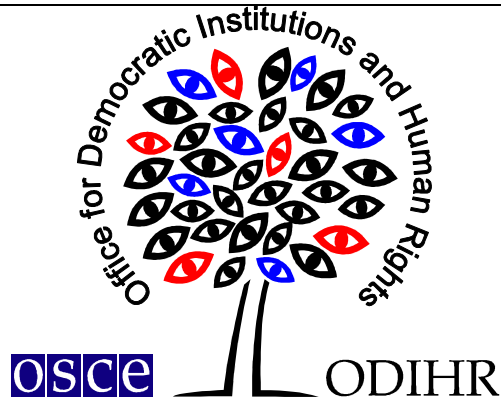


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# **ASSESSMENT OF THE LEGISLATIVE PROCESS IN THE REPUBLIC OF MOLDOVA**

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# **I INTRODUCTION**

## **1. BACKGROUND**

In May, 2006 an ODIHR delegation, visited the Republic of Moldova, with the purpose of establishing whether there exists a need to conduct a full-scale assessment of the legislative process in view of identifying deficiencies, if any, and possible solutions for making it more transparent and effective. Following standard ODIHR practice on such initial visits, the ODIHR limited its interviews to civil society representatives, academics and international organisations operating in the Republic of Moldova and did not seek interviews with members or officials of state institutions.

In the summer of 2008, ODIHR prepared a preliminary assessment of the legislative process in Moldova. ODIHR published the report of the preliminary assessment in September 2008<sup>2</sup>.

In June 2010, following an official request from the Moldovan authorities, ODIHR undertook a full scale assessment of the legislative process in Moldova. The full-scale assessment involved re-visiting many issues contained in the Preliminary Report through semi-structured field interviews a number of domestic legislature and executive interlocutors as well as the international organisations operating in this field in Moldova. The purpose of such assessment is to provide an illustration of the practice in the process of law making in the Republic of Moldova and recommendations on improving its efficiency and transparency. Discussions with representatives of the Moldovan authorities as well as with practitioners and scholars familiar with the Moldovan legislative practice contributed significantly to the thorough analysis as well as the formulation of practical recommendations.

## **2. SCOPE OF THE REPORT**

This Report seeks to build on the initial visit of the ODIHR delegation and the initial analysis of relevant framework legislation in the Preliminary Report.

This Report, using the developed methodology of ODIHR, has been informed by a series of semi-structured field interviews with pre-identified interlocutors, including all governmental and parliamentary bodies involved the law making process. The interviews were held in June 2010 and the interviewees are listed in *Annex I*.

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<sup>2</sup> *Preliminary Report on the Legislative Process in the Republic of Moldova* (ODIHR: Warsaw; 2008); Legis Paper – Nr: 118/2008 (MASz/DP). The Report is also available at [www.legislationonline.org](http://www.legislationonline.org).

Also, in preparing the Report, the provisions of the Constitution and legislation examined in the Preliminary Report have been reconsidered, and further relevant legislation and official publications have been analysed. As the analysis has been based on unofficial English translations of the Constitution and legislation, the ODIHR also wishes to note the possibility of misinterpretation that may have arisen in the analysis as a result of the use of these translations. A list of the legislation and associated materials which, together with the Constitution, have been assessed or re-assessed in the preparation of the Report is contained in *Annex 2*. The summary of the international assistance efforts in related areas is outlined in *Annex 3*.

The overall objective of the Report has been to provide an accurate account of the legislative process in Moldova, together with an analysis leading to recommendations to improve the efficiency and transparency of the process.

### **3. EXECUTIVE SUMMARY**

This assessment is a comprehensive study of both the formal procedures and the actual practices whereby legislation is elaborated, drafted, discussed, adopted, published, communicated and evaluated in the Republic of Moldova. It identifies a number of obstacles to achieving legislation that matches generally accepted international standards and a number of strategies that might be adopted with a view to overcoming those obstacles and improving the quality of legislation.

- Based on that assessment, the following are the principal general conclusions on the contemporary legislative process in the Republic of Moldova. The legislative process is still being developed and refined. There remains a need for the institutions involved in the process to establish more robust mechanisms to monitor compliance with their statutory requirements. There is also a need to maintain as a high priority the training of public officials within the process, not least more systematic training in legislative drafting.
- With respect to policy development which leads to draft legislation, the comprehensive and detailed legislative provisions which regulate this could usefully be reviewed to establish whether in all cases they are entirely practical and proportionate.

- Civil society consultation within the legislative process has been advanced in recent years. There remains a need to open the consultation further within society; to reduce official discretion over whether consultation should take place; to extend the minimum periods in which submissions may be made; and, to ensure that there is effective civil society consultation on proposed amendments to draft laws. In particular, consultation should not be rendered nugatory by inappropriately frequent resort to the statutory accelerated legislative procedure.
- With regard to legislative drafting, an important priority is to prepare a drafting manual, as a practical supplement to the statutory provisions which regulate the structure and drafting style of primary and subordinate legislation (normative acts). The statutory provisions themselves might usefully be reviewed to ensure that they fully reflect international standards of best drafting practice. In addition, the relative status of legislative texts in the national language and in Russian considered during parliamentary proceedings should be clarified by law.
- As for the legislative process itself, the Parliament in consultation with the Government should consider moving to a largely text-based process, in the interests of efficiency and clarity.
- In terms of parliamentary scrutiny and approval of delegated legislation (normative acts), the Parliament, in consultation with the Government, should consider introducing a more comprehensive and flexible procedure.
- Finally, the Parliament should review the structure and working methods of its standing committees with the objective of enhancing their present functions and of creating a capacity to undertake others.

## **II THE LEGISLATIVE PROCESS: An Overview**

### **1. INSTITUTIONAL BACKGROUND**

**1.1** The *Parliament* is unicameral with 101 members, elected by direct universal suffrage. It normally sits in two ordinary sessions each year; the first begins in February and cannot extend beyond July and the second begins in September and cannot extend beyond

December<sup>3</sup>. However, it does have the capacity to sit in extraordinary or special sessions outside these periods<sup>4</sup>.

**1.2** The Chairman (Speaker) of the Parliament, the Standing Bureau, and the standing and special committees are the central institutional elements in the legislative process.

**1.3** The *Chairman* is elected by an absolute majority of the MPs in secret ballot for the term of the Parliament<sup>5</sup>, from candidates proposed by the recognised factions in the Parliament<sup>6</sup>. In addition to exercising significant influence, not least in chairing the Standing Bureau, the Chairman has formal powers in relation to the legislative process. It is, for instance, the Chairman who formally receives and distributes draft laws and legislative proposals<sup>7</sup>, and who signs the laws adopted by Parliament<sup>8</sup> and submits them to the President of the Republic for promulgation.

**1.4** The *Standing Bureau* is composed of the Chairman and Deputy Chairmen<sup>9</sup> of the Parliament, *ex officio*, together with representatives of the recognised factions in the Parliament and the number of these representatives is proportional to the number of parliamentarians in each faction<sup>10</sup>. Amongst its formal functions the Standing Bureau proposes, subject to formal parliamentary approval in each case: the structure of standing committees (and presumably the other parliamentary committees), the dates of parliamentary sessions and the agendas for parliamentary sittings<sup>11</sup>. It also establishes the parliamentary procedures for considering draft legislation, including the manner in which public debates on draft legislative acts should be carried out<sup>12</sup>, and co-ordinates the activities of the standing committees.<sup>13</sup> The Standing Bureau is also tasked with ensuring control of timely updating

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<sup>3</sup> Constitution, Art 67(1); Law on the Regulation of Parliament, Art 37(1).

<sup>4</sup> Constitution, Art 67(2); Law on the Regulation of Parliament, Art 37 (2)-(4)

<sup>5</sup> Law on the Regulation of Parliament, Art 9

<sup>6</sup> For the creation of the factions and their functions generally, see Law on the Regulation of Parliament, Arts 4 and 6

<sup>7</sup> *ibid.*, Art 14(1)(d)

<sup>8</sup> *ibid.*, Art 14(1)(f)

<sup>9</sup> There are currently three deputy chairmen; the number of deputies is contingent on the number of factions in Parliament. One of the deputies is designated as “Prime-Deputy”; this title may be seen as an informal one as the Constitution does not specifically provide for such an office.

<sup>10</sup> Regulation of Parliament, Art 12

<sup>11</sup> *ibid.*, Art 13

<sup>12</sup> *ibid.*, Art 13(1)(g), although this is also regulated by primary legislation

<sup>13</sup> *ibid.*, Art 13(1)(e)



of the Parliament's website with draft legislative acts, agenda, minutes of plenary sittings and other information which is open to the public.<sup>14</sup>

**1.5** There appear to be currently nine *standing committees* of the Parliament, and each MP (other than the Chairman of the Parliament who is not eligible) must be elected as a voting member of one (but not more than one)<sup>15</sup> of the standing committees.<sup>16</sup> MPs may attend and participate in the proceedings of standing committees of which they are not members.<sup>17</sup> A standing committee may invite to its sittings interested persons from civil society or their representatives, and others, as well as specialists from the Legal Department of the Parliament and from the secretariats of other standing committees; these invitees may be allowed to participate directly in the committee's deliberations.<sup>18</sup>

In terms of the legislative process, standing committees consider draft primary legislation and legislative proposals referred to them, and prepare reports and advisory notes on them for plenary consideration of the legislation<sup>19</sup>; they also draft legislation to implement legislative proposals which have been approved by Parliament<sup>20</sup>; and, in undertaking these tasks, they have the capacity to establish working groups (with a membership which includes specialists who are not MPs and also representatives of interested parties in civil society)<sup>21</sup>. There is also a capacity for standing committees to hold joint sittings<sup>22</sup>. The standing committees may also issue consultative notes "to ensure the uniform application of [...] legislation"<sup>23</sup>.

In addition to the standing committees, the Parliament may also establish *special committees* to, inter alia, scrutinise and report on draft legislation of greater than usual complexity. These special committees perform the same functions as standing committees in this respect<sup>24</sup>; and,

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<sup>14</sup> Ibid., Art. 13 (h)

<sup>15</sup> Ibid., Art 17(6)

<sup>16</sup> Ibid., Art 18; the Deputy Chairmen may be elected to standing committees but it is not mandatory for them to members of the committees

<sup>17</sup> Ibid., Art 21; but, by implication, not vote in their deliberations

<sup>18</sup> Ibid., Art 26

<sup>19</sup> Ibid., Art 27(1)

<sup>20</sup> Law on Legislative Acts, Art 16

<sup>21</sup> Law on the Regulation of Parliament, Art 27 (4) and also sub-committees [ibid., Art 27(5)-(7)]; Law on Legislative Acts, Art. 16

<sup>22</sup> Ibid., Art 30

<sup>23</sup> Ibid., Art 27(3) [an amendment made by Law 430/2006, which came into on 23.03.2007]. The Constitution provides that the interpretation of laws is a basic power of Parliament [Constitution, Art. 66 (c)], and it is a moot point whether Parliament may delegate the power within Parliament. In any event it is not entirely evident what is the status or scope of such consultative notes.

<sup>24</sup> Ibid., Arts 32, 33(1) and (3); it has not been ascertained how frequently special committees have been established to undertake these scrutiny functions

like standing committees, the membership of the special committees is proposed by the Standing Bureau and subject to parliamentary approval<sup>25</sup>.

**1.6** It may be convenient here to observe that the Parliament is essentially in control of its own budget. The parliamentary budget is prepared by the Standing Bureau<sup>26</sup>, and it includes a specific fund for the preparation of legislation and related activities<sup>27</sup>. The Parliament approves its own annual budget<sup>28</sup>. The Chairman manages the budget and reports monthly to the Standing Bureau on its management<sup>29</sup>.

## **2. LEGISLATIVE PROCESS: A “ROAD MAP”**

In procedural terms, there are three basic categories of primary legislation enacted by Parliament: laws [“constitutional laws”] to amend the Constitution<sup>30</sup>; organic laws, relating to specified subjects and further subjects which the Parliament recommends should be regulated by organic laws<sup>31</sup>; and ordinary laws, which regulate other matters<sup>32</sup>. Ordinary laws may be enacted by the Parliament after a first reading (although commonly it is after a second reading)<sup>33</sup>; organic laws may only be enacted after a minimum of two readings<sup>34</sup>; laws making constitutional amendments and organic laws on the budget, financial matters, or which are complex, important or will incur substantial public expenditure may be given three readings before enactment<sup>35</sup>.

Laws making constitutional amendments require a vote of two-thirds of the MPs (an absolute majority of two-thirds) to pass<sup>36</sup>; organic laws require a majority of MPs (a simple absolute

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<sup>25</sup> *ibid.*, Art 33 (2)

<sup>26</sup> Law on the Regulation of Parliament, Art 13(1)(l)

<sup>27</sup> Law on Legislative Acts, Art 60

<sup>28</sup> Law on the Regulation of Parliament, Art 150

<sup>29</sup> *ibid.*, Art 14(1)(j)

<sup>30</sup> Constitution, Arts 72(2), 141-143

<sup>31</sup> Constitution, Art 72(3)

<sup>32</sup> Constitution, Art 72(4)

<sup>33</sup> Law on the Regulation of Parliament, Art 60(1) and (2)

<sup>34</sup> Constitution, Art 74(1); Law on the Regulation of Parliament, Art 60(3)

<sup>35</sup> Law on the Regulation of Parliament, Art 60(4)

<sup>36</sup> Constitution, Art 143(1); law on the Regulation of Parliament, Art 87(1)(a); it is not made explicit whether this majority is required at each stage of the legislative process or only at the final reading.

majority) to pass<sup>37</sup>; and ordinary laws require a vote of the majority of MPs in attendance to pass<sup>38</sup>.

Legislation can be initiated either in the form of draft legislation or as a legislative proposal. In both cases they are first considered by a parliamentary standing committee to which the draft or proposal is allocated by the Chairman (hereinafter, referred to in the Report as “the committee of reference” or “CoR”)<sup>39</sup>. At this stage, civil society organisations may make submissions; and other standing committees, the Legal Department of the Parliament and, where it is not a Government initiative, the Government, may all submit advisory notes<sup>40</sup>. This material is considered by the committee of reference.

Once the committee of reference has reported on draft legislation, the legislation is given a first reading in plenary session. This appears to be a rather formal general debate to approve the law in principal. At its conclusion, the Parliament may enact the legislation (but only if it is an ordinary law), refer it back to the standing committee to finalise the text, refer it to the committee to prepare it for a second reading, or simply reject it. Where a legislative *proposal* is approved by the Parliament the committee of reference will usually establish a working group to draft legislation to implement the proposal.

Where the draft legislation is subject to a second reading, following a further report of the committee of reference, the second reading must take place within 45 days of first reading approval. It is possible to submit further amendments to the committee within 10 days of first reading approval. The second reading debate consists of the presentation of the report of the committee of reference, and consideration and vote on the articles of the draft, article by article, and amendments to them, together with thereafter, if considered necessary, a vote on the draft as whole.

Any draft legislation may be enacted (adopted) at second reading stage, but the Parliament may decide that there should be a third reading of drafts within the categories indicated above, and also where the legislation was substantially amended at second reading or the second reading amendments would result in substantial public expenditure. The committee of

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<sup>37</sup> Constitution, Art 74(1); Law on the Regulation of Parliament, Art 87(1)(b); it is not made explicit whether this majority is required at each stage of the legislative process or only at the final reading.

<sup>38</sup> Constitution, Art 74(2); Law on the Regulation of Parliament, Art 87(1)(c); it is not made explicit whether this is a majority of MPs in attendance at the sitting or a majority of those in attendance and voting, and again it is not made explicit whether this majority is required at each stage of the legislative process or only at the final reading.

<sup>39</sup> Law on the Regulation of Parliament, Arts 48-49; the Chairman distributes the draft legislation to all parliamentary committees, the Legal Department of the Parliament and, where appropriate, to the Government.

<sup>40</sup> See para II: 4.1

reference may then be required to report on the economic and financial implications of the amendments and how they may be met, and the Government may be asked to submit an advisory note on the same matters.<sup>41</sup>

The debate at third reading is limited to those articles of the draft legislation to which amendments were made at second reading and is informed by the committee of reference report and the Government advisory note. Participation in the debate is largely curtailed to the factions and individual members who proposed amendments at second reading which were not accepted by the committee of reference.

If the outcome of the third reading debate substantially modifies the legislative text, it may be referred back to the committee of reference for editing and presentation for the final reading, and this will occur with complex drafts and codes. The period for such editing is set by the Parliament and cannot exceed 30 working days, with the exception of complex draft legislation and codes where it may last for a maximum of three months. The edited draft legislation returns to a plenary session for final enactment (adoption), and at that stage no further amendment is permitted, unless to rectify a discrepancy between the approved third reading text and the edited version.

The approval of the legislative text at this point is the adoption of the legislation by Parliament. It is then signed by the Chairman of the Parliament and sent to the President for promulgation. However, if the President has objections to any of its provisions, the President may within a two-week period refer the legislation back to the Parliament to consider the Presidential objections. The Parliament may accept the objections and amend the legislation accordingly, or it may choose to maintain the original text in which case the President is then obliged to promulgate the legislation.

After promulgation, the legislation must be published in the *Monitorul Oficial* (the Official Gazette) and until it is published it cannot have any legal effect. Once enacted the legislation must also be registered and recorded, and the original text must be retained in the Parliamentary Archive.

Subsequently, there is statutory requirement to review the machinery for enforcement of the legislation within six months of it coming into force; and primary legislation generally is required to be reviewed and systematised at least every two years.

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<sup>41</sup> Any legislative initiative or amendment which entails the increase or diminishing of budgetary revenues or loans, or any increase or curtailment of budgetary expenditure does, in any event, require Government approval: Constitution, Art. 131(4).

### 3. INITIAL STAGES

#### *Legislative Initiative*

**3.1** Members of Parliament, the President of the Republic of Moldova, the Government and the People's Assembly of the autonomous territorial-unit of Gagauzia all have the right to initiate primary legislation<sup>42</sup>; and in the case of a proposal to initiate an amendment of the Constitution, the initiative can also be by a citizen's petition<sup>43</sup>.

The initiative may be in the form of draft primary legislation or, in the case of the President and of parliamentarians, where there is considered to be a need for a range of legislation in respect of an issue, it may simply be a legislative proposal rather than draft legislation<sup>44</sup>; if the proposal is approved by the Parliament the draft legislation is usually drafted by a working group of a standing committee<sup>45</sup>. At least in respect of primary legislation initiated by Parliament, there must be a prior wide-ranging investigation of the contextual implications and of the impact of the legislation<sup>46</sup> and, similarly, where a standing committee working group is drafting primary legislation in implementation of a legislative proposal it must first conduct a similar broad analysis of the implications of the proposed legislation<sup>47</sup>. In each case, this background material must be submitted with the draft legislation<sup>48</sup>.

