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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

AND

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

JOINT OPINION

ON DRAFT LEGISLATION OF THE REPUBLIC OF MOLDOVA PERTAINING TO FINANCING POLITICAL PARTIES AND ELECTION CAMPAIGNS

Adopted by the Council for Democratic Elections
at its 44th meeting
(Venice, 7 March 2013)
and by the Venice Commission
at its 94th Plenary Session
(Venice, 8-9 March 2013)

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I. INTRODUCTION

1. On 2 July 2012, the OSCE/ODIHR received a request from the Chairperson of the Central Election Commission of the Republic of Moldova to review a draft Law on Amendment and Completion of Legislative Acts (hereinafter "the draft Amendments"; CDL-REF(2012)037), which aimed to amend legislation pertaining to political party and election campaign financing. These draft Amendments had been prepared following extensive discussions under a Working Group established by the Central Election Commission, which included other government bodies, civil society, political parties and international development partners.

2. On 11 July 2012, the Director of the OSCE/ODIHR replied that his Office would be ready to prepare an opinion on the draft Amendments once endorsed at the government level or submitted to parliament, in conjunction with other sets of draft amendments that were being considered. At a later date, the OSCE/ODIHR was informed that the draft Amendments had been endorsed by the Government of Moldova.

3. On 19 September 2012, the OSCE/ODIHR received a letter from the Head of the OSCE Mission to Moldova forwarding a request from the Parliament of the Republic of Moldova, to review a draft Law on Financing of Political Parties and Electoral Campaigns (hereinafter "the draft Law"; CDL-REF(2012)038), which also aimed to change existing legislation in these areas. The two proposals under discussions should be seen as alternative legislative solutions.

4. The OSCE/ODIHR thereupon invited the Venice Commission to cooperate and prepare a joint opinion on both pieces of draft legislation.

5. On 17 October 2012, the Director of the OSCE/ODIHR sent a letter to the Head of the OSCE Mission to Moldova stating that the OSCE/ODIHR would provide a combined review of both sets of draft legislation in co-operation with the Venice Commission.

6. On 20 November 2012, the Secretary of the Venice Commission sent a letter to the Moldovan delegation to the Council of Europe confirming that the Venice Commission and the OSCE/ODIHR would be preparing a joint opinion on both the draft Amendments and the draft Law.

7. This opinion is based on:

- The Constitution of Moldova;
- The Electoral Code as of 17 January 2012 (CDL-REF(2012)039);
- The Law on political parties as amended by Law 192 of 12 July 2012 (CDL-REF(2013)007);
- The draft Law on Amendment and Completion of Legislative Acts (CDL-REF(2012)037);
- The draft Law on Financing of Political Parties and Electoral Campaign (CDL-REF(2012)038);
- Relevant OSCE commitments, in particular the OSCE Copenhagen Document, 1990;
- The Venice Commission Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev);

- The OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation (CDL-AD(2010)024).
- OSCE/ODIHR Election Observation Mission Report, Moldova Local Elections 2011;
- OSCE/ODIHR Election Observation Mission Final Report, Moldova Early Parliamentary Elections 2010.

8. On 23-24 January 2013, a delegation made up of Venice Commission and OSCE/ODIHR experts visited Moldova and met with a range of stakeholders, including parliamentary caucuses of major political parties, the Minister of Justice, the Central Election Commission, local NGOs, and international organisations, to discuss relevant international standards and the background to the development of the amendments.

9. This Opinion is provided in response to both above-mentioned requests for review.

10. The present Joint Opinion was adopted by the Council for Democratic Elections at its 44th meeting (Venice, 7 March 2013) and by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013).

II. SCOPE OF REVIEW

11. The scope of the Opinion covers only the draft Amendments submitted by the Central Election Commission, and the draft Law submitted by the Parliament. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation regulating political parties and elections in the Republic of Moldova.

12. The Opinion raises key issues and indicates areas of concern. The ensuing recommendations are based on relevant international norms, including Council of Europe and OSCE commitments, as well as good practices and the OSCE ODIHR-Venice Commission Guidelines on Political Party Regulation (2010) (hereinafter "the Guidelines").

13. This Opinion is based on unofficial translations of the draft Amendments and the draft Law. Errors from translation may result.

14. In view of the above, the OSCE/ODIHR and the Venice Commission would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the draft Amendments and draft Law or related legislation that the OSCE/ODIHR and/or the Venice Commission may make in the future.

III. EXECUTIVE SUMMARY

15. The draft Amendments and the draft Law both meet many international standards and good practices relevant to the funding of political parties and election campaigns. At the same time, in order to ensure the legislation's full compliance with such standards, it is recommended as follows:

Key Recommendations

A. To delete Article 10 of the Draft Law which stipulates that all unused funds become private property of the contestant after the election [par. 28];
B. to reconsider the imposition of an annual ceiling for all permissible donations and member fees, as required by the new Article 26 proposed by the draft Amendments; [par. 30]
C. to ensure that liability statements concerning donations made under the draft Amendments (to the Political Parties Law) and the amendments to the Electoral Code, should contain analogous requirements; [par. 38]
D. to clarify, in relevant draft legislation, whether the ceiling for donations for election campaigns under Article 38, as revised by the draft Amendments, shall allow donations in addition to the annual permissible ceilings for individual donations to political parties; [par. 41]
E. to reduce annual ceilings for private donations to political parties, as proposed by Article 26, as revised by the draft Amendments; [par. 43]
F. to ensure, in draft legislation, that the basis for calculating income or expenditure limits for electoral campaigns is listed as an absolute or relative sum, and that such basis is maintained at a reasonable level; [pars 58-60]
G. to remove the blanket ban on third-party donations, in line with European case-law and alternative measures should be introduced; [par. 63]
H. to consider establishing an independent Directorate of Financial Control in the Central Election Commission, as proposed in Article 44 of the draft Law; [par. 78]
I. to enhance the system of sanctions in relevant draft legislation by combining the comprehensive system outlined in the draft Amendments with the autonomous sanctions to be imposed by the Central Election Commission in the draft Law. [par. 83]

16. The Venice Commission and the OSCE/ODIHR stand ready to provide assistance to the authorities in their continued efforts to improve the legal framework regulating political party and election campaign financing and to bring it more closely in line with OSCE commitments and Council of Europe standards.

IV. ANALYSIS AND RECOMMENDATIONS

A. Preliminary Comments

17. Both sets of draft legislation serve introduce a comprehensive regulatory framework in Moldova. This includes a variety of mechanisms to restrict and limit private contributions; find a right balance between private and public funding; introduce new criteria for allocating public financial support; limit party and campaign income or expenditure; detail transparent and structured financial reporting; and establish comprehensive regulatory mechanisms and appropriate sanctions for violations.

18. Beyond the final content of any adopted legislation, it should be noted that there exists a need to maintain open and inclusive debate and discussion and allow for continued opportunities for public review and commentary. This will ensure that

individuals and political parties remain actively engaged in the process and are aware of their respective rights and responsibilities.

19. In addition, given the continued changes to the applicable legal framework, whatever the end result, political parties and election contenders should receive timely and comprehensive training on the provisions prior to enforcement of the amended regulations.

20. Currently, the funding of political parties, with limited aspects of campaign finance, is regulated in Chapter 7 of the Law on Political Parties of Moldova. Campaign finance is predominantly regulated under Chapter 4 of the Election Code, with supplementary regulations developed by the Central Election Commission. The draft Amendments propose changes to provisions pertaining to party and election campaign financing in the Election Code, the Law on Political Parties, the Criminal Code, the Criminal Procedure Code, the Administrative Offences Code, the Audio-visual Code, the Fiscal Code, and the Law on the Court of Accounts.

21. The draft Law on Financing of Political Parties and Electoral Campaigns submitted by the Parliament, while also aiming to reform legislation, adopts a different approach by regulating matters pertaining to political party and campaign financing in one piece of legislation. Both sets of draft legislation try to achieve the same goal, namely the improvement of legislation on financing political parties and campaign financing, but using different means. In both cases, it is essential that new legislation adopted avoids duplication, and is consistent, both in itself (provisions on political party funding, and on campaign financing), and in relation to other domestic legislation in the Republic of Moldova.

22. At the outset, it is noted that the definition of political parties under Article 3 of the draft Law is slightly different from the definition in Article 1 of the Law on Political Parties; while the former talks about a “non-commercial organization” and then refers back to the Law on Political Parties, Article 1 of this Law talks about a voluntary association, but does not specify that it is non-commercial. However, Articles 5 and 24 of the draft Law would appear to suggest that economic activity is permissible. Furthermore, the non-commercial aspect of the definition under Article 3 of the draft Law would appear to be in contradiction with Article 5 par. 3 of the draft Law, which talks about permissible commercial activities of political parties. The definition of political parties under Article 3 of the draft Law should thus be revised accordingly.

23. The definition of electoral campaign under Article 3 of the draft Law also differs slightly from what is stated within Article 1 of the Law on Political Parties. The draft Law offers a more general description of the term and refers to compliance during the campaign period following the Election Code.

24. It is also questionable whether the definitions of financing of political parties, or of electoral campaigns, or indeed of financial reports contained in Article 3 of the draft Law are necessary, in particular because the proposed definitions appear to be largely self-explanatory. Later in the draft Law, Chapters II – V would seem to provide sufficient information on funding of political parties and electoral campaigns, and Chapter VI deals specifically with financial reports. At the same time, it should be noted that the definitions of political parties and of electoral campaigns speak only of private funding, not of public funding, even though funding through the state budget is regulated specifically under Chapter III. Also, the definition of funding political parties speaks only about “electoral contestants”, and is thus indistinguishable from the definition of financing electoral campaigns.

25. Generally, it is recommended that the added value of some of the above definitions be reconsidered, and to clarify those definitions that remain so that they cover all relevant terms used in draft legislation.

B. Funding of Political Parties and Electoral Campaigns

1. Assets of Political Parties and Electoral Contestants

26. Currently, the property of political parties is regulated in Article 24 of the Law on Political Parties. This provision enumerates a number of types of property that political parties may own, including real estate, and specifies that parties may not own any goods "prohibited by law". Article 24, in accordance with good governance principles, further specifies that political parties may not own, dispose or use, or indeed keep or hold, weapons, explosives, or other materials dangerous for the life and health of the population. The property of political parties may also not be distributed among its members.

