

# REPUBLIC OF MOLDOVA

## Handbook on Transparency and Citizen Participation

Original:

*Handbook on Transparency and Citizen Participation in the Republic of Moldova (English version)*

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# Acknowledgements

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This updated edition was produced as part of the project ‘Reinforcing the culture of dialogue and consultation of local authorities in the Republic of Moldova’ (2020-2021), implemented within the framework of the Council of Europe Action Plan for the Republic of Moldova 2017-2020.

As of 2021, six handbooks have been produced with country-specific information for Albania, Armenia, Georgia, the Republic of Moldova, Ukraine and Kosovo\*. They aim to preserve and share the lessons learnt and best practices identified during the co-operation projects implemented by the Congress of Local and Regional Authorities of the Council of Europe.

The research work and writing of this *Handbook* was carried out by Ms Veronica Cretu, national consultant for the Republic of Moldova. The overall co-ordination was ensured by the Co-operation and External Relations Division of the Secretariat of the Congress of Local and Regional Authorities of the Council of Europe.

\* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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# Foreword

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Governments can only function effectively if they enjoy the trust of their citizens. Local governments, municipalities and their civil servants have a crucial role in trust-building and participatory decision-making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regard to national governments, and represent the first interface between citizens and elected representatives. The professionalism and integrity of these governments and local administrations and their ability to function in a transparent, responsive and accountable manner will doubtlessly lead to enhanced, fair and equitable services to citizens. Local and regional elected representatives therefore must act as role models in the areas of public ethics, transparency and participatory decision-making.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives. Threats such as the lack of transparency and poor public ethics are problems faced by all levels of government, including the local and regional levels. They affect citizens, governments and businesses alike and pose a threat to the universal access to basic services and local development. The fight against corruption needs to remain a long-term priority for local and regional governments and their associations. Concerted preventive action is paramount in order to **foster economic growth, improve living conditions and develop citizens' trust.**

As the decentralisation of power advances, the quality of local governance becomes even more decisive. Therefore, along with the introduction of criminal law provisions against corruption, it is essential to promote public ethics, transparency and participatory decision-making in order to reduce the risk of corruption and boost the citizen confidence in local and regional authorities. The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting, in 1999, the European Code of conduct for the political integrity of local and regional elected representatives. An advisory group revised this Code, which has been adopted as the European Code of Conduct for All Persons Involved in Local and Regional Governance in November 2018. The updated text addresses the new challenges, including new forms of communication, the impact of digital technology, the respect for the privacy of data, and enlarges the scope of its application to all actors involved in local and regional governance, and not just elected officials.

The Congress is committed to promote ethics and transparency at local and regional levels as an essential component of enhancing the quality of local and regional democracy, one of the key priorities for the period 2017-2020. With that aim, it set **"Ethics and Transparency at local and regional level"** was set as the theme for its two plenary sessions of 2016, and adopted in October of that year a **"Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels"**. One of the objectives of this roadmap is to deepen our understanding of the various risks and forms of corruption that exist at local and regional levels. In that perspective, the Congress recently adopted reports on the abuse of administrative resources in election campaigns, preventing corruption in public procurement, conflicts of interests, the protection of whistle-blowers, nepotism in the recruitment of staff, and transparency and open government.

As a sign of its political determination to tackle these issues, the Congress has appointed two spokespersons on promoting public ethics and preventing corruption at the local and regional levels, Mr Andrew Dawson and Mr Andreas Galster. In 2017, during the 33<sup>rd</sup> session of the Congress, it also brought

to the fore the important perspective of young people and open government in the fight against corruption. This is a comprehensive and long-term approach to corruption prevention, including through the co-operation activities of the Congress of which this *Handbook* is just an example, which sends a clear signal of our intention to make this a priority activity for the years to come.

**Our citizens'** attitudes and expectations with regard to public governance are changing. We are witnessing a growing mistrust toward public institutions and their representatives. In this regard, effective mechanisms for the implementation and compliance with standards of conduct are essential to renew the confidence in public administration. Preventing corruption, reducing its risks, and developing effective, accountable and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this *Handbook on transparency and citizen participation in the Republic of Moldova* is aimed at local authorities, mayors, local councillors and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns, cities and regions. The *Handbook* will provide local authorities with practical guidelines on transparency and citizen participation, identifying relevant international standards and national legislation, and providing case-law examples and best practices which it recommends being applied and promoted by all Moldovan local authorities.



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*Congress of Local and Regional Authorities*  
*of the Council of Europe*



## PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key tools in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions which the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective transparency and participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. They are also more positive tools as they help produce the conditions for increased trust. Finally, they also help governments to draw on the skills and experience of citizens to enable better decision-making and the delivery of more effective public services.

*This Handbook on Transparency and Citizen Participation in the Republic of Moldova* aims to support local authorities in their efforts to improve the quality of local governance in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207). It provides them with practical guidance on transparency and citizen participation, based on the Council of Europe principles and with reference to the general international standards and particular national legislation.



To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the *Handbook on Transparency and Citizen Participation in the Republic of Moldova* includes country-specific information about anti-corruption legislation, and mechanisms for addressing public ethics and accountability, transparency and citizen participation. In particular, the user of this *Handbook* is provided with a straightforward look at relevant national legislation, a concise assessment of the most prevalent corruption risks, and a set of good practices to introduce and implement public ethics and open government mechanisms.

Furthermore, the implementation of the mechanisms included in this *Handbook* will help local authorities contribute to the Sustainable Development Goals (SDGs)<sup>1</sup> of the 2030 Agenda for Sustainable Development,<sup>2</sup> namely the goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals). In this regard, the implementation of open local government will be presented as a powerful mechanism for deepening the commitment to good governance in the context of sustainable development.

The *Handbook* is structured in four main chapters:

- Chapter 1 – Public Ethics and Accountability:  
This chapter highlights the importance and challenges of public ethics and accountability in the Republic of Moldova. Moreover, it is emphasised how essential they are for an effective, transparent and participatory governance.
- Chapter 2 – Corruption Risks:  
This chapter introduces the most common corruption risks identified in the Republic of Moldova and outlines relevant international anti-corruption standards, along with the national legal framework for each form of corruption. In addition, this chapter is supported with examples of case law related to each corruption risk.
- Chapter 3 – Transparency:  
This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. Each mechanism includes an introductory description and an outline of international standards. This is followed by four sections summarising key national laws and presenting practical guidelines and best practices, which may serve as examples for local authorities in their efforts to enhance transparency.
- Chapter 4 – Citizen Participation:  
This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, it includes an introductory description for each mechanism and outlines relevant international standards. This is followed by four sections summarising key national laws and presenting practical guidelines and best practices which may serve as examples for local authorities in their efforts to foster and improve inclusive citizen participation.

## Chapter 1

# PUBLIC ETHICS AND ACCOUNTABILITY

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### 1.1. INTERNATIONAL CONTEXT

Public ethics and accountability are essential features of an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and apply equally to organisations in the private and civil society sectors, as well as public authorities.

Ethics are the rules that define the conduct of public officials<sup>3</sup> in order to ensure that the public is treated fairly and equally. Ethics can help officials make better decisions in the public interest, as well as help people evaluate decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of public ethics and accountability, corruption and malpractice are able to thrive. As outlined in the following section, corruption is damaging to individuals, society, the economy and government in a number of respects. Public ethics and accountability can help curb the worst excesses of power, and encourage more responsible and fairer decision making by local authorities.

Even where corruption is not endemic, the absence of public ethics and accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between both ethics and public accountability is complex, when done well, they can help to build and strengthen trust between the public and government.

On the other hand, public ethics and accountability can also play a much more positive role. They recognise that citizens and other stakeholders have much value to offer in decision making. They can help to ensure that their personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Finally, effective public ethics and accountability are also key elements in improving public services. This is based on the idea that public services that are more responsive and accountable to people - and benefit from their insights, ideas, energy and scrutiny - will work better for people.

Taken together, public ethics and accountability help to ensure that decision-making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society.

Transparency and citizen participation are important mechanisms for promoting public ethics and accountability in national and local government. A recent report from the European Committee of the **Regions on "Preventing Corruption and Promoting Public Ethics at the Local and Regional Level in Eastern Partnership Countries"** found that **lack of transparency was the main vulnerability in all of the cases assessed.**<sup>4</sup> This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

## 1.2. DOMESTIC CONTEXT

While the Republic of Moldova has managed to make serious progress in passing anti-corruption legislation, a significant portion of which was adopted between 2011 and 2013 as part of the EU Visa Liberalisation Action Plan, one fundamental obstacle to democratic development in the country remains the lack of accountability within the governance system, which generates a negative political environment that affects the trust of citizens in political processes, undermines the rule of law, leads to heavy migration, impedes the delivery of basic services, and enables corruption to thrive.

2019 brought unprecedented events in the Moldovan political landscape, demonstrating the gravity of the ways in which state structures operate, the political influence in the decision-making process and the vulnerability of the judiciary. The Republic of **Moldova's February 2019 Parliamentary elections took place** during a period of serious democratic backsliding and ruling party efforts to consolidate power. A national government, formed on the last consultation day (8 June 2019), was the result of an unexpected coalition between the pro-EU and pro-Russian parties and was seen rather as a protest to the ongoing one. The immediate and controversial decisions of the Constitutional Court to declare invalid any following decisions during June 2019 have demonstrated the need for substantial changes across all branches of government. 12 November 2019 brought a no-confidence vote for Prime Minister Maia Sandu's pro-Western government and generated even more despair and lack of trust in the government among the general population.

According to the widely-respected Public Opinion Barometer (POB),<sup>5</sup> a low level of trust in central government still prevailed as of June 2020: 48.1% of respondents said they did not trust their government at all, 27.3% somewhat trusted the government, while only 5.2% trusted the government fully. When it comes to the level of trust in local public administration, particularly the **mayors' offices**, the same POB shows that the level of trust is different here: 16.6% of respondents said they highly trusted their **mayor's** office, 36.3% somewhat trusted it, 18% of the respondents did not quite trust it, and 24.6% did not trust it at all.

In addressing the above challenges, Chisinau has established a National Integrity Authority<sup>6</sup> and strengthened the independence of the National Anti-Corruption Centre. Since 2018, the Republic of **Moldova's National Integrity Authority (ANI) has a new structure and a new** body of integrity inspectors who are in charge of **verifying officials' asset declarations**.

Among the positive developments are the submission of asset declarations online and the possibility of accessing asset declarations through the Declarations Portal of the ANI,<sup>7</sup> while Article 31 of Law No. 82 on Integrity of 25 May 2017 foresees the issuing of Integrity Certificates for those who are applying for eligible public positions.

The Republic of Moldova is currently implementing its 2019-2020 National Action Plan on Open Government, based on the principles of access to information, data, citizen engagement, and transparency.<sup>8</sup> The National Integrity and Anti-Corruption Strategy for 2017–2020<sup>9</sup> has a separate objective for Pillar 2, **"Developing the integrity, accountability, transparency, and resistance to corruption risks of the public agents, government members, and locally elected officials"**, with the aim to address areas of the public sector that are vulnerable to corruption, such as the local public administration.

Local level efforts to strengthen democracy and citizen engagement in policymaking are being mandated by Law No. 436 on Local Public Administration, which regulates transparency in decision-making (Article 8). Law No. 780 on Legislative Acts and Law No. 317 on Normative Acts of the Government and Other Central and Local Administration provide rules for public authorities to consult on draft laws with

interested authorities and agencies. Moreover, all draft laws and decisions of the government are subject to mandatory anti-corruption expert examination by the National Anti-Corruption Centre.

Proper implementation of the above provisions by all key state actors, at all levels, could bring the citizens of the Republic of Moldova closer to the decision-making and policy-making processes, and thus generate public services that better respond to the increased needs and demands of the population. Ultimately, it may generate more trust in the government, both at local and national levels.

### 1.3. CODES OF ETHICS AND PROFESSIONAL CONDUCT

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring in transparency and public accountability in governmental operations.

Codes of conduct are often confused with codes of ethics, which establish basic principles to which public servants must abide, such as integrity, selflessness and openness, among others. A code of conduct applies and implements the code of ethics to the particular circumstances of an institution.

Well-designed codes of conduct and ethics will help meet the growing expectations from the public, business leaders and civil society, and places an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials.

#### *International standards*

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct** for Public Officials<sup>10</sup> and the European Code of Conduct for all Persons Involved in Local and Regional Governance<sup>11</sup> are the reference texts for local and regional authorities in Europe for ensuring political integrity.  
The **Committee of Ministers of the Council of Europe's Guidelines on Public Ethics**<sup>12</sup> consolidate in one single document Council of Europe core principles, standards and recommendations in this field, covering all categories of public officials, be they elected, appointed or employed. They are complemented by the guide Practical steps to implementing public ethics in public organisations,<sup>13</sup> a living document which provides case studies and examples from Council of Europe member states.
- The OECD Recommendation on Public Integrity<sup>14</sup> shifts the focus from ad hoc integrity policies to a context-dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.
- This Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service<sup>15</sup> provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

#### *Domestic context*

A civil servant in the Republic of Moldova must follow the Code of Conduct approved by the government back in 2008. The Code also compels state officials to rationally use public means, state property, and work time, to strictly observe laws, be impartial, professional, and loyal. This Code has the potential to

tackle corruption and increase transparency and accountability in the public sector if fully embraced by civil servants and with compliance mechanisms in place.<sup>16</sup>

The Code is not applicable to mayors and other persons of public dignity. It is applicable only to the civil servants from municipal administration, but not to the local elected representatives. In their case, the Law on the Status of Persons of Public Dignity<sup>17</sup> and the Law on the Status of Local Elected Representatives apply.<sup>18</sup> However, these laws have no specific provisions on the conduct of local elected representatives.

