



**SPAI General Assessment Report  
for  
MOLDOVA**

***FINAL REPORT***  
***Adopted on 30 April 2002***

## MOLDOVA

### 1.1. ADOPTION AND IMPLEMENTATION OF EUROPEAN AND OTHER INTERNATIONAL INSTRUMENTS

#### 1.1.1. ACCESSION TO INTERNATIONAL AGREEMENTS

Moldova is making efforts to adopt European standards related to the fight against corruption and organised crime and to participate in international cooperation and evaluation mechanisms.

ACCESSION TO INTERNATIONAL CONVENTIONS	STATUS	MEASURES TAKEN OR ENVISAGED
Council of Europe Criminal Law Convention on Corruption – ETS n° 173 (1999)	Signed : 24/06/1999	Moldova has committed to ratify the international conventions after amending and/or adopting the relevant national legislation accordingly.
Council of Europe Civil Law Convention on Corruption – ETS n° 174 (1999)	Signed : 04/11/1999	
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime – ETS n° 141 (1990)	Signed : 06/05/1997 Ratified : 15/03/2002	
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)	----	For the time being, the Moldavian authorities do not consider signing the OECD convention.
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)	In force: 16/05/1995	The Moldavian Parliament has adopted a Law on the Circulation of Narcotic and Psychotropic Substances on 6 May 1999. On 30 March 2000, the Government has adopted a National Program for combating drugs for 2000-2001.
United Nations Convention against Transnational Organised Crime (2000) UN Trafficking In Persons Protocol (2000) UN Smuggling Protocol (2000)	Signed : 14/12/2000	
<b>PARTICIPATION IN :</b>		
Group of States against Corruption (GRECO) - CoE	Accession: 28/06/ 2001	Moldova has not yet nominated a special representative for the GRECO yet.
Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV)	Moldova is participating in the work of this committee on a regular basis. It has already been visited by a PC-R-EV team (20-23 June 2000) and the evaluation report was adopted in December 2001.	
OECD Working Group on Bribery in International Business Transactions	----	No participation is foreseen for the time being.

However, much remains to be done in this area as Moldova is only a signatory of the Council of Europe's Criminal and the Civil Law conventions on Corruption as well as of the UN Convention against Transnational Organised Crime and its two protocols.

This situation may partly be explained by the current bottom-top approach taken by Moldavian authorities which favours drafting and/or putting domestic legislation in line with international texts prior to their ratification. Unfortunately, the lengthy parliamentary adoption procedure, though sometimes beneficial in terms of improvement of the legislative framework, delays considerably the ratification of these texts. Moldavian authorities could therefore consider that in certain cases, adopting an opposite approach (ratifying the international convention prior to finalising criminal legislation) would have the advantages of setting clear objectives and standards in the perspective of the final drafting of the legislation, thus avoiding loopholes, and also reducing the duration of the criminal reform process.

Moldova has in December 2001 joined the Stability Pact Anti-corruption Initiative. It is party to three follow-up programmes which monitor and promote the full implementation of appropriate measures to combat corruption – the Council of Europe's partial agreement "Group of States against Corruption (GRECO), the Council of Europe's Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV), in the framework of the Financial Action task Force on Money Laundering (FATF), and the Stability Pact Anti-Corruption Initiative's Steering Group.

Moldova also participates in the Stability Pact Initiative against Organised Crime (SPOC).

### **1.1.2 MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

In the field of international legal assistance, Moldova has ratified two key international instruments: in 1997 the European Convention on Extradition (ETS n° 024) and in 1998 the European Convention on Mutual Assistance in Criminal Matters (ETS n° 030). The two additional protocols to the European Convention on Extradition (ETS n° 086 and n° 098) and the additional protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS n° 099) have also been ratified by Moldova in 2001 and are in force.

In contrast, the European Convention on the Transfer of Sentenced Persons (ETS n° 112), its additional protocol (ETS n° 167), the European Convention on the International Validity of Criminal Judgements (ETS n° 070) as well as the European Convention for the Transfer of Proceedings in Criminal Matters (ETS n° 073) have only been signed but not yet ratified.

International co-operation and assistance in criminal matters is carried out pursuant to the provisions of the Criminal Procedure Code, unless otherwise stipulated by an international treaty. Moldova is a party to several regional treaties (CIS countries) and bilateral treaties on co-operation in criminal matters. For instance, bilateral agreements regulating mutual assistance in criminal matters have been concluded with Latvia (1993), Lithuania (1993), Romania (1996), Russian Federation (1994), Turkey (1996), Ukraine (1994), etc.

Art. 18 to 18/5 of the Criminal Procedure Code are the provisions related to international cooperation. The central authorities dealing with international cooperation in criminal matters are the Ministry of Justice and the Public Prosecutor's Office.

Under the Law on Police<sup>1</sup>, the co-operation with foreign law enforcement authorities and international organisations in matters related to combating organised crime and protection of public order lies within the responsibility of the Ministry of the Interior.

Plans are underway to improve provisions on mutual legal assistance during the current reform of the criminal legislation. In the draft Code of Criminal Procedure, adopted in its first reading stage in December 2001, a new chapter is dedicated to international judicial assistance in the criminal field.

The Moldavian Constitution provides that citizens of Moldova cannot be extradited or expelled (art.17(3)). Art. 18/5 of the Criminal Procedure Code lists the reasons justifying refusal of extradition, among which figure Moldavian nationality of the person in the absence of an agreement on legal assistance between Moldova and the requesting country, offence regarded by national legislation as having been committed in whole or in part in its territory, no reciprocity of incrimination, etc. There seems to be no clear procedure of receiving requests for extradition.

Foreign or stateless citizens may be extradited only in compliance with an international agreement or under conditions of reciprocity in consequence of a decision of a court of law (art. 18/5 – 5). In case extradition is refused, foreign nationals may be prosecuted in Moldova for the offences that gave rise to the extradition request.

The main obstacle hindering mutual legal assistance and extradition is a lack of adequate legal framework (which should be improved by the adoption of the new Criminal Procedure Code) on one side and a lack of experienced and trained judges, prosecutors and police officers in this area.

Transmission of proceedings and transfer of sentenced persons are based on the principle of reciprocity. Moldova has signed the European Convention on the Transfer of Proceedings in Criminal Matters. Furthermore, bilateral agreements have been concluded with Romania and Ukraine dealing with transfer of sentenced persons.

The existence of European data protection is usually a pre-condition for the exchange of sensitive data among European countries. Moldova has signed the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS n° 108) on 4 May 1998. The Law on Personal Data and Data Protection is expected to be adopted by the Parliament in November 2002.

### **1.1.3 INTERNATIONAL CO-OPERATION IN FINANCIAL INVESTIGATIONS AND MONEY LAUNDERING CASES**

Further to the signature of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds (ETS n° 141), Moldova had committed to ratify it after the adoption of national legislation on money laundering. The Law on the Prevention and Combating of Money Laundering (hereinafter law on money laundering), which was finally adopted on 15 November 2001, does not bring any major improvements and only reiterates the status quo by making reference, in its art. 11, to the laws in force in this field and to international conventions.

On 13 March 2002, the Moldavian Parliament has ratified the ETS n° 141. However, at present, Moldova's implementation capacity of the provisions of the convention is limited. The Moldavian government has also announced its intention to amend and complete the Law on Money Laundering.

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<sup>1</sup> Art. 9/8 of the Law on Police n° 416-XII of 18 December 1990.

According to the law, investigative assistance may be provided to identify and trace property and obtain documents. However, national authorities cannot carry out a seizure based on a foreign confiscation order or enforce a foreign confiscation order.

In general, Moldova has no experience in mutual legal assistance in the field of confiscation of proceeds and the fact that money laundering is not criminalized in the Criminal Code makes it difficult to execute any foreign request for confiscation of proceeds.

#### **1.1.4 RECOMMENDATIONS FOR REFORM**

*Draft recommendations to be modified in view of the comments and additional information provided during the Washington Steering Group meeting.*

1. Ratify the key anti-corruption instruments and most particularly the Council of Europe Criminal and Civil Law conventions on corruption
2. Adjust its national legislation to the provisions of these conventions and adopt, when necessary implementing legislation.
3. Ratify the European Convention on the Transfer of Sentenced Persons (ETS n°112), its additional protocol, the European Convention on the International Validity of Criminal Judgements (ETS N° 070) as well as the European Convention for the Transfer of Proceedings in Criminal Matters (ETS n° 073) and adopt implementing legislation.
4. Ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS n° 108) and adopt national data protection legislation as a basis for enhanced international exchange of information, in line with the standards set by the above mentioned convention and Recommendation R(87)15 regulating the use of personal data in the police sector.
5. Adopt a clear and effective framework for international cooperation, in particular on mutual legal assistance in criminal matters as well as on international co-operation in financial investigations and money laundering cases.
6. Take measures to make international co-operation, in particular mutual legal assistance, more effective:
  - by ensuring that the organisation of assistance covers the various procedures for the execution of requests for mutual assistance, particularly the execution of decisions handed down by foreign courts and requests for seizure and confiscation.
  - by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and by supporting judicial networking at European and international levels.

## 1.2 PROMOTION OF GOOD GOVERNANCE AND RELIABLE PUBLIC ADMINISTRATIONS

Considerable work has been done in recent years to reform Public Administration in Republic of Moldova with the support of international donors. For example, a civil service reform programme was undertaken in 1998-1999 with the support of TACIS Programme and USAID is funding a major programme in the Ministry of Finance. Whilst a number of Laws have been enacted and the main institutions exist, except for internal audit / financial control, there remains a lack of capacity and some of the reforms have not been sustained. The current Administration appears to have shelved the PAR strategy of the previous administration, and CIS models are being mixed with Western models of public administration. The institutional capacity is lacking, due to a deficit of internal resources, the poor state of the economy and Government debt absorbing much of the State Budget. Sustainability of reforms is hampered by organisational change, such as the reorganisation of financial control services, the reversal of the previous Administration's reorganisation of Local Government, and the merger of the Civil Service Human Resource Policy Division with the State Chancellery.

### 1.2.1 PUBLIC PROCUREMENT SYSTEM

#### LEGAL FRAMEWORK

The Organic Law No 1166-XIII on Procurement of Goods, Works and Services for Public Needs was adopted in 1997 and was drafted with World Bank support. It allocates responsibilities for public procurement, sets out the basic procedures and methods, rules for the evaluation of tenders and provision for appeals. The Public Procurement Law (PPL) applies to all public sector institutions, central and local authorities, public services and utilities. It creates a National Procurement Agency (NPA) and requires each budget institution to create a Procurement Working Group (PWG) to implement the Law. It does not cover international funds and assistance.

In general the law reflects the UNCITRAL model law: Open Procedure is the preferred procurement method, but other methods allowed in defined circumstances are a two-stage procedure, a restricted procedure, requests for price proposals, and single source. With the approval of the National Procurement Agency a preferential margin of 10% of the price may be applied to domestic contractors of goods.

It is understood the Government is considering amendments to the law (for example, the World Bank has been consulted over a proposal to limit participation in small tenders). There has also been discussion within Government over a proposal to require all purchases over 5,000 lei to be handled by the National Procurement Agency. At present, below 5,000 lei purchasers have no need to consult the National Procurement Agency. Purchases from 5,000 to 100,000 lei can be conducted through price proposal. Above 100,000 lei the approval of the National Procurement Agency is required. The Law 832 of 12 August 2001 sets out the methodology to be followed when using the price proposals. The National Procurement Agency plans further secondary legislation to set out the detailed procedures for other methods of purchasing. The National Procurement Agency also wishes to enact secondary legislation to deal with the non-compliance of contracts, for example to exclude contractors from bidding again for 3 years.

## **INSTITUTIONAL FRAMEWORK**

The National Procurement Agency was created in 1998 and every State budget institution has a Procurement Working Group to carry out its purchasing function. Consequently, the procurement activities are decentralised, while the monitoring and control over purchasing decisions is centralised under the National Procurement Agency.

The 1997 Organic Procurement Law No 1166-XIII gives the National Procurement Agency responsibility for:

- drafting secondary legislation on procurement;
- providing methodologies for procurement, including mandatory forms and documentation;
- publishing the Government Procurement Bulletin containing details of invitations and results;
- approving decisions of procurement working groups;
- opening tenders;
- consider complaints from suppliers.

