



**Monitoring report on the implementation of the Priority  
Reform Action Roadmap  
(March-August 2016)**

**Prepared by the Association for Participatory Democracy (ADEPT), “Expert-Grup”  
Independent Think-Tank and Legal Resources Centre from Moldova (LRCM)**

This report has been possible due to generous support of the American people through the U.S. Agency for International Development (USAID). The opinions expressed herein are those of the authors and do not necessarily reflect the position of USAID.

## Table of contents

Executive Summary .....	4
Assessment methodology .....	11
Introduction .....	12
1. Combating corruption .....	13
2. Public administration reform .....	22
3. Enhance transparency of political parties financing and accountability of elected candidates .....	25
4. Media freedom.....	27
5. Justice Sector Reform, in particular ensuring the independence, effectiveness, transparency and accountability of the judiciary and law enforcement agencies.....	30
6. Reform of the Prosecution .....	36
7. Resuming negotiations for the signature of a Cooperation Agreement with IMF .....	38
8. Strengthen the independence and supervisory powers of the National Bank and of the National Commission for Financial Markets.....	40
9. Ensure thorough, impartial investigation of the cases of fraud that affected the banking system in 2014, also with a view to recovering the diverted funds and to bringing those responsible to justice. ....	45
10. Restoring an attractive and stable business and investment climate .....	46
11. Increasing transparency and investment conditions in the energy sector .....	51
12. Cooperation with civil society .....	56
13. Accelerating the implementation of the Association EU – Moldova Agreement, including the DCFTA chapter .....	58

## Executive Summary

The Priority Reform Action Roadmap (hereinafter – *Roadmap*) was adopted in March 2016 and included 69 actions that the country's leadership (Government, Parliament and some other public institutions) was to undertake in 5 months (March 1 – July 31, 2016) in order to overcome the political and socio-economic crisis. According to the Roadmap, the crisis was to be overcome by channeling the government's efforts towards two major objectives: establishment of good governance and rule of law; economic development and ensuring a functioning market economy.

At government level, the Government Commission for European Integration, chaired by the Prime Minister, monitored the implementation of the Roadmap, and at the operational level it was achieved by the Ministry of Foreign Affairs and European Integration. In the parliamentary dimension, the role of coordinator for implementation of measures included in the Roadmap was granted to the Parliamentary Council for European Integration, which comprises the heads of permanent commissions and a team of parliamentary officials appointed by decision of the Permanent Bureau of the Moldovan Parliament. According to the reports presented by authorities in late July 2016, the Roadmap was achieved in the proportion of "90%, representing 74 actions performed out of total 82, including the four permanent actions", and overall assessment of Roadmap achievement was considered positive. Authorities found 8 overdue actions, which are to be implemented on a priority basis during the III-IV quarter of 2016, including with the support of development partners. They refer to the set of laws on development of the financial and banking sector, including adoption of the legislation on systemic banking crises (bridge-bank), which will be finalized with the support of IMF experts, and legislation on broadcasting in consultation with OSCE and the Council of Europe. Besides the overdue actions, authorities are to implement the other actions intended to ensure the continuity of initiated reforms (for every chapter, main actions were indicated that are to be achieved by the end of the year: they were formulated based on, among other things, the recommendations of the civil society and development partners).

According to alternative monitoring, by September 1, 2016, out of total 69 actions<sup>1</sup>, 38 (55%) were achieved without deficiencies; 19 actions (27,5%) were achieved with deficiencies; 12 actions (17%) were not achieved. Therefore, only a little over a half of the 69 actions planned by the Government in the Roadmap were achieved in full and without deficiencies. The other actions were either achieved with deficiencies related to their content or failure to abide by the legal provisions regarding the legislative procedure and transparency in decision making, or were not achieved.<sup>2</sup>

**Among the main achievements** there can be mentioned promulgation of the law on prosecution, adoption of the law on optimization of the court system and of the package of laws on integrity, optimization of state inspections, approval of the Investment Attraction and Export Promotion Strategy 2016-2020, initiation of the reformation process of the banking system by

---

<sup>1</sup> It is important to note that the Government in its own assessment of the Roadmap operated with the number of 82 actions instead of the 69 included in the document. The 12 additional actions resulted from disaggregation of actions 1.2, 1.3 and 10.1 and separate assessment of sub-actions, which influenced the final result reported by the Government. It is unclear what criterion the Government was guided by in choosing the actions that were disaggregated and assessed in fragments, since the Roadmap contains a larger number of complex actions.

<sup>2</sup> At the same time, we shall stress that quantitative results on the number or percentage of actions achieved from the Roadmap must be considered as a secondary indicator to the quality of the actions achieved. Some of the actions included in the Roadmap are doubled (actions regarding exclusion of monopoly in mass media, regulation of the legal regime of media ownership and adoption of a new Audiovisual Code), while others are technical and simplistic (e.g. extension of the deadline for implementation of the National Anticorruption Strategy, adoption of modifications to the Criminal Code, developed back in 2015, minor modifications to the Law on the status of judge), and they should not have been included into such a document. At the same time, their realization increased the number or rate of actions achieved, without actually being actions that create conditions for realization of necessary reforms or demonstrate the will to reform.

aligning it to Basel 3 principles, “unfreezing” the negotiations with IMF on a potential program, initiation of the public administration reform, and, last but not least, the relatively transparent and inclusive process of selection of NBM Governor and members of the NBM Supervisory Board.

At the same time, the majority of actions undertaken are of legislative nature, and they need to be followed by implementation. In this sense, we appreciate the national authorities’ approach to continue realization of actions that come to ensure continuity of reforms initiated, both of overdue actions and of priority actions that are to be realized under each chapter of the Roadmap. We must emphasize, however, that overdue actions are not limited to those indicated in the authorities’ report<sup>3</sup>. Similarly, the priority actions formulated by authorities in that report, mostly of legislative nature, are insufficient to ensure continuity and sustainability of initiated reforms. Thus, the alternative report recommends a number of priority actions for each chapter, which are to be implemented as soon as possible – otherwise, the legislative measures adopted according to the Roadmap are likely to remain only on paper. The recommended actions are to be included in strategic policy papers in order to ensure their implementation.

Among **the main drawbacks in implementing the objective „good governance and rule of law”** there are the reform of the National Anticorruption Center and too large competences granted to the Anti-corruption Prosecutor’s Office, and the adoption of a new Audiovisual Code (one of the big arrears of all the governments since 2011 until now). National authorities are urged to liquidate these two drawbacks by the end of 2016 and thus show strong willingness to implement reforms that affect the interests of influential groups. In addition to legislative measures indicated as priorities in the report on the Roadmap, the authors of this report recommend undertaking the following priority actions, some of which until the end of 2016. These actions are necessary in order to ensure the irreversibility and consistency of the measures already taken/initiated in the reform areas included in the Roadmap.

### ***Combating corruption:***

- Integrity: Expeditious application of rules concerning creation of the National Integrity Authority (NIA) with selection of NIA bodies in a fair and impartial competition; Elimination of all vulnerabilities and ambiguous provisions from the text of laws on integrity; Exclusion of parallel institutional competencies (NIA/Prosecutor’s Office, NIA/MoI, NIA/NAC, NIA/SCM) related to wealth statements and audit, and civil servants’ personal interests; Allocation of financial resources required for NIA’s work in the period of 2016-2017; Ensuring inter-operation of the E-Integrity system with all state and private records necessary for efficient verification of wealth and personal interests; Gradual transition to online submission of declarations by 01 January 2018; Adoption in final reading of the draft law on integrity, adjusted to the set of laws on integrity and revised to meet the requirements of language and legal expression. Also, it is recommended that the National Integrity Commission and the Information and

---

<sup>3</sup> The authorities’ report makes it apparent that the following actions are overdue: 1) Adoption of the Law on integrity in the public sector and the legislative framework related to the law (Action 1.2); 2) Implementation by the National Integrity Commission of the online system for submitting property and interests declarations and personnel training (Action 1.9); 3) The Parliament will adopt relevant legislative framework that will enable the development of the local media market, national broadcasters and promotion of domestic product according to the expert opinion of the Council of Europe and the OSCE (Action 4.3); 4) The Parliament will appoint new members to the National Bank’s management in order to refill vacancies (two deputy governors and four independent members for the National Bank’s Supervisory Board) (Action 8.2); 5) The National Bank and the Parliament (with support from IMF) will ensure contracting of an independent international assessment of the bank supervision conducted by the National Bank (Action 8.4); 6) The Parliament will adopt legislation on legal instruments for systemic banking crises (bridge bank legislation) (Action 8.7); 7) The National Bank of Moldova will provide all the necessary support to KROLL investigation in order to recover the embezzled funds (Action 9.1, continuing); 8) The General Prosecution will ensure timely advancement of cases in courts and speedy execution of requests for international judicial assistance sent to the competent authorities of Latvia, Russia and the USA (Action 9.2, continuing); 9) Amendment of Law no. 131 of June 08, 2012 on state control over business activities in order to reduce the number of checks and inspections (Action 10.1 (c)); 10) Re-launch by the Government of the privatization process (Action 10.3, continuing).

Security Service monitor the implementation of Law no. 325 of December 23, 2013 on institutional integrity assessment, in order to prevent violations of fundamental rights and use of the assessment/testing mechanism for other purposes than those stated in the law. A major challenge remains de-politicization of law institutions and regulators. This requires fulfillment of the recommendations of the Constitutional Court, attached to Decision no. 29 of December 21, 2010 on “express demarcation of public officials representing a particular political or public interest”<sup>4</sup>; appointment to leading positions in law institutions and regulators of persons selected via public contests based on criteria of professionalism and integrity.

- Reform of the National Anticorruption Center (NAC): Excluding from the competence of NAC the function of prosecution on cases of small corruption (cases that are not in the exclusive competence of anticorruption prosecutors), and granting that competence to prosecutors in territorial prosecution offices; Evaluation of the role, duties and personnel of NAC in the context of the reform of prosecution and integrity system and adoption of relevant legal changes;
- Specialized prosecution offices: Revision of organizational charts and staffing of specialized prosecution offices and of the Prosecutor General’s Office in the spirit of the new Law on prosecution and Law on specialized prosecution offices; Appointment as soon as possible of prosecutors that are not suspected of lack of integrity to leading positions in specialized prosecution offices; Beginning deployment of criminal investigators, investigation officers and specialists to specialized prosecution offices and ensuring adequate funds to these prosecution offices; amendment of the constitutional provisions related to the prosecution service.

#### ***Public administration reform:***

- Ensure the periodical meetings of the National Council for Public Administration Reform, at least according to the provisions of the Government Decision establishing it (every three months), by agreeing at each meeting the time frames and the subjects to be discussed at the next one, at least in general outlines. Besides observing the meetings calendar, it is crucial for this Council to have a determining role in promoting, implementing and, later, monitoring and evaluating the PAR Strategy implementation.
- The State Chancellery to publish the minutes of the National Council for Public Administration Reform meetings on its website and to make the decision-making process in the public administration reform more transparent.
- Develop a realistic Action Plan after the approval of the strategy, involving all interested parts and estimating required costs, to increase the responsibility of institutions which will implement its provisions, thus ensuring the proper implementation of the strategy.
- Final report presenting the functional analysis of State Chancellery to be published on the websites of the Government and the State Chancellery.
- The options for reorganization of State Chancellery, based on the conclusions and recommendations of the report developed after functional analysis of State Chancellery to be discussed and validated at the National Council for Public Administration Reform.
- The conclusions and recommendations presented in the final report, and the report to be subsequently published on the websites of the Government and the State Chancellery.
- Funds for realization of actions by the deadline to be mobilized, in accordance with the Action Plan for the public services modernization reform.

#### ***Enhance transparency of political parties financing and accountability of elected candidates:***

- Amend the Law on political parties to include the provisions of CEC Regulation on the financing of political parties that refers to donations and sanctions for non-compliance with the Regulation. These provisions are subjected to disputes, being considered new rules but not

---

<sup>4</sup> <http://lex.justice.md/md/337241/>

regulations for the application of the existent legal norms

- Cap annual donations to political parties so that individuals can donate no more than 4-5 average salaries, and legal persons around 20 average salaries, in accordance with international practices.
- Review the criteria for funding political parties, so as to motivate funding from private sources, including citizens with the right to vote who reside abroad.
- To urgently remove the discrepancy of about 400 thousand voters (~15%) from the official data presented by the Bureau of Statistics and data presented by the Central Electoral Commission, according to the State Register of Voters.

### ***Mass media freedom:***

- Draft laws no. 218 and no. 125 to be withdrawn from Parliament agenda as a result of international bodies' negative opinion about the prohibitive provisions on transmission/retransmission of foreign shows/channels. Provisions regarding the measurement of audience and share of domestic product, which have already been included into the new Audiovisual Code, to be discussed in public consultations on that draft law.
- The new Audiovisual Code to be adopted in the autumn-winter session of the Parliament, preceded by organization of wide public consultations. During public debates, clear provisions to be developed regarding control over the transmission/retransmission of programs produced by foreign broadcasters in compliance with specialized European rules.
- The process of developing the new law on advertising to be launched/resumed as soon as possible.
- The process of modifying/supplementing the law on competition to be launched, in compliance with the new Audiovisual Code. Especially, it is necessary to include the media area in the list of the Competition Council's areas of intervention.
- Consultations on the adoption of a development strategy for domestic broadcasting to be launched.

### ***Justice Sector Reform:***

- Court map: Public consultation to be conducted and the Parliament to adopt, as soon as possible, the plan for construction of new buildings and/or renovation of existing buildings necessary for good functioning of the court system; to develop, as soon as possible, an action plan on implementation of the law on reorganization of the court system, which will include the strategy of informing litigants and the sector's personnel about the stages of implementation of the law;
- The Bar: The draft law on modifying the Law on the Bar to be improved and adopted by the Parliament;
- The status, performance evaluation and disciplinary responsibility of judges: Adoption of draft law no. 187 on modifying and supplementing the Constitution (the Judiciary – Articles 116, 121, 121<sup>1</sup>, 122 and 123) and reforming of the Judicial Inspection and the system of disciplinary responsibility of judges.
- Civil procedure code: Reintroduce the discretion of judges to declare closed hearings. Public and not secret/closed hearings should be the rule.

### ***Prosecution reform:***

- The Prosecutor General's Office and the Superior Council of Prosecution to develop and adopt secondary legislation in order to implement the Law on prosecution in strict compliance with this law;
- Appointment of competent persons not suspected of lack of integrity to vacant leading positions in the Prosecutor General's Office, specialized and territorial prosecution offices;
- Allocation of funds necessary for prosecutors to receive, beginning on August 01, 2016, salaries under the new Law on prosecution and for hiring, from January 01, 2017, 300 more staff units to assist prosecutors.

- The Parliament shall amend without delay the Constitutional provisions concerning the prosecution office

On the objective **„economic development and functioning market economy”**, we point out the slow pace of investigations on the bank frauds of 2014, slow pace of reforms within the National Bank (NBM) in terms of fostering its independence and competences, as well as slow pace of implementation of the association agreement. In the energy sector, due to the lack of transparency in renewing the contract with the Transnistrian region supplier and rejecting the offer of the Ukrainian supplier, the price negotiated was not the most advantageous. In addition to legislative measures indicated as priorities in the report on the Roadmap, the authors of this report recommend undertaking the following priority actions by the end of 2016, without which implementation of the Roadmap cannot be considered successful:

***Resuming negotiations to sign the Cooperation Agreement with the International Monetary Fund:***

- Given that the Agreement has not been signed yet and several actions in chapter 8 have not been fully achieved, we consider it necessary to liquidate all drawbacks in the shortest time possible. The institutions involved, particularly the Parliament, should concentrate on the 2 draft laws voted only in the first reading (Law on recovery and bank resolution and Law on Single Central Depository) and to speed up the process of debate so that by the October meeting of the IMF Executive Board they be fully approved;
- Final removal of all deficiencies present in the local banking sector, especially those related to shareholders transparency, corporate governance, bad loans, since these elements were behind the recent banking crisis.

***Regarding the objective of “signing a cooperation agreement with the IMF”:***

- The currently precarious situation in the financial and banking sector demonstrates once again that in addition to financial support, Moldova needs continuing monitoring of financial policies, which a cooperation agreement with the IMF involves. The experience of the last three years shows that the lack of a functional agreement with the IMF along with continuing political crisis is a dangerous combination for Moldova’s economy and security.

***Ensuring the independence and supervisory competences of the National Bank and the National Commission for Financial Markets:***

- Appointment and approval by the Parliament in the nearest future of the remaining members of the National Bank’s Executive Committee on the following basis: relevant professional experience, no political affiliation, and professional integrity;
- Approval in final reading of the legislation on legal instruments for managing systemic banking crises and legislation on the Single Central Depository by the end of September;
- Eliminate any form of exposure and interaction between “offshore companies” and commercial banks, since this was an essential element in concealing the funds misappropriated from the liquidated commercial banks;
- Reform the bank deposits guarantee framework by strengthening the capacity of the Deposits Guarantee Fund so that it plays a bigger role in the process of solving bank crises, including bank liquidation. The ceiling of deposits guarantee should be increased in the following years according to the commitments assumed under the Association Agreement.
- Increase the prudential requirements in order to eliminate toxic assets from the entire banking sector;
- Restructure the National Council for Financial Stability so that its responsibilities do not overlap with those of NBM and NCFM, and its role is limited to facilitating communication between institutions in order to prevent financial crises;
- Accelerate the implementation of the EU – Moldova Association Agreement, including

the financial services chapter. In this regard is important to adopt a schedule for overdue and remaining actions according to the Ukraine and Georgia model.

***Ensuring thorough and impartial investigation on cases of fraud detected in the banking system in 2014, with the objective of restoring the funds diverted and bringing those responsible to justice:***

- Speeding up the investigations launched by prosecutors on bank frauds and the dialog with partners from the countries where those funds were transferred. Maintaining a constructive dialog between all stakeholders: the National Bank of Moldova, the Prosecution, the Kroll company;
- Increasing transparency, within legal limits, of the criminal investigation of bank frauds. Provision of information to the public will lead to increased trust of public opinion in the correctness of measures taken;

***Restoring stable business and investment environment:***

- Speeding up the adoption of draft laws encouraging the business environment and approval of secondary regulatory documents related to the recently adopted laws (Law on metrology, Law on national standardization, and Law on market surveillance);
- Reforming state structures so that they can provide quality public services. The basic problem in implementation of legislation refers to the quality and reduced capacities of public institutions, and in this context the spreading of positive effects associated to application of legislative and regulatory documents is diminished
- To implement the new WTO agreement on trade facilitation, this will lead to streamlining the regional and international trade by reducing transaction costs, and optimizing the cross-border flow.
- To increase transparency of selection process for managers of state enterprises and to ensure public access to the reports related to activity of state enterprises.
- To foster the inclusive implementation of standards by firms should be created an extensive dialogue platform from representatives of business and institutions that manage quality infrastructure (NIM , NIS and National Accreditation Centre MOLDAC )

***Increasing transparency and investment conditions in the energy sector:***

- Urgent publication by the Ministry of Economy of information referring to negotiations for signing the electricity supply contract between Energocom and Energocapital, with detailed arguments for rejecting the offers proposed by other suppliers (DTEK Energo from Ukraine).
- Prioritizing the actions needed to fully and unconditionally implement the new legislation on electricity and natural gas (Ministry of Economy, National Energy Regulatory Agency (ANRE)), in order to enable: acceleration of internal market integration and elimination of costs; attraction of private investment to the sector, including from abroad; interconnection with European markets via Romania; reduction of energy dependence on the Transnistrian region and, therefore, Russia.
- Publication of ANRE evaluation report immediately after its completion by the Energy Community Secretariat and subsequent elaboration of an action plan for elimination of faulty aspects from ANRE's activities.
- Ensuring transparency (through public consultations and other accessible forms) in the process of fulfilling the measures included in the energy sector liberalization roadmap. Establishing a mechanism for ANRE to report on the roadmap fulfillment progress, both to the audiences at home and to the Energy Community Secretariat.

***Cooperation with civil society***

- Development and adoption of the implementation mechanism (Government Decision) for the Law on 2% by August 31, 2016, for the Law on 2% to be applied beginning in 2017;
- Review of the legal framework on transparency in decision making in order to ensure



effective participation of civil society in decision making.

***Accelerating the implementation of the EU-Moldova Association Agreement, including its DCFTA part:***

- Realistic reassessment of deadlines for implementation of actions in the context of development of a new action plan for implementation of the EU-Moldova Association Agreement, in view of avoiding “accumulation” of drawbacks and minimizing the need to develop new drawback liquidation calendars.
- Identification of a reliable mechanism for monitoring DCFTA implementation in the Transnistrian region, taking into account the responsibility of constitutional authorities of guaranteeing to European partners correct implementation of commitments assumed under AA/DCFTA on the entire territory of the country.
- Identification of a mechanism of legal expertise during the entire legislative process in order to ensure continuous and correct harmonization of legislation with *acquis communautaire*.
- Reassessment of all documents guiding the implementation of AA/DCFTA in the format of a single instrument, in order to exclude excessive pressure in monitoring and reporting during the implementation of AA/DCFTA.

