

Subject: Comments on the draft Code of Parliamentary Rules and Procedures

Addressed to: The Parliament of the Republic of Moldova, Andrian CANDU, the President of Parliament, andrian.candu@parlament.md, the Legal Committee for Appointments and Immunities, cji@parlament.md

Date: 22 November 2018

Contact persons: Sorina MACRINICI, Civil Society Program Director, Legal Resources Centre from Moldova (LRCM), sorina.macrinici@crjm.org; Elena PROHNITCHI, deputy Executive Director, Association for Participatory Democracy (ADEPT), elena@e-democracy.md; Viorel PARVAN, independent expert, pivanviorel30@gmail.com

The signatory organizations welcome the initiative of the Parliament of the Republic of Moldova to amend the Rules of Procedure of the Parliament by the Code of Parliamentary Rules and Procedures ("Parliamentary Code"). The draft Parliamentary Code¹ regulates important aspects of the parliamentary activity. At the same time, we should note that the draft is being promoted in the Parliament within very short period of time. The draft was registered as a legislative initiative of three MPs on 2 November 2018 and examined at a meeting of the Legal Committee for Appointments and Immunities on 14 November 2018, which recommended the draft to be adopted at first reading.² Two days later, the draft was included in the agenda of the Parliament sitting of 16 November 2018,³ but was withdrawn by one of the authors. On the website of the draft there is no anti-corruption expertise of the draft, which is mandatory under the Law on Normative Acts no. 100/2017, as well as the Government opinion, which is mandatory under Art. 58 of the Rules of Procedure of the Parliament no. 797/1996.

An analysis of the content of the document highlights the existence of very vague provisions on access to information, transparency in decision-making and cooperation with the civil society. Taking into account the importance of the Parliamentary Code for a good operation of the Parliament and its activity in a manner that is transparent and predictable for the public and stakeholders, we find it inappropriate to adopt such a draft within such a short period of time and without organizing wider discussions, including with the civil society as an interested party.

Further, we will analyse the provisions of the draft Code of Parliamentary Rules and Procedures („Parliamentary Code“) regarding the regulation on the transparency of the decision-making process and the adoption of regulatory acts in the emergency procedure.

¹ The Draft Code of Parliamentary Rules and Procedures no. 374 as of 2 November 2018, http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4433/language/ro-RO/Default.aspx?fbclid=IwAR2BiWrT_Osrolb9fsgS5bqJ9IJEN0Kl4oRuWu1aGuer_yaij6Ts1W08Yys.

² The additional agenda of the meeting of the Legal Committee for Appointments and Immunities as of 14 November 2018, <http://parlament.md/LinkClick.aspx?fileticket=UkEGg%2b8uDL4%3d&tabid=130&mid=507&language=ro-RO>.

³ Agenda of the Parliament sitting as of 16 November 2018, <http://parlament.md/SesiuniParlamentare/%C5%9Eedin%C5%A3eplenare/tabid/128/SittingId/3330/language/ro-RO/Default.aspx>.

I. Public consultations

The current legislative framework on public consultations in the Parliament is too general to be explicit and enforceable. As a result, the provisions are not enforced or are applied inconsistently and inefficiently.⁴ The Rules of Procedure of the Parliament regulate public consultations under Art. 49¹, but they are left entirely at the discretion of the parliamentary committees. Another document related to public consultations is the Concept on Cooperation between the Parliament and the Civil Society,⁵ which stipulates the deadline for the submission of comments on draft regulatory acts, some forms of public consultations, but does not regulate exactly how the parliamentary committees should carry out the public consultations, and does not regulate in detail the forms of public consultations. Another act of the Parliament that refers to the public consultations is the Instruction on the circulation of draft legislative acts in the Parliament⁶, but it makes reference to the provisions of the Rules of Procedure of the Parliament, which are quite general.

The draft Parliamentary Code contains regulations on public consultations that are even vaguer than those currently in force mentioned above. The forms, stages and deadlines of the public consultation process, as well as the obligations of the parliamentary committees, are regulated fairly confusingly and sporadically. These regulations are set out in different sections of the Parliamentary Code, which makes it even more difficult to understand the public consultation process in the Parliament, including for the staff of the Parliament, who will be obliged to enforce new rules. Some regulations on public consultations are set out in Chapter XI „Collaboration of the Parliament with the Civil Society“ (Art. 211-216). These are taken from the Concept on Cooperation between the Parliament and the Civil Society, but yet some important provisions have been excluded.

