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Council of Europe Group on Access to Information (AIG)

**Report submitted by the Republic of Moldova
pursuant to Article 14, paragraph 1
of the Council of Europe Convention
on Access to Official Documents (CETS No.205)**

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I. GENERAL OVERVIEW

1. This report has been prepared in accordance with the requirements laid down in the Guide for the preparation of the national report by the signatory member States to the Council of Europe Convention on Access to Official Documents (CETS No. 205) DGI (2020) 20 of 02/02/2020 and the Report Explanatory to the Convention of the Council of Europe Convention on Access to Official Documents, and focuses on information related to legislative and other measures, which have been adopted by the Republic of Moldova for the implementation of this Convention.

2. The report has been prepared by the State Chancellery (Directorate for Coordination on Human Rights and Social Dialogue / Secretariat of the National Human Rights Council) with the input from the following authorities and institutions: Parliament of the Republic of Moldova, Presidency of the Republic of Moldova, Ministry of Health, Ministry of Labour and Social Protection, Ministry of Environment, Ministry of Economy, Ministry of Infrastructure and Regional Development, Ministry of Finance, Ministry of Education and Research, Ministry of Justice, Ministry of Internal Affairs, Ministry of Foreign Affairs and European Integration, Ministry of Defence, Interethnic Relations Agency, Superior Council of Magistracy, General Prosecutor's Office, National Anti-Corruption Center, Audiovisual Council, National Integrity Authority, National Agency for Public Health, Office of Reintegration Policy, Office of Diaspora Relations, National Social Insurance House of the Republic of Moldova, Public Services Agency, Land Relations and Cadastre Agency, National Medical Insurance Company, Supreme Court of Justice, Court of Accounts, Court Administration Agency, National Integrity Authority, 'Moldsilva' Agency, National Financial Market Commission, National Probation Inspectorate.

3. In addition to the inter-ministerial consultations, extensive consultations have been organized with national human rights protection institutions and civil society organizations in the course of development of the report. The recommendations and suggestions received have been carefully evaluated and discussed before compiling the final version of the report.

II. LEGISLATIVE AND OTHER MEASURES ADOPTED TO IMPLEMENT THE CONVENTION

A. The legal and institutional framework of the Republic of Moldova regarding the access to official documents

Article 1 – General provisions

1.1 As regards the definition of the concepts set out in Art. 1 of the Council of Europe Convention on Access to Official Documents signed in Tromsø on 18 June 2009, according to Art. 5 and 6 of Law No. 982/2000 on access to information (hereinafter – Law No. 982/2000) we note the following similar concepts:

- **official information** is all the information that is possessed and available to information providers, which has been developed, selected, processed, systematized and/or adopted by bodies or officials or made available to them in accordance with the law by other subjects of law. According to Art. 6(2)(1)(e), information-bearing documents are also considered any other information recorder that has appeared as a result of technical progress;
- **information providers** (holders of official information) are the subjects obliged to provide the applicants with official information. In this case, under the conditions of this law, these subjects are:
 - a) central and local public authorities – authorities of the state administration, provided for in the Constitution of the Republic of Moldova, and namely: the Parliament, the

- President of the Republic of Moldova, the Government, the public administration, the judicial authority;
- b) central and local public institutions – organizations founded by the state represented by public authorities and financed from the state budget, which aim to perform administrative, socio-cultural and other non-commercial duties;
 - c) natural and legal persons that, based on the law or the contract with the public authority or the public institution, are empowered to manage certain public services and collect, select, possess, store, use official information.

Article 2 – Right of access to official information

2.1 According to Art. 3 of Law No. 982/2000, the legal framework on the guarantee of access to information, consists of this law, the Constitution of the Republic of Moldova, the international treaties and agreements to which the Republic of Moldova is a party, as well as the provisions of other regulatory acts regulating the relations concerning the access to information.

2.2 The right to guarantee access to official information is enshrined in the Constitution of the Republic of Moldova in the light of Art. 34(1) that stipulates that the right of a person to have access to any information of public interest shall not be limited. Art. 4 of Law No. 982/2000 stipulates that everyone, under this law, has the right to seek, receive and make known official information. Thus, under this law, official information may be requested by:

- a) any citizen of the Republic of Moldova;
- b) citizens of other states, who are domiciled or reside in the Republic of Moldova;
- c) stateless persons, who are domiciled or reside in the Republic of Moldova.

2.3 As regards the guarantee of the right referred to above, regardless of the use of the information received from information providers, Art. 10(3) of Law No. 982/2000 stipulates that any applicant of access to information under this law is not obliged to justify his/her interest in the requested information.

2.4 The violation of the legislation on access to information and on petitioning by establishing certain sanctions is provided for in Art.71 of the Contravention Code No. 218/2008.

- (1) Intentional violation of legal provisions on access to information or petitioning shall be punished with a fine of 9 to 15 conventional units imposed on the natural person, with a fine of 18 to 30 conventional units imposed on the person holding a management position.
- (2) Provision, on request, of a response with obviously erroneous data shall be punished with a fine of 27 to 33 conventional units imposed on the person holding a management position.

2.5 Sanctions for intentional violation of the legislation on access to information are provided for in Art.180 of the Criminal Code of the Republic of Moldova No. 985/2002.

2.6 Other provisions regarding the guarantee of the right of access to official documents are laid down in the following legal documents:

- Administrative Code No. 116/2018;
- Law No. 982/2000 on access to information;
- Law No. 305/2012 on reuse of public sector information;
- Law No. 239/2008 on transparency in the decision-making process;
- Law No. 91/2014 on electronic signature and electronic document;
- Law No. 71/2007 on registers;

- Law No. 880/1992 on the Archival Fund of the Republic of Moldova
- Government Decision No. 188/2012 on the official pages of public administration authorities in the Internet network;
- Government Decision No. 967/2016 on the mechanism of public consultation with civil society in the decision-making process
- Government Decision No. 618/1993 for the approval of the Rules of preparation of organizational and executive documents and of the Standard Instruction on the document management in the specialized central public administration and local self-administration bodies of the Republic of Moldova;
- Government Decision No. 208/1995 on the management of documents related to petitions of natural and legal persons, addressed to state bodies, enterprises, institutions and organizations of the Republic of Moldova;
- Government Order No. 43/2011 on the governmental public data portal www.date.gov.md;
- Decision No.1/2007 of the Plenum of the Supreme Court of Justice of the Republic of Moldova on examination of cases of access to official information;

2.7 The category of relevant international documents regulating the access to information of public interest includes:

- Universal Declaration of Human Rights, adopted in New York on 10.12.1948 and ratified by the Republic of Moldova by Parliament Decision No. 217/1990;
- International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16.12.1966 and ratified by the Republic of Moldova by Parliament Decision No. 217/1990;
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by the Additional Protocols (concluded in Rome on 04.11.1950 and ratified by Parliament Decision No.1298/1997;
- United Nations Convention against Corruption, adopted in New York on 31.10.2003 and ratified by the Republic of Moldova by Law No. 158/2007;
- Council of Europe Convention on Access to Official Documents, ratified by Law of the Republic of Moldova No. 217/2013;
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed at Aarhus, Denmark, on 25.06.1998, ratified by Parliament Decision No. 346/1999;
- Resolution 1954 (2013) of the Parliamentary Assembly of the Council of Europe on national security and access to information;
- Recommendation of the Committee of Ministers of the Council of Europe Rec(2002) on access to official documents, adopted on 21.02.2002;
- Recommendation of the Committee of Ministers of the Council of Europe No. 19 on the access to information held by public authorities, adopted on 25.11.1981;
- Recommendation of the Committee of Ministers of the Council of Europe No. 1037 on data protection and the right to information, adopted on 03.07.1986;
- Regulation (EU) 2016/679 of the European Parliament and of the Council of the European Union on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
- Global Principles on National Security and the Right to Information (TSHWANE Principles) of 12 June 2013;
- Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted on 1 October 1995.