### *Legislation*

Discussions about the need for a code of conduct for public servants in the Republic of Moldova took place in 2004. It took four years to develop, consult, and approve a Law on the Code of Conduct (Law No. 25 of 22 February 2008). The goal of the Code is to establish norms of conduct for the civil service and inform citizens about the conduct civil servants should have in order to:

- Improve the quality of civil service;
- Ensure a better administration in promoting public interest;
- Contribute to the prevention and elimination of bureaucracy and corruption in public administration; and
- **Create an environment that would enhance citizens' trust in public authority.**

Additionally, Article 23 of the Law on Integrity No. 82 of 25 May 2017 stipulates as a requirement the respect for the norms of ethics and deontology and describes the responsibilities of the head of the public entity, among which are: establishing and implementing norms of ethics and deontology; ensuring that public agents receive relevant training and serve as a good example for other public agents with regard to the implementation of these norms; using accountability mechanisms, particularly in cases when violations contain elements of certain contraventions or crimes, in order to notify the responsible anti-corruption authority.

### *Guidelines*

Back in 2013, a methodological guide was developed by the Moldova State Chancellery in order to provide practical support for the implementation of the current Code.<sup>19</sup> The guide provides clear examples on ways a public servant shall be guided by the following principles: legality, impartiality, independence, professionalism and loyalty. The guide has a separate chapter on the legal implications on non-compliance with the provisions of the Law.

The Methodological Guide covers all the provisions of the Law on the Code of Conduct for Civil Servants of the Republic of Moldova and includes a compliance-related chapter. It is a guidebook that aims to support both public servants and citizens in understanding the value of the Code of Conduct in the public sector.

Despite limited resources, local authorities can fully embed the principles of the Code of Conduct into everyday activities:

- Local authorities can organise mini training sessions on the Code of Conduct, based on the guide, and ensure that both local authorities' staff and members of the Local Council are familiarised with the provisions of the Code.
- A mini guide, with most essential aspects, can be compiled and handed in to all staff of local authorities, and an ongoing updating process can take place once every few months.
- The Code can be published online, on the websites of local authorities.

- Local authorities can assess the effectiveness and improvement opportunities against some baseline data and targets, develop a list of indicators to help measure progress, and communicate the results to the citizens.

In addition to the above, a guide for the local elected representatives has been written with the support of development partners, aiming to address 100 questions related to local good governance in the Republic of Moldova.<sup>20</sup>

Back in 2017, the government had created a Training Module on the Ethics and Integrity of Civil Servants. However, according to the *Public Administration and Local Governments Reforms in Eastern Partnership Countries* report (2017),<sup>21</sup> the training programmes stipulated by existing Moldovan legislation are not fully implemented, and the mandatory number of training hours for each civil servant is not fulfilled in practice.

### *Good practices*

According to the authors of the *Guide on the Code of Conduct*,<sup>22</sup> the guide itself is considered to be a best practice, given its simplicity and relevance for any public servant. It has been distributed in several hard copies in all central and local public administration authorities across the country. The guide is used for reference in the training program on Public Servant Integrity, which is delivered on a regular basis (as part of a state order) by the Academy for Public Administration. In 2017 alone there have been four training courses organised for national authorities and one for local authorities (based on the Government Decision No. 1400/2016). However, no monitoring process is currently in place to follow the compliance of public servants with the Code of Conduct.

At the same time, progress can be seen in representatives of local authorities endorsing the practice of adopting Codes of Conduct for public servants and employees of the district council. For example, the Ștefan-Vodă District Council adopted such a code of conduct in January 2018<sup>23</sup> and the Leova District Council adopted one in February 2018.<sup>24</sup> At local level, only 27% of local authorities have published their codes on ethics and deontology, according to a report from 2017 on the Monitoring and Evaluation of the Implementation of the National Strategy on Integrity and Anti-Corruption.<sup>25</sup>

## Chapter 2

# CORRUPTION RISKS

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In the absence of ethics and public accountability, corruption and malpractice are allowed to thrive, which undermines the foundations of a peaceful, prosperous and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision-maker and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their position on the basis of something other than merit, result in poor quality public services and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, it results in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

## 2.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g. gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

### *International standards*

The following international conventions and standards relate to bribery:

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions<sup>26</sup> establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. It is the first and only international anti-corruption **instrument focused on the 'supply side' of the bribery transaction.**
- The International Anti-Bribery Standard 37001<sup>27</sup> specifies a series of measures to help organisations prevent, detect and address bribery.
- The OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance<sup>28</sup> which supports the convention on combating bribery.

### *Domestic context*

An impact assessment report of the National Integrity and Anti-Corruption Strategy 2017-2020 indicates that the estimated volume of bribe accounted for in 2019 was 516 million Moldovan Lei (MDL): MDL 319.4 million from the general population and MDL 197.3 million from economic units. In 2017 the same indicator accounted for MDL 405 million.<sup>29</sup>

The same study shows that the general incidence of informal payments is relatively low. According to the survey data, 7% of the respondents from the general population and 4.7% of the business units have recognized that they have offered informal payments during 2019. The average number of times a person from the general population offered a bribe is 5.4 times per year (as compared to 3.7 in 2017); in case of a business unit it is 3.5 times (as compared to 6.1 in 2017).

Data shows that the maximum amount of the offered bribe has also decreased, as compared to previous years: the value of informal payments varied between MDL 50 and MDL 20,000 both in the case of business units and the general population. In 2017 these amounts varied between MDL 100 and MDL 500,000 in the case of business units, and between MDL 50 and MDL 8,000 in the case of the general population.

Overall, the general population, as per the above assessment, have become less tolerant towards corruption, and now consider any corruption situation to be unacceptable, by stating that they would not agree to give bribes, regardless of the situation and personal benefit.

When it comes to attitude change among the general population vis-à-vis reporting an act of bribery, there is a positive change: about 87% of the survey respondents stated that in encountering such situations they would most probably/certainly report the corruption acts to the anti-corruption agencies through different means.

### *Legislation*

Article 16 of the Law on Prevention and Combatting Corruption<sup>30</sup> establishes individual and institutional liability for corruption offences, in accordance with the Criminal Code. The same article lists all corruption acts: active corruption, passive corruption, influence peddling, giving bribes, and taking bribes. Public agents, including foreign ones, private individuals, and corporate entities shall bear liability, pursuant to the provisions of the Criminal Code, for the deliberate commission of corruption acts. The legislation of the Republic of Moldova currently prohibits active and passive bribery, extortion, abuse of office, bribery of foreign public officials, and trading in influence.<sup>31</sup>

Currently, regulations on gifts in public administration are stipulated in the following normative acts: Law No. 25 on the Code of Conduct of the Civil Servant of 22 February 2008; Law on Integrity No. 82 of 25 May 2017, and the Government Decision on the legal regime of gifts No. 116 of 26 February 2020.

Additionally, Law No. 325 (2013) on Institutional Integrity Assessment sets forth the regulatory purpose, principles, means, methods, procedures, and legal effects of institutional integrity in the context of public entities. Article 2. of this law stipulates that *“The assessment of institutional integrity is carried out for the purpose of: (a) enhancing the accountability of the leaders of public entities and organisations in order to develop, maintain, and strengthen the climate of professional integrity within the public entities; (b) ensuring professional integrity of public agents, preventing and combating corruption within the public entities; (c) the identification, assessment, and elimination of corruption risks within public entities; (d) increasing the number of tip-offs relating to manifestations of corruption **admitted by public agencies.**”*

Article 16 of the Law on Integrity No. 82 of 25 May 2017 sets forth the legal regime of gifts. It stipulates that the leaders of public entities, as well as public agents, are prohibited from soliciting or accepting gifts (goods, services, favours, invitations, or any other advantages). Such requests or acceptance of inadmissible gifts constitute acts of corruption within the meaning of criminal legislation and of the provisions of Chapter VI of the current law.

Additionally, the Government Decision No. 116/2020 on the Legal Regime of Gifts stipulates that the total allowed value of the gifts offered out of politeness or on the occasion of certain protocol actions amounts to a maximum value of MDL 1,000 for one year. The current decision stipulates that a commission for recording and assessing gifts must be established within all public entities, in which public agents operate in the framework of Article 3 of the Law of Integrity No. 82/2017. The Government Decision No.134 of 22 February 2013 is repealed by the Government Decision No. 116/2020.<sup>32</sup>

The National Anti-Corruption Centre has launched the “reLAWed” online platform with the aim to provide people with the possibility to get involved in the process of improving the legal framework, take action, identify and notify/communicate about deficient or interpretable normative acts, which have generated or may generate acts of corruption, abuse, or other illegalities.<sup>33</sup>

### *Example of case law*

Back in 2019, the Mayor of Floreni, a village in the Anenii Noi district, along with a local councillor, were detained by National Anti-Corruption Centre officers and anti-corruption prosecutors in two criminal cases, based on passive corruption and peddling. The Mayor and the local councillor were suspected of having demanded from a local businessman MDL 350,000 to legalise his possession of a piece of land he had been using for several years. According to the dossier of this case, the suspects were planning to influence members of the local council to issue a decision to lease the land, of which the businessman would then abusively take full possession. In order to give him legitimate rights over the land, the two are said to have proposed to the businessman to lease him the lot and then to give him the possibility to buy it. The money was sent in three instalments, under the control of National Anti-Corruption Centre: MDL 200,000, MDL 10,000 and MDL 140,000. Two cases were initiated for passive corruption and for influence peddling.<sup>34</sup>

## 2.2. CLIENTELISM

Clientelism is the promise and acceptance of a personal benefit (e.g. gift, loan, reward, favour, job, etc.) in exchange for political support. It is often based on an unequal relationship between a patron (e.g. political leader) and client (e.g. voter). Clientelism results in decisions that reflect the special interests of a few, rather than the wider public interest, leading to unfair and unjust outcomes.

### *International standards*

As one type of corruption, clientelism is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>35</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>36</sup>
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**<sup>37</sup> aims to coordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**<sup>38</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Fighting nepotism** within local and regional authorities<sup>39</sup> sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union’s Convention against Corruption Involving Officials**<sup>40</sup> aims to fight corruption involving officials from the EU or its Member States.

### *Domestic context*

A recent report on the Republic of Moldova states that *“corruption and clientelism remain prevalent, and that there is a lack of connection between citizens’ needs and the government’s reform agenda”*.<sup>41</sup>

Clientelist ties in the Republic of Moldova are most often based on party affiliations.<sup>42</sup>

A regional report from 2018 on party organisation and clientelism in transition countries,<sup>43</sup> indicates that Moldovan parties appear to be the more clientelism-oriented among the three investigated countries. **The Republic of Moldova’s** Democratic Party is the most clientelist party out of the 15 investigated in the study. Additionally, in the Republic of Moldova, the territorial coverage of the parties is the main driver for clientelism. The same study indicates that if public funding is a source for clientelism, there should be mechanisms to control the amount of financial resources allocated to parties and how political parties spend them. Like Georgia and Ukraine, which were also investigated in the above-mentioned study, the Republic of Moldova lacks the scrutiny of public funding to parties, and this may be one reason for which clientelism keeps flourishing.

Today, clientelism is still a risk in the following situations:

- The mixed electoral system voted by the parliament on 20 July 2017. The new voting system provides for 50 deputies to be elected on proportional party lists, while another 51 will be elected in uninominal constituencies (only the candidate who wins the greatest number of votes in an uninominal constituency will make it to Parliament). Political analysts and civil society have long argued that uninominal voting would encourage clientelism, nepotism, and the allocation of local resources based on clientelism.
- Political loyalty/clientelism determines the selection of civil servants at the higher levels of government.
- The political affiliation and party migration of local elected officials in order to increase the chances of the respective municipality receiving more funding from national investment funds. The new Law on Local Public Finances, implemented in 2015, has considerably reduced the political criteria in the distribution of investment funds from national level to municipal level. Before 2015, Members of the Parliament usually proposed amendments to the annual state budget law so that localities that are politically-friendly to the incumbents get more public resources and the opposition less.<sup>44</sup> Another strong reason for clientelism and the political migration of mayors is to avoid the selective pressure of representatives from opposition parties; criminal investigations have started many times without solid

evidence. The ratio of mayors from opposition parties against which criminal investigations have been initiated, compared with the ones from the ruling parties, is instructive.<sup>45</sup>

### *Legislation*

One of the most significant examples of clientelism in the Republic of Moldova is related to the allocation procedures for public resources from national investment funds to first-level local governments. Public resources are used as a 'lure' to ensure independent candidates' **loyalty toward the political majority**.

There were cases where mayors from other political parties were **'forced' to join the ruling party**, having been promised the chance to benefit from capital investments. Currently, there are efforts in place to address the above issues through Law No. 68 of 5 April 2012, on the Approval of the National Decentralisation Strategy, and the Action Plan on the Implementation of the National Decentralisation Strategy for the years 2012-2018.

