

THE REPUBLIC OF MOLDOVA

ANTI-CORRUPTION PROGRESS REPORT

2010

This document was drawn up by the Centre for
Combating Economic Crimes and Corruption

Chisinau
November, 2010

Introduction

Consistent with its commitments to the European community, this period was marked by the continuity of reforms in various public sectors.

The anti-corruption efforts have been directed at strengthening legislative and institutional framework, appropriate implementation of diagnostic and prevention tools, applying at the same time criminal restrictive measures, promoting the constructive partnership between state authorities and civil society, as well as strengthening cooperation with international institutions.

The following policy documents set the priority activities in the field:

- *Government Programme "European Integration: Freedom, Democracy, Welfare" 2009-2013*, that has as an objective judiciary reform, national integrity and fight against corruption systems strength. There were included certain activities to achieve these objectives in the *Government's activity plan for 2010*, approved by *Government Decision in March 2010*;

- *Economic Stabilization and Recovery Programme of the Republic of Moldova for 2009-2011*, approved by Government Decision on December 1st, 2009, which includes "corruption and justice" section;

- *Action Plan for 2010 on implementing the National Strategy for Preventing and Combating Corruption*, approved by Parliament Decision in May 2010. This plan reflects strategic priorities identified by participants at the national anti-corruption conference, held on December 9, 2009. This forum brought together all actors involved in anti-corruption.

Regulatory and law enforcement strengthening

Normative acts drafted in 2010 and submitted to the Government and Parliament:

- Draft laws to amend and supplement some legislative acts, aimed at adjusting the national anti-corruption legislation to the UN Convention against Corruption, Criminal law Convention on Corruption and its Additional Protocol and GRECO recommendations addressed to Moldova in 2nd Evaluation Round:

- draft law (*submitted to the Parliament on 13.05.2010*) suggests that the breach of the Code of Conduct is not just a disciplinary but, where appropriate, take the form of an offense or contravention; it also proposes supplementing the Criminal Code by establishing *liability for legal persons for corruption acts*, *criminalization of the "false accounting documents" offense*; proposes decreasing

the immunity level of bailiffs and also proposes changes that relate to some aspects of public procurement procedure,

- draft law (*submitted to the Government on 11.06.2010*) proposes amendments to Criminal Code by introducing the concepts of "public person", "high-ranking public person" and the description of their defining signs so that the aforementioned subjects are criminally punishable for the commission of corruption acts; as well as introducing additional concept of "*foreign public person*" whose content will be similar to terms used in the UN Convention against corruption: "foreign public official" and "official of a public international organization"; it also proposes *criminalizing the offense of corruption of voters and* amends Criminal Procedure Code by obliging to take measures to ensure the confiscation of proceeds of crime,

- Draft law (*submitted to the Government on 06.08.2010*) proposes toughening punishment for the tax evasion crime,

- Draft law (*approved in Government session of 11.08.2010*) which aims at amending and supplementing contravention Code of the Republic of Moldova, which, inter alia, includes such contraventions as "protectionism", "conflict of interest", "management of public financial and material resources contrary to their destination", "nondisclosure of corruption and related acts that became known in the exercise of the function";

- Draft law on protection of whistleblowers (*submitted to the Government on 02.06.2010*);

- Draft law (*approved in Government session on 25.08.2010*) on amending and supplementing some legislative acts (changes will relate to tax evasion of natural persons);

- Draft Law on the Main Ethics Commission, its structure and modus operandi (*submitted to Government for approval*);

- Draft law on amending and supplementing some legislative acts, in which are prescribed changes and additions to Law on state registration of legal persons and individual entrepreneurs, by including the "single window" concept as a principle for the state registration procedure and a series of amendments to improve the legal framework in this field (*project was approved by Law no. 127 of 18.06.2010*);

- Draft Law on amending and supplementing certain legislative acts (*submitted to the Government*) that provides the review of current mechanism for declaring income and property of state officials, judges, prosecutors, public officials and persons with managing positions. This draft Law also concerns the application of the Law on conflict of interest implementing mechanism;

- Draft Law on supplementing Law on preventing and combating corruption (*submitted to the Government on 15.09.2010*);

- Draft Law on amending and supplementing Law on public procurement, which aims to improve public procurement mechanism and ensure transparent use of public funds (*the project is subject to public debates*);
- In order to implement Law no. 158-XVI of 4 July 2008 on public service and public servant status, there were drafted 8 normative acts, of which 6 were approved by the Government;
- Government Decision no. 96 of 16.02.2010 on measures for implementing the Law no.239-XVI of 13 November 2008 on transparency in decision making process.