The National Procurement Agency is a sub-Division of the Ministry of Economy with a total of 10 staff, has its own budget and benefits from a partial independence. The National Procurement Agency reports annually to the Government but its report is not published. Tender invitations and contract awards are published and advertised weekly on a radio programme. The National Procurement Agency finds it difficult to deal effectively with the decentralised Procurement Working Groups due to some redundant work arising from handling contracts for the purchase of utilities, such as gas, electricity, water etc, as the suppliers are state monopolies. The National Procurement Agency also encounters difficulties in ensuring compliance with the regulations by local officials, who need convincing of the need for the procurement procedures, support and training to carry them out.

### **1.2.2. PUBLIC EXPENDITURE MANAGEMENT SYSTEM**

#### **Legal Framework**

Article 131 of the Constitution refers to the National Public Budget, comprising the national budget, the national social security budget, and the local budgets of districts, towns and villages. The Organic Budget Law 847-XIII Regarding the Budget System and Budgetary Process was published in 1997. The Law contains the general principles and definitions of public finance. It foresees the budget development process by the Ministry of Finance and its adoption by the Government, its presentation, examination and approval by Parliament and its execution. It also covers the budgets of administrative territorial units, the Budget of the State Social Insurance, the Extra-budgetary funds, the service of the State Debt and the international financial-budgetary relations.

In 1993, the Presidential Decree No. 39 created the State Treasury to manage the State Funds, carry out budget operations and enforce budget discipline. The presidential decree was later amended by a Government Decision in 2001, and covers now the majority of expenditure and revenues at the State, regional and local levels. There is a basic Cash Accounting system and a system for contracts above 5,000 lei, which covers most commitments. The Republic of Moldova has adopted a Tax Law which sets out the basis of the tax system, including the types of taxes, the competencies of the tax bodies, the rights and duties of the taxpayers and responsibilities for

infringement of taxation. The budget system is fundamentally sound but the annual budget law tends to focus on detail, rather than strategy. Support is being given by a large USAID Fiscal Reform project and a Fiscal Code system is being developed based on international standards. The World Bank is supporting work on Programme Budgeting, Medium Term Financing and Debt management.

#### **INSTITUTIONAL FRAMEWORK**

The Ministry of Finance has Departments for Treasury, Public Debt, Budgetary Synthesis, Fiscal Policy and Accounting Methodology, Financial Analysis and Regulations. Budgetary reform is advanced, with support being given by USAID to the development of the financial systems. Although the professional quality of many of the staff seems to be quite high, the working culture of a centrally planned economy with a “Ministry of Accounting” remains strong in many areas. The present allocation of staff between different areas and responsibilities can also be questioned. There is a need to support the further development of treasury, tax and customs systems, and for the training of Ministry of Finance staff in management skills.

#### **1.2.3 FINANCIAL CONTROL**

##### **LEGAL FRAMEWORK**

Individual control systems are set out within the respective laws on the budget, public procurement, treasury, and external audit. These laws provide a good standard of legislation, but many of them have not yet been fully implemented. They will need to be supplemented by implementing regulations and well established procedures. Whilst there is an existing regulation covering the Control Department within the Ministry of Finance, this is undergoing reform. There appears to be no law on internal audit and no overall statement of financial control was obtained. In consequence, there is no legislation on the co-ordination of standard setting and quality control responsibility of the Ministry of Finance in financial control, financial management and management/internal control systems, including internal audit mechanism at the central and local government level.

##### **INSTITUTIONAL FRAMEWORK**

The Financial Control Department in the Ministry of Finance has been responsible for internal audit only within the Ministry of Finance and it has not looked at questions of efficiency and effectiveness. As part of the current reforms, it is being merged with the Financial Guard, the Economic Police and the Department of Anti-Corruption, to form a new Anti-Corruption Unit. There will still be the separate Fiscal Inspectorate and Customs Control. The internal audit mechanism described above needs further strengthening. A Law on Internal Audit is needed. There is not enough staff available for providing an adequate internal audit solution in the Ministry of Finance, Line Ministries and other central and local government bodies. There is no tradition in the area of internal audit. There are no standards and manuals elaborated in line with international practices. The shortcomings of management controls and internal audit are not offset by the external audit performed by the Court of Audit.

#### 1.2.4. CIVIL SERVICE CAPACITIES

##### LEGAL FRAMEWORK

The Law on the Civil Service No 443-XIIA was passed in 1995. The General Provisions set out the positions, activities and tasks covered by the Civil Service Law. It also created a central Personnel Policy Division. Further chapters cover the legal status of employees, rights and obligations of civil servants, describes the recruitment process, the probation period, the conditions of service, the remuneration and the cessation of service. The law applies to central and local government positions, as well as judges and prosecutors, officials of the diplomatic service, in the tax service, the financial guard, the customs bodies, the national security, the internal affairs and military when they are not covered by other legislative acts.

The Law establishes a career system. There are three ranks of civil service positions covering largely managerial and executive posts. Civil servants are tenured, unless found guilty of criminal activity. Short term appointments can be made for their period of office by the President of the Republic, the Chairman of the Parliament, the Prime Minister, Ministers and heads of other central public power bodies. The law provides for central supervision, common methodologies, and co-ordination of civil service management, but decisions are taken individually by institutions. Entry is by competition and tenure is granted after a successful probation period. An oath is required and a register of all civil servants is to be kept. Personal files are to be kept by the personnel sections of individual institutions.

The following secondary legislation covering civil service management has been issued:

- Government Decision 312. 1998 classifying public service positions;
- Government Decision 1997 providing a single regulation on personnel service;
- Government decision 693.1997 on the calculation and payment of civil service pensions;
- Government decision 1038.1997 on conducting competitions for filling vacancies in public administration bodies;
- Law on the awarding civil service ranks 1997;
- Government decision 139.1998 (modified 98, 99, 2000, 2001) on remuneration of public officials and public administration support staff on the basis of a unified salary grid;
- Government decision 302.2000 on salary increase for budget sector employees;
- Government decision 96.2001 on the first grade salary rate for the unified salary grid and the salary increase for budget sector employees;
- 1998 Recommendations of the Government Personnel Policy Division on the order of compiling the civil service personnel reserve lists;

##### INSTITUTIONAL FRAMEWORK

Upon enactment of the Civil Service Law a Personnel Policy Directorate was created, a Human Resources Management Information System was launched, a Personnel Management manual written and a Management Development Programme for civil servants introduced within the Academy of Public Administration.

The main functions of the Policy Division were:

- 0 the organisation and supervision of public body activities in projecting and planning staffing needs;
- 1 the organisation, methodological supervision and co-ordination of the activities of selection and appointment of civil service employees;
- 2 the organisation and methodological supervision of professional qualification upgrading system for civil service employees;
- 3 the organisation and methodological supervision of the activities of evaluation of the work of civil service employees;
- 4 the drafting and enactment of methodological instructions and recommendations on the organisation of work of civil service employees;
- 5 the organisation and co-ordination of scientific research in the sphere of personnel policy, applying new achievements of science and technology into the work of personnel, utilisation of progressive methods of training, selection and appointment of personnel, as well as organisation of management activity.

With the last change of Administration, the Government merged the Civil Service Human Resource Policy Division with the State Chancellery. This has led to a high turnover in staff within the Division. The Chancellery is organised into Departments, with the personnel function now being carried out by a Section within the Department of Finance and Administration.

## **1.2.5 PUBLIC SECTOR EXTERNAL AUDIT SYSTEM**

### **LEGAL FRAMEWORK**

Article 133 of the Constitution refers to the Court of Audit controlling ways of creating, administering and utilising public financial resources. The Court is composed of 7 members, with the President being appointed for a 5-year term by Parliament on a proposal submitted by the President of Parliament. The Court is to submit annual reports to Parliament. The Organic Law on Audit No. 313-XII of 1994 creates the Court. In addition to general provisions, it sets out the Court's organisation and activities, its review and other functions, rights, duties and responsibilities of its employees. The Court decides its programme independently but may be asked by Parliament to carry out certain audits or inspections. It is the supreme audit authority, has its own budget and carries out its own recruitment and personnel management. The annual report must be submitted to Parliament by 15 June and published in the Official Journal. The Court is required to exercise control over all public funds and property, enforcing laws and the principles of effectiveness, expediency and efficiency. It has powers to terminate illegal bank settlements and impose financial penalties on individuals or demand their dismissal for material damages to the state.

### **INSTITUTIONAL FRAMEWORK**

The 7 members of the Court comprise the President, Vice President and 5 Members. Each Member is Head of a Directorate – Methodologies and systems of control; Control and analysis of national public budget; Control of public authorities; Control of financial institutions and public property; and judicial control. The Court has 68 Controllers and 40 support staff. The Law No 814-XIV in 2000 has added a regional set of Territorial Courts – Balti (25 staff); Cahul (21);

Chisinau (25); and Comrat (4). The Court is a member of INTOSAI and EUROSAI. It is developing its own methodology and introducing thematic audits, crossing institutional boundaries, but still tends to look at transactions rather than systems. There is little co-operation with or reliance upon internal audit.

#### **1.2.6. RECOMMENDATIONS FOR REFORM**

*Draft recommendations to be modified in view of the comments and additional information provided during the Washington Steering Group meeting.*

##### **Public procurement system**

1. Review the Procurement Act to bring it fully into line with UNCITRAL standards and complete the secondary legislation covering the different procurement methodologies.
2. Strengthen the capacities of the Central Procurement Agency and develop a public procurement training programme for civil servants.
3. Establish the Regional Offices of the Procurement Agency.
4. Publish the annual report of the Procurement Agency.

##### **Public Expenditure Management**

5. Strengthen the budget laws and by-laws and the central organisations overseeing budgeting, treasury and internal control.
6. Undertake an organisational review of the Ministry of Finance and implement the necessary changes.
7. Integrate the procedures for preparing current and capital expenditure budgets.

##### **Financial control**

8. Enact a Law on Internal Audit in order to define the objective, the scope and remit of internal audit and the rights and duties of the internal auditors.
9. Elaborate national internal auditing guidelines based on international standards (Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Auditors and INTOSAI Guidelines as Internal Control Standards).
10. Establish a Government Audit Committee in order to increase the effectiveness of the internal audit units and help safeguard their functional independence.

##### **Civil Service capacities**

11. Devise and publish a new Public Administration reform strategy.
12. Strengthen the central Civil Service management capacity and review the operation of Civil Service legislation over the last years.
13. Develop and implement a Civil Service training strategy for public managers at state and at local government levels.

##### **Public sector external audit systems**

14. Review the type and implementation rate of Court of Audit recommendations.
15. Parliament should consider its arrangements for dealing with audit reports, for instance instituting an impartial and non-politicised Audit Committee and formal requirements for Government response to parliamentary and Court of Audit recommendations.
16. Develop capacity through professional training of Court of Audit staff.

## 1.3 STRENGTHENING LEGISLATION AND PROMOTION OF THE RULE OF LAW

The SPAI Compact requires that countries create an appropriate legal framework by criminalizing corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions and which have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

Since the last decade, Moldova has initiated a process of reform of the current legal framework, which has revealed itself to be slow and painful. Indeed, since 1992, relevant authorities have adopted a series of measures aiming at preventing and curbing corruption, which, in spite of their potential, had limited results. These measures culminated in November 1999 with the adoption by the Government of a “*State Programme for the Combating of Crime, Corruption and Protectionism*” for the years 1999-2002<sup>2</sup>. This strategic programme lists the measures to be taken at various levels, such as the improvement of the legal framework through drafting new laws or modifications of the existing ones, the improvement of the mechanism of combating criminality, the enhancement of international co-operation through the adoption of bilateral and multilateral treaties and accession to international conventions, adoption of preventive actions and economic sanctions, etc. However, the orientation of the programme is very little focused on prevention; its effective implementation, whose responsibility is shared by several institutions, appears difficult to achieve in the absence of a lead agency and finally there is no efficient control mechanism of the implementation of the Programme.