## Assessment methodology

Fulfillment of the Priority Reform Action Roadmap was assessed based on a methodology focused on: specifying performance indicators for the actions planned<sup>5</sup>; assessment of degree of achievement in relation to deadlines<sup>6</sup> and the content of the actions performed<sup>7</sup>. It has been established that several actions in the Roadmap had quite tight deadlines, leading to multiple failures to comply with them. Consequently, in the assessment of realization of actions the emphasis was placed on the quality of documents adopted/measures undertaken and their potential impact in short, medium and long term. In the case of the 4 actions that have no deadlines (*are ongoing*), the same assessment criteria were applied, except the time criterion.

Categories used for the final assessment of the Roadmap actions and their meanings:

Stage	Categories used after the monitoring process ends	Meaning
<b>Not achieved</b>	Not launched	No activities have been undertaken to accomplish the action
	Launched, not concluded	The action has been launched, but has not been concluded by August 15, 2016 according to the assessed indicator (an extension of deadline for the execution of some measures is accepted, considering tight timeframes of the Roadmap)
<b>Achieved</b>	Achieved without deficiencies	The action was achieved in line with the requirements of legislative process and transparency in decision making, the adopted act or actions taken comply with the spirit of the given action and with international commitments.
	Achieved with deficiencies	The action was achieved with deficiencies. This means that there are problematic issues related to: respect of legal provisions on legislative process and transparency in decision making, the content of the adopted act or actions taken does not comply with the spirit of the given act/action or are not in line with international commitments.

<sup>5</sup> Given the lack of performance indicators in the Roadmap, performance indicators were set for each action and qualifiers were explained in relation to those indicators.

<sup>6</sup> Qualifier given: achieved or unachieved before expiry of the Roadmap. Given the very tight deadlines of the Roadmap, some actions were assessed by taking into consideration the actions undertaken before August 15, 2016.

<sup>7</sup> Qualifier given: achieved with or without deficiencies.

## Introduction

This final monitoring report on implementation of the Priority Reform Action Roadmap refers to assessment of both the course and results of implementation of the above-mentioned document. The report was produced over a month after expiry of implementation deadlines (March-July 2016) in order to estimate the preliminary effects of reforms, too. The methodology for producing the report and assessing results was based on the goal declared by authorities for the development and implementation of the Roadmap – to overcome the crisis in Moldova, return to normality, and subsequently concentrate on implementation of the Association Agreement with the European Union. In this sense, the goal of overcoming the crisis aimed at regaining the trust of citizens and development partners in the purpose formulated and policies promoted by the government, including, especially, by achieving the 69 objectives formulated in the Roadmap. These objectives were intended to realize concrete legislative, regulatory and administrative measures referring to: justice system reform; fighting corruption; public administration reform; free competition of political parties; freedom of expression and the media; business and investment environment; banking system; etc.

This report offers an alternative assessment of implementation of the Roadmap, and it was produced by the Association for Participatory Democracy (ADEPT), “Expert-Grup” Independent Think-Tank and the Legal Resources Centre from Moldova (LRCM) in accordance with the methodology developed by the authors of the report. In assessing progress, they took into consideration that despite short duration of Roadmap implementation (only five months), its results can be very important, with immediate, medium- and long-term impact. In this sense, the report contains recommendations, the acceptance of which might serve to strengthening citizens’ trust in a political process oriented towards ensuring good governance. In its turn, good governance would represent the guarantee for regaining the trust of Moldova’s development partners.

In the sense of the above, and given the maxim that success is the sum of details, the report notes a relatively satisfactory degree of Roadmap implementation, mentioning also the existing drawbacks, which, if are not removed, will undermine the government’s efforts of regaining the trust of citizens and development partners. This approach was considered welcome in the current socio-political and economic context in Moldova, which allows objective verification of the immediate and medium-term impact of Roadmap implementation. It means that, firstly, by the end of November an agreement between Moldova and the International Monetary Fund (IMF) should be signed, although according to the Roadmap it should have taken place in July. The signing of that document is the main indicator of the start of recovering the trust of development partners, without whose financial support Moldova could not overcome the economic and financial crisis.

Secondly, the organization and conduct of presidential elections in October-November will clearly demonstrate the impact of Roadmap implementation on ensuring the activity of political parties, the impact of funding from the public budget on dependence from obscure funding, freedom and neutrality of the media, fair settlement of electoral disputes in justice, etc. Thirdly, the long-term impact of Roadmap implementation depends on application of the integrity package as a guarantee in the fight against corruption, as well as the process of recovery of funds misappropriated from the banking system and bringing to justice the persons guilty of these frauds.

# 1. Combating corruption

## Summary of general progress

*Out of 9 monitored actions, 3 were achieved without deficiencies, 2 - achieved with deficiencies and 4 were not achieved.*

In combating corruption, the most significant action achieved is adoption of the package of laws on integrity, namely: the Law on the National Integrity Authority (NIA), the Law on declaration of wealth and personal interests and the Law on amending the legal framework related to these two laws. All these laws put the basis of a new system for verification of wealth, personal interests and incompatibilities in public service, including clear provisions on penalties that can be applied for such violations. This verification mechanism has the potential of becoming an efficient method to prevent and combat corruption, if it is correctly and diligently applied.

Some technical measures have been adopted, such as extending the deadline of the National Anticorruption Strategy and amendments to the Criminal Code. The law on institutional integrity assessment was adopted and promulgated, constituting a system for testing the professional integrity of any public agent and assessing the integrity of public institutions, a mechanism of unprecedented volume in European countries and not only. The mechanism involves a number of risks to the fundamental rights and freedoms of the tested persons, if it is not applied in a reduced manner and in good faith.

The Law on specialized prosecution offices has been adopted, but its implementation already shows some deviations from the concept of prosecution reform and the Law on prosecution.

The biggest drawback in the area of combating corruption is failure to reform the National Anticorruption Center (NAC) and maintenance of criminal investigation in cases of small corruption in the competence of Anticorruption Prosecution Office. If the NAC's mandate is not clarified and the Anticorruption Prosecution Office's mandate is not reduced, combating corruption via prompt and efficient investigation of cases of big corruption might remain at the level of declarations.

## Summary of individual actions

Action	Target date	Stage
<b>1.1. Parliament to adopt the set of Laws on integrity, including: Law on National Integrity Commission; Law on declaration of wealth and interests which extends the circle of subjects and objects of the declaration of wealth and interests;</b>	<b>March-May 2016</b>	<b>Achieved with deficiencies</b>

Law no. 132 of June 17, 2016 on the National Integrity Authority (NIA), Law no. 133 of June 17, 2016 on declaration of wealth and personal interests, and Law no. 134 of June 17, 2016 on modifying and supplementing some legislative acts were published in the Official Gazette of the Republic of Moldova on July 30, 2016. The laws entered into force on August 01, 2016, except some provisions that enter into force on the date of publication (such as rules on organization of the competition for the positions of president and vice-president of NIA) or on January 01, 2018 (e.g. rules on submission of declarations of wealth and personal interests in electronic form). The adoption and entry into force of the set of laws on integrity is an important achievement, as it fulfills some overdue actions provided by important policy papers.<sup>8</sup> Overall, these laws create preconditions for a more efficient mechanism of

<sup>8</sup> National Anticorruption Strategy for 2011-2015, approved by Parliament Decision no. 154 of July 21, 2011; Strategy of Justice Sector Reform for 2011-2016, approved by Law no. 231 of November 25, 2011.

declaration and control of wealth and personal interests in public service, having extended the list of subjects and the object of declaration. However, some provisions could be more secure and predictable if they were treated with diligence, including in parliamentary debates. For example:

- Article 12 paragraph (1) of Law no. 132 – Starting with competences, the quality of Council members is essential in ensuring NIA's independence. The Council's composition should guarantee balance between governmental interest (legislative, executive and judiciary branches) and non-governmental interest. It would also be important to include into this body two representatives of the civil society. Exclusion of journalists from the Council as a result of parliamentary debate is condemnable. Although journalists fall under the notion of civil society, they would definitely be represented, if the law had clear rules in this regard;
- It would be important to clearly establish, in Law no. 132, an exact period for conduct of control. It would not only ensure safety and predictability to persons subject to control, but would also ensure the responsibility of integrity inspectors;
- Article 2, the notion of close person, in Law no. 133 – as a result of parliamentary debate, among other things, the notion does not include spouses, children and dependants. Thus, given the existing notions of conflict of interests and personal interest, there will be no obligation to identify, declare and settle conflict of interests, and no grounds for recording and sanctioning conflict of interests, if it was generated by the subject's relations with these categories of persons.
- Article 4 paragraph (1), letter. j)-m) of Law no. 133, provides the obligation of the subject to declare his personal interests, though it could be important that this obligation be extended over family members, as well as common-law partners too. In this regard, the appropriate amendments will be necessary in the article mentioned as well as the text of the standard statement (chapter VIII)
- Article 23 paragraph (4) of Law no. 133 – According to the Organization for Cooperation and Economic Development's guidelines for the settlement of conflict of interests in public administration, if a personal interest de facto compromised correct execution of a public official's tasks, the situation should be regarded as a case of misbehavior or abuse of office or even corruption. In such situations, the possibility to hold the subject administratively or criminally liable is essential, and clear norms are necessary in this respect.

In the context of contradictory statements of the Minister of Justice about exclusion of the media from the list of sources of information that can be used to initiate ex officio control<sup>9</sup>, we shall mention that the phrase "public information", included in Article 28 paragraph (2) of Law no. 132, is a general one and includes information from the media sources, such as journalistic investigations. It is important this provision not to be interpreted by authorities and NIA to apply it in good faith and to use the media in its activity of control of wealth and interests.

Also, the form of the new declaration on wealth and interests contains some ambiguous or inconsistent phrases that will have to be reviewed by the end of 2016, such as:

- Section VIII (personal interests), letter C, heading "Position held", does not directly require indication of the collegial body in public organizations;
- Section VI (shares), heading "Holder" is not accompanied by the Note present in the other sections, saying "Name of the subject of declaration, their family member or cohabitant."

---

<sup>9</sup> Minister of Justice: The media is no longer a veridical source of information, so the National Integrity Authority will no longer be able to take notice of information from the media, <http://www.moldovacurata.md/interview/ministrul-justitiei-presa-nu-mai-este-o-sursa-de-informare-veridica-de-aceea-autoritatea-nationala-de-integritate-nu-se-va-mai-putea-sesiza-din-presa>

<p><b>1.2. Parliament to adopt other related set of Laws on integrity, including: Law on integrity in the public sector and the respective amendments to legislative framework related to the law; Amendments to the law no. 325 of 23.12.2013 on testing the professional integrity based on the principles of constitutionality and introduction of the evaluation of the institutional integrity.</b></p>	<p>April- July 2016</p>	<p>Not achieved</p>
--	---------------------------------	-------------------------

• **Law on integrity in the public sector and the respective amendments to legislative framework related to the law – not achieved**

The draft law on integrity, no. 267 of June 15, 2016, is still pending in the Parliament, having been debated in the first reading. Although opportune, this draft law needs to have its provisions properly debated in the Parliament, especially the ones that might generate confusion about authorities' competences. For example:

- According to Article 9 paragraph (2) of the draft law, the professional integrity of persons in elective positions or exclusively political positions is ensured at the moment of their obtaining those positions, by means of preliminary verification of candidates, and then, as long as they are in those positions, by means of periodical verification of those officials by the Information and Security Service (ISS). These rules are contrary to article 5 letter a) of Law no. 271 of December 18, 2008 on verification of holders of and candidates to public offices, according to which only appointed public officials and candidates to such positions are subject to verification;
  - Under Article 13 paragraph (4) of the draft law, public officials' declarations on wealth and interests can be subject to additional verifications by the public entity of which they are part, with application of consequences provided by the special legislation that regulates their activity. These rules are contrary to the spirit of the laws on integrity;
  - Under Article 18 paragraph (4) letter c) of the draft law, public officials must inform without delay the National Anticorruption Center about attempts to involve them into acts of corruption, if such acts contain elements of a crime or contravention. Under Articles 3 and 47 paragraph (2) letter f) of the draft law, failure to declare or settle a conflict of interests is a manifestation of corruption, corruptible act. It is unclear why this information is not sent to the NIA, if the latter shall determine failure to declare or settle the conflict of interests, according to Articles 313<sup>2</sup> and 423<sup>3</sup> of the Contraventions Code of the Republic of Moldova no. 218 of October 24, 2008;
  - Under Article 24 paragraph (2) letter a) of the draft law, public officials shall have to communicate about all job offers they intend to accept in connection with the termination of employment or office and about conclusion of commercial contracts, within three working days from the moment when they received such offers, to the head of the public entity where they work or, as appropriate, the head of a higher public entity or the National Anticorruption Center. These rules are contrary to Article 18 of Law no. 133, under which the subjects of declaration must inform about these offers the head of the public organization where they work and, if appropriate, the NIA.
- **Amendment of Law no. 325 of December 23, 2013 on professional integrity testing based on the principles of constitutionality and introduction of institutional integrity assessment – achieved with deficiencies**

Law no. 102 of July 21, 2016 on modifying and supplementing some legislative acts was promulgated by the President on August 05, 2016 and published in the Official Monitor on August 12, 2016. It will enter into force 3 months after publication (on November 13, 2016). According to Law no. 102, Law no. 325 on testing professional integrity has been renamed into "Law on Evaluation of Institutional Integrity."

The law does not solve some key issues raised by the [Venice Commission](#)<sup>10</sup> and the

<sup>10</sup> Venice Commission, opinion no. 789/2014, CDL-AD(2014)039, December 15, 2014, available at 15



[Constitutional Court](#)<sup>11</sup>, which found that several provisions of Law no. 325 are contrary to international standards. The adopted law does not provide for an adequate judicial control of integrity testing; there is no requirement for existence of reasonable suspicion to start the integrity testing; and there are no guarantees that testers will not provoke tested persons to commit crimes. Also, the new system creates preconditions for unlimited influence of the NAC over any public entity. The draft law empowers the NAC to carry out checks on public entities and to challenge refusals to dismiss the head of the entity that undergoes assessment, i.e. to directly influence dismissal of any head of public institution in the country. In addition, the law provides that the case files generated by this draft law are to be examined by specialized judges in trial courts and appellate courts, who are to be selected and appointed by the Superior Council of Magistracy (SCM) under a regulation coordinated with the NAC and the Security and Information Service (SIS). Such a provision raises questions about possible interference of the NAC and ISS into the independence of justice.

Mechanisms similar to the mechanism of institutional integrity assessment and professional integrity testing provided by Law no. 325 exist in no other European country. This mechanism leaves room for abuses, so monitoring of implementation of Law no. 325 by the NAC and ISS is particularly important.

<p><b>1.3. Parliament to adopt other related laws on delimitation of competences between the institutions with competences fighting corruption, including: Law on delimitation of competences between the National Integrity Commission and other authorities on competences to find, pursuit and prosecute the wealth from other sources than the one declared; Law on delimitation of competences on criminal prosecution between the National Anti-Corruption Centre, Ministry of the Interior and General's Prosecutor Office;</b></p>	<p>July 2016</p>	<p>Achieved with deficiencies</p>
--	------------------	-----------------------------------

- **Law on delimitation of competences between the National Integrity Commission and other authorities on competences to find, pursuit and prosecute the wealth from other sources than the one declared — achieved without deficiencies;**

Provisions relevant to this action are contained in Law no. 134. However, there remains some confusion in respect of the powers of some authorities, which are parallel to those delegated to the NIA. For example:

- Article 22 paragraph (2) letter h) of Law no. 3 of February 25, 2016 on the Prosecution – the declaration on wealth and personal interests is one of the documents that is to be submitted upon registration in the Register of candidates to vacancies, held by the secretariat of the Superior Council of Prosecutors, although candidates are not subject to declaration under Law no. 133;
- Article 41 paragraph (1) letter a) of Law no. 320 of December 27, 2012 on police and the status of policeman – compliance of policemen’s living standards with their legal salary and the salary of the persons they live with is one of the elements monitored by the specialized subdivision under the Ministry of Internal Affairs;
- Article 15 paragraph (1) letter a) of Law no. 1104 of June 06, 2002 on the National Anticorruption Center – compliance of NAC employees’ living standards with their legal salary and the salary of the persons they live with is one of the elements monitored by the internal security subdivision of the NAC.
- **Law on delimitation of competences on criminal prosecution between the National Anti-Corruption Centre, Ministry of the Interior and General's Prosecutor Office – achieved with deficiencies;**

Law no. 152 of July 01, 2016 on modifying and supplementing some legislative acts delimits

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)039-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)039-e).

<sup>11</sup> Constitutional Court, decision no. 7 of April 16, 2015, available at <http://constcourt.md/ccdocview.php?tip=hotariri&docid=532&l=ro>.

the competences of prosecutors from those of the criminal investigation body (National Anticorruption Center (NAC) and the Ministry of Internal Affairs) in the course of criminal proceedings. Changes are overall positive. At the same time, the law maintains conduct of criminal investigation by the NAC under the leadership of the Anticorruption Prosecution Office. This approach involves the following two problematic aspects:

- The Anticorruption Prosecution Office will continue having a large number of cases to manage. This competence will burden the Anticorruption Prosecution Office with minor cases and will negatively affect its capacity to focus on big corruption. Practically, by maintaining the Anticorruption Prosecution Office’s competence to conduct criminal investigation of all corruption cases brings to zero any reform claimed by authorities in relation to increasing the efficiency of criminal investigation in cases of big corruption (see details in sections 1.5 and 1.6);
- The NAC is still the criminal investigation body for small corruption. The opportunity of maintaining a specialized body with relevant administrative structure/personnel for criminal investigation of small corruption cases has not been discussed.

The working group on drafting the package of laws on prosecution reform discussed the opportunity of maintaining the NAC’s criminal investigation competence for cases of small corruption, but this topic was postponed for more detailed discussions as part of a separate draft law dedicated to NAC reform (see details in sections 1.5 and 1.6). Because of lack of finality in terms of NAC competences and substantial negative implications on the mandate of the Anticorruption Prosecution Office, Action 1.3 was qualified as achieved with deficiencies.

<b>1.4. Ministry of Justice to draft the legislation on incrimination of misuse and misappropriation of EU and international funds which would also tackle the conflict situations in the use of EU and international funds according to the provisions of the Convention on the Protection of the European Communities’ Financial Interests and other international conventions on the matter.</b>	<b>March-April 2016</b>	<b>Achieved without deficiencies</b>
---	-------------------------	--------------------------------------

Law no. 105 of May 26, 2016 on modifying and supplementing the Criminal Code, in force since July 01, 2016, modified articles 126<sup>1</sup>, 240, 332<sup>1</sup> and 332<sup>2</sup> of the Criminal Code. The changes overall comply with the goal indicated in the action. However, it is not clear enough nor justified in the explanatory note to the draft law why it had been decided to divide the composition of crime provided by Article 240 (use contrary to the destination of means from internal loans or external funds) into several paragraphs solely based on the source of the funds used contrary to the destination. Such an approach could create confusion in the application of that Article. Also, it is unclear why only in the case of the crime provided by Article 332<sup>2</sup> (embezzling of funds from external funds) there is a harsher penalty if the crime is committed by a public official. Although the Roadmap indicates that this legislation should be developed by the Ministry of Justice, the National Anticorruption Center (NAC) had already developed those modifications to the Criminal Code in August 2015, and they had been sent to and adopted by the Parliament. The modification proposals of the Ministry of Justice (opinion of October 01, 2015) were not taken into consideration.

Despite some doubt in terms of the text of the approved modifications, it could be avoided by correct and consistent application of these norms. For this reason, this action is qualified as achieved without deficiencies.

<b>1.5. Ministry of Justice to develop anti-corruption initiatives and to further reform the National Anti-Corruption Centre in accordance with the new law on prosecution, the law on the National Integrity Commission and the law on declaration of wealth and interests.</b>	<b>March-April 2016</b>	<b>Not achieved</b>
--	-------------------------	---------------------

Action 1.5 has been vaguely formulated in the Roadmap. Laws no. 134 of June 17, 2016 (delimitation of competences of the National Integrity Authority (NIA) and the National Anticorruption Center (NAC)) and Law no. 152 of July 01, 2016 (delimitation of competences of



specialized prosecution offices, NAC and the Ministry of Internal Affairs (MIA)), referred to in the Government report on Roadmap implementation, do not represent a reform of the NAC. The very separate formulation of an action in the Roadmap in terms of NAC reform indicates that the authors had initially intended to reform the NAC, but it has never been initiated. The mandate and resources granted to the NAC in the context of the reform of Anticorruption Prosecution Office and the NIA are unclear (NAC mandate was significantly reduced due to Anticorruption Prosecution reform and creation of NIA). Therefore, modifications should have also included a modification to the Law on the NAC and its structure/personnel. Although the Parliament's Legal Commission, in the context of adoption of the legal framework related to the law on prosecution, discussed the lack of need to maintain a body dealing with small corruption and the need to reduce the mandate of the Anticorruption Prosecution Office (exclude the competence of conducting criminal investigation of small corruption), a decision in this regard has not been made, but it was declared that this issue will be introduced with the NAC reform. These discussions also confirm the need to reform the NAC. The EU experts' analyses regarding the NAC also recommend reviewing and clarifying the role and mandate of the NAC.