2.8 Decision No.19/2015¹ of the Constitutional Court for the interpretation of Art.34(3) of the Constitution of the Republic of Moldova (access to information), where the High Court of Constitutional Jurisdiction interpreted the rules of the fundamental Law, has a defining relevance for the implementation of the Law on access to information, as it stipulates that:

- '31. The Court notes that, according to Article 34(1) and (2) of the Constitution, the person's right of access to any information of public interest may not be limited. According to their competences, public authorities are obliged to ensure correct information of citizens about public affairs and matters of personal interest.
32. The Court notes that the right of access to any information concerns the manner in, the means by and the conditions under which state affairs are managed and the right to disseminate such information. [...]
34. The Court notes that the right to information is the right to request information from public authorities and institutions. This right has two aspects: the right to request and the right to receive information.
35. In this regard, the Court states that any public authority and/or public institution is required to provide the requested information, as long as there is no legitimate reason to refuse such requests.
36. The Court notes that the right to information contains the following elements:
 - the right of a person, an organization or a legal entity to request information of public interest from public authorities and institutions without proving the legal interest that underlies the request;
 - the right of a person to request personal information from public authorities and institutions;
 - the obligation of a public authority or institution to respond or provide the requested information, which implies the existence of certain mechanisms for dealing with requests and time limits for providing responses to such requests;
 - the existence of certain exceptions, which would allow avoiding the provision of certain categories of information. These exceptions include protection of national security, international relations, privacy, commercial confidentiality, public order and law enforcement, as well as refusal to provide information under confidential conditions or information resulting from internal discussions. Application of exceptions requires proves of the existence of a harm to the public interest if the information is disclosed;
 - the existence of challenge mechanisms for applicants if public authorities and institutions refuse to provide information;
 - the existence of external remedies in case of refusal to provide information (usually ordinary courts);
 - the condition that public authorities and institutions provide ex officio certain types of information about their structure, rules and activities.
37. The Court notes that the right to information **is a precondition for exercise of other rights**, and namely political, economic and social rights; the right to privacy, the right to get involved in public affairs, the right to a fair trial, etc. [...] According to the interpretation of the Constitutional Court, within the meaning of Art. 34(3) of the Constitution:
 - the right to information can be restricted provided only it is based on the real and justified purpose of protecting a legitimate interest in protection of citizens or national security, unless there is an overriding public interest in disclosure;
 - any restriction of access to information, including specific and limited categories

¹ Decision No. 19/2015 of the Constitutional Court for the interpretation of Art. 34(3) of the Constitution of the Republic of Moldova (access to information) - https://www.legis.md/cautare/getResults?doc_id=89709&lang=ro

of information, which shall not be disclosed for the protection of citizens or national security, shall be provided for by law and necessary in a democratic society for the protection of a legitimate interest;

- the justification of the legitimate interest is based on the seriousness of its harm in the event of publication of information, while the public authorities shall prove that disclosure of information would seriously threaten the protection of citizens or national security.'

Article 3 – Possible limitations of the right of access to official information

3.1 Limitations of the right of access to official information are laid down in Art. 7 of Law No. 982/2000. Thus, the exercise of the right of access to information may be subject only to the restrictions regulated by organic law and that correspond to the following needs:

- a) respect for the rights and reputation of another person;
- b) protection of national security, public order, health or moral of society. Access to official information may not be limited, except for:
 - a) information classified as state secrets, regulated by organic law, the unauthorized disclosure or loss of which may harm the interests and/or security of the Republic of Moldova;
 - b) confidential business information provided to public institutions by way of confidentiality, regulated by legislation on trade secret, and related to production, technology, administration, finance, other activity of economic life, the disclosure (transmission, leakage) of which can affect the interests of entrepreneurs;
 - c) personal information, the disclosure of which is considered as an interference with the privacy of the natural person, protected by legislation on the protection of personal data;
 - d) information related to the operative and criminal investigation activity of competent bodies, but only in cases where the disclosure of such information could prejudice the criminal investigation, interfere with a trial, deprive the person of the right to a fair and impartial trial of his/her case, or would endanger the life or physical security of any person – matters regulated by legislation;
 - e) information that reflects the final or intermediate results of scientific and technical investigations and the disclosure of which deprives the authors of investigations of the priority of publication or negatively influences the exercise of other rights protected by law.

3.2 Limitations of the exercise of this right may be subject to restrictions for specific reasons, which meet the principles of international law, including defence of the national security or privacy, according to Art. 4 of Law No. 982/2000. The same principle is laid down in Art. 34(3) of the Constitution of the Republic of Moldova, according to which the right to information shall not damage the measures of protection of citizens or national security.

3.3 According to Art. 7 and Art. 11(1)(3) of Law No. 982/2000, the obligations of the information provider include, but are not limited to, compliance with the limitations of access to information, provided for by legislation, in order to protect confidential information, privacy and national security, which, in view of the above provisions, sets out the obligation of the information provider to limit the applicant's right of access to official information.

3.4 In accordance with Art. 7 of the above mentioned law, no restrictions shall be imposed on the freedom of information unless the information provider can prove that the restriction is regulated by organic law and necessary in a democratic society for the protection of rights and legitimate interests of a person or for the protection of national security, and that the harm to these rights and interests would override the public interest in knowing the information.

3.5 Regulations on possible limitations of the right of access to official information can be found in the case law of the Constitutional Court, and namely in the Resolution No. 16/2016², which ruled that:

- '51. The Court has previously held that the right to information may be subject to certain exceptions, which may allow refraining from disclosure of certain categories of information. These exceptions include protection of national security, international relations, privacy, commercial confidentiality, public order and law enforcement, as well as refusal to provide information received by way of confidentiality or resulting from internal discussions. To refer to such exceptions, they shall justify the existence of a harm to the public interest, if the information was communicated (RSC No. 19/2015). [...]
63. Since this right [of access to information] is not absolute, compliance with the principle of proportionality in this case should be examined, as it is an imperative requirement that shall be complied with in cases of restriction of the exercise of certain fundamental human rights or freedoms, enshrined in Art. 54(2) of the Constitution.
64. Also, to be consistent with those constitutional provisions, such a restriction or interference shall be 'provided for by law', pursue one or several legitimate purposes, including those listed in paragraph two, and be 'necessary in a democratic society', in order to achieve those goals.
65. The Court will therefore carry out the test of proportionality, as a pre-established logical method, intended to identify whether the right alleged to be violated has been infringed, which goes beyond the limits imposed by the Constitution.
66. According to the test of proportionality, the restriction laid down by the challenged rule shall objectively pursue a legitimate goal, be indispensable for the achievement of that goal and be proportionate – to ensure a fair balance between competing interests.'

Article 4 – Requests for access to official documents

4.1 See p. 2.3.

4.2 According to Art. 12 of Law No. 982/2000, official information is made available to applicants on the basis of a written or oral request. The written request, in addition to the other elements, shall contain the applicant's identification data.

4.3 In accordance with the above-mentioned article, to obtain access to information, the applicant shall submit an oral or written request. Thus, the written request shall contain:

- a) enough and conclusive details to identify the requested information (of a party or parts thereof);
- b) acceptable manner of receiving the requested information;
- c) identification data of the applicant.

4.4 An oral request shall be submitted if a positive response is possible, and the request for information shall be immediately satisfied. If the provider intends to refuse to provide access to the requested information, it shall inform the applicant of this refusal and of the possibility of submitting a written request. In additional, the development and provision of analytical, synthesis or original information may be carried out under a contract between the applicant and the information provider, for a negotiable fee, if the provider is available and has the right to make such an offer.

² Decision No. 16/2016 on the exception of unconstitutionality of Art. 10(4) of Law No. 151/2015 on the Government Agent (access to information) https://www.legis.md/cautare/getResults?doc_id=93680&lang=ro

Article 5 – Processing of requests for access to official information

5.1 According to Art. 15 of Law No. 982/2000, written requests for access to information shall be recorded in accordance with the legislation on registers and petitions. They shall be examined and satisfied by the civil servants responsible for provision of information. The decisions of the civil servants shall be subsequently reported to the applicant in a way that would guarantee their reception and awareness. When satisfying a request for access to information, providers shall take all necessary measures to ensure that information with limited access will not be disclosed, integrity of the information will be protected, and unauthorized access to it will be excluded.

5.2 According to point 2.3 and Art. 4(3) of Law No. 982/2000, the exercise of this right shall in no case involve discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin.

5.3 As regards the time limits for satisfying the requests for access to information, according to Art. 16 of Law No. 982/2000, requested information, documents shall be made available to the applicant as soon as it/they are available to be provided, but not later than 15 working days from the date of record of the request for access to information. The term for provision of information, a document, can be extended by 5 working days by the head of the public institution if:

- a) the request refers to a very large amount of information that shall be selected;
- b) additional consultations are required to satisfy the request.

Additionally, the applicant shall be informed of any extension of the time limit for provision of the information and of its reasons 5 days before the expiry of the initial time limit.

5.4 As regards the refusal of access to information under Art. 19 of Law No. 982/2000, the refusal to provide information, an official document, shall be made in writing, while specifying the date of the refusal, the name of the responsible person, the reason for refusal, a reference to the regulatory act (title, number, date of adoption, source of official publication), which substantiate the refusal, as well as the procedure for challenging the refusal, including the limitation period. At the same time, information providers cannot be obliged to provide evidence of the lack of undocumented information.

Article 6 – Forms of access to official information

6.1 According to Art. 13 of Law No. 982/2000, the forms of access to official information are:

- a) hearing the information that can be voiced;
- b) examination of the document (parts of it) at the premises of the institution;
- c) issuance of a copy of the requested document, information (some parts thereof);
- d) issuance of a copy of the translation of the document, information (parts thereof) in a language other than the original one, for an additional fee;
- e) posting (including e-mailing) the copy of the document, information (some parts thereof), the copy of the translation of the document, the information in another language, at the request of the applicant, for a relevant fee.

Extracts from registers, documents, information (some parts thereof), in accordance with the request of the applicant, may be made available to the person concerned, in a reasonable form that is acceptable to him/her, to be:

- a) examined at the premises of the institution;
- b) typed, photocopied or copied in another way that would ensure the integrity of the original;
- c) written on an electronic carrier, printed on video, audio tapes, another carrier resulting from technical progress.

6.2 According to Art. 7 of the above mentioned law, if the access to the requested information, documents, is partially limited, information providers are obliged to submit to applicants the parts of the document, the access to which is not subject to restrictions according to the legislation, specifying in the places of omitted parts using one of the following phrases: 'state secret', 'trade secret', 'confidential information about a person'. The refusal of access to information, to the relevant parts of the document, shall be drawn up as provided for in Article 19 of Law No. 982/2000.