While the Government periodically monitors the fulfilment of the actions stipulated in the *Programme for the Combating of Crime, Corruption and Protectionism* and a new draft Programme for Combating Corruption is currently being elaborated by the National Anti-Corruption Working Group, it remains to see to what extent these reforms will be in accordance with European standards and when and how these strategies will be fully implemented. The actual implementation and enforcement of legislation remains a challenge. Institutional capacities to investigate and prosecute corruption cases need to be strengthened, in particular through enhanced inter-agency co-operation and the development of appropriate training programs.

### 1.3.1 CRIMINALISATION OF CORRUPTION AND MONEY LAUNDERING

The current Moldavian legislation comprises a series of loopholes and contradictions, which renders difficult the fight against corruption. Thus, there is a clear need of adjustment of the national legislation to European standards in order to curb efficiently corruption, render possible the ratification of European instruments and enhance cooperation at international level within the European structures and mechanisms.

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<sup>2</sup> Governmental Decision n° 1017 of 4 November 2002.

## CRIMINALISATION OF CORRUPTION

The definition of corruption in the Moldavian legal system may be found in the Law on the Fight against Corruption and Protectionism<sup>3</sup>. It defines corruption as an anti-social phenomenon which represents an illegal agreement between two parties, one of which proposes or promises privileges and illegitimate advantages and the other one, as a public servant, agreeing or receiving them for the execution or non execution of certain functions which constitute elements of crime according to the Criminal Code.

However, a discrepancy is noticeable between the above mentioned definition and the Criminal Code's provisions. Chapter VIII of the current Criminal Code criminalizes the receiving of (and intermediation in) bribes (art. 187), the giving of bribes and its repetition (art. 188), trading in influence (art. 188/1), abuse of powers or functions (art. 184), misuse of powers (art. 185), negligence (art. 186), receiving of an illegitimate advantage by an official of public authority, companies and state organisations (art. 189/3), non observance by a high-ranking public official of provisions of the Law on the Fight against Corruption and Protectionism (art. 189/4) etc. Sanctions for receiving, intermediation and giving of bribes vary between 3 to 20 years imprisonment, according to each case, confiscation of property and interdiction of exercising certain functions and activities for a period of maximum 5 years.

In addition, the Criminal Code (art. 155/1 and following) criminalizes and sanctions mostly with imprisonment accounting offences, misuse of budgetary resources/other public funds/public grants, infringements to credit regulations, deliberate or fictive bankruptcy, illegal entrepreneurship, tax evasion, dissimulation of income and related material etc. Various laws also allow to punish corruption from a disciplinary point of view within the police, the judiciary etc.

However, corruption of foreign public officials and corruption in the private sector are not foreseen. Among major loopholes, can be noted that isolated active bribery is not a crime (a contrario), making of promises prior to the execution of corruption and provocation are not covered, and that the additional sanctions for passive bribery are unclear. Furthermore, the listing of identified subjects of acts of corruption and protectionism excludes certain categories of persons which are not public officials (e.g. doctors, teaching staff). However, the Moldavian authorities have indicated that the Supreme Court of Justice has issued an opinion that criminal liability occurs even if the bribe was only promised, whatever effectively given.

Discrepancies are also present regarding the subjects of acts of corruption, as listed in art. 3 of the law and by the provisions of the Criminal Code. The sanctioning mechanism provided for in the law is limited to public officials and leaves aside certain categories, such as the "persons with high functions of responsibility".

These contradictions and loopholes between the Law on Fighting Corruption and Protectionism and the Criminal Code signal the need to unify the notions of corruption offences in the various normative acts, in accordance to European and international standards. The new Criminal Code will include a revised definition of corruption, penal responsibility of legal entities as well as new categories of penalties which do not imply imprisonment.

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<sup>3</sup> Art. 2 of Law n° 900-XIII adopted on 27 June 1996, Official Monitor of the Republic of Moldova n° 56 of 22 August 1996.

## CRIMINALISATION OF MONEY LAUNDERING

At present, only a very limited number of the provisions on money laundering contained in international conventions and other international instruments have been incorporated into domestic legislation.

After several unsuccessful attempts during previous parliamentary legislatures, the Law on the Prevention and Combating of Money Laundering was finally passed by the Moldavian Parliament in November 2001 and entered into force the same day. This new law includes a series of definitions, sets out the obligations of financial institutions, defines the various cases of suspicious financial operations, etc. Its implementation is under the responsibility of the Public Prosecutor's Office.

Under Moldavian legislation, money laundering is not a criminal offence and there are very few preventive measures<sup>4</sup>. The responsibility for laundering of proceeds of crime is not covered in the current legislation, in spite of the adoption of the law on money laundering. It remains unclear whether in practice, art. 23 of the Law on Financial Institutions<sup>5</sup>, which prohibits banks from "*concealing, converting or transferring money or other known proceeds of criminal activities with a view to disguising their illegal origin or helping any other party involved in such activities to escape the legal consequences of his/her acts*", is actually enforced.

It may thus be assessed that the current anti-money laundering legislation does not provide the necessary basis for effectively countering money laundering. Reforms which address these issues are underway: in the draft Criminal Code (which is at the second reading stage in Parliament), money laundering is criminalized and constitutes an aggravating circumstance in many offences which are committed in the interest of or by a criminal organisation; a new amendment and completion of the law on money laundering is envisaged.

The Criminal Procedure Code (art. 155) entitles an investigating authority to seize a prosecuted person's assets for the purposes of a civil action or when subsequent confiscation is possible under the criminal law provisions applicable to the prosecuted offence. This applies to all kinds of assets of the accused person. Seizure is possible when criminal proceedings have been opened and the suspect has been formally indicted, which generally requires a certain degree of certainty of the facts (certain exceptions to this rule exist). The property of legal entities cannot be seized. However, the system is not satisfactory. Seizure constitutes a difficult measure to apply in practice and consequently there have been very few cases of seizure. Furthermore, the Law on the Compensation for Damage Caused by Illegal Actions of Investigative Bodies and Judiciary provides for material liability of prosecutors and investigators even in cases of legal seizure when the charges are dropped. Abuses of this law's compensation mechanism have a strong deterrent effect on the competent authorities, which prefer not to carry out provisional measures.

Confiscation and interim measures mostly concern other offences, such as economic offences. Art. 33 ("*Confiscation of Property*") of the Criminal Code provides for confiscation of property belonging to a convicted person which derives from crime or was used or intended for use, to

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<sup>4</sup> Art. 13 of the 1996 Law on the Fight against Corruption and Protectionism provides that proceeds from corruption must be transferred to the State, further to a judicial decision.

<sup>5</sup> Law n° 550-XII of June 21, 1995, promulgated in December 27, 1995.

commit the crime, as well as income from the criminal use of property or assets. It is not possible to confiscate property without a criminal conviction, even if the suspect has absconded. Confiscation is possible only when specific provision is made for it among the penalties for the offence concerned. It is left at the discretion of the judge. The Criminal Code foresees mandatory confiscation for 42 crimes, mostly when they involve pecuniary damage, (e.g. for sabotage, smuggling, currency counterfeiting) while for 31 crimes confiscation is left at the discretion of the court. In cases where illicitly received money, gifts and services cannot be found, the corresponding value can be exacted from the convict. The assets thus confiscated become the property of the State by virtue of art. 70 of the Code of Criminal Procedure. Property held by third persons can be confiscated only if the third party is aware of the illicit origin.

The Code of Administrative Misdemeanours also contains provisions regarding confiscation which are applied in case of minor (administrative) offences. The law on the money laundering does not contain any provision related to confiscation.

Although statistics on confiscation are not available, it would appear that proceeds from crime have hardly been confiscated in practice. The absence of criminal responsibility of legal persons has detrimental effects due to the impossibility of confiscating criminal proceeds which have been transferred by natural persons to commercial companies. Institutional capacities are limited and the institution managing seized and confiscated property has not been established.

Provision is made in the draft new Criminal Code for a wider range of cases where confiscation is mandatory or at least possible.

#### **EFFECTIVENESS OF LEGISLATION**

As a general remark, it is difficult to measure the effectiveness of the current legislation<sup>6</sup>, owing to the fact that most of it has been introduced recently and that the reform process is still underway with the adoption of the new Criminal Code and the Criminal Procedure Code. Furthermore, the absence of an unified database on corruption and the differences between the official figures and those of the Ministry of the Interior (Department for fighting corruption and organised crime- DFCOC), complicate this task.

According to the statistic for the year 2001 collected by the Ministry of Interior 427 cases of corruption offences (which represents a 41% increase from year 2000) were detected or reported of which 253 were investigated and in 235 resulted in court proceedings. 58% of those cases were classified as serious offences (not so-called "street corruption").

It appears, however, that the practical implementation of institutional decisions in fighting corruption remains limited and that one of the main problems in Moldova is the weak enforcement of laws and the spread corruption within state institutions. According to the estimations of the DFCOC<sup>7</sup>, trading in influence is present at various levels of the public administration, judiciary, political sphere, law enforcement authorities, media and businessmen.

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<sup>6</sup> Parliamentary decision 518-XIII of 7 July 1995 (Official Monitor of the Republic of Moldova n° 43 of 03.08.1995) set up a special parliamentary commission in order to control the implementation of legislation on combating corruption. It adopted a report in 1996 which gave a negative assessment of the situation.

<sup>7</sup> Data provided by Ms Larisa Miculet, High Representative of Moldova to SPOC, at the International conference "Participation in the Stability Pact as an Accelerator of Social and Economic Reforms in the Region", Moldova, 7-8 December 2001.

This is also reflected in the results of the Barometer of Public Opinion 2001 of the Institute for Public Policy in Moldova which indicate that the first two major actions suggested by the population in order to improve the social and economic situation of the country are: first the improvement of the law enforcement mechanism (27%) and second the fight against crime in the economy (16%). 46% of the population inquired has declared not to be satisfied by the Government's activities in fighting corruption.

The difficulty in gathering evidence on corruption and organised crime admissible in courts is a major obstacle impeding the effectiveness and dissuasive nature of legislation and sanctions. Mass-media discloses numerous cases where criminal case were inappropriately classified or dismissed, either due to corruption itself or personal relationships. The confiscation regime is not very effective as it is conviction based.

In conclusion, the current provisions – if they were effectively applied – would certainly allow to fight corruption with some significant results. The new Criminal Code contains much better mechanisms which come closer to European standards and which apply to corruption, organised crime and money laundering. Uncertainty remains however concerning several provisions already foreseen as well as the reading which will be finally adopted<sup>8</sup>.

### **1.3.2 SPECIALISED UNITS**

Throughout the past years, Moldova has created a number of institutions to address the issue of corruption. The 1996 Law on the Fight against Corruption and Protectionism lists the public authorities responsible for the anti-crime policy, namely special departments of the Ministry of the Interior, the Public Prosecutor's Office, national defence bodies, the Customs Department, the Accounting Court, the State Fiscal Service and the Control and Review Department of the Ministry of Finance. In addition, specialised departments and services have been created within the Ministry of the Interior, the Public Prosecutor's Office and the Ministry of Information.

However, even though several specialised subdivisions have been set up, the most vulnerable elements are the lack of interaction and co-operation among the various authorities and ministries, at local and national level, the problems of repartition of responsibilities among them and finally the lack of necessary financial and technical resources.

### **NATIONAL CO-ORDINATION MECHANISMS**

Several co-ordination mechanisms for combating corruption were established successively in 1992, 1994 and 1997 by presidential and governmental decrees<sup>9</sup>, with limited results. Following the political changes in March 2001, prevention and combating of corruption were officially announced as a main priority of the new Government. Consequently, a new Decree (n° 57-III) on the constitution of the Co-ordination Council in problems related to combating corruption (composed of high level authorities) suspended the previous governmental coordination council.

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<sup>8</sup> Some aspects remain questionable, for instance art. 373 which a contrario allows persons in charge of responsibilities to receive presents, introducing as such a distinction between high rank officials and other officials. Questions of presents and gifts should be dealt with by deontological rules (codes of conduct, guidelines, etc).

<sup>9</sup> Presidential decree n° 104 Regarding Measures for Combating Corruption in State Organs and State Administration, 30 April 1992, Official Monitor of the Republic of Moldova n° 4, (1992), Presidential decree n° 315 of 8 November 1994, Official Monitor of the Republic of Moldova n° 15 of 24.11.1994; Presidential decree n° 305, 7 July 1997.