- *the deadline for submission of comments*

The main rule on public consultations is set out in Art. 214 para. (1) letter a) of the Parliamentary Code, which stipulates that public consultations take place by means of publishing the draft regulatory acts on the website. At the same time, the Parliamentary Code does not stipulate the deadline for submitting comments on the draft regulatory acts published on the website of the Parliament. Under p. 4.3.1 of the Concept on Cooperation between the Parliament and the Civil Society, the consultation period lasts for 15 working days after the publication of the draft, while the Law on Transparency in Decision-making no. 239/2008 stipulates a deadline of at least 10 working days for the submission of the recommendations. It is necessary to clarify the deadline for submission of comments and to regulate them directly in the Parliamentary Code.

- *the list of interested parties*

Art. 46 para. (8) of the Parliamentary Code also stipulates the creation of the List of associations and other interested parties to facilitate the public consultation process. Although mentioning of the list in the Parliamentary Code is a positive thing, still there is no obligation of the parliamentary committees to use this list. Such a list already exists on the website of the Parliament, but is not sufficiently used or even not used at all. If the provision regarding this list was included in the provisions of Art. 214 para. (1) letter a) of the Parliamentary Code, which stipulates that the public consultation takes place by means of publishing the draft regulatory acts on the website, would increase the chances that public consultations will be more effective. Thus, two public consultation tools would be used: the publication, which represents general information, and targeted

⁴ Association for Participatory Democracy „ADEPT“, Transparency in the Parliament's decision-making: legal provisions, applicability and application, p. 8-12, 2013, <http://www.e-democracy.md/files/td/transparenta-decisionala-parlament-2013.pdf>.

⁵ The Concept on Cooperation between the Parliament and the Civil Society, approved by Parliament Decision no. 373 as of 29 December 2005, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=314906>.

⁶ Instruction on the circulation of draft legislative acts in the Parliament, approved by Decision of the Standing Bureau of the Parliament no. 30/2012, <http://www.parlament.md/LinkClick.aspx?fileticket=LnMHXo6mDHg%3d&tabid=197&language=ro-RO>.

information through the use of the lists of interested parties. Moreover, it would be appropriate not only to create a list of associations and interested parties, but also to establish the mandatory rule for standing committees to consult those stakeholders and organizational structures on the list that are "representative" for a particular area of reference, and which *de facto* represent the interests of its members, in the case of legislative initiatives that directly concern them. An example in this regard is Art. 209 of the draft Parliamentary Code which expressly stipulates the obligation to inform and consult the local public authorities through their associative structures in the process of examination and adopting of legislative acts regarding the organization and functioning of the local public administration.

- *forms and stages of public consultations*

Art. 214 para. (1) letters b) and c) mentions two forms of public consultation, taken from the Concept on Cooperation between the Parliament and the Civil Society. They are ad hoc meetings and public hearings. Even these two forms are not sufficiently regulated and left to the discretion of the institutions involved. As regards public hearings, it is stipulated that the parliamentary committees will hold at least one public hearing per year, which is a quantitative indicator rather than a qualitative one. Nothing is stipulated regarding public debates when it comes to matters of public interest, especially when the Parliament initiates draft laws or makes essential amendments that change the essence of the regulatory act previously consulted with the public by the Government. Some details about public hearings are also set out in Chapter XVII „Hearings and reports“, section 1 „Parliamentary hearings“. In Art. 247 para. (3) public consultation hearings are called legislative hearings. However, even in this chapter no more specific provisions on the organization of hearings are given.

Under Art. 85 para. (2), the parliamentary committees may hold consultation meetings with the representatives of civil society, upon a proposal by the members of the committee or those concerned. Similarly to the above situation, in the absence of an obligation, it will be difficult to foresee to what extent the committees will apply this advisory regulation. Situations in which committees might be required to hold consultation meetings would be cases when versions of draft regulatory acts received from the Government are substantially amended and when comments received from civil society raise serious issues and are reasoned.

- *the obligations of the responsible institutions*

It is necessary to regulate the obligations of the institutions responsible for transparency in the decision-making process similar to Art. 7 of the Law on Transparency in Decision-making no. 239/2008 in the chapter XI „Collaboration of the Parliament with the Civil Society“ of the Parliamentary Code.

- *sanctions for non-compliance with the regulations on transparency in decision-making*

It is necessary to provide in the draft Code sanctions for non-compliance with the regulations on transparency in the decision-making process in order to make all key actors involved in the legislative process accountable. The amendments and supplements to the law on local public administration no. 436/2006 and the Misdemeanors Code no. 218/2008, which entered into force on 28 October 2018, can serve as an example, whereby the responsible persons in the local public administration are sanctioned for violating the requirements regarding the transparency of the decision-making process (not publishing a draft act for public consultation, etc.). The Code could also stipulate that draft regulatory acts can not be discussed in plenary sitting unless they have been subject to public consultations.

A positive regulation in the Parliamentary Code is the indication that the essence of the public consultations shall be included in the report of the Standing Committee (Art. 95 para.(2) letter (f)) and the indication regarding reasoned acceptance or rejection of comments received within public consultations - in the final summary drafted by the responsible committee (Art. 95 para. (5)).