Article 7 – Charges for access to official information

7.1 According to Art. 20 of Law No. 982/2000, fees may be charged in the amounts and under the procedure set by the representative bodies for the provision of official information, apart from the exceptions provided for by law, which shall be paid to the state budget. The amounts of such fees shall not exceed the expenses incurred by the provider for making copies, sending them to the applicant and/or for translation, at the request of the applicant, of information, a document. The fees for the provision of analytical, summary or original information, paid at the request of the applicant, shall be set according to the contract between the applicant and the information provider. (4) No fee shall be charged for the provision to applicants of official information, which:

- a) directly affects the rights and freedoms of the applicant;
- b) is provided orally;
- c) is requested to be studied at the premises of the institution;
- d) by the fact that it was provided, it contributes to the increase of the degree of transparency of the activity of the public institution and meets the interests of society.

7.2 According to para. (5) of the above-mentioned article, if the information provided to the applicant contains inaccuracies or incomplete data, the public institution is obliged to make the relevant corrections and additions free of charge, unless the supplementation of information involves considerable efforts and expenses not provided for and charged upon the primary provision of the information. At the same time, the public institution shall inform the applicants, in the most appropriate and detailed way possible, how the fees for provision of information are calculated.

Article 8 – Review procedure

8.1 According to Art. 21 of Law No. 982/2000, the person who considers his/her right or legitimate interest affected by the information provider, may challenge its actions both out of court and directly in the competent administrative court. The person may also apply to the Ombudsman for the protection of his/her legitimate rights and interests.

8.2 As regards the type of decisions that the court may make in case of violation of a person's right of access to official information, according to Art. 24 of Law No. 982/2000, depending on the seriousness of effects of the unlawful refusal by a civil servant, the court may

decide to apply sanctions under the legislation, to remedy the damage caused by the unlawful refusal to provide information or by other actions that affect the right of access to information, as well as to immediately satisfy the applicant's request.

8.3 According to Art. 22 of Law No. 982/2000, if a person considers that his/her rights or legitimate interests of access to information have been violated, he/she may challenge the actions or inaction of the information provider before its leadership and/or its hierarchically higher body within 30 days from the date he/she has found out or had to find out about the violation. The leadership of the information provider and/or its hierarchically higher body shall examine the applicants' requests for information within 5 working days and shall necessarily inform the petitioner about the results of the examination within 3 working days. The complaints, whereby the actions or inaction of the organizations that do not have higher bodies are challenged, are addressed directly to the competent administrative court.

8.4 According to Art. 23 of the above-mentioned Law, if the person who considers that the rights or legitimate interests of access to information have been violated, as well as if he/she is not satisfied with the solution given by the leadership of the information provider or by its hierarchically higher body, then such person may challenge the actions or inaction of the information provider directly in the competent administrative court. The court shall be notified within one month from the date of receipt of the response from the information provider or, if he/she has not received a response, from the date when it had to be received. If the applicant for information has previously challenged the actions of the information provider out of court, the time limit of one month shall run from the date of the response of the leadership of the information provider and/or its hierarchically higher body or, in case of no response, from the date when he/she had to receive it.

Article 9 – Complementary measures

9.1 According to Art. 34 of the Constitution of the Republic of Moldova, public, state or private media are obliged to ensure correct coverage of the public opinion. The obligations of the information provider to guarantee free access to information under Law No. 982/2000 includes:

- a) elaboration, in accordance with the present law, of regulations on the rights and obligations of civil servants in providing official documents, information;
- b) provision of the necessary assistance and support to applicants for searching and identifying information;
- c) holding of its meetings and sessions publicly, in accordance with the legislation.

At the same time, the information provider shall publish or make otherwise, generally and directly, accessible to the population the information containing:

- a) a description of the structure of the institution and its address;
- b) a description of the functions, directions and forms of activity of the institution;
- c) a description of subdivisions with their competencies, their working hours, specifying the days and hours of audience of the officials responsible for provision of official information, documents;
- d) final decisions on the main examined issues.

In addition to the above, the information provider shall also use other forms of active information of citizens and the media.

9.2 According to Law No. 982/2000, to carry out the procedures for providing official information, officials responsible for the above mentioned action shall be appointed and trained;

9.3 The Constitution obliges information providers, *inter alia*, to ensure that citizens are properly informed about public affairs and matters of personal interest. At the same time, the following measures of official information management are usually carried out:

- a) provision of a space arranged for documentation and accessible to applicants;
- b) provision of effective access to registers of information providers, which shall be completed in accordance with the legislation on registers;
- c) provision of effective access, through the interoperability platform, to registers of information providers, which shall be completed in accordance with the legislation on registers.

Article 10 – Documents made public at the initiative of the public authorities

10.1 According to Art. 11 of Law No. 982/2000, to ensure the transparency of the institutions' activity, to make the access to information efficient, to create conditions for search, operative identification of documents and information, public authorities/institutions shall develop, at least once a year, guidelines containing lists of provisions, decisions, other official documents issued by the institution concerned, and the areas in which it may provide information, and shall make available to the media representatives official data on its own activity, including on areas in which it may provide information.

B. Legislative proposals and/or draft laws proposed for public discussions or officially registered

11.1 In accordance with the Ex-Post Impact Assessment Report on Law No. 982/2000 on access to information³ prepared by the Parliament of the Republic of Moldova, the Commission on Culture, Education, Research, Youth, Sports and Media, during the year 2020-2021 was proposed the following draft laws for the implementation of the Convention on Access to Official Documents:

- The draft Law⁴ No. 237 of 11.06.2020 for amending and supplementing certain legislative acts (*Tax Code of the Republic of Moldova - Art.129; Law on access to information – Art.1*). The author of the draft law is a member of the Parliament of the Republic of Moldova.

According to the informative note, the draft law aims to prevent corruption, combat tax evasion and increase transparency and access to information. According to the author, based on the examples of other states that implement instruments of tax transparency, it is proposed that information on taxes paid by natural or legal persons should no longer be considered a tax secret. In essence, the legislative solutions proposed by the draft law concern exclusion of the amount of tax contributions from the definition of tax secrecy, as well as inclusion of information on the amount of tax contributions in the subject of regulation of the Law on access to information.

³ <https://www.parlament.md/LinkClick.aspx?fileticket=bTk8rg8l2jl%3d&tabid=104&language=ro-RO>

⁴ The draft Law registered with the Parliament with No.237 dated 11.06.2020 - <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5093/language/ro-RO/Default.aspx>

- The draft Law⁵ for the amendment of certain legislative acts (*Law on access to information; Law on freedom of expression; Law on state secrecy; Contravention Code; Administrative Code, etc.*). On 18 June 2020, the Executive Director of the Independent Press Association, in the context of the ex-post impact assessment of the Law on access to information, submitted a draft law proposing to amend several laws in order to facilitate access to information of public interest and the informative note, which substantiates the need to adopt this draft Law.

According to the informative note, adjustment of the domestic legislation to the European and international legislation, as well as implementation of the new regulations aims at the following effects:

- developing a sufficient and efficient legal framework;
- ensuring the right to obtain information of public interest and contributing to the exercise of the right to freedom of expression;
- excluding the misinterpretation of the fundamental concepts regulating the activity of the media;
- ensuring a balance between the right to the protection of personal data and the right to freedom of expression and information;
- excluding situations of misinterpretation of the right to the protection of personal data while ensuring the right to information and the right to freedom of expression.

The draft law aims to make amendments to the following 10 legislative acts:

1. Law No. 982/2000 on access to information;
2. Law No. 642010 on freedom of expression;
3. Law No. 133/2011 on protection of personal data;
4. Contravention Code, approved by Law No. 218/2008;
5. Law No. 245/2008 on state secret;
6. Repeal of the Press Law No. 243/1994;
7. Administrative Code, approved by Law No. 116/2018;
8. Law No. 1543/1998 on the real estate cadastre;
9. Law No. 142/2018 on data exchange and interoperability;
10. Civil Code, approved by Law No. 1107/2002.

As regards the proposed amendments to the Law on access to information, they focus in particular on:

- establishing sufficient guarantees of control and liability for the violation or impediment of the exercise of the right of access to information of public interest;
- creating mechanisms for holding accountable the actors involved in exercising and capitalizing on this fundamental right.

⁵ The draft Law has been developed by experts from the Independent Press Association with the support of other non-governmental media organizations – the Center for Independent Journalism and the Electronic Press Association. It is also worth mentioning that the draft Law has been developed within the project 'Support for solving the priority problems of the media', implemented by the Independent Press Association in partnership with other media organizations and funded by the Soros Foundation-Moldova. The project has been completed by the very authors of the draft: Tatiana Puiu, Stela Pavlov (Freedom House Moldova), Sergiu Bozianu (Privacy Protection Association), and is based on the previous legislative initiative (draft Law No. 290 of 26.07.2018, developed by non-governmental media organizations within the Working Group for the Improvement of Media Legislation, which was active in 2017-2018 in the Parliament of the Republic of Moldova), as well as the proposals of the Privacy Protection Association. According to the Independent Press Association, on 29 May 2020, the online presentation and consultation of the draft Law took place with the participation of over 40 people, including lawyers, journalists, activists, representatives of public institutions, other stakeholders.