The Council has a cross-cutting coordinative role in the field of prevention and repression of corruption and bring together representatives of the legislative, executive and the judicial branch of the State. Its members are the President of the Republic, the Speaker of the Parliament, the Prime Minister, the Head of the National Security Committee of the Parliament, the General Prosecutor, the Minister of Justice, the Minister of the Interior, the Director of the Intelligence and Security Service and the Chairman of the Court of Audit.

As provided for by the new law on money laundering, the co-ordination of the activity of authorities in charge of the prevention and fight against money laundering as well as international collaboration in this field is under the responsibility of the Office of Public Prosecution,.

Procedures are underway for the nomination of a new Senior Representative to the SPAI, further to the resignation of the Minister of Interior, former Senior Representative, in February 2002. The Senior Representative is assisted in his work by the National Anti-Corruption Working Group, composed of representatives of the Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Justice, General Prosecutor's Office, Ministry of Finance, Customs Department, Service of Information and Security and of a representative of civil society, the Executive Director of the NGO "Transparency International – Moldova".

#### **SPECIALISED ANTI-CORRUPTION UNITS**

New changes have recently occurred among anti-corruption units available in Moldova.

The Ministry of the Interior investigates criminal offences through its central and local departments. The following services are of relevance: the Directorate of Economic and Financial Crimes, the DFCOC and the Department of Criminal Investigation. A specialised operative service for discovery of offences related to corruption and protectionism has also been created within the Information and Security Service (SIS). The DFCOC and SIS's service are directed by the Public Prosecutor's Office.

In February 2002, the Moldavian Parliament has approved a decision to establish a Centre for Combating Economic Crime and Corruption through the merger of the DFCOC (Ministry of the Interior), the Department of Financial Control and Audit (Ministry of Finance) and the Chief and the Financial Guard (State Fiscal Inspectorate). The Centre has been created with the aim to optimise and concentrate the activities of different law enforcement bodies in the area of economic crime and corruption. Though a director has already been appointed, the Centre is not yet fully operational and the draft law regulating its activities and competencies is currently under consideration in the Parliament.

The Customs Department has also investigative power in cases related to customs activities and may impose penalties, particularly fines.

#### **SPECIALISED PROSECUTORS**

The Office of Public Prosecution conducts criminal investigations through its central and local offices. Three units within this office play an important role: the Anti-corruption Section, the Section for Financial and Economic Crime Investigations and the Section for Investigation of Exceptional Cases (for most serious and complicated cases). The Public Prosecutor generally heads the investigation once criminal proceedings have been instituted and may conduct all or part of the investigation in person. The initial investigation phase is generally conducted by an

investigator from the relevant Ministry or department and investigators from the Public Prosecutor's office.

### **SPECIALISED POLICE UNITS**

Police services are within the responsibility of the Ministry of the Interior. The head of the Moldavian Police is the Inspector General of Police, who is also Deputy Minister of the Interior. Two departments are more closely concerned with economic crime: the Economic and Financial Police Directorate and the Corruption and Organised Crime Department.

The Tax Police (part of the national tax inspectorate of the Ministry of Finance since 1998) has preventive and investigative powers in case of tax related crimes, breaches of fiscal and customs legislation. It is authorised to conduct certain investigations, check the existence and authenticity of certain documents, inspects registers and accounting documents and seize goods of unproven origin, income on which taxes have not been paid and goods which is illegal to manufacture and sell. In case such offences are disclosed, the Tax Police must inform the relevant criminal investigation bodies.

### **FINANCIAL INTELLIGENCE UNITS**

No financial intelligence unit has been established, in spite of pressing demands from the Ministry of the Interior. The tasks of the FIU are currently performed by the Special Section of the General Prosecutor's Office, which is responsible for collecting and analysing reports of suspicious transactions. It is expected that this section will in the future establish efficient cooperation with the new Centre for Combating Economic Crime and Corruption.

## **1.3.2 INVESTIGATIVE CAPACITIES**

### **INTER-AGENCY CO-OPERATION**

Investigations against corruption and money laundering require a level of inter-agency co-operation that is presently not available in Moldova. Efforts are underway to enhance co-operation, through amendments and changes of the existing legal framework (see Specialised anti-Corruption Units).

### **COLLABORATION WITH JUSTICE AND WITNESS PROTECTION**

The collaboration of witnesses and collaborators with the law enforcement authorities is of vital importance to uncover and prosecute corruption offences. The Moldavian legislation comprises certain protective measures and provisions for victims, witnesses and other collaborators of justice aiming at safeguarding the concerned persons' safety, dignity and privacy. It is within the Ministry of the Interior's responsibility to elaborate and implement protective measures for victims, witnesses and persons cooperating with law enforcement authorities.

The Law on State Protection of the Victim, of Witnesses And Other Persons who Provide Assistance in Criminal Proceedings<sup>10</sup> has been adopted by the Parliament on 28 January 1998. It provides for ordinary (e.g. physical protection, temporary placement in safe location) and extraordinary protective measures (change of place of work/studies, change of residence, change

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<sup>10</sup> No. 1458-XIII from 28.01.98, Official Monitor of the Republic of Moldova No. 26-27/169 from 26.03.1998.

of identity, closed court hearings). At the end of 1999, the Ministry of the Interior set up a specialised unit in charge of enforcing the above-mentioned measures.

Protection measures during detention period, partial drop of charges, lowering of sentences and change of identity may be granted to persons willing to collaborate with the authorities. The usual procedure is that the Ministry of Interior submits a protection protocol to the Prosecutor, the instruction judge or the judge who takes the final decision so as to grant this measure or not. It is up to the specialised unit of police to decide which particular measure must be applied.

Measures such as the possibility to use written testimony, the giving of testimony from a secret place through audio-video equipment, the exclusion of the defendant from Court, anonymous testimony is not used. The intimidation of a witness constitutes an autonomous penal crime.

In conclusion, the protection of witnesses, victims, individuals providing assistance in the criminal proceedings and their relatives remains a challenging issue as the procedural system does not provide adequate means and measures to encourage their co-operation and give them specific protection. The existing regulations are sometimes contradictory and do not set up a coherent system of protective measures. Even after having been subsequently modified by Law n° 126-XV, the law on state protection of the victim and witnesses is still not being enforced because of lack of adequate financial resources.

Further work needs to be done to ensure that such measures have been taken so that the person who reports a corruption offence does not suffer disadvantages because of his action.

#### **USE OF SPECIAL INVESTIGATIVE MEANS (SIMs)**

Special investigative means are regulated by an incoherent heterogeneous legal framework, a problem which the draft new Code of Criminal Procedure is aiming at solving through a codification.

The Criminal Procedure Code comprises a limited number of investigative means such as searches (art. 148 to 153) and interception of communications (art. 154 and 156). The adoption on 12 December 1994 of the Law n° 45 – XIII on Operational Activities, which has a broader scope (additionally, it includes surveillance, telephone tapping, undercover operations, use of informers, etc), has become a source of uncertainty and contradiction, given the fact that it has not been followed by corresponding amendments of the Criminal Procedure Code. Thus, this discrepancy creates obstacles, such as for instance the use of electronic surveillance or controlled delivery as evidence. While art. 55§3 of the Criminal Procedure Code states that evidence obtained by the use of special investigative means which are provided for cannot serve as a basis for conviction or other judicial decisions, nor for procedural documents, according to art. 10 of the 1994 Law,, the results of the investigation may be used as evidence for criminal files. However, it seems that in practice, judges accept evidence obtained through the use of special investigative means.

The law enforcement agencies have a fairly wide range of investigative means at their disposal, the most used ones being bugging, interception of communications and searches. However, they are very little experienced with certain techniques (undercover operations, electronic surveillance) and lack adequate equipment. The technique of the agent provocateur is not used, since it is not provided for in the legislation; the same applies to cross-border pursuits<sup>11</sup>.

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<sup>11</sup> Cross-border pursuits are regulated by bilateral agreements. Moldova has entered into such agreements with Romania, Russia, Ukraine and Belarus.

Art. 6(2) of the Law on operational activities draws an exhaustive list of the authorities responsible for using special investigative means for operational activities, namely: the Ministry of the Interior, the Department of Penitentiary Institutions of the Ministry of Justice, the Information and Security Service, the Ministry of Defence, the department of Customs Control since 1998, and the State Service of Protection and Guard. The use of SIMs is supervised by the Public Prosecutor's Office.

When these methods violate individual freedoms, a reasoned decision is needed from a senior official of the body wishing to use them as well as the approval of the Public Prosecutor concerned. Certain investigative means such as the control of post and of the correspondence of convicted persons, the interception of communications and the collection of information through technical channels may only be used by investigative authorities of the Information and Security Service.

The time period for the use of such means varies – if a preliminary investigation is mandatory, the criminal investigation may last maximum 10 days from the beginning of the process, if not, it may last one month, renewable for an additional month upon decision of the prosecutor (art. 103 of the Code of Criminal Procedure). Regarding the use of interception of telephonic communications, art. 156/1 limits the time period to 6 months.

In conclusion, the Moldavian authorities should engage in reviewing the legislation with the purpose of identifying the existing sources of difficulties and removing them.

#### **SPECIALISED TRAINING**

Specialised training in the investigation and prosecution of corruption and other related offences is not available on a regular basis in Moldova. Initial and on-going training are provided by Universities, the Police Academy and specialised seminars abroad. Monthly one-day seminar and one month courses every four – five years are held for prosecutors and investigators. However, there is no specific training at national level in the fight against organised crime and corruption.

### **1.3.3 RECOMMENDATIONS FOR REFORM**

*Draft recommendations to be modified in view of the comments and additional information provided during the Washington Steering Group meeting.*

#### ***Criminalisation of corruption and money laundering***

1. Accelerate the judicial and legislative reform, in particular by adopting a new Code of Criminal Procedure, while ensuring that it is in accordance with international instruments of the European Union and the Council of Europe.
2. Ensure that corruption and money laundering are clearly defined and criminalized in accordance with European standards. Legislation should clearly typify and punish corrupt behaviour in elected bodies, public administration, business and society at large, ensure that appropriate remedies are available for victims of corruption and that anti-corruption legislation is enforced effectively.
3. Draw up and consider the publication of regular reports on the situation related to corruption and measures taken in the country.

#### ***Specialised units***

4. Ensure that the Centre for Combating Economic Crime and Corruption becomes fully operational and strengthen the National Anti-Corruption Working Group.
5. Ensure that specialised anti-corruption units, in particular the new, are provided with sufficiently trained staff and legal and budgetary means to effectively investigate, prosecute and adjudicate cases of corruption. Members of these units should enjoy appropriate independence, autonomy and protection in the exercise of their functions, be free from improper influence and have effective means for gathering evidence and protecting those persons helping the authorities in combating corruption.
6. Improve the functioning of central organs responsible for co-ordination of activities in the fight against corruption and organised crime by reviewing the existing distribution of tasks in order to avoid overlapping and co-ordination problems and by reorganising when necessary the various services.
7. Ensure effective collaboration among the various law enforcement authorities and strengthen the exchange of information.
8. Establish a modern and effective anti-money laundering mechanism and set up a anti-money laundering unit/financial intelligence unit, with the necessary powers as far as national and international co-operation is concerned, which would record notifications of suspicious transactions and start prosecutions.

#### ***Investigative capacities***

9. Further strengthen investigative capacities of criminal justice institutions by fostering inter-agency cooperation and joint investigations, focusing on financial investigations, taking into account links to fraud, tax evasion and economic crime, creating the conditions for the use of special investigative methods while respecting fundamental human rights and freedoms and by providing appropriate training and resources
10. Take all measures to and implement further the legal framework and establish a mechanism of protection of witnesses, collaborators of justice and vulnerable persons.
11. Enhance and improve the legal institutional framework for the application of special investigative means with due respect for human rights.
12. Promote comprehensive and specialised anti-corruption training for prosecutors, police and the judiciary.