Conclusions to chapter:

Although developed in time, the draft laws have not been adopted in order to adjust national legislation to the UN Convention against corruption, Criminal Law Convention on Corruption and its Additional Protocol. Moreover, effective mechanisms to implement anti-corruption legal framework has not been implemented as well.

A component of the project conceived in August 2008 to assist the Moldovan authorities in implementing agreements between the Republic of Moldova and the EU is bringing Moldavian legislation in line with EU acquis.

Within the project's framework, in July 2010 "law and public procurement policies" study was launched. European experts have concluded that although the Law on public procurement from 2007 was prepared generally in accordance with the EU Directive regarding the public sector, there must also be included a number of additional specific concepts. Experts stressed that while the degree of harmonization is reasonable so far and provides a stable basis for further broader approximation, the 2007 Law on public procurement requires changes to achieve a closer degree of approximation as well as to repair some of the identified deficiencies.

Within the framework of technical assistance to Moldova, financed by UNDP, the European Commission expert analyzed the legal and institutional system on preventing and combating corruption through the EU acquis and best practices.

The conclusions of the Final Report provided the following needs:

adoption of laws drafted by Centre for Combating Economic Crimes and Corruption and Ministry of Justice, mentioned above;

consideration of the submission of the draft amendment to the Constitution in order to exclude the thesis - "*The Legality of acquirement shall be presumed*";

prior solving of the immunities problem;

reflection on the limits and methods of liability relief application in the Republic of Moldova in view of GRECO evaluation mission;

clarifying the laws pertaining to special investigative techniques;

reassessment the penalty regime in respect of corruption acts.

According to GRECO decision of December 5, 2008, Moldova has implemented satisfactorily or dealt with in a satisfactory manner 9 of the 15 recommendations addressed at the 2nd Evaluation Round, 6 were partially implemented. At its Plenary Meeting in September 2010, GRECO adopted Addendum to the Compliance Report on 2nd Evaluation Round. Five from six recommendations remain partially implemented; one was dealt with in a satisfactory manner. In these five recommendations are mentioned the draft laws that were drafted but not adopted by the Parliament. Most of these draft laws are mentioned above.

Preventing Corruption

Anti-corruption expertise of draft normative acts

According to competence conferred by Law no. 1104-XV of 06.06.2002, during the reporting period Centre for Combating Economic Crimes and Corruption ensured the continuity of corruption “proofing” of draft laws and regulatory acts. 253 expertise reports have been elaborated in nine months of 2010, placed on the Centre’s website of the.

Conclusions:

Efficiency of the expertise of draft laws can not be assessed since the legislative acts relevant to the field were not adopted by the Parliament.

Public finance management

Article 9 of the UN Convention against Corruption requires each State party to take appropriate measures to promote transparency and accountability in public finance management, including implementation of efficient systems of risk management and internal control.

Public external audit activity on the financial resources and public goods administration is carried out by the Court of Accounts. In 2009 the Court of Accounts conducted 34 audit missions of 444 entities; there were adopted 41 decisions on approval of audit reports and 50 audit reports as a result. Court’s decisions are published in the Official Monitor of the Republic of Moldova and posted on the official website of the institution.

According to its duties, the Court of Accounts audits the work of other control bodies / public financial audit, as well as the internal control systems of entities, contributing to their improvement. In this activity the auditors are guided by the assessment methodology of the internal control systems in public sector, approved by the Court of Accounts' Decision.

There were achieved certain progresses in implementing a modern system of public finance management, based on the public internal financial control concept.

The concept of public internal financial control is based on three distinct elements: financial management and control + internal audit + Central Harmonization Unit. In order to implement it the following steps have been undertaken:

1) legislative and normative- methodological framework was approved, including:

Law no. 847-XIII of 24 May 1996 on budgetary system and budgetary process was supplemented with Title IX¹ "Public internal financial control" and the Law no.436-XVI of 28 December 2006 on public administration with Chapter XIII "Public internal financial control",

Law on public internal financial control was adopted in September 2010 in second reading;

development program of public internal financial control with an achievement term of 4 years (2010-2013) was approved by Government Decision in July 2010;

by joint decisions of the Court of Accounts and Ministry of Finance, Ethics Code for Internal Auditor and Internal Audit Charter (Model Regulation of performing internal auditing), National Internal Audit Standards and Methodological Norms for Implementing of Public Sector Internal Audit, as well as National Standards for Public Sector Internal Control were approved;

2) A Central Harmonization Unit within the Ministry of Finance was created, responsible for coordinating the process of transforming the existing control system in a new system of public internal financial control;

3) There were created 47 internal audit units (IAU), 20 of them within ministries and other central administrative authorities and one within the local public authorities. The process of creating new IAU and strengthen existing activity is ongoing;

4) There were developed training materials for internal auditors and public sector managers. 20 one-week workshops have been conducted till now, number of trained internal auditors – 83, number of employees trained in financial management and control – 139.