Establishment of a control, prevention and sanctioning mechanism is of particular importance, especially in the light of current administrative practices that challenge the legal provisions on access to information by providers.

The national concept of development of the media in the Republic of Moldova, adopted on 20 April 2018, highlights the importance of fully implementing the constitutional rules in the field of freedom of the press and freedom of expression through the media. The precondition for substituting the concept of 'official information' with the concept of 'information of public interest' consists in the opportunity to make uniform the terminology of legal provisions, as well as in the need to make consistent the text of the law subject to amendment, with the provisions of Art.34(1) of the Constitution, with the following content: 'the right of a person to have access to any information of public interest may not be limited'.

The lack of a detailed and exhaustive listing of categories of information providers is a legal vacuum that is proposed to be filled by means of this Law. The need to make these amendments is determined by certain vicious practices of refusal to provide information of public interest by subjects of law, which fall, by virtue of features of the activities they carry out and the way of financing, in the category of information providers.

The proposed amendments are intended to exclude uncertainties related to the definition of the extent of the circle of subjects – information providers, and to counteract the current bad practices derived from this legislative gap. These additions are justified by the need:

- to increase the level of transparency of the activity carried out by information providers;
- to increase the accessibility to information of public interest through the web pages of information providers;
- to set minimum binding requirements on web pages of information providers.

Furthermore, to reconcile the right of access to information and the right to protection of personal data, and also to facilitate the access of media institutions to personal data of public interest, it is proposed to introduce in the text of the law the concept of 'personal data of public interest' that refer to information concerning: personal wealth and interests, conflicts of interest, training/education and career path, administrative activity and way of fulfilment of tasks and duties, management of property and/or public funds, financing of political parties, measures of coercion by criminal and/or contravention actions, in which the official, holder of a public office, beneficial owners or acts of public interest in which the person was involved, are concerned.

Subsequently, the draft law contains formal and procedural requirements for requests for access to personal data of public interest, time limits for examination, as well as appropriate guarantees, in the case of media institutions, so that they cannot be unjustifiably prosecuted and intimidated, in cases of journalistic investigations or media products of public interest.

C. Other practical measures for the implementation of the Convention on Access to Official Documents

Article 1 – General provisions

12.1 In the context of ensuring the implementation of the Resolution of the Committee of Ministers of the Council of Europe on rules on the election procedure of the members of the Group of Specialists on Access to Official Documents, the national competition for the selection of national representatives started. The national competition took place on the basis of the Regulation on the procedure of organization and conduct of the national competition for nomination of candidates from the Republic of Moldova to the position of member of the Group of Specialists of the Council of Europe on Access to Official Documents, developed by the

MEAEI and approved by Government Decision No. 170 of 08 September 2021.

12.2 Open government is an essential feature of a democratic state and an important factor in modernizing public activity, and Moldova's accession in 2012 to the Open Government Partnership – an initiative of the states of the world that was launched in 2011 at the UN General Assembly to promote transparency, fight corruption and use new technologies to strengthen government and dialogue with citizens – stated the desire to put in place policies required for a more open and transparent, accountable and efficient executive power. These goals were reflected in the commitments assumed by the Government of the Republic of Moldova through the four action plans implemented so far, starting from 2012, and were materialized through measures of opening public data, modernizing public services by capitalizing on the technological potential and innovations, encouraging dialogue and constant collaboration between public institutions and civil society.

The State Chancellery has prepared the monitoring and evaluation reports on the Open Government Action Plan for 2019-2020, which can be accessed on the official website of the State Chancellery⁶. The implementation period of the future document for open government is expected to be 4 years.

12.3 The Law on transparency in the decision-making process No. 239/2008, is the framework law designed to set out the basic principles and requirements concerning information, consultation and participation of the associative sector, citizens and other stakeholders in drafting and adopting decisions by public authorities. The purpose of involving the public in the decision-making process is to improve the quality of decisions made and their social legitimacy. Involvement, in drafting regulatory acts of non-governmental organizations, of various groups of stakeholders from all sectors contributes to the balancing of strategic documents, developed having due regard to the interests of the community and society as a whole. Ensuring multilateral transparency by public authorities surely leads to increased accountability, performance and trust in the public sector. The regulatory act subordinated to the law concerned, which regulates the procedures for ensuring transparency in the development and adoption of decisions is the Government Decision No. 967/2016 on the mechanism of public consultation with civil society in the decision-making process.

Thus, according to point 2 of that Decision, the State Chancellery, ministries, other central administrative authorities and their decentralized public services shall:

1. update internal procedures of decision-making transparency;
2. designate the persons responsible for coordinating the process of public consultation with civil society in the decision-making process;
3. establish the institutional hotline to inform civil society;
4. prepare, update and publish the list of non-governmental organizations by areas of activity.

12.4 To ensure transparency in the decision-making process, the results of public consultations are posted on the official website of the ministries and central public authorities, in the Decision-Making Transparency section. At the same time, the assurance of the decision-making transparency by the CPAs is monitored by the State Chancellery (SC), with the development of an annual report in this regard. Such monitoring reports are prepared in accordance with Government Decision No. 967/2016 and placed on the official website of the SC in the Decision-Making Transparency section, Reports subsection⁷.

⁶ <https://cancelaria.gov.md/ro/apc/rapoarte-0>

⁷ <https://cancelaria.gov.md/ro/advanced-page-type/rapoarte-0>

12.5 During 2021, 40 Government sessions were held. For each session, agendas, minutes and related materials were prepared and sent to all participants. During that period, 34 sessions of general secretaries took place, which were organized weekly (online). To ensure the smooth running of these sessions, 34 agendas with related materials and 34 minutes, including related instructions, were prepared and sent electronically to the session participants.

12.6 During 2021, the State Chancellery received for registration 643 draft regulatory acts, of which 99 were returned to authorities to bring them in line with the requirements of the Government Regulation. 544 draft regulatory acts were accepted for procedure (assigning of the unique registration number). To ensure the principle of transparency in the decision-making process, the agendas and draft regulatory acts on the agenda of the session of general secretaries and the session of the Government were placed on the website of the State Chancellery and the Government accordingly.

12.7 To assess the needs of the population for open government data, we report that the Ministry of Finance and the Ministry of Economy and Infrastructure have developed surveys and have published them on official websites⁸. Moreover, to assess the needs of the population for open government data, the ministries use the 'Participate' subsection of the <https://date.gov.md> platform. At the same time, the National Bureau of Statistics regularly consults public authorities and users of statistical data on the need for statistical information, especially in the preparation of the Annual Programme of Statistical Works, as well as in the National Statistics Council, which brings together representatives of various public authorities, employers, academia and civil society.

12.8 To enforce the provisions of Law No. 305/2012 on re-use of public sector information to ensure public access to documents intended for re-use, according to the Methodology for publication of open government data, approved by Government Decision No. 701/2014, ministries and other central public authorities ensure the publication and updating of data sets on the portal www.date.gov.md. A total of 1,136 data sets are available (13 more data sets in 2020 than in 2019). The portal administration is ensured by the Public Institution Electronic Government Agency⁹, subordinated to the State Chancellery. As an institution responsible for digital innovations and data exchange management in the public sector, the EGA has developed a new version of the date.gov.md portal, which was launched in November 2019, and significantly expanded and improved its functionality.

Article 2 – Right of access to official information

13.1 All national institutions carry out their activity in accordance with the laws in the field on access to official documents and also the laws, decisions, orders specific to the area of activity as follows.

13.2 The National Agency for Energy Regulation, in accordance with Art. 16 of Energy Law No. 174/2017, provides information on request, except for official information subject to limited accessibility, including information that constitutes a trade secret. The information in licensing registers, in addition to being published on the website, is also provided on request.

13.3 The National Social Insurance House works with official documents that are accessible on the official website¹⁰, in addition to the public data sets managed by the National Social Insurance House, are published and regularly updated on the single government open data portal.¹¹

⁸ <https://mf.gov.md/ro> and <https://mei.gov.md/>

⁹ <https://egov.md/ro>

¹⁰ www.cnas.gov.md

¹¹ www.date.gov.md.

13.4 The National Health Insurance Company is guided in its activity by Law No. 1585/1998 on compulsory health insurance, which has been amended in the context of ensuring the right of access to official documents, as follows:

- 1) *Art. 5 was completed with let. h)* that provides for the regulation of a new principle, i.e. the principle of transparency¹². In view of the principle of transparency, the right of access to official documents (contracts, reports) is held by the CHIS subjects and other interested persons.
- 2) *Art. 12(3) was completed with let. g)* that stipulates the obligation of the NHIC to publish on its web page¹³ official information.¹⁴ The full decisions of the Management Board of the NHIC must be published within 15 working days from the date of the Board session. The annual report on the use of the CHIS funds shall also be published within 15 days of its approval by the Parliament.

Additionally, in accordance with the NHIC Order No. 382-A of 31.12.2020, the NHIC issues free of charge to citizens, based on requests submitted personally or by legal representatives, certificates on the status of insured person within the CHIS.