## 1.4 PROMOTION OF TRANSPARENCY AND INTEGRITY IN BUSINESS OPERATIONS

The Stability Pact Anti-Corruption Initiative requires countries of South Eastern Europe to rid business deals of corrupt practices through *inter alia*: enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for domestic and foreign investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

According to an opinion poll carried out three years ago by the EBRD and the World Bank among 3000 managers from 20 countries in transition, Moldova was ranked 15<sup>th</sup> in terms of microeconomic governance, the last place for the quality of macroeconomic governance, the last place for infrastructure and the penultimate place regarding law enforcement (Transition Report 1999, EBRD). In 2001, Moldova was ranked 63<sup>rd</sup> out of 91 countries in Transparency International's Corruption Perception Index. According to recent surveys, about one third of the Moldavian firms admit that they frequently pay bribes. Therefore, preventing bribery in business transactions should be a high priority for the Moldavian authorities. Efforts are currently made by the Government to improve the legal and institutional framework in light of the international anti-bribery standards; further improvements would be however welcomed, concerning in particular the effective implementation of recently adopted legislation.

### 1.4.1 PREVENTING BRIBERY OF PUBLIC OFFICIALS IN BUSINESS TRANSACTIONS

Preventing and deterring bribery of public officials in business deals requires making bribery of public officials a crime, levying significant and effective penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies overcome pressure to bribe coming from public officials themselves. This includes the prohibition and effective punishment of public officials that take bribes and the development of open and transparent conditions for investment.

#### ACTIVE BRIBERY AND THE RESPONSIBILITY OF COMPANIES

##### *The offence of active bribery*

Giving a bribe to a public official is criminalised by article 188 of the Criminal Code. The nature of the bribe is not expressly defined by article 188, but can be deduced from an implicit reference to provisions applicable to passive bribery. The offence consists of giving money, goods, advantages, undue privileges or services, including non-material advantages, to a "person of responsibility", so that this person performs or refrains from performing an action in relation to his/her official duties. Active bribery through intermediaries is also covered by this provision. However, it seems that neither promising to give a bribe nor attempting to bribe are criminalised under current legislation. Furthermore, it is not clear whether aiding and abetting in the framework of a bribery offence would be punished. As in several South Eastern European countries, the Criminal Code provides for one defence, according to which the briber can avoid punishment when he reports the bribery act to the competent authority before its discovery, or if he reports the act without being aware that the bribery has already been discovered.

Furthermore, bribing a foreign public official is criminalised under current criminal legislation, in the cases when the briber is a Moldavian citizen or if the corruption of the foreign official takes place in the territory of the Republic of Moldova.

The definition of public officials covers “persons of responsibility” as defined by the 1996 Law on the Fight against Corruption and Protectionism, and by article 124 of the Criminal Code. According to the legal definition, the “person of responsibility” is (1) a person elected, nominated or holding delegated powers, who is legally entrusted with certain rights and obligations and who is holding public functions (“person of responsibility”), or (2) a person whose nomination or election is regulated by the Constitution or an organic law, or a person who has received a delegation of powers from such a person (“person of high responsibility”).

The 1996 Law on the Fight against Corruption and Protectionism defines corruption as an anti-social phenomenon representing an illegal agreement, containing elements of crime according to the Criminal Code, between two parties, one of which proposes or promises privileges and illegitimate advantages, and the other one, being a public official, who agrees or receives them for the execution or non-execution of certain functions. It seems that the definitions of active bribery provided for by the Criminal Code and by the Law on the Fight against Corruption and Protectionism slightly differ, since the first one does not explicitly cover the act of promising a bribe. However, the Moldavian authorities have indicated that the Supreme Court of Justice has decided that criminal liability occurs even if the bribe was only promised, whatever effectively given.

A new Criminal Code of Procedure has been drafted and is currently being discussed by the Moldavian Parliament. The new Criminal Code has been adopted in 2002 and is currently pending promulgation by the President of the Republic. This draft Criminal Code provides for a new definition of the offence of active bribery, which is more in line with international anti-bribery standards than the current one, as not only the effective giving of bribes, but also the promise of giving a bribe are criminalised. Under this new definition (article 347 of the draft Criminal Code), the act of promising, offering or giving a bribe to a “person of responsibility”, so that this person performs or refrains to perform an action in relation to his/her official duties, shall be punished.

#### ***Corporate responsibility and sanctions of companies***

Under Moldavian legislation, only natural persons can be held criminally liable for bribery acts. Corporations bribing public officials cannot be held liable as such in the framework of non-criminal liability (e.g. administrative liability). It would appear that legal persons can be held liable under the Civil Code but this possibility is not used in practice regarding bribery acts. In addition, while there might be various other statutes regulating the economic activities of legal persons under which fines can be levied on companies for economic offences, bribery acts committed by companies often do not fall under the scope of these statutes. Furthermore, there are currently no procurement sanctions that could be applied on enterprises that are determined to have bribed public officials in the framework of a public procurement.

However, the absence of criminal or non-criminal liability for business entities does not mean that bribery offences in business transactions can be committed with impunity via companies. Indeed, natural persons, such as a director, a manager or an employee of a company bribing a public official would be subject to sanctions under criminal legislation. The Moldavian authorities have indicated that the new criminal legislation will address the issue of criminal liability of legal entities.

### ***Penalties for bribery acts***

Under current legislation, active bribery is sanctioned by imprisonment of 3 to 8 years. Aggravated cases can be sanctioned by a penalty of up to 20 years imprisonment. However, fines are not foreseen and the confiscation of property is provided for only in the case of repetition of the offence and of aggravated bribery cases. According to the Moldavian authorities, a bribe and its proceeds can be confiscated from third persons and from legal persons according to articles 33 and 187 of the Criminal Code. Concerns may be raised as to whether these sanctions are effective, proportionate, and dissuasive enough, as requested by the international anti-bribery standards. It should be noted that sanctions provided in the new draft Criminal Code seem to be more in line with the international standards, since the courts will have the choice to impose fines (proportionate to 2000 to 4000 times average monthly salaries) or imprisonment sanctions (from 2 to 5 years, extended to 12 years in aggravated bribery cases). However, the scope of application of other sanctions, such as confiscation of the bribe and its proceeds, seems to remain limited under new legislation.

Money laundering is not criminalised under the current Criminal Code. However, the draft Criminal Code contains provisions related to money laundering and a new Law on Prevention and Combating of Money Laundering has entered into force on 15 November 2001. This Law contains definitions of money laundering, illegal profits and suspicious financial operations, and imposes various data-keeping and reporting obligations on financial institutions, as well as an obligation to adopt anti-laundering programmes and to educate their employees in this sense. However, it seems that only a few measures have until now been taken to raise awareness about money laundering within banks, public authorities and law enforcement agencies, and that there is no body designated to deal with suspicious transactions. The Moldavian authorities stress that the full application of the Law on Prevention and Combating of Money Laundering can only be done after the entering into force of the new criminal legislation.

### ***Enforcement***

According to the Criminal Procedure Code, the public prosecutor has the obligation to initiate an investigation every time the elements of a crime are made known. The grounds for suspending an investigation are very precisely defined by the article 172 of the Criminal Procedure Code, and the termination of an investigation is regulated by articles 5; 5<sup>1</sup> - 5<sup>7</sup> of the same Code. According to the Moldavian authorities, political interference, national economic interest, the identity of the persons involved would hardly affect the objective and obligatory character of an investigation.

Jurisdiction is exercised on both a nationality and territoriality basis, so that Moldova can prosecute bribery offences committed abroad by its nationals or by foreigners in its territory. The statute of limitations for the offence of active bribery is 15 years from the date the offence was committed and, as such, higher than in OECD and European Union countries where most statutes are in the range of about 5 years. Therefore, Moldavian statute of limitation allows an adequate period of time for investigation and prosecution of bribery cases.

Since bribery of public officials committed in South Eastern European business transactions often involves more than one jurisdiction, mutual legal is an essential instrument to effectively investigate and prosecute bribery cases. It should be noted that bank secrecy cannot be invoked as a motivation to decline to render mutual legal assistance. However, although Moldova has ratified a number of key instruments on international legal assistance, it lacks an effective framework for providing such mutual assistance. As far as the confiscation of proceeds of crime is concerned, it

is not possible to seize goods on the basis of a foreign confiscation order. The only assistance Moldova can provide is to assist in the investigation in order to identify and trace property as well as documents. Regarding extradition procedures, there are no clear rules as to how requests for extradition are received and processed. Extradition is refused for Moldavian citizens according to art. 17(3) of the Constitution, and foreigners can be extradited either on the basis of a multilateral or bilateral treaty, or on the basis of the principle of dual criminality, or also if a Moldavian court decides so.

There are indications that in practice, numerous cases of corruption are not prosecuted and that filed cases are sometimes settled before trial with a corrupt payment. Low salaries in the police and the judiciary and delays in payment of salaries are some of the factors explaining the persistence of corruption in the law-enforcement sector.

Although current legislation contains legal provisions that would to some extent allow punishing corruption-related behaviour, the practical implementation of these provisions is limited and the acceptance of corruption remains widespread throughout Moldavian society. In particular, there are significant obstacles in gathering evidence related to corruption cases. While this situation might change once the new Criminal Code and the Code of Criminal Procedure will be adopted, it will however be necessary to sufficiently train prosecutors, judges and investigative bodies to ensure an effective implementation of new legislation.

#### **CURBING PRESSURE FOR BRIBES FROM OFFICIALS**

##### ***Extortion/solicitation***

While giving a bribe is used by economic operators to get free from formal procedures and to simplify business and administrative formalities within the country, asking for a bribe is considered a legitimate additional income and compensation for low wages. The classic bribery schemes are the “fee-for-service” scheme, blackmail or even racketeering with the use of intimidating procedures. Such practices are reported to be used by public officials who have direct contact with private economic operators (financial guards, tax inspectors, customs officers, sanitary and other inspectors, etc). According to reports written by independent Moldavian NGOs, inspectors from various government agencies have the habit to visit a company 30-40 times a year, soliciting additional payments to solve whatever problem they have found. Therefore, considerable efforts should be made by the Moldavian authorities to help companies overcome the pressure for bribes from domestic public officials.

These practices are reported to be usual, although prohibited. Under the current Criminal Code (article 187), public officials who receive bribes, as well as their intermediaries, shall be sanctioned. However, public officials who simply solicit bribes without receiving any shall not be punished, since the Criminal Code only criminalises the effective reception of bribes. This situation, which does not match international standards, should be upgraded with the adoption of the new draft Criminal Code, which extends the criminalisation of passive bribery to soliciting bribes. Sanctions provided for passive bribery under current legislation are imprisonment penalties of 3 to 10 years, the confiscation of proceeds and the interdiction to perform public functions during a maximum of 5 years. In addition, the 1996 Law on the Fight against Corruption and Protectionism prohibits certain corruption-related behaviour to public officials such as receiving gifts or other rewards and services, and provides that certain behaviour that does not constitute criminal offences under the Criminal Code shall fall under the scope of disciplinary regulations.

Under the Moldavian legislation, immunities are provided for high-ranking political officials, judges, prosecutors. However, procedures for raising such immunities seem to be commonly used by the units specialised in combating organised crime and corruption. Therefore, the investigation and prosecution of bribery acts committed by these officials is not impeded by the existence of their immunities.

Furthermore, certain corruption-related offences are criminalised in the Criminal Code, like abuse of powers or functions (article 184), misuse of powers (article 185), receiving an illegitimate advantage (article 189-3), and trading in influence (article 188-1). In practice however, officials soliciting bribes are rarely prosecuted. In addition, the impact of extortion and racketeering practices by public officials is amplified and facilitated by the ignorance of rules by smaller operators and by the lack of transparency of rules regulating business.

#### ***Transparency in the regulatory system for doing business***

The Moldavian authorities have taken major steps to instil transparency in the regulatory system for doing business in their country, by adopting the Law on Property, the Law on Entrepreneurship and Enterprises, the Law on Small Business Support, the Law on Financial Institutions, the Law on Insolvency, the Law on Licensing certain activities, etc. Furthermore, legislation regulating investment is clearly designed to promote foreign investment, which enjoys favourable tax treatment.