27. In the draft Law, Chapter II, and Article 5 specifically, deals with the property of political parties. This provision largely duplicates the wording of Article 24 of the Law on Political Parties, though the latter is at times more specific, such as when detailing permissible economic and other activities (Article 24 par. 3) as it mentions the very important provision that economic (commercial) activity is permissible if it "directly results from the purpose defined by the statute". At the same time, Article 5 of the draft Law also mentions movable property, which, for the sake of completeness, could be added as permissible type of property under Article 24 of the Law on Political Parties. A separate provision on movable property would then not be necessary.

28. Money available to electoral contestants, not provided by parties is addressed in Article 10 of the draft Law. Under par 4 of this provision, it is noted that after the end of the electoral campaign, unused funds become the private property of the contestant. This regulation could potentially create problems, as it could incite contestants to purposefully not use up all of the funds, so as to retain some for themselves at the end of the campaign. Such a solution is unacceptable and should be deleted. It should be noted that the current Election Code specifies under Article 35 par 4 that unused funds for election campaigns shall be transferred back to the state budget.

2. Non-State Sources of Funding

29. Under the current Law on Political Parties, Article 25 foresees different types of funding for political parties, including from both state and non-state sources. Non-state sources mentioned in Article 25 are membership fees, donations, and other forms of legally obtained revenues. Under Article 26, donations shall be made free of charge, and unconditionally. The annual income of a political party received from donations may not exceed 0.1per cent of the projected income to the state budget for that year.

30. The annual revenue ceiling for a political party has been changed in the draft Amendments, which state, in Article 26 par 3, that membership fees and donations together (for one political party) may not exceed 0.25 per cent of the income provided in the state budget for the respective year. The Venice Commission and the

OSCE/ODIHR have stated in previous opinions[1] that imposing an annual ceiling on the total of all permissible donations and membership fees received by a political party appears to be overly broad and should be reconsidered.

31. Article 25 par. 3 of the Law on Political Parties stipulates that the amount and manner of paying membership fees is established by the party statute, without specifying the permissible limits of such fees. The draft Amendments foresee the publication of all membership fees received in the course of one year (revised Article 25 par. 3), which is a welcome attempt to enhance transparency. Membership fees paid by individuals are also limited by the ceilings imposed on the maximum permissible amount of donations from a single person or entity under Article 26 pars 4 and 5, as revised by the draft Amendments, during one budget year. The draft Law adopts a similar approach as the draft Amendments in that it foresees a combined total limit for donations and membership fees from one individual, by stating that the total amount paid by a member to the political party within one year may not exceed the limit of donations (Article 21 of the draft Law). As suggested by par. 163 of the Guidelines, limiting membership fees by individuals is a welcome development as unlimited membership fees may be used to circumvent the cap on the total amount of donations. The draft Amendments attempt to enhance transparency by reflecting membership fees distinctly in party bookkeeping, in their financial reports, and by publishing them on an annual basis, which is also to be encouraged.

C. Types of Donations

32. Article 26, as revised by the draft Amendments, and Article 19 of the draft Law both include monetary donations, donations in the form of estate, goods, and services that are free of charge, favourable conditions, and payment for goods and services under this term.

33. Article 3 of the draft Law contains separate definitions for donations, direct financing, and indirect financing (although the latter two do not appear in Article 26 on donations). It is not clear why three separate definitions are necessary and it may be advisable to merge them into one (generally, donations for political parties and for election campaigns should have the same definition). Article 1 of the draft Amendments defines "financing of election campaigns" as direct and indirect financing by natural and legal persons. Similarly, the term "indirect financing" is not sufficiently defined, and could create problems of interpretation in practice. In this context, it is noted that in Article 4 par. 1 of the draft Law, there is a distinction between "elected contestants" and "elected persons". This distinction should likewise be either explained or removed. Thus far, only the term "electoral contestant" is defined in Article 3 of the draft Law.

34. Article 19 par. 3 of the draft Law specifies that discounts exceeding the market value of goods and services by 50 per cent shall be considered donations and registered separately in the list of donations. This provision is positive as it enhances transparency and prevents attempts at circumventing donation limits. To enhance the practical usefulness of this provision, the method of calculating the market value should be specified (for instance, the value of received services may be determined by calculating the average price of three providers of the respective service at the moment when the donation is received).

[1] Joint OSCE/ODIHR – Venice Commission Opinion on the Draft Law on Amendments and Additions to the Organic Law of Georgia on Political Unions of Citizens, adopted by the Venice Commission at its 89th Plenary Session, Venice 16-17 December, 2011, par. 18.

35. Similarly, loans could be considered as in-kind or financial contributions depending on their conditions and on whether they may be written off, or are perhaps even repaid not by political parties themselves, but by third parties.[2] Should this be permissible based on existing legislation, it is recommended that such situations be provided for in the draft legislation amending or replacing the Law on Political Parties.

36. Article 19 par 5 of the draft Law prohibits donations that have the "obvious goal to obtain an economic or political advantage". It is difficult to imagine in which case such a goal would become obvious in the above sense. Also, it is presumed that donations of political parties usually aim, to a certain extent, at obtaining some political advantages. However, situations where donations are made in exchange for personal favours should be particularly avoided. Such cases are already implicitly prohibited in Article 26 par. 1, which requires donations to be "unconditional"; the unconditionality of donations is also included in the definition of donations under Article 3 of the draft Law. This principle could be stated more explicitly in Article 19 par. 5 as well, by having this provision prohibit donations that are obviously or clearly made in exchange for personal favours.