Given that clientelism is seen as a dominant trend when it comes to the allocation of funds to local authorities – particularly capital investments – it is important that the following core principles outlined **in the World Bank's guidebook to capital investments** for local governments<sup>46</sup> are being referred to by local authorities in negotiations with national authorities and in drafting their local budgets:

- Local government does not spend its limited resources on 'frivolous' investment in projects that should not be government business (for example, speculative commercial real estate);
- All needs are compared objectively;
- Prudent long-term fiscal policy is exercised;
- Innovative solutions at project level are considered;
- Individuals have effective channels through which to express their preferences.

### *Example of case law*

Political clientelism undermines the economic development of the Republic of Moldova by deviating public resources from their most efficient usages. Political affiliation matters when the funds for investment are distributed through various national investment funds. There have been attempts to demonstrate such violations back in 2012-2013, with the help of open data, when the BOOST database on public spending was launched.<sup>47</sup> It allowed citizens to see budget allocations per each district (raion), and it was clear that the district a former Prime Minister was originally from, Hâncești, was the one with the largest budget in 2014.<sup>48</sup> However, these efforts have not yet led to any prosecutions.

## 2.3. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest –either if they are actual, perceived or potential–<sup>49</sup> result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

### *International standards*

- The Committee of Ministers of the **Council of Europe's** Recommendation on Codes of Conduct for Public Officials<sup>50</sup> and the European Code of Conduct for all Persons Involved in Local and Regional Governance<sup>51</sup> cover the general issues normally thought to be necessary for avoiding such

conflicts.

- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest** at local and regional level<sup>52</sup> propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The OECD Guidelines for Managing Conflict of Interest in the Public Service<sup>53</sup> identify principles and standards for developing policies.
- The **Congress of the Council of Europe's Resolution and Recommendation on Making public procurement transparent** at local and regional levels<sup>54</sup> and the OECD Checklist for Enhancing Integrity in Public Procurement<sup>55</sup> provide guidance for enhancing transparency and for promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>56</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>57</sup>
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**<sup>58</sup> aims to coordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**<sup>59</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**<sup>60</sup> aims to fight corruption involving officials from the EU or its Member States.
- The OECD Recommendation on Public Integrity<sup>61</sup> shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.

### *Domestic context*

Conflict of interest is still a common phenomenon in countries with young democracies, like the Republic of Moldova. Even though the country has been taking steps to adopt European and international standards to combat corruption, conflict of interest remains a major problem. The Government adopted its Law on Conflict of Interests back in 2008, and the Republic of Moldova became one of the first countries in the former Soviet space to introduce legislation that addressed this issue. The law served as foundation for the Strategy for Prevention and Fight against Corruption, as well as the EU Moldova Action Plan for 2005-2008, key **documents for the country's Association Agreement with the European Union**.

Among the most recent developments in this area is the establishment of an e-declaration system by the National Integrity Authority which became mandatory in January 2018, together with a mechanism for **filing civil servants' assets and conflict of interest statements**. Compared to 2017, 2018 saw the number of declarations double thanks to the e-declaration system. Due to the e-Integrity information system, 58,080 declarations of assets and personal interests of civil servants were submitted, of which 4,261 statements were repetitive. The number of subjects of the declaration of assets and personal interests registered in the system was 57,569 in 2018.<sup>62</sup>

Declarations must be submitted electronically through the electronic service available on the official website of the National Integrity Authority ([ani.md](http://ani.md)) using the electronic signature issued for free, through the Special Telecommunications Centre, in the manner established by the Government.

The e-declaration is considered received by the National Integrity Authority if the subject of the declaration receives the electronic receipt confirming its acceptance.<sup>63</sup>

At the same time, the Law on Whistle-Blowers, adopted in July 2018 and entered in force in November 2018,<sup>64</sup> is a huge step forward and establishes a mechanism for reporting integrity incidents, irregularities and abuses, as well as providing protection for whistle-blowers.

According to this law, the National Anti-Corruption Centre deals with reviewing illegal practice disclosures, while the **People's Advocate Office** is responsible for ensuring whistle-blowers' protection. Additionally, the monitoring mechanism under the 2017-2020 National Integrity and Anti-Corruption Strategy 2017-2020 was made operational through three monitoring groups, bringing together representatives of key institutions and civil society organisations active in the field of anti-corruption.

### *Legislation*

Personal interest means any material or non-material interest of the person concerned, resulting from his/her activities as a private person, from his/her relations with close persons or with legal persons and businesses, property, relationships or affiliations with non-commercial organisations, including political parties and international organisations. The legal framework in the Republic of Moldova in the area of conflict of interest is based on several normative acts:

- Law No. 16 of 15 February 2008 on Conflict of Interests;<sup>65</sup>
- Law No. 180 of 19 December 2011 on the National Integrity Committee;<sup>66</sup>
- Law No.133 of 17 June 2016 on Assets and Personal Interest Declaration, Articles 5 and 9;
- Law No.82 of 25 May 2017 on Integrity, Article 21;
- Law No. 132 of 17 June 2016 on National Integrity Authority;
- Law No. 133 of 17 June 2016 on Asset and Interest Declaration;
- Law No. 90-XVI of 25 April 2008 on Preventing and Fighting Corruption (Article 15);
- Law No. 25-XVI of 22 February 2008 on the Code of Conduct for Civil Servants (Article 12);
- Law No. 158-XVI of 4 July 2008 on Public Function and Status of the Civil Servant (Article 25).

Law No. 16 sets a general framework for the prevention of conflict of interests. Its main purpose, as stated in Article 1, is to regulate the incompatibilities and restrictions imposed on persons with public functions or positions in central and local public administrations, the resolution of conflicts of interests, and the manner in which the declaration of conflict of interests is presented. According to said law, the public authorities who should declare competing interests are persons holding public office<sup>67</sup> and public servants, including local public administration authorities and of the territorial-autonomous units with special status, as well as their decentralised services.

The control over the execution and compliance with the abovementioned law on conflicts of interest is exercised by the National Integrity Commission (Article 25), while violations of the provisions of this law are being sanctioned in accordance with the Contravention Code and Criminal Procedure Code. The National Integrity Commission is in charge of verifying the assets and personal interests of public officials, resolving conflicts of interest and detecting incompatibilities or violations of the Law on Conflict of Interests. To carry out its mandate, the Commission works closely with the National Anti-Corruption Centre and the **Anti-Corruption Prosecutor's Office**, when referring its findings for further criminal investigations.

Additionally, Article 26 of the Law on Public Function and Status of the Civil Servant states that public officials may not exercise a public function under the direct subordination of a direct relative (parent, brother, sister, son, daughter) or a relative by affinity (husband/wife, parent, brother or sister of spouse) in the same public authority.

Article 326 of the Criminal Code,<sup>68</sup> on Influence Peddling, states that *“Receiving or extorting money, securities, other goods, or material advantages or accepting services, goods, or advantages either personally or through an intermediary for personal use or for another person committed deliberately by a person exerting influence or claiming to exert influence on a civil servant in order to make him/her undertake or not undertake actions that are part of his/her official duties irrespective of whether such actions were undertaken or not shall be punished by a fine in the amount of 500 to 1500 conventional units or by imprisonment for up to 3 years.”*

According to Article 14 of the Law on Integrity, a public agent has the obligation to declare in writing, within a deadline of three days, to the head of the public entity about any real conflict of interest having occurred within his/her professional activity. Also, according to Article 12 of Law No. 133 on Assets and Personal Interest Declaration, public agents must declare any potential conflict of interest.

When it comes to the practical implementation of the provisions of these laws, there are no single or unified guidelines. However, there are specific sector-related guidelines, one of them being the Practical Guide on Conflicts of Interest in Public Procurement.<sup>69</sup>

Overall, the Moldovan legislation does not directly state the responsibility for violations of legislation on conflict of interest. However, there is an increased acknowledgement of the need for a rigorous system of declaration of interests, and the e-declaration mechanism is a promising one. Its successful implementation could bring benefits beyond those of simply detecting and preventing corruption. It could help increase citizen trust in local public administration authorities and become a bridge to sustainable reforms in the Republic of Moldova.

### *Example of case law*

In 2020, the National Integrity Authority issued a statement regarding a Mayor from Criuleni district, who allegedly violated the legal regime of conflicts of interest by signing contracts with members of her own family.<sup>70</sup> In January 2016, while exercising a public function, the Mayor allegedly concluded with her husband several contracts aimed at the use of a car owned by her husband, a fact confirmed by documents in the dossier. In addition to this, in April 2016, the Mayor’s office had another conflict of interest, this time with the **Mayor’s son, with whom a contract for the purchase of low-value services** was signed. As a result of these actions, the integrity inspector established that the subject concerned – exercising the function of Mayor and having a personal interest resulting from her relations with close persons (i.e. husband and son) – violated legal acts on conflict of interest, failing to declare those within the legal deadline. If the document issued by the National Integrity Authority will remain final, the integrity inspector will notify the competent authority for the dismissal of the Mayor from her public function. Accordingly, the Mayor risks being barred from holding a public office position and a **Mayor’s** mandate for a period of three years. She could also be included in the Prohibition Register of the National Integrity Authority.

## 2.4. EMBEZZLEMENT

Embezzlement is the illegal appropriation of money, goods or other resources by an official to whom they have been entrusted. This results in the loss of public money, which reduces the capacity of authorities to act in the interests of the public, resulting in worse services and outcomes for people. It also undermines public trust in government.

### *International standards*

As one type of corruption, embezzlement is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>71</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>72</sup>
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**<sup>73</sup> aims to coordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**<sup>74</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**<sup>75</sup> aims to fight corruption involving officials from the EU or its Member States.

### *Domestic context*

The Republic of Moldova has known a number of cases in which ghost companies stole Moldovan budget funds, ‘laundered dirty money’, embezzled budget money from public procurement, stole from the budget under the cover of litigations, etc.

An IMF Report from March 2020<sup>76</sup> points out the lack of progress in recovering fraudulently-acquired assets in the Republic of **Moldova, specifically from perpetrators involved in the ‘grand theft’ of US\$ 1 billion from the Moldovan banking system between 2012 and 2014. “Little progress has been made to recover assets stolen during the 2014 fraud when several money-laundering operations facilitated the theft of around 12% of GDP from the Republic of Moldova’s largest banks”,** says the report.

### *Legislation*

The Criminal Code of the Republic of Moldova (Law No. 985-XV of 18 April 2002) currently sets the provisions and sanctions related to embezzlement.

The misappropriation of foreign property (i.e. the misappropriation of the assets of another person) entrusted to the administration of an individual is punishable by a fine of up to 500 conventional units<sup>77</sup> or by imprisonment for up to three years, in both cases with or without deprivation of the right to hold certain positions or to practice certain activities for a term of up to three years. Where committed by use of an official position, as per Article 191(d), embezzlement is punishable by a fine in the amount of 500 to 1,000 conventional units or by imprisonment for two to six years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to five years.

### *Example of case law*

In February 2020, Chisinau City Hall received the results of an independent external audit on the repair of the Ștefan cel Mare boulevard. Data from the report showed that EUR 7 million had been laundered during the repair of this boulevard with acts of embezzlement reported too. The mayor of Chișinău stated that a series of legal procedures on this matter have been taken. The repair of the Ștefan cel Mare boulevard started in 2015, as part of a project aimed at restoring six streets in the Moldovan capital. Although the works on the boulevard were finished in 2017, the certificate of acceptance was not signed as deficiencies were discovered, with the asphalt being badly deformed in more places.<sup>78</sup>

## 2.5. FRAUD

Fraud is the use of deceit in order to gain an unfair or illegal advantage. Fraud erodes public trust in government and reduces the capacity of government to act. It often results in the loss of public money, which harms public services and the ability of governments to address the public's needs and aspirations.

### *International standards*

As one type of corruption, fraud is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>79</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>80</sup>
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**<sup>81</sup> aims to coordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**<sup>82</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**<sup>83</sup> aims to fight corruption involving officials from the EU or its Member States.

### *Domestic context*

During the past couple of years, the Republic of Moldova has been severely affected by what was called the "theft of the century". In late 2014 a huge corruption case hit the Republic of Moldova, the infamous "one-billion-dollar bank fraud". The scandal, involving three of the largest banks of the country, Banca de Economii, Banca Socială and Unibank, holding approximately **one third of the country's assets at the time**, put the fragile Moldovan economic and banking system severely at risk, robbing the country of at least one billion dollars, around 15% of its annual GDP. Expert analysis and investigations showed that this operation was conducted in a highly coordinated, structured way and was made possible thanks to the support of key financial and political institutions. Experts argue that little or no progress has been made in recovering the assets from the bank fraud. There is no indication as to whether the Republic of Moldova requested the mutual legal assistance of foreign jurisdictions on starting the recovery of the stolen assets.<sup>84</sup>

### *Legislation*

The Criminal Code of the Republic of Moldova (Law No. 985-XV of 18 April 2002) currently sets the provisions and sanctions related to fraud, through Chapters VI and X.

Fraud is punishable by a fine between 200 and 500 conventional units, by community service ranging from 120 up to 240 hours, or by imprisonment for up to three years. When committed by use of an official position, fraud is punishable by a fine in the amount of 500 to 1,000 conventional units or by imprisonment for two to six years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to three years. Point (4) of the same Article states that *"the actions mentioned in paragraphs (1), (2) or (3) committed on a large scale shall be punished by imprisonment from 7 to 10 years with the deprivation of the right to hold certain positions or to practice specific activities for up to 5 years"*.

