

# Opinion on a series of controversial initiatives of the Moldovan government in 2017-2018

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# Capital amnesty in Moldova: why it is risky and should be watched closely

## What happened?

On July 27, 2018, the Parliament of Moldova adopted a law allowing for capital amnesty. It was part of a larger package of initiatives, including the application of flat income tax for individuals, reduction of social insurance contribution rate and a quasi tax amnesty (annulment of fines and penalties for fiscal debts upon full repayment of the debt). Out of all these measures, the element related to capital amnesty attracted most of the attention because of its risks for the integrity and anti-money laundering framework. This is the second attempt to implement capital amnesty by the current ruling coalition (in December 2016, it launched a similar law, “packed” under a number of initiatives aimed at fiscal stimulation, which was cancelled after being harshly criticized by a large part of the civil society and most development partners).

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

## Key concerns

The supporters of capital amnesty rely on the positive experience of other countries that managed to diminish the informal sector and bring more money into the state budget. In fact, there is no clear evidence about the benefits of capital amnesties. The results are rather mixed. In fact, IMF warns that such amnesties, in the long run, can undermine even more the tax compliance, while their long-run costs often exceeding the short-run benefits<sup>1</sup> (this was the case of Argentina, Turkey, Philippines or Kazakhstan). In fact, the research shows that capital amnesties can be beneficial in case of well-functioning anti-money laundering framework<sup>2</sup>, integrity and anti-corruption framework, and in case such initiatives are part of wider voluntary compliance and enforcement strategies (an amnesty alone may not be sufficient to induce delinquent taxpayers to declare unreported income)<sup>3</sup>.

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

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

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

<sup>1</sup> K. Baer, E.L. Borgne, Tax Amnesties: Theory, Trends, and some Alternatives, FMI, 2008

<sup>2</sup> “Managing the anti-money laundering and counter-terrorist financing policy implications of voluntary tax compliance programmes”, FATF, 2012

<sup>3</sup> “Best practices and tax amnesty and asset repatriation programmes”, Transparency International, 2017

robust enough to prevent any abuses of capital amnesty.

Another source of concern that can undermine the enforcement of AML legislation is related to the fact that the duration of the capital amnesty is rather short, making around 2-3 months (in case of real estate, the Law allows the beneficiaries to declare their assets until 1 November 2018; in case of cash, the declaration can be submitted until 10 December 2018). Usually, such programs are run for about 1 year or more, in order to allow all interested parties to benefit of it. In Moldova, such a short duration raises at least two concerns: (i) it is organized for a narrow group of potential beneficiaries, suggesting that the real purpose of this law is not to extend the tax base, but to legalize illegally obtained and owned assets by a narrow group of vested interests; (ii) it could undermine the capacity of banks to conduct proper due diligence and other measures required to properly enforce the anti-money laundering (AML) legislation (short duration and potentially high volumes of transactions could overwhelm the capacity of banks to apply the AML measures effectively, which is one of the risks raised by FATF in relation to capital amnesties)<sup>4</sup>. This risk is fuelled by the fact that the law does not come with proper secondary legislation, spurring a lot of uncertainty regarding the way how, in practice, the banks will apply this law (e.g. the central bank has to develop the secondary legislation in this regard, which will take time and will make the period of de facto implementation of this program even shorter, overwhelming even more the capacity of banks to properly apply AML measures).

## *2. Rampant corruption and fragile integrity framework*

Moldova is ranked 122<sup>nd</sup> out of 180 countries according to the Corruption Perception Index 2017 (the same position with Azerbaijan, Djibouti, Kazakhstan, Liberia, Malawi, Mali and Nepal). Such a high level of corruption clearly points on the fact that among the main beneficiaries of this law could be the corrupted officials, who, instead of being punished for their misbehaviour, will be favored by entering the legal field. Even though the law on capital amnesty does not provide the guarantee of non-prosecution, except for tax evasion charges, with such a weak integrity system and endemic corruption, it is unlikely that corrupted individuals or other criminals will not benefit of this law via their relatives. Even though the law restricts its application on a number highly ranked public officials, these provisions will be hardly enforced because, the hidden assets will not be declared by corrupt officials, but by their relatives and later donated or transferred to facto otherwise to public officials. It makes, de facto, possible that corrupt officials will legalize their illegally gained assets. It will be impossible afterwards to question the legality of these assets.

