.

---

[25] Announcement regarding the competition for the selection of the candidate for the position of director of the National Anticorruption Center,http://www.parlament.md/Actualitate/Concursuripublice/tabid/248/ContentId/3426/Page/0/language/ro-RO/Default.aspx.

[26] Victor Mosneag, About the six candidates for CNA director: a political affiliate, one targeted in an investigation, another dismissed for incompetence, https://www.zdg.md/stiri/stiri-justitie/detalii-despre-cei-sase-pretendenti-la-functa-de-director-al-cna-un-afiliat-politic-unul-vizat-intr-o-investigatie-altul-demis-pentru-incompetenta.

[27] Parliament's decision on the appointment as director of the National Anticorruption Center, nr. 286 din 15.12.2017, Monitorul Oficial al RM, 2017, nr. 440, art. 735.

[28] Constitutional Court Decision no. 32 of 05.12.2017 on the objection of unconstitutionality of certain provisions of Law no. 271-XVI of December 18, 2008 regarding the verification of the holders and candidates for public positions (verification of judges by the Information and Security Service) (sesisation nr. 115g/2017), Monitorul Oficial al RM, 2018, nr. 40-47, art. 14.

[29] Promo-LEX report, 2018, pp. 15-18, https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf.

[30] Anastasia Nani, Victor Moşneag, Judjes with nine lives, https://anticoruptie.md/ro/investigatii/justitie/judecatorii-cu-noua-vieti-.

[31] Report on the assessment of the level of implementation of anticorruption instruments in the judiciary, CAPC, 2017, pp. 52-53, http://capc.md/files/RAPORT%20DE%20EVALUARE_FINAL_2.05.2017_versiune%20finala.pdf.

[32] Moldova's Evaluation Report adopted by GRECO at its 72nd Plenary Meeting, Strasbourg, 27 June - 1 July

Declaring the unconstitutionality of certain provisions of Law no. 132/2016

On April 10, 2018, the Constitutional Court declared unconstitutional the text "and who passed the simulated (polygraph) behavioural detector test" in Art. 11 par. (12) of the Law no. 132/2016[33]. Thus, the result of the polygraph test is no longer mandatory for the position of Chair and Vice–Chair of NIA. In fact, by this provision the text of the law is brought into line with the international and national standards in the field[34]. The Constitutional Court has held that the contested provisions may contribute to the selection of persons with no integrity problems for position of the Chair and Vice-Chair of the NIA and prevention of corruption within this institution. However, the legal provisions cited have been declared unconstitutional, starting from the uncertainty in some cases of the results of the polygraph test[35], but also from the legal provisions, according to which the results of the polygraph test are presumptive and indicative and can not constitute incontestable evidence in any procedure. From this perspective, the requirement of positive support for the polygraph test was considered a disproportionate measure, affecting the right to participate in the administration of public affairs and the right to work.

Nevertheless the Constitutional Court has not been able to remove all the deficiencies in the field. Without an essential review of the relevant legal framework, it is impossible to make this anticorruption instrument more efficient[36].

Implementation of policy documents in the field

Authorities report on the implementation of the National Integrity and Anti-Corruption Strategy for 2017-2020 with a considerable delay. In the spring of 2018, the monitoring groups of the strategy implementation process hear the first report in this regard.[37].

Regarding the Justice Sector Reform Strategy for 2011-2016[38], the authorities have, in fact, recognized the failure in this process[39]. A concept of the so-called Little Justice Reform[40] was presented by the Ministry of Justice. Thus, in the view of the authority, in order to ensure fair justice, the reform is to be based on: reforming the judiciary and assessing the integrity of all judges; restructuring the judiciary (finalizing the judicial map reform); strengthening accountability mechanisms for judges; strengthening the independence of the judiciary; increasing the efficiency and transparency of the judiciary; the reform of the system attorney services and the Constitutional Court.

The problem, however, is that authorities are so discredited in these efforts that reforms can no longer be treated seriously. Alexandru Tanase, the Minister of Justice, who launched the idea of the Small Justice Reform, after a massive media scandal, resigned[41]. There was an audio recording in the public space where he spoke amicably with Veaceslav Platon, who was later convicted in the bank frauds file.

2016, §§ 98, 101-102, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9b1a.

[33] Constitutional Court Decision no. 6 of 10.04.2018 on the objection of unconstitutionality of some provisions of Law no. 269 of December 12, 2008 regarding the application of the simulated behavior detector test (polygraph) and Law no. 132 of 17 June 2016 on the National Integrity Authority (polygraph test) (Sesisation nr. 147g/2017), Monitorul Oficial al RM, 2018, nr. 157-166, art. 76.

[34] Monitoring the employment / cessation of public functions in 2017, Promo-LEX, Chișinău, 2018, p. 20, https://promolex.md/wp-content/uploads/2018/06/Monitorizarea-modului-de-ocupare-incetare-a-functiei-publice-2017.pdf.

[35] It is the provisions of art. 22 par. (1) lit. j) of Law no. 269/2008 on the application of the simulated behavior detector test (polygraph).

[36] Report on the assessment of the level of implementation of anticorruption instruments in the judiciary, CAPC, 2017, pp. 54-60, http://capc.md/files/RAPORT%20DE%20EVALUARE_FINAL_2.05.2017_versiune%20finala.pdf.

[37] Parliament's Decision no. 56 of March 30, 2017 regarding the approval of the National Integrity and Anticorruption Strategy for the years 2017-2020, , Monitorul Oficial al RM, 2017, nr. 216-228, art. 354.

[38] Law no. 231 of 25.11.2011 for the approval of the Justice Sector Reform Strategy for 2011-2016, Monitorul Oficial al RM, 2012, nr. 1-6, art. 6.

[39] Ministry of Justice, The Small Reform of Justice, General Considerations, http://justice.gov.md/pageview.php?l=ro&idc=714&.

[40] Ministry of Justice, The Small Reform of Justice, Strategic Directions, Concept, http://justice.gov.md/pageview.php?l=ro&idc=715&.

[41] The reasons put forward by Alexandru Tanase for resigning from the post of minister and leaving the public service https://www.zdg.md/stiri/stiri-justitie/motivele-invocate-de-alexandru-tanase-pentru-demisia-din-functia-de-ministru-si-iesirea-din-serviciul-public.

More seriously, the recent events in the new local elections for the mayoralty of Chisinau have shattered any illusions about the independence and integrity of justice sector. Andrei Nastase's notorious case has demonstrated the profound politicization of the Judiciary, which not only raises questions as to the effectiveness of national anti-corruption mechanisms but also signals serious problems in ensuring democracy in the Republic of Moldova. In essence, Andrei Nastase's case has shown that whatever the electoral performances of one or another candidate can be overturned by unjust and allogical court judgments. This can not be without prejudice to any electoral exercise, and the current government can not be entrusted with reforms.

Final statements:

- The authorities rather mimic, than actually implement, reforms. The process of institutionalisation of NIA lasted practically two years, of which almost a year took the competition procedures to fill the positions of the Chair and Vice-Chair of NIA;
- In spite of compulsory regulations, important anticorruption tools are not applied - candidates for the positions of Chair and Vice-Chair of the NIA have not been subject to ISS verification;
- The authorities are tempted to abandon verification procedures for certain categories of functions. Declaring the unconstitutionality of the legal provisions on the verification by the ISS of holders and candidates for judges could serve as a precedent for other categories of public officials who are tempted to gain a more lenient employment and promotion status;
- Anti-corruption tools remain confusing and inefficient. This is the case for the polygraph test. Both the Chair and Vice-Chair of the NIA were appointed to positions despite the inconclusive results of the polygraph test, it being obvious that in such cases the test failed and needs to be repeated;
- Even if the integrity inspectors have lasted less (4 months) for the contest procedures, the four appointed integrity inspectors will not cover the need to control the wealth and personal interests. Obviously, under such conditions, any statements regarding the successful institutionalization of NIA can only be treated as an insult to common sense and reason;
- The contest procedures are discredited, the authorities being tempted to quit from several procedures (written test, training of representatives of civil society and the academic environment) - this is the case for the replacement of the position of director of NAC;
- the experiences of implementing policy documents have failed to consolidate the image of the real reformer of the Government, and the Năstase case is just the beginning of a profound political and values crisis that can no longer be overcome by analyzes, conceptions, strategies and plans actions.

https://www.transparency.md/2018/08/22/monitoring-the-process-of-re-setting-the-anticorription-system-october-2017-june-2018/

2.3 TI-Moldova: The New Tax Policy Announced by Authorities: Challenges and Risks

On July 23, 2018 several statements were made at the headquarters of the current ruling party. A “tax revolution” was announced, and three key directions were traced:

- ‘‘capital amnesty”, i.e. legalization of assets and capital,
- decriminalization of economic offenses, and
- tax cuts for individuals and legal entities.

This *Note* is meant to review**announced changes in the taxationof individuals**, particularly the authorities' statements (as no officials acts/drafts are available to the public at the moment):

- Personal income tax rate cut from 18 percent to 12 percent. *'It will be possible because we will cut the rate of personal income tax from 18 percent to 12 percent by introducing a flat tax rate'*;
- two-fold increase in the yearly PIT exemption - from MDL 11,280 to MDL 24,000, and *'Those whose monthly wage is below MDL 3,500 will pay not taxes'. 'Those whose wage is below the subsistence level will no longer be taxed. The measures we are talking about will result in higher income for employees (by 6 percent) and employees (by 5 percent). people will end up with more money in their pockets and we count on more revenue to the national budget';*

- *"We are discussing the new measures with the International Monetary Fund" "All reforms, includingthese, have been agreed upon with external partners, with the IMF and the World Bank"*;
- *"The reform will be approved until the end of the current Parliament session, i.e. by end of this week. We are talking here about the reform that has been long awaited by the business community. Its impact on the budget would amount to about* ***MDL 2 billion****. The state budget can* ***accommodatethe*** *first-stage* ***expenditure****";*
- *"Tax measures to be implemented in fall will allow for collecting* ***revenue of MDL 2 billion"****.*

Identified Challenges and Risks

- The statements seem to give the signal that the authors of the initiative see differently the immediate short-term impact of this act. The Prime Minister believes that the budget will get immediate additional revenue of MDL 2 billion, while the Chairman of the Standing Parliamentary Committee expects a budget gap in the same amount due to lower revenue. In this context, it should be noted that such comprehensive legislative initiatives need to include clear impact assessments that can be discussed with the public.
- The flat personal income tax (12 percent) will be applied by **cutting the maximal PIT rate** from 18 percent to 12 percent and **increasing the minimal PIT rate** from 7 percent to 12 percent. The first group of taxpayers are high-wealth individuals. The second group includes individuals will low and medium income levels: the tax rate for this group will go up from 7 percent to 12 percent.
- A compensatory measure for low-income individuals might be the announced two-fold increase of the amount of personal exemption (non-taxable minimum), from MDL 11,280 to MDL 24,000. However, given that in 2018 taxable income up to MDL 30,000 is taxed at the PIT rate of 7 percent, while in future the 12-percent PIT rate will apply to income above MDL 24,000, the impact of the measure is not unequivocal. Individuals with low and medium income would feel an insignificant impact of the increase in personal exemption, while high-wealth individuals will have substantial gains.
- The analysis of the data in the table (see annex: 'Disposable income of individuals: current tax policy vs. the proposed'new tax policy") shows that for differentgroups of employees (in agriculture and forestry, education, health care, the financial sector and one example of a high-wealth individual) the use of the new flat PIT rate of 12 percent would look as follows:
  - tax exemption and lower tax burden mostly for high-wealth individuals, significant increase in their disposable income (from several hundreds to several thousands of MDL);
  - the 'savings' of individuals with low and medium income would be insignificant and their disposable income would increase only slightly (from several MDL to several tens of MDL);
  - the gap between the disposable income of the low and medium income group and of high-wealth individuals would widen and tax unfairness would increase. It would be a consequence of the change in the rate of (after-tax) disposable income against (pretax) gross earnings. Thus, the disposable income of individuals with low and medium income would basically remain the same (83-85 percent of gross earnings). High-wealth individuals, however, will gain 3-4 percentage points of disposable income in gross income if compared to the current taxation formula. Hence, the announced increase in income by 6 percent would mostly end up in the pockets of those who have higher income rather than of those with low or medium income;
  - higher disposable income of high-wealth individuals might lead to higher domestic consumption and inflationary expectations (higher prices), which would affect those who have low income.
- For countries with strong income gaps and obvious poverty, progressive taxation of income of individual is recommended, i.e. different tax rates for different taxpayer groups, as it is now. Flat tax rates are used in large advanced economies that have a significant middle class.
- PIT revenue is split between the central and local budgets. Hence, lower budget revenue would first of all affect local budgets, at least at the first stage. The authors of the reform initiative did not mention any clear compensatory measures or funds to be provided to local budgets. One might assume that inter-budgetary relations between some local public authorities and the state budget would be channel used to 'ensure loyalty' in regions, as already concluded by a number of recent studies.[1]

- Restricting the funding of local authorities, particularly during election periods, is a sensitive matter and would generally ensure 'greater' loyalty' towards central authorities. The local budgets might get about MDL 800 million a year less funding.
- Thus, the immediate burden of the reform would be borne by the state budget. On one hand, local budgets should get compensation equivalent to the amounts lost due to the implementation of the new taxation system. On the other hand, additional funds need to be identified to increase transfers to the social fund, to compensate lower contributions by employers (down from 23 percent to 18 percent) if other measures fail to yield expected outcomes in due time.
- As it was announced that the new provisions would apply since October 2018, the state budget needs to be revised no later than September. Otherwise, the public sector might face financial blockage.
- The state budget would not get in 2018, as planned initially, certain funding from external partners, particularly the EU. The wipe-off of MDL 2 billion more at the initial stage of the reform implies urgent measures to cut budget expenditure or borrow more by end of 2018, which would affect the budget in the years to come.
- The authorities count on inflows from quasi-financial projects, which is not sustainable in the long term. Moreover, some of these projects involve greater state debt and state guarantees rather than greater investment in the real sector that would generate new tax capacity.
- The IMF-supported program, as well as the authorities' dialog with the IMF might be affected by policies that might undermine the budget setup and the stability of public finance in the long term.

http://www.transparency.md/2018/07/25/observatorul-de-politici-publice-nota-preliminara/

2.4 *TI-Moldova:* The Stolen Assets Recovery Strategy – Quo Vadis?

Four events have marked the second decade of July, 2018. All refer, directly or indirectly, to a sensitive issue for each and everyone, namely the bank fraud, also known as the 'theft of the billion'.

The first event was Vladimir Plahotniuc's interview[42] that was an attempt to underscore, among other issues, the importance of communication with external partners about what has been happening lately in the Republic of Moldova.

Then the launch of an alleged investigation of the Russian Laundromat and the Theft of the Billion[43] followed, with the intention to plant certain perceptions about the events associated with the bank frauds. By and large, they are described exactly in the manner sought by the protagonist of the first event.

The third event was a public joint press conference of the Office of the Prosecutor General, the Office of the Anticorruption Prosecutor and the National Anticorruption Center, at which the Strategy for the Recovery of the Funds Stolen from Banca de Economii, Banca Sociala and Unibank[44] (hereinafter referred to as 'Strategy') was presented.

The fourth event was an interview by Ilan Shor, the key actor identified by Kroll Company in its investigation of the bank fraud, which was broadcast by a TV channel with nation-wide coverage and preceded by mass publicity prior to broadcasting.

All these events have aligned following a specific rationale and each had a specific goal:

- to shape a certain general perception of the bank frauds and the people who have been or might have been involved in them;
- to ensure some protection and absolution from public and political responsibility of certain people involved directly or indirectly in the bank frauds;
- to persuade external partners that the investigation of the bank frauds is in full swing and significant recovery efforts have already started;
- to distort certain findings of the Kroll Company with regard to the bank frauds;

[42] http://tribuna.md/2018/06/11/interviu-vlad-plahotniuc-astazi-nu-exista-un-singur-pol-al-puterii-in-republica-moldova/
[43] http://zeppelin.md/rom/investigatii/miliardomat-moldovan-laundromat
[44] http://procuratura.md/file/Strategy%20Publica.pdf

- to give some advantages to certain political groups and, hence, to disadvantage other political groups, in the context of a pre-electoral period.

In our view, the launching of the Strategy is the key event, for a number of reasons:

- it is conditioned by the IMF in the authorities' Memorandum on Economic and Financial Policies, as a prior action for the program review by the IMF Executive Board, whose meeting is scheduled for end-June, as well as is part of the authorities' dialog with the European Union, in the context of eventual disbursement of the first tranche of macro-financial assistance.
- it is a first attempt at initiating at least some communication with the public on this matter. Even if it is just an attempt, it is however an important step for subsequent domestic and external monitoring of the steps taken by relevant authorities (the Office of the Anticorruption Prosecutor and the National Anticorruption Center, in particular the Criminal Assets Recovery Agency);
- it allows one to track whether there is any connection between the authorities' views/understanding, on one hand, and other documents or actions, particularly in the field of justice, financial and bank fraud investigation, combating anti-money laundering and financing of terrorism, financing of political parties and other related activity, on the other hand.

The structure and key elements of the Strategy

By and large, the full title of the Strategy conflicts with the structure and contents of the document. Although the title suggests that the Strategy's goal is to **recover the funds stolen from three banks**, the text mostly covers the mechanics of bank frauds. The description of the frauds, their substance, actors and impact, including financial impact, should be part of other official investigations/documents.

It is worth noting that strategies as official documents are predominantly political documents and are developed by policy-making institutions. Therefore, the document published by the prosecutors cannot be treated as a strategy in the traditional sense, as defined by Moldovan law.[45]

The Strategy does not clarify the frauds. Moreover, with the **extension of the target period** and the **inclusion of other types of bank frauds**, the goal of investigating the "theft of the billion" and subsequent recovery is diluted, the Strategy adds up to the lack of clarity about the fraud, but most importantly it increases uncertainty about the accountability of those involved and, respectively, about the eventual recovery of the assets.

The strategy abounds in contradictory statements, leaving the impression of a hasty compilation. For example, even if it is called "**recovery strategy**", which implies that the investigations have been completed, to a large extent, the authors state that "this document sets out the subsequent strategy of the institutions in charge, within their competencies", with a view to:

- **identify the beneficiaries** of the funds stolen from the three banks, including those who have supported and contributed to the fraud;
- **identify the route** of the stolen funds and determine their final destination;
- **take steps to recover the funds**, including by increasing the capacity of the relevant agencies to carry out such tasks;
- **recover the stolen funds** either by identifying them or, if impossible, by identifying other assets belonging to those who are guilty of the fraud, arresting them and eventually foreclosing/confiscating them."

Moreover, the authors of the Strategy point out that "**there is no accurate assessment of the exact amount of the bank fraud**". Hence, one may assume that the actual investigation is far from 90% reported by authors of the Strategy.

According to the Strategy, its goal is "**to recover, ... the funds in the amount equivalent to that of the state securities** issued to secure the deposits of individuals and legal entities, ... including interbank placements of BEM, BS and UB, namely MDL 13.34 billion". The figure appears to be irrelevant in the context of the damages resulting from the political decisions taken on 7 November 2014, which have led to

[45] http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=319904

the subsequent acceleration of the theft of billions from the three banks. Eventually, the prosecutors treat this amount as unsecured damage, but the rationale behind recovery efforts should correlate with the rationale behind the fraud. The Strategy says that its purpose is to **collect the funds needed to cover the cost of the political decisions** that have led to emergency lending by the NBM, guaranteed by Government, which was later converted into state debt. However, the costs are much higher, including debt servicing interest (MDL 11 billion in 25 years).

Moreover, the Strategy seems to imply that the government's intention to convert guarantees into state debt was already there in November 2014. Thus, as noted in the Strategy "according to the **information notes** accompanying Government Decision 938-11 dated November 13, 2014 on Ensuring Macroeconomic Stability in the Context of Regional Conjuncture and Government Decision 124 dated March 30, 2015 on Ensuring the Stability of the Banking System in the Republic of Moldova, Minutes 2 dated November 3, 2014 and Minutes 3/2015 dated March 26, 2015 of the meetings of the National Committee for Financial Stability (NCFS), the purpose of granting state guarantees for emergency loans, **with their subsequent conversion into state securities**, was to cover the deposits of individuals and legal persons, **except for parties related to the banks and the placements of domestic banks in Banca de Economii (BEM), Banca Sociala (BS) and Unibank (UB)**. The NBM has thus extended non-performing loans to the three banks, although only one might have been classified as systemic at that time.

It should be noted that the final version of Government Decision 938-11 dated November 13, 2014, published after its de-classification, we no longer find the prohibition/exception to cover the deposits of other banks in BEM, BS and UB by state guarantees. On the contrary, the Decision[46] states that emergency lending would be used to repay, as needed, the deposits of domestic financial institutions. The verbatim of the Government meeting[47] shows that between the meetings of the NCFS and of Government (which both took place on November 7, 2014, with a difference of several tens of minutes) amendments ("improvements") were made to the original text of the Government Decision. Therefore, a natural question comes to mind: who and why has added the words "financial institutions" in the list of beneficiaries of government-guaranteed lending extended by the NBM to the banks with placements in problem banks? Another obvious question is why the Strategy says nothing about investigating and recovering those funds.

Although the Strategy abounds with descriptions of the fraud at the expense of the description of planned recovery efforts, it seems that the **events preceding the theft at the three banks** have been overlooked on purpose. We refer to the **concerted actions by which control over the banks was taken** by changing the structure of shareholdings and shareholders. The strategy taken no note of the coordinated preparatory efforts that had paved the way for taking over the three banks and subsequently using them for implementing the "theft of the billion".