### *Example of case law*

In May 2020, a criminal case against Vladimir Plahotniuc was opened with charges including the creation of an organised criminal group, extortion, and fraud. The Republic of Moldova will seek his extradition from the United States. As former head of the Democratic Party, Plahotniuc fled the country in June 2019 after being forced out from Parliament as part of a government shakeup. He has been linked to what is known as the ‘theft of the century,’ a scandal involving the disappearance of more than US\$ 1 billion – totalling nearly one-eighth of the Republic of Moldova’s GDP – from the country’s largest banks between 2012 and 2014.

The charges against Plahotniuc are based on “indisputable evidence” from the international investigative firm Kroll. The report documented how companies and individuals with connections to a 28-year-old businessman took control of three major banks during the period of the scandal, in which money was funnelled overseas through dubious loans, shell companies, asset swaps, and shareholder deals. The businessman Ilan Shor, then allegedly issued massive loans to his companies during a three-day period in November 2014, according to the report, which was later leaked and published by an opposition lawmaker. Shor, who is currently believed to be in Israel, was charged in 2016 and later convicted of money laundering and embezzlement in connection with the theft. Also in 2016, the former Prime Minister Vlad Filat was found guilty of taking bribes related to the theft. He was released early in December 2019 after serving three years in prison. Prosecutors said that through Shor, Plahotniuc allegedly withdrew USD 100 million from the former state bank Banca de Economii. The funds were subsequently covered from the reserves of the National Bank in order to buy the insurance company Asito, a hotel, a fashion business, and a personal jet.<sup>85</sup>

## 2.6. NEPOTISM

Nepotism is the exploitation of an official position to unfairly benefit a family member or friend (e.g. through giving a job or favour). Nepotism, and other forms of favouritism, results in local and regional authorities not having access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces the efficiency and effectiveness of the administration.

### *International standards*

As one type of corruption, nepotism is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>86</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>87</sup>
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**<sup>88</sup> aims to coordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption** (ETS No. 174)<sup>89</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Fighting nepotism** within local and regional authorities<sup>90</sup> sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union’s Convention against Corruption Involving Officials**<sup>91</sup> aims to fight corruption involving officials from the EU or its Member States.

### *Domestic context*

Clientelism and nepotism tend to be persistent in the Republic of Moldova year after year. The most negative effect of maintaining clientelism and nepotism in the country is endemic corruption.

The most prevalent form of corruption in the Republic of Moldova, according to experts, is favouritism in public procurement (83%), followed by nepotism in appointing public officials (48%) and conflicts of interests (48%). Experts also believe that there is a high concern amongst citizens about the prevalence of favouritism in public procurement, thus reflecting a much higher awareness of the public regarding institutional distortions in the Republic of Moldova.<sup>92</sup> A Transparency International report states that *“the level of tolerance for corruption is very high. The public considers that corruption and nepotism are culturally bound and cannot be reduced.”*<sup>93</sup>

The same report suggests two important measures that might help the country address the issue of nepotism:

- Elaboration of a mechanism of declaration of incomes and ownership for high-ranking public officers and their relatives while undertaking and being freed from the position.
- Reduction of staff in public sector, and the de-politicisation of the government, by introducing an obligatory system of professional promotion on the basis of performance and competitiveness.

### *Legislation*

Article 11 of the Law on Integrity No. 82 of 25 May 2017 stipulates that the employment and promotion of public agents ought to be based on merit and professional integrity. Any recruitment and promotion shall be organized based on public competition, with objective selection criteria and in full transparency.

According to the same Article, documents such as the professional integrity record certificate, the information regarding the unresolved incompatibility states, the sanctioned conflicts of interest, and the criminal record containing information on the deprivation of the right to hold public functions should be requested from applicants.

The Law on Assets and Personal Interest Declaration No.133 of 17 June 2016, as well as the legislation on access to information and other normative acts do foresee the publication of key data, including information about public service enrolment and leadership of public organisations, allowing citizens to monitor and to inform accordingly the National Integrity Authority of any misconduct.

According to the Evaluation Study on the Impact of National Integrity and Anti-Corruption Strategy 2017,<sup>94</sup> hiring and promoting public servants at work is usually done on the basis of merit (according to 84% of public officials) and based on the evaluation of employee performance (72%). However, one in five public officials states that favouritism (relationships with the right people) and political affiliation are often practiced. The level of knowledge of the legal/illegal situations regarding the employment and promotion of public agents based on merit and professional integrity is very low. Thus, only 7% of public officials provided correct answers to all possible situations of corruption in the process of hiring and promoting public officials on the basis of merit and professional integrity.

### *Example of case law*

The Chişinău Court of Appeal found Ms Ludmila **Belonoşca**, head of the Culture Department of the Ocniţa District Council, guilty as per Article 313 (1) of the Contravention Code. Being subject of the declaration of assets and personal interests, by virtue of her position, she failed to declare the conflict of interest in

relationship with her daughter, a subordinate employee exercising the function of artist-instrumentalist/violinist of the folk music orchestra of the Ocnîța District Council.

A sanction was imposed in the form of a fine in size of 45 conventional units, which is MDL 2250 (about EUR 116), with the deprivation of the right to hold a position in a public organisation for a period of three months. As a result, Ms Belonoșca appealed against the decision of the Chișinău Court of Appeal and on 14 May 2019, the court rejected her appeal as it was deemed groundless.<sup>95</sup>

## 2.7. MISUSE OF ADMINISTRATIVE RESOURCES IN ELECTION CAMPAIGNS

The misuse of administrative resources<sup>96</sup> during the electoral processes involves unlawful or abusive behaviour on the part of politicians and civil servants, who use human, financial, material, *in natura*, and other immaterial resources to influence the outcome of elections, and thus undermine the fairness of the election itself.

### *International standards*

The Republic of Moldova has ratified the following treaties and is therewith committed to abide by the following treaties and hard law instruments:

- The United Nations International Covenant on Civil and Political Rights<sup>97</sup> (Articles 19, 21, 22 and 25), further elaborated in paragraph 25 of the Human Rights Committee's General Comment No. 25.<sup>98</sup>
- The **Council of Europe's European Convention on Human Rights (ETS No. 5)**, in particular Articles 10 and 11, and Article 3 of the Protocol No. 1 to the Convention (ETS No. 9).<sup>99</sup>
- The United Nations Convention against Corruption,<sup>100</sup> in particular Articles 7, 17 and 19.
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**.<sup>101</sup>
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**.<sup>102</sup>

The misuse of administrative resources during electoral processes is covered by the following international standards and guidelines:

- The **Council of Europe's Venice Commission and the OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes**<sup>103</sup> specify a series of measures and laws to be adopted in that regard.
- The **Council of Europe's Venice Commission report on the Misuse of Administrative Resources during Electoral Processes**.<sup>104</sup>
- The **Congress of the Council of Europe's Resolution** on The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials and its Explanatory Memorandum.<sup>105</sup>
- The **Congress of the Council of Europe's Resolution** on Preventing corruption and promoting public ethics at local and regional levels and its Explanatory Memorandum.<sup>106</sup>
- The **Congress of the Council of Europe's Checklist** for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level.<sup>107</sup>
- The **Congress of the Council of Europe's booklet on Administrative Resources and Fair Elections** provides practical examples and guidance.<sup>108</sup>

### *Domestic context*

In 2017, amendments to the Election Code of the Republic of Moldova changed the electoral system from fully proportional to a mixed one. Under the new system, 50 Members of the Parliament are elected through proportional representation from closed party lists in one national constituency and 51 Members of the Parliament in single member constituencies through the first-past-the-post system. In order to win seats in the national constituency, a party must receive at least 6% of the valid votes, while an electoral bloc needs at least 8%. ODIHR and the European Commission for Democracy through Law (Venice Commission) have consistently recommended lowering the thresholds.<sup>109</sup>

The Social Impact report<sup>110</sup> on the *Accountability in Moldova* USAID-funded project (February 2020) states that “**voters in the Republic of Moldova have little confidence that the political parties represent their interests.**” According to the Public Opinion Barometer in 2019, over 50% of Moldovans believed that no political party or civic formation represented their interests, and only 49% reported voting during the 2019 parliamentary elections.

The latest local elections in the Republic of Moldova took place in October 2019, and according to a Promo-LEX report,<sup>111</sup> **898 mayors’ offices and 11,580** offices of first-level and second-level local councillors (100 fewer than in 2015) were to be taken up in the last general local elections. The term of office for local elected officials is four years.

Overall, the pre-election period was characterised by dominant themes such as the oligarchisation/capture of the state and the efficient management of administrative-territorial units, as opposed to geopolitical issues and the pro-Russian or pro-EU vectors of discourse prevalent in previous local elections.

In the context of general local elections and new parliamentary elections, considerable attention was given to several issues concerning the misuse of administrative resources – for example, the use of public assets and/or public office for electoral purposes. At least eight cases have been reported in this category, three of which covered the ACUM electoral bloc, two – the PSRM, the other two – the PDM and one case – the PCRM. Electoral assemblies organised at state institutions with their employees during their working hours remain to be a persistent practice of electoral candidates. During the electoral period, at least 152 cases were reported of candidates holding such meetings.<sup>112</sup>

In its report from October 2019<sup>113</sup> the ENEMO International Election Observation Mission raised concerns regarding allegations of misuse of administrative resources, namely the involvement of mayors’ office workers, as well as independent candidates using their official positions to influence the election campaign. Another concern was the use of mayoral property and resources for campaigning.

### *Legislation*

Moldovan legislation on the use of administrative resources during the election period, and election campaigning in particular, is deficient according to a Promo-Lex report.<sup>114</sup> Even though the legal framework has been modified, the problem of explicit and full regulation of the use of administrative resources still remains unsolved.

Article 52 (7) of the Electoral Code on Electoral Campaign<sup>115</sup> stipulates that candidates may not use public means and goods (administrative resources) during electoral campaigns, while public authorities/institutions and other related institutions may not send/grant public goods or other benefits to candidates unless a contract is concluded to this end, providing equal terms to all candidates. According to Article 22 (2) of the Central Electoral Commission General Duties, the Central Electoral

Commission has the right to access the information held by public authorities at all levels, including access personal data, in compliance with the legislation on personal data protection.

The Criminal Code of the Republic of Moldova<sup>116</sup> has two important articles in this regard: Article 181 (1), *Corruption of Voters*, which is punishable by a fine ranging from 500 to 850 conventional units or by imprisonment between 1 to 5 years; and Article 181 (2), *Illegal financing of political parties or electoral campaigns, violation of the management of financial means of political parties or electoral funds*, which stipulates the penalties applied for the falsification of reports on the financial management of political parties and/or of reports on the financing of electoral campaigns with the intention to substitute or hide the identity of the donors.

According to experts, the legal framework should provide a clear jurisdiction in case of electoral complaints on the misuse of administrative resources both by candidates and third parties, to provide an effective enforcement mechanism that would prevent potential violation.<sup>117</sup>

### *Example of case law*

On 6 June 2019, the candidate Dimitri Manol submitted a statement (*zayavleniye*) to the Găgăuzia Central Electoral Commission and to the Ministry of Education on misuse of administrative resources. The complainant posited that the Head of the Education Department obliged all school headmasters to report on the number of personnel that participated in the elections of the Governor (Bashkan) and threatened with dire consequences, including job dismissal, to those who would not vote on 30 June in the Elections of the Governor of Găgăuzia.<sup>118</sup>

According to the Electoral Code (Article 66), a complaint may be filed on an action or inaction of a **candidate**. Since Mr Manol's statement concerned the actions of the Head of the Education Department, the Central Electoral Commission found it inadmissible. However, according to the Electoral Code, if the subject of a complaint does not fall within competences of an electoral organ to which it was submitted, the complaint should be forwarded to a competent organ within two calendar days (Article 67.5). The misuse of administrative resources and assistance in it are criminal offences punishable by a fine ranging from 4,000 to 6,000 conventional units<sup>57</sup> (MDL 200,00 to 300,000), and three years of imprisonment, along with deprivation of holding certain offices and of engaging in certain activities for two to five years (Criminal Code of the Republic of Moldova, Article 181 (2)).<sup>119</sup>

## 2.8. EXTORTION

Extortion is the use of coercion to obtain money, goods, services, or some other advantage from an individual or institution. Beyond the damage it does to the victim, extortion reduces public trust in government and can discourage business growth and investment in the area.

### *International standards*

As one type of corruption, extortion is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>120</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>121</sup>

- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**<sup>122</sup> aims to coordinate criminalisation of corrupt practices and improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**<sup>123</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**<sup>124</sup> aims to fight corruption involving officials from the EU or its Member States.

### *Domestic context*

In the Monitoring Survey on the National Integrity and Anti-Corruption Strategy Impact conducted in 2019,<sup>125</sup> participants were asked to answer the question whether, during the last 12 months, they encountered any corruption cases coming from public agents. The share of answers provided by the population and businesses that have encountered any of the mentioned cases does not exceed 6% in the study. Extortion of funds (obtaining money by force) was indicated by 2% of the respondents among the general population and by 1% among businesses. It can be observed that there have been few cases, and in comparison with the previous study, there has been a decrease in the share of affirmative answers for all the variants of answers (*Misappropriation and fraud, Use of working time for personal purposes, Requesting favours of any form, Favouritism, bribe, abuse of power, traffic of influence*).