Laws no. 134 and 152 delimited the competences of the NAC from those of NIA, Anticorruption Prosecution Office and MIA, but they left small corruption in the competence of the NAC and the Anticorruption Prosecution Office (see details in section 1.3), failed to clarify other questionable duties in the competence of the NAC (e.g., preventing and combating money laundering and terrorist funding) and did not refer to the opportunity of maintaining the current structure/personnel of the NAC. Therefore, actual reform of the NAC has not been initiated, so the action was qualified as non-achieved.

<b>1.6. Ministry of Justice to draft special laws on the specialised prosecution: anti-corruption prosecution, fight against organised crime prosecution and the special cause prosecution, in accordance with to the concept of the reform of prosecution and the new law on prosecution.</b>	<b>May 2016</b>	<b>Achieved without deficiencies</b>
--	-----------------	--------------------------------------

The working group on reform of prosecution developed two draft laws to implement this action. [The first draft \(no. 243\)](#) amends, *inter alia*, the Code of Criminal Procedure, establishing the competence of specialized prosecution offices. [The second draft \(no. 271\)](#) targeted the internal organization of these prosecution offices, in order to guarantee their independence..

Law no. 152 of July 01, 2016 on modifying and supplementing some legislative acts (draft law no. 243) entered into force on August 01, 2016, except provisions on prosecution staffing (the provision reading “To be approved Prosecution staff in the number of 720 prosecutors and 700 units of personnel, including technical staff” is to enter into force on January 01, 2017). Law no. 159 of July 08, 2016 on specialized prosecution offices (draft law no. 271) entered into force on August 01, 2016. Delay in adoption of these laws made efficient work of the two specialized prosecution offices from August 01, 2016 impossible, for administrative reasons (including due to delay in choosing the chief prosecutor of the prosecution office for combating organized crime and special cases, in employing personnel, etc.).

Some actions of the Prosecutor General's Office raise questions regarding its leadership's willingness to correctly apply the law on prosecution and related laws. On May 27, 2016 the interim Prosecutor General approved the organizational chart and staffing of the 2 specialized prosecution offices, although the draft law on specialized prosecution offices provided that the structure of these prosecutions should have been proposed by chief prosecutors of these offices, and the personnel should be coordinated with them. On the same day, the new organizational chart of the Prosecutor General's Office was adopted. New organizational charts do not fully meet the needs and specificity of the two specialized prosecution offices. Also, the organizational chart of the Prosecutor General's Office involved duties in areas that by the Law on prosecution are granted exclusively to specialized prosecution offices, such as cybercrime or human trafficking. It creates the risk for the Prosecutor General's Office to unofficially continue strict surveillance of specialized prosecution offices, undermining their independence.

On April 22, 2016, the chief prosecutor of the Anticorruption Prosecution Office was appointed via a contest organized by the Superior Council of Prosecutors (SCP). On July 14, 2016, the SCP appointed one of the anticorruption prosecutor's deputies, a person who had not previously declared his wealth and was placed 4<sup>th</sup> out of the 5 candidates in the contest for the position of chief anticorruption prosecutor<sup>12</sup>. Such appointments raise questions about the system's willingness to appoint to leading positions persons without suspicious related to their integrity. The position of head of the prosecution responsible for combating organized crime remains vacant. Until it is filled via a contest organized under the new Law on prosecution, these duties are exercised by an interim appointed by the Prosecutor General.

It is crucial that the vacancies be filled with the best candidates, and the term of substitution of vacancies (interim duty) should not be excessively long. In any case, the key persons in specialized prosecution offices cannot be suspected of lack of integrity; otherwise it undermines the very purpose of the prosecution reform.

According to the Law on prosecution, specialized prosecution offices employ criminal investigators, investigation officers and specialists. Before August 01, 2016, these positions in specialized prosecution offices did not exist. They shall be selected individually by the chief prosecutor of the specialized prosecution and shall be deployed to specialized prosecution for a period of 5 years.

The structure of specialized prosecution offices and their staffing change considerably with the adoption of the new Law on prosecution. It involves considerable additional expenses. Given that for 2016 specialized prosecution offices have no separate budgets, the Prosecutor General's Office is to ensure proper funding for these institutions. Also, their managers must develop feasible budgets for 2017, which shall be included into the prosecution budget for the next year. If this measure is not undertaken, specialized prosecution offices are likely to be under-funded in 2017.

The action was qualified as achieved without deficiencies only due to adoption of the law on specialized prosecution offices, as the action is formulated in the Roadmap. The implementation of this law is problematic, so it should remain one of the key priorities of the government for the nearest future.

<b>1.7. National Anti-Corruption Centre to prolong the implementation deadline of the National Anti-Corruption Strategy for 2016.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
---	-------------------	--------------------------------------

The action was achieved by means of Parliament Decision no. 89 of May 12, 2016 on modifying Parliament Decision no. 154 of July 21, 2011 on approval of the National Anticorruption Strategy for 2011-2015 and Parliament Decision no. 90 of May 12, 2016 on approval of the Action Plan for 2016 for implementation of the National Anticorruption Strategy for 2011-2016.

The main changes refer to extending the NAS implementation deadline to the end of 2016 and intensifying parliamentary control over NAS implementation by requiring quarterly meetings of the permanent parliamentary commission responsible for national security, defense and public order, including anticorruption. Both decisions were published in the Official Gazette on 01.07.2016. It is not clear why this action was considered a priority and included in the Roadmap, since it is rather a technical issue. Due to delayed adoption of NAS 2011-2015 and delayed adoption of action plans for NAS 2011-2015, the need to extend the implementation deadline seemed obvious.

<sup>12</sup> Ziarul de Gardă, 20.07.2016" Un procuror cu casă de milioane, firme nedeclarate, care a plecat de două ori din Procuratură, după scandaluri, numit șef adjunct la Procuratura Anticorupție", <http://bit.ly/2beQK4U>

<b>1.8. National Anti-Corruption Centre to develop the professional integrity electronic file and the soft of electronic evidence.</b>	<b>May 2016</b>	<b>Not achieved</b>
--	-----------------	---------------------

The NAC redrafted new Performance Specifications to create the IT system “Professional Integrity Record of the Public Agents”. Based on these specifications, UNDP Moldova organized a tender for software creation and contracted the company in June 2016. Delivery of works is scheduled for the end of 2016, and final version – over a year after the signing of contract, the period including connection of public institutions and software piloting.

The action itself raises no questions, as long as the information system fully corresponds to the final text of the Law on Institutional Integrity Assessment (see action 1.2 above).

The action was qualified as not achieved because according to its formulation in the Roadmap, by July 31, 2016 there should have been an electronic file, but in fact only the company was contracted to do the work and the work has just begun. It is clear that the deadline is unrealistic, since such an action requires at least one year to develop the software version for testing.

<b>1.9. The National Integrity Commission to implement the on-line system of submission of declaration of property and personal interests and train its staff.</b>	<b>July 2016</b>	<b>Not achieved</b>
--	------------------	---------------------

The online system for submission and control of declarations on wealth and interests has been developed, tested in terms of operation and security, and accepted. The E-Government center has adapted it to the new form of such declarations. The component on assets' control has already been connected to several state registers, except cadaster and fiscal registers. The E-Government center has trained the personnel of the National Integrity Commission (NIC) responsible for control of income, wealth and interests, but additional training will be needed for newly employed integrity inspectors of the National Integrity Authority (NIA). The Law establishes that the obligation to file the electronic wealth and interests' declaration starts on 01.01.2018. Until then, it is at the civil servant's discretion to decide whether to file the declaration online or on paper. The Government, in turn, is to establish the type of electronic signature and how it will be distributed to the declaring subjects within 6 months, meaning by January 2017, which is more than enough time. Also by January 2017, NIA is to create the necessary conditions for filing the wealth and interests' declaration electronically (the Regulation on filling in online statement and the Guidebook approved) and to approve the concept of the Electronic Registry of declaring subjects. This last one is already developed and it is only to be filled in by the public authorities/institutions holding personal data falling under the law on declaring wealth and personal interests. Considering the time necessary to fill in the Electronic Registry of declaring subjects, the online filing of wealth and interests declarations could actually be launched in March-April 2017 or even sooner. In such case, the Government could recommend through a decision that the subjects give preference to declaring wealth and interests electronically starting with 2017, thus, ensuring a much faster shift to the system of online wealth and personal interests' declarations filing. In addition, it is important that the Government observes the timeframes established for the implementation of all measures preceding the launch of the E-integrity system. For example, the timeframe established for granting access to all state registries, information systems and other forms of data management is already exceeded (target date – September 2016).

Continued submission of written declarations will require contracting a company for their digitalization and online placement in 2017, too. The last years' experience shows that the expenditure for such services keeps growing<sup>13</sup>, and online placement of declarations takes

<sup>13</sup> In 2013, the expenditure for services of digitalization and online placement of income, property and interests declarations was MDL 639 thousand (“BTS PRO” SRL), in 2014 – MDL 284.8 thousand (ÎS “Fiscservinform”), in 2015 – MDL 798 thousand (ÎS “Fiscservinform”), and in 2016 – MDL 900 thousand (“Esempla Systems” SRL).

place with big delays to the legally established deadlines.

### **Next steps and priority recommendations:**

#### Integrity:

- Diligent implementation of norms, especially those related to the creation of the National Integrity Authority (NIA) via reorganization of the National Integrity Commission (NIC); return to the text of laws from the set of laws on integrity in order to remove all vulnerabilities and ambiguous provisions.
- Operating legislative amendments, so that parallel institutional competencies (NIA/Prosecutor's Office, NIA/MoI, NIA/NAC, NIA/SCM) related to wealth statements and audit, and civil servants' personal interests are excluded.
- Selection of members for the Integrity Council, NIA leadership and integrity inspectors via a fair and impartial contest, in compliance with legal provisions.
- Allocation of funds required for reorganization of the NIC and for the work of NIA in 2016-2017, according to new legal provisions.
- Ensuring NIA access to all state and private registers needed for efficient verification of wealth and personal interests, especially cadaster and fiscal registers.
- The Government to observe the timeframes established for the implementation of all measures preceding the launch of online system for submission of declarations of assets and interests, and to ensure its gradual application by the entry into force of provisions in 2018.
- The Parliament to debate and adopt in final reading the draft law on integrity. The draft law should be adjusted to the set of laws on integrity, including via exclusion of provisions that attribute the same competences of declaration and control of personal interests in public service to several authorities, thus creating vagueness in terms of responsible authority. Also, the draft law is to be reviewed so as to comply with requirements on language and legal expression.
- The National Anticorruption Center and the Information and Security Service to monitor implementation of Law no. 325 of December 23, 2013 on institutional integrity assessment, especially in order to prevent violation of fundamental rights and use of the mechanism of institutional integrity assessment and professional integrity testing in other purposes than those under the law.
- De-politicization of law enforcement and regulatory institutions. Fulfillment of the address of the Constitutional Court, attached to Decision no. 29 of December 21, 2010 on "express delimitation of public officials representing a particular political or public interest"; appointment to leading positions in law enforcement and regulatory institutions of persons selected via public contests based on criteria of professionalism and integrity.

#### Reform of the National Anticorruption Center (NAC):

- Exclusion from NAC competences of the duty to conduct criminal investigation in cases of small corruption (cases that are not in the exclusive competence of the Anticorruption Prosecution Office), with granting this competence to territorial prosecution offices.
- Assessment of the role, duties and personnel of the NAC in the context of reform of prosecution and integrity system.

#### Specialized prosecution offices:

- Revision of organizational structure and staffing of specialized prosecution offices and the Prosecutor General's Office in the spirit of the new Law on prosecution and of the Law on specialized prosecution offices.
- Appointment to leading positions in specialized prosecution offices of prosecutors that are not suspected of lack of integrity. The appointment process should not be delayed.
- The heads of specialized prosecution offices to begin deployment of criminal investigators, investigation officers and specialists to specialized prosecution offices.

- The Prosecutor General's Office to ensure proper funding of specialized prosecution offices in 2016, and the heads of specialized prosecution offices to develop feasible budgets for their offices for 2017.

National Anticorruption Strategy:

- Develop a new National Anticorruption Strategy for 2017-2021 and to adopt it by the end of 2016, in order to enable the start of its implementation from January 1, 2017.

## 2. Public administration reform

### Summary of general progress

---

*All 4 actions were achieved without deficiencies.*

---

The subject of public administration reform, especially in terms of ensuring the rationality and efficiency of the administrative system, professionalism of public service and modernization of public services, is treated as a major priority of the Government, which has the role of catalyst for any other reform initiatives in any sector. However, one should mention that the actions are focused on setting up the strategic and institutional framework for the reform, rather than on actual realization of reform.

Thus, although the actions were achieved within the deadline and without deficiencies, the major challenge is to ensure their sustainability. One meeting of the National Council for the Public Administration Reform, organized within the deadline according to the Roadmap, does not guarantee efficient functioning of this platform, in compliance with rules. This Council was not convened in order to discuss and make decisions regarding actions related to the public administration reform, such as analysis of options in reorganizing the State Chancellery following functional analysis, or options to reform Government structure. Also, the functional analysis of the State Chancellery does not ensure its reorganization according to good practices, and approval of the Public Administration Reform Strategy and the Action Plan for Public Services Modernization Reform, without decision makers assuming relevant responsibility and ensuring necessary funds, is likely to remain only an intention.

### Summary of individual actions

Action	Target date	Stage
<b>2.1. State Chancellery to ensure functionality of the National Council for Public Administration Reform, inter alia by convening the Council in regular meetings.</b>	<b>10-11 March 2016</b>	<b>Achieved without deficiencies</b>

The National Council for Public Administration Reform was set up by Government Decision no.716 as of 02.10.2015 at the recommendation of development partners in order to boost the implementation of reform activities in this sector. The Council was conceived as a high-level platform for decision making and taking commitments regarding the strategic directions for the public administration reform, taking into account that the reform is a complex one and it includes several components managed by different authorities and it also includes the high-level administration, both at central as well as local level. Thus, the Council is headed by the Prime-minister and is composed of the heads of two line parliamentary committees, five members of the Government and the Secretary General of the Government, its meetings are called at least once every three months.

Since its creation and for five months now, no meeting of the Council took place, the main cause being the instability of the Government. The first meeting of the National Council for Public Administration Reform took place on 11.03.2016. The development partners attended



and the main subject on the agenda was the development of the Strategy for Public Administration Reform (PAR). At the meeting, the need for a monthly meeting of the Council was established for the period of PAR Strategy development, until its approval. The second meeting of the Council took place on 12.05.2016, the draft PAR Strategy was presented and the public consultation process for its finalisation started.

In the period of May 13 – August 31, 2016, no meeting was convened, although according to Government Decision no. 716 of October 12, 2015 “Council meetings shall be convened at least once every three months”, and in this period important reforming actions were initiated or achieved. Eventual issues that could have been discussed by the Council for Public Administration Reform refer to: reorganization of State Chancellery following its functional analysis, institutional reform of the Government, draft Action Plan for Public Services Modernization for 2017-2021, approved by the GD no. 966 of August 9, 2016.

The Council’s format is the one suitable for establishing reform priorities and taking institutional commitments for their implementation, and its action would facilitate the reform activities implementation and monitoring, as well as the dialog with the development partners in this area, a more active attitude from the secretariat of the Council, currently being in the responsibility of the State Chancellery, is needed in order to establish the agenda of the Council and ensure its operation.

<b>2.2. State Chancellery to update and approve the Roadmap/Strategy on Public Administration Reform in consultation with civil society and development partners, including, recommendations of the SIGMA study findings.</b>	<b>April 2016</b>	<b>Achieved without deficiencies</b>
---	-------------------	--------------------------------------

Development of the Public Administration Reform Strategy was initiated in April 2016 with the support of the Foundation for Good Governance, funded by the UK, based on evidence and recommendations from the SIGMA report on public administration in Moldova, finalized and presented to the Government in March 2016 with support from the European Union. Thus, the Strategy reflects the European principles of public administrations and is aimed to establish the general framework for the public administration reform for 2016-2020, both at central and local levels. The strategy focuses on five components: (i) raising accountability of public administration, (ii) developing public policies, (iii) modernizing public services, (iv) public finance management, and (v) human resources management.

The draft PAR Strategy was presented at the meeting of the National Council for Public Administration Reform on 12.05.2016 attended by the development partners; after meeting a public consultation process for finalizing Strategy<sup>14</sup> was launched. Thus, during the month of May public consultations have been organized with representatives of the development partners, civil society, local authorities, academia.

In the process of consultations, advisory notes, comments and proposals have been received from over 60 public authorities and institutions of all levels and development partners; these have been taken into account in the strategy finalization process. In particular, the draft Strategy was consulted in two stages with the EU Delegation and with SIGMA Program. The Strategy was approved by Government Decision no. 911 of July 25, 2016<sup>15</sup>. In two months after approval of the Strategy, an action plan for its implementation is to be developed and approved.

Although the document is correlated with the results of the public administration evaluation conducted by SIGMA and reflects the reform needs and priorities for the entire public administration sector, the success of its implementation depends on the political support and

<sup>14</sup> <http://particip.gov.md/proiectview.php?l=ro&idd=3188>  
<sup>15</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366209>

the Government’s commitment for the implementation of the Strategy’s Action Plan. At this stage, it is imperative to finalize the Action Plan for implementation of the Strategy, establish the costs needed for implementation of the public administration reform, and consult the document with civil society and development partners.

<b>2.3. State Chancellery to launch an independent study to the institutional capacity of the State Chancellery (functional analysis, business processes, coordination role etc.)</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
---	-------------------	--------------------------------------

At the State Chancellery’s request, on 29.05.2016, UNDP Moldova launched the procedures to select a team (that would include international expertise) to conduct the institutional and functional analysis of the State Chancellery and the Prime-minister's office. In May, 2016, the team from Ernst & Young Baltic<sup>16</sup> was selected, composed of four international consultants, it started its activity during May 19-25, 2016.

The final report following functional analysis, which contains recommendations on optimization/reorganization of State Chancellery functions, was presented to the beneficiary on July 14, 2016, but it was not made public. At the moment, based on recommendations, the reorganization of State Chancellery is being prepared.

<b>2.4. State Chancellery to draft the Action Plan for modernization reform of the public services for 2017 – 2021</b>	<b>July 2016</b>	<b>Achieved without deficiencies</b>
--	------------------	--------------------------------------

By the Order of the Secretary General of the Government as of 03.05.2016, the E-Government Centre was appointed as responsible for developing the Action Plan for modernisation of public services for 2017-2021 by July 1, 2016. In the process of Action Plan development, the priorities established by the PAR Strategy for 2016-2020 on the modernization of public services were taken into account. Beginning on July 01, 2016, draft Plan was subject to public consultations, having been posted on [particip.gov.md](http://particip.gov.md) and subsequently approved by the GD no. 966 of August 9, 2016.

**Next steps and priority recommendations:**

- Ensure the periodical meetings of the National Council for Public Administration Reform, at least according to the provisions of the Government Decision establishing it (every three months), by agreeing at each meeting the time frames and the subjects to be discussed at the next one, at least in general outlines. Besides observing the meetings calendar, it is crucial for this Council to have a determining role in promoting, implementing and, later, monitoring and evaluating the PAR Strategy implementation.
- The State Chancellery to publish the minutes of the National Council for Public Administration Reform meetings on its website and to make the decision-making process in the public administration reform more transparent.
- Develop a realistic Action Plan after the approval of the strategy, involving all interested parts and estimating required costs, to increase the responsibility of institutions which will implement its provisions, thus ensuring the proper implementation of the strategy.
- Final report presenting the functional analysis of State Chancellery to be published on the websites of the Government and the State Chancellery.
- The options for reorganization of State Chancellery, based on the conclusions and recommendations of the report developed after functional analysis of State Chancellery to be discussed and validated at the National Council for Public Administration Reform.
- The conclusions and recommendations presented in the final report, and the report to be subsequently published on the websites of the Government and the State

<sup>16</sup> <http://www.undp.md/tenders/archive2016.shtml>

Chancellery.

- Funds for realization of actions by the deadline to be mobilized, in accordance with the Action Plan for the public services modernization reform.