Unlike this Strategy, the report prepared by Kroll company offers full clarity on coordinated action in 2012-2013, which have made possible the bank fraud in the fall of 2014. Kroll's reports prepared in 2015[48] and 2017[49] show a clear picture of the events related to the **preparation and implementation of the bank fraud**. Moreover, Kroll's reports clearly identify the concerted action that culminated in stealing 12-13% of GDP. The reports cover the period between 2012 and 2014 and the findings are largely based on the information provided by the NBM.

It is worth noting that the Strategy developed by national authorities does not make any reference to the Stolen Assets Recovery Strategy prepared by the Kroll and Steptoe&Johnson Consortium in 2017 (according to the task book and agreement concluded with the NBM). According to the official press releases published in November 2017, "the officials representing Kroll and Steptoe&Johnson **have submitted an updated version of the Stolen Assets Recovery Strategy**, which takes into account earlier comments by the NBM, the Stolen Assets Recovery Agency and the Office of the Anti-Corruption Prosecutor."[50]

---

[46] Paragraph 6 (1) of Government Decision 938 dated November 13, 2014
http://lex.justice.md/viewdoc.php?action=view&view=doc&id=358103&lang=1
[47] https://www.zdg.md/stiri/stiri-politice/doc-stenograma-sedintei-in-care-s-a-decis-acordarea-a-95-mlrd-de-lei-bancilor-falimentare-candu-noi-avem-filtre
[48] https://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf
[49] https://bnm.md/ro/content/bnm-publicat-o-sinteza-detaliata-celui-de-al-doilea-raport-de-investigatie-al-companiilor
[50] http://www.bnm.md/ro/content/raportul-de-investigatie-companiilor-kroll-si-steptoe-johnson-este-faza-finala-de-redactare

It should also be noted that a number of the findings in the Strategy developed by national authorities conflict with the information published by some state institutions. For example, the Strategy (June 2018) states that "at present, according to the findings related to investigated criminal cases, the total amount to be recovered pursuant to final judgments by courts is **MDL 1.39 billion**." On the other hand, in a press release published in September 2017, the NBM referred to final decisions of the courts of law and receivables amounting to **MDL 12 billion**, also mentioning that final court judgments were awaited for in connection to MDL 3 billion more[51]. Even though the amounts seem to differ – some are related to final judgments on criminal cases, and others – to judgments on civil cases – the amounts should be complementary, that is to be identifiable when compared to asset **recovery targets** set out in asset recovery strategies.

Conclusions and recommendations

- The Stolen Assets Recovery Strategy must be the outcome of joint work of all state entities, including the NBM, and aim at effectively recovering funds stolen from the banking sector by fraud. Recovery efforts must target not only the funds associated with criminal cases, but also those associated with civil cases, where the amounts to be recovered are much higher and the beneficiaries are well-known.
- The Recovery Strategy should have been presented as a commitment of the state and not just of the prosecution bodies. The latter should have their own plans for tracking and recovering the stolen funds. Those plans should not necessarily be made public if there is a risk of jeopardizing recovery.
- The Recovery Strategy must aim at recovering all stolen funds. A Strategy cannot have the goal of recovering assets equivalent to the amount of the state guarantees issued and subsequently converted into government debt by Government. Covering only one hole in the NBM's budget due to the exceptional lending decisions taken in November 2014 and April 2015 cannot be the goal of a strategy for recovering the funds stolen from the three banks. Besides, the other banks' decision to place deposits in BEM after Government has secretly decided on guaranteeing the debt of the three banks requires a special investigation and calls for the subsequent recovery of funds extended by the NBM, and should be treated as part of the "theft of the billion".
- Any recovery strategy must rely on sound investigation, clear understanding not only of the financial consequences, but also of all stages of preparing the fraud. Otherwise, the recovery efforts based on the strategy would not yield any results, and might lead to legal disputes against the Republic of Moldova.
- Given international experience in recovering funds stolen in other countries, the national Stolen Assets Recovery Strategy should also correlated with the investigations and the strategies prepared by the foreign companies (Kroll and Steptoe&Johnson) contracted by the NBM.
- The fate of the recovery strategy prepared by Kroll and Steptoe&Johnson under the contract signed with the NBM is not clear. The national strategy in fact does not refer to relevant data in Kroll's reports or the strategy prepared by the Kroll and Steptoe&Johnson Consortium. A number of communications by officials seem to infer that these two companies have submitted and discussed with the authorities their vision and strategy proposed for recovering the stolen funds.[52]
- The extended period included in the Strategy (2007-2014), however, totally neglects a number of sensitive but important events, in the context of international investigations. Including those related to the Magnitsky case. However, both the Republic of Moldova and at least one of the three banks involved in the bank frauds in 2014 are at the core of the financial transfers made back in 2008. At the same time, the Magnitsky case is more and more often mentioned in connection with a number of bank fraud investigations in the region[53]. The strategy does not make any reference to the "Moldovan Laundromat" either, while it is relevant, even if another bank than those three was involved in it.
- It is vital for national institutions to actively collaborate with the empowered institutions in relevant jurisdictions where the stolen funds are kept. However, by wasting time and failing to act swiftly reduce the chances of recovering the funds stolen from the banking system, including from the NBM.

http://www.transparency.md/wp-content/uploads/2018/06/Observator-Nr.10-ENG.pdf

[51] http://www.bnm.md/ro/content/precizari-suplimentare-privitor-la-actiunile-civile-intentate-de-bancile-lichidare-si
[52] http://www.bnm.md/ro/content/raportul-de-investigatie-companiilor-kroll-si-steptoe-johnson-este-faza-finala-de-redactare; http://www.parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/3023/language/ro-RO/Default.aspx
[53] http://delna.lv/wp-content/uploads/2018/06/Delna-press-statement-on-ABLV-liquidation.pdf

2.5 *TI-Moldova:* New risks to legalize impunity and affect the investigation of the fraud from the banking system

Transparency International-Moldova (TI-Moldova) expresses its concern about the fact that on the eve of the end of the current parliamentary session, the governors have brought back to the agenda two older ideas, previously blocked by a joint effort of civil society and country's development partners[54]: the capital amnesty and de-criminalization of economic and financial crimes. This time, the initiatives outlined have been covered by the process of amending fiscal-budgetary legislation and overshadowed by government's apparent intentions to reduce the tax burden on the population and economic agents.

Along with these draft laws that jeopardize the process of investigating and recovering the means extracted from the Moldovan banking sector, including the NBM, as well as creating opportunities for legalizing these means for the benefit of the persons directly and indirectly involved in fraudulent schemes, the governors put on their agenda other projects to the detriment of the public interest.

Recently, TI-Moldova has learned about the existence of a draft amending the Law on the National Bank of Moldova (NBM). We note that the project in question has not been made public, as required by the rigors of decisional transparency. The extract from the unofficial text of the project is presented in the Annex.

According to the document, the changes come in excess of protection, security and compensation to NBM officials in the supervision and management of the financial and banking field. Along with the NBM proposals to admit its **remote** management[55], a group of authors proposes to protect NBM employees from any criminal and administrative prosecution for "actions or failure to carry out arbitration proceedings in which they have been authorized to participate by NBM".

At the same time, the authors propose to offer the cash compensations to the members of the Executive Committee who have ceased their mandate, as well as NBM staff who have completed their employment relations for a period after leaving the office of the NBM (which is, in effect, a payment "for keeping silence").

In the case of the adoption of such projects by Parliament, a number of risks are imminent:

- ensuring the impunity of people who have designed, realized, benefited from financial-banking frauds and those who have not taken steps to prevent fraud;
- jeopardizing the investigations as well as the subsequent recovery of fraudulently extracted funds from the banking sector, including the NBM.

We draw the attention of law enforcement institutions, society and development partners that the Republic of Moldova was deprived of about 13% of GDP in 2014 as a result of frauds in the banking system. These missing funds, including the NBM reserves, were converted into government debt by the Government in 2016, and the entire burden was placed on taxpayers for the next 25 years.

The Kroll investigation reports clearly indicate the issues to be investigated to increase the chances of recovering the stolen assets. National competent authorities have mimicked or have done little to ensure genuine investigations and recovery chances. Under these circumstances, the package of legislative acts promoted by authorities without public discussion, in secret, on the eve of the deputies' vacation, contrary to the recommendations of the development partners, documents that would protect the persons involved in the fraud from the banking system, are contra-indicated and contrary to the public interests.

We demand the authorities to stop promoting and reviewing draft laws that affect the public interest. We urge the speeding up of bank fraud investigations and the enforcement of required procedures, including externally, for securing and securing further recoveries.
http://www.transparency.md/2018/09/04/public-policy-observer-nr-12/

---

[54] http://www.transparency.md/2016/12/12/adoptarea-proiectului-legii-privind-liberalizarea-capitalului-submineaza-eforturile-anticoruptie/, http://www.transparency.md/2017/01/12/apel-al-reprezentantilor-societatii-civile-catre-guvernul-statelor-unite-ale-americii/, http://www.worldbank.org/en/news/press-release/2016/12/21/world-bank-statement-on-capital-liberalization-and-fiscal-stimulation-law-in-moldova, http://www.ipn.md/en/economie-business/81114, http://www.transparency.md/2017/02/07/no-amnesty-for-corruption-in-moldova/

[55] http://www.bnm.md/ro/content/proiectul-legii-pentru-completarea-legii-nr-548-xiii-din-21-iulie-1995-cu-privire-la-banca

2.6 *Expert-Grup:* Capital Amnesty in Moldova: Why it is Risky and Should be Watched Closely

On July 27, 2018, the Parliament of Moldova adopted a law allowing for capital amnesty[56]. It was part of a larger package of initiatives, including the application of flat income tax for individuals, reduction of social insurance contribution rate and a quasi tax amnesty (annulment of fines and penalties for fiscal debts upon full repayment of the debt). Out of all these measures, the element related to capital amnesty attracted most of the attention because of its risks for the integrity and anti-money laundering framework. This is the second attempt to implement capital amnesty by the current culling coalition (in December 2016, it launched a similar law, "packed" under a number of initiatives aimed at fiscal stimulation, which was cancelled after being harshly criticized by a large part of the civil society and most development partners). With fragile anti-money laundering and integrity frameworks in Moldova, which were recently the source of massive money laundering and corruption cases ("Russian Laundromat"[57], involving money laundering of around USD 20 billion assets and banking frauds of about 13% of GDP), any form of capital amnesty should be treated with particular precaution. Especially we have to take into account that the investigations related to the mentioned cases were not finalized. In this brief note, I will explain the provisions of capital amnesty, reactions it spurred among the civil society and development partners, and what are the main concerns related to this law.

Key provisions of capital amnesty

According to the law allowing for capital amnesty, any citizen of Moldova that is currently hiding his assets (e.g. assets are undeclared, undervalued or are officially registered on another person) can legalize them by paying a 3% fee from the declared value of the asset, with no other fees or taxes and with the guarantee to not be prosecuted against tax evasion on these assets. Importantly, the ambit of the law is quite large, covering almost any form of assets: cash, real estate, shares and other financial instruments. In order to avoid abuses of this law for corruption and/or money laundering purposes, it contains a series of special provisions: (i) a number of highly ranked officials can not benefit of capital amnesty (President, Prime-Minister, ministers, deputy ministers, members of Parliament, judges, prosecutors, heads of regulatory agencies, officials involved in the liquidation process of banks that bankrupted since 2009, individuals convicted for frauds related to these banks and individuals that were subjects of investigations on money laundering cases)[58]; (ii) as objects of capital amnesty can not be assets obtained illegally, except for breaches of tax legislation (tax evasion); (iii) all institutions involved in the capital amnesty process (public institutions, commercial banks, participants on the capital market, notaries) are obliged to respect the legislation related to anti-money laundering[59], implying that they will have to conduct a number of measures aimed at preventing any forms of money laundering (e.g. identification of effective owners of assets, investigations about the origin of assets and purpose of the transaction, and other relevant measures of precaution[60]).

… and reactions it stirred among civil society and development partners

The law was criticized by a large part of the civil society and most development partners. A group of the most active CSOs issued a public appeal against this law on grounds that there is no explanation regarding the objective conditions that explain the necessity of this law, a conclusive impact analysis has not been carried out, and the practice of capital amnesty at a reduced price of only 3% compared to standard fees is contrary to international practices in this domain, implying major risks of negative social impact and stimulating the increase in tax evasion. Moreover, the law has been promoted with disregard to the democratic processes and without rigorous technical expertise. Public hearings on this draft law did not exist and the process of launching and validating of this law is done in a lightning-like regime, with direct violations of democratic processes, lack of transparency and the exclusion of the civil society. No public consultations were organized. The anti-corruption expertise has not been elaborated either, although it is mandatory under

[56] Law on voluntary declaration and fiscal stimulation: http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4329/language/en-US/Default.aspx
[57] "The Russian Laundromat exposed", Organized Crime and Corruption Reporting Project, https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/
[58] Article 3, Law on voluntary declaration and fiscal stimulation
[59] Article 9, al. 3, Law on voluntary declaration and fiscal stimulation
[60] Articole 8, al. (2) of the Law no. 308 of 22.12.2917 on prevention and combating of money laundering and terrorism financing

Law no. 100 on normative acts[61]. This position was endorsed by key development partners of the country. For example, The EU's head of mission in Moldova, Peter Mihalko, has said that the country should not apply a proposed tax reform and capital amnesty bill, which, he claims, is "hasty and non-transparent."[62]

Main concerns

The supporters of capital amnesty rely on the positive experience of other countries that managed to diminish the informal sector and bring more money into the state budget. In fact, there is not a clear evidence about the benefits of capital amnesties. The results are rather mixed. In fact, IMF warns that such amnesties, in the long run, can undermine even more the tax compliance, their long-run costs often exceeding the short-run benefits[63] (the cases of such countries are Argentina, Turkey, Philippines or Kazahstan). In fact, the research shows that capital amnesties can be beneficial in case of well-functioning anti-money laundering framework[64], integrity and anti-corruption framework, and in case such initiatives are part of wider voluntary compliance and enforcement strategies (an amnesty alone may not be sufficient to induce delinquent taxpayers to declare unreported income)[65].

So, what are the key concerns related to the capital amnesty applied in Moldova and why, most likely it will not complement the scarce evidence of beneficial capital amnesty effects worldwide:

1. The anti-money laundering (AML) framework in Moldova is weak and its effective enforcement in relation to the Law on capital amnesty will be questionable

First of all, the entire AML system in Moldova is quite fragile. After massive money laundering cases (e.g. USD 20 billion "Russian Laundromat" case), involving banks, judges, most probably, public institutions, which were uncovered in 2014, the country reformed its AML provisions: a new Law on AML was adopted in December 2017, along with some institutional reforms conducted in this regard. Although, these measures are necessary and very important, it is necessary more time to ensure that the legislation is effectively enforced and the AML framework is robust enough to prevent any abuses of capital amnesty.

Another source of concern that can undermine the enforcement of AML legislation is related to the fact that the duration of the capital amnesty is rather short, making around 2-3 months (in case of real estate, the Law allows the beneficiaries to declare their assets until 1 November 2018; in case of cash, the declaration can be submitted until 10 December 2018). Usually, such programs are run for about 1 year or more, in order to allow all interested parties to benefit of it. In Moldova, such a short duration raises at least two concerns: (i) it is organized for a narrow group of potential beneficiaries, suggesting that the real purpose of this law is not to extend the tax base, but to legalize illegally obtained and owned assets by a narrow group of vested interests; (ii) it could undermine the capacity of banks to conduct proper due diligence and other measures required to properly enforce the anti-money laundering (AML) legislation (short duration and potentially high volumes of transactions could overwhelm the capacity of banks to apply the AML measures effectively, which is one of the risks raised by FATF in relation to capital amnesties)[66]. This risk is fueled by the fact that the law does not come with proper secondary legislation, spurring a lot of uncertainty regarding the way how, in practice, the banks will apply this law (e.g. the central bank has to develop the secondary legislation in this regard, which will take time and will make the period of de facto implementation of this program even shorter, overwhelming even more the capacity of banks to properly apply AML measures).

2. Rampant corruption and fragile integrity framework

Moldova is ranked 122nd out of 180 countries according to the Corruption Perception Index 2017 (the same position with Azerbaijan, Djibouti, Kazakhstan, Liberia, Malawi, Mali and Nepal). Such a high level of corruption clearly points on the fact that among the main beneficiaries of this law could be the corrupted

---

[61] *"Tax reform - an attempt to disguise the amnesty of dubious capital?",* https://www.expert-grup.org/en/biblioteca/item/1641-reforma-fiscala-o-incercare-de-camuflare-a-amnistiei-capitalului-dubios/1641-reforma-fiscala-o-incercare-de-camuflare-a-amnistiei-capitalului-dubios

[62] https://emerging-europe.com/news/eu-calls-moldovan-tax-amnesty-hasty-and-non-transparent/

[63] K. Baer, E.L. Borgne, Tax Amnesties: Theory, Trends, and some Alternatives, FMI, 2008

[64] "Managing the anti-money laundering and counter-terrorist financing policy implications of voluntary tax compliance programmes", FATF, 2012

[65] "Best practices and tax amnesty and asset repatriation programmes", Transparency International, 2017

[66] "Managing the anti-money laundering and counter-terrorist financing policy implications of voluntary tax compliance programmes", FATF, 2012

officials, who instead of being punished for their misbehavior will be favored by entering the legal field. Even though the law on capital amnesty does not provide the guarantee of non-prosecution, except for tax evasion charges, with such a weak integrity system and endemic corruption, it is unlikely that corrupted individuals or other criminals will not benefit of this law.

Moreover, even though the law restricts its application on a number highly ranked public officials, these provisions will be hardly enforced because, in most cases, the hidden assets are not owned by corrupt officials, but rather by their relatives. It makes, de facto, possible that corrupt officials will legalize their illegally gained assets and still remain their unofficial owners, undermining the very essence of anti-corruption policies.

3. Negative reputational implications for the banking sector

After the massive banking frauds, uncovered in 2015, resulting in a decapitalization of 13% of GDP and bankruptcy of 3 large banks that accounted for one third of total banking sector assets, the Moldovan banks suffered a massive reputational blow. Ever since than, the central bank embarked on a number of reforms aimed at increasing the transparency of banks about their effective shareholders, improving the corporate governance and enhancing the prudential regulations and supervision of the banking sector. First results could be seen with an important investor entering the sector this year and clear improvement of risk management and corporate governance within banks (despite the long road ahead in this area). The capital amnesty law can undermine these reforms and throw the banking industry several years back. The reason is that the object of capital amnesty can be the cash. Thus, the law will allow individuals that illegally obtained cash to legalize it and even deposit it in banks. It exposes the banking sector to massive influx of "dirty" money, undermining the capacity of banks to apply AML measures. Moreover, it could even undermine the stability of the banking sector, because these liquidities could leave rapidly and unexpectedly from the Moldovan banks.

4. The law was designed in a non-transparent and non-participatory manner

The way how laws are promoted can point on their quality and intensions behind them. In the case of capital amnesty low, there is a number of concerns related to the process of its elaboration and adoption:

- it lacks an ex-ante impact assessment, which is simply not admissible for such important initiatives;
- there were no de facto public consultations on this important initiative;
- the relevant international organizations were not consulted about the opportunity of this law (e.g. Moneyval, the key institution focused on anti-money laundering policies at the international level, to which Moldova has commitments, was not consulted, although the law does pose significant money laundering risks).
- the law was adopted with a record high speed: it was registered on July 24, 2018 and adopted on July 27, 2018, automatically in two readings, in the last meetings of the Parliamentary session.

5. It can have detrimental implications on tax compliance in the long run

Firstly, any form of amnesty can stimulate tax evasion in the long-run. The reason is that it makes the cost of tax evasion very low relative to its benefits: the individuals benefiting of capital amnesty will be treated preferentially in relation to those who complied with the law because they will be exempted from any form of penalties and taxes for the period of hiding the declared assets. Additionally, the 3% legalization fee is tremendously low in relation to the personal income tax applied in Moldova (7% and 18%), which makes this capital amnesty one of the most generous one in the world. In this way, the costs incurred by the beneficiaries of capital legalization are much lower than those incurred by individuals complying the tax legislation.

Secondly, any tax and capital amnesty once implemented creates expectations that the government will repeat it in the future, undermining the incentives to pay taxes and creating strong propensity for tax evasion. Such expectations, coupled with low costs of capital amnesty for beneficiaries create a fertile ground for persistent non-compliance.

In conclusion

In short, if capital amnesties can be beneficial, it can happen if and only if the country applying it has strong institutions, allowing for robust anti-money laundering and anti-corruption frameworks, so that to avoid its use by vested interests. Moldova is far from fulfilling both conditions and, hence, is simply not prepared for such measures. With only 3 years after uncovering massive (even historical) money laundering (about USD 20

billion) and banking frauds (about 13% of GDP), with limited progress with the prosecution on these cases, any form of capital amnesty will potentially be abused by criminals, including those benefiting of recent cases of money laundering and banking frauds. Irrespective of the intensions of the authors and promoters of this law, ignoring the country's fundamental flaws of its anti-money laundering and anti-corruption frameworks is an act of blunt irresponsibility.
Taking into account the risks and concerns mentioned in this analysis, but also voiced by relevant CSOs and development partners, the strong political will for capital amnesty is, at least, strange, if not dubious. The first attempt to conduct capital amnesty by the ruling coalition was in December 2016, when it was "packed" under a number of initiatives aimed at fiscal stimulation. Due to the strong criticism from relevant CSOs[67] and development partners, the initiative has been cancelled. This time, the initiators promoted the similar initiative under a larger package of laws aimed at fiscal stimulus and diminishing informal economy, but in a much faster and less transparent way, in order to be able to adopt without major "disturbance" (indeed, not everyday laws with such a high potential impact are adopted automatically in two Parliamentary readings during in the same day). If we assume the benevolent motivation behind this initiative, such an unprecedently strong political will can not be explained, because of non-trivial international experience, its risks of increased money laundering, corruption and even persistent tax evasion (any amnesty creates expectations over time that the government will repeat in the future, undermining the tax compliance in long-term).