According to the National Anti-Corruption Centre, in 2018, there were a total of 700 corruption acts, of which 42 involved **mayors, and the most affected communities were Chişinău, Bălţi, UTA Găgăuzia, Cahul, Criuleni, and Soroca.**

### *Legislation*

The following articles from the Criminal Code of the Republic of Moldova set the legal framework in this field:

- Article 324 (1) on Passive corruption;
- Article 325 (1) on Active Corruption;
- Article 326 (1) on Influence peddling;
- Article 327 (1) on Abuse of power or official misconduct, and;
- Article 328 (1) on Excessive power or exceeding work attributions.

### *Example of case law*

Three officials, including a mayor, a former mayor and a local councilor from Gotesti, Cantemir district, allegedly extorted almost MDL 600,000 from an economic agent. According to the National Anticorruption Center, such action was aimed at favouring a decision of the Local Council in exchange of money, which would in turn, favour the businessman to receive around MDL 6 million for the renovation of the local Youth Center. At the same time, National Anti-Corruption Center representatives specify that the three officials would have claimed the equivalent of 10% of the MDA 6 million in several installments, the amount that the Local Council was to allocate to the winning company, in order to include this on the agenda of the draft decision. Currently, two people are detained in prison and under criminal investigation, and another without being detained. All three risk up to 10 years in prison, a fine and deprivation of the right to hold public office.<sup>126</sup>

## 2.9. PATRONAGE

Patronage is the use of an official position to appoint a person in a public office based on favouritism, often in exchange of political support. It can be closely linked to the concepts of clientelism, cronyism and nepotism. Patronage results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It violates the boundaries of legitimate political influence and the principles of merit, and leads to public money being misspent.

### *International standards*

As one type of corruption, patronage is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>127</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>128</sup>
- The **Council of Europe's Criminal Law Convention on Corruption** (ETS No. 173)<sup>129</sup> aims to coordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**<sup>130</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism** within local and regional authorities<sup>131</sup> sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**<sup>132</sup> aims to fight corruption involving officials from the EU or its Member States.

Since the misuse of administrative resources during electoral processes is the most widespread manner to use patronage as a form of corruption, the following international standards are of relevance:

- The Congress of the **Council of Europe's Resolution on the Misuse of Administrative Resources during Electoral Processes: The Role of Local and Regional Elected Representatives and Public Officials**<sup>133</sup> provides international standards and best practices to tackle the misuse of administrative resources.
- Joint Guidelines of the Venice Commission and OSCE/ODHIR for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes<sup>134</sup> aim to assist decision makers in adopting laws and initiating concrete measures to prevent misuse of administrative resources.

### *Domestic context*

Reporters wrote on anticorruptie.md that 2018 was marked by several controversial appointments and promotions to senior positions in certain major state institutions of the country. Some of them raised questions about the criteria for promotion. Experts qualified these appointments as political decisions, and explained that the government had merely rotated some people from one job to another.<sup>135</sup>

The Survey on Anti-Corruption Strategy Impact Monitoring from 2019 measured public agents' perceptions with regards to measures needed to be taken to eliminate favouritism situations in the public sector. Of those surveyed, 62% (69% in 2017) thought that the superior hierarchical leader should be announced, 37% (41% in 2017) considered that cases of favouritism should be reported to the National Anti-Corruption Centre, and 32% in both surveys advocate for denunciation at the National Integrity Authority. Survey results show that most public agents declare that the requirements of the institutional integrity are respected in the institutions they work in. Among the main causes of non-declaration of

conflicts of interest by public agents are the lack of knowledge of the procedure (47% in 2019, 54% in 2017) and the gain of personal benefits (financial, material or other) (33% in 2019, 42% in 2017).

The results of the survey indicate that public agents have a high level of knowledge regarding legal/illegal situations in the regime of conflict of interests and the non-admission of favouritism: about 87% (77% in 2017) of public agents offered correct answers to all possible situations of corruption concerning the regime of conflict of interests and non-admission of favouritism.<sup>136</sup>

### *Legislation*

The Law on Integrity No. 82/2017 provides a definition for favouritism, which consists of the *“support provided by the public agent whilst exercising his function to the natural persons or legal entities when solving their problems, regardless of the motives, which is not provided for by normative acts and does not meet the elements of a conflict of interests or the elements of an offence”*.

Article 15 on Avoidance of favouritism stipulates the following:

- 1) *For the purpose of serving public interest with impartiality and objectivity, favouritism practices in public entities are inadmissible.*
- 2) *A public agent is obliged to reject favouritism in his/her professional activity;*
- 3) *The head of the public entity is obliged:*
  - a) *to not knowingly admit favouritism practices in the professional activity of the public agents from the entity he/she leads;*
  - b) *to report cases of favouritism to the National Anti-Corruption Centre.*

### *Example of case law*

According to the website *“Anticorupție”* ([anticoruptie.md](http://anticoruptie.md)), Silvia Radu was favoured into the position of Minister of Health, Labour and Social Protection despite being suspected of numerous illegalities in her previous position. From November 2017 to April 2018, Ms Radu served as acting General Mayor of Chisinau, having been appointed by the former interim Mayor Nistor Grozavu. During the term of office, Silvia Radu was accused of having committed abuses and rigging public tenders.<sup>137</sup> In May 2018, during the electoral campaign for local elections, several representatives of civil society accused the Constituency Electoral Council of Chişinău and the Central Electoral Commission of violating the provisions of the Law on Access to Information, as well as other laws, admitted by Silvia Radu in the race for the General Mayor’s office. Over 2,000 falsified signatures, with no identity data, of deceased persons, as well as other errors, were found in the subscription lists of the candidate Silvia Radu. For Silvia Radu to enter the electoral contest, five deceased persons had **“signed”**, as well as 430 people who do not live in the relevant community and 898 who failed to indicate their ID details.<sup>138</sup>

## Chapter 3

# TRANSPARENCY

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### 3.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation.

Access to information supports accountability along with informed public participation in decisions, and is therefore fundamental for the effective functioning of democracies.

#### *International standards*

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The Council of **Europe’s Convention on Access to Official Documents** (CETS No. 205)<sup>139</sup> affirms an enforceable right to information.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**<sup>140</sup> call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.
- The Aarhus Convention<sup>141</sup> grants rights, including access to information, in decisions concerning the environment.
- The OECD Recommendation of the Council on Open Government<sup>142</sup> identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

#### *Domestic context*

According to the Freedom in the World Global Report for 2020, the Republic of Moldova scores 60/100 with 26/40 political rights and 34/60 score in civil liberties, which places the Republic of Moldova in a ‘partly free’ status country.<sup>143</sup>

The right to information is guaranteed by the Constitution of the Republic of Moldova in Article 34.<sup>144</sup> The Law on Access to Information has been granting access to public data since 2000.<sup>145</sup> However, there are numerous challenges still associated with requesting access to public information, including obstruction by government officials, refusals or delays in replying to requests for access to information, and purposefully incomplete or vague responses to requests for information.<sup>146</sup>

On the major challenges in the implementation of the Republic of **Moldova’s right to information system** is the absence of an institution responsible for monitoring the implementation of the guarantees of access to information and aggregating statistical data on the number of public information requests submitted, accepted, or refused by state administration bodies. In the case of a refusal to share information, the applicant usually does not know what to do and is not informed of the grounds for refusal and the right to appeal.

A Freedom House report from 2020<sup>147</sup> states that *“all principles of transparency and access to public information have been neglected while promoting major draft decisions, with a strong impact on corruption prevention and on society as a whole. In certain cases, under the cloak of ‘personal data protection’, access to information of public interest was systematically restricted (depersonalisation of court decisions)”*.

The Republic of Moldova’s regulatory framework has great potential to address corruption, ensuring transparency, accountability, and open government overall. However, much needs to be done until the relevant law is implemented in practice. Efforts are being put in place by the Moldovan Parliament to improve access to information: *“Now, public authorities understand better than ever how important it is to guarantee access to information, particularly because being opened to society means having the advantages of credibility, efficiency and responsibility”*.<sup>148</sup>

The Republic of Moldova is currently implementing its 4th National Action Plan on Open Government, based on the principles of access to information, open data, and transparency.

### *Legislation*

The Law on Access to Information (adopted in 2000) only restricts public access to state secrets, confidential business information submitted to public institutions under conditions of confidentiality, and personal data, the disclosure of which may be considered **interference in one’s private life**.<sup>149</sup>

Subjects of the present law are information providers and information seekers. Information providers that are holders of official information required under the present law to provide such information to applicants are:

1. local and central public authorities;
2. local and central public institutions – organisations founded by the state, represented by public authorities that are financed by the state budget, who are responsible for administrative activities, those in social-cultural domains or other non-commercial activities.

In addition to the Law on Access to Information, here are some other important legislative acts:

- The Law on Approving the National Development Strategy of the Personal Data Protection Domain (2013-2018)
- The Law on Personal Data Protection (2011)
- The Code of Television and Radio Broadcasting (2006) (excerpts)
- The Law on National Security Agencies (1995) (excerpts)
- The Law on State Security (1995) (excerpts)
- The Law on Informatics (2001) (excerpts)
- The Law on Informatisation and State Information Resources (2004) (excerpts)
- The Criminal Code (2009) (excerpts)
- The Law on State Secrets (1994).

Article 21 of the Law on Integrity stipulates that *“Ensuring access to information of public interest should be made more efficient through fostering active participation of citizens in decision-making processes, through guaranteeing access to information of public interest regarding the activity of public institutions.”*

**The People’s Advocate (Ombudsman) in the Republic of Moldova has the authority to oversee the implementation of the law; however, this office lacks the capacity and resources to exercise control.**<sup>150</sup> Article 5 of the Law on Access to Information stipulates that the direct subjects of this law are both the central and the local public administration authorities.

Citizens' access to public information is not fully ensured, because the law does not fully clarify the obligations of the public administration to proactively make it available, and the implementation of the law is not monitored.<sup>151</sup>

The Law on Libraries<sup>152</sup> was adopted on 20 July 2017, after over a year of deliberation and consultation. **This new legislation enshrines public libraries' role as providers of free and inclusive public access to information and locally relevant community services.** Article 17 describes the roles and responsibilities of the local public administration authorities under this law.

### *Guidelines*

A guide for journalists on legal access to government information was developed by Access Info Europe and the Network for Reporting on Eastern Europe. It provides a very detailed step by step guidance on access to information, data security, and how to submit a request for information among others.<sup>153</sup>

Another guide for public servants and journalists was developed in 2015 by the Moldovan Independent Journalism Centre and Civil Rights Defenders. It provides a clear illustration of how the Law on Access to Information should be implemented, with specific tips for public servants and journalists.<sup>154</sup>

Local authorities have an important role to play in the implementation of the "right to know" at local level. Hotlines, a user-friendly website for the community, a spokesperson, surveys, information campaigns, and information boards are just a few examples. Local authorities should consider the following advice when developing a website to support access to information:

- Publish local council decisions on the local authority website;
- Digitalise local open data as much as possible, making it available on the website (following the open data principles);
- Ensure that any content published on the website is applicable or relevant to community members;
- Provide citizens with the opportunity to make a request or contact someone for more information;
- Keep information up to date;
- Provide links/references to information available elsewhere, on other governmental or non-governmental websites (e.g. links to national platforms on e-services, national legislation, opportunities for studies, etc.);
- Include a comments section for feedback and provide "feedback on feedback".

### *Good practices*

The tools most frequently used by local public authorities in order to ensure transparency and access to public data are information panels and web portals. In the past years there has been an increase in the use of social networks, which allow local authorities to place timely and relevant information about their activity online.

In an IDIS (**Institutul pentru Dezvoltare și Inițiative Sociale**) "Viitorul" report on Transparency of the Local Public Administration Authorities (2019), all 32 monitored local authorities have webpages, through which access to information is provided. According to the report, a good practice is the use of several search engines for documents developed, examined and adopted by local authorities, including decisions, as it is the case of the Local Councils of Soroca, Ceadâr-Lunga and Strășeni.<sup>155</sup>

## 3.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is «*a set of policies that promote transparency, accountability and value creation by making government data available to all*». By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens.

### *International standards*

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The Congress of the Council of Europe's Resolution and Recommendation on Open data for better public services<sup>156</sup> explain its importance for improving local democracy.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**<sup>157</sup> call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The United Nations Guidelines on Open Government Data for Citizen Engagement<sup>158</sup> introduce policy guidelines and good practice recommendations.
- This World Bank Toolkit<sup>159</sup> starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The Five Star Open Data Deployment Scheme<sup>160</sup> provides five steps to fully opening data, explaining the costs and benefits of each.
- The International Open Data Charter<sup>161</sup> sets out six principles for open, timely and interoperable government data.
- The OECD Recommendation of the Council on Open Government<sup>162</sup> identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

### *Domestic context*

The Republic of Moldova embarked on a national open data initiative in 2011 as part of its Governance e-Transformation Agenda. The initiative has drawn support from the highest levels of government, with two prime-ministerial directives and new legal provisions solidifying the country's commitment to opening up government data by default. Led by the e-Government Centre, the initiative has spurred the release of 782 datasets from 39 institutions across the government.

Today, there are more than 1,000 datasets on the portal and several apps based on this data.<sup>163</sup> One critical factor contributing to the success of the initiative was the political support from the Prime Minister and the State Chancellery. Other crucial elements have been the solid legal framework and the development of the open data portal ([date.gov.md](http://date.gov.md)).