## *3. Negative reputational implications for the banking sector*

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

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

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

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<sup>4</sup> “Managing the anti-money laundering and counter-terrorist financing policy implications of voluntary tax compliance programmes”, FATF, 2012

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

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

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

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

#### **Conclusion**

In short, if capital amnesties can be beneficial, it can happen if and only if the country applying it has strong institutions, allowing for robust anti-money laundering and anti-corruption frameworks, so that to avoid its use by vested interests. Moldova is far from fulfilling both conditions and, hence, is simply not prepared for such measures. With only 3 years after uncovering massive (even historical) money laundering (about USD 20 billion) and banking frauds (about 13% of GDP), with limited progress with the prosecution on these cases, any form of capital amnesty will potentially be abused by criminals, including those benefiting of recent cases of money laundering and banking frauds. Irrespective of the intentions of the authors and promoters of this law, ignoring the country's fundamental flaws of its anti-money laundering and anti-corruption frameworks is an act of blunt irresponsibility.

Taking into account the risks and concerns mentioned in this analysis, but also voiced by relevant CSOs and development partners, the strong political will for capital amnesty is, at least, strange, if not dubious. The first attempt to conduct capital amnesty by the ruling coalition was in December 2016, when it was “packed” under a number of initiatives aimed at fiscal stimulation. Due to the strong criticism from relevant CSOs<sup>5</sup> and development partners, the initiative has been cancelled. This time, the initiators promoted the similar initiative under a larger package of laws aimed at fiscal stimulus and diminishing informal economy, but in a much faster and less transparent way, in order to be able to adopt without major “disturbance” (indeed, not everyday laws with such a high potential impact are adopted automatically in two Parliamentary readings during in the same day). If we assume the benevolent motivation behind this initiative, such an unprecedented strong political will cannot be explained, because of non-trivial international experience, its risks of increased money laundering, corruption and even persistent tax evasion (any amnesty creates expectations over time that the government will repeat in the future, undermining the tax compliance in long-term).

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<sup>5</sup> “Position paper on the Legislative Initiative Regarding the Tax and Capital Amnesty”, Expert-Grup, 2016, <https://www.expert-grup.org/en/biblioteca/item/1356-nota-de-pozitie-ammistia-fiscala-si-de-capital>

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

## Change of tax rates (Fiscal reform)

### What happened?

On 26 of July, the Parliament of Moldova approved a series of changes to the fiscal system. The main innovations were the following:

- The progressive tax system for personal income tax (7%/18%) was replaced with a flat rate of 12%.
- The deduction threshold for the personal income tax was raised from 11280 MDL to 24000 MDL, which is similar to the living subsistence level.
- The social security contribution rate paid by the employer was reduced from 23% to 18% (the contribution rate paid by employee remained at the same level of 6%).

These are the most important adjustments to the tax system from the last 10 years. The last change to the personal income tax happened in 2008, when three-level progressive system was replaced with a two-level system. During 2000-2009, the social security contribution rate paid by employer was reduced from 31% to 23%, while the rate paid by employee increased from 1% to 6% (since 2009 there were no changes to social security contributions rates).

### Key concerns

In fact, the government of Moldova relied to fiscal easing, which implies a series of positive outcomes for the population and economy as a whole, but which also contains a series of risks that could undermine these outcomes in the medium and long-term.

*The most obvious immediate effects of these adjustments:*

- A loss of MDL 406 million of revenues to the State Social Insurance Budget in 2018 and MDL 1.4 billion in 2019. This loss relative to the status quo will persist in 2020-2021 with another MDL 309 million losses.
- A loss of MDL 157 million of revenues to the State Budget from Personal Income Tax in 2018 and MDL 429 million in 2019. During the next 5-7 years the loss will continue to persist relative to the status quo, being around MDL 100 million per year.
- An increase in the real net wages by about 11%
- The switch to the flat rate will favor mostly the employees with highest incomes. As a result, the income inequalities will increase: the estimated Gini coefficient will be of about 31%, compared to current 24%.

However, if we analyze better the impact the fiscal easing might have on the wages, consumption, investment activity and economic growth as a whole, we estimate the following medium- and long-term effects:

- In 2020, the total public revenues may increase by 16% relative to status quo, outpacing the immediate losses and generating a net beneficial effect on public finances due to extended tax base.
- In 2020, the formal employment could be spurred by 2.3%, while the informal one could decline by 6%, relative to status quo.
- In 2019, investments may grow by 26% relative to status quo.
- In 2019, GDP may grow by 3% and in 2020 – by 6% relative to status quo.