Having said that and taking into account that this law has been already adopted and even promulgated by the President (also, in a relatively rapid way), the only strategy now is to monitor its enforcement. The key is to avoid its abuse by vested interests for money laundering and/or corruption purposes. In this regard, all related parties should play an active role: Parliament, through its Parliamentary control function, should ask the Government for periodic (monthly) public reports on the implementation of this law, while the development partners and civil society should engage in alternative oversight and monitoring of its implementation. It will be interesting to analyze the impact of this capital amnesty after its end (1 February 2019) and compare it with expectations of its promoters, but also the risks flagged in this analysis. To be continued…

2.7 *Legal Resources Centre from Moldova*: Justice Sector Challenges Undermine the Rule of Law in the Republic of Moldova

Justice sector reform has continually been on Moldova's agenda since the political changes in 2009, but with very little impact. Moldova's reform of the justice sector has stalled, with many critical areas unresolved regardless of the implementation of the Justice Sector Reform Strategy (JSRS, 2011 – 2017). Even the loss of EU budgetary support caused by unfulfilled commitments in the justice sector did not change the attitude of the authorities. The JSRS was part of the EU-Moldova Association Agenda for 2014-2016. Independence of the judiciary is among the key priorities of the EU-Moldova Association Agenda for 2017-2019, including a series of crucial short and medium-priorities to strengthen judicial independence and accountability. Respect for rule of law is a precondition for EU macro-financial assistance to be provided to Moldova, agreed upon in 2017.

Several issues seriously affect rule of law and independence of the judiciary in Moldova. The selection and promotion of judges is still not merit-based, mainly due to selective approach and promotion of several candidates with serious integrity issues. Judges are still nominated for an initial mandate of 5 years, condition that may seriously affect their independence. The Parliament continues to play a dominant role in appointing judges of the Supreme Court, which politicizes the appointment of Supreme Court judges. The Superior Council of Magistracy takes most of the decisions behind closed doors and poorly reasons them. Signs of selective justice became visible, in particular after 2015. This refers to the use of criminal justice against outspoken judges and political opponents, enhanced prosecutorial bias in the judiciary and closed hearings in several high profile cases for no legitimate reasons.

The public trust in the judiciary decreased in recent years and remains at a low level today, in spite of the implementation of the JSRS during 2011-2017. According to public opinion surveys, the share of distrust in the judiciary was 76% in November 2011 and reached 79% in November 2017.2 Urgent measures to

[67] *"Position paper on the Legislative Initiative Regarding the Tax and Capital Amnesty"*, *Expert-Grup, 2016,* https://www.expert-grup.org/en/biblioteca/item/1356-nota-de-pozitie-amnistia-fiscala-si-de-capital

ensure judiciary and law enforcement bodies' impartiality and professionalism are necessary. Only real reforms with proven results can restore the credibility of the justice sector in Moldova. The authorities shall amend the primary and secondary legislation to ensure merit-based appointment and promotion of judges and provide track-record of merit-based appointments and promotion of judges. The legislation and practice changes shall be promoted to ensure an effective disciplinary mechanism for judicial accountability, including an accessible mechanism for public complaints and a functionally independent and accountable Judicial Inspection. The Parliament shall amend the Constitution in line with Venice Commission recommendation to provide important safeguards for judicial independence, in particular by removal of the initial 5-year appointment for judges, changing the composition and strengthening the role of the SCM, as well as removing the Parliament appointment of judges of the Supreme Court). Legislation should be amended to ensure transparency in the decision-making process of the Superior Council of Magistracy. The right to a public hearing and publishing of all court judgments shall be ensured in all cases, except legitimate exceptions. Any selective justice elements shall be excluded, such as the use of criminal justice against political opponents, selective judicial practices, unjustified use of closed hearings and intimidation of independent judges through various legal proceedings, including criminal justice.

https://crjm.org/wp-content/uploads/2018/08/2018-Justice-Hriptievschi.pdf

2.8 *Legal Resources Centre from Moldova*: Selection and Promotion of Judges in the Republic of Moldova - Challenges and Needs

The selection and career of judges are the key elements of the judiciary. The promotion of merit-based candidates is an essential condition for ensuring an independent, responsible and professional judiciary. Transparency in the process of selection and career of judges is important to ensure trust in the system, but also in the bodies responsible for the appointment and promotion of judges, both of the society and judges, as well as of the staff within the system. Selection and promotion based on subjective criteria following a non-transparent process can affect the quality of justice administration because it reduces the judges' motivation to work properly and professionally. For these reasons, the appointment and promotion of judges are particularly important for the Republic of Moldova.

This document provides an analysis report of the selection system (appointment of candidates for the position of judge) and promotion of judges in the Republic of Moldova (promotion to a higher court or promotion to the position of the chairperson or deputy chairperson of the court). The document contains a review of the main provisions of law on the powers of the bodies involved in the appointment and promotion of judges, of the contest organization procedure and of the selection and promotion criteria. The document also has an important component as empirical research. The authors analyzed the practice of appointing and promoting judges within the period of January 2013 through May 2017 and presented conclusions and recommendations regarding this practice.

The conclusions of the analysis confirm the lack of progress regarding selection and promotion of judges, as previously noted in the recommendations of a similar policy paper, drafted by the LRCM in 2015. One of the basic conclusions of the analysis is that the role of the assessment by the Judges Selection and Career Board (Selection Board) is still minimized. The Superior Council of Magistracy (SCM) often proposes to appoint judges disregarding the score awarded to them by the Selection Board. In many of these cases, the SCM does not give reasons why it disregards the results obtained by the candidates. Thus, at least 72% of the candidates for the position of judge who were appointed after a contest withat least two candidates had a lower score. In the Courts of Appeal (CA), the same scenario is valid for 39% of those proposed, while for the Supreme Court of Justice (SCJ) this amounts to 42%.

The number of appointments following the contests with the participation of a single candidate raises concerns. Within the reference period, 65% of those proposed for the appointment to the administrative positions at courts, 83% of those proposed for the appointment to the administrative positions at the courts of appeal and 100% of those proposed for the appointment to the administrative positions at the SCJ, are candidates who participated in singlecandidate contests. Contests with one candidate do not allow holding of a genuine and competitive contest and the selection of the best candidate. At the same time, 9-14% of all announced contests (21% for promotion to the SCJ) are declared by the SCM as failed, the only argument being that a candidate or the participating candidates did not get the required number of votes from members of the SCM, without motivating the votes of members.

There is a lack of interest of judges to take part in contests for administrative positions. Many contests announced by the SCM for the promotion to the courts of appeal or to administrative positions at the courts of appeal and the SCJ included one candidate only or they did not take place because there were no candidates or they withdraw before voting, determining the SCM to announce repeated contests. At the courts of appeals, in 63% of the organized contests no applications were submitted or the candidates withdrew from the contest, while at the SCJ this number is 38%. Insufficient reasoning of the SCM decisions and declaration of a large number of contests as failed could be among the causes that discourage judges from participating in these contests.

Another aspect analysed by the authors concerns the SCM practice of organizing contests. The analysis of the SCM practice of organizing contests for appointment and promotion of judges between January 2013 and May 2017 has shown a high frequency of organizing contests for each separate position. For example, during the reference period, on average, two contests per month were organized for the selection of candidates for the position of a judge (105 contests in 53 months), one contest per month for the promotion to administrative positions at the courts (78 contests in 53 months) and by one contest per month to promote judges to the courts of appeal (78 contests in 53 months). In addition, there were held 14 contests for the promotion to the SCJ, 32 contests for the promotion to the leadership positions at the courts of appeal and 13 contests for the promotion to the leadership positions at the SCJ. The results of the analysis in this part reveal that the unplanned announcement of contests, which leads to the organization of a large number of contests, is deficient. Such an approach does not allow adequate planning for either candidates or the SCM. Such an approach does not create predictability and clarity for the society, but facilitates abusive opportunities. Moreover, the lack of interest of judges to participate in contests, especially for leadership positions at the courts, was observed. Insufficient reasoning of the SCM decisions and frequent organization of contests, many of which are declared to have failed, may be among the causes that deter judges from participating in contests.
https://crjm.org/wp-content/uploads/2017/12/CRJM-Selectia-si-cariera-jud-2017-ENG.pdf

2.9 *Legal Resources Centre from Moldova*: Admission of Revision Requests in Civil Cases - is the Practice of the Supreme Court of Justice Uniform?

The judiciary of the Republic of Moldova has always been exposed to the risk of having inconsistent judicial practice. The 2011-2016 Justice Sector Reform Strategy, in the domain of intervention 1.2.4, emphasized the need for insuring the consistency of the judicial practice. This analysis was prepared by the LRCM to boost the consistency of the judicial practice.

The analysis establishes, based on empirical data, to what extent the practice of the Supreme Court of Justice (SCJ) is uniform in one domain - the quashing of final civil judgements. This particular area was chosen taking into account that, until 31 December 2017, the European Court of Human Rights found 20 times that the Republic of Moldova unjustifiably quashed the final court judgements in civil cases by allowing revision requests. All the decisions by the SCJ adopted within 36 months, between January 1, 2015 and December 31, 2017, allowing the revision requests in civil cases, were analysed in this research. The document also reflects the official statistics published by the SCJ.

Despite numerous convictions at the ECtHR and clear legislation, the number of revision requests received by the SCJ has not decreased significantly since 2006. The SCJ continued to receive annually 500-700 revision requests. Most of the revision requests examined by the SCJ were rejected. However, it can not be said that the rate of admitted requests during 2011-2017 has decreased. It varied between 2.7% in 2011 and 5.4% in 2015. The rate of the revision requests admitted by the SCJ in 2017 (3.6%) was even higher than in 2011 (2.7%). It is however 3 times lower than in 2006 (11.9%)

70 judgements of the SCJ admitting the revision requests in civil cases were studied for this research. The authors of the analysis had serious doubts concerning the existence of the grounds for revision in 28 out of 70 judgements (40%).

When accepting 70 revision requests, the SCJ did not analyse thoroughly the compliance with the legal time limit for submitting the revision. This can be explained by the fact that, in most cases, there was no appearances regarding the omission of this term. However, in seven judgements the SCJ did not rule on the observance of the term, even if there were serious doubts about that this term was missed. In six out of

seven judgements, there was doubt not only regarding the compliance with the deadline for filing the revision request, but also regarding the lack of legal grounds for the admission of the revision request.

Although the number of unjustifiably allowed revisions requests (28) is low (1.7%) comparing to the total number of examined requests (1,638), it is in fact an important number. We are speaking here about cases where the final judgements are overturned, i.e. where the SCJ revises without justification its own verdict. This undermines the very foundation of justice – the irrevocable nature of the justice that has been done. Moreover, such practices encourage the submission of manifestly ill-founded revision requests, increasing the workload of judges.

The consistency of judicial practice has attracted the attention of the LRCM for a long time. Previously, the LRCM analysed the SCJ practice regarding sanctions in corruption cases[68] and disputes on the retroactive increase of customs duties[69].
https://crjm.org/wp-content/uploads/2018/04/CRJM-practica-CSJ-cauze-civile-2018.pdf

[68] Available at https://crjm.org/wp-content/uploads/2015/12/CRJM-DA-Sanct-cazuri-coruptie-23.12.2015-1.pdf.
[69] Available at https://crjm.org/wp-content/uploads/2015/11/CRJM-DA-Plati-vamale-2015-11-12-1.pdf.

3 Economic Development

3.1 *IDIS Viitorul:* Gas Debt – a Russian Tool of Geopolitical Influence over Moldova

The entire energy sector in Moldova, natural gas business in particular, has always been a substantial source for the corrupt networks, greedy politicians and high tips for incompetent administrators. Taking advantage of the lack of vision and corruptibility of Moldovan elites, including at the highest political level, Russia has strengthened its influence in Moldova. Following a series of actions together with decision makers from Moldova, as well as artificial boost of debts and assets undervaluing during the 90s, OJSC "Gazprom" has obtained control over the critical infrastructure of gas transmission and distribution in Moldova.

Funding separatism under the formula of "gas debt"

Due to the contractual scheme implemented in the 90s and still being implemented, the Russian natural gas is being supplied to the left bank and used (de facto free of charge) both by households and economic agents from the separatist region. Meanwhile, the debt associated to gas consumption is accounted for as "Moldovagaz" debt to "Gazprom" OJSC. Taking advantage of the lack of vision and corruptibility of Moldovan elites, the Russian Federation, via OJSC "Gazprom" and JSC "Moldovagaz", had openly financed the separatist authorities in Moldova, worth of at approximately US $ 6 billion during 1994 to 2016. Between 2007-2016, about 1.3 billion US dollars of the total 6 billion received by alleged Transnistrian authorities as grant (in material form – natural gas), were converted into budgetary resources, being used further to funding social obligations. These funds covered about 35.3% of total expenditures of the regional budget for that particular period of 10 years.

Russian investors – the main beneficiaries of subsidized gas prices

Since the 90s of last century, consumers in the Transnistrian region benefited of heavily subsidized natural gas prices. The main beneficiaries of that situation were the big industrial enterprises in the region: JSC "MoldGRES" power plant and Moldovan Metallurgical Plant in Rybnitsa, both owned by Russian business. **About 1.8 billion US dollars of the resources supplied by the Russian authorities to finance the separatist regime in Moldova have already been recovered by Russian business.** Based on financial reports of "Inter RAO UES" in 2008-2015, just via JSC "MoldGRES" power plant, the Russian investors have reached a profit of 291.8 million US dollars. In case of Moldovan Metallurgical Plant, during 2007-2015 the profit accumulated to "Metalloinvest" traders was over 1.5 billion US dollars. Until 2015, the Plant was part of the Russian holding "Metalloinvest", controlled by Russian oligarch Alisher Usmanov.

Gas debt and perpetuation of Transnistrian conflict

OJSC" Gazprom" agenda for Moldova is rather political than economic, serving as an operational platform to promote the strategic agenda of the Russian Federation in Moldova. Nowhere can be found as many interference transferred from the economic sector to political sector as in the energy sector, referring both to power and gas resources. This agenda, promoted by Gazprom, could be summarized to the following sentence: *„maintaining Moldova in the Russian sphere of influence by perpetuating the Transnistrian conflict and securing the role of Russia as a mediator in this conflict"*.
http://www.viitorul.org/files/Policy%20Paper%202017%20-%20Impunitate%20si%20%20intelelegeri%20rentiere%20sectorul%20energetic%20ENG%20II.pdf

3.2 *Watch Dog:* Why Should be the Tariff for the Natural Gas Reduced

During 2016-2017 years, the import price for gas dropped more than 28%. Considering the average annual consumption of about 1 bcm of gas, the consumers paid more than 1.5 billion lei in addition to the real gas supplier's costs. This amount (*tariff deviation*) is in fact an advanced payment from consumers and is to be deducted from the next tariff. According to the Methodology on gas tariffs, as the deviation between the real costs and the indicators included in the tariff calculation exceeds 5%, ANRE (energy regulatory agency) must have revised the tariffs during 2017. The provisions of the Methodology has not been fulfilled in due time.

The tariff should be reduced by at least 25-30%, given the decrease in the import price for gas, the accumulated tariff deviations already paid by the consumers, as well as the unjustified expenses, which should be excluded from the tariff.

Why is ANRE postponing the tariff decrease?

Currently the consumers pay a much higher tariff than the real costs of the supplier. If the tariff adjustment would occur in the fourth quarter of 2018, in the eve of the parliamentary elections, tariff deviations will increase by approximately 800 million lei, which means a further reduction of the tariff by another 14.5%. Consequently, the tariff would have to be reduced already by 40-45% before the parliamentary elections. This will be used by the Democratic Party as an electoral propaganda to gain political capital. ANRE's attempt to postpone the reduction of the tariff is nothing but the financing of the Democratic Party's political PR from consumers' pockets. A similar situation happened in January 2016, when ANRE lowered the gas tariffs just a few days after the newly appointed Prime Minister, Pavel Filip, publicly announced the necessity of lowering the gas tariffs.

Analytical note, Community WatchDog.MD

4 Media Freedom

4.1 *Association of Independent Press:* How Moldovan Authorities Implemented the Actions under the Association Agreement in Mass-media Sector

During the period March 2017 - May 2018, the Association of Independent Press (API) monitored the implementation of actions foreseen on mass-media segment in the National Action Plan (NAP) for implementation of the European Union (EU) – Republic of Moldova Association Agreement (AA) for the years 2017 - 2019. It should be noted that the NAP includes 12 actions in total. The monitoring of actions' fulfilment was carried out in accordance with a methodology that includes two basic indicators: one - quantitative and the second - qualitative. Cummulatively, the two indicators contain four statements each, with three possible answers. Each answer corresponds to a certain score, on a scale from three to one, "three" meaning "the best" and "one" meaning "the worst" (see statement below).

Monitoring sheet 1

Indicators	Statements	Score
Quantitative		
1. Sufficiency of actions planned and accomplished	1.1. Actions planned for the implementation of AA provisions are sufficient, satisfactory, insufficient	3,2,1
	1.2. Actions planned for the reporting period are sufficient, satisfactory, insufficient	3,2,1
	1.3. Actions planned for the reporting period are accomplished, partially accomplished, not accomplished	3,2,1
	1.4. Unplanned but appropriate actions for the reporting period are accomplished, partially accomplished, not accomplished	3,2,1
Qualitative		
2. Actions: compliance, relevance, fulfilment, impact	2.1. Actions planned and AA provisions are fully compliant, partially compliant, or not compliant	3,2,1
	2.2. Actions planned for the reporting period are relevant, partially relevant, irrelevant	3,2,1
	2.3. Planned/unplanned actions for the reporting period are accomplished, partially accomplished, not accomplished	3,2,1
	2.4. Planned/unplanned actions implemented during the reporting period fully reached the expected impact, partially reached the expected impact, null	3,2,1
Total score		
Index of NAP fulfilment		

The monitoring was conducted over a period of 15 months and five reports were produced, each covering a three-month period.

The quantitative analysis referred to the actions planned and included in the NAP for the implementation of AA provisions; actions planned to be fulfilled during the reporting period; actions planned for the reporting period and the degree of their fulfilment; unplanned but appropriate actions and the degree of their fulfilment.

The qualitative analysis referred to the compliance of NAP actions with the AA provisions and the relevance of actions for the real pursued goal; modality of action implementation with a view to achieve the real pursued goal, the real impact of actions on fulfilment of the goal pursued.

The monitoring results were grounded on a pertinent, quantitative and qualitative analysis: of the actions committed through NAP, of the manner of their implementation, and of the real impact on the condition of mass-media as a result of actions' implementation. Finally, a numerical value obtained by summing up the scores given to each statement shall be attributed to the degree of NAP implementation for each monitored period.

The results were interpreted as follows:

- 17 to 24 points - NAP implementation takes place in a dynamic rhythm that needs to be maintained;
- 9-16 points - NAP implementation flows at a pace that requires acceleration;
- 1-8 points - NAP implementation is stagnating.

The quantitative and qualitative analysis of the 12 actions planned in the NAP for a period of three years has showed the following:

- the number of actions is insufficient, taking into account, on the one hand, the compliance of provisions no. 131-133 from the AA, and, on the other hand, the major problems existing in mass-media field,
- the actions cover only the broadcasting sector, and not the entire media system,
- most actions planned are not compliant with the provisions of the EU-RM AA,
- the biggest share of actions refer to traditional and day-to-day concerns of the broadcasting regulatory authority,
- a single institution is responsible for implementation of actions - the Broadcasting Coordination Council (BCC),
- the performance indicators do not adequately and exactly reflect the purpose of actions fulfiled,
- some deadlines for actions fulfilment are neither logical, nor justified,
- the implementation of actions, practically, does not require additional costs, which is less plausible.

The quantitative and qualitative analysis of the implementation of actions planned in the NAP showed the following:

- most frequently, although far from being in accordance with the AA provisions and, thus, being partially relevant or irrelevant, the actions were not implemented within the timeframe planned,
- some actions have been fulfilled with up to one-year delay,
- a part of planned actions were either partially fulfilled or unfulfilled, and those partially fulfilled actions were either partially adequate or inadequate,
- a part of planned or unplanned, but appropriate actions either were entirely fulfilled or partially fulfilled, and those entirely fulfilled had, in most of the cases, a partial impact, compared to the expected one.

The monitoring of the modality in which the actions under the EU-RM Association Agreement for mass-media sector had been implemented during March 2017 - May 2018 led to the following conclusions:

- the wording of actions, as well as the manner of their implementation, generates the impression that, overall, the NAP (on mass-media segment) is a goal in itself, but not a tool to boost positive developments in the media sector, grounded on democratic principles and undertaken with full knowledge by the authorities;
- the actions planned in the NAP for the period 2017-2019 on mass-media sector are insufficient and do not cover the mass-media as a whole;
- even if accomplished, the impact of planned actions could not meet either the real provisions of AA or the necessity to create and develop a democratic, pluralist and professional media system;
- a part of actions planned in the NAP were fulfilled with signifiant delays compared to the deadlines planned;
- a part of actions planned in the NAP were partially implemented or not implemented at all;
- the planned and unplanned actions for the reporting period are partially relevant, they were partially correctly implemented, and have a partial impact as compared to the expected one;
- the partial impact upon the condition of broadcasting is due, in fact, to unplanned actions, and not to the planned ones, as it should be;
- only BCC commits to implement the NAP-foreseen actions, fact which excludes important policy-making entities, such as the legislative body, some ministries, some autonomous public authorities, academia or specialised non-governmental organizations;
- the media segment in NAP is regarded / perceived as something separate from other social institutions, which reveals an inadequate approach to the problem.