The Republic of Moldova participated in two editions of the Open Data Barometer (2015/2016), having one of the highest rates among Eastern Partnership countries.<sup>164</sup>

Since 2020, the Republic of Moldova is included in the annual Open Data Maturity assessment.<sup>165</sup> This is a research project on the state of maturity of open data in EU Member States, EFTA countries, and Eastern European Partnership countries, including the Republic of Moldova.

## Legislation

The Republic of Moldova succeeded in developing a solid legal and policy framework to pave the foundations for its open data initiative. Open data principles were embedded in the Governance e-Transformation Agenda (Strategic Programme for Governance Technological Modernisation (e-Transformation), approved in September 2011.

The passing of the Law on Public Sector Information (PSI), in line with European Union directives, aimed to boost the open data agenda in government. To enforce this law, the Ministry of Information Technology and Communications developed methodological norms for implementation.<sup>166</sup> These set out the terms and conditions for accessing and reusing PSI and developed an open data license for the **Republic of Moldova's public data**.<sup>167</sup>

In addition, the Republic of Moldova approved a national open data policy which aims to achieve open data in government by default. The policy brings clarity to the data publishing process, provides for machine-readable formats to be used for the publication of data, and defines standards on data collection, archival, and publishing. Every ministry and government agency are to embed an open data action plan in their sectoral governance e-transformation action plan, which is to support and expand the implementation of open data initiative in government.<sup>168</sup>

## Guidelines

A methodology for publishing open government data has been approved through the Government Decision No. 701 of 25 August 2014.<sup>169</sup> It sets clear guidelines for the publication of open data and is mandatory for all central public administration authorities. It sets clear requirements for the open data portal, the nature of the data to be released via the portal, who is to have access to publishing the data, and the rights and responsibilities of the persons involved in releasing the data. The methodology also specifies the format and frequency of the data publishing.

The guidelines were developed by the e-Government Centre of the Republic of Moldova back in 2014, based on the G8 Open Data Charter principles.<sup>170</sup>

## Good practices

More than 1000 open data sets are available on the national open data portal, [www.date.gov.md](http://www.date.gov.md), with several valuable applications being available to the public sector, local governments, and citizens. The Chişinău municipality launched an online application based on open data in order to allow the monitoring in real time of the special vehicles across the capital. This allows application users to track where and what kind of equipment is involved, and for what kind of work. Each truck/vehicle (there are 109 altogether) is fitted with a GPS monitoring system that transmits relevant information to the central server ([gps.navisat.md](http://gps.navisat.md)).

## 3.3. DISCLOSURE: DECLARATION OF ASSETS AND CONFLICT OF INTEREST

Disclosure is the act of routinely publishing certain information, sometimes required by law. It can support anti-corruption measures by requiring the routine publication of assets and declarations of conflict of interest, for example. It can also be for more positive reasons, such as to support policymaking, or by ensuring that the public are better informed and therefore able to contribute more effectively.

### *International standards*

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The Committee of Ministers of the Council of Europe's **Recommendation on Codes of Conduct for Public Officials**<sup>171</sup> and the European Code of Conduct for all Persons Involved in Local and Regional Governance<sup>172</sup> require private interests to be declared, made public and monitored.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest** at local and regional level<sup>173</sup> call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**<sup>174</sup> provides practical instruments for modernising conflict-of-interest policies.
- The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**<sup>175</sup> identifies the key elements of asset declaration systems.

### *Domestic context*

While the e-declaration system introduced by the National Integrity Authority is mandatory, together with a mechanism for filing civil **servants' assets and conflict of interest statements, challenges remain, such as concerns about the Authority's independence**, stemming from its selective delivery of certificates of integrity to individuals who had been sentenced to jail.

Some other challenges include low salaries for integrity inspectors, which have been drastically reduced under the new Law on a Unitary Salary System, and a lack of collaboration with CSOs and the journalists who brought to its attention substantiated cases of corruption.<sup>176</sup>

### *Legislation*

Despite general agreement that the system for the verification of asset declarations should be improved, the reform has been met with strong political resistance. New legislation introduces harsher sanctions for unjustified wealth and conflicts of interest, and ultimately would affect many dishonest public servants and dignitaries. The European Union and the World Bank reacted decisively to the resistance of the Moldovan Government, suspending financial assistance and requiring specific structural reforms, including one that is aimed at strengthening the oversight role and independence of anti-corruption institutions.

Thus, by mid-2016 the legislative package on integrity was passed by the government and Parliament:

- Law No. 132 of 17 June 2016 on the National Integrity Authority;
- Law No. 133 of 17 June 2016 on Declaration of Assets and Personal Interests, and;
- Law No. 134 of 17 June 2016 on the Amendment and Completion of Legislative Acts, all of which are part of the package of laws on integrity.

Article 13 of the Law on Integrity No. 82/2017 sets the framework for the *"compliance with the regime for declaring assets and personal interests"*, while Article 14 of the same law sets up the framework for the compliance with the conflicts of interest regime.

### *Guidelines*

The National Commission of Integrity has the responsibility to control income and property statements of civil servants and ensures transparency by publishing them on its web page. The new legislation

provides for an online submission and verification of asset and interest declarations (E-integrity system).<sup>177</sup> It is expected that it will increase the efficiency and speed of verification procedures, as the system will be connected to all public and private registers. The electronic submission of declarations has been mandatory since January 2018.

### *Good practices*

One of the most ambitious examples in this case is the publishing of data on beneficial ownership (i.e. who owns companies) through the e-portal IDNO ([idno.md](http://idno.md)), which allows users to search for data and look into a **company's** historic information, as well as to generate infographics. Currently, there is data available on approximately 215,000 companies that have been registered in the Republic of Moldova since 1991. Data on the platform is being updated automatically on a monthly basis. In the long run, the team behind this portal aims to connect data results of public procurements to companies which have won tenders throughout the years. Another useful portal with data on beneficial ownership is the Open Database of the Corporate World ([opencorporates.com](http://opencorporates.com)).

## 3.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with the relevant laws and rules of the country to support those external to government to hold it to account. External audit can also look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

### *International standards*

- The International Public Sector Accounting Standards<sup>178</sup> focus on the accounting, auditing, and financial reporting needs of national, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The International Standards of Supreme Audit Institutions<sup>179</sup> website contains a complete collection of professional standards and best practice guidelines for public sector auditors.
- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

### *Domestic context*

The EU-Moldova Association Agreement includes commitments (Article 22) related to Public Administration Reform. Among the key areas for cooperation in the field of public finances are: budgetary policy, internal control, financial inspection, and external audit which regulates the budgetary and accounting systems, internal control, financial inspection and external audit, the fight against corruption and fraud.<sup>180</sup>

In addition to this, Article 49 (e) of the same agreement puts in place external audit standards set internationally by the International Organisation of the Supreme Audit Institutions (INTOSAI).<sup>181</sup>

### *Legislation*

The Court of Accounts (CoA) is a Supreme Public Audit Institution and acts in accordance with the provisions of the Law on the Court of Accounts No. 261 of 5 December 2008.<sup>182</sup> It exercises control over

the formation, administration and use of public financial resources and public patrimony management, by conducting external audit in the public sector and ensuring compliance with international standards on best practices in the field of external public audit by the country. The relevant law guarantees the independence of CoA.

The Public Administration Reform Strategy for 2016-2020 sets out the **government's** vision, including the goals of “*developing effective, accountable and transparent institutions at all levels*” (SDG target 16.6)<sup>183</sup> and to “*ensure responsive, inclusive, participatory and representative decision-making at all levels*” (SDG target 16.7).<sup>184</sup> External and internal audits are foreseen in the PAR strategy.

### *Guidelines*

The Court of Accounts is assigned as the responsible institution for the external audit of the management of public funds in Article 13 of the Law on the Budgetary System and Budgetary Process. The CoA has successfully performed a number of audits in recent years.

There are several guides developed by the Court of Accounts:

- Guidance on the audit of state revenues;
- Guide on key indicators for evaluation of the audit activity, including in the monitoring of the execution requirements and implementation of the Court of Auditors' recommendations;
- Guidance on the strategic planning process of performance audits;
- Quality Framework Guidelines.<sup>185</sup>

### *Good practices*

The EU Twinning Project on Developing an Effective Internal Control and Audit Environment in the Public Sector was closed in 2019.<sup>186</sup> The project provided support to the Moldovan Ministry of Finance in the process of reforming public finance management, by strengthening the internal control and audit environment in line with best EU practices.

As a result of the project, amendments were made to the Law on Public Internal Financial Control; a range of secondary regulations, guidelines, and methodologies related to the sector were developed; 15 trainers/multipliers in the field of internal audit have been trained, and the level of expertise of internal auditors in the public sector, of managers and coordinators of internal managerial control increased.

These results were obtained by training employees, exchanging experience with EU Member States' experts, implementing surveys and other assessments. The final results of the project and its benefits for Moldovan citizens will become more visible once the new normative framework is implemented and the new methodologies begin to be applied, thus facilitating both the development of internal managerial control systems and the increase of quality in internal audit activity.

The project must be seen as a library, a toolbox that experts have filled with instruments, methodologies, and recommendations, which may be used anytime and transposed into practice.

## 3.5. PUBLIC PROCUREMENT

Public procurement refers to the process by which public authorities, including local authorities, purchase work, goods or services.

As public procurement is an essential part of public service provision for local and regional authorities, efficient procurement is key to good governance. However, as procurement involves a large proportion of public expenditure and the transfer of public resources to the private sector or non-profit organisations, it is particularly vulnerable to corruption.<sup>187</sup>

Therefore, public authorities have to increase transparency over public procurement, with the help of new technologies, and allow greater scrutiny. Open contracting systems will also create a preventive effect, because officials will refrain from manipulating the contracting process, if they know that the details will be revealed.

### *International standards*

- The **Congress of the Council of Europe's Resolution and Recommendation on Making public procurement transparent at local and regional levels**<sup>188</sup> and the OECD Checklist for Enhancing Integrity in Public Procurement<sup>189</sup> provide guidance for enhancing transparency and promoting integrity in procurement.
- The OECD Recommendation of the Council on Public Procurement<sup>190</sup> promotes a strategic and holistic use of public procurement systems across all levels of government and state-owned enterprises. The online Public Procurement Toolbox<sup>191</sup> provides policy tools, specific country examples as well as indicators to measure any public procurement system.
- The WTO Agreement on Government Procurement<sup>192</sup> establishes rules requiring that open, fair and transparent conditions of competition be ensured in government procurement.
- The EU Directive on Public Procurement<sup>193</sup> ensures the best value for money for public purchases **and guarantees the respect of the EU's principles of transparency and competition.**
- The UNCITRAL Model Law on Public Procurement<sup>194</sup> is a legal template available to national governments seeking to introduce or reform public procurement legislation for their internal market.
- The European Bank for Reconstruction and Development (ERBD) Guide to Electronic Procurement Reform<sup>195</sup> provides information on and assistance with designing and implementing national eProcurement reforms.

### *Domestic context*

According to a report of the European Committee of Regions,<sup>196</sup> some of the main problems in the Republic of Moldova regarding public procurement, as reported by experts, are: lack of transparency (77%), nepotism (65%), and untrained personnel (54%).

In the municipality of Bălti, waste disposal and cleaning contracts are flagged as opaque and preferential. Often, improprieties in the administrative process are publicly linked to the personal interests of the incumbent mayor – in this case, Renato Usatâi.

Other public services affected by corruption in the procurement process are the medical and educational centres that fall under the authority of local administrations (given the process of decentralisation). Studies show that the most widespread practice is to organise and arrange public procurements through dubious schemes related to the execution of the contracts. Most frauds in the public procurement sector contain an element of corruption and conflict of interest. A conflict of interest occurs when the representatives of the contracting authorities involved in the procurement process use their status and position to award contracts to companies in which they have financial or managerial interest. For example, cases were identified with contracts being awarded to companies whose founders were relatives of the decision-making representatives.

## Legislation

The Ministry of Finance has been working throughout the past years on designing and implementing public procurement policies that help ensure a functional, efficient and transparent legal framework for public procurement, including its harmonisation with EU Directives and international standards.

Public procurement in the Republic of Moldova is mainly governed by Law No.131 of 3 July 2015, which entered into force on 1 May 2016. The law is transposing the EU Directives 2004/18/CE, 89/665/CCE, and (partially) 2014/24/UE. The government has further approved a set of secondary legislation intended to facilitate the implementation of this law.

The Ministry of Finance has developed the 2016-2020 Strategy for the Development of the Public Procurement System and the Action Plan on its implementation, approved by the Government Decision No. 1332 of 14 December 2016, in order to implement the provisions of the EU-Moldova Association Agreement and the World Trade Organisation Government Procurement Agreement, which the Republic of Moldova had joined on 14 July 2016.

Amendments to Law No. 131 of 3 July 2015 were adopted by Parliament in September 2016 and as a result, the National Complaints Agency was to be then established by Parliament; this only happened a year later, in September 2017. Establishing this entity aimed to eliminate the conflict of competencies from the activity of the Public Procurement Agency, a specialised body subordinated to the Ministry of Finance, which ensures the implementation of the public procurement policy.