The Parliament is also required to adopt a legislative programme, encompassing new legislation and necessary amendment of existing legislation, and the programme may be amended on the proposal of the initiator of individual draft legislation<sup>49</sup>.

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<sup>42</sup> Constitution, Art 73

<sup>43</sup> *ibid.*, Art 141(1)(a); an initiative to amend the Constitution may also be by a third of the members of Parliament or by the Government: *ibid.*, Art 141 (1) (b) and (c); in all three cases, it can only be submitted to Parliament accompanied by an advisory opinion of the Constitutional Court adopted by at least four of its six judges; there are also restrictions on the substance and the timing of such amendments: *ibid.*, Arts 142, 143; in each case the primary legislation amending the Constitution must be adopted by two-thirds of the MPs (presumably at each reading): *ibid.*, Art 143 (1). There are specific procedures which apply to legislation which amend the Constitution [see Law on the Regulation of Parliament, Arts 76-86] but these are not considered in detail in this Report.

<sup>44</sup> Law on the Regulation of Parliament, Art 47; Law on Legislative Acts, Art 15; and that also appears to be the case where there is a citizen's petition to amend the Constitution, see fn 36.

<sup>45</sup> Law on Legislative Acts, Art 16

<sup>46</sup> *ibid.*, Arts 13 [cf. Art13-1]

<sup>47</sup> *ibid.*, Art 17

<sup>48</sup> Law on Regulation of Parliament, Art 47(6)

<sup>49</sup> Law on Legislative Acts, Art 14

## **Registration and Allocation**

**3.2** Draft primary legislation and legislative proposals are registered by parliamentary officials in the order that they are submitted<sup>50</sup>.

**3.3** On registration, draft primary legislation submitted in compliance with the Law on the Regulation of Parliament<sup>51</sup> is circulated to all the standing committees<sup>52</sup>, and allocated by the Chairman of the Parliament to the appropriate standing committee for consideration and report and, where necessary, it may be also allocated to other standing committees with a view to a joint report<sup>53</sup>. The draft legislation is also submitted to the Legal Department of the Parliament and, “where applicable”<sup>54</sup> to the Government and (unspecified) “interested institutions” for comment<sup>55</sup>.

## **Publication on Parliamentary website**

**3.4** Within *5 working days* of their registration, draft primary legislation, together with the background documentation which is required to be submitted with it, must be placed on the Parliamentary website<sup>56</sup>. The background documentation includes, inter alia, an explanation of the objective, purpose, place within the existing regulatory framework (legislation already in force) and its socio-economic effects. It must also contain information about who took part in the elaboration of the draft and include the results of expertise and research performed. Furthermore, information on “the financial, material or other costs” must be provided.<sup>57</sup> In case the draft in question requires the elaboration of other normative acts for the purposes of

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<sup>50</sup> Law on the Regulation of Parliament, Art 48(1); this appears to be synonymous with the concept in that legislation of being “introduced into the legislative procedure”, and, although is not made explicit, this Report proceeds on that assumption; the date of registration, on this basis, then becomes a significant base date for other stages of the process.

<sup>51</sup> Where it is not, the Standing Bureau may suggest to those submitting it that it be brought into compliance (ibid., Art 47 (11)) which suggests that registration is under the direction and scrutiny of the Standing Bureau.

<sup>52</sup> ibid., Art 48(1)

<sup>53</sup> ibid., Art 49(2); there are procedures for resolving conflicts between the committees over their competences to consider draft legislation allocated to them: ibid., Art 50.

<sup>54</sup> Presumably where the Government itself does not initiate it.

<sup>55</sup> ibid., Art 48(1)

<sup>56</sup> ibid., Art 48(2); oversight and management of the website is a statutory responsibility of the Standing Bureau: ibid., Art 13(1) (h); operational management of the website is a duty of the staff within parliamentary administration: ibid., Art 141(5).

<sup>57</sup> ibid., Art. 47(6)

implementation (*assuming this refers to secondary legislation*), a list of such acts or their drafts, should (theoretically) also be attached.<sup>58</sup>

#### **4. PRELIMINARY CONSIDERATION BY STANDING COMMITTEE**

**4.1** The committee of reference has *60 working days* to consider and report<sup>59</sup>. Within that period, the committee may receive various submissions on the draft legislation within the timeframes indicated: submissions from civil society organisations (within 15 working days of the draft legislation being placed on the website<sup>60</sup>); advisory notes prepared by other standing committees (within 30 working days<sup>61</sup>), advisory notes prepared by the Legal Department of the Parliament (within 30 working days<sup>62</sup>) and, in cases where it has not prepared the draft, advisory notes from the Government (within 30 working days or such shorter period as the Chairman of the Parliament determines<sup>63</sup>); and, finally, proposed amendments to the draft legislation may be submitted by MPs, standing committees or parliamentary factions – these amendments must be reasoned and normally in writing, but can be textual amendments or proposals for amendments (within 30 days from receiving the draft legislation<sup>64</sup>).

**4.2** Where the committee of reference has under consideration more than one piece of draft legislation regulating the same matter in the same manner<sup>65</sup>, it is required to examine them individually but may report that they be integrated as one text for consideration at the second reading stage<sup>66</sup>. However, where there is more than one draft legislative text regulating a

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<sup>58</sup> Ibid., Art. 47(7)

<sup>59</sup> Ibid., Art 52

<sup>60</sup> Resolution on Co-operation with Civil Society, (Annex), para 4

<sup>61</sup> Law on the Regulation of Parliament, Art 53

<sup>62</sup> Ibid., Art 54

<sup>63</sup> Ibid., Art 58; in the case of advisory notes from the Government and also those from other standing committees, the relevant provision provides that the failure to provide them does not impede the progression of parliamentary consideration of the draft legislation.

<sup>64</sup> Ibid., Art 59

<sup>65</sup> Ibid., Art 56 (3) which in translation provides “regulating the same issue based on the same concept” but it is assumed this is what is meant.

<sup>66</sup> Ibid., Art 56(3); it may make a similar recommendation where it has under consideration several pieces of draft legislation to amend the same existing law [ibid., Art 56(5)].

matter but in different ways<sup>67</sup>, the committee of reference may propose that a specified text be treated in plenary session as the principal draft and the others as alternative drafts<sup>68</sup>.

**4.3** Once the committee of reference reports, its report, which must now indicate that public consultation has taken place and the results of that consultation<sup>69</sup>, together with the advisory notes it has received from other standing committees and the Legal Department of the Parliament<sup>70</sup>, is circulated to MPs and the initiators of the draft legislation<sup>71</sup>. It is also submitted by the committee of reference, with additional information, to the Standing Bureau, which determines when the draft legislation should be placed on the agenda for a plenary meeting of the Parliament<sup>72</sup>. Draft primary legislation is usually put on the agenda within 10 days of the report of the committee of reference being received<sup>73</sup>.

**4.4** The period in which the committee of reference has to report may be varied by the Standing Bureau<sup>74</sup>.

In particular, the Standing Bureau may reduce the period at the request of the Prime Minister, where the Government considers a draft law it has initiated is a matter of urgency<sup>75</sup>. If the Standing Bureau accedes to that request, the period for the committee of reference to report must be set at a maximum of *10 working days* and, once received, it must be placed on the agenda for the *next plenary sitting*<sup>76</sup>.

## **5. FIRST READING**

**5.1** The first reading debate consists of a series of short speeches<sup>77</sup>. The initiator of the draft legislation presents the legislation<sup>78</sup> and also has a right of a final intervention at the end of the debate<sup>79</sup>; the report of the committee of reference is presented by the chairman or other

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<sup>67</sup> *ibid.*, Art 56(4) which in translation provides “regulating the same issue, however based on different concepts”, but again it is assumed this is what is meant.

<sup>68</sup> *ibid.*, Art 56(4)

<sup>69</sup> Law on Legislative Acts, Arts. 21, 23

<sup>70</sup> And presumably any advisory notes from the Government, although this does not appear to be specified.

<sup>71</sup> Law on the Regulation of Parliament, Art 57(1)

<sup>72</sup> *ibid.*, Art 57(2); proposed agendas are prepared by the Standing Bureau on a two-week cycle; *ibid.*, Art 39

<sup>73</sup> *ibid.*, Art 41(2)

<sup>74</sup> *ibid.*, Art 52; in the case of a legislative proposal, the Parliament having approved it sets a timetable in which legislation is to be drafted to implement it: Law on Legislative Acts, Art 15(2).

<sup>75</sup> Law on Regulation of Parliament, Art 43 [cf. Art 44]; Constitution, Art. 74 (3)

<sup>76</sup> Law on the Regulation of Parliament, Art 47 (2) and (3)

<sup>77</sup> e.g. of their regulation: *ibid.*, Art 61(4)

<sup>78</sup> *ibid.*, Art 61(1)(a); in the preparation of this Report it has not been established how this procedure operates where the initiator is not a member of Parliament.

<sup>79</sup> *ibid.*, Art 62



member of the committee<sup>80</sup>; representatives of parliamentary factions and other MPs may also speak<sup>81</sup>; and MPs may ask a maximum of two questions each of the CoR rapporteurs<sup>82</sup>, but may not make substantive comments on the draft legislation<sup>83</sup>.

**5.2** At the conclusion of the first reading, the Parliament may: (i), if it is an ordinary law, enact (“adopt”) the law, (ii) refer it to the CoR or other specified committee to make final adjustments to the text, (iii) approve it at first reading and refer it to the relevant committee to prepare the draft for a second reading or (iv) reject it<sup>84</sup>.

**5.3** Also at this stage Parliament decides on any recommendations of the committee of reference on amalgamating alternative drafts or treating one draft as the principal text and other drafts as alternative drafts – as outlined in paragraph 4.2 above<sup>85</sup>.

## **6. POST-FIRST READING FINALISATION OF TEXT**

Where the Parliament decides at the conclusion of the first reading that the legislative text simply requires to be finalised by the committee of reference, the initiators of the draft legislation are entitled to attend and participate in the meeting of the committee when this is done<sup>86</sup>.

## **7. PRE-SECOND READING STANDING COMMITTEE CONSIDERATION**

**7.1** Although this may be a misreading, it would appear that it is at this stage that the committee of reference considers the documentation which was submitted to it under time-limits prior to its initial pre-first reading consideration of the draft legislation<sup>87</sup>. Nevertheless, within 10 days after the approval of the draft legislation at first reading, MPs, standing

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<sup>80</sup> *ibid.*, Art 61(1)(b), (2)

<sup>81</sup> *ibid.*, Art 61(1)(c)

<sup>82</sup> *ibid.*, Art 61(3)

<sup>83</sup> The last sentence Art 61(3) provides “comments concerning the presented drafts are not allowed”.

<sup>84</sup> *ibid.*,

Art 63(1); Art 63(2), which is not altogether clear in translation, provides for the parliamentary decision taken at first reading to be minuted but allows for the Parliament to “decide otherwise”, but why it should decide not to minute its decision and the implications of such a decision are unclear.

<sup>85</sup> *ibid.*, Art 64; the implication being that these arrangements are to operate from the second reading stage.

<sup>86</sup> *ibid.*, Art 65(3); it is assumed that the finalised text then returns to a plenary sitting for approval; this is not specifically indicated, but it may be formally a continuation of the first reading procedure.

<sup>87</sup> *ibid.*, Art 65(1); the submissions that may have been made previously are set out in para 4.1.

committees and parliamentary factions have a further opportunity to submit amendments to the committee of reference<sup>88</sup>.

**7.2** The committee of reference must report on its consideration of these materials within the timeframe for the second reading in plenary session (see paragraph 8.1).

## **8. SECOND READING**

**8.1** As previously indicated, two readings are the norm for legislation and mandatory for organic laws; and the second reading must take place within 45 days of the first reading approval<sup>89</sup>.

**8.2** At the second reading debate, the report of the committee of reference is presented, and the draft legislation is considered and voted on article by article, together with amendments to each article, and a vote may then be taken on the whole draft<sup>90</sup>. Oral amendments relating to legislative technique and language are permitted during the debate, to which the committee of reference rapporteur may respond<sup>91</sup>.

Government representatives may also participate in the second reading debate<sup>92</sup>.

## **9. STANDING COMMITTEE CONSIDERATION PRIOR TO THIRD READING<sup>93</sup>**

**9.1** As indicated earlier, Parliament may decide on a third reading of laws making constitutional amendments and organic laws on the budget, financial matters, or which are complex, important or will incur substantial public expenditure may be given three readings before enactment<sup>94</sup>. It may also decide to give a third reading to draft legislation which was substantially amended at second reading or where the second reading amendments would result in substantial public expenditure<sup>95</sup>.

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<sup>88</sup> *ibid.*, Art 65(2)

<sup>89</sup> *ibid.*, Art 65(4)

<sup>90</sup> *ibid.*, Art 66; the procedure for debate generally, and consideration of, and voting on, individual articles and amendments to them is set out in *ibid.*, Arts 67- 69.

<sup>91</sup> *ibid.*, Arts 67(3), 68(3)

<sup>92</sup> *ibid.*, Art 67(2)

<sup>93</sup> Articles 70 and 71 of the Law on the Regulation of Parliament which deal with the third reading stage, although amended in 2006, appear, at least in translation, to be somewhat deficient in structure and obscure in content, so the analysis of this stage of the legislative process is consequently less secure.

<sup>94</sup> *ibid.*, Art 70 (1); Law on the Regulation of Parliament, Art 60(4)

<sup>95</sup> Law on the Regulation of Parliament, Art 70(1)

**9.2** The committee of reference may be requested to report within three weeks on the economic and financial implications of second reading amendments and how they might be met. The Government may also be requested to submit an advisory note on these matters within the same timeframe<sup>96</sup>.

## **10. THIRD READING**

**10.1** The debate at third reading is limited to those articles of the draft legislation to which amendments were proposed for second reading<sup>97</sup> the report of the committee of reference and the advisory note of the Government. Participation in the debate is largely limited to a representative of each parliamentary faction which, and to individual MPs who, proposed a second reading amendment and which was not accepted by the committee of reference in its report<sup>98</sup>.

**10.2** If the outcome of the third reading debate substantially modifies the legislative text, it may be referred back to the committee of reference for editing and presentation for the final reading, and this will occur with complex drafts and codes<sup>99</sup>. The period for such editing is set by the Parliament and cannot exceed 30 working days, with the exception of complex draft legislation and codes where it may be a maximum of three months<sup>100</sup>.

**10.3** The edited draft legislation returns to a plenary session for final enactment (adoption), and at that stage no further amendment is permitted, unless there is a discrepancy between the approved third reading text and the edited version<sup>101</sup>.

## **11. FINAL STAGES**

### ***Signature of Chairman***

**11.1** Once enacted (adopted) by the Parliament, the legislation must be signed by the Chairman of the Parliament (or, in certain cases by a Deputy Chairman) within 20 days of its

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<sup>96</sup> *ibid.*, Art 70(2); there is no base date given for this time-frame; it may be from second reading approval.

<sup>97</sup> *ibid.*, Art 70(4)

<sup>98</sup> *ibid.*, 70(3)

<sup>99</sup> *ibid.*, Art 71 (1); it is not entirely clear from the text and context whether this “final reading” is treated as a continuation of the third reading stage or a separate stage.

<sup>100</sup> *ibid.*, 71(2); again no base dates are set for these time-frames, but it may be assumed to be from the date of completion of substantive deliberation at third reading.

<sup>101</sup> *ibid.*, 71(3)

adoption<sup>102</sup>, and by the next working day following its signature at the latest, the Chairman (or a Deputy Chairman) must send it to the President of the Republic for promulgation<sup>103</sup>.

### ***Promulgation***<sup>104</sup>

**11.2** If the President has an objection to the law as enacted (adopted), the President, on one occasion only<sup>105</sup> and within two weeks of receiving it, may refer it back to the Parliament for reconsideration of the basis of the objection<sup>106</sup>.

If the Parliament upholds the original text of the legislation or amends it to accommodate the Presidential objection, then the President is obliged to promulgate it within two weeks<sup>107</sup>.

If, having considered the President's objections, the Parliament fails to uphold the law, it is treated as rejected<sup>108</sup>.

### ***Publication***

**11.3** Primary legislation must be published in the *Monitorul Oficial*; if it is not so published, it is of no effect<sup>109</sup>.

**11.4** The legislation comes into force on the date specified in its provisions or, otherwise on the date of its publication<sup>110</sup>.

### ***Registration etc***

**11.5** Primary legislation is numbered when it is adopted<sup>111</sup> and the originals must be permanently retained in the Parliamentary Archives<sup>112</sup>. Each piece of primary legislation is,

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<sup>102</sup> *ibid.*, Art 73

<sup>103</sup> *ibid.*, Art 74(1)

<sup>104</sup> It should be noted that an official from the Office of the President attends Government sessions for the discussion of draft laws; and an official from the Office attends sessions of the Parliament for the particular purpose of monitoring legislative proceedings, and for example records whether a law is enacted with the requisite majority.

<sup>105</sup> A limitation in the Law on the Regulation of Parliament, Art 74(3), but not found in the Constitution, Art 93.

<sup>106</sup> The reconsideration follows the same parliamentary procedure as for the consideration of amendments: *ibid.*, Art 74(3).

<sup>107</sup> *ibid.*, Art 74(4); the translation makes it uncertain whether this is the original two week period or a period of two weeks from the response of the Parliament being registered by the President's Office.

<sup>108</sup> *ibid.*, Art 75

<sup>109</sup> Constitution, Art 76; Laws on the ratification international treaties are published in the *Monitorul Oficial* but without the text of treaty which is annexed to the law [see art. 31 Law 780/2001]; the treaty texts are published later in a separate series.

<sup>5</sup> never been published.

<sup>110</sup> *ibid.*

<sup>111</sup> Law on Legislative Acts, Art 54

<sup>112</sup> *ibid.*, Art 55(2); presumably the "original" is the copy signed by the Chairman and sent to the President for promulgation, and then presumably returned to be archived.

in addition, the subject of multiple registration and recording. It is required to be registered in the State Register of Acts and also in the State Register of Legal Acts<sup>113</sup>. A record of primary legislation is required to be maintained by the Parliament (in several formats)<sup>114</sup> and also by the Ministry of Justice<sup>115</sup>.

It may be observed in passing that these rather elaborate arrangements do not *ex facie* specifically and definitively address some practical questions. Where an enacted text is disputed, which text is to be treated as the definitive text - presumably the archived original? Which registration or record takes precedence and in what circumstances?

## **12. CONSEQUENCES OF REJECTION OF DRAFT LEGISLATION**

Usually draft legislation rejected by the Parliament cannot be reintroduced in the same session<sup>116</sup>.