The drawn conclusions allow for the recommendation of the following:

- As regards the media segment, the National Action Plan (NAP) must be revised and supplemented, so that actions would: a) include the entire range of mass-media, b) be in full compliance with the provisions of the Association Agreement (AA), c) avoid doubling the duties of competent institutions foreseen by legislation, d) be accurate, feasible and measurable;

- All important stakeholders must be involved in the activities to review and, further, to implement the NAP on mass-media segment: the legislative body, the government, certain autonomous public authorities, academia, specialised non-governmental organizations, etc.
- Performance indicators must be revised in order to take into account the real effects of actions' fulfillment and not the actions themselves, which are incapable of producing impact;
- The actors responsible for the development of the entire mass-media segment must be identified;
- On mass-media segment, the NAP must include only actions arising exactly from European Union - Republic of Moldova Association Agreement;
- The actions foreseen in the revised NAP must have financial coverage;
- The actions foreseen in the revised NAP must have precise and realistic deadlines;
- An effective mechanism must be set up for monitoring the implementation of NAP actions on mass-media segment, allowing for prompt interventions meant to ensure the complete fulfillment of the actions planned;
- The officers assigned to ensure the implementation of NAP actions on mass-media sector must regularly provide activity reports, specifying the modality of NAP-foreseen actions.
- Mass-media must not be viewed as a separate field, but rather as a social institute interacting with other social institutes, which bear a mutual influence on each other;
- The actions for appropriate fulfillment of timely and relevant actions for mass-media development must be accelerated.

http://api.md/page/en-2017-311

4.2 Centre for Independent Journalism: Media Monitoring in the Campaign for New Local Elections

The Center for Independent Journalism (CIJ) has conducted several monitoring reports on this topic, the latest report covered 21 May - 2 June, 2018

General conclusions:

The monitoring of 10 TV stations between 21 May and 2 June showed that some broadcasters covered the candidates relatively neutrally while others demonstarted political partisanship, favoring or disfavoring one candidate or another

- Public station Moldova 1 and private stations RTR Moldova and Pro TV were relatively balanced offering access to both candidates in their news items without obviously favoring or disfavoring either of them.
- TV 8 covered both candidates neutrally but was slightly in favor of PPDA/PAS/PLDM candidate Andrei Năstase who was repeatedly covered positively at the expense of PSRM candidate Ion Ceban who was covered in a negative context.
- National broadcasters Prime TV, Canal 2 and Publika TV that had announced that they would not cover the campaign broadcast a number of items with electoral content favoring PSRM candidate Ion Ceban and disfavoring the PPDA/PAS/PLDM candidate Andrei Năstase.
- Jurnal TV gave access to both candidates in its news items and presented them in different contexts. PPDA/PAS/PLDM candidate Andrei Năstase was heavily favored through exclusively positive coverage while PSRM candidate Ion Ceban was presented negatively but also neutrally and positively.
- NTV Moldova and Accent TV heavily promoted Ion Ceban for Chișinău mayor and disfavored Andrei Năstase who was presented in an exclusively negative light.

Recommendations:

- Broadcasters must use monitoring reports as self-regulation tools and remove any obstacles that prevent their work from complying with legal norms and the Journalist's Code of Ethics. They also must:
    - inform the electorate in a correct, impartial and unbiased manner;
    - renounce assessing/commenting on election events of political parties or their representatives in their news items;
    - remove discrimination when applying the principle of pluralism and diversity of opinion and when granting the right to reply;

- cover events truthfully without distorting reality by editing or commentary, following the principle of multiple sources.

- The BCC should take action and use the monitoring reports to assess whether the TV stations monitored have observed Moldovan citizens' rights to full, objective and truthful information.
- The BCC should develop intervention tools and apply them promptly and efficiently when broadcasters deviate from legal norms in covering election campaigns in order to secure adequate information for the electorate through broadcasts.

http://media-azi.md/sites/default/files/Raport_monitorizare_alegeri_locale_nr5_ENG.pdf

4.3 Centre for Independent Journalism: Elements of Propaganda, Information Manipulation, and Violations of Journalism Ethics in the Local Media Space

CIJ has conducted several monitoring reports on this topic, the latest report covered April 1 – June 27, 2018.

General conclusions:

The electoral campaign for the new local elections has increased the frequency of deontology violations and manipulation techniques used by the 12 monitored media outlets. Thus, the general conclusion is that all the monitored outlets violated the principles of the Journalist's Code of Conduct and used certain information manipulation techniques. The main problem faced by all outlets is a mixture of facts with opinions – a fault committed by every one of them at least once in their own news. Generalization and the lack of the right to reply was another frequent fault of the monitored outlets during this period.

Overall, Moldovan media continue covering the issues of public interest based on political preferences. The televisions **Publika.md**, **Prime TV**, and **Canal 2**, which broadcast mostly similar content in newscasts, favored the Democratic Party of Moldova and its various representatives. Another group of media outlets – **Accent TV**, **NTV Moldova**, and more or less **Sputnik.md** – favored Igor Dodon, the Party of Socialists, and its representatives in their news.

Publika.md, Prime TV and **Canal 2, Canal 3** often diverged from the rules of professional ethics, appealing to manipulation techniques, such as labeling, truncation of opinions and statements, lack of the right to reply or the national savior (Messiah) technique.

Televisions **Accent TV** and **NTV Moldova** covered the monitored topics unilaterally and tendentiously, directly favoring the Party of Socialists of the Republic of Moldova. In many cases, they misinformed the public through false information, referred to sources that are impossible to check, and abused the internal and external enemy technique.

Jurnal TV sometimes politicized issues, favoring one party (Dignity and Truth Platform Party) and certain politicians (Andrei Nastase, Maia Sandu) and disfavoring other parties. Some topics were covered from a perspective that is unfavorable to the Democratic Party and its representatives, emphasizing information that shows them in a negative light. **Jurnal TV** used in its newscasts mixture of facts and opinions, generalization, and lack of the right to reply.

Regarding the public television **Moldova 1**, it has been noted that it built the scenarios of some news reports and presented them similarly to **Prime TV**, **Canal 2**, and **Canal 3**. In the majority of cases, however, the public television presented information neutrally and impartially. Its main fault was a mixture of facts with opinions.

Deschide.md often used irony to present information and appealed to the priority information technique, while **Sputnik.md** often applied labels and, like **Accent TV** and **NTV Moldova**, used the internal enemy technique. **Noi.md** failed to give the right to reply in several cases and used the priority information technique.

Thus, ***the most frequently identified violations*** of professional and ethical standards at monitored outlets were:

- A mixture of facts with opinions;
- Reference to sources that cannot be checked;
- Lack of the right to reply for the people concerned;
- Generalization and truncation of statements.

At the same time, the manipulation techniques used by journalists during the monitoring period intensified. The most frequent of them were the priority information technique, internal and/or external enemy technique, national savior (Messiah) technique, and suggestion technique. The media outlets that used them the most frequently were: **Accent TV, NTV Moldova, Prime TV, and Deschide.md**.

RECOMMENDATIONS

The Broadcasting Coordinating Council (BCC), based on Article 4 of the Broadcasting Code, should take note of the information and initiate monitoring of the TV stations, about which there are reports that they broadcast manipulating information, so the BCC can record violations of legislation and apply sanctions as required.

The editors of TV stations are called to monitor the editorial content of their outlets so that it is in line with the mission of the press to inform the public and to present the reality correctly, instead of following the wishes of political circles to promote their interests and settle accounts with rivals.

Reporters are encouraged to report from the site of events about all relevant facts completely, impartially, and after checking information, not selectively or unilaterally.

Media consumers are recommended to seek information from several media sources, in order to avoid the risk of getting wrong and manipulating information.
http://media-azi.md/en/elements-propaganda-information-manipulation-and-violations-journalism-ethics-local-media-space-0

5 Human rights

5.1 *Promo-LEX:* Human Rights in the Republic of Moldova

In the context of the Review of the Third Periodic Report of Moldova (CAT/C/MDA/3) at the 62th session of the UN Committee Against Torture [NOVEMBER 6 – DECEMBER 6, 2017], Promo-LEX Association, Rehabilitation Centre for Torture Victims (RCTV) "Memoria", World Organization Against Torture (OMCT) and International Rehabilitation Council for Torture Victims (IRCT) have prepared a Joint submission on the situation of persons subjected to torture and other cruel, or to inhuman or degrading treatment or punishment in Republic of Moldova[70]. The submission also refers to conditions of detention and domestic violence in Moldova.

Human Rights in the Transnistrian region of the Republic of Moldova

In the context of the Review of the Third Periodic Report of Moldova (CAT/C/MDA/3) at the 62th session of the UN Committee Against Torture [November 6 – December 6, 2017], Promo-LEX Association and World Organization Against Torture (OMCT), in collaboration with Media Centre from Tiraspol, prepared a shadow report[71]. The report describes the ways in which torture and ill-treatment continues to be committed in the Transnistrian region (MRT) and perpetuated due to a lack of action on the part of the national authorities of the Republic of Moldova.

The Russian Federation continues to play an important role in strengthening the de facto Tiraspol regime through generous and unconditional economic, social, political and military support that contravenes the international rules of law and its own status in the context of regulation of the Transnistrian issue. At the same time, public policies and strategies aimed at promoting and protecting the fundamental rights and liberties promoted by the constitutional authorities fail to achieve their purpose. In these conditions the de facto administration bears no responsibility for the human rights abuses and violations, enjoying total impunity for the deeds of its agents.

On 18 March 2018, presidential elections were organized in the Russian Federation. On this occasion, the authorities of the Russian Federation opened 27 polling stations in the Republic of Moldova. Of these, 3 were established on the territory controlled by the constitutional authorities and the other 24 were established in the Transnistrian region of the Republic of Moldova. The manner in which it was decided to set up and operate those 24 polling stations in the Transnistrian region was contrary to the diplomatic customs and confirm once more that the Russian Federation has the *de facto* control over the administration of the Transnistrian region[72].

The second half of 2017 and the first semester of 2018 were marked by the consensus reached and the protocol decisions[73] signed on a number of issues, after a long period time and a series of failed attempts (the *Berlin Protocol Decision*[74]). Nonetheless, in essence, the general human rights situation still remains outside any monitoring process.

An important *protocol decision* allowed access of the Dubasari farmers to their land parcels. To this end, authorities elaborated a number of implementation mechanisms. In this context, it is important to mention that, during the reported period, the European Court of Human Rights issued the judgment[75] on the case of **farmers from Dubasari district**. This class action case includes 8 cases submitted by Promo-LEX during 2004-2006, on behalf of 1646 applicants and 3 companies. The Court found violation of the right to property by the Russia and awarded about 2.5 mln. Euro to applicants as material damage.

Human rights are poorly promoted and cannot be efficiently protected in the Transnistrian region due to a confined space for the operation of independent civil society. Human Rights in the region are practically not

---

[70] https://promolex.md/wp-content/uploads/2017/12/INT_CAT_CSS_MDA_29211_E-1.pdf
[71] https://promolex.md/wp-content/uploads/2017/12/INT_CAT_CSS_MDA_29212_E.pdf
[72] https://promolex.md/11949-organizarea-alegerilor-prezidentiale-ruse-in-republica-moldova-inclusiv-in-regiunea-transnistreana-are-loc-prin-incalcarea-dreptului-international-si-a-drepturilor-omului/?lang=en
[73] https://promolex.md/wp-content/uploads/2018/02/Raport-DO-2017-ENG-web.pdf
[74] 'Protocol decision of the meeting focused on political issues in the Transnistrian settlement negotiations' 3.06.2016. Source: http://gov.md/sites/default/files/2016_06_03_protokol_52_berlin_0.pdf
[75] https://promolex.md/12861-federatia-rusa-se-face-vinovata-de-violarea-dreptului-de-proprietate-a-fermierilor-din-dubasari-reprezentati-de-promo-lex-la-curtea-europeana/?lang=en

monitored at all by local, national or international specialized institutions. Few of the region's independent organizations remain tightly supervised by the so-called security service ('MGB').

On May 19, 2018, the new regulations on non-commercial organizations in the Transnistrian region came into force[76]. The amendments were made to the Law on Non-Commercial Organizations, the Law on State Registration of Legal Entities and Individual Entrepreneurs, the Criminal and Civil Code and the Law on Public Associations. The amendments refer to a more rigorous and already formalized (acknowledged and assumed) administration of the Tiraspol administration, which attacks the freedom of association and expression, as well as the right to private life. According to these amendments, local non-commercial organizations receiving funds from abroad will not be able to carry out a number of activities, including those related to the promotion and protection of human rights. Therefore, non-commercial organizations from the Transnistrian region with foreign funding will be obliged, within one year, to comply with the new changes, otherwise they risk being liquidated and the members of the organizations could be criminally sanctioned. Given the fact that the Tiraspol administration does not provide funds to local non-commercial organizations and the non-governmental sector in the region is also considered by the international community to be rudimentary, these regulations are an additional obstacle to the development of the associative sector in the region. The adopted amendments merely formalize the control and pressure of the Tiraspol regime on civil society, which will ultimately lead to absolute control over the civil society activity in the region.

During May 28 - June 1, 2018, the Senior UN Human Rights Expert Thomas Hammarberg carried out a monitoring visit in the Transnistrian region. The main purpose of the monitoring visit was to assess the progress in implementing the 38 recommendations in 13 human rights areas, which were formulated by the Expert following his monitoring visit in the region in 201[77].

On July 26, 2018, the Russian Federation was reviewed by the UN The Committee against Torture (UN CAT)[78]. To this end, Promo-LEX and OMCT have prepared an Alternative Report on Extraterritorial Obligation of the Russian Federation under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment over the Transnistrian Region[79]. On August 10, 2018, The Committee issued Concluding Observations with recommendations for Russia to take measures to promote the prevention and prohibition of torture and ill-treatment in the Transnistrian region of Moldova. [80]

A recent case, registered in July 2018 shows that the practices of cooperation between the Ministry of the Interior of Moldova and the so-called Interior Department of the Transnistrian region continue in breach of a court decision that invalidated a presupposed cooperation agreement signed in 1999. Such practices are illegal as they violate the presumption of innocence too. The handing over of a person to the bodies of the Transnistrian regime is a crime committed by the constitutional authorities as the law enforcement agencies have to protect persons, not to expose them to risks by being transferred to a territory that is not controlled by them and to which they will not have access for trying to defend their rights there[81].
https://promolex.md/wp-content/uploads/2018/02/Raport-DO-2017-ENG-web.pdf

5.2 *Legal Resources Centre from Moldova*: Strengthening the Mechanisms for Fighting Discrimination and Hate Speech in Moldova

Equality is protected by the 1994 Constitution. However, a national mechanism for effectively ensuring the right to equality and nondiscrimination was created much later, to a large extent due to EU Moldova relations. Moldova's commitments on anti-discrimination derived initially from the visa-free dialogue, and it is part of the visa liberalization monitoring mechanism. The EU-Moldova Association Agenda for 2017-2019 provides that equality and gender issues are addressed as a crosscutting priority. It includes adoption of legislation on hate crime, the application of laws and regulations against discrimination on all grounds and strengthening the capacity of the Equality Council among short and medium-term priorities.

---

[76] https://promolex.md/12450-controlul-asupra-societatii-civile-din-regiunea-transnistreana-oficializat/?lang=en
[77] http://md.one.un.org/content/unct/moldova/en/home/presscenter/press-releases/statement-by-senior-un-human-rights-expert-thomas-hammarberg-on-/
[78] https://promolex.md/12933-federatia-rusa-a-fost-audiata-la-comitetul-onu-impotriva-torturii/?lang=ro
[79] https://promolex.md/wp-content/uploads/2018/07/UNITED-NATIONS-COMMITTEE-AGAINST-TORTURE_2018.pdf
[80] https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/CAT_C_RUS_CO_6_32062_E.pdf
[81] http://ipn.md/en/societate/92705

The national equality mechanism - the Equality Council - should play the leading role in promoting a more inclusive and diverse society in Moldova. Since its creation in 2013, it has demonstrated a proactive approach and independence in fulfilling its mandate. However, its effectiveness is significantly hampered by inadequacies in the existing legislation regarding the status of the Equality Council's decisions and their enforcement mechanism. Individual complaints on discrimination examined by the Equality Council can result in finding of discrimination and recommendations for redress, but the enforcement mechanism for recommendations is weak. When the act of discrimination amounts to a misdemeanour, the Equality Council issues a protocol and the court applies the administrative sanctions if the protocol is maintained. Due to inconsistency in legislation, the courts do not usually maintain the protocols. As a result, the acts of discrimination found as misdemeanours remain unsanctioned, or even not qualified as such by the Equality Council, to avoid its decision being quashed by courts. The Equality Council is constrained in submitting direct requests to the Constitutional Court on discriminatory legislative provisions. Keeping the current status quo can lead to the Equality Council's losing credibility among the victims of discrimination and the larger public. Legal framework should be amended to empower the Equality Council with sanctioning competences and the right to address the Constitutional Court.

Hate crimes are severely underreported in Moldova and are inadequately investigated. This results from both the poor legislative basis and the inadequate police and prosecution measures. A draft law amending Criminal and Contravention Codes regarding hate crimes/misdemeanours was voted in after the first reading on 8 December 2016. It contained a series of loopholes and needed several improvements before adoption. No progress has registered since then.

Hate speech is particularly present in political discourse, especially regarding certain social groups. It increased during the presidential elections of 2016, with no prompt public authority response or counter speech. The 2018 electoral year poses new risks for amplification of hate speech. The public authorities should urgently develop a strategy on combatting hate speech, involving all competent bodies. Public authorities and officials should confront and condemn hate speech via counter-speech that clearly shows its destructive and unacceptable character.
https://crjm.org/wp-content/uploads/2018/04/CRJM-practica-CSJ-cauze-civile-2018.pdf

6 Democracy and Electoral Process

6.1 *WatchDog.MD Community:* Gerrymandering 2.0 – How Were the Uninominal Constituencies in the Republic of Moldova Drawn?

WatchDog.MD Community issued a policy brief that reflects the way uninominal constituencies were designed and approved in Republic of Moldova after the electoral reform[82]. The study examines the legislation and the process which designs the delimitation of the uninominal constituencies in the Republic of Moldova. The author's conclusion is that most of the recommendations of the Venice Commission have not been taken into account in the process of amending the legislation, and the delimitation of constituencies has been non-transparent, contrary to the recommendations of the Venice Commission and the national legislation. The result of the formation of constituencies is disadvantageous to voters in the Diaspora and favors the parties that have promoted the modification of the electoral system, which is contrary to good international practices.

Main findings and conclusions:

The issue of politicians in control of the electoral rules abusing their power is a widespread one. Gerrymandering is present even in more developed democracies. Politicians change electoral laws to fit their own interests. However, in Moldova this practice was taken to a whole new level. Already the first analyses of the draft laws regarding the change of the electoral system made it clear that the new rules would favor PDM and PSRM. It became obvious that the two parties had made a deal behind the scenes. The winner-takes-all system, with MPs elected in a single round, clearly favors PSRM, which has monopolized the left. Involving the National Integrity Agency in the electoral process, limiting the role of mass media, increasing the power of the politically subordinate judiciary in electoral matters, increasing the importance of administrative resources and of the control of local administration - these and other provisions of the new legislation will provide the governing party with almost complete control over the electoral process.

The second stage was the creation of single-mandate constituencies according to the same logic. Even though the Electoral Code requires the establishment of an independent commission to draw up the constituencies, the regulation of this body was prepared by the Ministry of Justice, controlled by PDM, thus undermining the commission's independence from the very start. Next, in a discretionary manner, the authorities appointed as members of the commission a majority of politically affiliated people, thus ensuring complete political control over the creation of constituencies. The commission's work was wholly non-transparent and the decisions were taken without any public consultations. The government acted the same way when approving the constituencies. The commission disregarded even the provisions of the Electoral Code, not to mention international good practices. As a result, most the constituencies violate the legal provisions. Out of the 51 constituencies, nine bear clear signs of malapportionment and gerrymandering. The manner in which the constituencies have been drawn up and approved shows that in most cases the Party of Socialists is favored, while pro-European parties are at a disadvantage.

The way in which the single-mandate constituency reform was implemented proves once again that the current government plans on staying in power via PSRM's candidates in constituencies. The Socialists are sufficiently under control to be used to promote under their banner people that will later make up the parliamentary majority of the current government. There may be even more secret deals behind the scenes. What is certain is that the constituencies have been designed to disadvantage pro-European voters.

During analysis of the main recommendations issued by Venice Commission, there were found that absolute majority of them were not applied. Technical and fundamental issues were not addressed both by the Government and Special Commission. More than this, a lot of vicious procedure were used during constituencies delimitation.

[82] https://watchdog.md/2018/02/27/gerrymandering-2-0-how-were-the-uninominal-constituencies-in-the-republic-of-moldova-drawn/

Process 1: Malapportionment

The malapportionment process[83] is known as defective and disproportionate allocation of the seats between constituencies. It is envisaged the allocation of a similar number of mandates to constituencies with a much different number of voters / citizens. It is a different process than gerrymandering. In the US, in 1962, the Supreme Court of Justice declared this practice unconstitutional[84]. Sometimes it happens when this process is combined with classic gerrymandering. However, no example in the world can be given, when this process has been applied as broadly as it was in the Republic of Moldova as a result of the formation of uninominal constituencies. Especially since the mismanagement of mandates is combined with a visible gerrymandering. To avoid malapportionment, precise rules are applied regarding the allowed deviations. In the Electoral Code of the Republic of Moldova these norms are passed – first one the maximum of 10% deviation (the maximum deviation between constituencies, starting from the reference figure, is 10% between the largest and the smallest constituencies) and the second norm of 55-60 thousand voters included in the lists (the districts on the controlled territory of the Republic of Moldova will have between 55 and 60 thousand voters with the right to vote).

Out of 51 constituencies, 36 exceed in both directions the norm established by the law - so 70% of the constituencies. If it is to establish the maximum difference, then the 50 (Europe) constituency is the largest one with over 110 thousand voters who participated in the 2016 elections and the lowest it is the 47 constituency (the northern districts of Transnistria) with less than 7 thousand voters that came to the 2016 elections.