### 3. Enhance transparency of political parties financing and accountability of elected candidates

#### Summary of general progress

*Out of 4 monitored actions, 1 was achieved without deficiencies and 3 – achieved with deficiencies.*

The Ministry of Justice satisfied its role and enforced legislation on the registration and operation of political parties. Transparency of political party funding aims to eliminate the use of funds from sources that may hide obscure interests. In this regard, the financing of parties from the public budget is a solution, if the criteria for allocation of these funds reflect properly the citizens' support and the perspectives for parties' development. The public funding requires the political parties to report the use of these funds according to their statutory objectives.

The government provided in the state budget funds to support the operation of parties, but there still are problems with these resources reaching the beneficiaries. The Central Electoral Commission (CEC) fulfilled its commitments of developing mechanisms to monitor transparency in funding political parties. To make political parties submit their financial statements on time, the CEC called to order the parties that failed to meet reporting deadlines, first by applying the Contraventions Code and then by refusing to provide budget funds to parties. The last warning had the desired effect. As a result of transition to direct elections of the head of state, the CEC focused its efforts on amending electoral legislation by including provisions on elections of the country's president. Revision of electoral legislation in accordance with the recommendations of the EU and OSCE election monitoring missions has been postponed until 2017.

#### Summary of individual actions

Action	Target date	Stage
<b>3.1. Ministry of Justice to ensure the right of political parties to register and operate.</b>	<b>ongoing</b>	<b>Achieved without deficiencies</b>

During the implementation of Roadmap, the Ministry of Justice registered two political parties: the Party "Right"<sup>17</sup> (24.03.2016) and the Party of Action and Solidarity<sup>18</sup> (26.05.2016). The Ministry has also registered regularly the amendments to the statutes of a number of parties, and changes in their governing bodies. It wasn't announced any rejection of party registration or changes to the parties' statutes and governing bodies by the Ministry of Justice.

<b>3.2. Government to secure in the 2016 Budget Law funds for political parties financing, as provided by law.</b>	<b>March 2016</b>	<b>Achieved with deficiencies</b>
--	-------------------	-----------------------------------

The Law on State Budget for 2016, adopted on July 01, 2016 and entered into force on July 26, 2016, in Article 2(9) provides for allocation to the budget of the Central Electoral

<sup>17</sup> <http://www.e-democracy.md/parties/dreapta/>

<sup>18</sup> <http://www.e-democracy.md/parties/pas/>



Commission (CEC) of 39 million 850 thousand Moldovan lei, which is 0.13% of budget income, for the funding of political parties. On August 18, 2016, the CEC adopted a decision *on establishing the monthly amount of subventions from the state budget of 2016 for political parties according to their performance in the parliamentary elections of November 30, 2014 and general local elections of June 14, 2015*. According to Law no. 294-XVI on political parties, the amount of subventions was established as follows: 50% - to political parties proportionally to their performance in parliamentary elections, and 50% - to political parties proportionally to their performance in the general local elections. According to CEC's calculations, each party that participated in the parliamentary elections of 2014 will receive 1.11 lei monthly for every vote obtained. Also, each party that participated in the municipal elections of 2015 will receive 0.47 lei monthly for every vote obtained (including votes for local, regional councils and mayors' offices). The CEC obliged parties to open special accounts in order to receive monthly money transfers, beginning in August 2016. Although the Law on State Budget for 2016 says that money shall be allocated to parties from the budget of the CEC, the procedure of transfer to parties is still to be identified.

<b>3.3. Central Election Commission to identify weaknesses and gaps in the electoral legislation, drafting amendments to the Electoral Code and related legislation within the inter-institutional working group by the Central Election Commission on 11.09.2015.</b>	<b>May-July 2016</b>	<b>Achieved with deficiencies</b>
--	----------------------	-----------------------------------

CEC published a range of party financial evidence documents models regarding: membership fees; donations from individuals; donations in the form of property, goods and services; costs of subsidies from the state budget; report on financial management. Upon expiry of the deadline for submission of quarterly reports (July 15), only 19 parties of the 45 registered complied with it. Later, with a delay, other 8 parties submitted their financial management reports for the first quarter of the year. It should be mentioned that the CEC's summons towards the parties that failed to submit financial statements on time affected the entities that participated in previous elections and could be deprived of budget subventions. At the same time, the entities that did not participate in previous elections and are not entitled to subventions ignored the CEC summons. In this context, on August 18 the CEC repeatedly appealed to the parties that had fallen behind, threatening them with application of the Contraventions Code provisions of assigning fines to the heads of those entities after September 15.

<b>3.4. Central Election Commission to identify weaknesses and gaps in the electoral legislation, drafting amendments to the Electoral Code and related legislation within the inter-institutional working group by the Central Election Commission on 11.09.2015.</b>	<b>June 2016</b>	<b>Achieved with deficiencies</b>
--	------------------	-----------------------------------

The CEC has created a working group for amending electoral legislation and related laws according to recommendations given by OSCE missions for monitoring the parliamentary elections of 2014 and local elections of 2015. This objective, however, was postponed in order to manage to respond to the new circumstances related to the Constitutional Court (CC) Decision of March 04, 2016, providing for direct election of the head of state. The CEC analyzed the legal framework related to the elections of the head of state, restored by CC Decision, and decided to develop a draft law to modify Title IV of the Elections Code, "Elections of the President of the Republic of Moldova"<sup>19</sup>. The draft law developed by the CEC, which had taken into consideration some recommendations of the Venice Commission and civil society organizations, was supported by practically all parliamentary groups.

<sup>19</sup> <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3166/language/ro-RO/Default.aspx>.

### **Next steps and priority recommendations:**

- Amend the Law on political parties to include the provisions of CEC Regulation on the financing of political parties that refers to donations and sanctions for non-compliance with the Regulation. These provisions are subjected to disputes, being considered new rules but not regulations for the application of the existent legal norms
- Cap annual donations to political parties so that individuals can donate no more than 4-5 average salaries, and legal persons around 20 average salaries, in accordance with international practices.
- Review the criteria for funding political parties, so as to motivate funding from private sources, including citizens with the right to vote who reside abroad.
- To urgently remove the discrepancy of about 400 thousand voters (~15%) from the official data presented by the Bureau of Statistics and data presented by the Central Electoral Commission, according to the State Register of Voters<sup>20</sup>.

## **4. Media freedom**

### **Summary of general progress**

---

*Out of 3 monitored actions, 1 was achieved with deficiencies and 2 were not achieved.*

---

The objective sought by authorities in realizing the three actions has not been reached. Modifications to the Audiovisual Code, which limited the right to hold more than two broadcasting licenses, did not lead to reduction of monopoly in the media, and it is very unlikely that it will happen in the future, because of legislative gaps that allow avoiding restrictions. The main drawback is repeatedly delayed adoption of the new Audiovisual Code. The draft code, developed in 2010 (with support from the Council of Europe), registered in the Parliament in 2015, was adopted in the first reading on July 01, 2016, and then it was decided that the Council of Europe, OSCE and other specialized international institutions should give their opinions about it. In parallel, the Parliament adopted 3 controversial draft laws on modifying the current Audiovisual Code, developed by a group of MPs of the Liberal Party and the Democratic Party of Moldova. In addition to the fact that some proposals repeat some provisions of the new draft Audiovisual Code, they also contain some prohibitions, which were criticized by the OSCE and national and international media organizations for its likelihood to limit pluralism of opinions, freedom of expression and freedom of broadcasting. At the same time, the situation with freedom of the media continues deteriorating, as confirmed by national<sup>21</sup> and international<sup>22</sup> reports. Information about the beneficial owners of private broadcasters, made public in November 2015 as a result of amendments to the Audiovisual Code, demonstrates the existence of media concentration, which media organizations had been warning about for quite a long time. Unfair competition on the advertising and media markets, lack of a transparent mechanism for measuring audience, lack of a policy for development of the national media market are other problems faced by the local media. These major problems are far from being settled by the measures provided and undertaken for implementation of the Roadmap.

### **Summary of individual actions**

---

<sup>20</sup> According to the National Bureau of Statistics, on January 01, 2016 the number of stable population in Moldova was 3,553.1 thousand persons (without population from the Transnistrian region), and according to the Central Electoral Commission, on August 22, 2016, the total number of voters in the State Register of Voters was 3,237,032 persons.

<sup>21</sup> Memorandum on Press Freedom in Moldova, <http://bit.ly/28MSnsj>, Report on external media pluralism in Moldova in 2015, prepared by APEL, <http://bit.ly/28Oue6X>.

<sup>22</sup> Freedom of the Press, Country Report, <http://bit.ly/28QjB2h>.

Actiona	Target date	Stage
<b>4.1. Parliament to adopt the amendments to the Audiovisual Code in order to exclude the monopoly in the media, restricting the possibility to hold more than 2 broadcasting licenses.</b>	<b>March 2016</b>	<b>Achieved with deficiencies</b>

Amendments were adopted by Law no. 11 of February 26, 2016, shortly after the draft law was registered and without prior public consultations. The goal of the law, i.e. to reduce monopoly in the media (from 5 to 2 broadcasting licenses per media owner), has not been reached, because the law still allows media owners to invest in an unlimited number of broadcasters, even though they will formally hold only 2 broadcasting licenses. The restrictive provisions of the law will enter into force gradually, on expiry of the period of validity of broadcasting licenses and not to a certain date, benefiting more media groups who hold valid licenses issued until after 2020. If adopted a new Audiovisual Code the situation will change, as it contains more extensive provisions on controlling and limiting ownership concentration in broadcasting.

<b>4.2. Audiovisual Coordinating Council, Government and the Parliament to draft and adopt amendments to the national legislation, mainly to the Audiovisual Code, introducing concepts in accordance to the EU legislation (Audiovisual Media Services Directive of the EU) and EUMS best practices in order to promote fair competition on the media market, aiming inclusively at limiting the concentration of media ownership and preventing intentional disruption of opposition oriented outlets.</b>	<b>June 2016</b>	<b>Not achieved</b>
--	------------------	---------------------

Audiovisual Coordinating Council (ACC) developed draft amendments to the Audiovisual Code to supplement it with concepts of audience share and audience measurement. They have not been submitted to the Government and Parliament, because a draft of new Audiovisual Code has been already registered in Parliament, which lists those terms and includes provisions needed for establishing a mechanism for control and limitation of media ownership concentration.

Moreover, the action 4.2 provides the adoption of amendments to the Law on advertising and Competition law in line with provisions of the new Audiovisual Code. In this respect, it is not clear why the ACC has been designated responsible for the development of these drafts that refer to other regulatory areas than broadcasting. Failure to adopt a new Audiovisual Code led to the absence of measures for development of relevant amendments. In the situation when for several years media organizations notify about unfair competition on the advertising market in broadcasting, adjustment and revision of the law on advertising and the law on competition remains imperiously necessary and must be initiated immediately after adoption of the new Audiovisual Code. The current law on advertising (Law no. 1227 of June 27, 1997) is incomplete, inefficient and outdated, while the law on competition does not include the media among the areas of intervention for the Competition Council. It should be mentioned that a draft of the new law on advertising, developed by the Ministry of Justice, was subjected to public consultations in May 2014, but it had no finality.

<b>4.3. Parliament to adopt the appropriate legal framework which will allow the development of the local media market, local broadcasters and promotion of the local media products in accordance with the CoE and OSCE expertise.</b>	<b>July 2016</b>	<b>Not achieved</b>
---	------------------	---------------------

Since the action was formulated vaguely in the Roadmap, it was assessed by taking into consideration the information presented by the Ministry of External Affairs and European Integration. According to it, the action implies the adoption of 2 sets of laws: draft of the new Audiovisual Code (no. 53 din 15.03.2015) and other 3 bills for amending and completing the

Audiovisual Code in force (no. 125 din 02.04.15 (art.11, 38), no. 218 din 22.05.2015 (art.2, 4, 9, etc.), no. 231 din 28.05.2015, (art.38, 40)).

The draft of new Audiovisual Code was registered in Parliament on 5 March 2015 by a group of MPs PL, but was actually developed in 2010-2011 by media experts from civil society.<sup>23</sup> In 2011, the draft received expert opinions from the OSCE, the Council of Europe and the European Broadcasting Union<sup>24</sup>, and in 2015 and 2016 it was subjected to public consultations, but their result was not made public on the Parliament's website. The draft was adopted in the first reading on July 01, 2016. The document aims at solving the main problems and challenges in broadcasting, such as: concentration of ownership in the media, regulation of media advertising and teleshopping, establishment of a mechanism for measuring audience and market shares, selection of the Broadcasting Coordinating Council members and its efficiency in controlling compliance with provisions of the Audiovisual Code, financial sustainability and management of the public broadcaster, regulation of community broadcasters, regulation of domestic and own broadcast media production, etc.

Given that since the development of the draft several actions have been undertaken related to transition to terrestrial digital television, some of its provisions are no longer relevant and need updating. Also, it is necessary to discuss provisions related to shares of own and domestic programs and European audiovisual works, so that they correspond to the real possibilities of local broadcasters and be applicable, in contrast with the current situation, when these provisions are lifeless text. In this sense, it is necessary to organize additional public debates before adoption of the final version of the Audiovisual Code. Because the draft Audiovisual Code contains several provisions related to sponsorship of programs and funding of broadcasters from donations, the current law on sponsorship and philanthropy (no. 1420 of October 31, 2002) is to be reviewed and adjusted to the new Code, shortly after its adoption.

The three draft laws on modifying and supplementing the current Audiovisual Code, which make up the second set of documents under Action 4.3 in the Roadmap, were developed by the Government (no. 231) and by a group of MPs from the Liberal Party (no. 125) and the Democratic Party (no. 218). Legislative initiatives were registered in the Parliament in 2015 and aim at limiting foreign propaganda, protecting the information space and promoting domestic media production.

Thus, draft law no. 125 obliges national broadcasters to air domestic informative shows in the proportion of 100%, out of which 80% should be in Romanian. At the same time, it is forbidden to air informative and politico-analytical shows produced in countries that have not ratified the European Convention on Transfrontier Television (except the USA), such as the Russian Federation. Failure to comply with these provisions is proposed to be penalized with fines up to MDL 50 thousand, suspension, or even withdrawal of broadcasting license.

In its turn, draft law no. 218 proposes modifying the broadcaster's jurisdiction, setting up the condition of having headquarters and production means on the territory of Moldova in order to have the status of broadcaster. The duration of maximum audience hours is increased, and national broadcasters are forced to air 8 hours of domestic product daily, in which 6 hours – during the evening prime time, thus excluding the term of “their own product.” The provision on audience measurement is introduced. In contrast with draft law no. 125, it prohibits full retransmission of TV channels and radios that contain informative, analytical and political shows produced in the countries that did not ratify the European Convention of Transfrontier Television. Failure to comply with these provisions is to be penalized with sanctions up to withdrawal of the broadcasting license or authorization for retransmission. The sanction of withdrawing broadcasting licenses is also to be applied for incitement of the public to national, racial or religious hatred, to mass public violence, or to terrorist acts.

These draft laws were challenged by media organizations and by some local broadcasters,

<sup>23</sup> The draft was developed by media experts from APEL and CJI, <http://bit.ly/29knyeF>.

<sup>24</sup> [http://www.soros.md/files/publications/documents/Expertiza\\_Cod\\_CoE\\_2011\\_RO.pdf](http://www.soros.md/files/publications/documents/Expertiza_Cod_CoE_2011_RO.pdf).



which qualified these provisions as dangerous for the freedom of the media and of expression, because they can be used arbitrarily and directed against certain broadcasters that are considered inconvenient. At the same time, exclusion of the terms “their own product” might jeopardize further development of the broadcasting market and establishment of healthy competition between the broadcasters that make their own products and air domestic products.

Following criticism, the controversial legislative initiatives were sent to the Council of Europe for expert opinion, and it found the need to review/reformulate the proposed amendments for the reason that they are unclear, disproportionate or incomplete and might create problems for the freedom of broadcasting, freedom of expression and the right to information<sup>25</sup>. The draft laws were criticized by Freedom House<sup>26</sup> and by the OSCE Representative on Freedom of the Media Dunja Mijatović<sup>27</sup>, and they urged the Parliament to review the proposed amendments in accordance with EU values and principles, which are at the basis of the Association Agreement.

The three draft laws were adopted in the first reading on July 07, 2016, but then MPs decided to unite them with draft law no. 53 on the new Audiovisual Code. Subsequently, because draft law no. 53 did not receive the opinion of the OSCE and the CoE, the specialized parliamentary commission announced its intention to annul unification of the draft laws and to examine in final reading only draft laws no. 125 and no. 218. They were subjected to wide public consultations on July 26, 2016, but participants did not reach consensus on the need to adopt the legislative initiatives in final reading.

#### **Next steps and priority recommendations:**

- Draft laws no. 218 and no. 125 to be withdrawn from Parliament agenda as a result of international bodies' negative opinion about the prohibitive provisions on transmission/retransmission of foreign shows/channels. Provisions regarding the measurement of audience and share of domestic product, which have already been included into the new Audiovisual Code, to be discussed in public consultations on that draft law.
- The new Audiovisual Code to be adopted in the autumn-winter session of the Parliament, preceded by organization of wide public consultations. During public debates, clear provisions to be developed regarding control over the transmission/retransmission of programs produced by foreign broadcasters in compliance with specialized European rules.
- The process of developing the new law on advertising to be launched/resumed as soon as possible.
- The process of modifying/supplementing the law on competition to be launched, in compliance with the new Audiovisual Code. Especially, it is necessary to include the media area in the list of the Competition Council's areas of intervention.
- Consultations on the adoption of a development strategy for domestic broadcasting to be launched.

## **5. Justice Sector Reform, in particular ensuring the independence, effectiveness, transparency and accountability of the judiciary and law enforcement agencies**

### **Summary of general progress**

---

*Out of 8 monitored actions, 4 were achieved without deficiencies and 4 with deficiencies.*

---

<sup>25</sup> <http://www.parlament.md/LinkClick.aspx?fileticket=rWBY4DkAXxw%3d&tabid=90&language=ro-RO>.

<sup>26</sup> <https://freedomhouse.org/article/moldova-restrictions-foreign-broadcasters-undermine-press>, 14.07.2016.

<sup>27</sup> <http://www.osce.org/fom/253346>, 13.07.2016

The actions included in this area are mostly overdue actions from the Justice Sector Reform Strategy (JSRS). The draft law on reorganization of the court system is an important progress, though delayed. The adoption and promulgation of law is an important achievement, although was not preceded by sufficient public discussions, and its provisions on termination of mandates of all chairmen and deputy chairmen of courts from 1 January 2017 are not justified and could raise constitutionality issues. However, the law creates important premises for improving the quality and efficiency of the justice system, if it is implemented correctly and in good faith. The law on limiting the judges' margin of discretion includes important improvements, but also problematic provisions; in particular, it creates preconditions for unjustified restriction to public hearings. *All these laws, especially the one on reorganization of the court system, require increased attention in implementation; otherwise the spirit of the law is likely to be distorted in practice.*

An important draft law on amending the Constitution in the part related to the court system was registered in the Parliament, aimed to strengthen the independence and self-administration of justice. It is important to have it adopted in the autumn 2016 and be followed by amendment of relevant laws, in particular the law on the Superior Council of Magistracy (SCM) and the law on the status of judges.

Amendments to the Law on the Bar were approved by the Government and they include some improvements. The procedure of admission into the profession is still a poorly regulated area, and it grants too much discretion to the members of the Licensing Commission. The draft law should be improved before its adoption in final reading by the Parliament.

**Summary of individual actions**

Action	Target date	Stage
<b>5.1. Ministry of Justice to appoint the members of the Disciplinary Board of Judges according to Law no. 178 of 25.07.2014 on the disciplinary responsibility of judges and the Regulations regarding the selection of the civil society representatives in the Disciplinary Board of Judges, approved by the Minister of Justice, Order no. 91 of 01.02.2016</b>	<b>March 2016</b>	<b>Achieved with deficiencies</b>

On 04.05.2016, three new members were appointed as civil society representatives in the Disciplinary Board of Judges (with a delay from the deadline set in the roadmap). They were chosen as a result of a public contest in accordance with new rules established by the regulatory documents mentioned in the title of the activity. The activity has been formally achieved. However, only five candidates participated in the contest organized by the commission for selection of civil society representatives in the Disciplinary Board of Judges, out of which three candidates were pre-selected, and then selected for the position. The small number of candidates who applied for this position might be due to several factors, especially the too short period of the contest (it was only 6 working days, between March 17-25, 2016) and poor attractiveness of membership in the Disciplinary Board (big amounts of work for admission staff, insufficient remuneration for civil society representatives and lack of basic working conditions for them (offices, computers, etc.)).