13.5 The activity of the Superior Council of Magistracy, according to Article 8¹ of Law No. 947-XIII/1996, is transparent and is carried out, by ensuring the access by society and the media to the information about the activity of the Council. To ensure and increase the degree of transparency of the activity of the Superior Council of Magistracy, the Plenum sessions of the Superior Council of Magistracy are public, being streamed online and recorded using audio and video devices. Thus, all the sessions of the SCM Plenum (24 of which 3 countermanded) were streamed online, being prepared and published on the official website of the SCM, 21 of summaries of plenary sessions.¹⁵

According to Art. 23 of the Code of Civil Procedure, court hearings in all courts are public, with the exceptions set out by law (closed hearings: e.g. participation of minors, state secrets). The chair of court hearing ensures that all procedural documents are published on the website of the court in the section of the respective case within 3 calendar days from the issuance of the respective procedural act. Cases are distributed randomly through the automated software – Integrated Case Management System (hereinafter 'ICMS'). This software is constantly improved, and ICMS-5 is now being implemented, following the collaboration between the Superior Council of Magistracy and the Transparent Justice Programme. This programme also ensures audio recording of court hearings, so that litigants have the right to request recording for use purpose. Further digitization of court archives is an important step in completing the automation of court activity and providing more practical, useful and cost-effective services for litigants. To facilitate access to official documents of the Superior Council of Magistracy, the Regulation on the public information service and relations with the media approved was adopted and approved by the SCM Decision No. 740131 of 15.10.2013 that lays down the manner of organizing and carrying out the activity of the responsible service within the courts for public information and relations with the media.

¹² 'CHIS is managed transparently, by informing the CHIS subjects and interested persons about the use of revenues and expenditure'.

¹³ www.cnam.md

¹⁴ Contracts for the provision of medical services (provision of medical services), their annexes and supplementary agreements, contracts for the provision of compensated medicines from the CHIS funds and information for each contract on the payment of compensated amounts by the insurer for the previous year, as well as contracts concluded with financial resources, other than those from the fund for the payment of medical and pharmaceutical services, within 15 working days from the date of their conclusion;

- the half-yearly reports on the financial resources paid for the compensated medicines, which shall include information on all compensated medicines provided by the pharmaceutical service provider during the reporting period, the total amount paid by the insurer, the international common names (ICNs), corresponding to the trade name, dose, pharmaceutical form, manufacturer, quantity compensated in nominal units, amount compensated by the 15th day of the following month.

¹⁵ <https://www.csm.md/ro/>

13.6 To effectively implement the national and international regulatory framework on ensuring access to official documents, the National Integrity Authority has developed and approved the following internal regulatory acts:

- the Regulation on ensuring transparency in the decision-making process within the NIA, approved by Order No. 6 of 22.01.2018;
- the Communication Strategy of the National Integrity Authority, approved by Order No. 56 of 11.07.2018. The Strategy provides for a range of actions aimed at ensuring effective dialogue with civil society in order to promote the image of the institution and decision-making transparency; establish a conceptual framework for institutional communication and communication priorities; identify the practical mechanisms for organizing and carrying out communication activities;
- the Internal Regulation of the National Integrity Authority, revised by Order No. 44 of 27.05.2020.

At the same time, in 2018, the National Integrity Authority revised the format of the official website¹⁶, by developing additional sections for a wider access to information of public interest and transparency in the decision-making process, which is constantly updated and viewed hundreds of thousands times annually.

13.7 The Tax Inspection, to implement the national and international legislation on access to official documents, has developed and approved, by Order No. 40-p of 01.04.2019, the Internal Regulation on the communication procedures of the institution.¹⁷

13.8 The State Tax Service¹⁸, on 26.05.2021, approved the STS Order No. 283 on the approval of the Regulation on the rights and obligations of tax officials in providing official information

13.9 The Court of Accounts of the Republic of Moldova, to ensure access to official documents, according to Art. 10 of Law No. 260/2019 on the organization and functioning of the Court of Accounts (with the amendments and completions that came into force in 2021 by Law No. 135/2019) the point called 'Transparency and Accountability' provides for the following:

'As regards the legal obligation to inform the public, the Court of Accounts shall provide public information on its activities by:

- a) submitting reports to the Parliament and publishing them in the Official Gazette of the Republic of Moldova, in the cases provided for by this law;
- a') publishing its decisions on audit reports in the Official Gazette of the Republic of Moldova;
- b) publishing the reports on its official website in the cases provided for by this law, as well as in other electronic information sources;
- c) holding press conferences and other forms of public information;
- d) publishing press releases and any other information determined by the Court of Accounts, except for information and materials containing state secret, trade secret or other secret protected by law;
- e) submitting its financial statements to external audit entities and publishing the external audit report on its official website¹⁹.'

¹⁶ www.ani.md

¹⁷ <https://if.gov.md/>

¹⁸ <https://sfs.md/ro>

¹⁹ <https://www.ccrm.md/>

13.10 The Court of Accounts is guided in its activity by the Regulation on the use of the Information System 'Register of Audit Missions' approved by the Decision of the Court of Accounts No. 6 of 21.03.2016. This Regulation provides for the procedure of organization and operation of the information resource for keeping records of audit missions at the Court of Accounts, which is directly linked to the interface of the official website of the RM CC and ensures the immediate publication of information on audit reports approved by the Court of Accounts and the current level of implementation of issued recommendations. According to its provisions, in the case of each decision, information about execution of requirements and recommendations submitted after the examination of the respective audit report and the term of their execution are published on the web page, which provides the possibility to download the response of the authority responsible for execution.

13.11 The National Bureau of Statistics, in accordance with Government Decision No. 96/2010 on the actions to implement Law No.239/2008 on transparency in the decision-making process, has developed and approved an Internal Regulation on procedures of ensuring transparency in drafting and adopting decisions.

Article 3 – Possible limitations of the right of access to official information

14.1 The general restrictions of granting access to information within the *National Integrity Agency* apply to the following categories:

- information referred to state secret, regulated by organic law, the unauthorized disclosure or loss of which may harm the interests and/or security of the Republic of Moldova;
- confidential business information, provided to public institutions by way of confidentiality, regulated by trade secret legislation, and related to production, technology, administration, finance, other economic activity, the disclosure (transmission, leakage) of which may affect the interests of entrepreneurs;
- personal information, the disclosure of which is considered an intrusion into privacy, protected by personal data protection legislation;
- information related to the operative and criminal prosecution activity of the relevant bodies, but only in cases where the disclosure of such information can affect the criminal prosecution, interfere with the conduct of a trial, deprive a person of the right to a fair and impartial trial of his/her case, or endanger the life or physical security of any person;
- aspects regulated by the legislation in force (mentioned in Art. 3 of Chapter A);
- information that reflects the final or intermediate results of scientific and technical investigations, the disclosure of which deprives the authors of investigations of the priority of publication or negatively influences the exercise of other rights protected by law.

Article – Request for access to official information

15.1 The press office of the Ministry of Foreign Affairs and European Integration, represented by the Service of Public Diplomacy, Strategic Communication and Interaction with the Press, receives requests from civil society representatives and transmits them to the subdivisions that are information providers (this function is also shared by the Section of Document Management and State Diplomatic Archive, the Public Relations Section of the Consular Affairs Directorate, as well as the Call Center of the MFAEI). This practice aims at facilitating the reception of applicants' messages and ensuring their transmission to the subdivision - information provider. The MFAEI also holds public consultations that are open to all interested parties, ensuring, in the context of the pandemic, the live broadcasting of events.

15.2 The regulatory framework related to examination of requests for information addressed to the National Bureau of Statistics (NBS), in addition to the general legal framework, the NBS is also guided by Government Decision No. 935/2018 on the organization and functioning of the National Bureau of Statistics. The request for official information can be sent to the NBS through an online form, by e-mail or on paper. Also, to request specific information, for example on the level of inflation, minimum living wage or average wage, there are standards request templates that can be downloaded from the NBS website and sent online. According to the Law on access to information, the response to the request shall be sent within 15 working days.

15.4 Within the National Health Insurance Company, according to Order 382-A of 31.12.2020, the time limit for examination of requests and issuance of certificates is one working day or 7 working days if the certificate is requested to be then submitted abroad. Other requests shall be examined in accordance with the legislation in force.

Article 5 – Processing of requests of access to official information

16.1 In accordance with Art. 7 of Law No. 982/2000 on access to official documents, refusals of access to official documents were recorded at central public institutions, as follows (See *Annex No. 1 'Chart of the number of refusals of access to official documents in 2020-2021'*):

- *National Agency for Energy Regulation*: 1 refusal, due to the fact that the licensee requested confidential business information, which could be provided only to public institutions, by way of confidentiality;
- *Audiovisual Council of the Republic of Moldova*: 1 refusal, due to incorrect completion of the form of the request for official information;
- *National Integrity Authority*: out of the total 267 requests for information, recorded during 2020, in 211 cases the requested information was provided and in 56 cases the requests were rejected. Out of the 56 reasonable refusals, there were 47 cases when the information was restricted by organic laws, 4 cases when the requests were anonymous and in 5 cases where the requests were not signed in the form established by the legislation in force.
- *Financial Inspection*: there were some cases of refusal to grant access to information due to the protection of personal data under Law No. 133/2011 on protection of personal data. A special register is to be put in place to record cases of refusal of access to information, in order to implement the Convention on Access to Official Documents.
- *National Administration of Penitentiaries*: during the years 2018 – 2021, 9 actions were filed in the court against the system of penitentiary administration concerning the access to information, including:
 - 5 cases – the requests regarding the obligation to provide the requested information were rejected in full (by the decisions of the Supreme Court of Justice);
 - 1 case – the NAP was obliged to provide the requested information;
 - 3 cases – are pending before the Chisinau Court of Appeal.