All in all, these adjustments should generate positive outcomes for the economy, while the budgetary losses

from the first year of implementation tend to be temporary and could be compensated by increased tax base in the medium and long-run.

Still, there are at least three risks that could undermine this optimistic forecast:

1. *The risk of low credibility of fiscal adjustments in relation to the population and firms.* This fiscal easing is made in a pre-electoral period, which could shape the expectations among companies that it was part of government's efforts to obtain electoral benefits rather than part of a new fiscal policy. It could fuel expectations among the population and firms that these easing is temporary. As a result, the population might hold back on consumption and companies might hold back on increasing employment and investments, making the optimistic forecasts related to these adjustments exaggerated.
2. *The risk of post-electoral adjustments.* The fact that this fiscal easing comes in the pre-electoral period, coupled with its detrimental effects on public finances (the State Social Insurance Budget is already in a large structural deficit), might trigger fiscal and budgetary tightening after elections. This risk is become even more dangerous if the risk mentioned previously will materialize. As a result, after elections, the government could increase taxes and/or cut on budgetary spending, which will negatively impact investments, consumption and economic growth.
3. *The risk related to financing the budgetary deficit and crowding out of private investments.* This fiscal easing is going to take place in a year when the budgetary deficit could approach and even exceed the level of 3% of GDP. Additionally, the State Social Insurance Budget is constantly under a structural deficit (are fluctuating around MDL 1 billion), which is covered from the state budget. Hence, the reduction of the social security contribution rate paid by employer from 23% to 18% could increase the structural deficit by 1.5 times, generating a larger budgetary deficit. In order to finance it, the Government will rely intensively on lending from domestic commercial banks through T-Bills. It could inflate the interest rates applied by banks due to increased demand, leading to higher costs of servicing the public debt and crowding out of private investments (banks will prefer to credit the Government, rather than the private sector, due to limited risks).

**In conclusion**, the recent fiscal adjustments can bring important costs in the short-run, but if managed properly, it can generate medium- and long-term net benefits for the population, businesses, public finances and the economy as a whole. However, the context in which this adjustment was promoted generates a number of risks that could undermine the beneficial effects of this reform. The problem is that it was promoted in challenging political and economic context, marked by the proximity of parliamentary elections with uncertain outcomes for the current government and high budgetary deficit. The combination of both ingredients might significantly undermine the credibility and benefits of these adjustments. In order to enforce the positive implications of this reform, the real challenge for the government is to convince the population and businesses that these adjustments are part of fiscal policy and hence are permanent, rather than electoral tricks that tend to be temporary and followed by post-electoral tightening.

## **Citizenship by investment, between the public interest and the interest of foreigners**

### **What happened?**

On 27 June 2017, entered into force a series of important amendments to the legislation regulating the system of granting citizenship and the section relating to obtaining citizenship by investment. According to these amendments,



the Moldovan citizenship may be granted at the request of any foreign citizen or stateless person who knows and complies with the provisions of the Constitution and who cumulatively fulfils the following conditions: 1) has a good economic and financial reputation; 2) does not present danger or risk to public order and state security; 3) makes investments in Moldova, as established by the Government. The law provided that the citizenship can be granted via this procedure up to 5,000 persons. On [4 October 2017, the Government adopted a decision](#) establishing that the investment should be made in real estate sector and state securities in amount of EUR 250 thousand per person or makes a non-refundable contribution to the Public Investment Fund for Development of at least EUR 100 thousand.

The amendments were promoted very fast, contrary to the provisions of the legislation on transparency decision making, the process being overshadowed by the draft law on capital liberalization and tax incentives that was promoted in parallel and that attracted much more attention at that time. So, the legislative initiative registered on 1 December 2016, the debate on the draft law amending the Law on Citizenship was proposed for examination on 5 December, and the debates were initiated on 9 December 2016. Already on 13 December, the draft was adopted in the first reading and voted on 19 December in the second and final reading. The adopted law was promulgated on 21 December and published on 27 December 2016, with legal effects in six months after adoption, i.e. starting with 27 June 2017. Thus, we find that in just 13 working days (19 calendar days), while the whole society was focused on the capital liberalization initiative, the Parliament hastily adopted the draft law on the amendment of an organic law aimed at simplifying the granting of citizenship to a certain category of foreigners.