## **13. POST-ENACTMENT PROCEDURES**

### ***Enforcement of Legislation***

**13.1** The final and transitional provisions of legislation are required to include necessary provisions for providing that the law is enforced and applied<sup>117</sup>. Normally parliamentary consideration of these matters is by the appropriate standing committee which makes recommendations on enforcement to the Government and other relevant public bodies, and reports to Parliament, usually *within 6 months* of the legislation coming into force, but a different period may be specified in the legislation itself<sup>118</sup>.

### ***Review of Legislation***

**13.2** There is a statutory obligation to review legislation at least every two years to determine whether, in broad terms, individual pieces of legislation are effectively achieving their

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<sup>113</sup> *ibid.*, Art 55(1)

<sup>114</sup> *ibid.*, Art 56

<sup>115</sup> *ibid.*, Art 57(2)

<sup>116</sup> *ibid.*, Art 72(2); the provision in translation reads: "As a rule, draft laws...rejected by the Parliament cannot be *brought in repeatedly* for discussion at the *same sitting*"; it is assumed that the reference to "sitting" is a mistranslation for "session", and that otherwise the text of the Report captures the meaning of the provision

<sup>117</sup> *ibid.*, Art 110; this can include training on the legislative provisions for those tasked with implementing them

<sup>118</sup> *ibid.*, Art 111

objectives, and also to systematise statutory provisions generally and where appropriate consolidate and codify them<sup>119</sup>.

## **14. SUBORDINATE LEGISLATION: An Overview**

### ***Introduction***

**14.1** Subordinate legislation (normative act) takes the form of decisions, ordinances and regulations<sup>120</sup>; they have generally the same temporal and territorial scope, and applicability to those within Moldova, as primary legislation<sup>121</sup>. Decisions are made to enforce laws<sup>122</sup> but are also be used for wider financial, security and diplomatic purposes<sup>123</sup>; and ordinances are made under enabling legislation to give legal effect to the Government's programme in fields in which organic laws do not apply<sup>124</sup>; regulations are issued by the Prime Minister in respect of the internal structure of the Government<sup>125</sup>.

Both decisions and ordinances must be (i) signed by the Prime Minister and countersigned by the relevant ministers with operational responsibility for them<sup>126</sup> (although the Article is silent on the legal effect of there being no countersignature) and (ii) published in the *Monitorul Oficial*<sup>127</sup>, and those that are unpublished have no legal effect<sup>128</sup>.

Ordinances are effective from their date of publication without being promulgated<sup>129</sup> or from a date indicated in the text not earlier than the date of publication<sup>130</sup>, and decisions likewise<sup>131</sup>.

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<sup>119</sup> Law on Legislative Acts, Arts 50 - 53

<sup>120</sup> Constitution, Art 102(1); Law on Normative Acts, Arts. 8-14

<sup>121</sup> Law on Normative Acts, Arts. 18-21

<sup>122</sup> *ibid.*, Art 102(2)

<sup>123</sup> See Law on the Government, Art 30

<sup>124</sup> Constitution, Arts 102(3), Art 106b

<sup>125</sup> *ibid.*, Art 102(5); unlike other instruments, no constitutional provision is made for their publication or promulgation, nor the date from when they take effect. To this extent, perhaps they should not be treated as subordinate legislation but rather as internal Government management circulars.

<sup>126</sup> Law on the Government, Art 30, states in terms that only some need to be countersigned, although *ibid.*, Art 30-2 generally replicates the terms of the Constitution, Art 102(4).

<sup>127</sup> Law on the Government, Art 30, specifies that they must be published within 10 days of being made.

<sup>128</sup> Constitution, Art 102(4); Law on the Government, Art 30, purports to exclude those containing state secrets from this requirement, although this may be intended to apply to decision which are not legislative in character.

<sup>129</sup> *ibid.*, Art 106b (3)

<sup>130</sup> Law on the Government, Art 30

<sup>131</sup> *ibid.*; the Constitution itself does not specify when or by what procedure decisions take legal effect.

**14.2** *Ordinances* may only be made within: (i) the subject areas and (ii) the period of time specified in the enabling law<sup>132</sup> and once that period of time has expired they can only be “amended, abrogated or disclaimed” by a *primary legislation*<sup>133</sup>.

**14.3** The enabling law may also require that ordinances made under it are submitted to Parliament for approval, although this is not mandatory<sup>134</sup>. Possibly as a consequence of translation, the procedure for submitting ordinances for parliamentary approval, and the legal consequences of both complying with the procedure and failing to comply with it, are not entirely clear.

Article 106b(4) of the Constitution provides:

If the enabling law so requests, ordinances shall be submitted to Parliament for approval. The draft law on the ordinances approval shall be presented within the term established by the enabling law. Non-compliance with the term entails the discontinuation of the ordinance's effects. If the Parliament does not decline the draft law on the approval of ordinances, the latter shall remain in force.

The procedure for submitting an ordinance for parliamentary approval, where this is required, is the submission by the Government of the ordinance together with a “draft law” for its approval<sup>135</sup>.

The terms of Art 106(b)(4) indicate that where an ordinance requires to be submitted for parliamentary approval the ordinance can be in force at the time of submission. If it is rejected by Parliament, it ceases to be in force from the effective date of the rejection<sup>136</sup>. If the ordinance is not submitted within the time limit specified in the enabling legislation, it ceases to have effect, presumably from the date when the time limit expires although the ordinance may have been in effect some time earlier.

In general, subordinate legislation (normative acts) cease to have effect on repeal, being declared unconstitutional or illegal by a competent authority, or where they have expired as a result of a temporal limitation on their effect, or where they have been completely implemented (consummated) or become null and void<sup>137</sup>. This provision of the Law on

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<sup>132</sup> *ibid.*, Art 106b (2)

<sup>133</sup> *ibid.*, Art 106b (5)

<sup>134</sup> *ibid.*, Art 106b(4)

<sup>135</sup> Law on the Government, Art 30-i

<sup>136</sup> Law on Government, Art 30-i

<sup>137</sup> Law on Normative Acts, Art. 19

Normative Acts, it should be noted, may leave some areas of uncertainty as to when subordinate legislation ceases to have effect<sup>138</sup>.

### ***Preparation of Subordinate Legislation***

**14.4** Subordinate legislation is prepared in the competent public authorities, including ministries<sup>139</sup>, within regular Government programmes for their preparation<sup>140</sup>. The programmes must specify, *inter alia*, the authority responsible for the preparation of specific subordinate legislation (normative acts), the time frame for preparation, and whether public consultation is proposed on the preparation<sup>141</sup>.

**14.5** The procedure for preparing subordinate legislation (normative acts) is regulated by the Law on Normative Acts. The Act requires that first there should be an assessment of the principal issues to be addressed in the legislation, which may be reviewed during the preparation process<sup>142</sup>. This may include appointed experts and the representatives of interested parties within civil society<sup>143</sup>, and must include lawyers from the public authority preparing the legislation. The preparation must include an analysis of contextual legislation, the social and economic implications of the subordinate legislation (normative act), similar EU and other foreign legislation<sup>144</sup>; the initiation of this process must be intimated to interested parties in civil society<sup>145</sup>. On the basis of this research, an initial draft of the legislation is prepared, together with an advisory note (signed by the person responsible for the preparation) which contains specific information on the research undertaken in preparation of the legislation, including an impact assessment and its cost implications<sup>146</sup>. Prior to the submission of the initial draft and the advisory note to the competent authority,

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<sup>138</sup> E.g. although Article 19 provides that subordinate legislation (normative acts) cease to have effect if they are null and void, but the decision on this, unlike unconstitutionality and illegality, is not specifically stated to have to be made by a competent authority. Similarly, there is no indication of who makes a decision, which is a value judgment, on whether subordinate legislation ( a normative act) has been fully implemented, although that may be addressed by a decision on its interpretation (Arts. 15-17) or possibly under the duty and power to review the subordinate legislation (normative act) ( Art. 22).

<sup>139</sup> Law on Normative Acts, Art. 29; more than one public authority may be tasked with the preparation: *ibid.*, Art. 30.

<sup>140</sup> *ibid.*, Art. 28

<sup>141</sup> *ibid.*; it should be noted that the Law on Normative Acts now includes public consultation, and requires indication of whether it has taken place, at the various stages of drafting subordinate legislation, in consequence of amendments made to the Act, including Article 28, by the Law on Amending and Supplementing Some Legislative Acts, No. 72 of 04.05.2010.

<sup>142</sup> Law on Normative Acts, Art. 30(4),(5)

<sup>143</sup> *ibid.*, Art. 30(7)-(9).

<sup>144</sup> *ibid.*, Arts. 4-5, 32-35

<sup>145</sup> *ibid.*, Art 33(3)

<sup>146</sup> *ibid.*, Arts. 36-37



the Act requires opinions on the draft to be sought from authorities directly affected by the legislation<sup>147</sup>, and that the draft be subject to public consultation<sup>148</sup>. In particular, an opinion must be received from the Ministry of Justice before the draft is submitted for Government review<sup>149</sup>, and the draft must be legally examined to ensure that it is compliant with the Constitution, the *acquis Communautaire* and the treaty obligations of Moldova, and satisfies anti-corruption standards<sup>150</sup>.

A final version of the draft subordinate legislation (normative act) is prepared<sup>151</sup> and submitted with the specified comprehensive supporting documentation<sup>152</sup> to the public authority for publication<sup>153</sup>. All subordinate legislation (normative act) is registered by the Government in its registry of normative acts<sup>154</sup> and recorded in the Ministry of Justice<sup>155</sup>.

### **Drafting Style**

**14.6** The Law on Normative Acts contains detailed provisions on the structure and drafting style of subordinate legislation (normative acts); these parallel provisions in the Law on Legislative Acts relating to the structure and drafting style of primary legislation which are considered later in the Report.

## **III THE LEGISLATIVE PROCESS: An Analysis**

### **1. INTRODUCTION**

The analysis considers a range of vulnerabilities within the legislative process broadly in the chronological order of the process. The first area is the procedure for development of the policy which it is intended that the proposed legislation will deliver (in paragraph 2). This is followed by the arrangements for consulting civil society on the legislative policy and also on

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<sup>147</sup> The Act requires these advisory notes to be submitted within 10 days, although this period may be extended; where it is not received within the relevant period, it is assumed that the authority from which it was requested has no objections or alternative proposals: *ibid.*, Art 39. The working group preparing the draft may conduct further technical assessments of the draft on receipt of the advisory notes: *ibid.*, 41(3).

<sup>148</sup> *ibid.*, Art. 38(1)

<sup>149</sup> *ibid.*, Art. 38(2)

<sup>150</sup> *ibid.*, Art. 41

<sup>151</sup> *ibid.*, Art. 43

<sup>152</sup> *ibid.*, Art. 44, 45

<sup>153</sup> Art. 44 refers (at least in translation) to publication, rather than formal approval, of the subordinate legislation by the responsible public authority; on publication and related matters: *ibid.*, Arts 68-69

<sup>154</sup> *ibid.*, Art. 25

<sup>155</sup> *ibid.*, Arts. 26, 27

drafts of the legislation (in paragraph 3). Then limitations in managing the stock of legislation, including consequential amendments, approximation with the *acquis Communautaire*, and the procedure for, and the style of, drafting legislation are explored (in paragraph 4). Finally, various potential weaknesses in the legislative process, as described in Section II, are examined (in paragraph 5).

## **2. DEVELOPMENT OF LEGISLATIVE POLICY**

### ***Introduction***

**2.1** It is a truism of legislative drafting that determining exactly and in detail what policy is to be achieved by the legislation is the most difficult and important, and often the most time-consuming, aspect of the preparation of legislation. It is an initial task, and one that is often subject to refinement during preparation.

Once what has to be achieved has been determined, the next aspect of the process is to decide how what has to be achieved can best be achieved by the legislation. Then there follows the drafting, and the more carefully the earlier two stages have been conducted the easier the drafting will be.

The development of legislative policy in the Moldovan legislative process is viewed from this perspective.

### ***The Government***

**2.2** The Government has the constitutional power to initiate primary legislation, in the form of draft laws<sup>156</sup>, and also to adopt subordinate legislation in various forms: decisions relating to the implementation and enforcement of primary legislation on direct constitutional authority<sup>157</sup>; and ordinances by virtue of enabling primary legislation<sup>158</sup> (ordinances are commonly used during Parliamentary vacations).

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<sup>156</sup> Constitution, Art 73

<sup>157</sup> Constitution, Art 102; these instruments are translated as “decisions” in the Constitution, but as “regulations” in the Law on the Government; instruments translated as “regulations” in the Constitution (but as “orders” in the Law on the Government) are formal instruments relating to the internal structure of the Government and are not considered in this Report

<sup>158</sup> Constitution, Arts 102, 106b. Art 106b provides that ordinances on specified matters, in areas not within the scope of organic laws, may be made by the Government on the authority of a special law enacted by Parliament; the ordinances do not require to be promulgated. The special law must specify the period in which the Government may issue the ordinances, and after that period the ordinances may only be amended by a law. The special law may also require the ordinances to be submitted for Parliamentary approval within a specified period [for the legal implications of the approval process, see Art 106b(4)].

**2.3** The evidence received suggests that some 80% of primary legislation is initiated by the Government, and it is a reasonable assumption that at least the same, and probably a larger, percentage of subordinate legislation flows from the same source. Procedures, supported by legislation, for determining and evaluating policy which may well lead to legislation, and the subsequent implementation of the policy, are gradually being developed within the Government,<sup>159</sup> and other legislative requirements may also enhance this activity.

Particular mention may be made of the *Methodological Guide on ex ante assessment on the impact of public policies* published by the Government in 2009<sup>160</sup>. This *Guide* seeks to apply to Moldova the extensive and detailed work on impact assessment published by the EU and OECD, and also provides a guide to consultation<sup>161</sup>, which is considered later in this section of this Report. It is understood that the application of the *Guide* is first being piloted in five Ministries, including the Ministry of Justice. It is obviously desirable that consistent procedures on impact assessment are applied throughout the Government, that civil servants are trained in their use, and that there is machinery with Government to monitor the quality and effectiveness of their application.

The Law on Legislative Acts, enacted in 2001 and brought into force in 2002, require Government action in this area of policy development and for other matters.

Article 61 of the Act provides:

Within a three-month term after this Law comes into effect, the Government shall:

a) present to the Parliament:

- proposals for bringing the existing legislation in conformity with this Law;
- a draft law on normative acts of the Government, other bodies of central and local public administration;

b) bring its normative acts in conformity with this Law.

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<sup>159</sup> There are also general legislative provisions relating to the implementation of laws, so the Law on Government, Art 10(1), provides in general terms that “In compliance with its authority, the Government shall: (1) implement law of the Republic of Moldova, decrees of the President of Moldova, and control implementation of regulations and ordinances of the Government”; see also *ibid.*, Arts 16(2), 23; and the Government is also required to establish the procedure for developing, considering and adopting ordinances: *ibid.*, 30-2. The procedures within the Government for policy making, the drafting of both primary and secondary legislation and its implementation have a legal foundation in the Decision of the Government regarding the adoption of the regulation of the Government, 34 of 17.01.2001 [*Monitorul Oficial* No.8-10/73 of 25.01.2001].

<sup>160</sup> The *Guide* supplements an earlier guide published by the Government, the *Methodological Guidebook on the Decision-Making Process*.

<sup>161</sup> Chp. 3

There has been compliance with the second indent within Article 61(a) by the enactment of the Law on Normative Acts of the Government and Other Local and Public Central Administrative Authorities, from 2003.<sup>162</sup> Article 61(b) was addressed in Article 79 of the 2003 Act which requires the Government within three months to “bring its normative acts into compliance with *this law*” (emphasis added).<sup>163</sup> Action to comply with the first indent within Article 61(a) has not been identified in the preparation of this Report.

### *The President*

**2.4** The President of Moldova also has the constitutional capacity to initiate primary legislation<sup>164</sup>, which may be in the form of legislative proposals<sup>165</sup> but whether they may also be in the form of draft laws is unclear from the Constitution<sup>166</sup>. In practice, legislative initiatives by the President are in the form of draft laws.<sup>167</sup> Formally, draft laws on the ratification of treaties are initiated by the President<sup>168</sup>.

However, no specific legal procedure for this Presidential power of legislative initiative has been identified, and neither has a procedure for developing policy in relation to such legislation. These omissions should attract concern, although it may be that in practice they will be addressed by similar procedures to those being introduced within the Government.

### *The Government and the People's Assembly of the autonomous territorial-unit of Gagauzia*

**2.5** It may also be noted that these bodies also have the constitutional capacity to initiate primary legislation<sup>169</sup> but again no specific procedure for doing so has been identified, and neither has any formal procedure for the policy development of such legislation. This should also attract concern.

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<sup>162</sup> No. 317-XV 18.07.2003 [*Monitorul Oficial* No 208-210/783, 03.10.2003]

<sup>163</sup> The statutory obligation placed on the Government in the Law on Legislative Acts 2001, Art 61(b) was to bring its normative acts into compliance with that Act rather than with the 2003 Act.

<sup>164</sup> Constitution, Art 73

<sup>165</sup> Law on Legislative Acts, Art 15

<sup>166</sup> The President also has the constitutional capacity to issue decrees, some of which must be countersigned by the Prime Minister [Constitution, Art 94], although those that require countersignature [Constitution, Art 86(2) (accrediting and recalling diplomatic representatives); Art 87 (2), (3) and (4) (in respect of national security)] and some other categories are essentially executive in character.

<sup>167</sup> They are formally presented to the Parliament by the Government. In the period from 23 May 2005 to 31 December 2008, President V. Voronin submitted 151 draft laws, of which 136 were adopted and one was revoked. Source: interview with Moldovan officials.

<sup>168</sup> See also, Law on Normative Acts, Arts. 71-72

<sup>169</sup> Constitution, Art 73. However, this power of initiative, though exercised, does not seem to be a fruitful source of enacted legislation. In the period 23 May 2005 to 31 December 2009, ATU Gagauzia submitted 12 draft laws and legislative proposals to Parliament, but none were enacted.

## *The Parliament*

**2.6** Parliamentarians can also, of course, initiate primary legislation<sup>170</sup> and this may be either in the form of draft legislation or of legislative proposals<sup>171</sup>. In respect of initiating legislation within Parliament, and of drafting legislation to implement legislative proposals, there are statutory procedures on the policy development of the legislation, which were introduced in their present form as amendments to the Law on Legislative Acts in 2006. Unlike the apparent lack of such specific procedures in other institutions of the state noted above, the concern over these Parliamentary procedures is that they may, in some respects, be too elaborate to be practical. Two provisions of the Law on Legislative Acts may serve to illustrate this.