The reasons for the refusals were: the lack of consent of the data subject, the presence of personal data, the presence of secret data.

- *National Agency of Archives*: during 2021 there was a partial refusal to provide the requested information, as its confidentiality was guaranteed by the rules of the labour legislation.
- *Service of Information Technology and Cyber Security*: As the Convention became effective, 5 refusals of access to official documents were recorded within the Institution due to protection of personal data.

Article 7 – Charges for the access to official information

17.1 Charges for requesting official information are provided for and collected in accordance with the legislation in force by the following public authorities:

#	Institution	Legal Base / comments
1.	National Agency of Archives	The fees, categories of documents issued for a fee, are regulated by Government Decision No. 339/2005 ²⁰ . The examination of requests for urgent issuance of documents is not provided for in the legal framework.
2.	Publics Service Agency	PSA Order No. 471 of 29.06.2021 „On the application of the Nomenclature of services provided by the PSA and their rates, approved by Government Decision No. 966/2020 ²¹
3.	National Bureau of Statistics	According to Art.25 of Law No.93/2017 on official statistics, producers of official statistics may provide for a fee statistical information developed outside the PSW, through additional special processing, at the request of users. The information is provided for a fee, in accordance with Government Decision No. 1403/2005 ²² on the approval of the Nomenclature and rates of paid services and the Regulation on the manner of formation and use of special funds from provision of paid services by the National Bureau of Statistics and its territorial subdivisions. The rates of services provided for a fee are set on a non-profit basis, while ensuring the coverage of expenses of collection, processing, systematization of statistical information and other costs not financed from the State Budget. The general information produced by the NBS, in particular contained in the Programme of Statistical Work (PSW), is disseminated free of charge.
4.	National Commission for Financial Markets	The fees for official documents are set in the sectoral laws: Law No. 171/2012 on the capital market, Law No. 407/2006 on insurance, Law No. 1/2018 on non-bank credit organizations.
5.	State Agency on Intellectual Property	Point 11 of the Regulation on access to information held by AGEPI, approved by Order of the General Director of AGEPI No. of 02.06.2009, provides for that after the publication of the request on the Intellectual Property Objects (IPO), the file of the request can be opened for public inspection based on a written request submitted to the AGEPI, at any time during or after the registration of IPO. In such cases, it is allowed to inspect the documents, provided that the established fee is paid, by: a) issuing copies of the request on IPO; b) issuing copies of registration certificates; c) issuing extracts from the registers; d) issuing copies of other documents, which were officially sent by AGEPI in the process of examination and registration of IPO.

²⁰ https://www.legis.md/cautare/getResults?doc_id=113629&lang=ro

²¹ https://www.legis.md/cautare/getResults?doc_id=124770&lang=ro

²² https://www.legis.md/cautare/getResults?doc_id=8407&lang=ro

Article 9 – Additional measures

18.1 Central public institutions use the electronic document management system 'e-Management', which is an integrated electronic document management system that provides full functions of saving, archiving, searching, history, control, versioning, approval flow and reporting. The system ensures centralization and availability to the entire institution of all documents, regardless of how they enter the system or their nature, whether they are simple text documents, emails, faxes, scanned documents or images, which are the basis of the activity. It also ensures rigorous organization and control of access to archived documents by granting strict access rights. Access to documents is subject to the institutional information security policy and is adapted to the needs of the organization.

18.2 The automated information system 'Register of public functions and civil servants' approved by Government Decision No. 106/2014 (hereinafter the 'Register') is an integral part of the State Information Resources of the Republic of Moldova, intended for collecting, storing, updating and analyzing data on public functions, positions and staff of central and local public authorities, providing information on the statutory structure of public authorities of all levels, their public functions and positions, holders of these functions and positions, except those established by classified secret documents. This information resource is formed through the operation of the Register. The information system is also a tool to ensure efficient staff management and to provide information to competent bodies.

18.3 To ensure transparent and efficient governance by providing information on all vacant or temporarily vacant public functions, for which public authorities organize a competition on a single portal, accessible to all categories of users, the State Chancellery has developed and promoted Government Decision No.1022/2013 on the creation and administration of the single governmental portal of public positions for which the public authorities organize a competition.

18.4 As regards the applicability of the mechanism of public consultation with civil society in the decision-making process, approved by Government Decision No. 967/2016, 11 out of 21 central public authorities have developed internal procedures/regulations on decision-making transparency and two institutions have reported about the elaboration of an internal order in this regard, 21 of the authorities have designated the persons responsible for coordinating the public consultation process, 21 authorities have established and operate a hotline for information, including for cooperation with civil society, 11 authorities have developed and published on the official page lists of stakeholders with whom it cooperates in the areas of competence;

18.5 The Legislative Information System 'MoldLex' includes software products and legal databases. The System currently includes the following components:

- the database 'Legislation of the Republic of Moldova'²³;
- the database 'Judicial Practice';
- the database 'Legislative Dictionary';
- the database consultation software (legislation, practice);
- the database updating software.

18.6 The legislative database 'e-Lex' contains regulatory acts, international and bilateral agreements to which the Republic of Moldova is a party, published in the Official Gazette of the Republic of Moldova and in other official sources, since 1989, in Romanian and Russian. This

²³ The database contains the electronic version of the legal acts adopted and published in the 'Official Gazette of the Republic of Moldova' and other official editions, in Romanian and Russian. At the same time, the database contains amended (up-to-date) laws and regulations as amended. The amendments are made in accordance with the provisions of the legislation, on the date of their entry into force.

database is informative and offers the possibility to search for documents according to various criteria, to view, save or print them.

18.7 The MCloud platform is a common government information infrastructure, which operates on the basis of cloud computing technology hosted in the consolidated data center infrastructure. This platform is a model of provision of IT services, through the telecommunications system of public administration authorities, as well as through public communications networks, exclusively through secure data access and transport channels. The cloud computing technology of the MCloud platform is intended to be used only by central administrative authorities and organizational structures falling within their area of competence, subordinated to the Government (CPAs) and is an innovative delivery model, based on the consumption of infrastructure, platform and software as services.

The information platform in the area of protection of intellectual property rights, consisting of the information system in the area of intellectual property (IS e-IPO) and the information system 'register of 12 requests for intervention' (IS e-RRi), was established by Government Decision No. 721/2020, in force since 23.11.2020. With the support of the P.I. Service of Information Technology and Cyber Security (SITCS), technical actions to migrate the information system to the MCloud government platform were made. The IS e-IPO is currently being tested.

18.8 Citizens of the Republic of Moldova can address requests and petitions on the platform e-Petitions – an information system for electronic petition management, which enables automated supervision of information management processes concerning the petitions addressed to the leadership of the Parliament of the Republic of Moldova and makes it possible to provide quality services to petitioners.

18.9 Taking into account the objectives of the National Integrity and Anti-Corruption Strategy 2017-2020, as well as the Goal No. 16 of the Sustainable Development Agenda, which aims to *'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'* with the support of the project 'Curbing corruption by building sustainable integrity in the Republic of Moldova', implemented by UNDP in cooperation with the National Anti-Corruption Center, the reLAWed platform was created²⁴.

The reLAWed platform enables the citizen to get involved in improving the legal framework. With this tool, anyone can report a law, a legal rule that, in his/her opinion, can be interpreted as favouring or likely to generate an act of corruption. The platform offers the possibility to describe the problematic rule, and also to attach different acts/documents/materials. All reports may be anonymous, without disclosing personal data that would contribute to the identification of the person.

18.10 The Ministry of Defence has developed and published the Open Data Catalogue of the Ministry of Defence on the website²⁵ and, accordingly, on the single government open data portal www.date.gov.md. The Open Data Catalogue means the list of documents and data structured in various formats (usually processable ones: .xls, .csv, .pdf, .doc, .docx, etc.), intended for re-use. The Catalogue contains a list of public documents intended for re-use (45 documents), which have been submitted for publication by the structural subdivisions of the Ministry of Defence and the General Staff of the National Army, administrative authorities and subordinate institutions. The Catalogue is updated annually or as required, taking into account the mandatory completion of the included subsections.

²⁴ <http://relawed.cna.md/>

²⁵ http://www.army.md/img/userfiles/info/date_deschise/cdd.pdf

18.11 The institutional web page²⁶ of the National Archives Agency contains the RESEARCH section, where information about archival funds and collections managed by the institution can be found. At present, the electronic system 'AIS e-Chancellery' is being installed.

18.12 The Audiovisual Council of the Republic of Moldova has created an efficient technical information system for employees – ELO professional – an internal information management system.

18.13 Continuous development of e-Justice tools, including through digitization of court archives, is an important step in completing the automation of judicial activities and providing more useful and cost-effective services to litigants.