D. Statements of Liability

37. It is generally welcomed that Article 37 par. 1 of the draft Law requires every person donating to parties or election campaigns to present a statement of personal liability certifying that a donation was made in conformity with legal requirements, and disclosing the origin of the funds. The template for such declaration shall be approved by the Central Election Commission (Article 37 par. 3). The wording of this latter provision may, however, benefit from clarification, in particular the part relating to "the origin of the object of financing". At the same time it is proposed to reconsider such a requirement for all donations, as in cases of smaller donations, such a statement of liability may prove unduly burdensome on both the parties but also the CEC in their verification of the declarations.

38. Article 26 par. 2 of the Law on Political Parties, as changed by the draft Amendments, requires individual donors to submit a liability statement in case the donation was deposited in cash. The form of the statement also needs to be approved by the Central Election Commission, although the contents of this statement are not specified. In cases where donations are made by legal persons, Article 26 par. 5 requires the legal person to present the official decision of its competent bodies on making the donation, register the donation and reflect it in its accounting reports; the Central Election Commission is also to inform the shareholders accordingly. Article 38 par. 1.e and f of the Election Code, as revised by the draft Amendments, foresees similar requirements for election campaigns. However, it is noted that the documents submitted by legal persons under par. 1.e attest to the non-existence of foreign or state shares in capital, but not to the decision-making process leading to the donation. Since the limitations for donations for political parties and for electoral campaigns are largely the same, the liability statements from legal persons should reflect this by focusing both on the absence of state and foreign funding, and on demonstrated proper internal decision-making processes of donor legal entities. Therefore, it is recommended that liability statements concerning donations made under the draft Amendments (to the Political Parties Law) and the amendments to the Electoral Code should contain analogous requirements.

[2] OSCE-Venice Commission Guidelines on Political Party Regulation, par. 171.

39. Requiring donors, whether individual persons or legal entities, to submit liability statements seems to be a good way to enhance transparency and avoid donations by entities under public or foreign ownership, or made in violation of other provisions of the law. Such a general approach, as adopted in the draft Law, would thus be preferable – except in cases involving minor donations. At the same time, the legislation should specify the purpose of the liability statements (namely to testify that donations are made from one's own funds, obtained through legitimate, taxed income); the detailed requirements for legal persons under Articles 26 par. 5 and 38 par. 1.e, as changed by the draft Amendments, should be maintained.

E. Donation Limitations and Ceilings

40. It is commendable that both the draft Amendments (in the new Article 26), and the draft Law (Article 20) permit donations to more than one party. However, it is noted that the ceiling for donations by individuals is much lower in the new Article 26 of the draft Amendments (20 average monthly salaries) than in Article 20 of the draft Law (500 average monthly salaries). The same is true for donations by legal entities, which in Article 26, as revised by the draft Amendments, are limited to 40 average monthly salaries, while Article 21 allows amounts that do not exceed the amount of 10% of taxed revenues, or of 1000 average monthly salaries. It is advantageous that both the draft Amendments and the draft Law base contribution limits against salary values instead of absolute amounts, which serves to account for inflation.[3]

41. Article 38 of the Election Code, as revised by the draft Amendments, lists the same ceiling for donations for election campaigns. It is presumed that this means that donations for election campaigns are allowed in addition to the permissible yearly amount of donations for political parties. However, this could be clarified in the draft Amendments. The draft Law, on the other hand, does not mention a specific donation cap for election campaign financing.

42. Generally, limitations to the amount of permissible annual donations by individuals and legal entities aim to minimise the possibility of corruption, or the purchasing of political influence.[4] One may assume that the lower the ceiling, the greater the number and variety of private donors required to fund the activities of a political party. This would help prevent undue influence by small but wealthy interest groups, thereby avoiding distortions in the political process, and encouraging wider political participation.

43. It is thus recommended to follow the model proposed by the draft Amendments and introduce lower ceilings for private donations of both individuals and legal entities to the current Law on Political Parties, in line with principle 7 of the Guidelines, which states, as good practice, that legislation should aim to facilitate a pluralistic political platform.[5]

44. It is noted that while Article 26 par 5 of the current Law on Political Parties prohibits donations by citizens of Moldova residing abroad, Article 26 par. 6 as revised by the draft Amendments does not distinguish between citizens residing in Moldova and those living abroad (all citizens of Moldova may donate funds to political parties). Article 20 of the draft Law likewise specifies that natural persons and citizens of Moldova, including those living abroad, may donate. However, Article 38 par. 2 of the Election Code, as amended by the draft Amendments, prohibits citizens

[3] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, par.175.
[4] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, par. 175.
[5] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, par. 20.

not residing in Moldova from donating to electoral campaigns (such prohibition is not contained in the current Article 38 of the Election Code).