Nevertheless, the regulations that apply to businesses seem to lack clarity, and registration processes are bureaucratic and lengthy. It seems furthermore that the lack of clarity in the public administration is a burden on entrepreneurs, since it is difficult to get the right information on the competent official and on the requested documents or needed steps to obtain licences or authorisations. Furthermore, the involvement of Moldavian public officials in the business sector may cause conflicts of interest and is an opportunity for corruption. In order to increase transparency in the public administration, the Moldavian authorities intend to adopt a financial disclosure law for senior officials and parliamentarians.

### **1.4.2 PROMOTING INTEGRITY IN BUSINESSES**

Not only do governments have major responsibility in sanctioning bribery of public officials in business transactions but governments also have the corresponding responsibility to introduce sound company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

#### **DETECTING SUSPICIOUS PAYMENTS**

##### ***Accounting requirements and auditing standards***

Accounting offences may have a twofold relationship to corruption offences: they are either preparatory acts to the latter or acts disguising the corruption offences. That is why it is important that accounting requirements are in line with international standards to prevent off-the-book transactions and falsification of books and records, and that an independent external audit be carried out to control the proper implementation of these requirements. As regards accounting standards, Moldavian legislation requires since 1998 that financial statements are in conformity with the international standards, reflected in the new Moldavian National Accounting Standards. Under Moldavian legislation, off-the-books accounts, off-the-books transactions, the recording of

non-existent expenditures, and the use of false documents are sanctioned by administrative or criminal sanctions, depending of the seriousness of the act. The criminal penalties provided are fines (maximum of 500 minimal salaries) and imprisonment (from 2 to 5 years). With the help of USAID, a significant number of professors and practitioners were trained in this respect. An undergraduate curriculum in accounting has been designed and support has been granted to the development of an accounting association in Moldova.

As far as external audit of private firms is concerned, the joint stock companies, the investment funds and the banks are required to be regularly audited by external auditors.

#### ***Tax treatment of suspicious payments***

Under Moldavian legislation, bribes given to domestic or foreign public officials are not deductible for tax purposes. However, it seems that the amount of taxes collected is lower than expected, since a significant number of transactions are not recorded and thus not subject to any tax payment. Transborder movements of goods are particularly affected by smuggling and other forms of organised crime. A new Customs Code has recently been enacted, which has been developed with the assistance of the European Union and the US Customs Service. It is expected that this new legislation will help cleaning up trade with Romania and Ukraine and that it will provide the basis for improved revenue collection.

#### **INSTALLING AN ANTI-BRIBERY CORPORATE CULTURE**

Thanks to a low taxation system, the privatisation process and foreign investments, the private sector is continuously growing and represents about two thirds of the global activity in Moldova. The current situation as regards transparency and integrity in the private sector is hard to assess in objective terms. Findings of recent studies indicate that there are numerous shell companies, which are used to give a legal appearance to illegally made benefits. Strong bank secrecy, resulting from a deliberate policy designed to attract investments, has had the negative consequence of attracting foreign money launderers in Moldova, and thus developing a shadow economy and corruption.

Instilling an anti-bribery corporate culture requires that the Government and the private sector genuinely collaborate to defend the values of integrity, to work on improving the regular framework for doing business, monitor enforcement of new legislation and decrease opportunities for corrupt behaviour. In recent years, a constructive dialogue between the Moldavian Government and the leading industry actors has been established, in particular to discuss taxation and regulation policies. The Producers' Association of Moldova, which comprises more than 200 Moldavian companies from various sectors, plays a significant role for business-to-business communication and for promoting more transparent business regulations.

It seems that further efforts should be made by the Moldavian authorities to encourage socially responsible business practices and generate a global awareness of the economic, social, political and legal costs of corruption among the private sector. In addition, corporate governance standards and ethical business guidelines need to be developed and implemented.

### 1.4.3 RECOMMENDATIONS FOR REFORM

*Draft recommendations to be modified in view of the comments and additional information provided during the Washington Steering Group meeting.*

#### **Preventing Bribery of Public officials in Business transactions**

1. Streamline legislation related to corruption offences, in particular regarding certain discrepancies between the Criminal Code and the 1996 Law on the Fight Against Corruption and Protectionism (see 1.4.1).
2. Adopt the new criminal and criminal procedure legislation to further align Moldavian legislation with international anti-corruption standards. In particular, ensure that the simple promising and attempting to give a bribe be covered by the definition of the active bribery offence. Ensure also that the solicitation of bribes by public officials be sanctioned even in the case where no bribe is effectively paid following the solicitation.
3. Introduce the offence of bribing a foreign public official according to international standards.
4. Ensure that corruption-related acts are punished by effective, proportionate and dissuasive sanctions, including monetary fines. Ensure that seizure and confiscation of the bribe and its proceeds can be ordered and effectively applied to bribery acts.
5. Provide for adequate criminal and/or administrative and civil liability for legal persons that bribe public officials; in particular, apply procurement and other dissuasive sanctions, including monetary fines, to companies that are determined to have bribed public officials.
6. Ensure that bribery acts in business transactions are seriously investigated and prosecuted by the competent authorities, free of political or other influence in line with international standards.

#### **Promoting Integrity in Business**

7. Further develop more transparent administrative procedures and a simpler legal and institutional environment for doing business in Moldova.
8. Develop financial, criminal and civil provisions aimed at prohibiting off-the-books accounts and off-the-books transactions. Develop accounting and auditing standards.
9. Further involve representatives from the private sector in the legislation and regulation drafting process in the economic field; in particular, hold regular consultations with the private sector to provide businesses with the opportunity to identify for the SPAI Senior Representative which areas are conducive to corruption from the business perspective.
10. Further raise awareness and promote changes in business attitudes towards corruption and promote high corporate governance standards.
11. Continue to develop regular statistical reports on bribery offences, to be shared with the general public.

## 1.5. PROMOTION OF AN ACTIVE CIVIL SOCIETY

An active civil society helps make government accountable for its decisions and actions. The members of the SPAI Compact have committed themselves to creating the necessary conditions in their countries to promote and empower civil society and independent media, enabling them to contribute actively to anti-corruption programs. These conditions include: (a) *public attitudes* that demonstrate intolerance towards corruption; (b) the existence of basic *civil liberties* that encourage active public participation in anti-corruption activities; (c) existing *laws that facilitate the establishment of civil society organisations*; (d) the establishment of civil society organisations that have the *capacity and maturity* to pursue challenging objectives; (e) a *mass media* that is able to scrutinise government operations freely and gain easy access to authoritative information; (f) government operations that are *transparent* and that demonstrate a sincere *willingness to co-operate* with civil society; and (g) a civil society that has a *track record of action* that matches its verbal commitment to fighting corruption. The status of efforts to develop these conditions is assessed in this section based on information compiled from a variety of sources.

The Republic of Moldova has implemented many of the immediate steps related to civil society participation as required under the SPAI Compact and Action Plan. A representative of Transparency International Moldova was invited to participate in the National Anti-Corruption Working Group established soon after Moldova's full membership in the Initiative in June 2001 and close links have been developed with other non-governmental organisations (NGOs) active in the anti-corruption field. The text of the initiative has been translated into the local language and published in several periodicals. To further sensitise civil society to the Initiative and the importance of the fight against corruption, a public awareness campaign was launched in July 2001 and television and radio programs on fighting corruption have been organised by the Mass-Media Service of the Ministry of Interior. In addition, in all his public statements, the Senior Representative invited civil society organisations to actively participate in the fight against corruption.

### 1.5.1 PUBLIC ATTITUDES TOWARD CORRUPTION

Surveys carried out in the Republic of Moldova present a contradictory picture of public attitudes toward corruption. According to polls conducted by Transparency International Moldova in January 2001 and January 2002, corruption is the second most important concern of the population after the problem of poverty. A survey organised by the Institute of Public Policy in November 2001 however ranks corruption 6<sup>th</sup> behind issues such as poverty, unemployment, health, famine, and war in the region.

All surveys highlight the main factors influencing the spread of corruption as the difficult economic situation and low level of salaries. Mistrust in central Government and the Parliament is widespread and appears to be higher than in the other SPAI countries. There is a rather high level of tolerance towards corruption: the public tends to accept the existence of corruption and needs to increase its trust in the Government to reduce corruption effectively.

## **1.5.2 CIVIL LIBERTIES**

The 1994 Constitution of the Republic of Moldova guarantees political and human rights, including the right to vote and to privacy, the right of access to information, and freedom of movement, opinion and expression, conscience, assembly and association.

Association of citizens according to other criteria than the political and professional is not provided for in the Constitution. Articles 41 and 42 of the Constitution refer only to citizens' right to associate into political parties and trade unions. However, as the Republic of Moldova ratified both the UN Human Rights Declaration and the Council of Europe Convention on Human Rights, the right to associate into other forms of not-for-profit organisations as provided for in the international texts is guaranteed. Furthermore, the Law on Public Associations, which entered into force on 23 January 1997, allows citizens to form non-commercial organisations in the form of voluntary associations aimed at protecting their rights and freedoms and at pursuing not-for-profit interests.

The Constitution guarantees freedom of the press, speech and the right of access to information. The media is not subject to censorship, and there are no legal penalties for libelling officials. There is however a gap between existing legislation and its effective implementation. Hidden censorship is frequent, free speech is often discouraged by the authorities and access to information, although not legally obstructed, remains difficult.

## **1.5.3 LEGAL ENVIRONMENT FOR CIVIL SOCIETY**

The creation and activity of civil society organisations in the Republic of Moldova are regulated by the Law on Philanthropy and Sponsorship (1995), the Law on Public Associations (1996), the Law on Foundations (1999), the Law on Employers' Organisations (2000), and the Law on Trade Unions (2000), as well as by tax and fiscal laws.

The Law on Public Associations regulates the establishment and functioning of public organisations. According to the Law, associations can be set-up under three legal forms: public movements which are associations of legal and natural persons that do not have a fixed membership, public associations whose membership is fixed, and public institutions which are created to provide services in order to achieve by-law goals. The Law meets international standards.

With a view to defining a general framework for the third sector, a Law on non-commercial organisations has been drafted and is now under parliamentary procedure. The Law, which has been developed in co-operation with non-governmental organisations, regulates the establishment, activities, reorganisation and liquidation of non-commercial organisations, as well as the management of their patrimony.

There are no serious legal obstacles to registration, but the registration process is regularly criticised by civil society organisations (CSOs) as being inefficient, especially at the local level. National and international public associations, as well as foundations, are registered within the Ministry of Justice, while the local public associations are registered by the local public administration bodies. Local registration of CSOs is hindered by legal inconsistencies: while under the Law on Public Associations local CSOs should be registered by the local council within one month, the local council convenes only once every three months according to the Law on Local Public Administration.

NGOs pay revenue taxes for their permanent staff and some local taxes, but can be exempted from income tax when they are recognised as being public benefit organisations. Neither public associations nor foundations are entitled to VAT privileges. Exceptions are provided for where intergovernmental agreements on technical assistance are in place, in which case the decision to levy VAT is made by the Ministry of Finance. Other possibilities are ruled out. Individual donations to public benefit NGOs are deductible up to 7 % of taxable income.

#### 1.5.4 CIVIL SOCIETY CAPACITY

##### **Non-governmental organisations (NGOs)**

The Republic of Moldova has a diverse not-for-profit sector. The NGO movement started developing in 1989, boosted by the political, economic and social changes that took place in the country and the simultaneous adoption of a legal framework allowing for the establishment of such organisations. Since then, there has been a permanent growth in the number of NGOs.

Estimations regarding the number of NGOs in the Republic of Moldova range between 1800<sup>12</sup> and 2500<sup>13</sup>, with a predominant number being national rather than regional in scope<sup>14</sup>. Most NGOs are localised in Chisinau, but a recent movement to rural areas can be observed. Many organisations that have registered officially however consist of no more than a few individuals. According to the Soros Foundation, only one-third of registered NGOs is active, the rest operate occasionally.

The most active NGOs include those in the fields of social services, women's issues, human rights, and legal and regulatory environment, among which are the National Assistance and Information Centre for NGOs "CONTACT", the Association for Legal and Social Problems Investigation *Argus*, the Centre for Juridical Assistance, Civitas, the Helsinki Committee for Human Rights of Moldova, and the Moldavian Centre for Sustainable Development. A local Transparency International chapter was created in June 2000. Transparency International Moldova has since then developed a range of activities which aim at raising public awareness and stimulating civil society's involvement in the fight against corruption, and at providing the Government with expertise on anti-corruption related legislation. Other NGOs have also proven active in this field, among which the Viitorul Foundation and the Public Policy Institute.