**2.7** Article 13<sup>172</sup> requires a “scientific rationale” as part of the process of initiating legislation. It provides:

- (1) Initiation of the procedure for drafting a legal act shall be preceded by a scientific analysis of political, social, economic, financial, legal, cultural, sanitary and psychological consequences of respective norms; a comparative analysis of the norms with those in the respective branch of the Community legislation; identification of incompatibilities between the existing norms and existing public requirements and norms in the respective branch of the Community legislation; or identification of lack of legislative acts in the respective area.
- (2) Activities to study and collect materials to justify a draft legislative act shall take into consideration the judicial practice and the respective legal doctrine.
- (3) Decisions in the legislative act shall be based on constitutional provisions, the practice of constitutional jurisdiction, provisions of the Community legislation, also on provisions of international treaties that the Republic of Moldova is a party to.
- (4) Scientific justification shall result in identification of goals and areas of legal intervention and of means necessary to achieve the goals.
- (5) The Parliament may establish special forms for the justification and for finalizing the scientific rationale.

Several comments may be made about Article 13. If the paragraphs are intended to indicate a priority of tasks in policy development, the priorities appear, with respect, to be impractical.

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<sup>170</sup> *ibid.*

<sup>171</sup> Law on Legislative Acts, Art. 15; it also has a limited capacity to adopt regulations in matters predominantly, but not exclusively, executive: *ibid.*, Art 11.

<sup>172</sup> Article 13 was amended by Law No 168-XVI, 15.06.2006, effective from 01.09.2006; see also Art. 13-i.

As indicated in the introduction to this section, the issues listed in paragraph (4) should be the most appropriate primary concerns within the context of the matters cited in paragraphs (2) and (3). Embarking first on the objectives listed in paragraph (1) is likely to create an over-elaborate unfocussed exercise. Secondly, it is unclear, at least in translation, to what extent paragraph (2) is directed to an investigation of the manner in which the judiciary has applied, and to that extent interpreted, the existing law. If that is the task envisaged by the paragraph it is an important one.

**2.8** Article 17 provides for the functions to be undertaken by working groups established to undertake the task of drafting a legislative text to implement legislative proposals made under Article 15.

While Article 17 is generally sound and practical, paragraph (2) provides:

(2) The working group shall make a comparative analysis of useful information contained in the legislation of other countries, and principles of main legal systems applied in the world, also of their compatibility with the Community legislation. The comparative analysis shall be based on the following principles:

- a) sources of law in the compared legislations shall be necessarily studied;
- b) only similar institutes of law shall be compared;
- c) compared terms shall be considered in the social, political, economic, cultural and actual legal context from which they follow, also an investigation shall be made of their potential consequences in a different legal system;
- d) when comparing terms (institutes, provisions, norms), consideration shall be given to their original meaning as well as to the meaning they have acquired in the process of evolution.

These principles to be applied in undertaking the analysis required are sound but, if they were to be strictly and fully applied, the scope of the analysis would be unwieldy and unlikely, in most cases, to be cost-effective in terms of resources, time and results. In practice, the extent of compliance with Articles 13 and 17 appears to be determined by the nature and complexity of the proposed policy, and the likely implementing legislation. It would be desirable to reflect this by amendment of the provisions, which should also indicate the principles to be applied in exercising discretion on the extent of the compliance. Obviously, a simple draft law with minor amendments to existing legislation might nevertheless have substantial political, social or economic impact.

### **3. CIVIL SOCIETY CONSULTATION**

#### *Introduction*

**3.1** In developed democracies, there is an increasing emphasis in the legislative process on consultation with civil society. This stems not only from a recognition of the value of such participative democracy but also from an appreciation that it improves the quality and effectiveness (implementation) of legislation.

There is equally a recognition that, while such consultation has value at each stage of the legislative process, consultation at the stage of policy formation and prior to a draft legislative text being received for parliamentary consideration is a particularly effective time for the consultation. It is institutionally easier to take account of the product of consultation at preliminary stages before there is a firm internal consensus on policy and text. There is thus a premium on early consultation.

However, it is in the nature of the legislative process that the full implications of a legislative initiative do not become apparent until policy is reduced to a legislative text and amendments to it are proposed, so consultation continues to have a value throughout the legislative process.

Finally, in this regard, consultation not only has a value for primary legislation, it has a particular value for subordinate legislation. Subordinate legislation tends to be more technical and detailed, and commonly it is not, or little, exposed to the public and political nature of parliamentary scrutiny but is largely the product of purely internal government development. Consequently, consultation with civil society on subsidiary legislation has particular value.

**3.2** In considering consultation with civil society, there is the question of what is meant by “civil society” for this purpose. In developed democracies, where expertise outside the organs of the state often has a broad and politically vibrant institutional structure together with a well-informed electorate, this question may take the form of determining the breadth of consultation that is appropriate in particular circumstances. Should, in basic terms, the particular consultation be with the public at large or with specialists, or both, or with one informing the other? In emerging democracies, the question may also take a different form. For instance, and again in basic terms, should consultation focus on indigenous independent expertise, indigenous expertise which is to a greater or lesser extent externally funded, or on

the domestic presence of international NGOs, particularly those which are recognisably apolitical, or should there be no such distinctions drawn in the consultation process?

**3.3** Then there is the matter of the nature of the consultation. In essence, this reduces itself to the question: to what extent the consultation is to be a dialogue? And, however willing the organs of the state are to consult civil society, the answer to that question may be circumscribed by available resources.

There are various aspects to the question. Some are operational. Is consultation to admit formal written submissions, formal oral submissions (perhaps based on already recognised expertise, or on the quality of prior written submissions) or consultative meetings of varying degrees of informality, or some or all of these? Other questions are more functional. To what extent is civil society to be directly involved in the process, as advisers at policy development meetings say, or on drafting teams? Some are matters of courtesy and promotion. To what extent is there to be an institutional response to those who participate in the consultation process. Are written submissions to be simply acknowledged, or should the acknowledgement indicate whether the views expressed have been accepted or rejected, and should that include the reason for the decision?

What is certainly true is that responding to those who participate in a consultation will encourage them to participate in future consultations and thus strengthen the consultation process.

**3.4** Finally, there is the mundane, but significant, matter of access for civil society to the more public stages of the legislative process. To what extent is there, for example, the ability to attend sittings of parliamentary committees and parliamentary plenary sittings? If considerations of space constrain attendance, to what degree is this ameliorated by broadcasting proceedings?

All these considerations inform the analysis below of the nature and degree of civil society consultation in the Moldovan legislative process.

### ***The pre-Parliamentary dimension***

**3.5** Based on general principles developed by the EU and OECD, Chapter 3 of the *Methodological Guide on ex ante assessment of the impact of public policies* published by the Government in 2009 addresses consultation both with experts and the general public, at *inter*



*alia* the stage of policy development.<sup>173</sup> Although rather more descriptive than directive in presentation, it provides a useful initial template for consultation at this stage. One element which could usefully be reconsidered and made more directive is an approved timescale for consultation of interested parties in the community and the public generally. The advice given is that the time limit for written comments should be “at least three weeks”<sup>174</sup>. This is a rather short period by international standards. It is particularly so where comment is sought from organisations which may well in turn have to consult their members before submitting comment. With respect to the use of what is described as consultation using “deliberative tools” (e.g. conferences, workshops and focus groups), it would be useful to have a norm for the notice period for such events so that interested parties have sufficient time to prepare for them.

The value of the principles on consultation provided in the *Methodological Guide* is subject to the considerations with respect to the *Guide* which were outlined in paragraph 2.3; namely, that the procedures are applied consistently throughout the Government, that civil servants are trained in their use, and that there is machinery with Government to monitor the quality and effectiveness of their application.

### **3.6** The Law on Government, Art 25, in part provides:

The Government shall ensure transparency of its activities. For this purpose, the Government by its initiative or on demand shall make a decision on publicizing in media (including electronic media) separate draft legal acts or draft acts of the Government, transcripts of open sessions and other acts pertaining to the activities of the executive body depending on their importance for the public. If necessary, the same decision of the Government shall specify the procedure of public discussion of the legal acts and draft Governmental instruments, for collection, consideration and discussion of proposals presented in relation to them.

**3.7** With respect to consultation on draft legislation, this statutory obligation has been implemented by the Law on Transparency in the Decision Making Process 2008.<sup>175</sup> A primary purpose of this Law is to require Government in the widest sense<sup>176</sup>, and Parliament,

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<sup>173</sup> Consultation with civil society with respect to the preparation of subordinate legislation (normative acts) is also regulated by the Law on Normative Acts and was considered earlier in the Report.

<sup>174</sup> p. 57

<sup>175</sup> No. 239-XV1, 13.11.2008. The Law on Government now lists as one the main principles of Government activity as “ensuring the transparency of the process of elaboration and adoption of decisions, directives and ordinances: Art. 2(3-i) [amendment inserted by Law No. 72 of 04.05.2010]; see also Art. 25(6), inserted by the same Law.

<sup>176</sup> *ibid.*, Art. 3(2), (3)

to inform the public<sup>177</sup> about the drafting of proposed primary and subsidiary laws, and to stimulate and ensure the participation of the public in that process<sup>178</sup>, giving each element of the public an equal opportunity to do so<sup>179</sup>. The Law<sup>180</sup> entitles the public to participate in any stage of the law making process, to request and receive information from public authorities on the process<sup>181</sup>, to make recommendations on the draft law, and also to propose draft laws. Public authorities are placed under correlative obligations to provide information on draft laws, to inform the public about the drafting process, to create consultative mechanisms<sup>182</sup> and consult the public, to receive and examine recommendations on draft laws from the public and notify the public of decisions taken on them.<sup>183</sup> Public authorities are also required to prepare, and publicly disseminate within three months of the year end, annual reports on their application of the Act, which must include the number of laws passed, the number of recommendations received during the law making processes, the number of consultative meetings, public debates and public meetings organised with respect to law-making, and the number of incidences in which the actions and law-making of the authority have been appealed on grounds of non-observance of the 2008 Act and sanctions applied for non-observance (although the Law does not appear itself to provide for such appeals or the application of such sanctions).<sup>184</sup>

Three practical limitations on the operation of the 2008 Act may be noted<sup>185</sup>. First, the Law does not apply to law drafting or internal meetings within a public authority where official information with legally limited access is examined.<sup>186</sup> For the Law to be effective, it is obviously important that the application of this provision is restricted as far as possible. Secondly, there is a minimum period of 15 days prior to a stage which appears ill-defined in which the public authority must publicly announce that the drafting of a law is to be

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<sup>177</sup> The “public” encompasses “citizens, associations set up according to the law, private legal entities, which will be affected or may be affected by the passing of [the law] and which can influence [the law making process]”: *ibid.*, Art. 2

<sup>178</sup> *ibid.*, Art. 4

<sup>179</sup> *ibid.*, Art. 5(b)

<sup>180</sup> *ibid.*, Art. 6

<sup>181</sup> And to receive both draft laws and related materials, under the Law on Access to Information: *ibid.*, Art. 6(b)

<sup>182</sup> This may, for instance, involve civil society attending working groups drafting legislation, although there does not appear to be any authoritative guidance on the criteria to be applied in determining whether there should be such civil society involvement.

<sup>183</sup> *ibid.*, Arts. 7 – 12, 15

<sup>184</sup> *ibid.*, Art. 16; in practice, this may be done electronically in matrix form, rather than by individual reply, as is the case with the Ministry of Justice.

<sup>185</sup> It should be noted particularly here that the following observations are based on an unofficial translation of the Law.

<sup>186</sup> *ibid.*, Art. 3(5)

initiated.<sup>187</sup> The announcement must contain reasons why the law is necessary, the deadline, place and means by which the public can have access to the draft decision and can present recommendations on it, and to whom. However, no deadline for the submission of recommendations is specified in the Law, except perhaps by indirect reference to the minimum 15 day period; and if this period represents the norm for submitting recommendations on a draft law it is a short period in which to formulate considered and detailed recommendations on legislation.<sup>188</sup> Thirdly, the procedures in Law do not apply where laws are drafted during a state of emergency, although the reasons why a law requires to be adopted in such circumstances without public consultation must be made publicly available by the public authority not more than 10 days from the adoption of the law.<sup>189</sup>

**3.8** More recently, the Government has created a further institutional means of consultation. By decision in January 2010, it established the National Participation Council, which acts as a consultative body to the Government. The Council began work in March 2010. However, although its members are appointed by the Government from civil society<sup>190</sup>, the Council has not been created as a representative body for non- governmental bodies or civil society more widely. The Council does have a privileged access to Government, in that the Chairman has the right to attend, and intervene in, all Government sessions. There the Chairman has the capacity for instance, on behalf of the Council, to express views on the priority to be given to various draft laws prepared by the Government, the content of draft laws privately and well as publicly, and the length of the consultation period available for a draft law.

As the Council is of recent creation it is too early to make a considered assessment of its role in the legislative process. What may be said though is that, while the Council may be an enhancement of the consultative process, it is not, and not intended to be, a substitute for consultation of civil society on draft legislation.

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<sup>187</sup> *ibid.*, Art. 9

<sup>188</sup> Evidence received suggested that the Ministry of Justice, for instance invites NGOs active in the field of draft law to submit recommendations within 10 days, although the Ministry may extend this period to up to a month for complex legislation.

<sup>189</sup> *ibid.*, Art. 14

<sup>190</sup> The National Participation Council is composed of 30 representatives of organized groups of the civil society, approved by a decision of the Government. See the Decision of the Government no. 11 from 19 January 2010.

### *The Parliamentary dimension*

**3.9** In 2005, the Parliament adopted a formal resolution to confirm the concept of co-operation with civil society in the legislative process<sup>191</sup>, to which was annexed some concrete procedural proposals and requirements. The Resolution is to some extent reflected in subsequent legislative amendments, although not directly referred to in them. As it is a focus of parliamentary commitment, the following analysis is structured around the 2005 Resolution.<sup>192</sup>

**3.10** The Resolution may be divided into (i) the formal resolution and (ii) the annex which both describes the concept of co-operation and also how it is to be furthered. The Resolution, apart from resolving to ensure the implementation of the concept, simply resolves to ensure that draft laws will be placed on the Parliamentary website from 1 February 2006 “in the procedure prescribed by law”. It is now a legislative requirement that draft legislation, together with the documentation statutorily required to accompany it when submitted to Parliament, be placed on the Parliamentary website within a maximum of “5 working days” from the parliamentary registration of its submission<sup>193</sup>.

**3.11** The annex does not define “civil society”. However, it does make reference to “opinions of ...citizens” and “broad participation of voters” as part of the objectives in establishing co-operation with civil society<sup>194</sup>. Later, it envisages the co-operation as between the Parliament and civil society organizations *registered* in Moldova<sup>195</sup> and requires the Parliamentary bureaucracy which is to be established to manage the co-operation to “keep a record of *concerned* civil society organisations that will include the non-governmental registered in Moldova that express their wish to co-operate with the Parliament”<sup>196</sup>. The implication is that the organisations directly or indirectly should primarily be representing the views of the enfranchised citizen in preference to a wider agenda, and specifically they should not

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<sup>191</sup> No. 373-XVI, 29.12.2005

<sup>192</sup> It should be noted however that the Law on Transparency in the Decision Making Process 2008 (considered above) applies to Parliament: Art. 3(2)(a).

<sup>193</sup> Law on the Regulation of Parliament, Art 48(2); Art 48 is in redaction of Law No 430-XVI, 27.12.2006 and actually came into force on 23.03.2007. As is indicated earlier, the management of the website is a statutory responsibility of the Standing Bureau: *ibid.*, Art 13(1)(h).

<sup>194</sup> Annex, para 1

<sup>195</sup> Annex, para 3.2; it has not been possible as yet to identify the legislative provision which regulates such registration.

<sup>196</sup> Annex. Para 3.4; the *ex facie* implication is that this record will include organisations that do not require to be registered.

“promote business or political interests in the co-operation process”<sup>197</sup>. There is also a commitment to treat qualified civil society organisations equally in the co-operation process<sup>198</sup>, together with a perhaps over cautious protective statement, given the essential nature of the process, that contributions of the organisations are not binding<sup>199</sup>.

**3.12** The annex indicates the manner in which co-operation is to take place. It requires the parliamentary standing committees to establish panels of experts “from amongst...representatives of civil society organisations” relating to their terms of reference<sup>200</sup>; and Parliament to hold public hearings at least once a year to consult civil society organisations on issues on the Parliamentary agenda and other national issues<sup>201</sup>; it envisages discretionary ad hoc meetings on such issues, on the initiative of either the Parliament bodies or civil society organisations<sup>202</sup>; and it requires the Speaker to convene an annual conference of representatives of the organisations and of Parliament to review the progress of the co-operation process<sup>203</sup>. It should also be noted here that additional legislative requirements on public consultation have been placed on standing committees by amendments to the Law on the Regulation of Parliament.<sup>204</sup>

In addition to this, the annex provides that “civil society representatives may be included in the (parliamentary) working groups set up...in order to draft or finalise draft acts”<sup>205</sup>. Legislation provides for a range of private sector specialists to be included in the working groups<sup>206</sup>.

The co-operation arrangements contemplated in the annex<sup>207</sup> are certainly progressive; however, there are refinements that could be helpful.

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<sup>197</sup> Annex, para 2(e)

<sup>198</sup> Annex, para 2(d)

<sup>199</sup> Annex, para 3.7; presumably not binding on the Parliament.

<sup>200</sup> Annex, para 3.5 (a); standing committees are now required to maintain lists of interested parties and organisations within their field of competence (Law on the Regulation of Parliament, Art. 27(4-i)) and also

<sup>201</sup> Annex, para 3.5 (d)

<sup>202</sup> Annex, para 3.5 (c)], although no mechanism for this is provided.

<sup>203</sup> Annex, para 3.5 (e)

<sup>204</sup> Law on the Regulation of Parliament, Arts 26, 27, 29, 47, 49-i, 52 and 57 [amendments inserted by Law No. 72 of 04.05.2010]

<sup>205</sup> Annex, para 3.6

<sup>206</sup> Law on Legislative Acts, Art 16; these working groups are commonly established by standing committees to draft legislation in implementation of a legislative proposal, and to consider legislative initiatives in the form of legislative texts and to consider proposed amendments to legislation.

<sup>207</sup> And also in the Law on Transparency in the Decision Making Process (239-XVI, 13.11.2008)

Co-operation is usually expressed as being with “representatives of civil society organisations”. It may be an error to place great reliance on nuances in a translated text, but the phrase seems to imply that the knowledgeable individual is excluded from, or at least discouraged in, engaging in the consultation process. If so, this seems an unnecessary restriction, and participative democracy would be strengthened by encouraging the individual as well as the institutional representative, even if positive results from doing so may be slow to emerge.

There was some evidence to suggest that the use of such broader consultation may overwhelm the capacity of Parliament to process the responses to the consultation, but that may be addressed by refining the consultation process within Parliament, and in particular by adapting the timeframe for the enactment of draft laws to accommodate more effective and meaningful consultation. It certainly does not further democracy and good governance, for Parliament – as was suggested in some evidence – to adopt a position that consultation of civil society is a process which is primarily a matter at the stage of governmental preparation of the draft legislation.