Even if we do not take into account the rules of representation established by the law, the average number of voters on lists in 45 constituencies (without Taraclia, Diaspora and Transnistria) is 61 700. The maximum deviation from this average in the 45 constituencies is 10.6 %, but 6 constituencies have a deviation of at least 57% (District 44 Taraclia). In the case of the constituency no. 50 (Europe), only if we look at the last elections, almost twice as many voters as the average number for the country were included, meanwhile in the constituencies for the Transnistrian region almost 10 times more voters were taken into account.

If we add to this fact that voters' lists in the Republic of Moldova are more than the real number of citizens with voting rights (living in the respective localities in the rural areas) and in Chişinău, there are even more voters living than they are on lists[85], the situation is even more alarming.

The voters from abroad are the most affected. There are different data, some contradictory, regarding the actual number of citizens living permanently abroad. The realistic number can be approximately 1-1.1 million voters. They behave very different in the elections. The situation since the last electoral poll showed that there are regions where voters in the Diaspora are actively voting. There have been several situations when there haven't been enough voting sheets in some voting locations[86]. In any case, the number of voters is the only true figure regarding the minimum number of voters in one country or another. In this case, the formation of two constituencies for 10-13 thousand voters and one for 115 thousand is an obvious example of malapportionment.

Of the 6 districts affected visibly by the application of the malapportionment procedure, in the case of 4 it was applied visibly in the interests of the pro-Russian parties (Taraclia, Transnistria - 2 constituencies and CIS + Asia). As well in the case of the constituency 50 (Europe) took place a concentration of a very large number of European pro-voters in a single constituency (Annex 2). In the case of the formation of an entire constituency for America, pro-European parties are favored. The final score would be 5:1 constituencies spread deficiently, visible in favor of the pro-Russian parties. As we will see below, more than half of the constituencies can assure malapportionment, which can assure the advantage of PSRM in the next elections based on mixed system of voting.

[83] https://en.wikipedia.org/wiki/Apportionment_(politics)#Malapportionment
[84] https://www.theatlantic.com/magazine/archive/2012/10/the-league-of/309084/
[85] https://promolex.md/wp-content/uploads/2017/01/raport-electoral-final_RO_2016.pdf
[86] http://www.transparency.md/wpcontent/uploads/2017/05/TI_Moldova_Evaluare_Modificarii_Sitemului_Electoral.pdf

If it is strictly to apply the provisions of the electoral law in the Republic of Moldova, malapportionment can be traced to all the constituencies that do not respect the norm of 55-60 thousand voters, per total the case of 70% of the constituencies.

Process 2: Classic Gerrymandering As a basis for verifying the presence or the lack of the gerrymandering process in the process of distributing the uninominal constituencies in the Republic of Moldova, we will take the results of the second round of the 2016 presidential elections. They are very relevant because they are the most recent and they reflect most accurately the cleavage between the two large categories of voters in Moldova - pro-European and pro-Russian. In Appendix 2 we see that preferences of voters in different constituencies vary greatly. In order to be able to see whether constituencies are distributed deficiently or not, we need to compare the results that would be in a proportional and in a mixed voting system. If they correspond or they deviate a little bit, then we can be sure that the distribution has been done impartially.

If we take as a basis the results of the presidential elections and we will shape them as possible parliamentary elections, then we see that left parties would have accumulated 837 thousand votes, and the right parties - 766 thousand. Based on the proportional system, this would mean a score of 27 to 24 mandates out of 51 in total. Instead, according to the mixed system, we see that 30 constituencies would be won by the left candidate and only 21 by the right. The difference between the two camps would increase from 3 to 9 seats. If we put aside the 6 constituencies on which the malapportion mechanism combined with gerrymandering was applied, then we will notice that the ratio of the 45 mandates on the basis of the proportional system would be 25 −left: 20 −right, but it is 26 –for the left and 19 for the right. We analyzed closely commission's working stages and concluded that this difference was ensured on behalf of the Chisinau municipality.

In the first stage, the commission decided to establish 46 constituencies in the controlled territory of the country, then it decided that 11 would be from Chisinau. At the next stage, the commission decided to allocate 2 constituencies for the Transnistrian region and only 3 for the Diaspora. Finally, it was decided to subdivide Chisinau suburbs into two different constituencies. In this case we are talking about a classic method of excessive concentration of voters of a certain orientation in a single constituency. Of the 11 constituencies in Chisinau, 5 favor the left and 6 the right (Annex 2). However, the largest difference between right and left parties' voters (in constituencies favoring the right parties' voters in the municipality of Chisinau) is about 6 thousand voters. Instead, in the two constituencies in the suburbs of Chisinau, the right parties accumulate 7700 and 12100 more voters. It is a deliberate intentional concentration.

If the suburban localities were included in the same constituencies with the nearest voting stations from the sectors, the situation would have changed a lot. We have already shown above how in order to concentrate abusively the pro-European voters from the suburbs, it was violated the law by including parts of different sectors in the same constituencies. Nor is it the case to say that the map of constituencies of the two suburban districts looks bizarre due to the large distances between localities, while combining them with neighboring regions from the sectors would have been much more rational[87]. Had this procedure not been applied, the constituencies' report in Chisinau municipality would have been 8 to 3 or even 9 to 2 in favor of the pro-European orientation parties.

In conclusion, out of 30 constituencies favoring the pro-Russian orientation parties, 7 were formed by applying the malapportionment procedures (Taraclia, 2 in Transnistria 39
and 1 in the Diaspora) and the gerrymandering method (nr. 23, 29 and 31 from Chisinau . The constituency nr. 50 (Europe) was formed by excessive concentration of pro-European voters, which disfavored right-wing parties. If these procedures were not applied, the ratio of favorable constituencies (based on presidential elections modeling) should have been 25 to 26 in favor of right-wing parties, not 30 to 21 in favor of the left-wing ones.
https://watchdog.md/2018/02/27/gerrymandering-2-0-how-were-the-uninominal-constituencies-in-the-republic-of-moldova-drawn/

[87] http://gov.md/sites/default/files/document/attachments/intr20_93.pdf (page 189)

6.2 *WatchDog.MD Community*: Republic of Moldova's Television is Shaping Electoral Behavior – An Assessment of Russia's Influence on the Country's Geo-Political Options

WatchDog.MD Community issued a comprehensive research on the impact of TV content on electoral and geo-political views of Moldovan voters. The study examines the way in which voters' opinion about the country's foreign orientation options is formed. On the example of reflecting the global state leaders' actions, it is proved the Russian television's domination over informing most citizens on foreign policy issues. By doing so, the media controlled by the Russian state denigrates manipulatively the image of the EU and the US and induces an erroneous view of the real situation in the Russian Federation. Through this domination, the Russian Federation shapes geo-political options among Moldovan voters. Because of the distorted image over the Western foreign policy, almost half of the voters opt for the Eastern integration vector. Moreover, due to media influence, Vladimir Putin is the most popular politician in the Republic of Moldova, and his support generates very high electoral confidence to the domestic political actors. The new legislation applied regarding limiting the Russian media presence has a small impact and requires far more consistent legislative intervention. In addition to the effort of striving to limit the influence of manipulating mass media from the Russian Federation, it is necessary to stimulate the local media to provide more consistent information on international politics.

Main findings and conclusions:

The external option is the main argument for voting one party or another in the Republic of Moldova. This is certainly not normal, but it is an objective reality. Given that it can shape the visions of how good each of the two geo-political options is, the Russian Federation has decisively influenced all the elections in the Republic of Moldova since Moldova's independence gain. After the military intervention against Ukraine, the Russian state has launched an internal campaign to denigrate the Western states and, implicitly, their leadership. This campaign has totally invaded Moldova by reducing the popularity of European integration and the rating of the Western political leaders.

In addition to the non-stop anti-Western and anti-Ukrainian propaganda campaign, the worship of Vladimir Putin's personality cult also took on further revolutions. Voters in the Republic of Moldova were directly affected. The impact is so great that the level of confidence in Vladimir Putin is high even among those who support the European integration option. In these two parallel campaigns, the role of Russian televisions retransmitted to the Moldovan public was decisive.

The level of indoctrination related to Vladimir Putin's person in the Republic of Moldova is so high that a simple photograph and a written message raised the Socialist Party from 1.5% to 21% in 2014. Basically, if we say that President Dodon's popularity is a mere projection of Vladimir Putin's level of trust, it will not be an exaggerated statement. The PSRM example illustrates the best how the Russian Federation influences the elections in the Republic of Moldova.

The situation is solely due to local politicians. By offering at ridiculous prices the right to retransmit the Russian channels (that is to say to corrupt the consumers), through backstage understandings and games of politicians with the purpose of a geo-political division of the population, the Russian Federation solved a strategic objective – to take the control over the Moldovan informational space. Objectively, for any Moldovan citizen there can be one better option – to have a better living standard. The manipulation of the public opinion by the Russian press in the Republic of Moldova has persuaded many Moldovans to act against their own interests.

We can only salute the effort to secure the informational space from this harmful influence. Without believing in the sincerity or the voluntary nature of this initiative, we encourage authorities to make the effort by completing further the legislation and to ensure the independence of the Broadcasting Coordinator Council.

If in the case of other states we can talk about elections' results intervention of the Russian Federation, in the case of Moldova we can even assume the determination of these elections. Given that the Russian Federation determinates 40% of the votes, it can no longer be a mere influence. If we refer to the situation of the media space in the Republic of Moldova until February 12, 2018, then it can't be defined as part of a media war. In the case of the Republic of Moldova we can talk about a real ``media occupation``.

A separate part of the research refers to the impact of main TV stations on political views. The correlation between the share of respondents in the two directions and the preferences for certain TV channels are

almost identical to what we have previously discussed about. PRO TV, JurnalTV, TV8, and Publika TV' audience is more inclined towards the option of unification with Romania. On the opposite side there are the same three TV channels - Prime, RTR and NTV, whose audience would, to a much greater extent, support the unification with the Russian Federation and they adopt very critical positions on the unification with Romania.

The issue of the influence of the manipulating Russian Federation's mass media on the opinion of the Moldovan citizens will not be solved without the creation of consistent alternative information. If for the majority of voters the traditional information channels will present non-objective information about the competing geopolitical blocs, it can be easily combated through products made by Moldovan media affiliated with Russia. Even the Internet / Social networks can easily ensure the continuation of Russian media domination in the event that sufficient objective information on foreign policy is not disseminated through television and other media sources.

Television remains the main source of information, and it is in the national interest and the external partners should acknowledge that TV consumers should be properly informed about the foreign policy. And it is not about informational campaigns with spots, street banners and flyers about the benefits of European integration; they are virtually powerless in the face of an EU and US denigration campaign. The solution is not to explain the benefits to the RM, citizens need to realize that integration into the European space is the integration into a safe and well-governed space. This requires that every citizen receive this constant information.

The best contribution of the external partners would be to support news programs and news stories of the independent televisions; so as to increase their quantity and quality. The subjects to which attention is drawn are the same as in the Russian press, but they are presented equidistantly and objectively.
https://watchdog.md/2018/07/14/republic-of-moldovas-television-content-and-the-manner-in-which-it-is-shaping-electoral-behavior-an-assessment-of-russias-influence-on-the-countrys-geo-political-options/

6.3 *Legal Resources Centre from Moldova*: Radiography of Attacks against Nongovernmental Organizations from the Republic of Moldova (September 2016 – December 2017)

This document provides information on the worsening operational environment of civil society organizations (CSOs) in Moldova, where increasingly more independent CSOs become the target of numerous mudslinging and defamation actions.

The main purpose of the document is to draw attention to the danger of orchestrated attacks on CSOs, and to determine public authorities, private organizations, and individuals to stop supporting those attacks and let CSOs operate freely. The document also aims at enabling CSOs to design timely response to attacks against them.

The term "attacks" used in this document refers particularly to media articles or public interventions that present the nonprofit sector as promoting the interests of foreign countries or serving the interests of political parties. Some of these attacks take the form of direct administrative crackdown on CSOs by driving them out of policy-making process or by launching legislative initiatives aimed at deteriorating the CSOs' working environment.

Smearing and defamation campaigns are usually launched by media groups, bloggers, political party representatives, and other opinion-makers affiliated to ruling parties. Occasionally, these campaigns are even launched by representatives of particular CSOs. As a rule, the speeches of high-ranking officials or politicians inspire the attacks. Their purpose seems to be deterring the civil society sector from actively engaging in public affairs or to be outspoken against legislative initiatives that endanger democracy.

Orchestrated attacks are indicative of a real danger for an adequate functioning of Moldovan CSOs and a threat to democracy. This document draws on the information from online and social media, as well as based on their quantitative and qualitative analysis. The monitoring does not present itself to be exhaustive. Attacks are presented in chronological order starting with September 2016. Some attacks are grouped in single blocks, such as those targeted against CSOs that opposed the initiative to change the electoral system, or the attempted restriction of foreign funding for CSOs in the draft law on non-commercial organizations.
https://crjm.org/wp-content/uploads/2018/03/2016-2017-radiography-NGO-attacks-EN.pdf

6.4 *Promo- Lex:* Follow-up on the implementation of the electoral reform in Moldova

The last legislative scrutiny took place on November 30, 2014 and thus, on February 24, 2019 the Republic of Moldova will hold regular Parliamentary elections. The activity of the current legislature and political parties was/is marked by many social and political events with negative connotations, and is critically perceived by citizens *(the theft of approx. 1 billion USD from the bank system in December 2014, the massive migration of the MPs, mayors and local councilors from different parties to the Parliamentary faction of the Democrat Party, which distorted the original representation of the political parties in the legislature and local public administration bodies)*.

Under these circumstances, in July 2017 a Parliamentary majority, created mostly by the factions of the Democrat Party and Party of Socialists from Moldova, changed the electoral system for the election of MPs. As a result, under the adopted mixed electoral system the Parliament will be composed of 50 MPs, elected on parties' lists in a countrywide constituency, and 51 MPs, elected in single-member constituencies. This includes 3 constituencies established for Moldovans living abroad and 2 for those living in the Transnistrian region.

Although Promo-LEX acknowledges the right of the Moldovan Parliament to amend the electoral system, such a dramatic amendment should have been strongly correlated with the national standards established in the Constitution of the Republic of Moldova as well as the international commitments and recommendations of the Council of Europe/Venice Commission and OSCE/ODIHR.

Unfortunately, the mixed electoral system was passed in a hurry, with limited discussions that merely simulated the public consultations (mainly due to the lack of feedback and analysis of the proposals made by different CSOs and experts in the area) and without a consensus within the society. Although the Moldovan authorities claim that all the recommendations formulated by the Venice Commission and OSCE/ODIHR were taken into consideration, Promo-LEX has proven that, in reality, only 12 out of 32 recommendations were fully or partially implemented[88]. Moreover, the main recommendation formulated by the Venice Commission and OSCE/ODIHR - not to change the electoral system – was ignored.

Consequently, the adopted mixed-member electoral system abounds with issues that may not only compromise its implementation during next Parliamentary elections, but also may put the free and fair character of the scrutiny in danger. Below is a list of problems that have been publicly addressed by Promo-LEX, and respectively brought to the attention -but unfortunately were neglected- by the authorities. At the same time, Promo-LEX is convinced that by taking into consideration and properly addressing these issues, the authorities can still significantly improve the adopted mixed electoral system and ensure its proper implementation for the upcoming Parliamentary elections:

- The first deficiency refers to the election of the MPs through a single round election[89] (compared to the election of the President and of the mayors, which take place in two rounds), as it is provided by the mixed electoral system, may result in a less representative Parliament, thus eventually infringing the Article 60 of the Constitution, which state that the Parliament is the supreme representative body.
- Second, Promo-LEX is concerned with the violation of the principle of equality of votes. 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 the threshold expected to be recorded in certain single-member constituencies. For example, at a minimum electoral score of 6% and a voter participation rate of 50%, 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. At the same time, in the single-member constituencies, at the same participation rate, an MP could be elected with only about 3-5 thousand votes. A special concern is that the principle of equality of votes would be impossible to enforce in the constituencies created on the territory of Gagauz autonomy, the Transnistrian, and in regions abroad where voters reside.

[88] https://promolex.md/11482-opinia-asociatiei-promo-lex-doar-12-din-32-de-recomandari-europene-cu-privire-la-sistemul-electoral-mixt-au-fost-indeplinite/?lang=en

[89] 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

- Furthermore, in the light of the deficiency mentioned above, Promo-LEX also regrets 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 in comparison with the previous proportional system. Under the mixed system, a political party with 6% popular support at the national level is able to delegate into the Parliament only 3 MPs.

In regards to the practical preparation of the next Parliamentary elections under the mixed electoral system, Promo-LEX is extremely worried about the following aspects:

- About 7% of the voters may be excluded from the electoral process, which constitutes approximately 203,368 of the voters (updated on April 1, 2018). These voters have neither domicile nor residence. As the official statistical data shows, the number of citizens without a domicile or residence has continuously increased[90], although there are no clear explanations for this phenomenon[91]. Article 93 (4) of the Electoral Code states that the voter shall vote at the polling station situated in the single-member constituency in which he/she has domicile. Also, the law provides that the voters who do not have domicile in the corresponding constituency shall not participate in the parliamentary elections in single-member constituencies.

Table no. 1. Dynamics of the number of voters based on SRV data over the period of 2016 - 2018

DATA	31.04. 2016[9]	13.09.2016[10]	31.03.2017[11]	01.09.2017[12]	31.03.2018[13]
TOTAL voters per constituencies	2848634	2854557	2870500	2873707	2829171
Voters of no abode / of no fixed abode[14]	165 141	160 673	158 265	155 683	203 368
Voters from ATU on the left bank of the Dniester River and in the municipality of Bender	219 325	221 842	223 880	225 971	226 486
Total in SRV	**3233100**	**3237072**	**3252645**	**3255361**	**3259025**

- Article 93(2) of the Electoral Code provides that students and pupils eligible to vote may cast their vote in any polling station from the settlement in which they study. The official statistics show that in the Chisinau municipality, during 2016-2017, there were about 80000 students in universities and in vocational education training schools. Should these circumstances be applied in bad faith, this could play a fateful role in the majoritarian constituencies created in Chisinau[92].
- Promo-LEX is also concerned by the possibilities of indirect and masked funding[93] of the election campaigns of the parties through the opportunity offered to the persons included in the parties' list of candidates established for the nationwide constituency to also run for elections in a single-member district, on behalf of the same party or as an independent candidate. In such cases, the funds used to promote the candidate, who is seemingly independent, would also add value to the promotion of the party, on the list of which the candidate is simultaneously running in the elections. This problem also opens the possibility of doubly funding the election campaign of the election candidate from the nationwide district and his/her representatives from the single-member districts. Moreover, it means that a person, who is on the list of candidates for both the nationwide district and the single-member district, contrary to the principle of equal opportunities, may benefit from the spending of financial resources both from the party's electoral fund and from the electoral fund of the independent candidate. These financial resources can almost double the ceiling for one single-member district. Unfortunately, the monitoring and supervising capacity of the Central Electoral Commission is limited, thus there are real concerns about the lawful implementation of provisions with regard to political parties and election campaigns funding.
- The National Commission for the Establishment of Permanent Single-Member Constituencies has ignored the special criteria for the determination of the number of constituencies to be established on the

[90] https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitutional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en
[91] https://promolex.md/wp-content/uploads/2018/05/RAPORT-nr.2_MO-Promo-LEX_ALN_20.05._eng-1.pdf
[92] https://promolex.md/10213-efectele-sistemului-mixt-studiu-de-caz-votul-studentilor-si-elevilor-poate-decide-soarta-alegerilor-din-unele-circumscriptii-uninominale/?lang=en
[93] https://promolex.md/10613-efectele-sistemului-mixt-studiu-de-caz-situatia-candidatului-din-lista-nationala-a-partidului-care-concomitent-este-si-candidat-independent-in-circumscriptia-uninominala/?lang=en

left bank of Nistru river, as well as for voters residing abroad. The Commission approved the establishment of 3 constituencies abroad and of 2 on the left bank of Nistru River, without explaining what criteria were used to establish the formation of the 5 constituencies in these territories, nor from where the 3+2 formula came. Promo-LEX has proposed an alternative clear mathematical formula, based on the criteria provided by the law, that suggested that six constituencies need to be established abroad[94]. Unfortunately, although the Commission has requested the contribution of the specialized CSOs, the proposal made by Promo-LEX was neither discussed nor analyzed.

- The National Commission for the Establishment of Permanent Single-Member Constituencies has also failed to observe the demographic criterion for the establishment of constituencies in the territory of the Republic of Moldova[95]. Although the law stipulates that one constituency shall have from 55,000 to 60,000 voters, and the difference in the number of voters between constituencies shall not exceed 10%, in practice, between 15 to 30 established constituencies exceeded the 10% margin established by law.
- Promo-LEX also found that the use of administrative resources in the election campaign was not clearly regulated by the law[96]. Thus, since some mayors and district councilors belong to certain Parliamentary parties, we may assume that they could be tempted to 'help' their party colleagues by using the administrative resources at their disposal.
- Promo-LEX has also pointed out another specific shortcoming which relates to the compulsory integrity certificates for those who register as candidates for a particular public position, including for MPs[97]. The foreseen deficiencies, in this regard, are related to the capacity of the National Integrity Authority to issue integrity certificates and their effects. Promo-LEX has recommended, inter alia, to establish expressly in the law the public character of integrity certificates, as well as to strengthen NIA's capacity to process a large number of applications within a short period of time.

Promo-LEX acknowledges that there are no good or bad electoral systems, but rather that there are systems that are either appropriate or not appropriate for a certain country or society during a specific period of time. However, as it can be seen from the information provided above, and also taking into account a series of other essential deficiencies[98] regarding the conduct of elections that remained unaddressed and noted by the Constitutional Court to the Moldovan Parliament after the 2016 Presidential elections, the changing of the electoral system has generated too many risks for the February 24, 2019 Parliamentary elections.