On 31 May 2018, the Parliament amended the Law on citizenship. The amendments were promulgated by the President and will enter into force on 10 October 2018. According to them, the citizenship instead of investments will be offered up to 5,000 lead applicants (i.e. families) instead of 5,000 persons, the Moldovan citizenship can be acquired without renouncing to the previous citizenship (renouncement was mandatory under the initial procedure), while the name and the surname of the person that obtained the citizenship will not be published in Official Gazette (the decrees offering the citizenship are generally published in the Official Gazette and this is the only exception). The law was also completed with a provision that the application for citizenship can be submitted personally, or by an accredited agency. On 11 July 2018, the Ministry of Economy announced that a company registered in Dubai will promote the programme of acquisition of Moldovan citizenship. The programme will be launched in November, also in Dubai.

## **Key concerns**

*1. The amendments are not consistent with the public interest and can undermine the country's security.* The Corruption Assessment Report, prepared by the National Anti-Corruption Centre (NAC), and stamped by the Parliamentary Secretariat of the Republic of Moldova on 23 December 2016, i.e. four days after the adoption of the law in the final reading (19 December 2016), contains a number of key critics regarding the proposed amendment to the citizenship law. Thus, the NAC highlighted that the interests promoted in the draft law are "detrimental to the public interest and imply major risks to the safety and security of Moldovan citizens and the state". Although the adopted amendments provide for attracting investments, they ignore other issues such as national security or protection of the country's economy. In the NAC's view, in the context of migrant crisis that affected the European Union (EU) and the threats of terrorism, the simplified procedures for obtaining citizenship create "an imminent and direct danger to the security of the Republic of Moldova".

*2. There is insufficient compatibility between the adopted law and national anti-corruption standards.* In fact, the NAC's opinion expressly acknowledges the fact that the amendment to the citizenship law digresses from the anti-corruption principles existing in national law. Once these amendments are implemented, conflicts between various rules may arise. The NAC describes objections that the duties of the future Commission for the assessment of citizenship application files will overlap with the exclusive powers of the country's President in this field, exercised through the Commission for citizenship and political asylum. Moreover, it is unclear why the Ministry of Economy received such powers, i.e. to coordinate the activity of the Commission for the assessment of citizenship application files. According to the NAC, the Ministry of Economy should only be responsible for evaluating and monitoring investments and verifying the good economic reputation, but not for deciding on granting citizenship.

*3. The proposed regulation refers to the Public Investment Fund for Sustainable Development that does not exist at present.* The NAC's opinion warns that amendments to the citizenship law have introduced issues that are not yet

regulated by national law – the Public Investment Fund. This is a digression from the Law on legislative acts<sup>6</sup>, which may generate discretionary rules that can foster corruption. In its assessment, the NAC highlights that 30 days for reviewing files is an extremely short period for granting citizenship. At the same time, the draft Regulation does not provide a clear mechanism for monitoring how those 5000 persons who will acquire Moldovan citizenship will fulfil their obligation to keep the investments in Moldova for a period of 5 years (60 months).

*4. Even though the procedure for granting citizenship by investment involves a number of risks related to the security of citizens and the country's economy, it does not contain any sanctions or measures to remedy the situation.* The amendment of the citizenship law coincides with the attempt to liberalize the capital initiated during the same period. Thus, the draft law amending the citizenship law was registered in the Parliament on the same day (1 December 2016) as the draft law on capital liberalization and tax incentives, which was withdrawn due to criticisms made by civil society and external partners. At the same time, the Regulation on granting citizenship by investment regulates superficially the process of assessing the degree of danger or the risk to the public order and the country's security. Although it contains specific criteria for assessing the degree of danger and risk, there is no provision for a specific mechanism to conduct such assessment and an authority responsible for it.

*5. The mechanism proposed for making decisions within the Commission for the assessment of citizenship application files is deficient and leaves room for discretionary decisions.* The decision on the rules for granting citizenship by investment is adopted during the Commission's meetings, which are deliberative if at least three members are present. All in all, the Commission is made up of five members – the Ministry of Economy, the Ministry of Justice, the Ministry of Finance, the Ministry of Internal Affairs and the Office of the President of the Republic of Moldova. The majority of the present members approve decisions within the Commission. Thus, this mechanism is faulty, as it allows decisions to be taken by representatives of two institutions, if representatives of only three institutions attend the meetings. Furthermore, this mechanism allows decisions to be taken in the absence of the President's Office, which has the exclusive power in granting citizenship.