The most serious obstacle to the sustainability of Moldavian NGOs is their financial stability and viability. Most leading NGOs are either branches of well-established European or American organisations or depend on the support of a few foreign donors, which puts their financial viability at great risk. Neither the Government nor the private sector provide significant financial assistance to NGOs. The absence of tax exemptions on domestic donations does not encourage private sector actors to support NGOs and the fund raising capacity of Moldavian NGOs remains limited. As a consequence, the lack of funds has forced many organisations to stop operating.

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<sup>12</sup> Estimation of the National Assistance and Information Centre for NGOs "CONTACT".

<sup>13</sup> Data provided by TI-Moldova.

<sup>14</sup> The ratio of national to regional NGOs differs greatly depending on the source of the data: according to the Ministry of Justice, the proportion of national to regional NGOs was in October 2001 of 128:1, while data of the National Assistance and Information Centre for NGOs "CONTACT" give a ratio of 2:1.

A slight increase in support provided by local government to NGOs can be noted, mainly as a result of the pressure exerted by donor organisations for co-funding of projects. Several international organisations recently launched initiatives to strengthen partnerships between local government and civil society organisations, such as the 2001 IFES/ADEPT pilot project in the Soroca county “Partnership Step by Step”. Similar efforts have also been undertaken by UNDP.

Linked with the problem of fund raising capacity is the limited organisational capacity of most Moldavian NGOs. While leading NGOs have well-defined goals and missions, many smaller NGOs have basic and poorly defined missions. Some active NGOs can afford to have a few paid staff members, but many organisations do not have more than one full-time or even part-time paid staff member, sometimes assisted by a few volunteers. However, due to the deteriorated state of the Moldavian economy, volunteerism remains limited, many citizens preferring to engage in subsistence activities rather than in civic action — but when their rights are affected, Moldavian citizens do not hesitate to engage in civic actions as can be seen by the important protests and civil unrest that took place in the course of the past two years.

The not-for-profit sector in the Republic of Moldova suffers from a lack of recognition. According to a public opinion survey conducted by the Institute for Public Policy in November 2001, NGOs are among the least trusted institutions. Only 2% of the surveyed persons fully support the activity of NGOs and 20% support it to a certain extent. The general public does not have a clear understanding of the role of civil society organisations. To remedy this situation, ADEPT and the CONTACT Centre recently launched a newsletter to be distributed to the Moldavian third sector, government officials, and local governments to familiarise them with activities and success of the NGO sector.

Coverage of NGO activities by the media is insufficient and generally limited to brief announcement of events. In depth articles are almost non-existent and reporting is usually limited to some pictures taken during the event, a brief interview and some basic information about the activity. However, over the past few years, some media outlets started covering civil society’s activities more regularly, among which are the DECA-press and INFOPRIM News agencies and the Chisinau-based radio station ANTENA C, which covers two-thirds of the Moldavian territory and broadcasts twice a week a 30 minute program on the NGO sector “SECTORUL ASOCIATIV”.

A number of organisations are active in supporting the Republic of Moldova’s NGO sector, among which are the CONTACT Centre, the Association for Participatory Democracy (ADEPT), a local organisation which took over the program of the International Foundation for Electoral Systems (IFES) in July 2001, the Soros Foundation Moldova, the Euro-Asia Foundation, the Rotary International Club of Chisinau, the Philanthropy Foundation, the World Bank, the United States Information Service, and UNDP. In particular, the CONTACT Centre, registered in 1995 through a project of the Soros Foundation, provides information and training and technical assistance to local NGOs. The representatives of the CONTACT Centre also serve as consultants and trainers for less developed organisations. ADEPT assists NGOs by providing them with legal information on issues of registration, legal status of NGOs, taxation, etc. As regards the Soros Foundation Moldova, its support to NGOs takes the form of open grant competition programs and support to the CONTACT Resource Centres Network, which provides information and technical assistance, consulting and training for rural NGOs. Finally, UNDP has been very active in supporting civil society’s involvement in the fight against corruption. It supported the creation of Transparency International Moldova and is currently financing a large-scale project initiated by Transparency International Moldova in October 2001 and entitled “Strengthening the National Capacities to Fight Corruption in the Republic of Moldova.”

An important initiative aimed at strengthening the civil society sector in the Republic of Moldova and launched in 1997 is the so-called NGO Forums. These Forums, which are organised on a two-year basis, bring together representatives of Moldavian NGOs, local and central government, international NGOs, journalists and other stakeholders. The purpose of the Forums is to take stock of the situation of the not-for-profit sector in the Republic of Moldova, strengthen partnerships between the Government and civil society, and identify priorities of the associative sector. The first and the second editions of the NGO Forum were organised by the CONTACT Centre. The latest round took place on 15-16 November 2001 and was organised by the CONTACT Centre and the Association for the Development of Participatory Democracy (ADEPT). Participants in the Forum noted a number of problems hampering the development of civil society, among which were a growing interference of the central state bodies in all the spheres of social life, censorship, and limitations imposed on the activity of private businesses and local public authorities. NGO representatives called for a closer co-operation with the authorities.

In spite of the participation of governmental officials, these forums did not have much impact on the relations between the Government and NGOs and many NGOs deplore the lack of follow-up measures on the part of the Government.

### **Trade Unions**

Free trade unions operate in the Republic of Moldova throughout the various sectors of the economy. The National Trade Union Federation is an umbrella organisation, which brings together all Unions active in the country. Its leadership tends to co-operate closely with the Government and business management. Although the number of people belonging to trade unions has declined in recent years, the majority of the Republic of Moldova's workers and employees still belong to trade unions. In the Republic of Moldova, trade unions are generally not affiliated to a political party.

### **1.5.5 STATE OF THE MEDIA**

The Constitution guarantees freedom of opinion and expression and the right of access to information. Article 34 states that "public media shall not be submitted to censorship" and there are no legal penalties for libelling officials or for "irresponsible" journalism. However, since the adoption of the Constitution in 1994, these democratic principles have largely remained unimplemented. Free speech has been discouraged by the state authorities. An important step towards effective enforcement of the constitutional provisions was the June 2000 decision of the Supreme Court of Justice on defamation and libel, which stipulates that "if there is a discrepancy between the international human rights pacts and treaties to which Moldova is party and domestic legislation, international regulations will take precedence".

Hidden censorship occurs in Moldova in a variety of ways. For instance, the media, whose editorial policies do not necessarily correspond to the interests of some officials being are subject to more frequent inspection by the tax authorities. After the February 2001 parliamentary elections, there were attempts to liquidate the *Flux* newspaper and access to various events hosted by the new authorities was denied to members of the Association of Independent Press (API). Over the past year, journalists and media assistance organisations regularly denounced the growing limitations on media freedoms in Moldova and several declarations were issued to

protest against press freedom violations on the state television channel and to demand the end of “political censorship”<sup>15</sup>.

In May 2001, the Parliament adopted an amendment to the broadcast law granting the president of Television Moldova State Company the authority to dismiss the directors of the national Radio and National Television, a measure which was perceived by many as an attempt on the part of the Government to monopolise the national broadcaster.

Particularly worrying is the situation in Transnistria, where freedom of the press is regularly restricted. In November 2001, Transnistrian authorities prevented an opposition newspaper from printing and in January 2002 the newspaper *Delo* was closed down for having carried out a series of critical articles about the activity of Transnistrian authorities. With the closing of *Delo*, only two non-government publications remain in Transnistria.

In spite of restrictions to press freedom and freedom of expression, the Republic of Moldova has a wide variety of newspapers and television outlets. In 2001, there were some 180 newspapers and magazines published and about 90 private local radio and television stations. Major Russian television companies also broadcast to Moldova. Electronic publications are few and online journalism is only at its initial stage. The development of electronic media is hindered by insufficient financial resources and a still limited access to the Internet<sup>16</sup>. There are however a few successful projects, such as the online *Moldova Azi* magazine developed by the Independent Journalism Centre, the Institute for Public Policy and the DNT Association. A new information website was also launched in October 2001 by the Association of Economic Journalists (AZE). The market for Internet publications is dominated by publications in Russian.

The issue of language remains politically sensitive and a source of tension. While 65 percent of the Moldavian’s population is of Romanian origin, only 46 percent of the media is published in Romanian, the rest being almost exclusively in Russian. This linguistic disproportion is to be found equally in radio and television outlets. According to existing legislation, 65 percent of programming of audio-visual institutions, public or private, must be in the Romanian language. However, this provision does not concern TV programs broadcasted via satellite and provided by cable, foreign stations and stations that broadcast in areas populated by ethnic minorities. Many stations, however, have far more programs in Russian and do not come close to that figure.

There is a large number of unregistered publications. New legislation, requiring periodicals to indicate their registration numbers on each edition, was passed in May 2000 as an attempt to regulate the wide range of unregistered publications existing on the Moldavian market, especially under the form of “supplements” to legally registered periodicals that are thus able to avoid taxation.

The media is almost entirely privatised with only the state-owned National Television and National Radio station and the newspapers *Moldova Suverana* (in Romanian) and *Nezavisimaya Moldova* (in Russian) being under public ownership.

Many private media experience financial difficulties, the reasons for which are many. The majority of independent media depend on their private owners or political organisations for

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<sup>15</sup> One of the most recent examples is a declaration published on February 2002 under the title “The Civil Society Says No”.

<sup>16</sup> According to the International Telecommunication Union, there were 52 600 Internet users in Moldova in 2001, i.e. 1.20 percent of the population.

sponsorship and thus their financial livelihood. Management of the media remains an important problem. There is a clear lack of experienced managers, the advertising market remains under-developed, and the Soviet-type conception of the media as a propaganda tool rather than as a business still persists. Owing to state monopoly, fees for press distribution are very high and can amount up to 80 percent of a newspapers' price. Another source of financial difficulties was the adoption in July 2001 of an amendment to the Press Law banning funding for periodicals from foreign governments. After this provision went into effect, several Moldavian publications experienced serious financial difficulties, and one was forced to close down. The Press Law, adopted in 1994, has repeatedly been criticised by journalists' groups for obstructing rather than facilitating media activities in the Republic of Moldova and many media professionals have called on the authorities to revoke it. Some media businesses did however manage to become self-sustainable, among which are BASA-Press, *Infotag*, and *Economicescoie obozrenie*, a Russian language business newspaper.

Political influence over the media is very strong. About 30 percent of the media is directly financed by political parties, which greatly compromises their editorial independence. Information published in government-financed media is strictly controlled by the authorities and reflects only the opinions favourable to the ruling party. Media coverage is particularly distorted and biased during elections. The Code of Ethics for journalists adopted in May 2000 remains largely unimplemented and many media outlets often turn into mouthpieces for political parties during election periods. Media outlets are also subject to strong pressures on the part of a number of officials who offer to pay for favourable articles in the most popular newspapers.

Radio and television broadcast licences are issued by the Broadcasting Co-ordinating Council (BCC), composed of 9 members elected by the president, the parliament and the Government. The legal criteria on which licences are issued are considered vague and leave the way open to arbitrary distribution of licences therefore contributing to the maintaining of state control over the radio and television. The BCC is regularly criticised by the media for unfair licence distribution.

While investigative reporting is seen by journalism students as the most important type of reporting<sup>17</sup>, it remains almost non-existent. Articles on corruption are rare, very factual and of a low quality, and more often concern former high public officials rather than current ones. The reasons for this are many: problems of accessing information, the fact that investigation puts journalists at risk that is considered unjustified compared to the expected outcomes, the media can usually not afford the high costs of conducting investigations, and there is also a clear lack of training in investigative journalism. There is no university level course in investigative journalism and journalism instruction as such is of poor quality because of limited financial means and of antiquated curricula. However, the Association of Independent Press (API) launched in October 2001 a yearlong program on investigative reporting with the financial support of the Open Society Institute-Budapest. Under the program, all API newspapers jointly publish monthly investigative or in-depth articles, and seminars are organised on investigative reporting. A guide on investigative reporting was also recently published by the Centre for Independent Journalists (IJC) in the Romanian language.