According to the National Standards for Internal Audit, heads of public authorities develop an appropriate mechanism for risk management within the entity, depending on their complexity and size. In this regard, a Risk Committee (Working Group) has been established, responsible for risks identifying, evaluating, registering and monitoring.

Furthermore, independent of the above mentioned norms, Moldovan authorities initiated in 2009 the activity of institutional corruption risk assessment, in base of the provisions of Government Decision "On approval of the methodology for corruption risk assessment in public institutions".

Corruption risk assessment

Weaknesses: Due to the fact that the process of assessing the risk of corruption is a new one for the Republic of Moldova and involves several steps, public institutions were not able to respect the term of fulfillment, which led to the extension of the implementation term of Government Decision no. 906 of 28.07.2008 with 2 years.

The practical experience still lacks. Trainings or courses in corruption risk assessment at the national level have not been provided. They only refer to the generic risk assessment. Superficial attitude of the persons in charge of this activity from public authorities is still present and this leads to a stagnation in the implementation of this objective.

Civic Partnership

Partnership between public authorities and civil society was developed this year by creating *National Council for Participation*. National Council for Participation was constituted on February 2nd, 2010 in order to establish an effective dialogue between Government and civil society, as well as an active involvement of NGOs in decision-making process. The Council comprises 30 non-governmental organizations. The goal of the Council is development and promotion of strategic partnership between public authorities, civil society and private sector to strengthen participatory democracy in the Republic of Moldova by facilitating communication and participation of stakeholders in identifying and developing strategic priorities of the country development at all stages and creating the framework and institutional capacities to ensure the plenary involvement of stakeholders in decision-making process.

The priorities of the National Council for Participation for the period January 2010 - January 2012 include the prevention and combating of corruption.

Transparency in decision-making process

In 2010 NGO "Acces-info" has developed monitoring report "Access to information and transparency in decision-making process: attitudes, perceptions

and trends." The report concluded that although during the last year the Government has undertaken a number of complex activities on institutional transparency of governmental structures, efficiency in collaboration with civil society, elaboration of some normative acts and monitoring results confirm that the application of the Law on access to information and Law on transparency in decision-making process remains problematic, especially at municipal, regional and local levels. There is a lack of a clear and effective mechanism, of an objective and permanent information of public, active involvement of civil society in decision-making process through application of some forms, procedures and modalities that would bring some results, applied in other countries.

Anti-corruption education

To raise anti-corruption public awareness during the nine months of this year Centre for Combating Economic Crimes and Corruption trainers conducted 45 anti-corruption meetings attended by about 1,500 people, as well as a Summer School "Youth against Corruption" attended by students from Ukraine and Moldova. There were given around 185 press releases and organized 18 press conferences that focused on important issues such as: corruption in educational institutions, exposing fraudulent schemes in the health sector, collaboration Centre for Combating Economic Crimes and Corruption - Civil Council, combating corruption in law enforcement institutions etc. Centre for Combating Economic Crimes and Corruption representatives participated at TV and radio shows.

Weaknesses:

– The activities related to public awareness, civic education, conducted by state institutions and nongovernmental organizations in regard to a better understanding of human rights and suppressing legal illiteracy continue to be sporadic and ineffective, which generates passivity and indifference of citizens (Conclusion from the report of Access-info Center " - " Access to information and transparency in decision-making process: attitudes, perceptions and trends "). Also remains low the familiarization level of public officials with the conflict of interest subject and the Code of Conduct (TI Moldova study conclusions "Treatment of conflicts of interest in public service: evolution or stagnation?").

- In July 2010 Centre for Combating Economic Crimes and Corruption benefited of the UNDP Bratislava Regional Centre project, whose objective was to assess the preventive activities of the Centre. The final report concluded a reduced capacity in preventive activities of Centre for Combating Economic Crimes and Corruption, due to insufficient staff and financial resources provided in the budget to cover these activities.