Another problematic aspect is the selection of more members than are provided by the Law no. 178. Since there were other two active members from the civil society in the Disciplinary Board, the selection of 3 more members led to a number of 5 civil society representatives in the Disciplinary Board. It is contrary to Law no. 178, which provides for 4 civil society representatives in the Disciplinary Board, unless the provisions of the previous law are applied. Thus, the members were selected under the new law but in a number provided by the old law, which is inconsistent.

It should be mentioned that Action 5.1, despite being an important element of the system of disciplinary responsibility of judges, is still insufficient. It would be opportune to include into the

Roadmap an action for improving the system of disciplinary responsibility of judges, which involves at least modifications to Law no. 178 on the disciplinary responsibility of judges and Law no. 947 on the Superior Council of Magistracy. In particular, it is necessary to improve the efficiency of the disciplinary procedure and increase the accountability of the Judicial Inspection. The reform of Judicial Inspection and of the system of disciplinary responsibility of judges should be included into the government's key priorities.

<b>5.2. Parliament to adopt the law on reorganization of the judicial system (map of the courts).</b>	<b>March -April 2016</b>	<b>Achieved with deficiencies</b>
---	--------------------------	-----------------------------------

Law no. 76 of April 21, 2016 on reorganization of courts entered into force on July 01, 2016, except provisions related to liquidation of current specialized courts (military and district commercial courts), which will enter into force on April 01, 2017. The law provides for amalgamation of several courts (first instance), so beginning on January 01, 2017 there should be only 15 courts (currently, there are 44 courts). According to the law, unification of courts will be conducted gradually, until December 31, 2027, as long as conditions are created for that, under the plan approved by the Parliament at Government proposal. This reform, if implemented correctly, will enable creation of conditions for improving the quality of justice and more efficient administration of public money allocated to the justice system.

The law no. 76 is necessary and it is a high-priority action under the JSRS, which was supposed to be adopted back in 2013. Adoption of the draft law is an important achievement. However, it provided, without justification, for termination of mandates of all chairmen and deputy chairmen of courts from January 1, 2017 (article 4 p. (1) of the law) and organization by that time by the SCM of contests for the positions of chairmen and deputy chairmen. This provision is unjustified and might further increase the judges' resistance to reform. The termination only of mandates of chairmen and deputy chairmen of the courts that are merged or are liquidated would have ensured greater continuity and gradual implementation of the reform. At the same time, the law allows those whose mandates are being terminated to participate in two further contests for the position of chairman or deputy chairman (article 4 p. (2)). This provision might mean that the "loyal" chairmen/deputy chairmen will keep their positions. These concerns can be reduced only if the Superior Council of Magistracy (SCM) organizes fair contests and appoints heads and deputy heads of courts strictly according to criteria set in the law, based on candidates' merits. Also, amalgamation of the 5 Chisinau courts raises some questions in terms of opportunity and method, which seems to also cause the resistance of many judges to this reform. Discussions on this issue and scheduling merger of Chisinau courts for the last period provided for unification of courthouses might reduce tension and resistance to reform.

In no small measure, the reform is ambitious and requires complex approach for correct implementation. Resistance to the reform of the court map is quite big both inside the judiciary, including SCM, which is the key institution for good implementation of the law, and in other public authorities. The specificity of optimization of the court map requires continuing efforts from authorities to promote and explain the benefits of this reform to judges and litigants, in order to prevent wrong understanding of reform and manipulation of public opinion. Otherwise, the reform is likely to remain on paper or be distorted.

Final and transitional provisions of the draft law involve development by the Government, within 2 months after its entry into force, of a plan for the process of construction of new buildings and/or renovation of existing buildings. The Courts Administration Agency developed a draft plan, which is to be subjected to public consultations and approved in the shortest time. External technical assistance, including financial, for the Ministry of Justice and the Superior Council of Magistracy is particularly important in order to ensure good implementation of Law no. 76. Reorganization of courts should be one of the key priorities of the government, both for short and medium term.

Although it is not specifically included in Action 5.2, it is relevant to mention the draft law on creation of the Chisinau District Court of Appeal by dividing the current Chisinau Court of Appeal. The Ministry of Justice submitted the draft law to public consultation between July 4 and 15, 2016. The draft is an initiative of the Center for the Justice System Reform. The draft law is not sufficiently motivated, including on the part of economy and finance, and does not take into consideration the objective of optimizing the court map included in the Strategy of Justice Sector Reform. Its text is also unclear in the context of capital investments already made in the Chisinau Court of Appeal.

<b>5.3. Parliament to adopt amendments to the law on the status of judges.</b>	<b>March-April 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------------	--------------------------------------

Law no. 126 of June 09, 2016 on modifying and supplementing some legislative acts includes modifications to the Law on judicial organization (institution of examining magistrate) and Law on the status of judge (supplements to the reasons for suspension of judges). The reform of the institution of examining magistrate, adopted by Law no. 126, is an important reform. If the Superior Council of Magistracy correctly applies modifications related to examining magistrates, it is likely to improve the situation in this very problematic area.

The amendments regarding suspension of judges are rather technical, aimed to clarify some gaps from the legislation. They should be operated together or after amending Law no. 154 on selection, performance evaluation and career of judges, which provides (article 23 p. (3)) for dismissal of judges for failing performance evaluation, automatically, after the first failure. These provisions are contrary to international standards on the independence of judges (for details, see the Opinion on the Law of the Republic of Moldova on selection, performance evaluation and career of judges, no. JUD - MOL/252/2014 [RJU], developed by the OSCE/ODIHR, 13.06.2014).

Given the vague formulation of Action 5.3 in the Roadmap, it was qualified as achieved without deficiencies due to legislative modifications referring to the institution of examining magistrate and technical modifications related to suspension of judges. However, it is important to continue modifications needed to the Law on the status of judge, especially in terms of annulling the provision that allows dismissing judges for failing performance assessment, automatically, after the first failure.

<b>5.4. Parliament to adopt amendments to the Criminal Code, Criminal Procedure Code and Execution Code in order to exclude cases of arrest of minors who could be re-educated.</b>	<b>March - April 2016</b>	<b>Achieved without deficiencies</b>
---	---------------------------	--------------------------------------

Law no. 100 of May 26, 2016 and Law no. 123 of July 02, 2016 entered into force on July 29, 2016. Law no. 100 limits the period of detention of minors to up to 8 months. Law no. 123 requires judges and prosecutors to exempt from criminal liability the minors whose behavior can be corrected by educational measures of constraint. The monitoring of compliance with educational measures of constraint shall be the responsibility of probation bodies, and the special education and reeducation institutions were excluded from the mechanism of juvenile justice.

<b>5.5. Government to adopt draft amendments to the Constitution of the Republic of Moldova in respect of the initial term of appointing judges and the selection of judges of the Supreme Court of Justice, as well as specifying the role of the Superior Council of Magistracy in the self-administration of judiciary system, its composition and competences.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------	--------------------------------------

The draft law on amending and supplementing the Constitution (the judiciary – articles 116, 121, 121<sup>1</sup>, 122 and 123) was approved by Government Decision no. 430 of



11.04.2016, received positive opinion from the Constitutional Court, opinion no. 6 of 19.04.2016, and registered in the Parliament on 03.06.2016 under no. 187. According to that opinion, the draft law does not exceed the limits of review provided by the Constitution (article 142 p. (2)) and can be sent to the Parliament for examination. After the Constitutional Court issues its opinion, no intervention in the text of the draft law amending the Constitution is allowed. The draft law can be adopted at least 6 months after presentation of the initiative to amend the Constitution (after 3 November 2016).

The draft law is necessary and appropriate. It has been developed to implement action 1.1.6 p.6 and action 1.1.9 p. 3 of the JSRS. The draft law includes important provisions for the independence, accountability and professionalization of judges and the SCM. In particular, of importance are provisions on annulling the initial term of appointing judges for 5 years and on unifying the method of appointing judges in all courts by the President of the country upon SCM proposal. This amendment creates conditions for reducing the influence of politics in appointment of judges to the Supreme Court of Justice (SCJ), currently appointed by the Parliament. Judges’ immunity is reduced to functional immunity, which should contribute to increasing judges’ accountability. The draft also includes into the Constitution the obligation to consult the SCM about the state budget for courts; change of the SCM composition by excluding membership of the Prosecutor General and the SCJ Chairman; extending membership from “law professors” to “representatives of civil society with experience in law” and establishing a single term of 6 years for members of the SCM. Another provision of the draft law is that the SCM shall exercise its powers directly or through its specialized bodies, which will enable a clearer definition of the role and competence of the specialized bodies of the SCM.

At the same time, the draft law excludes from the Constitution the requirement on length of service in the position of judge of at least 10 years to be appointed into the SCJ. The explanatory note contains no arguments to exclude this condition. We believe that the SCJ is very important for ensuring a uniform judicial practice, and SCJ judges must have proven experience as a judge. Exclusion of the judge experience requirement should have been at least justified in the explanatory note to the draft law. There are concerns that the exclusion of this requirement from the Constitution could open the possibility for persons from civil society, academia and lawyers to become directly judges in the SCJ. This could lead to a new purge of SCJ and will block the judges’ promotion in career for many years.

Also, the draft law provides that judges will be “an important part” of the SCM. This provision is in line with relevant international standards. However, it is important to ensure that this provision is subsequently interpreted as a substantial part of the SCM, not a minority.

<b><i>5.6. Government to approve the draft law amending the law on lawyers by increasing the transparency in the process of accession to the lawyer profession, increase the liability and guaranteeing the responsibility of the lawyers by financial support</i></b>	<b><i>March 2016</i></b>	<b><i>Achieved with deficiencies</i></b>
--	--------------------------	--

The draft law on amending the Law on Bar was approved by Government Decision no. 555 of 05.05.2016 and registered in the Parliament on 10.05.2016 under no. 198. The initial draft was prepared at the request of the Ministry of Justice by the Union of Lawyers. Subsequently, it was presented to the MoJ, where more amendments were introduced. However, the draft law does not answer the most pressing problem of transparency in acceding to the profession of lawyer: there is no clear and transparent procedure for admission to the profession and no objective criteria for assessing the results of the bar exams. Currently, members of the Lawyers’ Licensing Commission admit candidates to the bar at their own discretion. Also, the draft law provides equal penalties for lawyers and trainee lawyers, which is not justified, and there are no time-limitations provided for the disciplinary procedures.

<b>5.7. Government to approve the draft law on reducing the limits of discretion (liberty of interpretation) of judges in the civil, criminal, and contravention cases</b>	<b>March 2016</b>	<b>Achieved with deficiencies</b>
<p>Law no. 122 entered into force on August 05, 2016. It limits the discretion of authorities in criminal proceedings and civil proceedings, but extends the discretion in the application of some administrative sanctions. In some cases, the judges' discretion is unjustifiably limited. For example, judges will no longer be able to annul interim measures on their own initiative, although this procedure allowed judges to annul the incorrectly applied interim measures</p> <p>Also, the law includes a problematic modification related to the public nature of meetings. Thus, courts must declare closed hearings when there is a chance to disclose information relating to intimate aspects of life, that violate professional reputation or other circumstances that could harm the interests of the trial participants, public order or morality. In this case, limiting the judges' discretion could lead to a violation of the principle of publicity of court hearings. Thus, it is very important to monitor the implementation of this provision in order to ensure that the principle of public hearings is respected.</p>		
<b>5.8. Ministry of Justice to develop and present for public consultations strategies for modernization of the probation system and penitentiary.</b>	<b>May 2016</b>	<b>Achieved without deficiencies</b>

The action no. 5.8 has been achieved. The action is poorly described in the Roadmap. The realization of the action is resumed to the proposal of the above-mentioned documents for public consultations. It seems that most efforts (development of strategies) for the implementation of this action were realized prior to the Roadmap, including with the involvement of civil society representatives. The Ministry of Justice proposed for consultation three documents that prescribe public policy initiatives in the field of probation and penitentiary system, starting April 13, 2016.

The implementation of strategies for modernizing the penitentiary and probation systems is not an area that could create resistance in society. However, it might prove to be complicated to implement the strategies due to lack of resources. According to the action plan for implementation of the Probation System Development Strategy for 2016-2020, implementation costs will be covered from the state budget, within the approved budget. Neither the strategy, nor the action plan provide for exact amounts needed for implementation or potential source of funding.

**Next steps and priority recommendations:**

Court map:

- The plan for construction of new buildings and/or renovation of existing buildings needed for good functioning of the court system to be subjected to public consultation and adopted by the Parliament, as soon as possible.
- An action plan on implementation of the law on reorganization of the court system shall be developed as soon as possible. This plan should include steps for implementing the law, including organization of contests, , transfer of judges and court staff, informing the society about the steps of court system reorganization;
- Ensure efficient communication between key authorities that are to implement the court system reorganization reform (MoJ, SCM, the judiciary and the Ministry of Finance) and to develop a common approach on communication with the society about the implementation of reform.
- The Ministry of Justice to abandon the draft law on creation of the Chisinau District Court of Appeal, by dividing the current Chisinau Court of Appeal, or at least to assess and motivate the draft law in the spirit of the court map reform.

Bar (improving draft law):

- Establish the process for the qualifying examination for lawyers, providing for a clear and transparent procedure and objective criteria of evaluation in the qualification exam;
- Reduce the fine stipulated for trainee lawyers in the draft law on amending the Law on Bar; Introduce fixed deadlines for control of disciplinary notifications and for examination of disciplinary cases against lawyers (draft law on Parliament's agenda);

Status, performance evaluation and disciplinary responsibility of judges:

- Draft law no. 187 on modifying and supplementing the Constitution (the judiciary system – articles 116, 121, 121<sup>1</sup>, 122 and 123) to be adopted in line with legal procedures and upon expiry of the term of 6 months from the presentation of the initiative on modifying the Constitution, and after organization of debates about the innovations included. In particular, it is necessary to examine the opportunity of excluding the requirement regarding the length of service of the judges appointed to the Supreme Court. The draft law is to become one of the Parliament's priorities in the field of justice.
- The Judicial Inspection and the system of disciplinary responsibility of judges to be reformed by strengthening the independence and responsibility of the Judicial Inspection and increasing the efficiency of the system of disciplinary responsibility of judges (modifying Laws no. 178 and no. 947).
- Create favorable working conditions for civil society representatives in the Disciplinary Board in order to make this position more attractive for professionals. Amend the Rules on the selection of the civil society representatives to the Disciplinary Board of Judges in order to provide a 30-days term for submission of application for this position.
- Law no. 154 on selection, performance evaluation and career of judges to be modified, as it currently provides (in Article 23 paragraph (3)) for dismissing judges for failing performance evaluation, automatically after the first failure.

Civil procedure code:

- Reintroduce the discretion of judges to declare closed hearings. Public and not secret/closed hearings should be the rule.

Probation and penitentiary systems:

- Carry out a study to assess implementation costs for the strategies of modernizing the probation and penitentiary systems and organize common campaigns with representatives of development partners to ensure the implementation of strategies.

## **6. Reform of the Prosecution**

### **Summary of general progress**

---

*All 3 monitored actions were achieved without deficiencies.*

---

The actions included in this area have been overdue for some time from the JSRS. In March 2016, the new Law on Prosecution was promulgated and published, and entered into force on 1 August 2016. In April 2016, the Constitutional Court approved amendments to the Constitution regarding prosecution, and in July 2016 the Parliament approved the legislation needed for effective implementation of the Law on Prosecution.

The law regarding the prosecutor's office involves considerable internal changes related to the prosecutors' selection and career, but also prosecutor's office internal organization. These measures are to be treated by prosecutors with all seriousness and implemented transparently. Special attention should be paid to the reorganization of the Chisinau Prosecutor's Office. The solutions proposed by the prosecutors can be discussed in advance

with the development partners, civil society and interested prosecutors. Considering the fact that the new Law regarding the prosecutor's office foresees higher salaries for the prosecutors and an increased number of auxiliary staff assisting the tem, the Government is to allocate sufficient resources to pay these increased salaries for the prosecutors starting with 01.08.2016, and to hire an increased number of assisting staff starting with 01.01.2017.

### Summary of individual actions

Action	Target date	Stage
<b>6.1. Parliament to submit the adopted Law on Prosecution for promulgation to the President.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>

The president of the country adopted the new Law regarding the prosecutor's office on 16.03.2016. The Law no. 3 dated 25.02.2016 regarding the prosecutor's office entered into force on 01.08.2016. The draft law was endorsed by the Venice Committee and subject to public consultations prior to adoption.

The Law regarding the prosecutor's office implies considerable changes in the prosecutor's office. New hiring, promotion and accountability rules will be developed for the prosecutors; the structure of the General Prosecutor's Office will be changed; several prosecutor's offices will be liquidated and other will be reorganized; contests for hiring a great number of head-prosecutors will be organized and the number of assisting staff for prosecutors will be increased etc. These measures are to be treated with all seriousness and implemented transparently. The solutions proposed should be discussed in advance with the development partners, civil society and interested prosecutors.

<b>6.2. Government to initiate the procedure for amending the Constitution, which relates to the Prosecution reforms (i.e. art 124 and 125 of the Constitution).</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------	--------------------------------------

On 12.04.2016, the Government requested the opinion of the Constitutional Court regarding amendments to articles 124 and 125 of the Constitution. These amendments are in line with the concept that is at the basis of the new Law on Prosecution. On 19.04.2016, the [Constitutional Court approved](#) this amendment to the Constitution. On 03.05.2016, [the initiative was registered in the Parliament](#) (no. 188). According to article 143 of the Constitution, this draft law can be adopted by the Parliament only 6 months after the presentation of the initiative to the Parliament (after 3 November 2016).

<b>6.3. Government to adopt the related framework to the Prosecution Law as approved by the justice sector reform working group.</b>	<b>April 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------	--------------------------------------

The working group on prosecution reform prepared two draft laws to implement this action. The first one amends the regulatory framework related to the Law on Prosecution, and the second one refer to the internal organization of specialized prosecutors' offices. The last draft law was developed in order to guarantee the administrative independence of specialized prosecutors' offices. Both projects were adopted by the Parliament in the final reading as early as the beginning of July 2016 (for details, see activity 1.6).

- Since the new Law on Prosecution provides substantially higher salaries for prosecutors and an increase in number of assisting staff for the prosecutors, the Government should allocate funds so that starting with 01.08.2016, the prosecutors would receive the salaries foreseen by the new law and to hire more units of assisting staff for the prosecutors, starting with 01.01.2017,.

### Next steps and priority recommendations:

- The changes in the internal organization are to be developed and implemented by prosecutors according to the spirit of the law regarding the prosecutor's office, without mimicking or trying to preserve the prosecutor's offices that are to be liquidated under the new law in a camouflaged way.
- The management of the prosecutor's office will develop a realistic plan that would ensure the merger of territorial prosecutor's offices from Chisinau into one single prosecutor's office and also its efficient activity.
- The changes proposed by prosecutors regarding the prosecutors' selection, career and discipline are to be treated by prosecutors with all seriousness and implemented transparently. The solutions proposed should be discussed in advance with the development partners, civil society and interested prosecutors.
- The Government is to allocate funds so that starting with 01.08.2016 the prosecutors would receive the salaries foreseen by the new law regarding the prosecutor's office.
- The Government is to allocate funds so that starting with 01.01.2017, more than 300 units of assisting staff for the prosecutors are hired.
- Allocation of funds necessary for prosecutors to receive, beginning on August 01, 2016, salaries under the new Law on prosecution and for hiring, from January 01, 2017, 300 more staff units to assist prosecutors.
- The Parliament shall amend without delay the Constitutional provisions concerning the prosecution office.

## 7. Resuming negotiations for the signature of a Cooperation Agreement with IMF

### Summary of general progress

*Out of 6 monitored actions, 4 were achieved without deficiencies, 1 – was achieved with deficiencies and 1 – not achieved.*

Actions related to audit in the banks subject to special supervision have been finalized, and the Action Plan to redress the situation of these banks is currently in the process of approval and implementation (the plan for one bank is still to be approved). The latest visit of IMF experts (July 5-15, 2016) practically represented the start of negotiations. Discussions with representatives of the Government and the National Bank of Moldova focused on the perspectives of economic growth, policies in financial sector, sustainability of public finances, and structural reforms needed to improve the business environment and attract investments. At the same time, experts recognized the reforms performed and the progresses achieved on the way to signing a new Agreement: this fact is evident, among other things, in the announcement in late July about conclusion of a staff-level agreement on a program of economic reforms supported by a 3-year-long funding arrangement. However, the staff-level agreement will have to be also approved by IMF leadership, represented by the Executive Committee, an event planned for this October.

### Summary of individual actions

Actiona	Target date	Stage
<b>7.1. National Bank to consult with IMF measures to be taken following the audit reports for the 2 banks, placed under special supervision.</b>	<b>March-April 2016</b>	<b>Achieved without deficiencies</b>

Following the audit of two of the three banks which are under special surveillance,

consultations with the IMF were carried out in order to coordinate measures that should be taken. The audit reports are not public and have not been consulted in the monitoring process of the Roadmap.