18.14 The Environment Agency uses the following automated information systems, each of which has registers and archives in different areas:

1. The automated information system 'Waste Management' (AIS 'WM'), as holder and registrar of information, in accordance with Government Decision No. 682/2018 on the approval of the Concept of the AIS 'WM'.
2. The automated information system for the management and issuance of authorization documents (AIS 'MIAD'), as a registrar, in accordance with Government Decision No. 550/2018.
3. The automated information system 'National Register of Emissions and Transfer of Pollutants' (AIS 'NRETP'), as holder of the National Register established by Law No. 71-XVII/2007 on registers. The National Register of Pollutant Emissions and Transfer was approved by Government Decision No. 373/2018.
4. The automated information system 'e-Fishing', a software for issuance of sport, amateur and recreational fishing permits, which has been purchased by the Environment Agency.

18.15 During the reporting period, internal training courses were conducted for employees of the National Social Insurance House on issues related to the security of information and personal data. To store and keep records of the internal regulatory documents within the National Social Insurance House, the e-Library information system is being implemented.

18.16 During the training courses in the process of certification of employees with audit duties, in the *Module dedicated to international standards on auditing*, one of the basic topics is *the management of official information and proper provision of information to improve the lives of citizens*. In the period 2019-2021, about 120 employees of the Court of Accounts of the Republic of Moldova participated in those courses.

18.17 During 2021, a training session for trainers from ministries and the State Chancellery was conducted for the implementation of the Methodological Guide on the integration of the National Development Strategy in planning documents and public policy documents at national level, organized by the State Chancellery within the Project 'Support for the Government of the Republic of Moldova in the implementation of the 2030 Agenda'.

18.18 During 2021, employees of the Ministry of Finance participated in the Professional Development Course organized under state order at the Academy of Public Administration with the theme 'Elaboration and coordination of draft regulatory acts'.

²⁶ arhiva.gov.md

18.19 Training courses were organized within the National Integrity Agency, with regard to the implementation of the Convention on Access to Official Documents, for the professional training of staff on decision-making transparency, the right of access to official documents and protection of personal data.

Article 10 – Documents made public at the initiative of the public authorities

19.1 To ensure public transparency, materials such as: press releases, regulatory framework relevant to the activity (government decisions, orders, regulations), draft regulatory acts subject to public initiation and consultation, activity reports, studies relevant to the area, etc. are published on the official websites of public institutions.

19.2. To ensure transparency in the decision-making process, the results of public consultations are made available on the official website of ministries and central public authorities, in the Decision-Making Transparency section. At the same time, the assurance of decision-making transparency by CPAs is monitored by the State Chancellery (SC) and an annual report is prepared in this regard. Such monitoring reports are developed in accordance with Government Decision No. 967/2016 and placed on the official website²⁷ of the SC in the Decision-Making Transparency section, Reports subsection. Results of TI-Moldova monitoring of public policy *Decision-Making Transparency in 12 CPAs*²⁸ shows that although all monitored entities have managed to create decision-making transparency subsections on their websites, these subsections need to be further developed.

19.3 www.particip.gov.md is a platform that facilitates the dialogue between citizens and the Government. On this website, all interested persons can access announcements regarding the initiation of elaboration of regulatory acts and draft documents subject to public consultations, which are posted by the institutions responsible for the promotion of regulatory acts. This platform can also be consulted by citizens of the diaspora; citizens abroad can take part in the decision-making process, contributing to the improvement of developed acts.

19.4 www.emoldovata.gov.md is a new platform that was launched in 2021, is intended for citizens settled abroad and contains several subsections where official documents of interest to the diaspora are available:

- The *Diaspora-Migration-Development Policy* (DMD) subsection contains the vision, the regulatory and institutional framework in the field concerned;
- In the *Migration* subsection, Bilateral Agreements on various areas concluded with the states of destination can be accessed;
- The *Government-Diaspora* subsection contains information on the collaboration with the BRD, the programs implemented by the Bureau, as well as the regulatory framework governing these programmes;
- The *e-Library* subsection contains various informative materials, guides, intended for the diaspora.

19.5 The Ministry of Defence publishes pro-actively, on the government open data portal, public data, which it prepares and holds as follows:

- Recruitment in the Armed Forces;
- Table of records of the activity of demining teams by years;
- Participation of military men of the National Army in international missions;

²⁷ www.cancelaria.gov.md

²⁸ TI-Moldova Report 'Monitoring of anti-corruption policies in central public authorities', 2020, page 20 (results of monitoring of the Decision-Making Transparency Policy) <http://www.transparency.md/wp-content/uploads/2020/10/Raport-monitorizare-generalizat-1.pdf>

- Information on the NATO/PfP project on the destruction of pesticides;
- List of non-governmental associations;
- Announcement regarding the award of public procurement contracts;
- Public procurement plan;
- List of territorial military centers;
- List of stakeholders;
- Examination of petitions addressed to the Ministry of Defence;
- Training plan in military education institutions;
- Report on transparency in the decision-making process;
- Distribution of the National Army budget;
- Services provided for a fee by the institutions of the Ministry of Defence;
- Open Data Catalogue;
- List of international treaties;
- Number of combatants who died in the fighting actions in the Nistru conflict;
- Number of military men originating from the Republic of Moldova, who died in the war in Afghanistan.

Public documents, well as the structured data held by the Ministry of Defence, were selected and submitted under Law No. 245/2008 on state secrecy, Law No. 139/2010 on copyright and related rights, and Law No. 133/2011 on protection of personal data.

At the same time, the following can be accessed on the official website of the Ministry of Defence, in the Decision-Making Transparency subsection:

- Internal rules of information procedures;
- Person in charge of coordination of the public consultation process;
- Annual/quarterly schedules of elaboration of draft regulatory acts;
- Announcements of initiation of elaboration of decision;
- Announcements of withdrawal of a draft from the elaboration process;
- Announcements of organization of the public consultation;
- Adopted decisions;
- Results of the public consultation;
- Annual report;
- Other information;
- List of interested persons;
- Manner of participation.

19.6 The National Social Insurance House, to ensure and promote transparency and good governance, as well as to facilitate access to official documents, publishes on the official website the internal regulatory acts that have an impact on the external environment, and has also published the Regulation on procedures of elaboration, information, consultation, participation and adoption of decisions within the National Social Insurance House, approved by an internal order.

19.7 To ensure the accessibility of information and the media coverage of the activity, the sessions of the Court of Accounts for the examination of audit results are public and are streamed on the official website of the institution²⁹ and on the accounts on social networks www.facebook.com, www.youtube.com. A tool for communication and assurance of transparency of the institution is the official website, which is regularly updated and contains all information of public interest. Also, special attention is paid to collaboration with information platforms and electronic media to arrange streamlining. Thus, in 2020, about 360 articles were published in the electronic press regarding the audit activity of the Court of Accounts.

²⁹ www.ccrm.md

19.8 Documents on the following issues are published on the official website of the NIA:

- Mission, functions, duties, organization chart, internal regulations, including organization and functioning of structural subdivisions;
- The regulatory framework related to the scope;
- Annual activity plans, quarterly, half-yearly and annual activity reports, including on public procurement;
- Fact finding acts adopted by the integrity inspectors;
- Judicial practice in courts;
- Transparency in the decision-making process;
- Various regulations, guides, video tutorials, forms, etc.
- Concluded collaboration agreements;
- Announcements, news and press releases;
- Contact information and schedule of audience of citizens;
- The public portal containing all the declarations of assets and personal interests submitted in the period 2012-present.
- Register of prohibitions to hold a public office or a position of public dignity, following the findings of the NIA;
- Access to the automated information system 'e-Integrity'.

19.9 The official website of AGEPI³⁰ publishes databases on intellectual property objects: trademarks³¹, designs³², inventions³³, geographical indications, designations of origin, guaranteed traditional specialties³⁴, plant varieties³⁵, objects of copyright and related rights³⁶. The databases also contain documents issued by AGEPI with reference to the Industrial Property Objects (hereinafter IPO): provisional notices of rejection, decisions of registration/rejection of IPO, decisions of registration/rejection of registration of contracts of transfer of rights to IPO, decisions to accept/reject changes in the legal status of IPO. AGEPI also has a monthly publication – the Official Bulletin of Intellectual Property, which includes official information on applications for IPO patent/registration in the Republic of Moldova and granted IPO protection titles, changes in the legal status of applications and IPO protection titles, as well as the results of examination of appeals filed to the Appeals Commission of AGEPI, court decisions on IPO disputes, general information³⁷.

19.10 The National Agency for Regulation in Electronic Communications and Information Technology of the Republic of Moldova has created and made available to the public, on its official website³⁸, a database that includes the conditions of access to public property of the state or administrative and territorial units, including the conditions of shared use of physical infrastructure, as well as the entities responsible for granting the right of access and/or shared use³⁹.

19.11 The placement on the official website⁴⁰ of the Ministry of Finance of the information on the results of the financial monitoring of the economic and financial activity of the state enterprises and commercial companies with full or majority state capital, for the years 2019-2020 has been ensured.