*6. The granting of citizenship by investment may affect the visa-free regime with the EU.* Moldova has already benefited from the visa-free regime for three years, since April 2014. In return for lifting the Schengen visa requirements for citizens, the Moldovan authorities have committed to comply with requirements in the field of border management, migration, security of documents, human rights and public order. Therefore, any deficient mechanism related to the granting of Moldovan citizenship, which may aggravate public order, creates grounds for both the disparagement of the country and the suspension of the visa-free regime at the initiative of one or more EU countries. Thus, in exchange for several thousand Moldovan passports offered to foreigners who make investments, over 3 million Moldovans could lose their opportunities for visa-free travels to Schengen countries.

*7. The mechanism of citizenship by investment is implemented with derogations from international best practices.* US, Australia, Switzerland and EU Member States that developed such programmes have more stringent rules, more complex procedures and a defined period in which the person demonstrates the quality of investor and contribution to the country's economy. Usually, in these countries, citizenship is not obtained immediately, but only at the end of a residency process lasting a few years, which ultimately determines the opportunity of granting citizenship. Respectively, although attempts are made to match residency programmes with those of obtaining immediately the citizenship by means of investments, they are still considerably different. In order to avoid money laundering, tax evasion and the potential destabilization of some economic sectors, the programmes applied by the developed countries provide for an in-depth assessment not only of the person but also of the investment area, which are much more diverse and calibrated with the peculiarities of the local economy. Moreover, to secure the impact of the investment on the economic environment, some states require that a certain number of jobs be created as a result of the investment, which in some way justifies the collective benefit for the society from implementing this mechanism. Even though the mechanism for granting Moldovan citizenship provides for an assessment of the applicant's profile, it has shortcomings in its modus operandi, as well as a limited period for assessment of applications (only 30 days). This creates opportunities for granting Moldovan citizenship to foreigners who are in close relationship with offshore companies, to which many cash flows have been directed from the Moldovan banking system over the recent years.

*8. There are high risks that the mechanism will be applied at a very large scale and without transparency.* The 2017 amendments provided that no more than 5,000 will receive citizenship through this procedure. In 2018, the parliament

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<sup>6</sup> Law on legislative acts, no. 780 of 27.12.2001

changed this limitation to 5,000 main applicants (i.e. families). This means that the number citizenships offered via this scheme can be of 10,000 or even more. This is a very high number for Moldova. Furthermore, in 2018, the parliament amended the law on citizenship with the aim of not publishing the name and surname of the persons that receive the citizenship. Bearing in mind that the citizenship is offered for investment and not for some specific merits, the last amendment is in itself problematic.

## **Conclusions**

Unlike in most of the other countries that have similar mechanisms in place, Moldova is offering its citizenship and not a residence permit. On the other hand, the legislation does not provide for a clear mechanism of oversight whether the conditions of investment in real estate or state bonds are respected after the citizenship is received (the law provides that this investment shall remain in the country for a period of 5 years). In 2018 the parliament amended the law on citizenship, doubling the number of citizenships offered for investment and non-publication of the name and surname of the person that received the citizenship. These elements make the Moldovan mechanism very different of the similar mechanism from other countries.

The amendments of the law on citizenship were made with significant deviations from the principles of decision-making transparency. There is no evidence of either public consultations held by the parliamentary committees or the possible results of such consultations. At the same time, the corruption assessment carried out by the NAC identified a number of shortcomings and risks of corruptibility both for the security of citizens and the security of the country. Although some of the NAC's recommendations were taken into account by the Parliament while adopting the final version of the law, the major concerns related to the excessive powers assigned to the Ministry of Economy, the short period for granting citizenship (30 days), the non-regulation of the Investment Fund and other issues were overlooked.

Both in the process of amending the law on citizenship and in the drafting of the Regulation on the rules for granting citizenship by investment, no assessment of the macroeconomic implications of such a programme was made. The strategic investment sectors mentioned in both documents are inconsistent with the country's economic development objectives and do not provide for any impediments to making investment in the absence of citizenship. In addition, the real estate and the state securities sectors are strongly connected to the country's banking and financial system, while the 2014-2015 crises has strongly undermined the resilience of commercial banks, which continue to face a number of difficulties at present. Respectively, the destabilization of some economic sectors through insufficiently evaluated programmes may generate significant risks to maintaining financial stability. In addition to the risks to the national economy, the mechanism of granting citizenship by investment contains multiple shortcomings and deviations from anti-corruption standards that may affect public order in the country, and may also lead to the suspension of the visa-free regime with the EU for all Moldovan citizens.