However, they refer to the results of public consultations and can not replace the need to regulate the way in which public consultations take place.

In the light of the above considerations, we propose either to set out the detailed regulation of transparency in decision-making in the Parliamentary Code by re-naming of Chapter XI „Collaboration of the Parliament with the Civil Society“ into „Transparency in Decision-making“, with separate regulation of the public consultation process (forms, stages, deadlines, obligations of the responsible institutions), indicating the above recommendations, or to regulate it under the Law on Transparency in Decision-making no. 239/2008 amending the latter.

II. Access to information

We note some positive aspects in the Parliamentary Code as regards ensuring the access to information, namely the provision regarding the legislative programme of the Parliament prepared by the Standing Bureau at the beginning of spring session and its publication on the website (Art. 48), publication of the Standing Bureau meeting minutes (Art. 41), publication of the parliamentary committees meeting minutes (Art. 83).

At the same time, other important issues are not set out in the draft of the Parliamentary Code, and namely:

- *publication of all proposals for amendments and preliminary drafts of the regulatory acts*

Neither the Rules of Procedure of the Parliament, nor the draft of the Parliamentary Code provide for the publication at all stages of the adoption of the legislative act of all versions of the draft, all proposed amendments, any meeting within which the draft will be discussed and so on. Under Art. 89, the MPs can make amendments to draft regulatory acts. Neither the Rules of Procedure of the Parliament in force nor the draft Parliamentary Code provide for the publication of amendments made by the MPs. In practice, they are published in very few cases and can usually be seen after the publication of the summary of recommendations before the final reading vote, when it is too late for stakeholders to get involved. Publishing amendments made by the MPs would ensure access to information and transparency in decision-making. We recommend that any proposals or modifications regarding drafts, preliminary versions and all meetings where the draft is discussed be published on the website of the Parliament sufficiently in advance before discussing of the draft in the parliamentary committee that has to prepare the report on the draft. An example of good practice is a publication on the UK Parliament website.⁷

- *publication of the summary of recommendations*

Article 90 of the Parliamentary Code regulates drafting of the summary of recommendations, proposals and objections to the draft legislative act. We recommend regulating the publication of this summary immediately after it is drafted.

- *publication of the sittings agenda*

Unlike the current Rules of Procedure of the Parliament,⁸ the draft of the Parliamentary Code does not provide for a specific deadline regarding the publication of the agenda of the Parliament sitting (Art. 59 (9) of the draft only provides for the publication of the agenda, not specifying the deadline). We recommend introducing this aspect and ensuring that the agenda of the Parliament sitting is published at least one week in advance. The same recommendation also refers to the publication of the agenda of the sittings of the parliamentary committees (Art. 81 of the draft Parliamentary Code).

⁷ The UK Parliament, the draft of Data Protection Act, 2018, <https://services.parliament.uk/Bills/2017-19/dataprotection/documents.html>.

⁸ Art. 45 (2) of the Rules of Procedure of the Parliament stipulates that the agenda of the Parliament sittings approved by the Parliament is published on its website at the beginning of the working week. In practice, the agenda is published 1-2 days before the sitting.

III. Adoption of the regulatory acts in the emergency, priority and by simplified procedures

Art. 75-79 of the draft of the Parliamentary Code regulates the adoption of the regulatory acts in the emergency, priority and by simplified procedures. Compared to the Rules of Procedure of the Parliament in force, the regulation of adoption in the emergency and priority procedures is more detailed. The adoption of drafts by simplified procedure is a novelty for parliamentary procedures. However, in cases of adoption in the emergency and priority procedures, the grounds and criteria for selecting draft legislative acts to be adopted by these procedures are not specified when they are ordered by the Parliament and not required by the Government. The criteria (draft decisions having individual nature and other decisions that do not contain legal norms) are set out only for simplified procedure.

Also, as compared to the current regulations when the Standing Bureau of the Parliament decides on the adoption of the act in the emergency procedure, under the Parliamentary Code, this power is assigned to the President of the Parliament. It is advisable to assign the power of taking such a decision to a collegial body, i.e. the Standing Bureau. Furthermore, it is not indicated that the decision of the President of the Parliament on the establishment of the urgency regime is published on the website. Also, the deadlines for drafting of mandatory legal expertise and of the Government opinion for adoption of drafts in the emergency or priority procedures are not stipulated.