45. As a result, this would mean that political parties may receive funding from citizens residing abroad for their usual activities, but not for electoral campaigns. It is recommended to clarify this point, and make consistent proposals to the Election Code, on the one hand, and to the Law on Political Parties, on the other. Should donations be permitted from citizens residing abroad, special measures should be taken to ensure maximum transparency, to avoid potential abuse (e.g. to channel funds from unknown sources), and facilitate the investigation of and appropriate sanctions for such abuse.[6]

46. Article 26 par. 6, as revised by the draft Amendments, also prohibits donations by international organisations, including political organisations.[7] However, Articles 7 par. a and 20 par. 6 of the draft Law permit such donations by international political organisations that the respective political party is affiliated to, but only in material assets necessary for political activity (except for electoral "propaganda" publications). In relation to the above provisions, it should be clarified whether this also includes capacity-building support provided by international organisations such as the Council of Europe, United Nations or the OSCE. For the moment, such support could potentially fall under "any form of material support", as prohibited by the relevant provisions of both sets of draft legislation. At the same time, Article 7 par. d prohibits donations by "apolitical organizations" – this term should also be clarified. Overall, to the extent possible, the limitations established on sources of donations should be the same for donations both to political parties and election campaigns.

47. Article 10 par. 3 of the draft Law commendably prohibits using political party and campaign funds for vote-buying (proposing money to voters or the dissemination of free assets). It may be considered to provide for a clear definition of this term, in the section on definitions in the draft Law. Exceptions are permissible for so-called "symbolic gifts" made from means declared to the Central Election Commission, the market value of which does not exceed 40 lei per object. Article 38 par. 4 as revised by the draft Amendments, contains a similar provision, but fixes the minimum value of permissible gifts at 20 conventional units. The latter reference to conventional units through a form of indexation is preferable to absolute monetary amounts, as it takes into account possible inflation (see par 40 *supra*). The practical equivalent of conventional units must be made clear to political parties and electoral contestants, to ensure that this provision is properly understood and enforced.

48. Both Article 49 of the draft Law and Article 31¹, as introduced by the draft Amendments, propose that in case political parties receive donations (the draft Law also foresees this for electoral candidates) in violation of requisite provisions of the law, they shall, within 10 days of having been informed about receipt of the donation, refund such donation to the source, or transfer the amount to the state budget. Such an approach is welcomed, as it allows for timely internal vetting processes within political parties, both for general party financing and, in particular, for financing received during an election campaign. It is stressed that this possibility should be granted to both political parties and electoral contestants, including those without party affiliation.

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[6] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, XII.2.e, par. 172.

[7] As stated in the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation (XII.2.e, par. 172), "this […] area should be regulated carefully to avoid the infringement of the free association in the case of political parties active at an international level."

1. Public State Funding

49. Currently, the Law on Political Parties regulates state funding for political parties under Article 28, and foresees that annually 0.2 per cent of the projected accumulation in the state budget for a budget year shall be allocated to financing political parties. This principle of allocating a specific amount of the state budget to political parties by law is contained in both the draft Law (Article 11 par. 2), and the draft Amendments (new Article 27 par. 1 of the Law on Political Parties).

50. Legislation should develop clear guidelines to determine the amount of such funding, ideally in a flexible manner, by retaining a minimum and maximum amount in legislation that must be allocated to funding political parties, and leaving the precise allocation to the determination of appropriate decision-makers.

51. Under Article 28 of the Law on Political Parties, 50 per cent of annual state funding shall go to parties in proportion to the mandates obtained in parliamentary elections and validated by the setting up of new legislature of the Parliament of Moldova. The other 50 per cent is distributed proportionally among political parties depending on the number of votes obtained during general local elections for those who acquired at least 50 mandates in the representative bodies in second-level territorial administrative units.

52. Both the draft Amendments and the draft Law changed the modalities of state funding for political parties for their general activities and for electoral campaigns.

53. According to Article 12 of the draft Law, political parties represented in “eligible authorities”, presumably this refers to parliament and local councils and similar decision-making bodies, and pending clarification, this would mean they receive 90 per cent of all state funding, with 10 per cent going to parties which are not part of such institutions. Within the 90 per cent allocated to parties in parliament, 50 per cent shall go to political parties on a proportionate basis, depending on the number of mandates obtained during parliamentary elections. However, one party may not obtain more than half of this 50 per cent. The remaining 50 per cent of the original 90 per cent shall go to parties based on the number of seats obtained during general local elections, following the same system of proportionality.

54. The draft Amendments, in the revised Article 27 of the Law on Political Parties, foresee a more differentiated manner of state funding, with 20 per cent allocated to parties that achieved more than 2 per cent of votes in parliamentary elections, under the condition that the amount granted to a party will not exceed 50 per cent of the electoral costs declared by the party. Moreover, 30 per cent shall go to parties that received more than 3 per cent of the votes at the last parliamentary elections and 10 per cent shall benefit parties based on the number of mandates that women won in parliamentary elections. Finally, 30 per cent shall go to parties based on the number of mandates won in local elections for second-level local councils; and the remaining 10 per cent to parties depending on how many mandates women won at the last local elections.

55. Ideally, public funding of political parties should aim to ensure that all parties are able to compete in elections in line with the principle of equal opportunity, thereby strengthening political pluralism and helping to ensure the proper functioning of democratic institutions.[8] Thus, the attempts of the draft Amendments to support parties that are not in Parliament, but received 2 per cent or 3 per cent respectively at

[8] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, par. 176.

the last parliamentary elections are commendable but require further clarification in practice.

56. It is particularly commendable that the draft Amendments create financial incentives (not mandatory requirements or sanctions) for parties who promote women's participation within their ranks. As stated in par 191 of the Guidelines such incentives may not be considered discriminatory in light of the requirement for special measures defined by CEDAW (Article 4)[9] and as articulated in Council of Europe Recommendation (2003)3[10] on balanced participation of women and men in political and public decision making. This good practice has been introduced in other states of the pan-European space, such as, Bosnia and Herzegovina, Croatia, Ireland, Georgia, Romania, amongst others. In addition to funding political parties financially, special programmes or strategies could also be a way to support welcome efforts to increase the opportunities of a lesser represented gender, or ethnic or other minorities.