Last, but not least, the lack of Moldovan citizenship does not seem to be a constraint for attracting foreign investments and the presence of potential investors in the country. According to international business and investment reports and studies (e.g. the Global Competitiveness Report or the Doing Business Index), the main factors that undermine entrepreneurial activity in the Republic of Moldova are political instability, corruption, access to finance, the bureaucratic and inefficient framework or government instability (practically, every second contractor considers at least one of these constraints as the main issue of the business environment). Thus, both foreign investors and the business community in general are more concerned with the systemic problems existing in the country rather the possible advantages of obtaining citizenship. Respectively, there are far more important and fundamental barriers to access foreign investment that the authorities should prioritize.

## „Business package” – whom it helps?

### What happened?

On 31 October 2017, the Ministry of Justice opened for public consultation [a draft law](#) aimed at reducing pressure on the business environment from state institutions (hereinafter “the business package”). The draft introduced a new ground for the release from criminal liability for crimes relating to crediting and bank management, securities, breach of shareholders’ rights and the competition market. The draft gave a new definition of smuggling and tax evasion, reducing the risk of discretionary interpretation. The bill also provided that a criminal investigation into a crime related to business can be opened only by a prosecutor, after the opinion of the administrative agency in charge of the domain. The bill further limited the possibility of arresting persons on charges related to business.

On 13 December 2017, [a group of civil society organizations launched a public appeal](#) requesting to withdraw the draft law and set up a representative working group involving all stakeholders to develop legislative solutions for real problems faced by the business. It described the draft as aimed at releasing “smart boys” of criminal responsibility and undermining the fight against corruption. On 20 December 2017, the draft was submitted to the Government for consideration, despite the negative opinions received, including the one of the National Anticorruption Centre. Due to the ministerial reshuffles from the end of 2017, the draft was not discussed in the Government. On 12 January 2018, at the sitting of the Economic Council under the Prime Minister, it was announced that the draft was withdrawn from the Government to be improved by the Ministry of Economy. The draft was never sent back to the Government.

On 24 July 2018, the Business People’s Association of Moldova, chaired by Mr. Plahotniuc, hosted the 2<sup>nd</sup> Economic Forum. It was attended by Mr. Plahotniuc, Mr. Filip and by the ministers of Justice and Economy. At the forum, Mr. Plahotniuc announced that the governing coalition will promote a package of laws aimed at facilitating the business environment. On the same day, several PMs of the Democratic Party registered in the Parliament [the “business package”](#) (no. 283). It appears that the PMs took the draft prepared by the Ministry of Economy and registered it under their name. On 25 July 2018, the [Government issued its opinion supporting the bill](#). In the same day it was discussed in the committees of the Parliament despite the lack of the anticorruption conclusion, which is mandatory under law. On 26 July 2018 it was debated in the plenary sitting of the parliament and on 27 July it was adopted in the final reading. On 13 August 2018, the President promulgated the law. It was published in Official Gazette and entered into force on 17 August 2018.

### Main aspects of the law

The key aspects of the law are:

- a) The opening of a criminal investigation on several economic crimes will be possible only by a prosecutor and only after an advisory opinion of the administrative agency in charge of the domain is obtained;
- b) Introduction of the ban to arrest a person under criminal charges, if the maximum sanction provided by law is below 3 years of imprisonment and reduction of the sanctions for the majority of economic crimes below 3 years of imprisonment;
- c) The definitions of definition of smuggling and tax evasion was clarified, reducing the risk of discretionary interpretation;
- d) Introduction of the ban on seizure of the equipment within a criminal case if it affects the economic activity;
- e) The grounds for arrest were extended, in a confusing manner.
- f) Introduction of a ban on arrest on some charges, if the accused is paying a bail. The request for prolongation of arrest beyond 3 months cannot be done anymore without the approval of the superior prosecutor. If a prolongation beyond 6 months is sought, the agreement of the Prosecutor of its deputies is needed;
- g) Introduction of a new ground for liberation of criminal sanction for several business charges, if the crime is committed for the first time, the accused admits the guilt and repairs the damage and pays 200% of the maximum fine provided by law.