**3.13** The annex also provides some of the detailed mechanics of the consultation.

The most significant element is that, although it can be varied by the Parliament, the normal requirement, is that submissions on draft legislation by civil society organisations must be submitted within 15 working days from the draft being placed on the Parliamentary website<sup>208</sup>, and that must be done within 5 working days of the draft law being registered as received by the Parliament<sup>209</sup>.

This requirement has some serious weaknesses as a consultation procedure. The default requirement of submission within 15 working days is a very short period and surely must place considerable pressure on small understaffed civil society organisations, particularly if they aspire to make submissions on a range of draft legislation. There was evidence that in practice the Parliament will accept submissions received outside the 15 working days period, and that those wishing to make late submissions can request a further period in which to make them. However, in the interests of consistency and equality of treatment, such areas of discretion should be incorporated formally in law or the procedural rules of Parliament.

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<sup>208</sup> Annex, para 4

<sup>209</sup> Law on the Regulation of Parliament, Art 48(2)

Secondly, the shortness of the submission period does not seem to be justified in terms of the parliamentary timetable. The default procedure is that the committee of reference has 60 working days to consider and report on the draft law<sup>210</sup>. And within that period other parliamentary committees, the legal staff of the Parliament and, in some cases, the Government each have 30 working days to submit advisory notes to the committee of reference<sup>211</sup>; parliamentarians, standing committees and parliamentary factions have the same period in which to submit amendments to, and legislative proposals regarding, the draft law<sup>212</sup>. And indeed the legislation refers to the committee of reference as being only required to examine proposals from civil society organisations in preparing the draft legislation for a second reading<sup>213</sup>. At the very least there appears to be no compelling argument against the period of submission by civil society organisations being the same as for official bodies, which are no doubt usually better resourced and certainly likely to be more familiar with technical requirements of the parliamentary legislative process.

Finally, if rigorously applied, this timeframe for civil society organisations to make submissions is not only narrow in itself but only allows one opportunity for such submissions in the legislative process. It effectively denies these organisations making submissions on amendments and proposed amendments to the draft law later in the process which is an unsatisfactory and inefficient result<sup>214</sup>. This is exacerbated by the fact that at present amendments are not posted on the Parliamentary website, although it is understood that they may be in the future.

**3.14** However, perhaps the most serious weakness in the consultation process is created by the accelerated legislative procedures. There is a statutory procedure which may be applied to Government draft legislation, with the approval of the Standing Bureau on the request of the Prime Minister<sup>215</sup>. By this procedure, the standing committee receiving the draft legislation has ten, rather than sixty, days to report and when the report is received the Standing Bureau

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<sup>210</sup> Law on the Regulation of Parliament, Art 52

<sup>211</sup> *ibid.*, Arts 53(1), 54, 58

<sup>212</sup> *ibid.*, Art 59(1)

<sup>213</sup> *ibid.*, Art 65(1); although this may be a requirement to re-examine them.

<sup>214</sup> Although it does not detract from the force of the argument here, it may be noted that where a parliamentary working group prepares draft legislation to implement a legislative proposal, and the legislation is “voluminous” and “of great importance” the group may prepare papers which are, *inter alia*, presented for public discussion: Act on Legislative Acts, Art 17(4).

<sup>215</sup> Law on the Regulation of Parliament, Art 43. The procedure appears to have been introduced by an amendment in 2006 (Law No.430-XVI 27.12.2006) and came into force on 23 March 2007.

must place it on the agenda of the next parliamentary plenary sitting<sup>216</sup>. Evidence received suggests that this statutory accelerated legislative procedure is used for some 10% to 15% of draft laws prepared by the Government; that it tends to be used more at the end of the year or of a parliamentary session; that requests for its use are not uncommonly based on economic considerations or matters arising from international obligations of the state; and that, although requests for the accelerated legislative procedure may be refused or their acceptance delayed, this is very much the exception rather than the norm.

Clearly the adoption of this procedure reduces the opportunity for civil society organisations to make submissions; and indeed others, including the Parliament's legal staff, to provide advisory notes on the draft legislation. This weakening of the consultative system generally in the course of parliamentary consideration of the draft legislation is of somewhat greater concern as no formal detailed consultative procedures during preparation of primary legislation within Government have been identified.

There may well be a need for an accelerated legislative procedure in exceptional or emergency circumstances, but the legislative provisions do not specifically require such circumstances to be established and the only protection against the possible abuse of the procedure is the requirement of the consent of the Standing Bureau to its adoption. A review of the situations in which this accelerated procedure has been used in the past, would be required for any further conclusions to be made.

There is a compelling argument to add protective elements to this accelerated legislative procedure. The most obvious of which is to limit its use to responding to exceptional or emergency circumstances, and to require the Prime Minister in making a request for the use of the procedure to provide a reasoned case to the Standing Bureau as to why there are such circumstances which justify its use.

**3.15** In addition, there is a more informal accelerated legislative procedure under which, unlike the statutory legislative procedure, the Prime Minister does not make a formal request to Parliament and there are no specific time limits for the enactment stages in Parliament. Such a procedure is open to all the democratic dangers mentioned in respect of the statutory accelerated legislative procedure. Indeed, the democratic dangers may be magnified by the informality of the procedure. While it is of course constitutionally acceptable that a Government should be able to have legislation enacted to further its policies and to have

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<sup>216</sup> Law on the Regulation of Parliament, Art 44



some capacity to influence the parliamentary priority to be given to such legislation, this should not be achieved without sufficient opportunity for consultation and Parliamentary deliberation, partially but not sufficiently regulated (as in the statutory accelerated legislative procedure) or simply the subject to an imprecise understanding between the Prime Minister and a majority of members of Parliament (as appears to be the case in the informal accelerated legislative procedure).

**3.16** Finally, the annex provides for a response to be provided to those who make submissions on draft legislation. Paragraph 4.4 stipulates the procedure and a sound rationale for adopting it. It provides:

The receipt of contributions must be confirmed in view of enhancing the coherence and mutual confidence. According to the number of the received contributions, as well as of the possibilities, the confirmation shall have the form of an answer (by e-mail) where shall be communicated the decision on (full or partial) acceptance or non-acceptance of the contributions, with the argumentation of this decision.

Although this is a valuable innovation, the terms of the paragraph do prompt a number of operational questions. To whom are the submissions received circulated? The decision of what body is communicated to the organisation making the submission? Who determines what were the reasons for the decision and who communicates this to the organisation? The need to address these operational matters is emphasised by the evidence, referred to earlier, that the Parliament finds it difficult to process responses to complex or controversial draft legislation.

### *Access to Proceedings*

**3.17** Reference was made in the introduction to this section to the value, and the symbolism, of permitting ready public access to plenary sittings of parliaments and to sittings of parliamentary committees, while accepting there are circumstances when closed sittings are justified.

The norm is that sittings of the Parliament of Moldova are public, but that sittings may be closed on a majority vote of members<sup>217</sup>. However, the general public may only attend with

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<sup>217</sup>Law on the Regulation of Parliament, Art 99(1); it is not clear from the translation whether that is an absolute majority or a majority of MPs present.

authorisation or a letter of invitation<sup>218</sup>. In addition, there may be direct public service radio and television broadcasting of public plenary sittings<sup>219</sup>.

Meetings of the standing committees are also public, but may be closed by decision of the committee<sup>220</sup>. Whether there are, as with plenary sittings, administrative requirements imposed on those seeking to attend these committee meetings, has not been identified. The minutes of open standing committee meetings are available to the public; the minutes of closed meetings may also be made available with the preliminary consent of the chairman of the committee<sup>221</sup>.

In general, the arrangements for public access to parliamentary proceedings do therefore appear satisfactory, although, given adequate security in Parliament, it should not be necessary to limit public access to those specifically invited or with prior authorisation.

#### **4. MANAGING THE STOCK OF LEGISLATION**

**4.1** Some of the important challenges for all states, but perhaps particularly for emerging democracies, are maintaining its legislation up to date, accessible, and ensuring that obsolete and inconsistent provisions are removed; for states that aspire to be Member States of the EU - that enacted legislation, but also the stock of legislation, are compatible with EU legislation; and that the style of legislative drafting ensures that norms are accurately and clearly expressed, which in itself is an aspect of making legislation accessible. These three matters are considered here in respect of Moldova.

##### ***CONSEQUENTIAL AMENDMENTS***

**4.2** Draft laws should by law be submitted to Parliament with a list of required consequential amendments, including repeals, of provisions in existing legislation.<sup>222</sup> Evidence received suggests that this is not always provided on submission of the draft law, and that the submission of draft laws without this accompanying documentation are nevertheless registered in Parliament and the information is sought informally later.

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<sup>218</sup> *ibid.*, 100(1); it is not clear who issues authorisations and invitation letters.

<sup>219</sup> *ibid.*, Art 99(2); it has not been possible to establish in the preparation of the Report to what extent such broadcasting takes place.

<sup>220</sup> *ibid.*, Art 24

<sup>221</sup> *ibid.*, Art 23

<sup>222</sup> Law on Legislative Acts, Art. 23(2); Law on the Regulation of Parliament, Art. 47(7)

Even where consequential amendments to existing legislation are required, and the consequential amendments are identified, these are not normally incorporated in the draft Law before it is enacted. Usually the draft Law will include a provision providing that “within 3 months, the Government ...will submit to the Parliament proposals on adjusting the current legislation to the present law”<sup>223</sup>. However, even when there is compliance within the time limit, and evidence received suggests that this is commonly not the case, there will be an extensive period where the law will be uncertain.

The Law on Legislative Acts provides a formal legal solution to conflicting provisions in Laws by adopting the common jurisprudential solution that the later enacted provision prevails<sup>224</sup>. However, this does not necessarily resolve the legal uncertainty created by extant legal provisions because there may be legal uncertainty about whether there is indeed conflict between provisions and the extent of that conflict.

**4.3** The overall effect is that the law is uncertain. It was suggested in evidence that this was inevitable as it cannot be determined what consequential amendments to existing legislation are required until a draft Law is finally enacted. This is not a compelling argument. Necessary consequential amendments should be identified when the Law is drafted, and those could be incorporated in the draft Law and not merely identified. If there are amendments to the draft Law in the course of its parliamentary consideration, necessary consequential amendments as a result of the amendment should be identified and these could also be incorporated in the draft Bill when incorporating the amendment.

Even in terms of the present arrangements, the situation could be improved by ensuring that the Parliament enforces the present legal requirement to provide the list of consequential amendments required to be submitted with the draft Law; and also introducing parliamentary procedures for Parliament to monitor that statutory obligations placed on the Government to introduce the consequential amendments within the period specified are duly implemented in practice.

#### ***APPROXIMATION WITH THE ACQUIS COMMUNAUTAIRE***

**4.4** As the Republic of Moldova aspires ultimately to becoming a Member State of the European Union, it is not surprising that the Law on Legislative Acts places considerable

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<sup>223</sup> E.g. Law on Transparency in the Decision Making Process, Art. 18(a).

<sup>224</sup> Law on Legislative Acts, Art. 6(7); this applies to provisions in Laws that have the same hierarchical status.

emphasis on ensuring that draft laws comply with the *acquis Communautaire*. It is an element in the provision setting out the main principles of law making<sup>225</sup> and in the provision declaring the mandatory general requirements of legislative acts<sup>226</sup>. It is an essential element in the preparation of legislative programmes<sup>227</sup>, and of the rationale prepared and analysis undertaken prior to drafting a law<sup>228</sup>. It is a required element in the legal, economic, scientific and environmental evaluation of draft laws<sup>229</sup>. Also in drafting laws, it is required that terms that are used shall carry the same meaning as in Community legislation or be compatible with Community legislation<sup>230</sup>, and that final and transitional provisions shall include any necessary action to be taken to make the Law compliant with EU norms<sup>231</sup>.

**4.5** Where laws are drafted within Ministries, there is a dedicated institutional check within Government, provided by the Centre for Legal Approximation, that there is compliance with these requirements. The Centre, which has a staff of fifteen lawyers, prepares advisory notes on the compatibility of such draft legislation with the *acquis Communautaire*. This is done once the Ministry has prepared the first draft of a law and before it is examined by the Ministry of Justice. The Centre performs a similar function with respect to ordinances where they have an EU impact, although we were told that at present relatively few ordinances do so.

**4.6** Although these legislative and institutional structures are in place, the view was expressed in evidence received that Moldova's processes for approximating its legislation to the *acquis Communautaire* are still "rather weak". If this is the case, it may be a consequence of limited resources or limited training. However, the time constraints inherent in preparing this Report did not allow for making an evaluation of the judgment which we received. It may added that the use of the comprehensive *Methodology* referred to in paragraph 4.8 may very well enhance performance in this area.

**4.7** Two important points may be made though with respect to the existing arrangements.

First, the existing arrangements appear in practice to be primarily directed to draft legislation rather than to policy development. A great saving of time and resources is achieved where the

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<sup>225</sup> Law on Legislative Acts, Art. 4(1)

<sup>226</sup> *ibid.*, Art. 5(1)

<sup>227</sup> E.g. *ibid.*, Art. 14

<sup>228</sup> *ibid.*, Arts. 13(1), 17

<sup>229</sup> *ibid.*, Arts. 22, 23

<sup>230</sup> *ibid.*, Art. 19 (c), (e)

<sup>231</sup> *Ibid.*, Art. 30 (c), (d)

implications of the *acquis Communautaire* are systematically evaluated during the development of policies.

Secondly, the existing arrangements do not address a significant burden in ensuring that legislation approximates to the *acquis*. They are presently directed to the drafting of legislation but do not address the existing stock of primary and subordinate legislation.

So, for instance, although the Centre for Legal Approximation prepares annual national action plans for legal approximation, its remit presently extends only to examining draft law and not the existing stock of legislation. Inevitably this is a larger body of legislation than the laws which are being currently enacted, and thus a larger evaluation task, and conceivably one which may require the enactment of much new legislation to make the stock of legislation compliant.

The experience of other applicant states for membership of the EU suggests that the lead time for ensuring that the existing stock of legislation approximates to the *acquis Communautaire* is a lengthy one, and is one which requires considerable specialist resources to be applied to achieve it. The experience of others also suggests that it may be necessary to introduce dedicated parliamentary procedures to address the volume of legislation which may prove necessary to ensure that existing legislation becomes EU compatible.

**4.8** However, it may well be that these matters, together with the effectiveness of the existing arrangements, will be re-evaluated once the *Methodology for Law Approximation in the Republic of Moldova*, prepared by the Centre for Legal Approximation and published in May 2010, has been fully considered within the Government and in Parliament.

## ***LEGISLATIVE DRAFTING***

### **Drafting within Government**

**4.9** Laws are drafted in individual ministries, but the Ministry of Justice has general oversight over the delivery of the Government legislative programme; registering draft Government primary legislation, and providing advice and opinions on its structure and style<sup>232</sup>. The Legislation Department within the Ministry of Justice has a dedicated unit to prepare advisory notes on individual draft laws prepared in individual ministries. Such an advisory

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<sup>232</sup> Previously the Government experimented with a central drafting unit which drafted Government draft legislation for ministries.

note, signed by the Minister of Justice, is required before a bill can be submitted by the promoting ministry to central Government.

### **Drafting in Parliament**

**4.10** Within the Parliament, the parliamentary administration provides general logistic support to the Standing Bureau, standing committees, and the parliamentary factions as well as to individual parliamentarians<sup>233</sup>. Amongst its duties the Legal Department within parliamentary administration provides advisory notes to standing committees on draft legislation and legislative proposals<sup>234</sup> and prepares draft legislation to implement legislative proposals that are approved by the Parliament<sup>235</sup>.

The Legal Department has 24 lawyers<sup>236</sup>, of whom some 20-22 are involved in the legislative process; and the evidence received is that the Department drafts some 30-40 laws per annum. There is currently a proposal, supported by the Chairman of the Parliament, to establish a centre (Legislative Council) within the Parliament dedicated to legislative drafting<sup>237</sup>.

### **Drafting Training**

**4.11** The Ministry of Justice provide training in legislative drafting for its own lawyers and at least to some of those who work in other ministries. In addition, the Academy of Public Administration by the President of R. Moldova offers courses on legislative drafting, and there are some university courses on legislative technique. It has not been feasible in the preparation of the Report to examine the nature and length of these courses, nor has it been possible to establish authoritatively which of these courses Government lawyers, or lawyers employed in the parliamentary administration, are required to take.

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<sup>233</sup> Law on the Regulation of Parliament, Art 141; the parliamentary administration is translated in the unofficial English translation of the Act as “the Apparatus of the Parliament”. The structure of the parliamentary administration and terms of service of its staff are regulated by a Decision of the Parliament [Decision No. 22, 22.03.2001 (as amended) but see proposed changes considered later in the Report.

<sup>234</sup> e.g. *ibid.*, Art 54

<sup>235</sup> Law on Legislative Acts, Art 16

<sup>236</sup> Evidence received suggested that many of the lawyers were relatively inexperienced. There is some internal evidence in the legislation reviewed which tends to support this. So, for instance, the members of the legal department who must be included in parliamentary working groups tasked with drafting primary legislation implementing legislative proposals are only required to have a minimum three year’s working legal experience: Law on Legislative Acts, Art 16(3).

<sup>237</sup> Such a centre existed previously, but it is believed it was later merged with the Ministry of Justice.

## **Regulation of Drafting Style**

**4.12** Moldova has followed the pattern of many emerging democracies by placing the procedures for the preparation of legislation, and its structure and style, on a statutory basis. This is done in the Law on Legislative Acts<sup>238</sup>, and applies to legislation drafted in Parliament to implement legislative proposals approved by Parliament, and also to parliamentary consideration of draft legislation submitted by those entitled to do so.

**4.13** The provisions of this Law regulating legislative structure and style are extensive but not comprehensive and are probably not intended to be so. In the main they reflect accepted standards of good drafting practice. There are, however, three less well-founded provisions in the Act, which are considered in this paragraph as their application would tend to complicate legislation and certainly make it less clear to the user.

*4.13.1 Dividing dispositive provisions from those indicating who attracts rights or responsibilities under them*

Article 29 (2) provides:

Dispositive provisions shall be systematized in the following logical sequence:

- a) provisions of substantive law shall precede procedural provisions;
- b) provisions containing responsibility shall be grouped, as a rule, in the final part of the legislative act.

Article 29(2)(b) raises some concern. A legislative structure which separates rights and duties from the persons to whom they apply is likely to be ponderous, will certainly make it more complex for the user to understand readily, and is more prone to drafting error (as the drafter is more likely to overlook a failure to attach a person to a right or obligation appearing earlier in the text). These consequences will be more pronounced where many pages of legislative text separate the provisions, as would be the case if Art 29(2)(b) were applied to complex legislation.