There are only two trade associations in the Republic of Moldova: the Association of Independent Press (API, founded in 1997), with two news agencies and 13 independent newspapers; and the Association of Electronic Press (APEL, founded in 1999), with 15 radio and TV stations. API organises regular professional development activities for its member-organisations and one of its

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<sup>17</sup> See June 2001 survey conducted by the Centre for Independent Journalists (IJC).

major projects in 2001 was the “investigative reporting program”. APEL’s activities mainly focus on training.

Media professional associations include the Union of Journalists (UJM) and the Independent Journalism Centre (IJC). The UJM is the primary association of professionals working in the print media. It is active in the Moldavian political scene and an important part of its activities is to protect the rights of journalists. It pressed for the adoption of the law on access to information and works, among others, on cases of violation of journalists’ rights. The IJC, which is supported by several international organisations, including the Soros Foundation, offers information about domestic and international legislation and consulting services for journalists. More than 20 workshops, seminars and other activities are on the agenda of the IJC for the first half of 2002. Special highlights include seminars on media-related legislation, training on investigative reporting and online journalism and media ethics training.

Since 1999, the IJC, in co-operation with UJM, API, the Committee for Press Freedom, APEL and the journalism faculty of the Moldova State University, organises a “Press Freedom Week” to raise public awareness on the need for an independent press. However, the unwillingness of journalists to work together to defend their interests remains an important obstacle to the development and defence of journalists’ rights.

#### **1.5.6 GOVERNMENTAL TRANSPARENCY AND COOPERATION WITH CIVIL SOCIETY**

Over the past few years, the Moldavian Government has made efforts to ensure a greater transparency in its activity. Thus the decision was made to post the draft budgets on the Internet. Citizens’ access to draft laws is not regulated in legislation and submission of written recommendations has therefore been very limited. On rare occasions the most important draft laws are published for public debate, but only on a resolution of the legislative body. However, amendments providing for draft laws to be posted on the web are under preparation.

Access to information is not legally obstructed, however there is still a heavy state control over it and access to information remains extremely difficult. In May 2000, the Parliament adopted the Access to Information Law, which stipulates that any individual living on the territory of the Republic of Moldova may request any kind of information or document from public authorities or institutions without having to provide an explanation. The law is however not implemented and many ministries do not know the provisions of the law or do not apply them fully. According to a recent survey carried out in November 2001 among representatives of 83 national and local news organisations, information on corruption is the least accessible.

There has been no real evolution in the co-operation between the Government and civil society, in spite of the three rounds of the NGO Forums that aim at strengthening partnerships, and co-operative relationships between the state institutions and civil society are still underdeveloped. Certain working groups and joint commissions between the Government and NGOs have been established, especially in the social field and on issues related to poverty eradication, but examples of co-operation remain limited to a small number of NGOs<sup>18</sup>. In a recent declaration,

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<sup>18</sup> As regards anti-corruption activities, IDIS-Viitorul did establish a good relationship with officials of the Chisinau Mayor Hall within the framework of its programme “Promoting transparency of public institutions in the Republic of Moldova and citizen access to information”. TI-Moldova also co-operates with the Government on a number of anti-corruption related issues, but recognises that it is in a privileged position. Many NGOs do not have this possibility.

the President of the Republic of Moldova launched the idea of a social pact with civil society and talks were held with some representatives of the mass media, NGOs, trade unions and ethnic groups. CSOs are however generally sceptical about the concrete outcomes of the initiative.

#### **PROMOTING CIVIL SOCIETY PARTICIPATION IN SPAI**

Since the Republic of Moldova joined the SPAI, the Moldavian Government has taken a number of concrete steps to encourage civil society's involvement in the fight against corruption. In order to involve the general public in the Initiative, the text of the SPAI was translated into the local language and published in several periodicals. A public awareness campaign was launched in July 2001 and a conference on the implementation of SPAI was organised that same month by the Institute for Public Policy in collaboration with the Ministry of Foreign Affairs. TV and radio programs on fighting corruption have also been organised by the Mass-Media Service of the Ministry of Interior. In addition, Transparency International Moldova organised, in co-operation with the Ministry of Economy and the USAID project BIZPRO-Moldova, a roundtable "Initiation of a dialogue between Business Associations and Government Institutions", during which a presentation about "Corruption as Impediment to the Development of Small and Medium size Enterprises" was made. On this occasion, as well as at other conferences, press conferences and briefings, civil society was invited to participate in the implementation of the Initiative and in the country's anti-corruption effort. The Government office responsible for dissemination of information about SPAI is the Directorate of Press and Public Relations of the Ministry of Interior.

Information about the Initiative is available on the website of the Ministry of Internal Affairs. The National Anti-Corruption Working Group is however planning further measures to enhance public access to government information, among which the creation of an Anti-Corruption Internet Bureau, the launching of a website dealing specifically with anti-corruption issues, and the publication of a magazine which will present the country's anti-corruption efforts and review the implementation of SPAI at the national level.

Links have been developed with several NGOs active in the anti-corruption field, in particular with TI-Moldova, which participates in the National Anti-Corruption Working Group established by the Ministry of Internal Affairs to implement the Initiative, the Viitorul Foundation and the Institute for Public Policies. In all his public statements, the Senior Representative invited civil society organisations to actively participate in the fight against corruption.

Many NGOs, however, deplore the lack of concrete actions on the side of the Government and the fact that declarations are often not followed by actions. A concrete example is the absence of the Moldavian Government at the SPAI Conference on Civil Society that took place in September 2001. Co-operation with civil society organisations is often driven only by the NGOs themselves, which submit proposals on various issues but do not necessarily get feedback.

#### **1.5.7 CIVIL SOCIETY ANTI-CORRUPTION ACTIVITY**

In the Republic of Moldova, NGO involvement in anti-corruption efforts is quite recent. Over the past year, commitment of civil society to join in the fight against corruption has been demonstrated by a number of concrete activities. A sampling of these civil society projects is listed below:

Created in June 2000, the Moldavian chapter of Transparency International is one of the most active and dynamic NGOs in the anti-corruption field. Its activities aim at assessing the impact of corruption on the social, economic and democratic development of the Republic of Moldova, carrying out public awareness campaigns, strengthening civil society's involvement in the fight against corruption, elaborating concrete proposals to the Government on fighting corruption, and monitoring their implementation. In October 2001, TI-Moldova launched a large-scale project on corruption entitled "Strengthening the National Capacities to Fight Corruption in the Republic of Moldova" with the support of UNDP. It provided expertise to the draft Law on Combating Corruption and on the draft Law on the Declaration of the Assets of Public Employees prepared by the Ministry of Justice. Since its creation, TI-Moldova has also published a number of studies on corruption, the most recent one being the report "Corruption in Moldova: facts, analysis, proposals" issued in December 2001. More recently, in January 2002, TI-Moldova launched a website to serve as a platform for dissemination of information on anti-corruption issues and submitted proposals for the National Program to Fight Corruption. Several workshops on "strengthening local governance" are planned for the year 2002.

The Institute for Development and Social Initiatives Viitorul (IDIS Viitorul), formerly Viitorul Foundation, was created with the aim of promoting the development of democratic institutions in the Republic of Moldova. Its work focuses on three main areas: advocacy of more transparent public institutions in the Republic of Moldova; reform of the local public administration through training, research and publications; and drafting of proposals to promote transparency and good governance at the local level. In 1999-2000, it launched a project on "Promoting transparency of public institutions and access to information" and in 2001 conducted a research on "Fighting political corruption in elections in Moldova". As a result, a law on corruption was drafted and submitted to the Parliament. As part of its awareness activities, the Foundation also organised a conference on anti-corruption issues in December 2001 and recently published the results of its research on political corruption in the Republic of Moldova.

Established in March 2000 with the support of the Soros Foundation, the Institute for Public Policy is an independent think tank. Its analyses mainly focus on corruption and the development of civil society in the Republic of Moldova, the issue of the European integration, the Transnistrian conflict and education policy. The institute has conducted surveys about corruption in the Republic of Moldova and it participated in July 2001 in the preparation of a conference on the implementation of SPAI, organised in co-operation with the Ministry of Foreign Affairs.

The Centre for Strategic Studies and Reforms (CISR) develops research projects on issues such as the shadow economy and corruption, the economics of transition, regional development planning, reform of property and private sector development. It annually publishes a report on the economic situation in the Republic of Moldova, entitled "Moldova in Transition/Economic Surveys", which includes an analysis of the phenomenon of corruption. In October 2000, the Centre also published the results of a survey on the Impact of Corruption on Development.

ADEPT is a local not-for-profit organisation that took over the activities of the International Foundation for Electoral Systems (IFES) in July 2001. It provides expert advice, information on electoral and democratic processes in the Republic of Moldova, South Eastern Europe and the New Independent States, and legal information on issues of registration, legal status of CSOs, and taxation. ADEPT's mission is to promote and support citizen participation in all forms of public life. It was one of the main organisers of the third round of the NGO Forum that took place in Chisinau in November 2001.

The goal of the Soros Foundation–Moldova is to promote open society values through support for its infrastructure and institutions. In 2001, work of the Foundation focused on four important areas: Educational Programs, Civil Society, Law and Public Administration. The Civil Society Programme of the Foundation aims at supporting CSOs through open grant competition programs for NGOs and the development of a Resource Centres Network, which provides information and technical assistance, consulting and training for rural NGOs. Grants to support anti-corruption related activities of NGOs are also allocated under the Law Programme. As regards the Foundation's Local Public Administration Programme, it has three focal points: (1) public administration education, (2) local government training, and (3) local governance. The first of these areas involves internships, scholarships, and book donations for institutions of higher education. Local government training is targeted at representatives of NGOs, local authorities, and professors of public administration. The foundation also supports local development projects, which help citizens identify problems at the local level and influence the decision-making process.

As far as human rights and the defence of free and fair elections are concerned, several associations can be mentioned, among which are: the Helsinki Committee for Human Rights of the Republic of Moldova, the League for Defence of Human Rights of Moldova (L.A.D.O.M), the Foundation for the Support of Democracy and Parliamentarism, the Independent Association of Human Rights and the International Association for Human Rights.

## 1.5.8 RECOMMENDATIONS FOR REFORM

*Recommendations under Pillar V take into account the comments and additional information provided by various Moldavian civil society organisations prior to the Washington Steering Group meeting.*

### **Public Attitudes Toward Corruption**

1. Publicize steps taken in the Anti-Corruption Initiative, especially examples of concrete measures that have brought good results.
2. Co-operate with NGOs to hold discussion forums and public awareness campaigns.

### **Civil Liberties**

3. Reduce both direct and indirect government influence over the media.

### **Legal Environment for Civil Society**

4. Review and streamline legislation to make registration of CSOs, especially at the local level, more efficient.
5. Clearly define and simplify bookkeeping rules for non-commercial organisations.
6. Provide incentives to encourage charitable contributions to CSOs.

### **Civil Society Capacity**

7. Promote the development of partnerships between NGOs, business associations and the Government at the central and local levels.
8. Provide financial support to NGO training organizations and support centres, in particular for training in management, budgeting, and fundraising.
9. Provide capacity-building training and implementation support to NGOs in coalition building, advocacy and lobbying, public awareness campaigns, legal support for victims of corruption, and government monitoring and oversight.
10. Encourage the media to cover anti-corruption activities of NGOs more in depth.

### **State of the Media**

11. Amend the broadcast law to ensure independence of national radio and television.
12. Encourage the development of private press distribution networks to make possible a reduction of press distribution costs and amend the Press Law to allow funding for periodicals from foreign sources.
13. Fund training for journalists and managers in order to improve professionalism and profits.
14. Develop comprehensive training programmes in investigative journalism and encourage professional investigative journalism of corruption cases.

### **Governmental Transparency and Cooperation with Civil Society**

15. Organise information sessions for officials on the Access to Information Law and take measures to ensure the proper implementation of the Law and therefore guarantee access to information.
16. Further increase the Government's capacity to inform, consult and engage civil society in policy-making (including opportunities to comment on draft legislation and upcoming policy issues).