At the same time, civil society organizations, as watch dog institutions, have the right and obligation to signal the deficiencies in adopted laws. Promo-LEX has formulated many recommendations for the improvement of the above-mentioned aspects of the electoral system, thus striving to contribute to the organization of free and fair elections in Moldova. The main recommendation formulated in this regard for the authorities was to cancel the mixed electoral system or at least to implement it no earlier than for the 2022 Parliamentary elections, and only after all the gaps are settled and citizens are better informed about this change[99]. Unfortunately, the Parliament and political parties that promoted the amendment of the electoral system have ignored our appeals.

Still, Promo-LEX believes that many of the issues raised above can be tackled even before the start of the election campaign for the next Parliamentary elections, should the Parliament display a proper openness and political will.

---

[94] https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumscriptii-uninominale-care-urmeaza-a-fi-create-peste-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=en

[95] https://promolex.md/11014-circumscriptiile-electorale-uninominale-intre-oportunitate-politica-si-legalitate/?lang=en

[96] https://promolex.md/11014-circumscriptiile-electorale-uninominale-intre-oportunitate-politica-si-legalitate/?lang=en

[97] https://promolex.md/11654-initiativa-legislativa-privind-certificatul-de-integritate-necesita-imbunatatiri-semnaleaza-asociatia-promo-lex/?lang=en

[98] 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

[99] 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

6.5 *Promo-LEX:* The Fact that the Application for Registration of the Initiative Group for Conducting a Legislative Referendum was Rejected, Puts in Doubt the Citizens' Right to Directly Exercise Sovereignty

Promo-LEX Association is alarmed by the trends that take shape in the society – when certain important national public authorities limit the citizens' right to initiate a referendum, as well as to freely express their opinions in a democratic exercise. We think that such tendencies do not pursue a legitimate aim and are unnecessary in a democratic society. We are concerned that these positions could lead to certain discretionary restrictions of this right. We refer to the fact of compromising the citizens' right to initiate a republican legislative referendum itself – aspects mentioned by the CEC in the body of its decision (Decision No 1344 of 12.01.2018), as well as to the findings of the Constitutional Court in its Decision No 24 of 27.07.2017, which make the citizens' right to initiate any kinds of legislative referenda seem to be expressly limited.

Promo-LEX Association disapproves of the decision of the Central Electoral Commission to reject the registration of the Initiative Group for conducting a republican legislative referendum on repealing Law No 154 of 20 July 2017, which changed the electoral system into the mixed one. We think that the right to organise a referendum is a guaranteed right of the citizens of the Republic of Moldova, naturally fitting in the concept of the rule of law and national sovereignty as the existential foundations of a democracy.

We regret that in this situation (in comparison with other similar or comparable cases) the citizen-serving public authority took a stand of insisting on emphasising exclusively the letter of the law, while totally and groundlessly ignoring its spirit. ***The Association considers that the procedural grounds*** invoked by the CEC are of ***minor legal relevance*** and are unable to put in question the legality and lawfulness of the created initiative group, as well as of the citizens' right to freely express their opinion in such a democratic exercise as referendum.

At the same time, note that when the amendments to the electoral legislation were approved, Promo-LEX Association identified and pinpointed several legal gaps and issues in the implementation of the mixed-member electoral system, which, as Promo-LEX believes, must be tackled immediately. These include: reduced representativeness of the Parliament, if the MPs are elected in single-member constituencies in one single round; necessity to clarify the situation of a candidate from the national list of the party, who is, at the same time, an independent candidate in a single-member district; legal aspects of student voting; interpretability of and failure to observe the demographic criterion for distribution used for the establishment of constituencies, etc. ***We wish to stress that despite the obligation of the Government of the Republic of Moldova (by virtue of final provisions of Law No 154 of 20 July 2017) to make suggestions on amendment and adjustment of the legal framework till 20 October 2017, none of the aforesaid issues was examined.***
https://promolex.md/11377-opinia-asociatiei-promo-lex-respingerea-cererii-de-inregistrare-a-grupului-de-initiativa-pentru-desfasurarea-unui-referendum-legislativ-pune-la-indoiala-dreptul-cetatenilor-de-a-exercita-direct-suve-2/?lang=en,
Full text of the Note *https://promolex.md/wp-content/uploads/2018/01/Opinion_Initiative_Referendum_Mixt_Voting.pdf*

7 Declarations and Appeals

Appeal: The Draft Law Regarding „Decriminalization of Economic Crimes" releases „Smart Boys" from Criminal Liability, Undermines the Fight Against Corruption and Can Not Be Promoted

December 13, 2017

On 31 October 2017, the Ministry of Justice has submitted for coordination a draft law the declared aim of which is the improvement of the investment climate, attraction of foreign investment and reduction of pressure on business environment by the law enforcement bodies. The signatory organizations did not know about the elaboration of this draft law until 31 October 2017.

Numerous initiatives that cannot have anything in common with the declared aim of the draft are among the proposed amendments. On the contrary, they are unjustified and undermine the fight against corruption and the investigation of previously committed economic frauds. These include a new ground for exempting from criminal liability, a new ground for suspending the enforcement of imprisonment, prohibition to arrest persons for crimes sanctioned with less than 5 years of imprisonment, widening of the powers of the Anti-corruption Prosecutor's Office and increasing the number of criminal cases transferred into the exclusive competence of prosecutors. The powers of enforcement bodies that concern sanctioning are also substantially changed.

The draft stipulates that the person is released from criminal responsibility for committing economic crimes only once, if s/he recovers the damage and pays a fine to the state. In similar situations, the judge is required to apply the suspension of imprisonment for many economic crimes. Among the offences when these provisions can be applicable are the illegal practice of entrepreneurial activity, tax evasion, manipulation and abuse with securities, violation of shareholders' rights or unauthorized access to telecommunications networks. In the initial version, the draft provided that these provisions also apply to illegal crediting, fraudulent bank administration or obstruction of supervision in the banking system. However, even with subsequent changes, the remaining amendments can have a number of negative consequences for the financial and banking environment, reforms initiated in the sector or even for the intention of potential strategic investors to come to our country. The de facto decriminalization of crimes related to securities, especially those relating to the keeping of the stock holders' registers, will further reduce the ability of the state to guarantee private ownership and the investors' rights, which is the main element of a safe investment climate. It is unacceptable that the numerous raider attacks of the recent years and the embezzlement of property in a fraudulent way as well as intermediaries are exempted from criminal liability.

De facto, the draft prohibits the arrest of persons accused of economic crimes. Investments cannot be attracted by providing facilities to crooks. On the contrary, it will also be a sign of discouragement to business people of good faith. Moreover, a state that has been the victim of a huge bank fraud and numerous raider attacks should, on the contrary, should tighten sanctions for such deviations in order to discourage any new attempts of this kind. Introducing these amendments at the moment could seriously hamper the work of the competent authorities as regards the investigation of the banking fraud and proper accountability of those guilty of the fraud.

At the same time, we have been struck by the fact that although the draft states as its purpose the facilitation of the business environment, it changes the powers of the bodies responsible for investigating the cases of corruption. Contrary to international recommendations, small corruption, which is now investigated by the NAC, is transferred into the exclusive competence of anti-corruption prosecutors. This will distract them from cases of high level corruption and will further increase the workload of anti-corruption prosecutors, impeding the fight with the high level corruption. The draft does not justify this amendment in any way. Moreover, this amendment is contrary to the basic concept of the legislative reform of the Prosecutor's Office voted in 2016. This change was not discussed with prosecutors beforehand. The Prosecutor General Office and civil society organizations have earlier requested the Ministry of Justice not to promote it, but unsuccessfully.

Previously, civil society organizations have asked the Ministry of Justice to remove the above issues and even have made a public position note. The National Anti-corruption Centre as well provided a negative opinion on the draft (NAC corruption expertise opinion of 1 December 2017). The absence of justification, alongside with the insistence with which the draft is promoted, suggests that the draft law pursues a different purpose than the declared one.

The signatory organizations strongly request the Ministry of Justice and the Government to:

- Withdraw the draft law regarding the „decriminalization of economic crimes";
- Set up a representative working group with the involvement of all stakeholders, including civil society, development partners and the business community with the view to develop legislative solutions to the real problems faced by the business community;
- We also call on the development partners of the Republic of Moldova to follow closely the initiative regarding the "decriminalization of economic crimes".

The signatory organizations:
Association for Participatory Democracy (ADEPT)
Association for Efficient and Responsible Governance (AGER) Association of Independent Press (API)
„Acces-info" Centre
Independent Analytical Center „Expert-Grup" Centre for Analysis and Prevention of Corruption (CAPC)
GENDERDOC-M Information Centre
Journalistic Investigation Centre (CIJ)
Legal Resources Centre from Moldova (CRJM) Center Partnership for Development (CPD) WatchDog.MD Community
CPR Moldova
Centre for Independent Journalism (CJI) Institute for Public Policy (IPP)
Institute for Development and Social Initiatives „Viitorul" (IDIS „Viitorul") Institute for European Policies and Reforms (IPRE)
Promo-LEX
Transparency International-Moldova

DECLARATION of organisations of the National Platform of the Eastern Partnership Civil Society

March 14, 2018

We, the organisations of the National Platform of the Eastern Partnership Civil Society Forum, signatories to the Declaration, are deeply disappointed and concerned about the increasing tendencies of unjustified limitation of the right of Moldovan citizens to initiate and conduct legislative referenda. We believe that the law does not provide for such a limitation and a democratic society does not need it.

The current national legislation of the Republic of Moldova provides for the right of the citizens to initiate republican and constitutional referenda. Article 155 of the Electoral Code stipulates that the republican referendum may be, inter alia[100], initiated by at least 200.000 citizens of the Republic of Moldova eligible to vote. In case of constitutional referendum, provisions of Article 141 letter a) paragraph (1) of the Constitution shall be applied. According to this article, the citizens initiating the review of the Constitution have to come from at least half of the second level territorial-administrative units and at least 20.000 signatures must be registered in each of them in support of this initiative. Thus, finding the present existence of at least 36 territorial-administrative units of the second level[101], in order to initiate amending the Constitution, at least 20 thousand signatures * 18 territorial-administrative units of the second level are required, which represents at least 360.000 signatures, well above the limit of 200.000 signatures.

We can infer that by introducing minimum numbers of signatures that need to be collected to promote an ordinary legislative initiative or to amend the Constitution, the legislator sought to guarantee the right of citizens to initiate different types of republican referendums and to ensure the direct exercise of sovereignty.

On July 27, 2017, the Constitutional Court of the Republic of Moldova declared unconstitutional[102] the provisions of the present (after republishing, the numbering of the articles was modified) paragraph 2 of

[100] Besides citizens eligible to vote, the republican referendum may be initiated by at least one third of MPs, President of the Republic of Moldova and Government. According to Article 155(2) of the Electoral Code the mentioned actors could initiate any type of referendum.
[101] According to the Law No 764 of 27 December 2001 on the Territorial-Administrative Organization of the Republic of Moldova, the 36 second level territorial-administrative units are represented by 32 districts, Chisinau and Balti municipalities, as well as by two territorial-administrative units with special status (TAU Gagauzia and Transnistrian region).
[102] http://constcourt.md/ccdocview.php?tip=hotariri&docid=627&l=ro

Article 155 of the Electoral Code, which offered inter alia the President of the Republic of Moldova, the Government and 200.000 citizens the right to vote any type of referendum.

On January 12, 2018, the Central Electoral Commission (CEC) rejected[103] the request for registration of an initiative group intending to initiate a republican legislative referendum to repeal the amendments and addenda adopted by the Law No 154/2017, by which the mixed electoral system of election of Members in the Parliament was introduced. The Commission substantiated its decision by formally invoking procedural deficiencies admitted by the group members, although they were qualified as insufficient by some civil society[104] organizations to be rejected.

Worse, by this decision, the Commission questioned the citizens' right to initiate legislative referenda: 'it is not clear whether can be organised a legislative referendum, which does not refer to the approval of the constitutional laws adopted by Parliament, as required by Article 157 (1) letter b) of the Election Code, therefore, this article, which sets out exhaustively the problems that may be subject to the Republican referendum, does not provide for the possibility of organizing another legislative referendum than the one which refers to the approval of the laws passed by the Parliament, or it is presumed that 'other important issues of society and the state' provided for by Article 157 paragraph (1) letter d) include both the consultative and the legislative referendum'.

On February 15, 2018, the Ministry of Justice of the Republic of Moldova initiated the public consultation[105] of a public debate on a draft law aimed at amending the Electoral Code by granting the Parliament the exclusive right to initiate the republican legislative referendum[106]. In this context, several civil society organizations have issued opinions[107] on this draft law[108] and have 'expressed their disagreement with the proposed amendments to the consulted draft law. The people of the Republic of Moldova, as the sole sovereign holder of the power cannot be deprived of the right to initiate any type of referendum. Moreover, we have *to find some artificial barriers that are not necessary in a democratic society and which seem to be obstacles in the future to suppress the intentions of exercising direct democracy by the people.*

On March 7, 2018, contrary to the legislation in force[109], the Legal Commission of the Moldovan Parliament examined the CEC's request for official interpretation of the Electoral Code and issued an advisory opinion, even if the Commission requested formal interpretation. According to the Advisory Opinion No. CJ-10/74 of March 7, 2018[110], the Parliament is the supreme representative body of the people and the sole legislative authority of the state, empowered with the right to decide on the electoral system, the right of citizens to proceed to a legislative referendum not regulated by the Constitution.

On March 12, 2018, the Central Electoral Commission rejected[111][12] a new request from the initiative group to organize a republican legislative referendum for the adoption of a law on the electoral system, which stipulates that the Parliament's elections are based on a proportional voting system. Although the normative framework did not undergo any change, the CEC justified its refusal to register the application by invoking the (non-existent) constitutional jurisdiction in the field of initiating the republican legislative referendum, in the absence of the normative legislative norms referring to the initiation of the referendum by the citizens, as well as by the international regulations not to modify the electoral system until at least one year before the ordinary elections …'

To conclude**,**

Recalling that the referendum is an instrument of direct democracy, through which citizens can express their views on issues of national interest;

---

[103] http://cec.md/index.php?pag=news&id=1001&rid=21420&l=ro
[104] https://promolex.md/11378-opinia-asociatiei-promo-lex-respingerea-cererii-de-inregistrare-a-grupului-de-initiativa-pentru-desfasurarea-unui-referendum-legislativ-pune-la-indoiala-dreptul-cetatenilor-de-a-exercita-direct-suver/?lang=en
[105] http://www.justice.gov.md/public/files/2018/transparenta_in_procesul_decizional/februarie/1381.pdf
[106] https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf
[107] https://watchdog.md/2018/02/26/opinia-asociatiei-comunitatea-watchdog-md-asupra-proiectului-legii-pentru-modificarea-si-completarea-codului-electoral-autor-ministerul-justitiei/
[108] https://promolex.md/wp-content/uploads/2018/03/Opinie-modif.-Cod-Electoral.pdf
[109] According to Article 72(2) of the Law No 100 of 22 December 2017, the formal interpretation of laws is carried out exclusively by the Parliament by the adoption of interpreting laws.
[110] https://watch.cpr.md/cec-refuza-cetatenilor-dreptul-la-initierea-referendumului-legislativ-inca-o-proba-degradarii-mecanismelor-democratice/
[111] http://cec.md/index.php?pag=news&id=1001&rid=21675&l=ro

Calling attention to consistently visible actions by a number of public authorities aimed at limiting the exercise of constitutional rights of citizens in the Republic of Moldova;

Regretting that the Constitutional Court of the Republic of Moldova, in examining a particular case, unjustifiably extended the scope of the examination and declared a rule guaranteeing the right of citizens to initiate any type of referendum fully, not partially, unconstitutional;

Regretting that, following the Constitutional Court's decision, several public authorities such as the Central Electoral Commission, the Ministry of Justice and the Parliamentary Commission 'Legal Committee for Appointments and Immunities have trained themselves in various forms to limit the right of citizens to initiate any type of referendum;

Considering that the prerogative of Parliament to declare resolutely all proposals to initiate the referendum is excessive and might serve as an unjustified and exclusive instrument of political opportunity to block popular initiatives;

Insisting on the fact that the participatory democracy counts and that in the decision-making process the good faith of public institutions and political actors prevails, and this will be assured, which will be the decisive factor in the evolution of law and jurisprudence in the Republic of Moldova;

EaP CSF National Platform Organisations, CALL FOR:

The public authorities, parliamentary and extra-parliamentary political parties, civil society organizations promoting democracy and the supremacy of human rights, other relevant national political and apolitical actors:

- to abandon initiatives to limit the right of citizens to exercise their sovereignty directly by initiating any type of referendum;
- to initiate a genuine and constructive dialogue with promoters and opponents of ideas limiting the right of citizens to initiate any type of referendum;
- to request Venice Commission's opinion on limiting the right of citizens to initiate any type of referendum;
- to recognize, support and promote all legal requests initiated at national level to block initiatives that limit the right of citizens to initiate any type of referendum;
- to amend the legislation to ensure a legal certainty of citizens' right to initiate any type of referendum and, according to the obligation of public authorities, to allocate the financial resources needed to consult the will of the people;

The international partners of the Republic of Moldova:

- to continuously monitor the intention of the authorities of the Republic of Moldova to unjustifiably limit the right of the citizens of the Republic of Moldova to initiate any type of referendum but also to freely expose their opinion on a problem of national interest in a democratic exercise;
- to insist on the consultation of the Venice Commission's opinion on draft laws on the right of Moldovan citizens to initiate any type of referendum.

Moldovan Platform of the EaP CSF: Statement on the Intimidation of Veaceslav Negruta, an expert of Transparency International Moldova and former Minister of Finance

June 4, 2018

Veaceslav Negruta, an expert of Transparency International Moldova, has come under increasing pressure from the current government representatives. His former advisor was arrested two months ago and is being forced by the law enforcement agencies to testify against Mr. Negruta on fabricated charges related to a bid for a public contract with a company issuing passports.[112]

Veaceslav Negruta served as the Minister of Finance of Moldova in 2009-2013. While being part of the government, he noticed irregularities in the banking system some time before the 1 billion USD bank fraud took place. In April and June 2012, he urged the Parliament and the Supreme Security Council of the President respectively to adopt measures preventing infringements. As for his stand against corruption, he

[112] Statement of the TI Secretariat in Berlin on the case: https://www.transparency.org/news/pressrelease/anti_corruption_campaigners_in_moldova_must_not_be_intimidated

became an inconvenient person for those who were planning the fraud and therefore several ways of removing him from the office were plotted, including a staged car accident.

In July 2012, as those plans were unsuccessful, a criminal case against Mr. Negruta was initiated, while the judge chairing the case in the Court of Appeal was the brother-in-law of the main Moldovan oligarch. Despite the groundless accusations, the Court ruled on a suspended sentence of three years in prison for Mr. Negruta.

In the meantime, Mr. Negruta resigned from his position in protest against the developments in the banking system in Moldova and their expected implications for the financial system, keeping a strong stance on the financial system violations in Moldova.[113]

Subsequently, Mr. Negruta contested the decision of the national law court in the European Court of Human Rights.

Transparency International Moldova hired Mr. Negruta in 2016. He has been working on the Public Policies Observer, including the opinions on legal initiatives in the economic field that may damage public interest. In the framework of this activities, he raised, among others, the following issues:

- money laundering of around 22 billion USD via the corrupt justice sector of Moldova;
- 1 billion USD fraud within the Moldovan banking system and the way it was planned by decision makers;
- burdening the Moldovan taxpayers with the state debt they will have to repay over the next 25 years as a result of the 1 billion USD theft;
- attempts by the Moldovan governors to legalise the embezzled money via several initiatives that were covered up as business support schemes;
- attempts to relieve the responsible decision-makers of criminal liability for the bank fraud;
- contracting a private company to grant Moldovan citizenship in order to formally distance authorities from such practices as giving citizenship to members of criminal organisations that could conduct money laundering activities in Moldova;
- manipulating public opinion on the process of recovering the embezzled funds;
- concerns over the nationalisation of the controversial stock of shares in the commercial banks;
- Russia's system of producing crypto-currency in Transnistrian region, which may facilitate money laundering in Moldova.

The EaP CSF Moldovan National Platform expresses its deep concern over the escalating pressure on the representatives of civil society fighting against corruption and state capture and urges the European Union institutions to take a strong stance on the situation in Moldova.

The Moldovan National Platform calls on the Moldovan authorities to stop attacks on civil society activists.

Statement on Invalidation of the Election of the Mayor of Chisinau Municipality

June 22, 2018

We, the Signatory Organizations, members of the Civic Coalition for Free and Fair Elections, and of the National Platform of Eastern Partnership Civil Society Forum[114], and other non-governmental organizations,

We are deeply concerned and alarmed by the judgments issued by the Chisinau City Court on June 19, 2018 and the Chisinau Court of Appeal on June 21, 2018, invalidating the local elections of the Chisinau mayor of May 20, 2018 (round I) and June 03, 2018 (round II).

---

[113] See more on the case here: https://anticoruptie.md/en/cases-of-corruption/sentence-of-veaceslav-negruta-condemned-in-the-case-of-record-compensations-upheld-by-the-court-of-appeal-chisinau

[114] www.alegeliber.md – **The Civic Coalition for Free and Fair Elections** is a permanent, voluntary entity, made up of 35 nongovernmental organizations from the Republic of Moldova, having the aim to contribute to the development of democracy in the Republic of Moldova, by promoting and conducting free and fair elections in accordance with the standards of the ODIHR (OSCE), the Council of Europe and specialized institutions affiliated to it.
The National Platform of the Eastern Partnership Civil Society Forum is an informal NGO network, created within the framework of the Eastern Partnership Civil Society Forum, set up in five working groups, specialized on different areas of expertise. At present, 85 civil society organizations of the Republic of Moldova are members of the National Platform.