57. At the same time, new draft legislation could consider the issue of funding newly-formed political parties which have for that reason not received votes in a previous election.

2. Limits on Campaign Income and Expenditure

58. Generally, a campaign expenditure ceiling is an advisable measure to maintain independence of political parties, and ensure pluralism in elections, as it has the potential to keep the total campaign costs at a moderate level, and thus minimises the need for additional fundraising and subsequent political dependence on donors. However, campaign expenditure ceilings are relevant and enforceable only if certain conditions are met. In particular, it is necessary that there is a clear definition of what campaign expenditures are, a clearly defined period that is reasonable in length; also, there needs to be a control mechanism to ensure that a reasonable ceiling is observed. Also, spending limits should not be imposed in such a manner as to be overly burdensome for the contestants.

59. Under Article 38 par 2 of the current Election Code, the limit for campaign expenditure is set by the Central Election Commission. This approach is also adopted in Article 38 par. 1.c, as revised by the draft Amendments, except that it now specifies that the income ceiling of an electoral contestant shall be calculated using a coefficient (set by the Central Election Commission) multiplied by the number of voters in the precinct where the elections take place. In order to enhance transparency, it may be preferable to indicate the basis for this calculation (either as an absolute or relative sum) in the draft Amendments themselves.[11]

60. This approach has been adopted by the draft Law (Article 34), which specifies that the Central Election Commission shall establish the maximum amount of allowed expenditures for electoral contestants, based on an estimated value of 1per cent of the average monthly salary of the economy for the respective year multiplied by the total number of voters in the district where elections take place. However, this calculation could in practice lead to an unreasonably high ceiling. A lower coefficient could be envisaged to enhance parity among electoral contestants.

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[9] Convention on the Elimination of all forms of Discrimination against Women, signed December 1979, entered into force 3 September 1981, 1249 UNTS 13 (CEDAW)

[10] Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making (Adopted by the Committee of Ministers on 12 March 2003 at the 831st meeting of the Ministers' Deputies)

[11] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, par. 196.

61. Under Article 33 of the draft Law, the provisions on financing electoral campaigns shall apply accordingly to the financing of a referendum. As referendums do not involve electoral contestants, it could be helpful to indicate in this provision exactly which parts of Chapter V on financing electoral contestants and electoral persons are to apply in the case of a referendum and how this is to be done.

62. It is noted that Article 38 par. 3 of the Election Code, as revised by the draft Amendments, prohibits natural and legal persons from ordering advertising election materials for and in favour of electoral contestants, and to pay the expenses related to their production. Article 26 par. 3 of the draft Law states the same.

63. While it is presumed that the aim of both provisions is to secure a certain equality between electoral candidates, it is noted that such a blanket ban on third-party expenditure would appear to be a disproportionate means to achieve this aim, which might appear not to be in line with relevant case law of the European Court of Human Rights in relation to Article 10 of the European Convention on Human Rights.[12] It is recommended to delete the above provisions in their current form. However, it is considered reasonable to regulate the issue of third party contributions and alternative measures could involve establishing a reasonable spending limit, requiring third parties (meaning individuals or organisations that are not standing or fielding candidates at an election) to register as taking part in the campaign and introducing adequate and transparent disclosure requirements. While it is presumed that the aim of both provisions is to secure a certain equality between electoral candidates, it is noted that such a blanket ban on third- party expenditure would appear to be a disproportionate means to achieve this aim, which would not appear to be in line with relevant case-law of the European Court of Human Rights in relation to Article 10 of the European Convention on Human Rights.[13] It is recommended to delete the above provisions in their current form. However, it is considered reasonable to regulate the issue of third party contributions and alternative measures could involve a reasonable spending limit, requiring third parties (meaning individuals or organizations that are not standing or fielding candidates at an election) to register as taking part in the campaign and introducing adequate and transparent disclosure requirements

3. Reporting Requirements

64. It is commendable that in both the draft Amendments and the draft Law, attention has been devoted to financial transparency, to prevent corruption and enhance public scrutiny (see pars 37-39 *supra* on liability statements).

F. Political Parties

65. Under Article 38 of the draft Law, political parties are obliged to publish information on their donors in the Official Monitor of the Republic of Moldova and on its webpage.[14] This shall, for individual donors making annual donations higher than 5000 lei, include the name and surname, but also to include an individual's "personal code". The definition of "personal code" is not clear. Should this refer to a personal

[12] See the Court's Grand Chamber judgment in the case of *Bowman v. the United Kingdom*, application no. 24839/94 of 19 February 1998, par. 47.
[13] See the Court's Grand Chamber judgment in the case of *Bowman v. the United Kingdom*, application no. 24839/94 of 19 February 1998, par. 47.
[14] To further transparency, some EU countries (Latvia, Lithuania, UK) have developed searchable databases operated by political finance controlling agencies that collect all data on donations for all political parties in a timely manner (with a 10-20 day delay after receipt).

identification number, then this may raise concerns with regard to the confidentiality of certain personal data.