It is sound drafting practice to attach the “addressee” directly when drafting a right or obligation. An example illustrates why:

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<sup>238</sup> Law on Legislative Acts, Arts 19-40

Style A

*Article 10:* X shall be provided.

*Article 110:* Y shall be responsible for meeting the obligations in Articles 7, 8, 10, 43, 64, 71 and 84.

Style B

*Article 10:* It shall be the duty of Y to provide X.

It is difficult to see why in most circumstances Style A would be preferred to Style B.

#### 4.13.2 *Use of legislative identifiers*

Various provisions suggest that in certain circumstances elements of legislation do not need to have a specific identifier. This is not sound practice as it can create unnecessary complication where the legislation is subsequently amended and difficulties if it is necessary to refer to the element in the same or other legislation.

Article 31 suggests that where legislation has a single annex (schedule) it need not be numbered; Article 32(3) requires that, where an Act consists of one article only, the article should not be numbered.

If legislation with a single annex is subsequently amended by adding a further annex, both annexes will then require a number, and the references to the original annex in the Articles will also have to be amended. This can be avoided by numbering the annex initially.

If the lone Article in legislation is unnumbered, it becomes unnecessarily clumsy to amend the legislation (for example to indicate whether a new Article should appear before or after the original Article) or to refer to the lone Article in other legislation; and, again, if another Article is added to the legislation the original Article will then have to be numbered anyway.

In the same vein, Article 32(6) requires subdivisions of subparagraphs of an Article to be bullet points. For the same type of reason, this causes unnecessary complication where there are amendments to the provision.

Indeed, Art 35(4) of the Act illustrates the difficulty by requiring a newly inserted bullet point provision in a list of bullet point provisions to be inserted ahead of the existing ones; however, this is too absolute as it may be logically inappropriate to adopt that order.



Difficulties would also arise where there is a need to make a reference to such a bullet point in the same or other legislation.

#### *4.13.3 Republication of legislation and renumbering of provisions*

Article 41 provides for the republication of legislation where there have been substantial amendments to it, and envisages the re-numbering of provisions in the republication. This practice is not recommended<sup>239</sup>.

Re-numbering provisions causes difficulties where there are cross-references in the same or other legislation to provisions of the legislation that is republished; the cross-references must be traced and amended and this can be an extensive and complicated exercise.

Also court judgments making reference to the legislation with its original numbering become more difficult to follow if the republished legislation has its Articles renumbered.

**4.14** Legislation is not necessarily the best vehicle for regulating the structure and style of drafting. It is not a particularly flexible instrument for the purpose; the formalities of amending it make it cumbersome to respond to evolving drafting practices; and it does not lend itself to illustrative examples of the operation of, for instance, stylistic rules which can be helpful in practice to the drafter.

One solution to this is the compilation of a supplementary, but authoritative, manual for drafting legislation. The ideal is a common manual for all institutions with authority to draft legislation but, failing that, possibly parallel compatible versions for Government and Parliament. It would also be valuable for the manual to encompass the preparation and drafting of subordinate legislation; if that were impractical in a single publication, this could be published separately.

**4.15** In general, a drafting manual should include matters of policy analysis; contextual issues, such as referential drafting; as well as the rules of legislative structure and drafting style; and maybe the parliamentary procedural rules with which the drafter needs to be familiar. It can provide practical detail, and illustrations of correct (and possibly incorrect) application of the principles and rules. It would, therefore, be able to include both a level of detail and also features that would normally be considered inappropriate in a legislative text. In short, it would serve as a more functional tool than an Act, and be a “desk book” that

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<sup>239</sup> And indeed seems in essence to conflict with the approach in Article 35(5) which provides that where there are repeals, the numbers of the repealed provision should not be reassigned.

individual drafters could have beside them. Other emerging democracies have adopted this approach and it is common in established democracies.

**4.16** The force of the suggestion that a drafting manual would be very desirable is evidently recognised within the government of Moldova, as we were made aware in evidence that the Ministry of Justice makes use, in translation, of an extensive drafting manual published by the German government; and indeed some lawyers within the Ministry have been required to pass informal “examinations” on its content. There may be other drafting manuals, of varying scope and authority, in use in other ministries and in Parliament.

However, while the use of a foreign drafting manual may be a short term expedient it is not a practical substitute for an indigenous manual which can reflect Moldovan needs and indeed its language. It may be said, and indeed was said in evidence, that the demands on the parliamentary and governmental legal services do not leave time for the preparation of a drafting manual. Yet it could certainly be prepared relatively easily with external assistance, and its preparation would save much time and effort in drafting and in the training of drafters.

### **Drafting Style in Practice**

**4.17** Although the Law on Legislative Acts contains detailed provisions on the structure and content of legislation, and on drafting style, there are two important macro aspects of legislative drafting that merit some content. They are analysed below using examples from current and repealed Moldovan legislation<sup>240</sup> which were noted in the preparation of the Report rather than by way of a systematic review of Moldovan legislation.

### ***Analytical focus***

**4.18** Although the relevant legislation and the *Methodological Guide to ex ante assessment of the impact of public policy* provides for establishing clearly the purpose of draft legislation, there are examples of provisions where that does not appear to have been central to the thinking of the drafter. Two historic examples illustrate the dangers of the drafter failing to keep the legislative purpose in mind.

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<sup>240</sup> And in one case a provision included in the draft law, but which was omitted before enactment.

4.18.1 (draft) *Law on Public Service and the Status of Civil Servants, Art. 15(3) [omitted in the Law as enacted<sup>241</sup>]*

This paragraph provided:

A civil servant who has been dismissed or has resigned cannot represent, during a period of 5 years, the interests of natural persons and legal entities concerning problems that were the subject of his job activity and are considered, in compliance with the law, a state secret or another secret protected by the law.

The focus here was presumably to prevent for a period former civil servants using certain confidential information which they obtained during their employment for the benefit of others, and presumably indirectly themselves. However, the provision embraces the civil servant who has been dismissed or who resigns, but fails to address the larger category of civil servants who have retired.

4.18.2 (repealed) *Law on Foreign Investments<sup>242</sup>, Art. 2*

This Article defined “foreign investors”, a concept central to the legislation:

Foreign investors in the Republic of Moldova may be:

- (a) foreign individuals and legal entities, their associations registered in the country of their citizenship, place of residence (permanent place of being), for conducting their entrepreneurial activity;
- (b) foreign individuals that are not registered for carrying out entrepreneurship activity in the country of their residence (completed by the Law from 27 July 1994, No 197-XIII);
- (c) citizens of the Republic of Moldova and persons without citizenship, permanently living outside the republic and registered in the country of their permanent place of residence, for conducting their entrepreneurial activity;
- (d) foreign states;
- (e) international organisations.

Article 2 failed, for instance, to capture Moldovan citizens who were permanently resident in a state outside Moldova but who were registered in a third state to conduct investment business.

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<sup>241</sup> Law No 158, 04.07.2008, which came into force on 01.01.2009.

<sup>242</sup> Law No.998-XII, 1.4.1992; the Law was repealed by Law on Investment in Entrepreneurial Activities, No. 81 of 18 March 2004 [Official Gazette no 64-66/344, 23.04.2004]

### ***Referential drafting***

**4.19** Incorporating by reference provisions of other legislation is not an ideal drafting technique, but can be justified in some circumstances. It is not ideal because it obliges the user of the legislation to refer to one or more pieces of other legislation to determine the law. From the perspective of the drafter referential drafting may be a convenience, but it may well also lead to the indiscipline of not carefully checking that parallel or related legislative provisions are consistent with what is being drafted.

However, where the incorporation of other provisions is not by precise reference but by vague generalisation it has to be regarded as poor drafting, whether or not it is technically effective. In that case, it makes it extremely difficult for the user, even the legally qualified user, to determine the law. Often incorporation by vague descriptive reference is a result of pressures of time, inadequate mechanisms for identifying related legislation or simply limited human resources. Again, some examples may serve to illustrate aspects of this issue.

#### *4.19.1 Constitution, Art. 66*

The Article lists the “basic powers” of the Parliament; there are sixteen powers listed in separate short paragraphs and then a final paragraph states:

(r) to carry out other powers as provided for by the Constitution and laws.

The reader is thus left to identify the remaining constitutional powers of the Parliament and all the powers granted to it by legislation. The only effective information that the reader is given is that the Parliament has powers under legislation as well as under the Constitution. The drafter, on the other hand, has ensured that technically nothing has been omitted from the list by an oversight.

#### *4.19.2 Constitution, Art 72(2)*

This paragraph declares the matters which are regulated by organic, rather than ordinary, laws; these are listed in fifteen brief paragraphs which are followed by a further two:

(p) other fields for which, pursuant to the Constitution, it is stipulated the adoption of organic laws;

(r) other fields for which the Parliament recommends the passing of organic laws.

Here paragraph (p) creates the same inconvenience for the user and provides the same protection for the drafter as in the previous example. Paragraph (r) peripherally

creates or reiterates a power of the Parliament (to recommend matters that should be regulated by organic law), without indicating to which of the bodies that may initiate legislation a recommendation may be directed, and whether the effect of such a recommendation is discretionary or mandatory. In the case of paragraph (r), clearly the matters which Parliament recommends should be regulated by organic law cannot be specified, as it is a parliamentary power to be exercised into the future. However, adding it to the list in this way has perhaps led the drafter to fail to analyse fully what is required in providing for the power<sup>243</sup>.

#### 4.19.3 *Criminal Code*<sup>244</sup>, Art. 1(3)

This paragraph provides:

The present Code shall be applied in compliance with the provisions of the Constitution of the Republic of Moldova and with the international acts to which the Republic of Moldova is a party. Wherever contradictions appear with the international acts regarding the fundamental human rights, priority shall be given and directly applied the international regulations.

Here the second sentence leaves the user to establish the international human rights instruments to which it refers and to identify any conflict between their provisions and those of the Criminal Code. While the sentence may appear to be an insurance for the drafter against error, the truth is that it is the drafter's task to ensure that the provisions of the Criminal Code as drafted are not in breach of international human rights obligations. In fact both sentences anyway seem legally unnecessary as they do no more than reiterate principles of Moldovan constitutional law unequivocally stated in the Constitution<sup>245</sup>.

#### 4.19.4 (repealed) *Law on Foreign Investments*, Art. 1

This Article (in part) provided:

1. The activities of foreign investors and enterprises with foreign investments are regulated: by legislative acts of the Republic of Moldova with exceptions set by the present law; by interstate and international agreements (conventions) with the participation of the Republic of Moldova.

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<sup>243</sup> Amongst other illustrations of the latter issue is Article 14(m) of the Law on the Regulation of Parliament, which specifies the duties of the Chairman of the Parliament.

<sup>244</sup> Adopted by Law 985-XV of April 18 2002

<sup>245</sup> Constitution, Arts 7 and 4(2)

2. If provisions of interstate and international agreements (conventions) with the participation of the Republic of Moldova differ from those set by the present Law, the provisions of the above agreements (conventions) are applied.

3. The provisions of the present Law cannot be modified or completed but through another Law adopted by the Parliament. All the legislative acts that contravene the present Law in the section referring to foreign investments are not applicable.

.....

5. The minimum level of the public capital of the enterprises with foreign investments is determined in conformity with the legislation in force that refers to public capital of the national enterprises (A national enterprise is an enterprise created on the territory of the republic of Moldova, its equity being formed by legal and physical persons of the republic of Moldova).

If this Article were viewed from, say, the perspective of the potential inward investor and his or her advisors, the drafting of the Article was unnecessarily opaque.

Paragraph (1) provided that inward investment was regulated by unidentified domestic legislation, except where this was amended by the present Act, and by the unidentified bilateral and multilateral treaties to which Moldova is a party.

If the potential inward investor could identify these treaties, he or she may have been reassured in paragraph (2) that their terms prevailed over inconsistent provisions of the present Act, but was left wondering whether that rule applied to other domestic legislation.

In paragraph (3), the potential investor discovered that domestic law in conflict with a described, but not specifically identified, provision of the present Law was inapplicable.

And finally, in paragraph (5), the investor was informed that the minimum level of capital required of companies with foreign investments was determined by reference to described but unidentified domestic legislation.

Again, this was a provision which may well have been essentially legally secure, but it simply failed to communicate the law effectively.

#### **Drafting Languages: A Note**

**4.20** Article 13 of the Constitution states that “the Moldovan language” is the state language of the Republic, but also provides that the State shall “acknowledge and protect the right to the preservation, development and use of the Russian language and other languages spoken

within the territory of the State”<sup>246</sup>. This Article reflects the duality in the use of the State language and Russian in the Republic, and has an effect on legislative drafting and the legislative process in general.

In terms of drafting primary legislation, the Law on Legislative Acts is quite clear; Article 19 provides that the “text of legislative acts shall be written in the national language”<sup>247</sup>. However, the Law on the Regulation of Parliament, Art. 47 (8) and (10), in respect of legislative initiatives, provides – with some internal inconsistency:

(8) Draft legislative act[s] shall be submitted in the Moldovan language together with the translation into the Russian language.

....

(10) Draft legislative acts or legislative proposals submitted by the MPs shall be presented in Moldovan or in Russian languages. The Apparatus of the Parliament ensures their translation into the respective language.

Presumably, this also applies to proposed amendments to draft legislation, but no specific legislative provision to that effect has been identified<sup>248</sup>.

The conclusion would appear to be that the authentic text of enacted primary legislation is only in the State language, but that Russian translations of draft laws, legislative proposals and amendments to draft laws may be working documents in the parliamentary legislative process. Given the complexity of the legislative process it would seem preferable for the rules to clearly state, what evidence received suggests is the position adopted in parliamentary practice, that texts of draft laws in the State language are the binding version in cases where any inconsistencies or discrepancies arise from the process of translation.

## **5. THE LEGISLATIVE PROCESS**

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<sup>246</sup> Constitution, Art 13 (4) requires the enactment of an organic law on languages, but it has not been established whether it has been enacted.

<sup>247</sup> See also, Art. 23(3) of the Law.

<sup>248</sup> Also no provisions have been identified in respect of subordinate legislation, but it is assumed that, as with primary legislation, the authoritative text would be solely in the State language.

## **Introduction**

**5.1** The legislative process is systematically described in Section II. Here some vulnerabilities in the process are analysed. The possibility of further rationalisation of legislative programmes, of a more text-based formal legislative process, of greater parliamentary scrutiny of subordinate legislation (normative acts), and more generally of a more focussed parliamentary committee system are all explored; and the section concludes with a short comment on parliamentary staff.

### ***Further rationalisation of legislative programmes?***

**5.2** To the external commentator it appears that under existing procedures the legislative programmes of the Parliament and the Government are initially formulated independently.

So, the Parliament is required adopt, and revise, legislative programmes, after consultation with interested parties in civil society; and once adopted they must be placed on the website of the Parliament<sup>249</sup>.

Also, the Government<sup>250</sup>, in its “sessions” which have to be held at least quarterly<sup>251</sup>, must consider its general programme of activities, draft laws and conclusions on legislative proposals, as well as the adoption of regulations and ordinances<sup>252</sup>. In addition, the Government establishes Action Plans, for instance on human rights and on anti-corruption, which require legislative implementation.

These initiatives of the Parliament and Government are rationalised by informal negotiation, the Government indicating the parliamentary priority to be given to the draft laws which it submits to Parliament and, not least by enjoying the support of the majority of parliamentarians. Nevertheless, there would be merit in adjusting procedures to allow for greater rationalisation at the stage of preparing the legislative programme, while at the same time recognising both the need to provide for the independence of the Parliament and also to

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<sup>249</sup> Law on Legislative Acts, Art. 14. For a recent example of the legislative programmes of the Parliament see: *Decision of the Parliament on Elaboration of the Legislative Programme for 2005-2009*, No.122/16, 06.2005 [O.G. no. 89-91/418, 01.07.2005: 2 *Decision of the Parliament on the Legislative Programme for 2005-2009*, No. 300/24, 11.2005 [O.G. no. 5-8/52, 13.01.2006]. In 2007 the Parliament reviewed the execution of the Legislative Program and adopted the *Decision on execution of the Legislative Programme for 2006*, No. 258/2007 [O.G. 36-38/276, 16.03.2007].

<sup>250</sup> Open, but sometimes closed, meetings of members of the Government, chaired by the Prime Minister or a deputy prime minister: Law on Government, Art 25

<sup>251</sup> *ibid.*

<sup>252</sup> *ibid.*, Art 25 (1), (7) and (8)



allow the Government to present its policies in a coherent manner. An earlier rationalisation of the legislative programme would enhance the systematic preparation and scrutiny of draft legislation.

#### *A single text legislative process?*

**5.3** It is a common experience that parliamentary consideration of legislation operates with more focus and efficiency if the legislature can address a single draft legislative text at each stage of the legislative process. It will be evident from the overview of the Moldovan legislative process in Section II that the process is not entirely a text-based and may also encompass consideration of more than one legislative text.

**5.4** So, for instance, legislative initiatives of the President and members and factions of the Parliament may either be in the form of a draft legislative text or of a legislative proposal. The relevant legislation does not specify what is required in a legislative proposal, but presumably it would need to be sufficiently reasoned and detailed to attract parliamentary support. Nevertheless, it falls to the committee of reference to evaluate and report on a legislative proposal, and it is clearly more cumbersome to do that than evaluate a legislative text. It is also usually the task of the committee of reference, and more particularly a working group established by the committee, to transform the proposal into draft legislation. So in the first instance the legislative process has to accommodate two rather different kinds of initiative, only one of which is text-based from the outset.

**5.5** It might also be argued that legislative initiatives merely in the form of legislative proposals impose something of a strain on a committee-focused Parliament of only 101 members, with a support staff which is apparently neither extensive nor particularly experienced<sup>253</sup>. This might be said to correspondingly reduce the parliamentary capacity to scrutinise Government draft legislation which accounts for some 80% of legislative initiatives. Similarly it may reduce the capacity of the Parliament to undertake its other parliamentary functions, some of them legislation-related such as the scrutiny of subordinate legislation. On the other hand, it may be argued that legislative initiative by way of legislative proposal is a convenient mechanism for the individual member and the smaller parliamentary factions.

**5.6** The argument in favour of a more text-based legislative process becomes stronger in respect of proposed amendments to draft legislation which appear to be permitted both in the

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<sup>253</sup> As noted later in the Report, the expertise of the parliamentary staff has been strengthened by a UNDP training programme.

form of texts and also proposals. Again, it is a task of the committee of reference to evaluate amendments in the first instance, and it is obviously a less demanding task if it is a textual amendment to a legislative text rather than a no doubt more amorphous non-textual proposal to amend the text which has to be transposed into a textual amendment. There seems to be no strong reason why a proposal to amend draft legislation should not be required to be in the form of a textual amendment.