We declare with all responsibility that we totally disagree with the reasoning and arguments used to void the vote of over 240,000 inhabitants of Chisinau, or about 40% of the municipality electorate.

We believe that the reasoning of the decisions of the Chisinau Court and the Court of Appeal is deficient, inconclusive and undermines citizens' confidence in the independence and professionalism of the judiciary.

We assume the right to resort to all legal means to defend the public interest and to advance our position set forth in this Statement.

Contrary to the judgments issued by the courts and in support of the above-mentioned desiderata**,** we present the following conclusions**:**

- **Applying a punishment not provided by legislation and the sanctioning of more than 240,000 voters who participated in the elections.** We emphasize that the Electoral Code provides for three types of sanctions: legal (electoral), contraventional and criminal. For illegal campaigning in the Election Day the candidate/candidates are imposed a contravention fine of maximum 1500 MDL (about 75 euros). In fact, more than 240,000 voters who exercised their right to vote, none of whom contested the lawfulness of the elections, were punished by invalidating the elections; as well as all the Moldovan citizens who pay taxes to the state budget, as the local elections were funded from the state budget.
- **The deficient and unconvincing reasoning of the judgments issued.** The finding of the Court of Appeal that candidates' calls, addressed to the voters on the Election Day, influenced the results of the elections had to be analyzed by their impact. It could have had both negative and positive impact. To void the elections, the Chisinau Court had to prove that the influence was negative. But this cannot be proved, unless citizens or candidates challenge the election results or, if citizens protest. If the impact of the campaigning made by candidates in the Election Day led to increased participation in the second round, then the court had to demonstrate that higher voter turnout damages the electoral process, which is impossible to prove. The Chisinau Court identified an influence on elections results which was not qualified anyhow. This disqualifies the decision to invalidate elections.
- **Judgments with an unclear and destabilizing impact.** The abstruse decisions of the courts undermine the entire electoral process, which according to the legislation, must conclude with the election of Chisinau mayor. If the courts declared the elections void, they had to clearly and unequivocally identify the guilty ones and remove them from the electoral competition, calling repeated voting. This has not been done, and the impact of the judgments has prompted voters' protest.
- **No candidate challenged the results of the local elections in Chisinau** The defeated candidate requested the court to determine the violations similarly invoked in the Constitutional Court decision of 13 December 2016 on the confirmation of the election results and the validation of the mandate of President of the Republic of Moldova. Additionally, election results have not been challenged by the electoral bodies neither by the observation missions.
- **The judiciary continues the practice of selective justice.** In the case of the candidate of the political party Șor competing in the local elections in Jora de Mijloc village, where allegations of violations were submitted both by candidates and observers, and could have led to the exclusion from the election race and therefore, to the cancelation of elections due to corruption of voters through aggressive campaigning, which exceeded the financial ceiling allowed by law, the elections were still validated. On the other hand, in the municipality of Chisinau, for a minor offense sanctioned by a fine of 1500 MDL (about 75 euros), which can be applied exclusively to the candidate responsible for the offense, and which is not included in the list of legal sanctions that may lead to exclusion from electoral race, the elections were called invalid, thus the winning candidate being, de facto, excluded from the race.
- **Delay and lack of transparency in the case examination.** The Chisinau Electoral Constituency Council had to pass on the minutes and the elections report to the Chisinau Court in 48 hours after the closure of the polling stations. The counting was finalized on 04.06.2018, 12:00, but the above mentioned materials were sent to court only on 11.06.2018. The Chisinau Court illegally and unjustifiably banned the free observation of the trial by reporters and journalists and, moreover, threatened them with sanctions. We underline that journalists, in the electoral context, have the same rights as observers, and have access to all election materials and can assist at all election operations, validation of the mandate, being among the last election operations.

- **By issuing such judgements, there is, de facto, an unjustified suppression of the freedom of expression,**by prohibiting the public call for voters' mobilization to participate in the elections on Election Day.
- There are growing doubts that by invalidating the elections and given the imperfect legal framework (publicly confirmed by CEC officials), **there is the risk of a total suppression of the popular will in Chisinau.**Thus, there is a risk that repeated elections will not be organized and the country's capital will be headed by an acting mayor.
- **Negative consequences of the invalidation of elections.** The trenchant attitudes of the development partners resonate with the assessments on the failure of justice sector reform, once again confirmed by the unjustified decisions issued by the courts on invalidation of Chisinau mayor elections. The growing concern about what has happened due to the negative judicial practices can be extended to the upcoming parliamentary elections given the mixed electoral system.
- **Voters' protests against the court decisions.** Chisinau voters protest is aimed at raising awareness among citizens and development partners, aiming at mobilizing the local and international public opinion in order to restore democracy in the Republic of Moldova. In these circumstances, it is justified to ask the development partners to review the conditions for granting any kind of assistance to Moldovan authorities.

In the context of the above, the signatory organizations ask the courts to come back to normal operation, to apply in good faith the legal provisions and repeal the judgments issued by the Chisinau Court (Center headquarters) on June 19, 2018 and the Chisinau Court of Appeal on June 21, 2018, which did not validate the local elections of Chisinau mayor on May 20, 2018 (round I) and June 03, 2018 (round II).

The signatory organizations reiterate their support for the rule of law and the supremacy of the popular will and call on all actors involved in the process to show political maturity and deep respect for the truly democratic traditions.

Statement on Invalidation of the Election of the Mayor of Chisinau Municipality

June 22, 2018

We, the Signatory Organizations, members of the Civic Coalition for Free and Fair Elections, and of the National Platform of Eastern Partnership Civil Society Forum[115], and other non-governmental organizations,

We are deeply concerned and alarmed by the judgments issued by the Chisinau City Court on June 19, 2018 and the Chisinau Court of Appeal on June 21, 2018, invalidating the local elections of the Chisinau mayor of May 20, 2018 (round I) and June 03, 2018 (round II).

We declare with all responsibility that we totally disagree with the reasoning and arguments used to void the vote of over 240,000 inhabitants of Chisinau, or about 40% of the municipality electorate.

We believe that the reasoning of the decisions of the Chisinau Court and the Court of Appeal is deficient, inconclusive and undermines citizens' confidence in the independence and professionalism of the judiciary.

We assume the right to resort to all legal means to defend the public interest and to advance our position set forth in this Statement.

Contrary to the judgments issued by the courts and in support of the above-mentioned desiderata**,** we present the following conclusions**:**

---

[115] www.alegeliber.md – **The Civic Coalition for Free and Fair Elections** is a permanent, voluntary entity, made up of 35 nongovernmental organizations from the Republic of Moldova, having the aim to contribute to the development of democracy in the Republic of Moldova, by promoting and conducting free and fair elections in accordance with the standards of the ODIHR (OSCE), the Council of Europe and specialized institutions affiliated to it.
The National Platform of the Eastern Partnership Civil Society Forum is an informal NGO network, created within the framework of the Eastern Partnership Civil Society Forum, set up in five working groups, specialized on different areas of expertise. At present, 85 civil society organizations of the Republic of Moldova are members of the National Platform.

- **Applying a punishment not provided by legislation and the sanctioning of more than 240,000 voters who participated in the elections.** We emphasize that the Electoral Code provides for three types of sanctions: legal (electoral), contraventional and criminal. For illegal campaigning in the Election Day the candidate/candidates are imposed a contravention fine of maximum 1500 MDL (about 75 euros). In fact, more than 240,000 voters who exercised their right to vote, none of whom contested the lawfulness of the elections, were punished by invalidating the elections; as well as all the Moldovan citizens who pay taxes to the state budget, as the local elections were funded from the state budget.
- **The deficient and unconvincing reasoning of the judgments issued.** The finding of the Court of Appeal that candidates' calls, addressed to the voters on the Election Day, influenced the results of the elections had to be analyzed by their impact. It could have had both negative and positive impact. To void the elections, the Chisinau Court had to prove that the influence was negative. But this cannot be proved, unless citizens or candidates challenge the election results or, if citizens protest. If the impact of the campaigning made by candidates in the Election Day led to increased participation in the second round, then the court had to demonstrate that higher voter turnout damages the electoral process, which is impossible to prove. The Chisinau Court identified an influence on elections results which was not qualified anyhow. This disqualifies the decision to invalidate elections.
- **Judgments with an unclear and destabilizing impact.** The abstruse decisions of the courts undermine the entire electoral process, which according to the legislation, must conclude with the election of Chisinau mayor. If the courts declared the elections void, they had to clearly and unequivocally identify the guilty ones and remove them from the electoral competition, calling repeated voting. This has not been done, and the impact of the judgments has prompted voters' protest.
- **No candidate challenged the results of the local elections in Chisinau** The defeated candidate requested the court to determine the violations similarly invoked in the Constitutional Court decision of 13 December 2016 on the confirmation of the election results and the validation of the mandate of President of the Republic of Moldova. Additionally, election results have not been challenged by the electoral bodies neither by the observation missions.
- **The judiciary continues the practice of selective justice.** In the case of the candidate of the political party Șor competing in the local elections in Jora de Mijloc village, where allegations of violations were submitted both by candidates and observers, and could have led to the exclusion from the election race and therefore, to the cancelation of elections due to corruption of voters through aggressive campaigning, which exceeded the financial ceiling allowed by law, the elections were still validated. On the other hand, in the municipality of Chisinau, for a minor offense sanctioned by a fine of 1500 MDL (about 75 euros), which can be applied exclusively to the candidate responsible for the offense, and which is not included in the list of legal sanctions that may lead to exclusion from electoral race, the elections were called invalid, thus the winning candidate being, de facto, excluded from the race.
- **Delay and lack of transparency in the case examination.** The Chisinau Electoral Constituency Council had to pass on the minutes and the elections report to the Chisinau Court in 48 hours after the closure of the polling stations. The counting was finalized on 04.06.2018, 12:00, but the above mentioned materials were sent to court only on 11.06.2018. The Chisinau Court illegally and unjustifiably banned the free observation of the trial by reporters and journalists and, moreover, threatened them with sanctions. We underline that journalists, in the electoral context, have the same rights as observers, and have access to all election materials and can assist at all election operations, validation of the mandate, being among the last election operations.
- **By issuing such judgements, there is, de facto, an unjustified suppression of the freedom of expression,**by prohibiting the public call for voters' mobilization to participate in the elections on Election Day.
- There are growing doubts that by invalidating the elections and given the imperfect legal framework (publicly confirmed by CEC officials), **there is the risk of a total suppression of the popular will in Chisinau.**Thus, there is a risk that repeated elections will not be organized and the country's capital will be headed by an acting mayor.
- **Negative consequences of the invalidation of elections.** The trenchant attitudes of the development partners resonate with the assessments on the failure of justice sector reform, once again confirmed by the unjustified decisions issued by the courts on invalidation of Chisinau mayor elections. The growing

concern about what has happened due to the negative judicial practices can be extended to the upcoming parliamentary elections given the mixed electoral system.

- **Voters' protests against the court decisions.** Chisinau voters protest is aimed at raising awareness among citizens and development partners, aiming at mobilizing the local and international public opinion in order to restore democracy in the Republic of Moldova. In these circumstances, it is justified to ask the development partners to review the conditions for granting any kind of assistance to Moldovan authorities.

In the context of the above, the signatory organizations ask the courts to come back to normal operation, to apply in good faith the legal provisions and repeal the judgments issued by the Chisinau Court (Center headquarters) on June 19, 2018 and the Chisinau Court of Appeal on June 21, 2018, which did not validate the local elections of Chisinau mayor on May 20, 2018 (round I) and June 03, 2018 (round II).

The signatory organizations reiterate their support for the rule of law and the supremacy of the popular will and call on all actors involved in the process to show political maturity and deep respect for the truly democratic traditions.

STATEMENT ON THE ERODING DEMOCRACY IN REPUBLIC OF MOLDOVA

June 25, 2018

We, the Signatory Organizations, members of the Civic Coalition for Free and Fair Elections, and of the National Platform of Eastern Partnership Civil Society Forum, and other non-governmental organizations,

Understanding the mission and responsibility of the civil society in the process of democratization and protection of citizens' rights and interests:

Express our profound disappointment with the eroding of democracy in Republic of Moldova, where citizens' fundamental right to elect their representatives is being infringed.

We reiterate our complete disagreement with the motivation and the arguments used by the judges to invalidate the vote of more than 240,000 citizens from Chisinau, representing circa 40% of the voters that elected the mayor of the municipality.

We are deeply concerned that justice in Republic of Moldova is politically controlled and used as a tool against the public interest.

We are alarmed that now and henceforth any elections can be invalidated by means of ill motivated court decisions, thus nullifying citizens' choice.

It is of paramount importance that the legality and legitimacy of the political power as well as the right to govern are ensured as a result of people's will, expressed in periodic and free and fair elections.

It is the common responsibility of authorities, voters and political forces in building and consolidating the democratic institutions, and thus

We call upon all political forces in the country as well as the development partners to use all legal means to protect the rule of law in Republic of Moldova.

STATEMENT: ONLY THE GOVERNMENT AND THE JUDICIAL SYSTEM ARE RESPONSIBLE FOR FAILURES IN THE JUSTICE SECTOR

July 11, 2018

The member organizations of the National Platform of the Eastern Partnership Civil Society Forum, signatories to this Statement, express their deep concern and indignation regarding the current Government's shrinking from the responsibility for the failure of the justice sector reform and shifting it to the development partners and civil society.

On 5 July 2018, the European Parliament adopted a resolution on the political crisis in Moldova following the invalidation of the mayoral elections in Chisinau**. The European Parliament, among other things, expressed its** grave concern over the further deterioration of democratic standards in Moldova, as well as regarding the lack of independence of the judiciary, urging the European Commission to suspend budgetary

support and macro-financial assistance for the Republic of Moldova. The High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission, Federica Mogherini, confirmed the decision to put on hold the disbursement of the first tranche of the macro-financial assistance reserved for the Republic of Moldova.

On 6 July 2018, the Ambassador of the European Union (EU) and the ambassadors of EU member states to Chisinau met with the Prime Minister Pavel Filip and the members of the Cabinet to inform them about the EU position after the invalidation of elections in Chisinau. After the meeting, the Delegation issued a brief statement.

On 7 July 2018, the Cabinet of the Republic of Moldova issued a press release with its own clarifications regarding the meeting of 6 July. According to the press release, the resolution of 5 July 2018 is wrongful towards the Government and is politically charged, noting that „[…] all commitments to receive EU funding have been fulfilled, and the decision to suspend the funding is unjustified and represents an interference into the internal policy of the Republic of Moldova". Moreover, the press release states that the Prime Minister has called the attention of the EU Ambassadors to the fact that „**if things are not going as they have to in the justice sector, it is the responsibility of both the Government and the European partners as well as of the representatives of civil society who participated in the implementation of the justice sector reform**". The Prime Minister also noted that the information sent by the EU Delegation to Chisinau to the European officials is incomplete and asked for „this approach to be revised and notes sent to be objective".

In this context, we express our grave concern and indignation regarding:

- the way in which the Cabinet and the Government as a whole has chosen to react to the resolution of the European Parliament of 5 July 2018 and to the EU position on the invalidation of the election results in Chisinau municipality expressed by the EU Ambassadors accredited to the Republic of Moldova and the unprecedented language to which a high-ranking official of the Republic of Moldova has resorted, making unfair accusations regarding the way of the EU Delegation to Chisinau is informing the European officials, even giving instructions to foreign diplomats regarding what kind of information they should send to the EU institutions. We should note that such worrying communication practices are inadmissible in accordance with diplomatic customs and do not comply with the spirit of bilateral relations and values set forth in the Association Agreement between the Republic of Moldova and the European Union, endangering good relations with a key partner for the sustainable development of the country, as well as
- the Government's shrinking from the responsibility for the state of affairs in the justice sector, shifting the responsibility for the failures of the justice sector reform to development partners and civil society representatives. The remarks about the responsibility of the European partners and civil society for the lack of progress in the reform of the justice sector are unacceptable, as progress has not been achieved mainly due to lack of political will or, even worse, due to a bad political will. The Prime Minister's tendentious statements that the justice sector reform has failed due to the involvement of civil society suggest a lack of respect for a fundamental principle of any democracy – transparency in decision-making processes through the involvement of civil society, as well as the lack of a clear understanding of the role of civil society in a democratic society and the quality of decisional transparency in the Republic of Moldova. Making decisions of public interest without the involvement of civil society is an attribute of the authoritarian regimes.

We have to draw Government and public opinion's attention to the fact that the responsibility for justice sector reforms rests only with the national authorities – the Parliament, the Government and, to a large extent, with the judiciary. The Cabinet, the parliamentary majority and the current Government as a whole bear the greatest responsibility for not promoting systemic reforms and policies aimed at ensuring the independent functioning of the judiciary and law enforcement institutions that are free from the influence of affiliated economic and political groups. They also bear responsibility for not using all the tools available to the Government and the Parliament to prevent the enforcement of court decisions that attack the fundamental right of citizens to elect and be elected. Dangerous practices have been instituted in the judiciary, and political influence on judges and prosecutors, a common phenomenon for the entire state apparatus, has increased. Below we present just a few illustrative examples of the justice sector's state of affairs:

1. Contrary to the provisions of the Justice Sector Reform Strategy (2011-2016), until now the Constitution of the Republic of Moldova has not been amended to increase judges' independence. The amendments were supposed to annul the initial appointment of judges for a period of 5 years, often transformed into a loyalty test to the system, and the composition of the Superior Council of Magistracy had to be modified to enhance its independence and accountability. Following the amendment of the Constitution, a series of amendments that would have excluded the group interests in the Superior Council of Magistracy were supposed to be made;
2. Contrary to the provisions of the Strategy, a genuine reform of the Supreme Court of Justice (SCJ) has not been carried out. The role of the SCJ and its powers have not been analysed, and the way of appointment of judges to the SCJ has not been improved;
3. Even though in 2012 the legislation was amended to ensure the appointment and promotion of judges based on merits, in practice, judges continued to be appointed and promoted without clear criteria and most of them were appointed and promoted at the mere Superior Council of Magistracy's discretion;
4. The extensive use in the justice system of intimidation practices or exclusion from the system of whistle-blowers, including judges who publicly speak about the problems in the judiciary or take decisions inconvenient to the Government, including by prosecuting such judges;
5. Since 2016 we have noticed an unprecedented phenomenon in the judiciary of the Republic of Moldova – the examination of high profile cases entirely in closed hearings. Closed hearings are an attribute of an inquisitorial and dependent judiciary. Although there have been numerous statements and public appeals to stop this practice, the phenomenon continues. Such practices further lower the trust of citizens in the judges' decisions and raise doubts about the independence of the judiciary;
6. More than USD 20 billion („laundromat case") were laundered through the judicial system of the Republic of Moldova. Although the Superior Council of Magistracy knew about this phenomenon and informed the Prosecutor's Office in 2012, since then it has promoted judges involved in money laundering (4 out of 16 accused later) and the Prosecutor's Office announced the criminal prosecution of judges only in September 2016;
7. About USD 1,000,000,000 or circa 13% of the country's GDP were stolen from the banking system of the Republic of Moldova. The competent national authorities were aware of these fraudulent schemes, but did nothing or acted insufficiently to prevent the fraud. Over four years, not a single leu (MDL national currency) out of those stolen through the bank fraud has been recovered. Moreover, the main suspect of the banking fraud, who is sentenced by the first instance court to imprisonment, is neither imprisoned nor his assets are seized, and his case is delayed for years, which shows unequal and selective practices of delivering justice in the Republic of Moldova;
8. Moreover, the application of selective justice is noticed in the case involving the former Mayor of Chisinau, who was suspended from office by court decisions, the case of whom is still pending, in dissonance with the judicial practice in other cases;
9. And finally, an unprecedented case that is illustrative, is cancelling by court decisions of the mayor's election results in Chisinau municipality of May-June 2018, won by an opposition leader. The court reasoned the decision to cancel the election results on assumptions about the impact of about 250,000 views on the social network Facebook on 12,643 people who voted on 3 June 2018 (the difference between those two election candidates). The courts reached these conclusions disregarding the electoral principles established by the Constitutional Court. Moreover, for the first time since the independence of the Republic of Moldova, the common law courts interpreted the call to vote on Election Day as „election campaigning", totally ignoring the previous practice and good international practices in electoral matters. The decision to invalidate the election was upheld by the panel of judges headed by the Chairperson of the Supreme Court of Justice, appointed on 3 May 2018 by the current parliamentary majority.

The press release of the Government of the Republic of Moldova of 7 July 2018 states that the Government will remain firmly committed to the European path, the only viable strategic direction for modernizing the country.

In this context, we recall that the fundamental values on which the European Union is based, shared by all Member States and assumed by the Republic of Moldova under the Association Agreement with the EU, are: human dignity, freedom, democracy, equality, the rule of law and human rights.

Therefore, we urge the Government and all the authorities of the Republic of Moldova to respect these values, to abandon the practices established in recent years that are contrary to these values and to ensure the implementation of these values into life in the interests of the citizens of the Republic of Moldova.