<b>7.2. National Bank to develop an action plan following the audit recommendations/findings for the 2 banks, placed under special supervision.</b>	<b>March-April 2016</b>	<b>Achieved without deficiencies</b>
---	-------------------------	--------------------------------------

Currently, the Action Plan was developed by the National Bank. According to the NBM's communique, the diagnostic studies have not detected risks for the financial stability of banks, but identified areas to be strengthened related to the corporate governance and internal control system, transparency of shareholders and affiliated persons and of the lending activity.

<b>7.3. Complete the audits of the third bank under special supervision.</b>	<b>March-April 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------------	--------------------------------------

Following the audit of the third bank which is under special surveillance, consultations with the IMF were carried out in order to coordinate measures that should be taken. The audit report is not public and has not been consulted in the monitoring process of the Roadmap. However, it is not clear why the audit process for all three banks under special supervision took so long (it started in October, 2015), while in the EU, the controls of banks ten times bigger take 1-2 months.

<b>7.4. National Bank to develop an action plan following the audit recommendations/findings for the third bank.</b>	<b>April 2016</b>	<b>Achieved with deficiencies</b>
--	-------------------	-----------------------------------

Currently, the Action Plan was developed by the National Bank, but the consultative and approval process by the stakeholders is going to be finalized by the end of August.

<b>7.5. Government to undertake all necessary steps in order to launch negotiation for a new Cooperation Agreement with IMF (Memorandum of Economic and Financial Policies)</b>	<b>April-May 2016</b>	<b>Achieved without deficiencies</b>
---	-----------------------	--------------------------------------

The last visit of the IMF mission was focused on financial system reforms and ensuring the safety and soundness of Moldavian commercial banks. At the moment the execution of all actions in the roadmap related to banking sector reform were not finished. However, negotiations on a new cooperation agreement have been launched, and an understanding at the level of experts has been reached.

<b>7.6. Negotiation and signing by the Government of a cooperation agreement with the IMF.</b>	<b>June 2016</b>	<b>Not achieved</b>
--	------------------	---------------------

Discussions with representatives of the Government and the National Bank of Moldova during IMF experts' latest visit (July 5-15, 2016) focused on the perspectives of economic growth, policies concerning the financial sector, sustainability of public finances, and structural reforms needed to improve business environment and attract investments. At the same time, experts recognized the reforms performed and the progresses achieved on the way to signing a new Agreement: this fact is evident, among other things, in the announcement in late July about conclusion of an expert-level agreement on a program of economic reforms supported by a 3-year-long funding arrangement. Eventually, the Agreement is to be signed in October 2016.



### Next steps and priority recommendations:

- The currently precarious situation in the financial and banking system shows again that in addition to financial support, Moldova needs continuing monitoring of financial policies, and the collaboration agreement with the IMF involves such monitoring. The experience of the last three years indicates that the lack of a functional agreement with the IMF correlated with continuing political crisis is a dangerous combination for the economy and security of Moldova. So, Moldova needs an agreement with the IMF not only from the perspective of financial support, but also from the perspective of technical aid and even pressure that the IMF can often exercise on the Government in order to implement unpopular reforms, structural reforms needed to increase the country's competitiveness, which couldn't be implemented without this external anchor.
- Given that the agreement has not been effectively signed yet, and several actions in chapter 8 have not been fully realized, we find it necessary to settle all overdue actions immediately after the summer vacation.

## 8. Strengthen the independence and supervisory powers of the National Bank and of the National Commission for Financial Markets

### Summary of general progress

*Out of 8 monitored actions, 5 were achieved without deficiencies and 3 - not achieved.*

The reform of the financial and banking system of Moldova is a crucial one and it is a fundamental condition for resuming the cooperation with Moldovan authorities invoked by all development partners. By the deadline, several actions have been realized, and some of the most important are election of the new governor for the National Bank of Moldova (NBM), adjustment of the legal framework in order to strengthen the independence of the NBM and the National Commission for Financial Markets (NCFM), as well as transfer of the central depository under NBM management. Still, some actions have not been fully realized. Here we could mention the troublesome process of appointment of the other members in NBM managing bodies (two persons for the vacancies of deputy governor are still to be identified), and the adoption of the legislation on management of systemic banking crises. Also, it has been decided to start contracting independent international evaluation for the NBM supervision process, beginning this August.

### Summary of individual actions

Action	Target date	Stage
<b>8.1. Parliament to finalize the procedure for appointing a Governor to the National Bank of Moldova (NBM) via a transparent competition, and to appoint the Governor to the NBM</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>

After several months without a fully functional management, from February through March, 2016, a second attempt to identify the suitable candidate for the NBM Governor position through a public contest was made. The Contest Committee was purely consultative, the the Speaker of the Parliament having the final decision on proposing a candidate. This candidate identification approach is an innovative one, both for Moldova and globally (usually, these processes are less transparent and participative). As a result, a candidate with a relevant professional profile has been selected as governor of the central bank, and he was voted for by the majority of the parliament members.

<b>8.2. Parliament to appoint new members to the NBM's management bodies in order to fill-in the existing vacancies (two deputy governors and four independent members of the NBM's Supervisory Council)</b>	<b>March-April 2016</b>	<b>Not achieved</b>
--	-------------------------	---------------------

Consolidation of the central bank's leadership started with election in March of a new Governor, who began working on April 11, 2016. However, to ensure full functionality of the NBM, one more collegial management body is still to be completed – the Executive Committee. One more stage in this process ended with the identification and approval by the Parliament of the remaining members of the Supervisory Board. According to modifications made in 2015 to the Law on the National Bank of Moldova, the Supervisory Board is a collegial body responsible for organization of an efficient system of independent public supervision of the National Bank's activities. It is made of 7 members, including 3 NBM employees (governor, first deputy governor and one deputy governor) and 4 members who are not employees of the NBM.

In connection with the contest held by the Parliamentary Commission for economy, budget, and finance, 11 personal files were examined and the candidates' performance was assessed. In the end, the Commission decided to propose that the Parliament validate 4 persons who obtained the largest cumulative score in descending order. On July 29, 2016, by Parliament Decision, the 4 candidates were approved for a period of 7 years. Membership in the NBM's Supervisory Board was granted to Dumitru Ursu, Alexandru Pelin, Valeriu Iasan, and Vadim Enicov.

Although the professional profile of the selected candidates seems relevant to their positions, the selection process did not include representatives of civil society organizations, which raises doubts regarding the correctness of the process conducted by the contest commission. We find unfortunate the decision not to include into the selection commission of relevant representatives of civil society, academia, and non-governmental organizations specialized in verification of integrity and anti-corruption policies. Given that candidates were assessed and interviewed behind closed doors, the public nature of the selection contest and the process of evaluation of candidates' professionalism and integrity are questionable.

<b>8.3. Parliament to adopt the financial-banking legislative package (amendments to the NBM and NCFM Laws, draft law #14) agreed with the IMF and WB.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------	--------------------------------------

Law no. 62 voted on 08.04.2016 and published in the Gazette on 06.05.2016 (the financial package, draft no. 14) involves the amendment and additions to several legislative documents, namely the Law on the National Bank of Moldova and the Law on the National Committee for Financial Markets and the Law on the Capital Market.

This law, named also "the financial package", was developed based on the recommendations of the Financial Sector Assessment Programme (FSAP) from 2014, and its objective is to strengthen the independence of regulators in the banking sector (NBM) and the financial non-banking sector (NCFM), to increase protection of their employees from potential intimidation from affected parties, as well as to create the single central depository that is to be established, supervised, controlled and regulated by the NBM. Basically, the package includes three core provisions, and namely:

**1. Strengthening the institutional independence of NBM and NCFM: other authorities' involvement in the NBM and NCFM activity is prohibited**

These provisions target the interdiction to "approve, suspend, annul, censure, postpone or condition the entering into force of NBM and NCFM documents, to issue ex-ante opinions on their documents, or in any other way influence the issuing of the final



document of these authorities. In this context, the elimination of the requirement for the regulatory documents issued by NBM and NCFM to be endorsed by the Ministry of Justice was voted in order to eliminate the Government’s ability to intervene in the activity of these institutions. Basically, these provisions are correlated with recommendations of the Basel Committee and the financial sector assessment report produced by the World Bank and the IMF, and should eliminate a major gap that affects the NBM and NCFM independence, this will ensure a better alignment of the institutional framework to the international best practices in this sector.

**2. Strengthening the independence related to the NBM and NCFM staff**

These amendments aim to increase the level of legal protection for the NBM and NCFM staff in case they are taken to court by the regulated entities (or affiliated individuals) for certain decisions or measures adopted in good faith and within their supervisory and regulatory functions in the banking and financial non-banking sector. Generally, such measures are welcomed due to the huge legal risks that central banks and their staff meet with in exercising their duties. In the case of NBM and NCFM, strengthening the staff's legal protection is currently especially important, since both institutions have to promote a series of important systemic reforms that could affect many interests. Even if including such guarantees is recommended by the Basel Committee, as well as the World Bank and the IMF, the approved wording somewhat distorts those provisions. According to the Basel principles of efficient bank supervision, the employees of a regulatory institution should have legal protection for cases when they are taken to court for acts committed or not committed in good faith. However, in the approved wording, the focus is on full protection except for the acts committed or not committed in bad faith. This generates the risk that the NBM staff (and the NCFM staff in case of a similar amendment to the NCFM law) can be exempted from punishment, considering that acts committed or not committed in bad faith are hard to prove in court, thus undermining the principle of the regulator's accountability.

**3. Creating the single central depository**

The amendments to the regulatory framework on the capital market provide that a single central depository is to be created which is to be established, supervised, controlled and regulated by the NBM. The importance of such an instrument for Moldova is crucial, considering the quite fragmented infrastructure system for depositing financial instruments, which undermines the efficiency of property rights protection and, accordingly, undermines the country’s investment attractiveness. In this regard, the Government took the commitment to submit the draft law on the Single central depository to the Parliament within 3 months from the publication of Law no.62 (Official Gazette no. 123-127 as of 06.05.2016).

<b>8.4. NBM and the Parliament (with support of IMF) to engage an independent external review of the banking supervisory process at the National Bank of Moldova.</b>	<b>July 2016</b>	<b>Not achieved</b>
<p>During March-June 2016 were not registered any steps in order to identify and contract an independent assessment of the banking supervisory process at the NBM. According to NBM, consultations with the IMF and other stakeholders led to the decision to begin, in August, the process of identification and contracting of experts to conduct this assessment.</p>		
<b>8.5. National Bank to draft the Action Plan for the implementation of the Financial Sector Assessment Program (FSAP) recommendations.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>

After about 2 years since the World Bank and the International Monetary Fund financial

sector assessment program for Moldova (FSAP) closed, the NBM finalized the development of the implementation Action Plan for recommendations emphasized in the final report. The main FSAP recommendations focus on reducing the main risks and vulnerabilities of the country's financial sector, and namely: (i) increasing the quality of financial sector supervision, (ii) shareholders transparency, (iii) strengthening the competencies of supervisory authorities in applying the adequate legislation in this field, (iv) strengthening the depositors protection system. Also, the recommendations are based on the need to improve the current legal and institutional financial crisis management framework.

Although the NBM has developed the plan, we can consider it being very late. Taking into account all the past years developments in the financial banking sector, the fact that the authorities needed 2 years and a large scale banking crisis to get back to the implementation of FSAP recommendations is concerning.

<b>8.6. National Bank to draft and consult with IMF on the Legal, Institutional, and Regulatory Framework in Times of Financial Stability - Legal tools for Systemic Banking Crises (Bridge Bank legislation).</b>	<b>March-May 2016</b>	<b>Achieved without deficiencies</b>
--	-----------------------	--------------------------------------

Currently, the development of the legal, institutional and regulatory framework for financial stability (the *bridge bank* legislation) is one of the main actions meant to strengthen and reform the financial and banking system of Moldova. In the process of development of the draft law, consideration was given to the experience of EU Member States and provisions of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms. Overall, the draft law on the recovery and resolution of banks appears to be a new instrument for state intervention, needed especially to prevent bankruptcy of banking institutions. At the same time, if bankruptcy becomes inevitable, the draft law intends to reduce negative consequences to the minimum, in the sense of maintaining the bank's functions of systemic importance by means of restoring its viability if possible or, as the case may be, by transferring these functions to another entity.

*Bank resolution*, in the context of the draft law, describes the process of restructuring of a banking institution by a resolution authority by means of resolution tools and competences. Resolution measures in relations with banks will be funded from the bank resolution fund, thus avoiding use of public budget resources. This fund will be made of contributions collected from the banking system, and until December 31, 2024 they shall amount to 1% of the volume of banks' guaranteed deposits. The bank resolution fund shall be administered by the Fund for Guarantees on Deposits in the Banking System, and resources shall be used solely based on NBM decisions.

<b>8.7. Parliament to adopt relevant legislation related to Legal tools for Systemic Banking Crises (Bridge Bank legislation).</b>	<b>June-July 2016</b>	<b>Not achieved</b>
--	-----------------------	---------------------

This action represents a continuation of previous action. On July 29, 2016, this draft law was voted in the first reading, and already in the autumn session the Parliament will return to it for approval in final reading. At the same time, during parliamentary discussions it has been agreed that for the second reading authors will work on a much clearer language for the text of the law and on removing all technical inconsistencies.

<b>8.8. NBM to draft (with the support of IMF) a special legislation on the Central Depository</b>	<b>May 2016</b>	<b>Achieved without deficiencies</b>
--	-----------------	--------------------------------------

The development of special legislation on the single central depository is derived from the amendments operated to the NBM law together with the approval of the financial package (action 8.3 of this document) on 08.04.2016. The Government took the commitment to submit the draft law on the Single central depository to the Parliament within 3 months from the publication of Law no.62 (Official Gazette no.123-127 as of 06.05.2016). The Single central depository is an important pillar of any financial system because it channels all financial instruments, the accounts of securities holders in entities of public interest in one single place, as well as provides clearing, settlement services and other related operations. The importance of such an instrument for Moldova is crucial, considering the quite fragmented infrastructure system for depositing financial instruments, which undermines the efficiency of property rights protection and, accordingly, undermines the country's investment attractiveness. Considering that the NBM was entitled to constitute, hold, and supervise the Single Central Depository, it also got the task to develop the relevant draft law. After coordination with IMF experts, on July 15, 2016, a draft law on the Central Securities Depository was sent to the Parliament for debates and approval. The draft law was developed with difficulties because of limited time, complexity of the area, and political disagreements regarding the institutions that are to manage and supervise the Depository.

According to the draft law, the Central Depository shall be organized in the form of joint-stock company with registered capital of at least EUR 1 million, and the NBM shall hold a big part of its shares. The principles of supervision of the Depository's activities raise some questions. Thus, in addition to initial responsibilities of constituting, operating and regulating the Central Securities Depository, the NBM shall act as the main authority for its supervision. At the same time, in the exercise of these functions, the NBM will cooperate with the National Commission for Financial Markets (NCFM) via an inter-agency committee. Shared supervision of the depository, just like of any financial entity, by 2 or more institutions, is contrary to the international principles of financial market infrastructure; it undermines the responsibility of the institutions involved and complicates the process of regulation and decision making. Here, we have the example of the National Committee for Financial Stability, which proved its inefficiency during crisis specifically due to lack of clear sharing of responsibilities and decision making.

On July 29, 2016, the draft law was voted by the Parliament in the first reading, and in the autumn session the Parliament is to return to it for approval in final reading.

#### **Next steps and priority recommendations:**

However, the measures taken so far are not fully sufficient to ensure an efficient financial system, and neither to prevent similar crises in the future. More question marks remain around the quality of assets in the entire banking sector, but also around the situation at the three large banks which continue to be under special supervision. Also, one of the main recommendations of the IMF was not fully implemented, namely the quality and transparency of bank shareholders, and there are doubts concerning the actual real beneficiaries of several packages of shares.

Even if the development process of the legal, institutional and regulatory framework on systemic banking crises was completed, it does not fully solve the situation of ensuring financial stability. The National Committee for Financial Stability (NCFS), the body tasked with coordinating the institutions responsible for the stability of the financial sector, is currently facing great governance problems caused by strong political affiliation and unclear mandate, thus becoming part of the problem in solving the banking crisis.

In order to continue the acceleration of the financial and banking sector reforms pace, for the following period we encourage the institutions involved in this process to correlate their actions and consolidate their efforts in order to implement the following measures:

- Finalize the process of appointing all members of NBM management bodies based on relevant professional experience, political non-affiliation and professional integrity criteria;
- Finalize the approval of the regulatory framework on systemic banking crises and the special legislation on the Single Central Depository;
- Eliminate any form of exposure and interaction between “offshore companies” and commercial banks, since this was an essential element in concealing the funds misappropriated from the liquidated commercial banks;
- Update the list of jurisdictions that do not implement the international standards of transparency<sup>17</sup> and observe the requirements regarding money laundry by including all states and territories that do not adopt such rules in the national legislation. Following some recent disclosures we notice that certain banks continue to provide services to companies residing in jurisdictions included in that list, without any response from the NBA and NAC;
- Reform the bank deposits guarantee framework by strengthening the capacity of the Deposits Guarantee Fund so that it plays a bigger role in the process of solving bank crises, including bank liquidation. The ceiling of deposits guarantee should be increased in the following years up to 12 average wages per economy;
- Increase the prudential requirements in order to eliminate toxic assets from the entire banking sector;
- Restructure the National Council for Financial Stability so that its responsibilities do not overlap with those of NBM and NCFM, and its role is limited to facilitating communication between institutions in order to prevent financial crises;
- Accelerate the implementation of the EU – Moldova Association Agreement, including the financial services chapter. In this regard is important to adopt a schedule for overdue and remaining actions according to the Ukraine and Georgia model.

## **9. Ensure thorough, impartial investigation of the cases of fraud that affected the banking system in 2014, also with a view to recovering the diverted funds and to bringing those responsible to justice.**

### **Summary of general progress**

*Out of 2 monitored actions, 1 was achieved without deficiencies and 1 achieved with deficiencies. Also, neither action has any deadline, having a permanent nature.*

The banking frauds investigation is slow and with no important results up until now. The Investigation started by the General Prosecutor’s Office is not transparent, the number of files that were sent to court as well as who are the people involved is unclear. Still, the commencement of the second phase referring to the Kroll investigation is commendable. It implies a more thorough investigation as well as the implementation of a strategy to recover the assets that disappeared from the three banks.

### **Summary of individual actions**

Action	Target date	Stage
<b><i>9.1. National Bank will grant all necessary support to Kroll investigation with a view to recover the diverted funds.</i></b>	<b><i>Ongoing</i></b>	<b><i>Achieved without deficiencies</i></b>

The NBM maintains a continuous dialogue with Kroll company and “Steptoe and Johnson” international legal firm in order to continue the investigation of banking frauds

and recovery of the embezzled funds. Also, the development and implementation of an efficient investigation plan is pursued, as well as a strategy to recover the assets in the benefit of Moldova. However, considering that the investigations launched by Kroll company are not public, certain results or actions could not be evaluated within the Roadmap monitoring process.

<b>9.2. General Prosecutor’s Office to ensure a timely advancing of the cases to courts and swift processing of the international requests for legal assistance from Latvia, Russia and the US.</b>	<b>Ongoing</b>	<b>Achieved with deficiencies</b>
---	----------------	-----------------------------------

Currently, the General Prosecutor’s Office launched an investigation to establish all persons involved, as well as the money flow in the banking system frauds. Also, the General Prosecutor’s Office is taking measures working with other countries in order to establish the entire chain of financial transactions involving the funds embezzled from the three liquidated banks. Still, the investigations of the General Prosecutor’s Office are conducted in a rather non-transparent manner, making their evaluation impossible.

Moreover, it is unknown which of the pending actions refer to fraud in the banking sector and who are all the persons involved in these case files. Also, according to the National Anticorruption Center and the Prosecution, the amount of the funds embezzled whose beneficiaries are known allegedly makes up about MDL 1.7 billion (EUR 50.8 million and MDL 375 million – Platon, and MDL 321 million – Filat). About investigation regarding the rest of the money, nothing is known, and the information presented by the Ministry of Finance has not yet included these amounts.

**Next steps and priority recommendations:**

- Ensure a thorough investigation of the frauds from the banking system in order to bring the culprits to justice and recover the embezzled funds.
- Speed up investigations on banking frauds launched by prosecutors, as well as the dialogue with partners from the countries where these funds have been transferred to. Maintain a constructive dialogue between all stakeholders: the NBM, the Prosecutor’s Office, the Kroll company.  
Increase the transparency (within the legal limits) of investigations of banking frauds. Public information will increase public confidence about the correctness of the measures taken.
- Ensuring elimination of any forms of exposure and interaction between offshore companies and commercial banks, as it has been an essential element for dissimulation of funds embezzled from the liquidated commercial banks.