### Key concerns

The law provides for a number of initiatives that can protect in theory business against arbitrariness of public authorities, such as the limitation of situations in which the arrest can be applied, redefinition of tax evasion and smuggling or the ban on seizure of the equipment. These limitations are applicable to everyone, not to business only. Redefinition of tax evasion and smuggling will probably change the practice of the tax authorities and customs. However, we estimate that the limitation of the grounds for arrest and the ban on seizure of the equipment will have limited practical impact. The spirit of the previous legislation was that the arrest should be applied in exceptional circumstances, as an ultimate measure, but the practice was running contrary to this principle. The same principles applied to the equipment seizure. Without substantive change of the mentality of the law-enforcement agencies, these novelties will remain on paper. On the contrary, we can see a more repressive attitude of the police and prosecutors.

The main objections to the initial draft of the law concerned the new ground for liberation of criminal responsibility (see letter g) above). The initial version of the draft referred to a very wide range of crimes, including the ones that could apply to the bank fraud 2014 or the crimes against environment. The adopted version of the draft does not permit the liberation of criminal responsibility for these crimes. The list of crimes for which the new institution is applicable is not very long and most of them are not serious crimes. Even though the liberation of sanction was not welcomed by us, the current version of the law does not create the risk that the persons involved in the 2014 bank fraud will be absolved of criminal responsibility. Our estimation is that the new ground for liberation of criminal sanction will have no or extremely limited practical impact, because:

- a) it can be applicable by the judge only at the end of the trial; and
- b) at the end of the trial the judge often applies sanctions below the maximum provided by law.

The bill may have also side negative consequences. For unclear reasons, the grounds for arrest were extended by a confusing text. Art. 185 para. 1 of the Criminal Procedure Code, which refers to the grounds for arrest and that it can be applied only if other measures are not suitable, was completed with a text suggesting that the arrest can be applied if the guilt is not admitted or if the crime was **not** committed by an organized criminal group. The added text is illogical because the non-recognition of the guilt should never be a ground for arrest, while the fact that the crime is not committed by a group should generally mitigate against arrest and not in its favor. This confusion can lead to an increased number of arrests. In 4 September 2018, a judge of the Chisinau District Court called the Constitutional Court to establish if the text added to art. 185 para. 1 of the Criminal Procedure Code is in line with the right to liberty provided by art. 25 of the Constitution. The Constitutional Court usually decides on such requests in several months.

A major change of the law is that a high number of crimes related to business (Art.183, 1851–1853, 223, 224, 225, 226, 227–2422, 244–2459, 24511–2462, 248–255, 257–2611 and 362 of the Criminal Code) were transferred for investigation from police to prosecutors. This will lead to a considerable increase of the workload of local prosecutors. On the other hand, it also means that the powers of the police to investigate those crimes were taken away from them. It is unclear if the prosecutors will be able to deal properly with this change of competence. No estimation in that respect was made ex-ante. It may turn out to be a major practical problem and ultimately lead to impunity.

The “business package” was adopted with a record speed – 3 days. The procedure of adoption of the bill was not respected as it was voted without the anticorruption opinion of National Anticorruption Centre, which is mandatory under law. Moreover, the bill was not discussed in all the committees of the Parliament, as provided by the Rules of the Parliament. This may suggest a hidden interest behind the law.

## **Conclusion**

The new law provides for a number of initiatives that can in theory protect business against arbitrariness of public authorities. Although the bill was generally known as “business package”, numerous of its provisions apply to everyone and not to business only. The main objections to the initial draft of the law concerned the new ground for liberation of criminal responsibility, which could apply to the persons in charge of the 2014 bank fraud or crimes against environment. In the adopted text, the new ground for liberation of criminal sanction has a limited application, excluding those risks. In any event our estimation is that the new ground for liberation of criminal sanction will have no or extremely limited practical impact.

The bill may have also side negative consequences. For unclear reasons, the grounds for arrest were extended and this can lead to an increased number of arrests. A major change of the law is that the competence to investigate a high

number of crimes related to business was transferred from police to prosecutors. It is unclear if the prosecutors will be able to deal properly with this change of competence. It may turn to me a major practical problem and ultimately lead to impunity for business.

The “business package” was adopted with a record speed – 3 days. The procedure of adoption of the bill was not respected, suggesting that there is a hidden interest behind it.