66. As for the upper limit of donations that will give rise to publication under Article 38 of the draft Law, it is recommended to base such values on a system of indexation, as done for the cap on donations under Article 20 of the draft Law, and Article 26 of the Law on Political Parties as revised by the draft Amendments. This would take into account inflation, and would ensure that even in cases of currency rate fluctuations, only the names of persons donating large sums of money would be published online.

67. Generally, obliging political parties to be more transparent about the sources of their funding through regular disclosure is a positive step, and any changes to the Law on Political Parties should include a requirement to indicate the sources of donations that exceed a certain (low) amount.

68. Both the draft Amendments (revised Article 29 of the Law on Political Parties) and the draft Law (Article 41) oblige political parties to submit financial reports to the Central Election Commission as the main supervisory body, on an annual basis. In case political parties receive state funding, such reports shall also be submitted to the Court of Accounts. These reports are then verified by the Central Election Commission, and information from them, and opinions/conclusions from independent auditing reports are published on the Commission's website, and on the websites of political parties. Article 29, as revised by the draft Amendments, is slightly more specific as to the exact nature of the information published, by specifying that it should include the identity of donors. Generally, both the Central Election Commission and political parties should be required to be as transparent as possible, and include information on all relevant parts of the financial reports, or ideally the reports themselves on their websites.[15]

69. Moreover, neither the draft Amendments nor the draft Law specifies how long financial statements shall remain on the political party websites. It is therefore recommended to outline in legislation amending the Law on Political Parties how long parties should keep such information on their websites. Ideally, this should allow for sufficient time for public scrutiny. Overall, the Central Election Commission should ideally retain all annual financial reports in an accessible manner.

70. Both Article 29, as revised by the draft Amendments, and Article 41 of the draft Law foresee that these reports shall be based on templates elaborated and approved by the Central Election Commission, which shall include information on goods and income of the respective party, donors, and obligations and expenditures of the party. With regard to the identity of donors, beyond disclosing names, both of the above provisions also require the disclosure of their residence/headquarters, and occupation/type of employment. While it would be permissible to disclose the headquarters and activity of legal persons, it may be excessive to require the publication of the residence of individuals in particular as such donations will be private donations. Both provisions should be clarified to ensure that such requirements are limited to legal entities to protect the private information of individuals once these reports are published. In these cases, it would appear

[15] See Council of Europe Recommendation 2003(4), of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, which in its Article 14 requires states to provide for independent monitoring in respect of political party funding and electoral campaigns; this shall include supervision over political parties' accounts and over expenses involved in electoral campaigns, as well as their presentation and publication.

sufficient to indicate the cities in which they reside, but not to include specific addresses. Under Article 31 of the Law on Political Parties, as revised by the draft Amendments, and Article 48 of the draft Law, political parties are obliged to commission auditors in cases where their incomes or expenses exceed 1 million lei yearly, at least once in three years. To ensure complete transparency, and independence of the auditors, it is recommended to specify in a revised or new law that these auditors should be certified in accordance with relevant legislation of Moldova; the Central Election Commission should also have the power to commission external auditors if needed, as part of its oversight functions.

G. Election Campaigns

71. The draft Law regulates reporting as follows: after the initiation of the electoral campaign, financial means and other forms of financing of electoral contestants shall be declared on a weekly basis (Article 27 par. 1). In the case of parliamentary elections through a "publication of republican coverage" (par. 1. a) and in case of local elections in a regional publication, in the respective territory (par. 1.b). After electoral councils or bureaus have been set up, electoral contestants also have the obligation to declare financial means and other forms of financing *prior* to their use. The Central Election Commission/electoral councils shall keep a register with all data received, and make it available to the public for information, in the form of a weekly report (Article 27 par. 6).

72. Under Article 42 of the draft Law, candidates shall submit reports on accumulated funds (including donors) and expenditures (including recipients and purpose), as well as debts, and accounting information. Article 42 par. 2 includes a detailed itemised list of necessary information on expenditures, which is much welcomed in terms of clarifying the contents of such reports, and may avoid using too general terms (e.g. "advertising", or "salaries").[16] The Central Election Commission shall publish these reports on its website within 48 hours of receipt (Article 42 par. 6).

73. For the purposes of transparency and disclosure, each political advertisement that is published in the printed press or aired on the broadcasting media should include a notification of which political party, bloc or candidate has paid for it. This is an important measure that gives important information to voters and also facilitates external monitoring of campaign expenditures.

74. The draft Law includes the abovementioned requirement in Article 26 par. 7, which obliges electoral contestants to print on all electoral publicity materials the following information: name of the electoral contestant and the title of the political party or other electoral political formation which ordered the publication. This is a welcome step. As such provision already exists in the Election Code (Article 64^1 par. 6), the draft Amendments do not include such provision. The wording of Article 64^1 par. 6 of the Election Code is preferred, as it is formulated in a clearer manner.

75. Both the draft Law (Article 28) and draft Amendments (revised Article 38 of the Election Code propose that all financial transactions shall be conducted through a specially created Election Fund, administered through a separate bank account, which is a viable method of oversight over campaign expenditures. However, the

[16] This reflects similar practices in other countries, e.g. The Law on Financing of Political Organisations (Parties) of Latvia provides for a detailed, itemised disclosure of campaign expenditure including, among others: placement of advertising (TV, radio, newspapers, internet); use of mail services; producing of advertising materials of all types; planning, preparation and organisation of the election campaign; salaries to persons involved in the election; renting moveable and real property for the campaign.

existence of such a fund does not guarantee that no transactions will by-pass the fund and that the expenditure ceilings will not be violated. For this reason, as an additional measure, a more comprehensive approach to include details of the campaign period, campaign definition and campaign expenditure ceiling could be used, stipulating by law that all transactions apart from regular party operations (office, salaries of the permanent staff) are campaign expenditures and be administered through the fund.