**10. Restoring an attractive and stable business and investment climate**

**Summary of general progress**

*Out of 10 monitored actions, 8 were achieved without deficiencies, 1 – achieved with deficiencies and 1 - not achieved.*

Generally, the implementation of this chapter’s actions is meant to create a regulatory framework that would benefit the business environment and refers to adopting new laws, developing draft legislative documents, the Government approving strategic documents or updating action plans. Although, the actions have been finished, their implementation took longer compared to the deadline set up in the Roadmap. Moreover, taking into account the fact that these actions are long-term, the immediate effects are either small or hard to measure.

During the implementation of the Roadmap an increase of economic activity did not occur, and the business environment continues to face a series of constrains. On the contrary, in the first half of 2016, and especially in the second semester, when the provisions of the Roadmap were implemented, the business environment indicators continued their negative development that started in 2015:

- after a minor growth by 0,6% in 2015, industrial production grew with another 1,1% compared to previous year in T1:2016, and in T2:2016 decreased by 1%;
- although a slowing down is noted, the amount of transported goods continues to decrease. Thus in 2015, the contraction is of 13,5%, and in T1:2016 and T2:2016 decreases of 13,6% compared to previous year and, accordingly, by 10,9% compared to previous year were recorded.
- The decrease in investments, financed by business and population, by 6,4 % in 2015 was followed by a 19,4% decrease compared to previous year in T1:2016 and a contraction of 12,2 % compared to previous year in T2:2016.

### Summary of individual actions

Action	Target date	Stage
<p><b>10.1. Parliament to amend the legislative framework in order to improve business climate, including:</b></p> <ul style="list-style-type: none"> <li>- <b>draft law for amending and supplementing the Law no. 451-XV of 30.07.2001 on licensing of entrepreneurial activity;</b></li> <li>- <b>draft law for amending the Law no.235-XVI of 20.07.2006 on the basic principles of regulation of the entrepreneurial activity;</b></li> <li>- <b>draft law on amending the law on the license activity of entrepreneurs and the law regulating by authorization the activity of entrepreneurs.</b></li> <li>- <b>draft law on amending the law on state registration of the legal entities and individual entrepreneurs (art, 2, 4, 5,7) and the law on the regulating by authorization the activity of entrepreneurs.</b></li> <li>- <b>draft law on metrology;</b></li> <li>- <b>draft law on national standardization;</b></li> </ul>	<p><b>March-April 2016</b></p>	<p><b>Achieved with deficiencies</b></p>

Mostly the laws were adopted, although certain gaps in some of them may be pointed out:

- The Law regarding the amendment of the Law on state registration of legal entities and sole proprietors and of the Law on regulating entrepreneurial activity through authorization. The purpose of the draft law is to make the functioning of the one-stop registration shop more efficient, as well as to establish a single tariff for the registration procedure. In addition to that, the law foresees the extension of the one-stop-shop competencies and its transformation into a mechanism through which the state registration body provides consultations, assistance and information to the economic entity. Among the benefits of the implementation of the law are: reducing the time and efforts of economic entities in the registration process and reducing the possibility of corruption;
- The Law on Metrology and the Law on national standardization – these are legislative acts approved in the context of DCFTA implementation. These laws aim to create a legal framework which is harmonized with the Community Acquis, this allowing for further implementation of other EU Directives. Thus, a new operational framework on metrology and standardization, rallying economic operators from Moldova to European



practices will be established. T However, since the secondary legislation was not fully adopted (see Action 10.2), the implementation of said legislative documents shall be faulty;

- There were no amendments operated to the Law nr.235-XVI dated 20.07.2006 regarding the main principles in regulating entrepreneurial activity, though in the meeting from 27.04.2016 the GD on the amendment and supplementation of certain Government Decisions according to Law nr.235-XVI dated 20.07.2006 was adopted, and the goal of this decision was to perfect the AIR development mechanism and the AIR process consolidation. Among the benefits of this documents are: the simplification of the AIR development procedure and increasing the AIR process transparency.
- Amendment of Law no.451-XV dated 30.07.2001 on regulating the entrepreneurial activity through licensing – the draft provides bringing the law in line with the Transportation Code. Through this regulatory document the road transport licensing for a fee for a period of 8 years was introduced. This amendment, favors the transporters, but there are some issues coming up in licensing, because the Licensing Chamber requests some additional documents regarding the transported object;
- The Law on regulating entrepreneurial activity through licensing and the Law on regulating entrepreneurial activity through authorization implies developing principles of regulation through permissive documents. The provisions included in this law will serve as basis for the future permissive documents revision process that is to be accomplished by: reducing the number of permissive documents, their replacement with other mechanisms or the highest possible simplification for the procedure of obtaining permissive documents. A first revision step is planned to annul about 100 permissive documents;

The draft law that is not adopted refers to the amendment of Law no. 131 dated 08.06.2012 on the state control of entrepreneurial activity adopted in the Government meeting from 15.06.2016. The draft aims to reduce the number of inspections and ensure their proportionality. In this regard, the draft contains several proposals, among which: reducing the number of documents used in inspections, conducting inspections only following a risk assessment, applying restrictive measures only in cases of severe violations, extending the privileges of the law on state inspections over the customs and fiscal sectors, granting priority to electronic documents, ensuring connectivity between documents related to inspections and the State registry of inspections. Should this law be implemented, there is a problem related to the lack of funds for the improvement of the State registry and extending its possibilities;

<p><b>10.2. Ministry of Economy to develop the necessary secondary legislation related to:</b></p> <ul style="list-style-type: none"> <li>- <i>Law on market surveillance;</i></li> <li>- <i>Law on the rights of consumers at the concluding of contracts</i></li> <li>- <i>Law on metrology;</i></li> <li>- <i>Law on national standardization;</i></li> </ul>	<p><b>April-May 2016</b></p>	<p><b>Not achieved</b></p>
--	------------------------------	----------------------------

The implementation of action 10.2 resides in adopting the legislative acts foreseen in 10.1, as well as some laws voted previously. Although in some cases, the primary legislation was adopted in due time, the actions of this chapter were not fully implemented. For this reason there will be difficulties in implementing the primary legislation. The main cause is that the timeframe given for the development of these documents, which are highly complex, was too short.

Ten regulatory documents were supposed to be approved in total, aiming to ensure good functioning in the following sectors: market supervision, metrology and standardization. At the government meeting from 13.06.2016 only 3 regulatory documents were

approved: „the GD regarding the Coordinating council for consumer protection and market supervision”, „The GD regarding the organization and regulation of the Standardization Institute from Moldova operation” and „The GD regarding the approval of the organization and operation regulation of the National Metrology Institute”. In addition, on 13.07.2016 at the meeting of the Working group for regulating the entrepreneurial activity 4 draft Government Decisions were discussed, they refer to: risk evaluation methodology for nonfood products, approving risk levels for nonfood products, regulation regarding the information exchange system regarding dangerous goods and the regulation of cooperation between market supervision authorities and the Customs Service. Three other regulatory draft documents are still in development, they will establish tariffs for the services provided by the National Metrology Institute and the Standardization Institute and will adjust the official list of measuring means and legal metrologic measurements.

<b>10.3. Government to re-launch the privatization process.</b>	<b>Ongoing</b>	<b>Achieved without deficiencies</b>
---	----------------	--------------------------------------

The privatization is continuing, and the intensity of the process varies. In this context, it would have been suitable that in the title of the action, the organization of a new round of privatization or several more was mentioned.

Public Property Agency conducted a new round of public property privatization. The informative notes were published in the Official Gazette no. 38-42 as of 19.02.2016 and posted on the website of the Public Property Agency. At this round, property in amount of MDL 1.76 billion was put up for sale, however, the assets sold only amount to MDL 313 million. Thus, the income is only 17.8% of the total value of the property put up for sale.

It is worth mentioning that a part of the assets were traded at a lower value than the initial prices. As a result, the income was about 2.7% lower, compared to the income that could have been collected if the assets have been traded for the initial prices. For example, the sale of shares held in the joint stock companies: „Amelioratorul”, „Aeroport Catering” and „Magazinul Universal Central „UNIC” would have brought the state an income of MDL 267.1 million, however, trading at reduced prices allowed the state to collect an amount of MDL 258.3 million. Still, the sale of the other property: The Horodiște engineering networks centre (Călărași), The Dezghingea shopping centre (Comrat), The „Zarea” Hotel (Chișinău) and „The Car repair and exploitation company” was for prices higher than those initially established.

For the period of July 8 – September 23 2016, the Public Procurement Agency organized a new round of privatizations, and state assets of about MDL 1.46 mil. were put up for sale.

<b>10.4. Ministry of Economy to update the Roadmap for improving the competitiveness of the Republic of Moldova.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------	--------------------------------------

There was a delay in updating the Roadmap. This exercise was planned for March 2016, but was actually performed at the Government meeting on 27.04.2016. The roadmap includes the policy matrix, the implementation of which should increase national competitiveness. Also, one of the objectives of the Roadmap is to strengthen Moldova’s economic capacity for the successful implementation of the DCFTA agreement with the EU.

The implementation degree for this document was of 49% in 2014, and in 2015 it reached 54%. The main causes invoked for the modest achievement of established objectives was the insufficient funds and inconsistency in delegating responsibilities to public authorities. Besides, in the future, the same causes could affect the implementation of the roadmap.

<b>10.5. Ministry of Economy to promote the legislative initiative establishing a consultative nature of state controls carried out in small and medium sized enterprises for 3 years after their establishment.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------	--------------------------------------

The provision on the consultative nature of state control for SMEs is part of the law on SMEs. The draft law was approved by the Government on 30.03.2016 and was submitted to Parliament. Draft law on SMEs was voted in first reading and now is being examined before the second reading. Basically, this provision will favor the SME sector development.

<b>10.6. Government to launch and conduct an inspection survey study (on the feasibility of all the public authorities in charge with competences of state control).</b>	<b>March-May 2016</b>	<b>Achieved without deficiencies</b>
--	-----------------------	--------------------------------------

The study was conducted with the World Bank support. Research results were presented to the Government. Based on the conclusions of the study, proposals were formulated and included in the draft Law regarding the amendment of the Law on state control over entrepreneurial activity. However, the recommendations deriving from the study remained „on paper” and have not been implemented, since the Law on state control has not been modified.

<b>10.7. Government to strengthen the capacities of the National Food Safety Agency, by appointing the Director of NFSA.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
--	-------------------	--------------------------------------

According to Government Decision no. 32 as of 02.03.2016 Gaberi George was appointed as head of NAFS. Appointment of a new chief of NAFS was made without deviation from the law. Mr. Gaberi has rich experience and his professional profile is compatible with the position of NAFS head.

<b>10.8. Government to approve the new National Strategy for investment attraction and exports promotion for 2016-2020.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
---	-------------------	--------------------------------------

At the Government meeting from 02.03.2016, the National Strategy for attracting investments and promoting exports for 2016-2020 was approved. The approval of this document was imperative in the situation where the previous strategy had expired in 2015, and Moldova did not register progress in attracting investment, and accessing external markets continues to be cumbersome. The main objective of the new Strategy is to capitalize on Moldova's export potential, mainly by attracting investments, both foreign, as well as domestic. The strategy implementation would allow for a better mobilization of investment capacity in order to increase exports, and, implicitly, stimulate economic growth.

<b>10.9. Government to approve the Action Plan for 2016-2018 for the implementation of the National Strategy for regulatory reform of the entrepreneurial activity for 2013-2018.</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>
---	-------------------	--------------------------------------

The actions on the Plan refer mostly to the revision of the business regulatory framework. The weakness of the Plan is that some of the measures are not financially covered. There are no funds from the national budget to cover actions on increasing the regulators' capacity by implementing technological and communication solutions. Although, the informative note annexed to the document mentions that the support of the international organizations is expected for the implementation of these measures, a probable lack of funding could create risks for implementation of the Action Plan.

**10.10. Ministry of Economy to draft the law on the state enterprises and municipal enterprises in order to adjust the corporative management rules to the best practices of public property management.**

**April  
2016**

**Achieved  
without  
deficiencies**

The draft law was sent to the Government with delay. The statutes of municipal companies based on the Government Decision on approving the Template-Regulation of municipal companies no.387 dated 06.06.1994, includes several gaps related to the insufficient reflection of the founder's functions in appointing and dismissing the administrator or in how the net profit is used. This law aims to eliminate these legal gaps. At the same time, the general objective of the draft is to harmonize public policies on state and municipal companies' administration and to bring the administration of public companies in line with the general corporate governance regulations.

**Next steps and recommendations:**

- Speed up the adoption of the draft law that would improve the business environment and the development of secondary legislation to the laws recently adopted (the Law on metrology and the Law on national standardization etc.).
- Include some measures in these documents, that have certain financial coverage and to make communication between state institutions more efficient in the process of their development.
- Reform the state structures so that they can provide quality public services. The main problem in implementing the legislation is related to the reduced quality and capacity of public institutions, and in this context the propagation of positive effects associated with the application of legislative/regulatory acts is reduced.
- To implement the new WTO agreement on trade facilitation, this will lead to streamlining the regional and international trade by reducing transaction costs, and optimizing the cross-border flow.
- To increase transparency of selection process for managers of state enterprises and to ensure public access to the reports related to activity of state enterprises.
- To foster the inclusive implementation of standards by firms should be created an extensive dialogue platform from representatives of business and institutions that manage quality infrastructure (NIM , NIS and National Accreditation Centre MOLDAC )

## **11. Increasing transparency and investment conditions in the energy sector**

### **Summary of the general progress**

*Out of 5 monitored actions, 4 were achieved without deficiencies and 1 – achieved with deficiencies.*

The actions implemented in the energy sector have created certain premises for improving the institutional transparency and stimulating investments through the adoption of new legislation, organization of a clear agenda on the sector reforms calendar and the launch of the regulator's audit process. Nonetheless, the tangible results in increasing transparency and investments will show only with efficient and completely transparent energy sector governance in the application of the legislative framework, and the political factor will be definitively eliminated.

The Parliament passed the new legislation on electricity and natural gas which allows the Energy Package II provisions to be transposed, and it was generally endorsed by the Energy Community and the development partners. Based on the new legislation, the National Agency for Energy Regulation (NAER) adopted a Roadmap for the liberalization of the energy market (July), planned for 2016-2018.

Due to the arrangement of the Ministry of Economy with the distributor Red Union Fenosa JSC, the Tariff deviations recovery mechanism for the energy sector was established; it will be implemented by NAER. At the same time, following the request of the Moldovan side, the Secretariat of the Energy Community initiated the NAER capacity and competence evaluation process as soon as July.

The only action implemented with deficiencies relates to renewing the contract with the energy supplier Energokapital, which has off-shore companies as founders. The contract signed is for a price lower than the one proposed by the same company in 2016 (4,89 cents per kW/h compared to 6,795 kW/h), but the low transparency of the tender results and the elimination of the offer coming from the Ukrainian supplier (DTEK Energo) raises some questions. Moreover, extending the contract with Energokapital till March 2017 undermines the country’s energy security. Through this contract, Moldova’s dependence on Russia increases, not only regarding the natural gas supply, but also from the perspective of electricity supply from the Cuciurgan power plant owned by the Russian company Inter RAO UES.

**Summary of individual actions**

Action	Target date	Stage
<b>11.1. Parliament to adopt the new Electricity and Natural Gas Laws in line with the 3rd Energy Package (Directives 2009/72/EC and 2009/73/EC).</b>	<b>March 2016</b>	<b>Achieved without deficiencies</b>

The Electricity Law and the Natural Gas Law were adopted in the second reading on 27.05.2016 and entered into force on 8.07.2016. According to the informative notes published on the Parliament website, the two laws partially take on the provisions of the Third Energy Package<sup>28</sup> The new laws create premises for the liberalization of the energy and natural gas market, strengthening the sector regulator and stipulate legal and technical conditions that facilitate the interconnection with the European energy market through Romania.

The draft law on electricity adopted in the Parliament was developed during 2014, with the involvement of relevant sector institutions and stakeholders (Ministry of Economy, NAER, the operators, etc.) with the participation of experts from the Energy Community Secretariat, with external technical assistance (EU, USAID). The law will foresee a better organization and regulation of the electricity sector. The implementation of the new law creates stimuli for the development of competitiveness on the energy market and attraction of new participants (connecting renewable energy producers). Significant investments are to be directed towards energy sector infrastructure development through development plans that become mandatory for transport networks, system and distribution operators.

Also, the new Law extends the NAER functions, which is to undertake actions for monitoring and certification of transport and system operators. As a result of the implementation of this law, the liberalization will be possible and the integration of participants from the market as well (producers, suppliers, distributors, consumers etc.) and also the extension of the electricity sector, including by joining the European network of transport system operators (ENTSO-E).

The new legal framework creates premises that would guarantee a more secure electricity supply for the end-consumer, with realistic, transparent, predictable, non-

28 The Third Energy Package includes the following European legislation: *Electricity*: Directive no. 2009/72/CE on common norms for the domestic electricity market; Regulation nr. 714/2009 on network access in cross-border electricity exchanges; *Natural Gas*: Directive no. 2009/73/CE on common norms for the domestic natural gas market; Regulation (CE) no. 715/2009 on network access for natural gas transportation

discriminative and justified tariffs, ensuring quality services, including universal service. Besides that, the consumers will have to annually incur certain costs derived from the costs supported by energy companies for the implementation of development programs, these could lead to a tariff increase up to 1,28% (0,02 lei/kW) during the following period.

Also, the Law includes some loose specifications on the regulation of NAER control and monitoring activity. Likewise, there are some vague provisions (such as in Art. 7 p.2(f) “approving sufficiently in advance”) regarding the NAER timeframes for approving tariff methodologies before their enter into force.

These aspects will have to be specified in the technical regulations that will be developed by NAER within the implementation of the Roadmap for liberalization of the energy market. Among other important aspects with certain lacks we find the provision regarding the monitoring of electricity supply security (Art. 4 p.3), which NAER must implement only once every two years. In the circumstances of the current energy insecurity in Moldova, such a report is necessary at least once a year and not only for electricity, but for the natural gas sector as well.

The draft law on natural gas adopted in the Parliament includes provisions that once implemented, can contribute to a functioning that is more efficient, transparent, competitive and safe in the natural gas sector, ensuring a better integrated market, but also one that is interconnected with the European one.

The new law defines the status of a vulnerable consumer, as well as, introduces the “take-or-pay” concept. A series of provisions clarify the NAER independence from the political factor (Government, Parliament, etc.), but also establishes the timeframes for consulting the documents approved by NAER. In another train of thought, the law provides clearer measures to promote competitiveness on the natural gas market. Thus, NAER has the function to monitor that there is competition in the sector and to notify the Competitiveness Council if certain actions against competitiveness are identified. Also, the Law requires that the environment requirements, especially regarding the impact of natural gas transportation networks over the environment are observed.

Both laws foresee a wide range of functions for NAER, and this is why additional and urgent efforts are necessary in order to ensure full independence and strengthen the Agency’s institutional capacity. Adopting the two laws corresponds with the obligations taken by Moldova as an Energy Community member, but also in relation with the Association Agreement provisions in the energy sector. However, these were adopted with a delay of over a year, compared to the initial commitment (until 01.01.2015), as a result of the electoral period from 2014 and the following political instability.

<b>11.2. Ministry of Economy to sign a new electricity supply contract in more favorable terms as of 01.04.2016.</b>	<b>April 2016</b>	<b>Achieved with deficiencies</b>
--	-------------------	-----------------------------------

A new electricity supply contract with Energocapital company was signed in March 2016, with a price 28% lower than the previous one (4.89 cents per kW/h compared to 6.795 kW/h). The term of the contracts is from 01.04.2016 to 31.03.2017.

It is important to point out that the energy supplier with whom the contract was extended is a company with founders from the Transdnestrian region and off-shore regions.<sup>29</sup> This company buys electricity from the Cuciurgan power plant, on the account of the natural gas unpaid for by the Transdnestrian region, which ultimately leads to the increase of MoldovaGaz debts to the Russian corporation Gazprom (debt of around USD 5 bln.). For

<sup>29</sup> EnergoKapital has two founders. The first one is the „Bas Market” company registered in Tiraspol (July 30, 2014), which has two other founders – the „Intercom Management LTD” company from the Belize and şi Iurie Dzetul, allegedly close to the head of the Tiraspol administration, Evgheni Şevciuc. The second founder is the off-shore „Ornamental Art Limited”, registered in Hong Kong.



this reason, the decision of the Ministry of Economy to prefer Energokapital's offer and reject the offer of the Ukrainian supplier DTEK Energo is suspicious. Furthermore, the Ukrainian supplier allegedly proposed a price of 4.7 cents per kW/h, which is about 0.2 cents per kW/h less than the price offered by Energocapital.