Signatories:

Legal Resources Centre from Moldova
Institute for European Policies and Reforms
Association of Independent Press
Transparency International Moldova
Institute for Development and Social Initiatives „Viitorul"
"MilleniuM" Training and Development Institute
Foundation for Development
Eco-Tiras International Association of River Keepers
BIOS Public Association
Expert-Grup
Association Terra-1530
Centre for Policies and Reforms
Foreign Policy Association
Institute for Public Policy
Association for Efficient and Responsible Governance
Foundation for Education and Development
Est Europe Foundation
Centre for Independent Journalism
Labour Institute
Association of Professional and Business Women
National Youth Council of Moldova
Ecological Movement from Moldova
National Association of European Trainers from Moldova
International Centre "La Strada"
National Environmental Centre
National Roma Centre
Union of Organizations for Disabled from Moldova
Association for Rehabilitation of the Disabled from Moldova
Promo-LEX Association

Transparency International – Moldova: APPEAL on legislative initiatives to the detriment of the public interest

July 26, 2018

Transparency International-Moldova (TI-Moldova) expresses its concern about the fact that on the eve of the end of the current parliamentary session, the governors have brought back to the agenda two older ideas, previously blocked by a joint effort of civil society and country's development partners[116]: the capital amnesty and de-criminalization of economic and financial crimes. This time, the initiatives outlined have been covered by the process of amending fiscal-budgetary legislation and overshadowed by government's apparent intentions to reduce the tax burden on the population and economic agents.

[116] http://www.transparency.md/2016/12/12/adoptarea-proiectului-legii-privind-liberalizarea-capitalului-submineaza-eforturile-anticoruptie/, http://www.transparency.md/2017/01/12/apel-al-reprezentantilor-societatii-civile-catre-guvernul-statelor-unite-ale-americii/, http://www.worldbank.org/en/news/press-release/2016/12/21/world-bank-statement-on-capital-liberalization-and-fiscal-stimulation-law-in-moldova, http://www.ipn.md/en/economie-business/81114, http://www.transparency.md/2017/02/07/no-amnesty-for-corruption-in-moldova/

Along with these draft laws that jeopardize the process of investigating and recovering the means extracted from the Moldovan banking sector, including the NBM, as well as creating opportunities for legalizing these means for the benefit of the persons directly and indirectly involved in fraudulent schemes, the governors put on their agenda other projects to the detriment of the public interest.

Recently, TI-Moldova has learned about the existence of a draft amending the Law on the National Bank of Moldova (NBM). We note that the project in question has not been made public, as required by the rigors of decisional transparency. The extract from the unofficial text of the project is presented in the Annex.

According to the document, the changes come in excess of protection, security and compensation to NBM officials in the supervision and management of the financial and banking field. Along with the NBM proposals to admit its remote management[117], a group of authors proposes to protect NBM employees from any criminal and administrative prosecution for "actions or failure to carry out arbitration proceedings in which they have been authorized to participate by NBM" .

At the same time, the authors propose to offer the cash compensations to the members of the Executive Committee who have ceased their mandate, as well as NBM staff who have completed their employment relations for a period after leaving the office of the NBM (which is, in effect, a payment "for keeping silence ").

In the case of the adoption of such projects by Parliament, a number of risks are imminent:

- ensuring the impunity of people who have designed, realized, benefited from financial-banking frauds and those who have not taken steps to prevent fraud;

- jeopardizing the investigations as well as the subsequent recovery of fraudulently extracted funds from the banking sector, including the NBM.

We draw the attention of law enforcement institutions, society and development partners that the Republic of Moldova was deprived of about 13% of GDP in 2014 as a result of frauds in the banking system. These missing funds, including the NBM reserves, were converted into government debt by the Government in 2016, and the entire burden was placed on taxpayers for the next 25 years.

The Kroll investigation reports clearly indicate the issues to be investigated to increase the chances of recovering the stolen assets. National competent authorities have mimicked or have done little to ensure genuine investigations and recovery chances. Under these circumstances, the package of legislative acts promoted by authorities without public discussion, in secret, on the eve of the deputies' vacation, contrary to the recommendations of the development partners, documents that would protect the persons involved in the fraud from the banking system, are contra-indicated and contrary to the public interests.

We demand the authorities to stop promoting and reviewing draft laws that affect the public interest. We urge the speeding up of bank fraud investigations and the enforcement of required procedures, including externally, for securing and securing further recoveries.

Tax reform – an attempt to disguise the amnesty of dubious capital?

July 26, 2018

Civil society organizations, signatory hereto, express their concern and condemn the adoption of the new draft law (no. 284) on voluntary declaration and fiscal facilitation, which essentially represents a new attempt to amnesty the capital obtained from dubious sources. The presentation of this measure as an element of comprehensive tax reform without an impact assessment that is mandatory in such situations also raises suspicions. It appears that the intention of fiscal amnesty is disguised by tax reforms, some of them being long awaited for by business circles or welcomed by citizens. The fiscal amnesty, however, will deepen and encourage corruption, a consequence that we do not want as a society.

So far the Ministry of Finance fought vehemently for every MDL that could have been lost as a result of tax incentives. Now, however, the authorities have launched a new legislative initiative entitled „small tax reform" without a conclusive impact analysis, implying significant changes in numerous

[117] http://www.bnm.md/ro/content/proiectul-legii-pentru-completarea-legii-nr-548-xiii-din-21-iulie-1995-cu-privire-la-banca

domains, including the „untouchable" one that concerns the mandatory contributions to the social fund. Contrary to the recommendations of the IMF and the World Bank, on 24 July 2018, the authorities launched a reform with unpredictable consequences for the national economy, as well as for the relations with external donors.

The political risk of multiple tax incentives provided by the so-called „small tax reform" cannot be justified, unless these are intended to cover the amnesty of capital provided by the draft law no. 284, promoted in parallel and urgently in the Parliament.

Draft law no.284 on voluntary declaration and fiscal facilitation does not clearly specify the pursued aim. There is no explanation regarding the objective conditions that require this law and the intended purpose is missing as well. A conclusive impact analysis has not been carried out, and the practice of capital amnesty at a reduced price of only 3% compared to standard fees is contrary to international practices in this domain, implying major risks of negative social impact and stimulating the increase in tax exemption.

The draft law **was approved by the Government on 25 July 2018, put on the agenda of the Parliament on 26 July 2018 and already adopted in both readings by 56 votes of MPs from Democratic and European People's Parties. The day before, the draft received the positive opinion of the Parliament Committee for economy, budget and finance.**

We should recall that a similar draft law was proposed in 2016, and it was strongly criticized both by the community of experts and civil society, as well as by international bodies. The return to the amnesty regime for accumulated and undeclared capital, with such an insistency and despite negative evaluations on the side of international bodies, is an indicator of promoting interests of some groups infiltrated into the political environment.

It is indisputable that the amnesty of the capital is a counter-productive measure, encouraging for those who receive income from corruption and crime and discouraging for bona fide citizens and tax payers. In fact, the existence of such draft laws indicates that the Government is unable to ensure the verification of the origins of assets and income and refuses to undertake measures and efforts to ensure this process.

The tax reform laws with such significant implications have been promoted with disregard to the democratic processes and without rigorous technical expertise indispensable for such reforms. Public hearings on this draft law did not exist and the process of launching and validating of the draft law on voluntary declaration and fiscal facilitation is done in a lightning-like regime, with direct violations of democratic processes, lack of transparency and the exclusion of the civil society. No public consultations were organized. The anti-corruption expertise has not been elaborated either, although it is mandatory under Law no. 100 on normative acts.

Such hurry is even more unacceptable in the case of a draft law on which both civil society and the development partners of our country have expressed negative opinion less than two years ago. The lack of impact analysis documents, as well as totally opposite statements by the Prime Minister and the Chair of the Parliament Committee for economy, budget and finance, denote a superficial approach without technical expertise of the draft law. This approach is on the edge of political adventurism and involves major risks of fiscal and budgetary instability for the following periods.

To reduce the risks of a tax reform, a number of principles shall be respected.

- Ensuring a democratic process, decision-making transparency and broad public consultations with sufficient deadlines for reactions and opinions of interested persons and organizations;
- Rigorous assessment of the impact of the proposed tax reform measures;
- Abandonment of tax amnesty laws in any form in the situation of massive corruption and embezzlement of public funds;
- Tax reform should improve social equity and contribute to a decent living for the citizens of the Republic of Moldova.

The signatory organizations:

1. **Condemn** the adoption by the Parliament of the Republic of Moldova of the draft law on voluntary declaration and fiscal facilitation;
2. **Request** the President of the Republic of Moldova not to promulgate the adopted law;

3. **Call for** the involvement of the IMF, WB, EU, GRECO and Moneyval with the view to examine this legislative initiative in terms of compatibility with the international and bilateral commitments undertaken by the Republic of Moldova in relation to each of the partners.

Signatories:
Independent Analytical Centre Expert-Grup
Legal Resources Centre from Moldova (LRCM)
Centre for the Analysis and Prevention of Corruption (CAPC)
Centre for Policies and Reforms (CPR)
Institute for European Policies and Reforms (IPRE)
Promo-LEX Association
Eco-TIRAS International Environmental Association of River Keepers
WatchDog.MD Community
AO BIOS

DECLARATION ON DISPROPORTIONATE CONDUCT OF AUTHORITIES AT PROTESTS AND PUBLIC DEMONSTRATIONS OF 26-27 AUGUST AND 1 SEPTEMBER 2018

September 3, 2018

Signatory organizations express their deep disappointment regarding the way the authorities of the Republic of Moldova have exercised their duties in connection with the protests and public demonstrations that took place in Chisinau municipality on 26-27 August and 1 September 2018. We will highlight some of the key issues that we consider important for the public knowledge and in relation to which we request the authorities to take the necessary measures.

1. We condemn the way the authorities acted as regards the protests in the Great National Assembly Square (Piaţa Marii Adunări Naţionale - PMAN) in Chisinau **on 26 August 2018.** According to the official information and that the information available in the public space, confirmed by the Head of the Public Relations Department of Chisinau mayor's office, two public assemblies were announced to be held in the PMAN on 26 August 2018. These included: 1) The General Assembly of Citizens, organized by the Committee of the National Resistance Movement ACUM starting at 14:00 (The Liberal Democratic Party of Moldova (LDPM) submitted a prior declaration to the Mayor's office on 28 June 2018) and 2) „Consumers Assembly", organized by the NGO „Salvgardare" led by Maia LAGUTA, starting at 13:00 (prior declaration submitted on 1 August 2018), which joined Aurel BUCUREANU, Alexei FROLKOP and Svetlana SANDOVSKAIA against the raising of prices for fuel (this group submitted a prior declaration on 25 June 2018).

In the morning of 26 August 2018, mobile kitchens, tents and a stage for concerts were installed in the central part of the PMAN by the representatives of Șor/Shor Political Party (hereinafter Shor Party), and the state institutions did not confirm that it had any authorization in this respect. No information about the demonstration organized by Shor Party has been made public in advance. There was no information about any demonstration of the respective party planned in the PMAN for 26 August 2018 on the website of the Mayor's office of Chisinau municipality under the heading of prior declarations for the public assemblies. In the interviews given at 12:00 on 26 August 2018, the organizers who were to start the protest first, in conformity with prior declarations, Aurel BUCUREANU and Maia LAGUTA, said they did not know about the demonstration of Shor Party and were surprised by the concert held in the PMAN. Aurel BUCUREANU just said that he was called by many people who wanted to come to the PMAN and he replied them that everyone is accepted as long as they do not have political slogans. The purpose of Shor Party demonstration was not clear. Finally, the police surrounded Shor Party demonstration, allowing the participants who had been gathering at the demonstration to continue the action unhindered, including playing music at a high volume and serving participants with food. Shor Party demonstration continued until about 15:00. Meanwhile, the organizers of the protest announced by the National Resistance Movement ACUM called their participants to gather around the monument of Ștefan cel mare și Sfânt/Stephen the Great and the Holy (hereinafter the monument of Stefan cel Mare). The participants in the protest organized by ACUM booed the participants of Shor demonstration. Between 14:00 and 15:00 there was a real danger of altercations between these two groups. The Chairperson of Shor Party, together with two or three other people from the demonstration, was escorted from the PMAN behind the Government building by the police, including by the Head of the National Inspectorate of Police, and his own apparently armed bodyguards,

then they were assisted to climb two cars that came from Pushkin Street and left. However, the people who participated in Shor Party demonstration, although easily identifiable due to the bags with bread and buckwheat provided to them by the organizers, were left to leave without any protection from the police after they have left the place surrounded by the policemen in the PMAN.

We condemn the way the authorities acted as regards the protests held in the PMAN on 26 August. The protest of the National Resistance Movement ACUM (hereinafter the protest ACUM) was announced in advance, including with the submission of a prior declaration. The investigation of the billion theft, in which Ilan SHOR is a key figure, was among the claims of ACUM from the very beginning. Mr. Shor was convicted by the court of the first instance in the case concerning the „billion theft", and both KROLL reports point directly to that person. One of the organizers of the protest ACUM is the political party "Dignity and Truth" Platform, which appeared following the protests initiated just after the billion theft. These facts are notorious and it is obvious that two demonstrations organized in the same place by two groups with diametrically opposite claims create a real danger of altercations.

The Mayor's office of Chisinau municipality and the police have to provide public explanations shortly as to why they allowed the Shor Party the organization of demonstration in the PMAN on 26 August 2018, even if it did not submit a prior declaration, the demonstration was not spontaneous and more than 50 people participated in it. Moreover, music at Shor demonstration was played at high volume, which obviously prevented the other protest from being held, and there were installed grills that emanated smoke and presented danger in the context of high temperatures and the potential concentration of many people in a limited space. Police have shown selective behavior - they did not provide any security to the people who participated in Shor Party demonstration, but provided guard forces to the head of this party, exposing the former to the risk of altercations. The indulgence of the police towards the demonstrators that appeared without any prior declaration and the absence of protection of the persons who left the place, being easily identifiable due to the received bags, is even more surprising in the context when on 23 August 2018 the police announced one of the organizers of the protest ACUM about the initiation of the criminal case for „preparations for mass disorders". In this context, from publicly available information, it seems that police warnings were strictly limited to opposition parties or movements. In order to avoid altercations and respect the freedom of assembly, the police and the Mayor's office of Chisinau municipality should have provided to Shor Party either another place for demonstrations or a shorter period for holding it, so that their demonstration did not to coincide with the other two protests (announced for 13:00 and 14:00 respectively) given the imminent risk of altercations and the absence of prior declaration regarding the Shor Party demonstration. Allowing Mr. Shor demonstration has in fact created situations of provocations and altercations among the participants, which would have given the police „legal" reason to intervene forcefully against the participants in the protest.

2. We condemn restriction of the journalists' access to the events of 26-27 August 2018 and police inaction when the representatives of Shor party have pushed the journalists off. We reiterate the statement by media NGO's of 28 August 2018 on preventing journalists from covering the events of 26-27 August and request the competent authorities, first of all the Prosecutor General's Office and the Ministry of Interior, to investigate promptly and impartially the cases reported in the statement.

3. We condemn the way the police dispersed the protesters at the Stefan cel Mare monument in the morning of 27 August 2018. Although the organizers of the protest ACUM announced as early as on 22 August 2018 about the prolongation of the protest overnight with the purpose to celebrate the Independence Day on 27 August 2018 together, in the morning of 27 August 2018, at around 6 o'clock, the police surrounded those approximately 70 protesters near the monument of Stefan cel Mare with several hundreds of police officers wearing balaclavas and protection equipment, and having no signs that allow identification of police officers in case of abuse on their side. After two warnings, the police scattered the protesters. Police representatives confirmed that they had requested protesters to leave the place near the monument of Stefan cel Mare only in the morning of 27 August, at the request of the local public authorities, referring to the order by the acting mayor of Chisinau on the limitation of public access and public assemblies in several places in Chisinau, including the monument of Stefan cel Mare, issued according to the authorities on 24 August 2018.
We condemn the brutal way in which the protesters were dispersed, despite the fact that they were peaceful and in a much lower number than the policemen, presenting no danger to the lives and security of the latter. The Mayor's office of Chisinau municipality had to inform the organizers of the protest about that order in advance. Forced scattering took place on the basis of an unpublished order. It was published on the Mayor's

office website only on 27 August, after the protesters were scattered. Thus, the violent dispersal of the public assembly near the monument of Stefan cel Mare was a manifestly disproportionate measure.

4. We condemn and qualify as illegal the dispersal of the civic group of protesters OccupyGuguță and seizure of their goods in the morning of 27 August 2018. As early as on 27 June 2018, the OccupyGuguţă civic group filed a prior declaration regarding the daily protest in the Public Garden Stefan cel Mare near the Guguta Café until the end of 2018. The civic group had a tent in which various objects used for the permanent protest and several banners were stored. In the morning of 27 August 2018, at about 6 o'clock, the police ordered the people present near the Guguta café to leave the place and seized the goods of the OccupyGuguţă civic group. The police officers who dispersed the group in the morning of 27 August 2018 and seized their goods did not provide any explanation. The order by the acting mayor of Chisinau municipality on limiting public access and public assemblies on 27 August 2018, which included the perimeter of protest actions of the OccupyGuguţă civic group, was distributed on the social networks only later.

The police did not provide any explanation for the dispersal and seizure of the goods of the OccupyGuguţă civic group in the morning of 27 August 2018. The Mayor's office of Chisinau municipality did not inform the civic group about the restriction of assemblies on 27 August 2018, although it had the obligation and all possibilities to do so. An unpublished order cannot be imputable to the public. Even if the order could have served the basis for dispersal, it should have been brought to the attention of the participants. Moreover, the order does not provide for the seizure of the goods. The official flower-laying ceremony in connection with the Independence Day was held about 400 meters from the place where the OccupyGuguţă goods were located, and it does not seem either necessary or proportionate to seizure of the goods. Such conduct is contrary to the Law on public assemblies.

5. We condemn and qualify as excessive the actions of the police and of the Government administration on 1 September 2018 against the participants in the Centenary March. On 1 September 2018 several people organized a demonstration in the PMAN to celebrate the 100th anniversary of the Great Union (1918 Great Unification of Transylvania, Bessarabia and Bucovina with the Romanian Kingdom). Subsequently, the organizers said they had to move to another location after the police had blocked access of three vehicles carrying informative materials on unification that were driving to the PMAN. The participants had altercations with the police, which were in large numbers, the policemen were wearing balaclavas and had no identification signs. The police said they had to intervene forcefully because the protesters blocked traffic on the Leuseni highway in Chisinau municipality. The police specified that the organizers of the public assembly would be sanctioned for public order disturbance and that they „*did not respect the law that stipulates the obligation to hold the public assembly only in the form, at the place and within the time indicated in the prior declaration*". Subsequently, the Internal Protection and Anti-Corruption Service of the Ministry of Interior (SPIA) initiated an investigation regarding the actions of the Ministry of Interior employees to determine the causes and conditions that led to the given incidents.

Although the vehicles seized by the police were already in Chisinau, the police stopped them and then escorted to Straseni Police Inspectorate for checks following the calls to 112 emergency service that informed about the presence of dangerous substances in them. The police explained that bringing the vehicles to the PMAN is unacceptable during public assemblies for security reasons and in order not to disturb the traffic in the area. The police did not explain the forced displacement of the vehicles to a distance of about 30 km from Chisinau. Later, following the searches, no prohibited or explosive objects were found. After the altercations with the police, the participants in the demonstration dedicated to the Great Centenary Assembly returned to the PMAN. The officers of the Police Brigade with special destination „Fulger", armed with automatic rifles, were on patrol along the perimeter of the demonstration and in both adjacent parks. The police did not explain these disproportionate measures. Moreover, on 1 September at about 20.00, in the perimeter of the demonstration, street lighting was switched off and swithced on again at about 01.00, on 2 September. It is the first time the lights were switched off in front of the Government building, where public demonstrations usually take place.

We condemn the disproportionate and provocative actions of the police, which seized the vehicles and intervened using force, switching off the lights at the place of the demonstrations and intimidation of the participants through the massive and armed presence of the police and special intervention troops.

6. We are concerned and require the Ministry of Interior to explain the presence of the persons in civilian clothes alongside the police without the possibility of identifying them and the way how to identify the policemen in balaclavas. In the protests of 26 August, at the scattering of the protesters in the

morning of 27 August (the monument of Stefan cel Mare and in the Public Garden Stefan cel Mare near the Guguta Café - see the pictures and videos distributed in the public space) and at the demonstration on 1 September, there were observed many people in civilian clothes who scattered the participants or participated in scattering actions together with the police. The Ministry of Interior has to present clear explanations about the use of persons in civilian clothes while scattering the protesters, as international standards clearly recommend that public authority officers should be clearly identifiable in public assemblies. Unidentified persons in civilian clothes raise a lot of questions about the role of public authorities in protests, including in case of provocations or altercations. Also, the police were wearing balaclavas at the protests and could not be easily identified. It is unclear if they had numbers for identification on their backs in case of abuses on their side at the protest. This was one of the main recommendations after the events of April 2009. Special police officers must have numbers on the back so that they can be identified later by prosecutors within the framework of the potential investigations. We require the Ministry of Interior to explain the presence of people in civilian clothes and the way how to identify policemen in balaclavas.

Finally, we reiterate that the peaceful protest is an important method of showing disagreement with certain public policies. The way in which the protest is conducted and the conduct of public authorities at the protest is an important indicator of the state of democracy in a state. The conduct of the public authorities of the Republic of Moldova during the protests of 26-27 August and the demonstration of 1 September 2018 raised many serious questions. We request the competent public authorities - in particular the Mayor's office of Chisinau municipality, the Ministry of Interior and the Prosecutor General's Office - to provide a comprehensive analysis of the events of 26-27 August and 1 September 2018, thoroughly investigate all complaints regarding those events and publish the results of the analysis and investigations within a short period of time. We request to abstain from actions that create the danger of altercations between protesters and to respect fully the law on public assemblies in the future.

Signatory organizations:
Legal Resources Centre from Moldova
Amnesty International Moldova
Association for Participatory Democracy “ADEPT”
Association for Efficient and Responsible Governance
Association of Independent Press
Foreign Policy Association
Centre for Investigative Journalism
Centre for Independent Journalism
Rehabilitation Centre for Torture Victims "Memoria"
National Environmental Centre
WatchDog.md Community
CPR Moldova
Institute for European Policies and Reforms (IPRE)
Institute for Public Policy
Pilgrim-Demo
Transparency International – Moldova