³⁰ www.agepi.gov.md

³¹ <http://www.db.agepi.md/marcireprezentanti/Search.aspx>

³² <http://agepi.gov.md/ro/formulare/design>

³³ <http://www.db.agepi.md/inventions/Search.aspx>

³⁴ <http://www.db.agepi.md/GeogrIndications/SearchGI.aspx>

³⁵ <http://www.db.agepi.md/soideplante/Search.aspx>

³⁶ <http://www.db.agepi.md/opere/>

³⁷ Its electronic version is available at <http://agepi.gov.md/ro/publication/48>

³⁸ <https://www.anrceti.md/>

³⁹ Art.8(2) of Law No. 28/2016 on access to property and shared use of infrastructure associated with public electronic communications networks

⁴⁰ <https://mf.gov.md/>

19.12 The official website of the Agency for Interventions and Payment for Agriculture (AIPA)⁴¹ is constantly updated with information related to provision of subsidies subject to the requirements of Law No. 239/2008 on transparency in the decision-making process. In addition, according to point 1151 of Government Decision No. 455/2017 on the manner of distribution of financial resources of the National Fund for the Development of Agriculture and Rural Environment and for the development of the electronic services platform, with the support of the World Bank, the application for the online submission of applications for financial support has been developed. As a result, farmers can submit the application for financial support including online for 4 support sub-measures. This application is a first step in simplifying the procedures of working with subsidy recipients, so that farmers can save time and resources when submitting the subsidy file. In addition, an interactive map of grant recipients has been developed and launched. The map includes data sets on the receipt, examination and authorization of grants, including territorially. The interactive map does not contain personal information, as the graphically provided data include only the name of localities and information about the amounts of grants requested/authorized by the AIPA⁴².

19.13 As regards the local public administration, the legislation in force lays down a number of requirements related to provision of decision-making transparency and access to documents issued by local public administration. In particular, Law No. 436/2006 on local public administration and Law No. 239/2008 on transparency in the decision-making process contain rules on the obligation to conduct public consultations.

To promote and implement the principle of transparency of the decision-making process at the level of local public authorities, the *State Register of Local Documents (SRLD)* has been created and has been operating since 28.10.2018. It includes locally issued/approved documents, electronic texts of documents, and enables to ensure the execution of the transparency requirements in the procedure of their approval.

As a result, the general public/civil society and the business community have access to documents issued by LPAs on the public part of the SRLD – actelocale.gov.md. The Register of Local Documents enables any interested person to view and access the electronic documents of the documents issued by LPAs.

Likewise, the implementation of the Register of Local Documents has made transparent the activity of the territorial offices of the State Chancellery, which exercises administrative control over the legality of documents of local public authorities and has eliminated the need to go to the territorial offices of the State Chancellery to submit paper documents. Annually, about 200 thousand documents (for comparison: 2018 - 175,992; 2019 - 213,071; 2020 - 215,083) are published in the State Register of Local Documents.

III. CONCLUSIONS AND CHALLENGES

20. Access to public information is a fundamental right of any person, which has two aspects: the right to request and the right to receive information – this right means the right to request information from public authorities, and any public authority/institution is obliged to provide the requested information, as long as there is no legitimate reason to refuse such requests;

21. Access to information is a multi-dimensional right that serves several categories of individual and group interests, and is a prerequisite for public participation in the democratic process;

⁴¹ <http://aipa.gov.md/>

⁴² The interactive map test version can be accessed at: <https://siagds.gov.md/aipa/f?p=103:1:2062113962525>

22. Access to information protected by the state shall be very well regulated, in terms of both the access procedure and the restriction of this right, or openness and transparency are recognized as an essential part of modern governments;

23. Implementation of the Convention on Access to Official Documents has the aim: a) to create a general regulatory framework for access to official information; b) to streamline the process of informing the population and the control performed by citizens on the activity of public authorities and public institutions; c) to stimulate formation of opinions and the active participation of the population in the decision-making process in a democratic spirit, etc.

24. The legislation on access to information needs to be updated, by completing the rules of the law clearly, avoiding interpretations by those who have to apply the provisions of the legislation;

25. Representatives of the media and NGOs propose to revise the Law 982/2000 on access to information, in order to define more precisely and expand the categories of applicants and information providers; to specify their rights and obligations, including the active publication of information by authorities; to reduce the time limit within which authorities shall provide the requested information; to provide for more effective mechanisms to ensure the right to information, by finding out violations and providing remedies for those whose rights have been violated.⁴³

27. There are precedents in judicial practice when the courts consider that the Law on access to information has become inapplicable when the Administrative Code became effective;

28. In the light of the ECtHR case-law after 2000, as well as the decisions of the Constitutional Court of the Republic of Moldova in the past five years, the legislation on access to information shall be adjusted to the principles and criteria established in the case-law of the European Court of Human Rights and the Constitutional Court;

30. According to GD No. 188/2012 on official pages of public administration authorities in the Internet network, ministries and other central administrative authorities constantly ensure the administration of the informational content of the official pages in the Internet network. However, the results of TI-Moldova's monitoring of the public policy *Decision-Making Transparency* in 12 CPAs⁴⁴ show that although all the monitored entities have succeeded to create subsections on decision-making transparency on their web pages, these subsections need to be further developed.

31. According to the same study mentioned above, all entities have posted draft decisions on web pages, but no information is provided on adopted drafts. The unavailability of the results of the public consultation is also a problem, as all entities have deficiencies in this regard. All entities need to improve compliance with the time limits for the publication of reports on decision-making transparency, the identification and sanctioning of cases of violations of legal requirements.

⁴³ Independent Press Association, <http://api.md/news/view/ro-un-proiect-de-lege-pentru-imbunatatirea-accesului-la-informatiile-de-interes-public-a-fost-prezentat-si-consultat-online-2221?v=1617515367> ,

http://api.md/upload/video_sf/Descifrare_propuneri_consultari-online_29.05.2020_mp.pdf, CPR Moldova

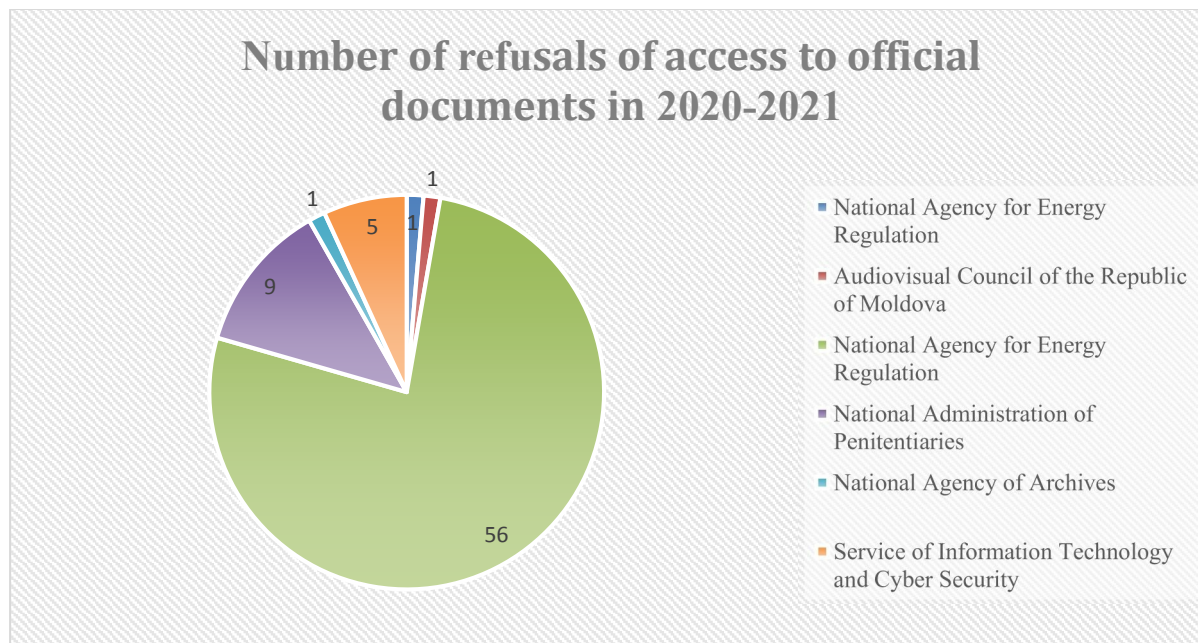
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⁴⁴ IT-Moldova Report 'Monitoring of Anti-Corruption Policies in Central Public Authorities', 2020, page 20 (results of the monitoring of the *Decision-Making Transparency* policy) <http://www.transparency.md/wp-content/uploads/2020/10/Raport-monitorizare-generalizat-1.pdf>

Chart of the number of refusals of access to official documents in 2020-2021



ABBREVIATIONS

AGEPI	State Agency on Intellectual Property
AIPA	Agency for Interventions and Payment for Agriculture
NIA	National Integrity Authority
NAP	National Administration of Penitentiaries
CHIS	Compulsory health insurance system
CPA	Central public administration
LPA	Local public administration
CARM	Court of Accounts of the Republic of Moldova
CAOD	Convention on Access to Official Documents
NHIC	National Health Insurance Company
NSIH	National Social Insurance House
CoE	Council of Europe
CCP	Code of Civil Procedure
SCM	Superior Council of Magistracy
SC	State Chancellery
ECtHR	European Court of Human Rights
MFAEI	Ministry of Foreign Affairs and European Integration
OGP	Open Government Partnership
IPO	Industrial Property Objects
ICMS	Integrated Case Management System
SRLD	State Register of Local Documents
EU	European Union