The decision to extend the contract with the Transdniestrian supplier raises questions also because Energokapital is a company with disputed reputation, accused of countless embezzlement, including in the Transdniestrian region. Besides, the company is putting pressure on SE "Energocom" through courts, requesting payment of debts and penalties of MDL 350 mil. The company representatives have also made threats to seize the electricity supply if Energocom does not pay the alleged debt.

To eliminate the obvious risks to the country's energy security, exhaustive transparency should be ensured regarding the contract signed with Energokapital, eventually publishing the contract, but also presenting the offer of the Ukrainian supplier. Important modifications to the legal framework are necessary in order to prohibit signing energy and other strategic sector contracts with companies having off-shore founders. Finally, all negotiations regarding contracts signed in the energy sector should be transparent and with access to public interest information regarding the national security.

**11.3. National Energy Regulatory Agency to establish the mechanism on the recovery of tariff deviations accumulated in the electricity sector and ensuring its adoption.**

**April  
2016**

**Achieved  
without  
deficiencies**

The Moldovan Government reached an agreement (on 03.06.2016) with the distributor Red Union Fenosa JSC on recovering debts accumulated based on the deviations between the buying price for electricity and the tariffs not being properly adjusted by NAER during 2015. Based on the agreed arrangement, the amount of tariffs deviations (about MDL 1.7 billion) will be recovered by adjusting the tariffs starting with January 1, 2017, for 4 years.<sup>30</sup>

The discussions regarding the dispute between the Government and Red Union Fenosa have been facilitated by Dirk Buschle, Deputy Director of the Energy Community Secretariat.<sup>31</sup> As a result of the mediation ensured by the Energy Community, an arbitration case against Moldova within the International Centre for Regulations of investments disputes of the World Bank was avoided. According to NAER<sup>32</sup>, the tariff deviation recovery mechanism for electricity it established is strictly based on the aspects of the arrangement from 03.06.2016. The decision on establishing the said mechanism is not yet posted on the agency website.

**11.4. Parliament and the Government to launch consultations with the European Energy Community and development partners for an external independent review of the National Agency for Energy Regulation, its competences and capacity for consolidating the independency of the Agency.**

**March  
2016**

**Achieved  
without  
deficiencies**

On May 20, this year, the Speaker and the Prime-minister have sent a request to the Energy Community Secretariat. The Secretariat confirmed the receipt of request and expressed its availability to provide the necessary assistance for the NAER evaluation. In July, the representatives of the Secretariat conducted evaluation activities in Chisinau.<sup>33</sup> In

<sup>30</sup> The Ministry of Economy, Press-release, June 6, 2016, <http://mec.gov.md/ro/content/ministerul-economiei-si-grupul-gas-natural-fenosa-au-semnat-un-aranjament-pentru>

<sup>31</sup> Energy Community Secretariat, Energy Community Secretariat welcomes settlement of dispute between Gas Natural Fenosa and Moldova, 6 June 2016, [https://www.energycommunity.org/portal/page/portal/ENC\\_HOME/NEWS/News\\_Details?p\\_new\\_id=13002](https://www.energycommunity.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=13002)

<sup>32</sup> According to NAER response from 10.08. 2016 to the Expert-Grup letter.

<sup>33</sup> The Representative of the Energy Community Secretariat had a meeting with Denis Cenuşa, Expert-Grup associated expert, during July 2016.

September, the Secretariat already published the report<sup>34</sup> that examines the legal framework, governance in the energy sector, institutional transparency and other aspects. The report identifies a number of issues concerning the activity of ANRE: legal vagueness regarding the organization of ANRE; non-transparent nature of the appointment of the management of the Agency; imprecise legal clauses that allow the removal of directors ANRE with abuses; Agency's financial vulnerabilities; lack of a system of checks and balances regarding the activity of ANRE; major issues related to transparency in decision making and reduced openness to civil society and other actors active in the energy sector and weaknesses related to institutional capacity and performance of ANRE. The report proposes recommendations for legal and institutional improvements. They aim at boosting the performance of the Agency, strengthening its independence and capabilities, improving the image of the institution in relation to civil society, sectoral operators and external partners, and improving the quality of services provided to consumers (tariffs, better regulation of the actors in the energy sector), but also strengthening energy governance in the country.

<b><i>11.5. National Energy Regulatory Agency to develop a roadmap on the liberalisation of the gas and electricity markets in order to properly inform the population, operators and other stakeholders about the timelines and steps to be taken.</i></b>	<b><i>March-April 2016</i></b>	<b><i>Achieved without deficiencies</i></b>
---	--------------------------------	---

The roadmap on liberalization of the energy market was developed after the electricity and natural gas legislation was adopted and published on the NAER website only on July 8<sup>35</sup>. The document did not go through the public consultation procedure. The agency explained that the public consultation procedure hasn't been applied, because the actions and implementation timeframe for the actions included are foreseen in the new legislation on electricity and natural gas.<sup>36</sup>

Actually, the laws include provisions reflected in the Roadmap on the liberalization of energy market, but the two laws do not specify a target date (calendar) for the implementation of the actions.

The document is developed for 2016-2018<sup>37</sup>, and includes actions dedicated to the following sectors: electricity (27), natural gas (30), renewable energy (3), heating (3), petrol products (1), water supply and sewage (1), including multi-sectorial actions (4). Most actions refer to electricity and natural gas and those established for these sectors refer to the development of methodologies, regulations, but also certification and operators' appointment.

For the electricity sector the development and approval of 18 new acts out of total number of 27 actions is foreseen, and for natural gas – 16 out of 30 actions. At the same time, 10 actions out of 27 dedicated to electricity are foreseen by the end of 2016 (6 new acts), while for natural gas – 10 out of 30 actions (only 3 new acts). Ensuring transparency (through public consultations) in the implementation process of these measures is an essential condition for the good implementation of the Roadmap including with the involvement of the Energy Community and the development partners.

#### **Further steps and priority recommendations:**

- Set up a mechanism for preventing non-transparent tenders. Develop a clear regulation on tender procedures in the energy field that determine the form of the organization of the

<sup>34</sup> Energy Community Secretariat Review, The National Energy Regulatory Authority of Moldova: Compliance, governance, independence and performance, 8 September 2016, [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/DOCS/4302393/3BFF875481ED5527E053C92FA8C05594.pdf](https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/4302393/3BFF875481ED5527E053C92FA8C05594.pdf)

<sup>35</sup> According to NAER response from 10.08.2016 to the Expert-Grup letter.

<sup>36</sup> According to NAER response from 10.08. 2016 to the Expert-Grup letter.

<sup>37</sup> The roadmap for the liberalization of the energy sector, <http://anre.md/files/Acte%20Normative/program%20de%20reglementari%202016/Program%20de%20Reglementari%202016-2018.pdf>

auctions, the rules establishing the criteria for the selection procedure for tenders opening, evaluation of tenders, contract terms and other issues. Additionally, in order to enhance the transparency, tenders must be organized with the participation of the international observers. Regulation on tenders in the energy sector must be developed in parallel with the adoption of the new Law on Energy, currently discussed in Parliament, with the support of external partners (Energy Community Secretariat, EU). The new regulation should be operational by the end of the year and applied for future tenders on purchasing electricity given that the contract signed with Energocapital on electricity supply expires in March 2017.

- Unveil and investigate the conditions under which the Ministry of Economy held tender for purchase of the electricity from the supplier Energocapital considering the accusations of using rigged tenders against other suppliers (Energo Ukraine DTEK).
- Restrict the contractual relationships between state enterprises and economic agents registered in "offshore zones" to secure energy supplies and energy market liberalization by attracting transparent and credible companies.
- Speeding up the implementation of secondary legislation in the field of natural gas and electricity concerning border access infrastructure for electricity and natural gas: (i) Regulation on access to electricity transmission networks for cross-border trade and congestion management (Art. 7, p. f, the Law on electricity of 27.05.2016); (ii) Regulation on access to gas transmission networks and congestion management (Art. 7, p. I, the Gas Law of 27.05.2016). The adoption of both regulations is planned by ANRE by the end of 2016 (Roadmap for liberalization of the energy sector from 2016 to 2018). The adoption of these documents is essential for the advancement of interconnection projects with Romania, both on natural gas and electricity.
- Develop an action plan for implementing the recommendations of the evaluation report of ANRE, published by the Energy Community Secretariat in September 2016. The main priorities refer to the following: (i) creating a transparent mechanism for appointing apolitical and representative management body of ANRE (directors) explicitly provided in the Law on energy; (ii) the adoption of the new Law on Energy specifying the organization of ANRE, which will establish clear procedures for dismissal of directors and restrict the possibility of renewal of their mandates to only one time; (iii) ensuring legal certainty regarding budgetary resources of ANRE; (iv) introducing a system of checks and balances in the activity of ANRE; (v) ensuring maximum transparency on decisions adopted by ANRE; enhancing the openness of the Agency to the public (consumers) and improving its performance through active communication and institutional capacity building activities.

## 12. Cooperation with civil society

### Summary of the general progress

---

*All 3 monitored actions were achieved with deficiencies.*

---

The actions under the Roadmap in this area are parts of the programmatic commitments of the last four Governments in office ([Leancă2](#), [Gaburici](#), [Strelet](#), [Filip](#)). At the same time, all three measures are unachieved commitments from the [Civil Society Development Strategy](#) for 2012-2015. Out of these three measures provided by the Roadmap, two are aimed to strengthen the presence of the non-profit sector in the decision making process. The third measure proposes the implementation of a fiscal mechanism through which individuals could redirect annually a part of their income tax (2%) to a non-profit or religious organization that conducts public benefit activities. The action will contribute to strengthening the financial sustainability of civil society organizations (CSO) through diversification of sources for fundraising to support their activities. Although measures were taken for each of the three actions, none of them is final and able to effectively achieve the objective announced and namely, to involve civil

society in the decision-making process and ensure financial sustainability of noncommercial organizations and religious cults engaged in public utility activities.

### Summary of individual actions

Action	Timeline	Stage
<b>12.1. Government to re-launch the cooperation mechanism with civil society on permanent basis.</b>	<b>March 2016</b>	<b>Achieved with deficiencies</b>

Initially, the action planned by the government envisaged the re-launch of the National Participation Council (NPC). Later the Government gave this initiative up, including due to the requests of the civil society representatives in this regard. With respect to the „[Cooperation between the Parliament and Civil Society](#)” national conference, several nongovernmental organizations forwarded a common [opinion](#), appreciating the idea of an institutional entity meant to ensure cooperation between authorities and civil society in the decision-making process as inefficient. The signatory organizations requested instead that the existing participation mechanisms are improved.

As a result, on 27.07.2016, the Government approved a [Decision](#) on the mechanism of public consultations with the civil society in the decision-making process. The document adopted replaces [another Government decision](#) from 2010, which regulated a similar object. According to the [information note](#), the new mechanism will strengthen the public authorities’ capacity in the public consultation process, new elements to contribute to the improvement of this process being foreseen. They mainly refer to the obligation of the authorities to post all draft decisions on the [www.particip.gov.md](#) platform, the establishment of an internal subdivision of the State Chancellery responsible for public consultations with civil society, as well as the support of a telephone line for the information of civil society regarding the decision-making process. At the same time, the Government proposed to update its procedures regarding the decision-making process within two months from the adoption of this present decision.

Although the Government initiative is welcomed, the lack of real public consultations and the delayed adoption of the decision lead to this action being evaluated as implemented with deficiencies. The civil society representatives did not have enough time to consult the draft decision. The advisory note on the consulting process initiation was published on 22.07.2016. The State Chancellery organized [public debates](#) with respect to the draft on 27.07.2016. On the same day the decision was approved by the Government. The entire consulting process from the moment when the announcement was posted and until adoption took 7 days (4 of which working days), compared to the legal timeframe of at least 15 days.

<b>12.2. Parliament to review its mechanism of cooperation with civil society and to set up a new platform for the civil society participation at the stage of draft laws discussions.</b>	<b>March 2016</b>	<b>Achieved with deficiencies</b>
--	-------------------	-----------------------------------

At the end of 2016, the Standing Bureau of the Parliament adopted a decision on strengthening the cooperation between the Parliament and civil society in the decision-making process. The document proposes to create a working group responsible for analyzing proposals coming from the civil society in relation to increasing the decision-making transparency launched at the „[Cooperation between the Parliament and the Civil society](#)” national conference.

According to the document, the purpose of the working group is to be validated through amendments to the legislation regarding the transparency of the decision-making process, the Parliament-Civil society cooperation concept, but also the Parliament regulation.

By 01.10.2016, the Parliament is to create another working group responsible for revising the [Civil society development strategy](#) 2012-2015, taking into account the strategy overdue. Finally, the Standing Bureau of the Parliament proposes that the Parliament Members and staff are trained on decision-making process transparency. The President of the Parliament

was assigned the task to monitor the implementation of this decision.

The actions described are to be implemented by 01.10.2016, which means that until the implementation of this decision, the document remains one of intention rather than one capable to produce the effects announced through the Roadmap. At the same time, the final version of the decision is not available on the Parliament website, although the final reports of the Government and Parliament regarding the Roadmap implementation refer to this document.

The adoption with a considerable delay, the lack of consultations and the Parliament decision not being published, as well as the content of this decision lead to action 12.2 being qualified as implemented with deficiencies. As for the content of the decision, it is not clear why a decision foreseeing actions for the future was adopted, namely for the future creation of a working group that would revise the legal framework regarding the decision-making process, and another one that would revise the Civil society development strategy 2012-2015, instead of actually creating the said working groups.

It is extremely necessary to make use of the existing mechanisms of cooperation with civil society by really implementing the [Law no. 239](#) dated 13.11.2008 on transparency in the decision-making process. The cooperation of permanent committees with those interested by ensuring the advertisement of the consultations process and maintaining correspondence with organizations interested in the sectors will give the line organizations with resources and expertise in specific fields the possibility to react more promptly to drafts proposed for consultations.

<b>12.3. Parliament to adopt the “2% Law” (amendments to the NGO Law and Tax Code allowing tax payers to redirect 2% of the taxes from the state budget to NGOs) as a measure to additionally support the activity of the civil society.</b>	<b>April – May 2016</b>	<b>Achieved with deficiencies</b>
--	-------------------------	-----------------------------------

The draft law [no.49](#) on amending some legislative acts, conventionally labeled as “the 2% Law”, was registered in the Parliament on February 22, 2016. In order for the measure assumed under the RPAR to reach its intended objective (support of CSO activities), the implementation mechanism for the 2% Law, in the form of a Government decision should be adopted. For the 2% Law to be applied in 2017, it is necessary to adopt the implementation mechanism by August 31, 2016, because the process of registration of organizations willing to benefit from the 2% will have to start in September 2016. Namely due to the delayed adoption of said Government decision, the action was qualified as implemented with deficiencies.

#### **Next steps and priority recommendations:**

- To develop and adopt the mechanism (Government decision) of implementation for the 2% Law till August 31, 2016, so that it can be applied starting with 2017.
- To review the legal framework on the transparency of the decision-making process in order to ensure effective participation of civil society in the decision-making process.

## **13. Accelerating the implementation of the Association EU – Moldova Agreement, including the DCFTA chapter**

### **Summary of the general progress**

*Out of 4 monitored actions, 2 were achieved with deficiencies, 1 was achieved without deficiencies, and 1 – not achieved.*

Developments in this area mostly portray an equivocal picture of the actions planned. Thus, during the reference period sustained efforts have been made in order to compensate for the deficiencies registered for the previous periods. In this regard, a calendar of the arrears for the



actions overdue from 2014-2015 and foreseen in the AA National Action Plan was developed, although new overdue actions are accumulated for the current period (actions planned for 2016).

Also, an Action Plan was developed, directed at implementing a set of measures to improve the trade of the Transdnestrian region with the EU without it being seen as a mechanism allowing the Transdnestrian part to monitor the implementation of this Action Plan. Under these terms the developments of this document's implementation remain uncertain. At the same time, common meetings of the Parliament and Government were organized in order to coordinate the process of AA/DCFTA implementation. In order to consolidate the role of the Parliament in the AA/DCFTA implementation process the Parliamentary council for European integration was established. However, even under these terms, the institutional interaction between the Government and the Parliament especially on ensuring compliance of legislative documents with commitments taken under the AA/DCFTA starting with the development at Government level stage and all the way through adoption in the Parliament.

**Summary of individual actions**

Action	Target date	Stage
<b>13.1. Government to implement the Calendar on liquidating the arrears in the implementation of the AA/DCFTA.</b>	<b>March 2016</b>	<b>Not achieved</b>

In order to advance the AA/DCFTA implementation process a Calendar on liquidating the arrears containing all actions with deadlines during 2014-2-15 that have not been implemented (not public). According to the authorities, this calendar was “70% implemented” (as of May 30, 2016) and consequently, the objective to implement within the deadlines has not been achieved. At the same time, in the conditions of limited transparency an individual evaluation of the implementation degree for this document was not possible.

Even though efforts are made to liquidate the arrears for previous periods, new arrears keep accumulating for the current period (from the actions planned for 2016). Consequently, either a new Calendar that will include the arrears for 2016 will be necessary, or a realistic re-evaluation of the target dates when the Action Plan for the implementation of the EU-Moldova Association Agreement should be developed.

<b>13.2. Government to draft a Roadmap for ensuring the DCFTA application on the entire territory of the country.</b>	<b>March 2016</b>	<b>Achieved with deficiencies</b>
---	-------------------	-----------------------------------

It should be mentioned that at the Bavaria reunion from October 30, 2015, the idea of creating a trade facilitation concept for the trade with the EU in the Transdnestrian region under the DCFTA was agreed upon. Subsequently, a set of *Measures for improving trade in the Transdnestrian region with the EU* was developed (not public) and coordinated with all the stakeholders involved, and on December 18, 2015 it was recorded by the Decision no.1/2015 of the EU-Moldova Association Council.

In order to implement the above mentioned document, an Action Plan was developed (not public) in coordination with both the EU as well as the Transdnestrian side and is to be implemented by the Transdnestrian side in cooperation with the EU. At the same time, there is no mechanism to allow the Transdnestrian side to monitor the implementation of the said Action Plan. In absence of necessary tools, the developments related to the implementation of this document remain uncertain.



<b>13.3. Government and Parliament to improve institutional coordination aimed at ensuring efficient and smooth legal approximation of the national legislation in accordance to the AA/DCFTA commitments.</b>	<b>March - April 2016</b>	<b>Achieved without deficiencies</b>
--	---------------------------	--------------------------------------

Starting from the terms used in the wording of this action (namely “improving”) we could admit to a certain positive developments in this regard through a more frequent organisation of Parliament and Government common meetings, these providing a better platform for the synchronisation of agendas as well as prioritize activities for these two institutions.

However, given that this practice existed previously as well (albeit less frequently), we cannot establish a clearly superior improvement in comparison with the previous periods. Moreover, up until now there is no clarity regarding the institutional relations on this matter. Besides, there is currently no mechanism to ensure a convergence between the development and adoption processes for legislative acts on issues of compliance with commitments taken under the AA/DCFTA.

<b>13.4. Government and Parliament to aggregate monitoring tools related to the legal approximation in accordance with the Legislative Programme of the Parliament based on the AA/DCFTA commitments.</b>	<b>March - April 2016</b>	<b>Achieved with deficiencies</b>
---	---------------------------	-----------------------------------

In order to consolidate the role of the Parliament in the AA/DCFTA implementation process and implicitly legislation harmonization, the Parliamentary Council for European Integration was created on April 14, 2016. The forum is to ensure an internal parliamentary coordination and control mechanism for the AA/DCFTA implementation. Nevertheless, there is no clarity regarding the interaction of this new body with the executive in order to ensure the necessary institutional synergy. Also, there is no tool to ensure the compliance of legislative acts with the commitments taken under the AA/DCFTA from the initial stage of development in the Government and to the final stage of adoption in the Parliament.

The multitude of documents meant to monitor the AA/DCFTA implementation process, which in most cases are overlapping, creates confusion and puts additional pressure on the monitoring process, and reporting as well.

#### **Next steps and priority recommendations:**

- Realistically re-evaluate the target dates for implementation of activities in the development of the new EU-Moldova AA implementation Action Plan, in order to avoid “accumulating” arrears and minimize the need to develop new Calendars on liquidation of arrears.
- Identify a viable mechanism to monitor the implementation of the DCFTA in the Transdnestrian region, taking into account the responsibility of constitutional authorities to guarantee that commitments taken under the AA/DCFTA are implemented correctly over the entire territory of the country.
- Develop/establish an efficient framework to regulate the institutional relations between the Parliament and the Government in the context of consolidating the role of the Parliament in the AA/DCFTA implementation process.
- Identify a legal expertise mechanism for the entire legislative process in order to ensure that the harmonization of the legislation with the Community Acquis is continuous and correct.
- Re-evaluate all guiding documents for the AA/DCFTA implementation in the format of a single tool, in order to exclude excessive pressure in the monitoring and reporting process during the AA/DCFTA implementation.