**5.7** In the case of both legislative initiatives and amendments, proposals rather than texts not only place a burden on parliamentary committees they also increase the likelihood of misunderstanding and ambiguity. At its simplest, the intention of the proposer may not be correctly or fully conveyed in the transposing text drafted by third parties. This may also result in unnecessary further confusion in plenary debate.

**5.8** The recommended and perfectly viable, though radical, solution is to permit legislation only to be initiated by submitting a legislative text and not a proposal. In respect of the President, the Presidential office could draft or contract out the drafting of the text. For individual members of the Parliament and the factions, a small parliamentary drafting office could be created; this would require reorganisation of staff rather than additional staff. The office would draft legislation on the instructions of an individual member or faction, following a formal approval of the proposal by Parliament in plenary session. The same office could also draft amendments to legislation under consideration for the members and factions. In this way the standing committees could focus on considering legislative texts and reporting on them; and members of Parliament in plenary session would only have text of legislation and legislative amendments, and not proposals, before them in the legislative process.

**5.9** The Moldovan legislative process also admits, in some circumstances, a principal legislative text and also alternative texts to be under concurrent consideration. This is a circumstance that may arise in the procedure of many parliaments from time to time, and indeed in some situations it can facilitate the legislative process, but as a standard procedure it is not recommended. Where possible separate texts should be consolidated for parliamentary consideration, and the Moldovan legislative process allows for this. Where that is not possible, it is more efficient and much less confusing in plenary consideration and debate for one text to be chosen as the focus for consideration and allow the authors of other texts to present their proposals only as amendments to the text chosen. It would be desirable to amend the relevant legislation to provide for this.

**5.10** Finally, in the Moldovan context, there is it seems the added dimension of commonly working in two languages within the legislative process. This matter is explored above in paragraph 4.4 when considering legislative drafting and, of course, it also has real relevance in the legislative process. The conclusion reached in paragraph 4.4 was that as legislation is enacted in the State language, the binding text, in case of inconsistencies or discrepancies with Russian translations, should also be the State language.

### *Greater parliamentary scrutiny of subordinate legislation?*

**5.11** The procedure for preparing and drafting subordinate legislation (normative acts), and the requirements of their structure and drafting style, were described earlier in the Report. The focus in this section is largely on aspects of the parliamentary role in the adoption of this category of legislation.

#### *5.11.1 Procedure for Submission and Consideration*

The procedure for submitting an ordinance for parliamentary approval, where this is required, is the submission by the Government of the ordinance together with a “draft law” for its approval; this seems a very cumbersome procedure and it would really be a sufficient procedure for the ordinance to be submitted with a motion for its approval.

From the legislation reviewed, although that may be supplemented by other legislation not identified, the procedure for the submission of ordinances for parliamentary approval is generally rather limited and sparse.

There does not appear to be any requirement for the ordinance to be submitted with any supporting and explanatory documentation, revealing the intended purpose, scope and impact of the ordinance; this is in stark contrast to draft primary legislation and here the ordinance is actually in force when it is submitted for approval.

There does not appear to be any time frame in which the submitted ordinance is to be considered and voted on in Parliament, or an indication of the vote required to approve it (whether an absolute majority or a majority of members present, for instance).

#### *5.11.2 Nature and Scope of Parliamentary Scrutiny*

No statutory procedures for the parliamentary scrutiny of ordinances have been identified.

It is in the nature of subordinate legislation that two distinct matters fall to be considered in such scrutiny: (i) the merits of the policy and substance of the subordinate legislation and (ii)

technical compliance with the enabling legislation, together with technical consideration of its consistency with other legal norms, and perhaps also the quality of its drafting. The appropriate standing committee would seem an obvious vehicle to consider and report on these matters before a vote is taken on the ordinance<sup>254</sup>.

### *5.11.3 Greater procedural flexibility coupled with more extensive parliamentary scrutiny?*

It is particularly in the nature of subordinate legislation that some is of considerably more political and legal importance than others. Consideration might usefully be given to introducing a procedure where most ordinances were submitted to Parliament but there was greater flexibility in the parliamentary procedures for regulating them.

To balance such increased flexibility, a requirement that most subordinate legislation be submitted to Parliament, rather than some of it, would allow Parliament to be fully appraised of such legislation and to develop appropriate and systematic procedures for scrutinising it.

### *A more focussed parliamentary committee system?*

**5.12** As is commonly the case in small unicameral legislatures in particular, much technical and detailed parliamentary activity in the Parliament is undertaken in committees. The Parliament currently appears to have nine standing committees, each with 10 or 11 members<sup>255</sup>. The standing committees have a broad range of functions within their subject areas, in particular the scrutiny and, in some cases, the preparation of legislation and also the conduct of inquiries into Government administration. In these tasks they are supported by the staff of the Parliament, and by specialists from outside Parliament in the public and private sector.

However, there is some scope for enhancing the work of the standing committees by giving it more focus. Some institutional restructuring of the committees would probably assist this; for instance, a reorganisation of the committees that they more fully mirrored Government ministries and taking fuller advantage of the power to create subcommittees. Restructuring and focussing their functions would also enhance the work of the committees. As indicated earlier in the Report, there is a proposal that drafting of legislation implementing legislative proposals emanating from individual parliamentarians, and also the drafting of amendments,

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<sup>254</sup> Such systematic scrutiny would serve to avoid the apparent difficulties that had to be resolved in 2005 by enacting legislation, commonly referred to as the “Guillotine Law”, to revoke a substantial tranche of subordinate legislation found to be in conflict with primary legislation.

<sup>255</sup> See the Parliamentary website, [www.parlament.md](http://www.parlament.md).

be transferred to a small department within the Parliamentary administration; this would allow the standing committees to focus more fully on assessing draft legislative texts. No doubt there are other areas where similar action might be taken. This would not only allow standing committees to focus on existing activities, but also create capacity to undertake other important scrutiny, not least of subordinate legislation.

### *Parliamentary staff*

**5.13** The evidence received is that there are 194 persons employed within the parliamentary administration, of whom 35 work in support of the parliamentary committees and the factions. All parliaments rely heavily on their staff. To attract people of good calibre, education and experience it is necessary to provide good management<sup>256</sup>, and the prospect of a career structure even though the number of staff is likely to be small as compared to, say, a government department. The current size of the parliamentary administration in Moldova appears, by international standards, to be modest to perform its constitutional and statutory functions, although this may be ameliorated by the proposed introduction of electronic systems, including both intranet and internet facilities. Nevertheless the present size of the parliamentary administration must place strains on maintaining good management and providing a career structure.

**5.14** Given that parliamentary administration are likely to be called on to give advice, often on sensitive issues, it also most important that its members have the confidence of an independent status. The parliamentary administration is led by a Director General who is presently appointed by the Chairman of the Parliament, after consultation with the Standing Bureau and receiving an advisory note from the Committee for Legal Issues, Appointments and Immunities<sup>257</sup>. The Director General's current responsibilities extend to appointing and dismissing parliamentary staff, other than some who are directly appointed by the Chairman. The establishment and terms of service of the Parliamentary staff are currently regulated by

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<sup>256</sup> A UNDP initiative in 2006 was designed to provide training for staff and to assist in enhancing management structures.

<sup>257</sup> Law on the Regulation of Parliament, 141(3), the Committee is one of the standing committees.

Decisions of the Parliament<sup>258</sup>. The Director General controls the appointment and dismissal of most of the Parliamentary staff<sup>259</sup>; although some are appointed directly by the Chairman.

**5.15** It is common experience that the independence of parliamentary staff is best provided by the staff being formally employed by an institution of the parliament which represents a wide spectrum of the political opinion within it. In the context of the Moldovan Parliament, the most obvious body to act as the formal employer would be the Standing Bureau.

From evidence received, it is understood that a draft law, currently awaiting enactment would authorise the members of the parliamentary administration to be employed under permanent contracts and be given the status of civil servants. It has not been possible to examine the terms of the draft law, but perhaps there will still be an opportunity to consider the observations in this paragraph during parliamentary consideration of the draft law.

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<sup>258</sup> *ibid.* Art 141(2); the structure of the parliamentary administration and terms of service of its staff are regulated by a Decision of the Parliament [Decision No. 22, 22.03.2001 (as amended)].

<sup>259</sup> *ibid.*, Art 141 (4)

## **IV CONCLUSIONS AND RECOMMENDATIONS**

### **1. GENERAL**

**1.1.** In addition to recommendations relating to specific areas of the legislative process presented below, broader themes have emerged from the assessment, which prompt more general recommendations.

**1.2** For instance, although in large part refuted by officials in Parliament and Government, there was a consistent concern in the evidence received from civil society that both the Parliament and the Government not infrequently failed to comply with statutory requirements relating to stages of the legislative process, for example in providing information at the required time and allowing the required time for consultation, and in the Government providing, and the Parliament ensuring that it provided, at the time of submission of a draft law, a list of consequential amendments which were required on enactment of the draft law. There may be similar issues in ensuring compliance with other statutory requirements, which do not affect the public so immediately and directly; for instance, the requirement in the Law on Legislative Acts, Arts. 50-53, that legislation should be reviewed every two years.

**1.3** A broad theme of a different, but perhaps related, nature is the question of the training of public officials. In recent years there has been a valuable impetus to systematise procedures related to the legislative process both within Government and also within Parliament. Much of this has been undertaken by legislation. However, in some cases, it has been by comprehensive guides; for instance, the *Methodological Guide on the Ex Ante Assessment of the Impact of Public Policies* and the *Methodology for Law Approximation in the Republic of Moldova*. Both publications provide good surveys of the issues addressed but could perhaps be more practically directive in content. It is highly desirable that training be provided on such legislative procedures and guides for those civil servants who have to apply them.

With respect to legislative drafting, training is provided for lawyers within Government and presumably in the Parliament. Here the need is to systemise the training, based not only on the legislative requirements on the content and drafting style of primary and subordinate legislation, but perhaps also on an indigenous drafting manual which it is recommended in the Report should be prepared.

*Recommendations*

**1.4 The Parliament and the Government direct particular attention to ensuring that there are robust mechanisms to monitor compliance with statutory requirements related to the legislative process.**

**1.5 The Government give a high priority to training its officials on statutory legislative procedures and on the authoritative guides relating to the legislative process.**

**1.6 The Parliament and the Government restructure legislative drafting training to provide comprehensive and systematic training of public service lawyers who are, or will be, required to draft primary or subordinate legislation.**

**2. DEVELOPMENT OF LEGISLATIVE POLICY [III: 2.1 – 2.8]**

**2.1** The President of Moldova has the capacity to initiate primary legislation and a capacity to issue decrees (although the scope of the decrees suggest that relatively few of them would be of a legislative character) and no legislative procedures have been identified for the policy development of legislation which emanates from the Office of the President. No statutory duty on the President to establish such procedures has been identified.

**2.2** Both the Government and the People's Assembly of the autonomous territorial-unit of Gagauzia have the capacity to initiate primary legislation. No legislative procedures have been identified for the policy development of such legislation or a statutory duty to establish such procedures.

**2.3** By contrast, there are quite detailed legislative procedures for policy development underlying legislation which will be drafted both within the Government and within Parliament. In some respects the concern over these procedures is that they may be too elaborate to be practical.

*Recommendations*

**2.4 Statutory procedures should be established for policy development leading to draft legislation initiated by the President of Moldova.**

**2.5 Statutory procedures should similarly be established for policy development leading to draft legislation initiated by the Government and the People's Assembly of the autonomous territorial-unit of Gagauzia.**



**2.6 The Government and Parliament should review their respective statutory procedures for policy development leading to draft legislation to assess whether they are entirely practical and proportionate.**

### **3. CIVIL SOCIETY CONSULTATION [III: 3.1 – 3.17]**

**3.1** Both Parliament and the Government have procedures for civil society consultation during the legislative process. Civil society consultation has been enhanced in recent years by the enactment of the Law on Transparency in the Decision Making Process, of 2008, and subsequent amendments to other legislation to implement its provisions. In the case of the Parliament, civil society consultation still rests to some extent on a 2005 Parliamentary Resolution on Co-operation with Civil Society, and in particular on its Annex. Consideration might usefully be given to putting the Resolution on a statutory basis, taking into account the Law on Transparency in the Decision Making Process, of 2008, which applies to Parliament.

**3.2** Although there have been significant advances in civil society consultation in the whole legislative process, there are five underlying weaknesses. Firstly, there appears to be an underlying philosophy that directly involving sectors of civil society in the legislation process may be equated with civil society consultation. Such involvement is admirable and likely to be useful in practice, but in addition a more general outreach would allow the real benefits of civil society consultation to be realised. Secondly, and related to that, there appears generally to be a somewhat restrictive approach, by international standards, to engaging civil society in consultation. Thirdly, there is a significant element of official discretion in the consultation processes, including whether consultation is required on a particular draft law. Fourthly, civil society consultation is constrained by very short minimum periods, by international standards, in which submissions may be made during consultation; and, at some stages of the legislation process, notably with respect to amendments submitted to draft legislation, consultation is effectively inoperative. Finally, where the statutory accelerated legislative procedure, or to some extent its more informal counterpart, operates civil society consultation becomes essentially nugatory.

#### ***Recommendations***

**3.3 Parliament and the Government should review their procedures for civil society consultation within the legislative process with a view to extending consultation as widely as possible within society.**

**3.4 Parliament and the Government should review their procedures for civil society consultation within the legislative process with a view to reducing official discretion in determining the scope of consultation, including introducing precise criteria for the exercise of remaining discretion.**

**3.5 Parliament and the Government should review their procedures for civil society consultation within the legislative process with a view to wherever possible extending the minimum periods for making submissions in a consultation.**

**3.6 Parliament should review the procedure for submitting and considering amendments to draft laws, and for making submitted amendments publicly available, with a view to allowing effective civil society consultation on them before any determinative parliamentary decision is taken in respect of the amendments.**

**3.7 Parliament and the Government should review the procedure for the use of the statutory accelerated legislation procedure, and its more informal counterpart, with a view to reducing their use and thus minimising the circumstances when draft laws cannot effectively be the subject of civil society consultation.**

#### **4. LEGISLATIVE DRAFTING [III: 4.1 – 4.20]**

**4.1** Legislative provisions regulating the structure and drafting style of primary and subordinate legislation generally, but not invariably, reflect international standards of best drafting practice. There are however weaknesses to be found in legislation which relate to matters not directly regulated by legislation.

**4.2** Moldova, in common with many emerging democracies, has chosen to place the structure of legislation and the style in which it is drafted on a statutory basis. This reflects the importance which is rightly attached to these matters. However, as a matter of practicality, drafting standards might be enhanced by preparing an authoritative drafting manual for use within both Parliament and Government, to supplement the legislative provisions. Such a manual would be a more flexible means of providing practical advice to drafters, and could also be more easily adapted to accommodate developing drafting techniques.

**4.2** A particular complication for both drafters and parliamentarians in Moldova is that the Constitution declares the Moldovan language to be the national language of the State, but

also requires the State to protect the right to use Russian and other indigenous languages. This is reflected in various ways in the legislative process, particularly in Parliament. However, to avoid confusion and ambiguity from mistranslation and the nuances of language it would be useful to amend the relevant legislation to provide specifically that during parliamentary proceedings where there is a discrepancy between legislative texts, including proposed legislative amendments, in the State language and in Russian, the State language version is binding.

### *Recommendations*

**4.3 Parliament and the Government should review legislative provisions regulating the structure and drafting style of primary and subordinate legislation, with a view to ensuring that they fully reflect international standards of best drafting practice.**

**4.4 Parliament and the Government should give priority to preparing an authoritative drafting manual, to supplement legislative provisions on the content and drafting style of primary and subordinate legislation.**

**4.5 Parliament, in consultation with the Government, should review its legislative procedures with a view to amending the relevant legislation to provide specifically that during parliamentary proceedings where there is a discrepancy between draft legislative texts, in the State language and in Russian, the State language version is binding.**

## **5. THE LEGISLATIVE PROCESS [III: 5.1 – 5.15]**

**5.1** It is a common experience that consideration of legislation operates with more focus and efficiency if a single legislative text is before the Parliament at each stage of the legislative process, whether it is the text of draft legislation or the text of a proposed amendment to it. The Moldovan legislative process is not entirely text-based and may encompass concurrent consideration of more than one legislative text.

**5.2** For instance, a legislative initiative may be in the form of a draft legislative text or of a legislative proposal. Legislative proposals which are approved by the Parliament are usually transposed by a legislative text drafted within a standing committee. Similarly, legislative amendments may be in the form of a text or a proposal, and a text implementing the proposal is usually drafted in a standing committee. Legislative proposals are more demanding to evaluate than legislative texts; and drafting legislative texts to implement proposals is time

consuming. All this must put a logistical strain on both the members and staff of the Parliament, and reduce their capacity to scrutinise draft legislative texts and to perform their other parliamentary functions.

**5.3** There is an effective and workable, if somewhat radical, solution to this. This would be to only permit legislation to be initiated by submitting a legislative text and not a proposal. The advantages of adopting this procedural change are that the standing committees could focus on considering legislative texts and reporting on them, and members in plenary sessions would only have the texts of legislation, and not proposals, before them during the legislative process. This reform would of course require legislative amendment; the Report suggests practical measures to implement it should the reform be enacted.

**5.4** The legislative process also admits, in some circumstances, a principal legislative text and also alternative texts to be under concurrent consideration. As a regular procedure this is not ideal and is prone to create confusion. Where possible, texts should be consolidated for plenary consideration and, where that is not possible, one text should be adopted for consideration and the authors of alternative texts should be required to transpose their provisions into proposed amendments of the text under parliamentary consideration. This would ensure a more orderly procedure.

**5.5** As regards Government delegated legislation, only some requires to be submitted to Parliament for approval. Where an ordinance is required to be submitted, it is apparently in force before submission and if rejected by Parliament it ceases to be in force from the effective date of its parliamentary rejection. Otherwise, the evidence from the legislation reviewed is that parliamentary procedures with respect to delegated legislation are limited. No requirement for ordinances to be submitted with supporting or explanatory documentation has been identified. Nor have any procedures for the parliamentary scrutiny of ordinances been identified, except for Art. 106(2)4 of the Constitution.

**5.6** Subordinate legislation, and in some cases delegated legislation as well, is an important source of law in all modern states, although it is in the nature of this form of legislation that some instruments have more significance than others. However, the legislative process is strengthened by requiring most, rather than just some, delegated legislation to be submitted to parliament to enable the merits of its policy and substance to be considered, as well as technical matters, such as its compliance with the enabling legislation, its consistency with other legal norms and possibly the quality of its drafting. At the same time, to accommodate

the variability of its significance a range of parliamentary control procedures could be introduced to create flexibility. The detail of the proposed reforms is set out in the Report.