On 30 November 2016, a memorandum was signed between the Ministry of Finance, the Public Procurement Agency, the Electronic Governance Centre, several business associations, and CSOs and IT companies. It aimed to pilot the new multi-platform hybrid eProcurement system for micro value procurements.

Order No. 30 of 10 February 2017 of the Minister of Finance *On Piloting the Public Procurement System for Low Value Contracts* entered into force, according to which the Ministry of Finance and all subordinate administrative authorities shall apply the e-procurement system in pilot regime for low value public procurement.

## Guidelines

In April 2017, a pilot of the MTender ([mtender.gov.md](http://mtender.gov.md)) e-procurement system – a partnership between the Ministry of Finance and four commercial electronic platforms – was launched with support from European Bank for Reconstruction and Development (EBRD).

Since March 2018, economic operators registered in the Republic of Moldova are able to use MTender for signing online contracts, both public and commercial ones. Public bodies funded from the state budget may use MTender for signing any public contract and registering it with the Treasury of the Republic of Moldova.

On 27 July 2018, the Law on Public Procurement No. 131 was amended in order to introduce electronic tendering procedures as a standard for all public sector entities in the Republic of Moldova.

Starting from 15 October 2018, new types of electronic tendering procedures became available on MTender, to suit different types of contracts and serve different public and commercial buyers, including state-owned enterprises.

MTender uses all eGovernment solutions that have been developed by the e-Government Agency ([egov.md](http://egov.md)) with the support of the World Bank: MCloud, MConnect, MPass, MSign, MPay, and eFactura.

The EU Delegation to the Republic of Moldova is currently assessing the results of the pilot and is to decide on ways to support the Ministry of Finance on the further development of MTender for the years ahead, or propose a better alternative to the current electronic procurement system.

### *Good practices*

MTender ([mtender.gov.md](http://mtender.gov.md)) is a unique and innovative multi-platform electronic procurement service using open source, open data and open contracting data standards. It aims to support all key relevant stakeholders in the implementation of the principles of Open Government, based on the principles of transparency, accountability, and stakeholder engagement in the collaborative delivery of public services. It provides an open data scheme describing how to release documents and data at each stage of a contracting process as machine readable, flexible, complete and re-useable data.

The MTender system aims to ensure the electronic processing of the full procurement cycle, from the procurement planning stage to the last payment made when the public procurement contracts are finalised. It also aims to provide tools dedicated to the special ways of awarding public contracts, such as electronic auction, electronic catalogues, and framework agreements. MTender consists of a web portal, the Open Data central database unit, three main networking commercial electronic platforms interconnected with the portal and the central database, as well as several e-government services, in order to provide a seamless digital procurement service for public sector and commercial buyers in the Republic of Moldova.

MTender represents the 2.0 version of the State Registry of Public Procurement automated information system and is an information system compatible with Cloud computing, to be hosted on the MCloud. MTender is a state-of-the-art modern, cloud-based, integrated and interoperable e-government solution, using the latest technologies to deliver end-to-end digital public procurement, from planning public spending to payment for public contracts.

## Chapter 4

# CITIZEN PARTICIPATION

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### 4.1. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allows civil servants and elected officials to identify where public services are being delivered ineffectively or inefficiently. When such mechanisms deal with complaints quickly, they can help to create the conditions for increased trust. If used proactively, complaints mechanisms can also help governments to identify new ideas and increase citizen participation.

#### *International standards*

There are no specific international standards for complaints mechanisms relating to public services. However, there are a number of helpful civil society guidelines and handbooks. See, for example:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>197</sup> provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- The Transparency International's **Reference Guide on Complaints Mechanisms**<sup>198</sup> sets out guiding principles and good practices for establishing and implementing complaint mechanisms which provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.
- The **Danish Refugee Council's** handbook<sup>199</sup> describes how to set up and manage a complaints mechanism.
- The World Vision overview of the tools and mechanisms used by development agencies to receive complaints.<sup>200</sup>

#### *Domestic context*

According to the World Justice Project Rule of Law Index 2019,<sup>201</sup> the Republic of Moldova scores 0.49, with scoring ranging from 0 to 1, where 1 indicates the strongest adherence to the rule of law. Thus, the Republic of Moldova ranks 83 in the global rank (with 126 participating countries) and ranks 9 in the top 13 countries of Eastern Europe and Central Asia, which Georgia leads.

Given the broad definition of complaints mechanisms and right to participate in public affairs, a range of different remedies may be required, but necessary to all is an existing and functioning judiciary that is independent and impartial.

The Good Governance component (central and local administration) in the Action Program of the Government for 2016-2018<sup>202</sup> (22) states: *"To introduce minimum quality standards for public services and an indicator system to monitor/assess their quality, as well as instruments to submit complaints related to public services provided under standard."* However, there is no evidence of the results of this activity from the plan.

When it comes to accountability in **the public sector, it is important to mention that the People's Advocate** institution has not reached full operational capacity, while citizens' right to compensation for damage caused by maladministration or omissions is not fully ensured. Among weaknesses related to service delivery are:

- Public services delivered to citizens are not based on the same standards across all public institutions and no institution is responsible for defining and ensuring minimum quality benchmarks in service delivery;
- A comprehensive legal framework to protect citizens against maladministration and unjustified administrative decisions does not exist;
- Users with special needs face many challenges in accessing public services and obtaining information about services.<sup>203</sup>

### *Legislation*

In order to ensure high quality public services, the Moldovan Government established its Public Services Agency on 26 April 2017. The Public Services Agency was set up in accordance with the provisions of the Public Administration Reform and the Action Plan on the Reform of Public Service Modernisation for 2017-2021. It is based on a one-stop shop principle for providing public services and ensuring their digitization, including the streamlining of operational processes and the reduction of costs incurred by citizens.<sup>204</sup>

The Law on Petitioning is another important document, which is addressed separately in this Handbook.

**The Republic of Moldova does not have a separate law/policy document regulating citizens' complaints,** but local authorities ought to establish complaints mechanisms in order to receive feedback on the standards of the services they provide.

### *Guidelines*

The good governance component of the Government Programme for 2016-2018 introduced minimum quality standards for public services and monitoring indicators for quality assessment, as well as tools for the submission of complaints regarding delivered public services.<sup>205</sup> The current Government Programme for 2020-2023 includes objectives such as the increase of the quality and accessibility of public services provided for citizens and business, and the improvement of the electronic services provided to citizens and entrepreneurs.<sup>206</sup>

### *Good practices*

So far, the Citizen Report Card survey,<sup>207</sup> conducted for the first time in the Republic of Moldova in 2010, is the only comprehensive exercise that took place in the public space, providing comprehensive information on services delivered by 30 public institutions. The survey was conducted in 173 locations, of which 12 were urban communities and 161 rural ones. At the 95% confidence level, the survey has a margin of error of  $\pm 1.7\%$ . Key issues investigated by the survey were the level of utilisation and means of accessing and contacting public institutions, perceptions of the quality of service provision, and difficulties faced by citizens in accessing services.

The study has revealed that there are levels of dissatisfaction with the delivery of public services which should be further investigated if improvements are to be made. Qualitative studies would help identifying the causes of such dissatisfaction, as well as finding out in further detail how the public feels service provision might be improved.

Local authorities can use the methodology of this study in order to conduct their own regular Citizen Report Card surveys at local level, which would help them identify gaps/irregularities and areas for improvement.

## 4.2. OPEN POLICYMAKING

Open policy making is a broad term describing policy development which is transparent and participatory. It describes a way of making policy and decisions which draw on the latest analytical tools and are interactive in nature. There is no one-way to do open policy making: different policy decisions will need different approaches.

### *International standards*

Although there are no specific open policymaking standards, the following provide a useful starting point:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>208</sup> provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe's Guidelines for civil participation in political decision-making**<sup>209</sup> sets out standards for engaging with citizens and civil society.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**<sup>210</sup> provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The OECD Recommendation on Open Government<sup>211</sup> helps to design and implement successful open government strategies and initiatives.
- The **OECD's Guiding Principles**<sup>212</sup> support the development of a culture of openness.
- The **OECD's Focus on Citizens: Public Engagement for Better Policy and Services**<sup>213</sup> explores how to put open policymaking into practice.
- The **OECD's Observatory of Public Sector Innovation**<sup>214</sup> lists useful toolkits and resources.
- The Open Government Partnerships Guide<sup>215</sup> and Toolbox<sup>216</sup> provide an extensive range of support.
- Both Australia<sup>217</sup> and the UK<sup>218</sup> have both produced useful toolkits.

### *Domestic context*

As a member of the Open Government Partnership since 2012, the Republic of Moldova has been using the term *open policymaking* in relation to the open government agenda and the co-creation of national action plans on open government. This agenda brings a whole new culture of openness in government (both at central and local levels).

Open policymaking is about being open to new ideas, new working methodologies, new insights, and new evidence. Moreover, it brings citizens into decision-making processes along with sectoral experts and professionals. As a result, the quality of decisions made is improved and responds to citizens' **needs**, which in turn generates a greater sense of ownership and internal pressure for change, along with increased trust (if the government has the appropriate feedback mechanisms in place).

Open policymaking goes deeper than transparency and public consultation: it brings together the right tools, approaches, and techniques in order to be able to listen to a diverse group of citizens, irrespective of their age, social status, or religion, among others.

## Legislation

The Law on Transparency in Decision-Making Processes of 2008 has been modified and amended. Following this, it was supplemented by the Government Decision on Consultation Mechanisms with Civil Society on Decision-Making of 8 August 2016. The current government decision sets the framework for consultation, describing the step-by-step tasks, roles, and responsibilities of the authorities, including deadlines, consultation methods, and transparency of the adoption of decisions. It also recommends that local public administrations update their internal procedures related to the transparency of the decision-making process.<sup>219</sup> Article 16/1 of the Law on Transparency in Decision-Making mentions that a person infringing this law would bear disciplinary and administrative responsibility.

Specific commitments to ensure a participative decision-making process for drafting and promoting draft normative acts and policy documents were part of National Action Plan on Open Government 2016-2018, along with a commitment on promoting the e-Legislation system as a new public consultation mechanism in order to involve citizens more actively in the drafting of normative acts. However, the completion of this commitment is limited, and the recommendation was to include it in future action plans until the commitment is fulfilled.<sup>220</sup>

## Guidelines

There are no specific guidelines related to the implementation of the Law on Transparency in Decision-Making. However, back in 2014, as part of the National Action Plan on Open Government for 2014, one of the commitments was the development of a guide on citizen engagement (fully based on the Law on Transparency in Decision-Making of 2008). It was a civil society-driven commitment and the guide is available as a Google site, which allows it to be updated at any time.<sup>221</sup>

## Good practices

An external evaluation report by Social Impact on USAID's Accountability in the Republic of Moldova project<sup>222</sup> reveals several good practices in the field of open policy-making and co-creation between citizens and local authorities. Specific tools, such as needs assessment surveys, problem identification, public consultations, public hearings, monthly newsletters, social media, etc., have become more widely used by local authorities in their interaction with citizens. Increasingly, such engagement is related to producing regional development strategies and planning for local services upgrades (waste and water management, green spaces, libraries, and educational institutions). Under AIM's **LEADER activity**, for example, 25 local action groups (LAGs) across the Republic of Moldova allowed local CSOs and active citizens to engage in decision-making. Several representatives of local authorities referenced the LEADER model as a flexible, **grassroots model that enabled cooperation among communities' public, private, and civic sectors** to address local development problems while building the capacity of active citizens and strengthening civic participation.

Through a process of LAG-participant selection, identification of a community priority to address, and provision of funding to address this priority, *"people are getting more confident at the local level and engaging more often in decision-making processes"*, noted one implementing partner. *"[LAGs] are important local platforms."*

The same report shows that mayors and local CSOs frequently mentioned local needs assessments as good instruments to engage communities; in fact, over half of mayors interviewed for this report had conducted such assessments (which engage 500 to 1,000 households) to define community development priorities in alignment with citizen needs. Other popular citizen consultation tools experiencing

increasing use were public hearings, petitions, and local civil society councils, with good quality public hearings taking place in Borogani, Sărata Veche, Leova, Dubăsari, and Comrat.

### 4.3. PARTICIPATORY BUDGETING

Participatory budgeting began in Porto Alegre, Brazil in the late 1980s and has spread worldwide. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

#### *International standards*

Although there are no specific standards for implementing participatory budgeting, the following provide a useful starting point:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>223</sup> provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The Congress of the Council of Europe's **Resolution on Gender budgeting**<sup>224</sup> recommends introducing gender budgeting methods in the annual budgets at local and regional levels.
- The OECD Policy Brief No. 22<sup>225</sup> provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book** *Participatory Budgeting*<sup>226</sup> provides an overview of the underlying principles, analyses current practice and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions** about Participatory Budgeting<sup>227</sup> explores how to implement participatory budgeting.
- The World Atlas of Participatory Budgeting<sup>228</sup> represents the widest compilation of data on the situation of these processes worldwide.
- The **UK's** Participatory Budgeting Unit has a useful list of resources and toolkits.<sup>229</sup>
- The Subnational Open Budget Survey Questionnaire<sup>230</sup> of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The Principles of Public Participation in Fiscal Policy<sup>231</sup> of the Global Initiative for Fiscal Transparency.

#### *Domestic context*

The Republic of Moldova participated in the latest Open Budget Survey (OBS) 2019.<sup>232</sup> OBS is the world's only independent, comparative and fact-based research instrument to assess public access to central government budget information.