RECOMMENDATIONS:

1. **To organize public debates on the draft Code of Parliamentary Rules and Procedures and give sufficient time to discuss this draft both in the Parliament and with civil society as an interested party;**
2. **To provide detailed regulation regarding the public consultation process (forms, stages, deadlines, obligations of the institutions involved) in Chapter XI "Collaboration of the Parliament with the Civil Society" of the Parliamentary Code (Art. 211-216) that should be renamed into "Transparency in Decision-making" and regulate public consultations separately. Otherwise, they could be regulated by the Law on Transparency in Decision-making no. 239/2008 that should be amended. In both situations, the amendments should include the following:**
 - a) regulation of the deadline for submitting comments on draft regulatory acts published on the website of the Parliament in Art. 214 para. (1) letter a) of the Parliamentary Code by adding the sentence: *"The deadline for submitting comments is 15 working days from the date of publication of the draft regulatory acts on the website of the Parliament or since the date of the explicit request by the parliamentary Committees"*;
 - b) regulation of the obligation of the parliamentary committees to use the list of interested parties for their targeted information and consultation in Art. 46 para. (8) of the Parliamentary Code, by adding the sentence: *"Following the publication of the draft regulatory acts on the website of the Parliament, the Standing Committees shall send drafts to the entities registered in the list of associations and interested parties, indicating the responsible person, contact details and deadline for submitting comments"*;
 - c) detailed regulation of all forms and stages of public consultation in Chapter XI "Collaboration of the Parliament with the Civil Society" of the Parliamentary Code (Art. 211-216), with indication of the deadlines and obligations of responsible institutions, similar to the Law on Transparency in Decision-making no. 239/2008 (Art. 2, 7-12¹);
 - d) regulation of the obligation of the parliamentary committees to organize public debates when the drafts of the regulatory acts are substantially amended as compared to their initial versions and when comments received from civil society raise rather serious

issues and are reasoned. We propose the introduction of the following rule in Art. 108 para. (5¹): *”If, after the first reading, the draft regulatory act is substantially modified as compared to its original version, the Standing Committee shall hold public debates or ask for written opinions, using the list of associations and stakeholders referred to in Art. 46 para. (8)“*. We also recommend introducing the following rule in Art. 214 para. (3): *”In case when comments received from civil society raise rather serious issues and are reasoned, the Standing Committee shall hold public debates or ask for written opinions, using the list of associations and interested parties referred to in Art. 46 para. (8)“*;

- e) regulation of sanctioning of persons responsible for violation of the transparency requirements in the decision-making process in Chapter XI *”Collaboration of the Parliament with the Civil Society“* (Art. 211-216), similar to Art. 16¹ of the Law on Transparency in Decision-making no. 239/2008;
- f) regulation of prohibition to adopt draft regulatory acts that have not been subjected to public consultations in Chapter XI *”Collaboration of the Parliament with the Civil Society“* (Art. 211-216).

3. Ensuring access to information through:

- a) publication of all proposals and amendments to the draft regulatory acts, preliminary versions of drafts, as well as the meetings where the drafts are discussed. To this end, we recommend amending Art. 89 para. (1) by adding the following sentence: *”The amendment shall be published on the website of the Parliament within 24 hours since its registration“*. We also recommend the following provision to be stipulated in Chapter XI *”Collaboration of the Parliament with the Civil Society“* (Art. 211-216): *”The Standing Committee shall publish on the website of the Parliament dedicated to draft regulatory acts the amendments proposed by the deputies, the proposals for amendments to the drafts, the preliminary versions of drafts, as well as the meetings where these drafts are discussed“*;
- b) regulation of the publication of the summary of recommendations immediately after it is drafted by adding the following rule in Art. 90 para. (2) of the Parliamentary Code: *”The report of the committee shall be published on the website of the Parliament within 24 hours since its adoption“*;
- c) regulation of the publication of the agenda of the sittings of the parliamentary committees and the Parliament by adding in Art. 59 para. (9) of the Parliamentary Code the following wording *”... at least 7 days before the sitting“* and adding in Art. 81 para. (2) the following rule: *”The agenda shall be published on the website of the Parliament at least 7 days before the sitting“*.

4. Modification of regulations regarding the adoption of regulatory acts in the emergency and priority procedures by:

- a) the regulation regarding the criteria for the selection of draft legislative acts to be adopted in the emergency and priority procedures, with the exception of those indicated in the Constitution, in Art. 76 and 78 of the Parliamentary Code;
- b) the regulation of the obligation to publish the decision on the establishment of the adoption of draft regulatory acts in the emergency and priority procedures on the website of the Parliament in the category of the respective drafts, by adding the following rule to Art. 76 para. (1): *”The decision on the examination of a regulatory act in the emergency procedure shall be immediately published on the website of the Parliament concerning the proposed draft regulatory act, and shall contain the deadlines for submitting comments from the interested parties“* and Art. 78: *”The decision on the examination of a regulatory act in the priority procedure shall be immediately published on the website of the Parliament concerning the proposed draft regulatory act, and shall contain the deadlines for submitting comments from the interested parties“*.