**5.7** Finally, two matters of institutional significance regarding the legislative process fall to be considered. First is the parliamentary committee system. Small unicameral legislatures are very dependent on committees undertaking much of their technical and detailed parliamentary activity. Moldova appears to be no exception to this and much of its parliamentary work is done in nine standing committees with some 10 or 11 members sitting on each of them. The committees have a broad range of functions within their subject areas and these are by no means limited to the legislative process. In this they are of course supported by parliamentary staff and also by specialists from outside Parliament itself, in both the public and private sector. There is some scope for focusing the work of these committees and thus improving it. Proposals for this are set out in the Report.

**5.8** Second is the status of staff within the parliamentary administration. All parliaments rely heavily on their staff. Given that the staff are likely to be called on to give advice often on sensitive issues, it is important that they have the confidence of an independent status.

The establishment and terms of service of staff in the parliamentary administration are regulated by Decisions of the Parliament (there is also a new draft Law on the Status of the Parliamentarian Civil Servant, which however at the time of writing this Report was adopted only in first reading). The Director General of the parliamentary administration is formally responsible for appointment and dismissal of most of the parliamentary staff, although some are appointed directly by the Chairman.

It is the common international experience that the independence of parliamentary staff is best provided by the staff being formally employed by an institution of the parliament which represents a wide spectrum of political opinion within it. In the context of the Moldovan Parliament and reflecting that experience the most obvious body to act as the formal employer would be the Standing Bureau.

From evidence received, it is understood that a draft law, currently awaiting enactment, would authorise the members of the parliamentary administration to be employed under permanent contracts and be given the status of civil servants. It has not been possible to examine its terms, but perhaps there will still be an opportunity to consider the observations in this paragraph during parliamentary consideration of the draft law.

### ***Recommendations***

**5.9 The Parliament, in consultation with the Government, should review the legislative process with a view to moving to one that is largely text-based, in the interests of efficiency and clarity.**

**5.10 The Parliament, in consultation with the Government, should review the legislative process with a view to introducing a more comprehensive and flexible procedure for the parliamentary scrutiny and approval of delegated legislation.**

**5.11 The Parliament should review the structure and working methods of standing committees with a view to enhancing their present functions and also to create capacity to perform other important parliamentary functions, such as the scrutiny of delegated legislation.**

**5.12 The Parliament is invited to examine the observations on the status of parliamentary staff during its consideration of the draft law on the subject.**

## ANNEX 1

### List of Interlocutors Met by the Assessment Team

The following persons were interviewed in Moldova on issues considered in the Report:

#### **Parliament:**

- Head of the Standing Committee for Legal Issues, Appointments and Immunities – *Ion Plesca*
- Chief of Parliament Apparatus – *Adrian Fetescu*
- Head of the Legal Department – *Ion Creanga*

#### **Presidential Administration:**

- Head of Legal and Public Relations Department – *Alexandru Ohotnicov*

#### **Ministry of Justice:**

- Legal Adviser to the Minister of Justice, Head of the Section on Analyses, Monitoring and Policies – *Rodica Secrieru*
- Head of Legislation Department – *Cristina Melnic*
- Head of International Relations Department – *Maria Strulea*
- Head of Department for Drafting Normative Acts – *Tatiana Filatova*
- Head of Approximation Section at the National Centre for Legislation Harmonization – *Bulat Alexandrina*

#### **Ministry of Finance**

- Head of Legal Department – *Valeriu Secas*

#### **Chancellery of the Government**

- Head of Policy, Strategic Planning and Foreign Assistance Department – *Ruslan Codreanu*
- Head of Legal Department – *Tudor Stirbu*

#### **International Organizations:**

- Programme Associate, UNDP Moldova – *Veaceslav Palade*
- Project Manager, Justice, Liberties and Security, Delegation of the EU to the Republic of Moldova – *Ghenadie Barba*

- Programme Manager of the Joint Programme of the Council of Europe and the Delegation of the EU to Moldova “Democracy Support Programme” – *Ulvi Akhundlu*
- Resident Twinning Adviser with the EU Twinning Project “Support to the Parliament of the Republic of Moldova” – *Krisztian Kovacs*

**Civil Society:**

- Director of ADEPT – *Igor Botan*
- Director of the Centre for the Analysis and Prevention of Corruption (CAPC) – *Galina Bostan*
- Expert of the Centre for the Analysis and Prevention of Corruption (CAPC) – *Lilia Ionita*
- Director of CREDO (Resources Centre for Human Rights) – *Serghei Ostaf*
- Chairman of National Participation Council, President of East Europe Foundation – *Sorin Mereacre*



## ANNEX 2

### List of Legislative Normative Acts Regulating the Moldovan Legislative Process

The following texts (as amended) regulating the Moldovan legislative process, including authoritative non-legislative texts, fall within the scope of the Report [the short reference used for them in the Report is provided in parentheses]; other legislation is also considered, less systematically, in the Report for illustrative purposes:

1. *Constitution of the Republic of Moldova* [Constitution]

2. *Law on the Government* No. 64-XII, 31.05.90 [Law on Government]

This law provides for the role of the Government, its relationship with other state bodies and institutions, and its principal areas of authority, its general structure and the making of subordinate legislation.

3. *Law on the adoption of the Regulation of the Parliament* No. 797-XIII, 02.04.1996

[Law on Regulation of Parliament]

The Law was republished in *Monitorul Oficial* (the Official Gazette) No. 50/237, 07.04.2007, with all the amendments to it and with a re-numbering of the articles; it was in particular subject to substantial amendment by way of insertions in Law No. 430-XVI, of 27.12.2006.

This law provides for the establishment of the main parliamentary institutions (including its committees) and the appointment of its principal officers, together with their respective powers and duties, detailed rules on the legislative procedure, and other parliamentary procedures including the election of the President of the Republic, a function of the Parliament.

4. *Law on International Treaties of the Republic of Moldova* No. 595-XIV, 24.09.1999

[Law on Treaties]

This law provides for the domestic procedures for negotiating and concluding treaties, their ratification (formal approval in domestic terms) by the Parliament and by the President (signing the instrument of ratification in accordance with international practice), together with procedures for compliance with, and for suspension and denunciation of, treaties, and their registration and domestic publication.

5. *Law on Legislative Acts* No. 780-XV, 27.12.2001

[Law on Legislative Acts]

This law categorises the forms of primary and subordinate legislation, and provides for the procedures for initiating primary legislation, drafting and amending it, and also contains rules on the structure and style of primary legislation.

6. *Law on Normative Acts of the Government and other central and local authorities of public administration* no. 317-XV from 18.03.2003, into force from 03.10.2003 (Of. Gazette no 208-210/783)

[Law on Normative Acts]

This law categorises and hierarchies the Normative Acts, adopted by administrative authorities for execution and organizing the laws execution, and established the procedure of its elaboration and adoption

7. *Law on Transparency in the Decision Making Process* No. 239-XVI, 13.11.2008

This law establishes procedures to ensure transparency in the decision making process, particularly within Parliament, the Government and central and local public authorities

8. *Decision of the Government of Moldova on the adoption of the Regulation of the Government of the Republic of Moldova*, No.34, 17.01.2001

This Decision, and its associated Regulation, provides for the structure and management of the Government, including internal Government procedures related to the preparation and drafting of primary and subordinate legislation.

9. *Resolution of the Parliament on Co-operation with Civil Society (and Annex)*

No.373-XVI,29.12.2005 including an Annex [Annex]

This Resolution reaffirms the parliamentary commitment to such co-operation, and the Annex provides some principles and procedures for consultation with, in the main, civil society organisations.

10. *Methodological Guide on the Ex Ante Assessment of the Impact of Public Policies* (Machinery of Government: 2009)

This *Guide* sets out detailed procedures to assist civil servants in Moldova in conducting impact assessments

11. *Methodology for Law Approximation in the Republic of Moldova* (Chisinau: 2010)

This *Methodology* is a guide for Government lawyers, prepared by the Centre for Legal Approximation in the Government of Moldova, on approximating the laws of Moldova to the *acquis Communautaire*.

## **ANNEX 3**

### **International Assistance to Legislative Strengthening and Regulatory Reform**

*This Appendix describes the donor landscape and programmatic activities in relevant areas implemented by various international actors. The description below lists international actors who were available for meetings in the course of the country-visit undertaken by ODIHR to Moldova on 14-17 June 2010, and is not meant to be exhaustive. The international actors are presented in the order in which they were met.*

#### **OSCE Mission to Moldova**

<http://www.osce.org/moldova/>

The OSCE Mission to Moldova provides assistance to the process of drafting various laws by preparing comments and expert opinions on draft legislation, upon the request of the Moldovan authorities, and by participating in roundtables, workshops and conferences to discuss draft amendments or legislative initiatives. Comments and expert opinions were provided to amendments concerning the Electoral Code, the Law on Political Parties, the draft Anti-Discrimination Law, the Law on Preventing and Combating Trafficking in Human Beings, the Law on Preventing and Combating Domestic Violence, and others. As a rule, the OSCE Mission to Moldova provides such assistance in partnership with the OSCE ODIHR.

The Mission's approach, whenever involved in legislative assistance, has always been to promote inclusiveness, transparency and expert and public consultations in the law-making processes. Also, proper policy making as a process preceding the legislative drafting has always been fostered in the relationship with the authorities. The Mission's legislative contributions always follow the Mission's program objectives and are coordinated with the OSCE ODIHR and with the Council of Europe's Commission for Democracy Through Law (Venice Commission) on some occasions.

#### **Joint Programme between the Council of Europe and the Delegation of the European Union to Moldova "Democracy Support Programme"**

The objectives of this 18-month, 4-mln. Euro Programme (otherwise called "Democracy Package for Moldova") are to strengthen the judiciary; the prosecution service; the police; the ombudsman institution; the media; and the Parliament of Moldova, through the application of European

standards in their work. This involves assessment of the relevant institutional frameworks and the provision of capacity-building support.

Component 6 of the Programme deals specifically with the Moldovan Parliament and seeks to address capacity constraints in: i) parliamentary representation, ii) policy development, iii) legislation formulation and iv) oversight functions. The Programme aims to build on achievements to date by the European Parliament and the PACE parliamentary assistance and targets both members of the Parliament and the staff of the Parliament Apparatus. The strengthening of the Parliament's administrative and institutional capacity is to be achieved through the following actions:

- Provision of European expertise in improving the organization and functioning of the Parliament, the strengthening of its management and development of its structure and working programme;
- Provision of European expertise to enable parliamentarians to improve their performance, to offer experiences of constructive political culture and to raise parliamentarians' awareness as regards their rights and obligations;
- Development of specific institutional capacities of the Parliament by organizing trainings, workshops and roundtables for the MPs and the staff of the Parliament, and provision of equipment.

#### **United Nations Development Programme (UNDP)**

<http://www.undp.md/>

The UNDP Moldova has an Institutional Reform and Governance Portfolio, which also provides support to the Moldovan Parliament. That support includes assistance in the preparation of a functional analysis of the needs and capacities of the Apparatus of the Parliament, as well as purchase of computers for the Parliament.

As concerns the functional analysis of the Apparatus of the Parliament, the UNDP has contracted three experts to prepare an "internal" report that will basically assess to which extent the Apparatus of the Parliament effectively supports the Parliament in carrying out its four main functions (legislative; representative; parliamentary oversight; and control function). This report is due to be completed by mid-July 2010 and is envisaged as an "internal" report, addressed mainly to the Speaker of the Parliament.

At a later stage, the UNDP may also provide support and assistance to the Parliament's staff, but at the time of the meeting such projects and activities were not certain.

**Twinning Project “Support to the Parliament of the Republic of Moldova”, funded by the European Union**

The project has a budget of approximately 985 thousand Euro and is scheduled for implementation in the period of July 2008 – July 2010. The overall objective of the projects is to contribute to the strengthening of democracy and the rule of law in Moldova, by assisting in the process of approximation of Moldovan legislation, norms and standards to those of the European Union and by strengthening the role of the Moldovan Parliament in the legislative process.

The project has four components. Component I, *Support to the Process of Reorganization of the Parliamentary Staff*, aims at improving the efficiency of work of parliamentary staff through revised and more efficient organizational structures and procedures. Component II, *Strengthening the Parliament's Capacity for Approximation to EU Legislation*, supports the development of quantitative and qualitative capacity within the Moldovan Parliament to deal with the issue approximation to EU legislation. Component III, *Regulatory Impact Assessment*, seeks to expand the knowledge of the principles, methods and mechanisms of the regulatory impact assessment of bills and laws among Parliamentarians. Component IV, *Strengthening the Control Function of the Parliament over the Government*, supports the development of the control function of Parliament over Government as an essential democratic tool.

The target groups for the project are Members of Parliament, Parliament staff and officials, Government officials and representatives of NGOs. Project partners include the French National Assembly, French Senate, Hungarian National Assembly, and France Coopération Internationale.

## ANNEX 4.

### Questionnaires on Legislative Process

#### General Questions on Legislative Process – Executive Branch

1. Does your ministry have its own specialist unit of law drafters? If not, who undertakes law drafting? If it is the Ministry legal officers, do their job descriptions mention this task? Is experience with drafting an asset for applicants to these positions?
2. Have you outsourced consultants for law drafting projects? If so, where did they mostly come from? (e.g. international consultants/donor agencies, academia, NGOs) Whose budget has borne the costs?
3. Is it common for more than one law drafter to be involved in the drafting of particular legislation? Does a law drafter engaged on primary legislation work as a member of a team of ministry officers that includes policymakers?
4. How is the quality of law drafting monitored? (e.g. by supervisors)
5. Who undertakes the drafting of secondary legislation? Is it the same staff who draft primary legislation?
6. How are annual legislative plans drawn? Who coordinates the submission of ministry inputs to the cabinet of ministers/prime minister?
7. How are decisions to initiate a new legislative project taken? Does this happen at the ministry level or at the Cabinet level?
8. How does the government collectively determine its priorities with respect to the proposed new legislative projects?
9. Are timetables set for the preparation of each draft (or otherwise known as a “law proposal”)? Who and how monitors them?
10. Does each draft, before it is introduced to the Parliament, have to undergo approval by the Government?
11. Is the compliance of policy proposals or policy options with the requirements of the Constitution verified during the policymaking stages? If so, how?
12. Is the compliance of policy proposals or policy options with the requirements of the extant law verified during the policymaking stages? If so, how?
13. Is a check carried out whether new legislation is required at all, as the matter may already be dealt with under the existing law or through an alternative instrument (e.g. administrative action, public awareness raising, etc.)? In what instances a decision may be taken that the issue in question can be addressed by an alternative instrument? How is the decision taken? What factors are taken into consideration?
14. Are outside advisers used in the policymaking? If so, in what instances?

15. Do you think stakeholder consultation can be employed in policymaking?
16. Are policymaking and law drafting undertaken as distinct exercises? Are they undertaken by different units or the same team? If by different units, at what stage does the law drafter step in? How is the policy communicated to the drafter?
17. How is the process of law drafting carried out? What are the usual steps that the law drafter follows? In your view, is there room for improvement? If so, what should be done?
18. How is the compliance of draft legislation with the requirements of the Constitution verified during the law drafting stages? In your view, is there room for improvement? If so, what should be done?
19. How is the compliance of draft legislation with the requirements of the extant law verified during the law drafting stages? In your view, is there room for improvement? If so, what should be done?
20. How is the cost assessment done? Does the assessment focus solely on the impact on the budget of the State or the impact on other governmental authorities' (e.g. local governments, autonomous units) budgets is assessed as well? Are these authorities made part of the consultations? In your view, is there room for improvement? If so, what should be done?
21. Does it happen that a team of officers from more than 1 ministry drafts a particular law? How is the process coordinated? Who and how monitors the progress of law drafting?
22. Are stakeholders consulted in the law drafting process? If so, in what instances?
23. How is consultation organized? In your view, is there room for improvement? If so, what should be done?
24. When do the law drafter's responsibilities in connection with a draft end? Is the law drafter responsible for proofreading all version of the draft?
25. What formal steps have to be followed when secondary legislation is being made? Do these differ according to the type of secondary legislation?
26. Who decides that secondary legislation has to be prepared for the purpose of giving effect to particular primary legislation? Do any matters require the collective consent of the government before this is undertaken?
27. Is secondary legislation ever prepared in the course of the same drafting process as the primary legislation with which it is concerned?
28. Who undertakes the policymaking with respect to secondary legislation? Are they the same unit that developed the policy for primary legislation?
29. Are stakeholders consulted?
30. To what extent can the original law drafters be involved in drafting amendments put forward in the Parliament?



31. What does a rapporteur presentation at the committee discussion of the draft typically consist of? Who is normally nominated to present the draft? Is it one of the actual drafters?
32. Do officials of the drafting ministry follow the progress of the draft in the Parliament? How is it done?
33. If the Government concludes that a draft currently being considered by the Parliament needs to be altered, can the drafting ministry itself draft the necessary amendments and put them before the Parliament? If so, how is this arranged?
34. Which Unit in the Ministry maintains the central registry of legislation? Is the central registry computerized?
35. Is there a database which contains all laws? Who can access this database? Does it contain drafts?
36. Does your Ministry have ready access to all legislation that is likely to concern it? Do the staff who undertake law drafting in your Ministry have access to a full set of legislation?
37. Are any groups eligible to receive free copies of legislation (e.g. judges, bar associations, etc.)?

#### **Questions on Legislative Process - Parliament**

1. How are the parliamentary legislative agendas compiled?
2. How are the committee session agendas prepared? Are they communicated to external actors? Who can be present at the sessions?
3. How is the process of law drafting carried out? What are the usual steps that the law drafter follows? In your view, is there room for improvement? If so, what should be done?
4. How is the compliance of draft legislation with the requirements of the Constitution verified during the law drafting stages? In your view, is there room for improvement? If so, what should be done?
5. How is the compliance of draft legislation with the requirements of the extant law verified during the law drafting stages? In your view, is there room for improvement? If so, what should be done?
6. How is the cost assessment done? Does the assessment focus solely on the impact on the central State budget or the impact on other governmental authorities' (e.g. local governments, autonomous units) budgets is assessed as well? Are these authorities made part of the consultations? In your view, is there room for improvement? If so, so what should be done?
7. Are stakeholders consulted in the law drafting process? If so, in what instances? How is consultation organized? In your view, is there room for improvement? If so, what should be done?
8. When do the law drafter's responsibilities in connection with a draft end? Is the law drafter responsible for proofreading all versions of the draft?
9. Who drafts amendments put forward in the Parliament? To what extent can the original law drafters be involved?

10. What does a presentation at the committee discussion of the draft typically consist of? Who is normally nominated to present the draft? Is it one of the actual drafters?
11. Do official of the drafting ministry follow the progress of the draft in the Parliament? How is it done?
12. If the Government concludes that a draft currently being considered by the Parliament needs to be altered, can the drafting ministry itself draft the necessary amendments and put them before the Parliament? If so, how is this arranged?
13. In what instances does the Parliament take evidence from officials, experts or members of public when considering a draft? How often does this happen?