One component of the OBS measures public access to information on how the central government raises and spends public resources, scoring each country on a scale of 0 to 100. The Republic of Moldova got 57/100, and the main recommendations are related to improving budget transparency by producing and publishing a comprehensive mid-year review online in a timely manner.

The OBS also assesses formal opportunities offered to the public for meaningful participation in the different stages of the budget process, scoring each country on a scale from 0 to 100. The Republic of Moldova has a public participation score of 4 (out of 100).

While the Republic of Moldova's Ministry of Finance has established public consultations during budget formulation, to further strengthen public participation in the budget process it is important that:

- Mechanisms to monitor budget implementation are piloted;
- Mechanisms during budget formulation are expanding so as to engage any civil society organisation or member of the public who wishes to participate.
- Actively engage with vulnerable and underrepresented communities, directly or through civil society organisations representing them.

At the same time, the Republic of Moldova's Parliament should prioritise allowing members of the public or civil society organisations to testify during its hearings on budget proposals prior to their approval. Additionally, it ought to allow members of the public or civil society organisations to testify during its hearings on the Audit Report.

Back in 2011, the Moldovan Government opened up millions of rows of government expenditure data to the public, but the information remained inaccessible to most citizens, because they did not know how to interpret large amounts of data. Raw data is used mostly by experts and policymakers in their research, while most members of the public often do not see the direct benefits of open data and how it affects their daily lives. Participatory budgeting started being more actively implemented as a mechanism for citizen engagement, transparency and accountability during the past years, particularly with the support of donor-funded projects, and evidence shows that more and more communities across the country are piloting it.

### *Legislation*

Even though there are no specific regulatory frameworks in place which would regiment the implementation of participatory budgeting in the Republic of Moldova, it fits within the existing framework and does not require additional legal adjustments.

More specifically, Law No. 436 of 28 December 2006 on Local Public Administration<sup>233</sup> stipulates that citizens should be consulted: (1) about issues of primary importance for the community (it can be done through a referendum), (2) about the local/specific issues that preoccupy most of the population (through consultations, public hearings, and discussions/debates, under the existent legal framework), (3) on the decisions of the local councils. Article 43 (v) of the same law stipulates that public consultations will be organised for draft decisions of local interest that can have an economic, environmental or social impact, as well as on other problems of importance to the local population

### *Guidelines*

Currently, there are no specific guidelines regarding participatory budgeting in the Republic of Moldova. However, there is a general acknowledgment that the quality of life and comfort of the ordinary citizens depends on the quality of budgeting processes (planning, public consultations, implementation, monitoring, and evaluation), be it at central or local levels. Given the importance of the local budget document, its development, preparation, and execution should be done ensuring maximum transparency.

All local authorities should make their draft budgets publicly available for consultation, by publishing them on the municipal websites, posting them on other local platforms, organising local discussions/debates and presentations. Another important aspect for local authorities is to publish the updated budget document and indicate the feedback received during the consultations. This will generate more trust and more engagement of the population in the long run. It is equally important to publish reports about the execution of the budgets (i.e. progress reports).

### *Good practices*

According to an external evaluation report by Social Impact on USAID's Accountability in the Republic of Moldova project,<sup>234</sup> *“five years ago, there was no discussion about participatory budgeting; now local organisations in 25 cities [are] work[ing] with local governments to learn how to do budgeting together.”* There are several examples of participatory budgeting initiatives across the country: i.e. the **mayor's office of Cahul** launched a call for proposals for the local budget 2019, aiming to improve citizen engagement in decision-making processes.<sup>235</sup> Another good example is the portal *“Buget Participativ”* ([bugetareparticipativa.viitorul.org](http://bugetareparticipativa.viitorul.org)) by IDIS *“Viitorul”*, which provides both guidelines and examples of good local practices.

## 4.4. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency and public involvement in important decisions. Done in a timely and effective way, public consultation will increase the quality of decision-making, improve compliance, reduce enforcement costs and support greater public trust in decision-making.

### *International standards*

Although there are no specific standards for implementing public consultations, the following provide a useful starting point:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>236</sup> provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The OECD Background Document on Public Consultation<sup>237</sup> defines consultation and provides a summary of consultation tools.
- The **Council of Europe's** Guidelines for civil participation in political decision-making<sup>238</sup> set out the different types of civil participation in decision-making.
- The Committee of Ministers of the **Council of Europe's Recommendation on the participation of citizens in local public life.**<sup>239</sup>
- The OECD Recommendation of the Council on Open Government<sup>240</sup> supports initiatives for designing and delivering public policies and services, in an open and inclusive manner.

### *Domestic context*

Citizens' **trust in administration is one of the core aspects of democracy.** It depends on people's personal experiences of fairness of administration, but also on opportunities to take part in and influence decision-making processes. The quality of citizen engagement depends hugely on the quality of public administration and the capacity of public servants to engage with citizens meaningfully (e.g. on public policy reforms, innovations in different sectors, strategies, etc.). The key pillars of this new engagement paradigm are: being citizen-centred, open, transparent, and collaborative; acting as an enabler of innovation and technology, and being accountable to citizens. Citizen consultation processes should comply with both national legislations dealing with this issue and internationally recommended practices.

The 2019 IDIS “Viitorul” Report on the Transparency of Local Public Administrations in the Republic of Moldova states that public consultation with citizens on key decisions is sporadic and riddled with deficiencies. The results show that 41% of the districts and 58% of the towns and villages monitored as part of the report have not held any public consultations during 2019. When consultations are being organised, the results of these processes are not being communicated to or shared with citizens.<sup>241</sup>

### *Legislation*

According to Article 3 of the Law on Transparency in Decision-Making, public authorities will consult citizens, associations, and concerned parties about drafts of legislative and administrative acts. The law is applicable to both central and local authorities, including local public administration authorities: local councils (of village, commune, town, municipality, district significance), mayors of villages (communes), towns (municipalities), chairpersons of districts, decentralised public services, and institutions of local significance.

The Government Decision No. 188 of 3 April 2012 on the Official Websites of Public Administration Authorities requires an increase in the level of transparency of public authorities and access to public information through official websites, and establishes mandatory minimum requirements for the official **websites of public authorities. Moreover, individual ministries’ websites should have a page dedicated to decisional transparency, where draft laws are published for consultation.** From the date of their publication, there is a deadline of 10-15 days for comments on draft legislation.

At local level, Law No. 436 on Local Public Administration regulates transparency in decision-making (Article 8). Law No. 780 on Legislative Acts and Law No. 317 on Normative Acts of the Government and other Central and Local Administration provide rules for public authorities to consult with interested authorities and agencies on draft laws. All draft laws and decisions of the government are subject to mandatory anti-corruption expert examination by the National Anti-Corruption Centre.

Article 20 of the Law on Integrity (2017) stipulates the requirements for ensuring transparency in the decision-making process. The rules related to the procedures for ensuring transparency in the decision-making process of the public entity and the derogations from such rules are **set forth in the Parliament’s Rules of Procedure, the Law No. 239/2008 on Transparency in the Decision-Making Process, and the normative acts of the government.**

### *Guidelines*

Although some government agencies provide online guidelines on transparency in the decision-making process or develop internal rules concerning the provision of transparency in the decision-making process, there is not a government manual outlining the participatory process in the review of draft laws and policies.

In line with this, one of the commitments of the National Action Plan on Open Government for 2014 related to the elaboration of guidelines<sup>242</sup> that could help any public servant follow the main stages of the decision-making preparation processes based on the Law on Transparency in Decision-Making (2008). Given that there is no one-size-fits-all model for citizen engagement, these guidelines also serve as a concise and practical reference tool for the successful implementation of citizen engagement by both central and local public administration authorities. The guide<sup>243</sup> provides nine stages of the decision-making preparation process, guiding principles for each stage and what this means in practical terms.

### *Good practices*

As part of the **project** “Implementation of the Principles of Open Government in the Inclusion of Citizens in the Decision-Making Process in the Republic of Moldova”,<sup>244</sup> an online interactive Citizen Engagement Guide<sup>245</sup> was developed to support the Moldovan Government in increasing the transparency of decision-making. The guide provides a set of tools and templates for civil servants in implementing the Law on Transparency in Decision-Making.

The Moldovan Law on Transparency of Decision-Making<sup>246</sup> contains principles and procedures to be followed in the daily work of public authorities, and contributes to improving the quality of the decisions drafted and approved, accountability of authorities to citizens, and to increasing the support of citizens for the policies approved and actions undertaken. The Government Decision for the implementation of this law<sup>247</sup> provides more detailed and practical information for citizen engagement. However, the decision is not exhaustive and it does not contain sufficient specific guidance for civil servants during the consultation process. Thus, the Citizen Engagement Guide covers existing methodological gaps by providing all necessary instruments for conducting public information and consultation throughout all the stages of decision-making set in existing legislation. It lists the most important government and civil society institutions, specifies responsibilities for concerned civil servants, reviews legislation, develops tools and templates, and provides guidelines used by other governments and organisations.

## 4.5. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues being raised. They aim either to raise the profile of the issue, or also to demand that specific actions are taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

### *International standards*

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>248</sup> provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD’s Promise and Problems of e-Democracy**<sup>249</sup> provides a section on the value and challenges of establishing an online petitioning platform.

### *Domestic context*

Article 52, *Right to Lodge Petitions*,<sup>250</sup> of the Constitution of the Republic of Moldova stipulates that: “(1) All citizens shall be entitled to refer to public authorities by way of petitions formulated only on behalf of the signatories. (2) Legally established organisations shall have the right to lodge petitions exclusively on behalf of the bodies they represent.”

In the past few years, citizens of the Republic of Moldova have started to use this right more often. In 2018, the number of petitions examined by the State Chancellery<sup>251</sup> was 4,047, of which 598 were in electronic form. This is 185 more petitions than in 2017 and 608 more than in 2016. Data shows that the most common areas of issues which citizens wanted to address via petitions were pensions, recovery, and indexation, while most petitions concerned health services, law enforcement bodies, and central and local

public administration authorities. Accordingly, 2555 petitions were redirected to the relevant ministries and 908 to local authorities. Various subdivisions of the State Chancellery examined 998 petitions. The official websites of the Government of the Republic of Moldova ([gov.md](http://gov.md)) and of the State Chancellery ([cancelaria.gov.md](http://cancelaria.gov.md)) have been updated to meet the need of permanently informing citizens about the examination of petitions and hearing results.

### *Legislation*

The Administrative Code of the Republic of Moldova No. 116/2018, as well as the Law on Petitioning No. 190/1994 (Article 5), repealed on 1 April 2019, indicate that a petition should be submitted in electronic form and in compliance with all requirements, including the digital signature (Article 5 (2)).

Experts in the field consider it necessary to amend the Law on Access to Information and the Administrative Code in order to exclude any confusions related to requests for information and petitions, specifically in order to avoid the situations where requests for information are examined based on the requirements for a petition; also, in order to avoid the use of digital signature in cases of electronically submitted requests for information. According to the IDIS “Viitorul” report for 2019,<sup>252</sup> there are cases where public authorities refuse to provide a response to electronic requests for information, motivating that these are petitions, and accordingly need to be submitted following all legal requirements.

Web portals of local public administration authorities ought to provide the possibility to submit an online petition, as well as requests for information, respecting the procedures for petitions and legislation on access to information.

### *Guidelines*

An official body to which petitions are addressed has the obligation to examine petitions; to ensure the restoration and recovery of any infringed rights under law, and compensation for damage caused; and to ensure the execution of decisions taken after examining petitions. The official body has the right to reject or accept the preliminary application of the petitioner and, where appropriate, cancel or modify the administrative act. A higher authority is entitled to reject the preliminary petition and to instruct a lower authority to accept or cancel the administrative act, in whole or in part (Article 12 of the Law on Petitioning).

The appropriate bodies generally examine petitions within 30 working days, while the petitions that do not require additional examination may receive a response without delay or within 15 working days from registration. Up to 90 working days is allowed for petitions that include international attributes, provided that, within 30 working days, the petitioner receives a response about the measures taken to resolve the subject of the petition. If the petitioner does not agree with the response, she or he has the right to challenge the decision in court within 30 days (Article 8).

### *Good practices*

One good example of ways citizens are being guided on how to submit petitions is the portal of the Public Services Agency ([asp.gov.md/petitii](http://asp.gov.md/petitii)). It provides step-by-step information about how to receive and review electronic applications addressed to the Public Services Agency.

## CONCLUSION

Local government plays a critical role for the well-being of citizens, delivering services and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services **are truly responsive and accountable, improving people's lives and** their trust and confidence in local institutions. However, the very qualities that make local and regional governments so important to citizens can also make them more prone to corruption.

Local governments in the Republic of Moldova are taking important strides in improving the legal framework towards more open and inclusive decision-making. However, on a practical level, local government units should translate laws and policies into practice and increase their efforts to ensure transparency, accountability and meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can help deliver effective public services, combat and prevent **corruption, and build citizens' trust in government.**

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as protection of whistle-blowers and support for independent media and civil society, are also critical to building open government, public ethics and accountability. An effective approach to rooting out corruption could be through reporting by public officials, the media and civil society, who need to feel confident that they will be listened to and protected.

The Congress of Local and Regional Authorities of the Council of Europe is committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, increase ethics and public accountability, and promote transparency and citizen participation.

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