International cooperation

This year, the Republic of Moldova continued to participate in various international and regional initiatives and projects aimed at preventing and combating corruption, including actions taken by the European structures (*RM - EU Cooperation Council, RM - EU Cooperation Committee, other committees, work groups, relevant committees and subcommittees*).

There are three ongoing projects, at which Centre for Combating Economic Crimes and Corruption represents the Republic of Moldova: Agreement on creation of the interstate council on combating corruption (CIS), Agreement on the Establishment of International Anti-Corruption Academy (IACA); Joint action plan / Memorandum on Centre for Combating Economic Crimes and Corruption cooperation with Romania in combating corruption.

In the context of the Republic of Moldova – the European Union relations, the dialogue is carried out through cooperation structures: *RM - EU Cooperation Council, RM - EU Cooperation Committee, other committees, working groups, relevant committees and subcommittees*. One of the relevant areas for starting the dialogue between the Republic of Moldova and EU is "combating corruption" that is addressed in meetings of the Eastern Partnership Multilateral Platform (EP) no. I - *Democracy, good governance and stability*. In base of the joint decision of the above mentioned platform the "Fight against Corruption" panel has been established, which convened at its first meeting on 14 September 2010 in Brussels. This international forum was attended by delegations of the EP's six partner countries, including Moldova, representatives of the Council of Europe, the European Commission, EU member countries, Civil Society Forum and various donors. In the context of discussions on the events planned in light of working program of the Panel, it was proposed to organize in the Republic of Moldova a conference entitled "*Review of national policies and strategies on good governance and corruption prevention*." This event is a good opportunity for the six countries to share practices and experiences on achievements and problems identified in the implementation of anticorruption policy documents.

Fight against corruption is a negotiated area in the context of the new Association agreement between the Republic of Moldova and the European Union, found in "Justice, freedom and security" chapter. Definitions of active and passive corruption within the meaning of the Protocol to the Convention for the Protection of the European Communities' financial interests are negotiated within the financial cooperation chapter.

One of the relevant areas to launch a dialogue on visa liberalization is the Block 3 "*policy in combating corruption*".

In the context of the assessment visit to the Republic of Moldova of the European Commission Mission for exploratory discussions on visa liberalization dialogue, on September 15-16, 2010 was held a meeting with a team of experts from EU

Member States and European Commission experts. Following the visit, assessment experts presented a report on the blocks of countering corruption and money laundering. Their recommendations will be included in a National Action Plan within the dialogue on visa liberalization with the EU.

Final conclusions:

The achievement of 2010 Action Plan to implement the National Strategy for Preventing and combating corruption is ongoing, but, according to its quarterly monitoring report, the expected result won't be achieved for the following reasons:

- the policy document was approved too late. As the result public institutions have failed to reorient their activities to carry out the plan activities;
- due to the institutional restructuring, the new Monitoring Group was set with delay (Presidential Decree of 08.07.2010). The Group initiated hearing of decision makers from public authorities on the implementation of the plan in September this year (two ministries heard at the hearing). Decision on on-site monitoring of the Ministry of Education was taken;
- the Coordinating Council for fighting corruption and crime was also formed later (point 3.2. from the Strategy);
- important draft laws relevant for the field haven't been adopted.

The corruption problem in the Republic of Moldova remains acute. Promotion of anti-corruption policies at a certain level was marked by political instability. This year Moldova recorded a CPI score of 2.9 points, or 0.4 points less than the previous year, returning to 2008 level. That means the Moldovan authorities have to strengthen the efforts to implement the planned and consistent actions to fight against corruption, a success factor of which is the political will.

According to the findings of the National Anti-corruption Conference, held in December 2009, the Moldovan authorities are to adopt a new policy document in the field, according to current norms of national and international law, its development is ongoing.

On August 9, 2010 the project within "Support to the implementation of agreements between the RM and the EU" Programme of the European Commission started which aims to assess the Anti-corruption Strategy. The project aimed to a new National Anticorruption Strategy elaboration as well as consolidating the monitoring capacities of the anticorruption policies implementation process. On 13-14 of September, 2010, the experts presented *Preliminary results of the Project for the purpose of the project* within the workshop, attended by about 40 representatives of public and private sectors as well as civil society. The experts team presented the National Integrity System

concept and assessment methodology. There were identified additional needs (legislative and institutional changes, recommendations and conclusions) which are to be included in the draft National Anti-Corruption Strategy.