H. Oversight and Sanctions

76. Article 30 of the current Law on Political Parties specifies the submission of financial reports on an annual basis to the Court of Accounts, the Ministry of Finance and the Ministry of Justice. Par. 4 of this provision, as introduced by the draft Amendments, requires an annual report to the parliament as well. This could be expanded to include information on how the law is being implemented, and whether reforms are needed.

77. Article 30 par. 3 states that any violations of legislation relating to the financing of political parties, or related to the use of them, would lead to liability under the law. In the past, mechanisms for the oversight of campaign finance in Moldova have been repeatedly criticised as insufficiently developed, lacking precision and enforcement.[17] Overall, the lack of thorough scrutiny of previous campaign finance reports underscored the lack of an effective system in place and no official body that would be clearly responsible for verifying the accuracy of campaign finance reports and enforcement of campaign financing rules.[18]

78. In this context, to enhance independent scrutiny of the observance of legal provisions concerning financing of, inter alia, political parties and electoral contestants, the approach adopted in Article 44 of the draft Law is welcomed; this provision foresees the establishment of a Directorate of Financial Control in the Central Election Commission, the Head of which shall be appointed following an open and transparent recruitment procedure. In particular, it is noted positively that only such persons shall be eligible who have not been members of political parties for the five preceding years. Given that the Central Election Commission is otherwise made up of political party representatives, appointing such an individual as leading the oversight over financing of political parties and electoral contestants would help remove any suspicions of potentially politically motivated sanctions against political parties. Under Article 44 par. 7, the Head of the Directorate of Financial Control may propose the application of sanctions to the Chairperson of the Central Election Commission. The transparency of any such proceedings could be enhanced by requiring such proposal to be made public, following an in-depth investigation, and to be made to the entire Commission, not only the Chairperson.

79. As for sanctions for non-compliance, it is noted that Article 30 par. 3 of the Law on Political Parties is quite vague as to the types of sanctioned behaviour, and the legal consequences. The current framework thus lacks progressive and proportionate sanctions. Both the draft Amendments and the draft Law attempt to introduce more detailed systems of sanctions for violations. The draft Amendments outline a comprehensive system for breaches to existing rules and regulations regarding violations, which includes a graduated system of including regulatory, civil, and criminal sanctions for non-compliance. The draft Amendments propose to do this by

[17] See OSCE/ODIHR Election Observation Mission, Moldova Local Elections 2011.
[18] See OSCE/ODIHR Election Observation Mission Final Report, Moldova Early Parliamentary Elections 2010.

including a new Chapter VII into the Law on Political Parties, describing which behaviour is considered illegal under the Law, and how it will be sanctioned. The system of sanctions outlined under this new chapter is noted as a good practice where it is clear and foreseeable, and also overall proportionate to the respective illegal behaviour.[19] At the same time, more specific regulations on sanctioning vote-buying could be considered.

80. While Articles 49 to 53 of the draft Law provide for sanctions, these only relate to sanctions issued by the Central Election Commission, and do not take into account the possible implications of such behaviour for administrative and criminal liability. The draft Law thereby fails to detail a comprehensive system of sanctions for violations. Penalties described for non-compliance are limited, and focus on the types of sanctions that may be imposed by the Central Election Commission autonomously (e.g. returning unallowable donations, suspending funding from the state budget and cancelling the registration of an electoral contestant). At the same time, sanctions need to be proportionate, thus Article 51 par. 1 permitting the cancellation of the registration of electoral contestants due to the acceptance or use of funds in violation of the provisions of the law should either be deleted or replaced with a less draconian sanction. Overall, a more differentiated approach that distinguishes between minor and more serious violations should be adopted.

81. Under Article 31¹, newly introduced by the draft Amendments, on the other hand, it is provided that the failure to execute a summons issued by the Central Election Commission shall be treated as an administrative offence, which will be sanctioned according to the provisions of the Administrative Offences Code. The draft Amendments also provide for the introduction of respective additional provisions to the Criminal Code, and the Administrative Offences Code. It is not clear whether administrative or criminal sanctions may also be issued towards legal entities. If so, it should be reviewed whether for certain violations the draft Amendments should also foresee punitive sanctions for political parties themselves, not only for individual party members or leaders. This could be applied, for example, to Article 48 of the Code of Administrative Offences, as revised by the draft Amendments.

82. Article 31¹ par 4 states that where the failure to execute summons issued by the Central Elections Committee, and the administrative sanctions applied for such violations are repeated during one calendar year, then the Central Election Commission may decide to deprive the respective political party of the right to state budget allocations for six months to one year. As the threat of financial loss may prove very effective in terms of deterrence, it is recommended to expand Article 31¹ par. 4 to the effect that such decision to deprive parties of state funds may also be taken in cases of other violations, e.g. repeated violations concerning financial management under Article 31², also introduced by the draft Amendments, or repeated violations of Article 26 of the Law on Political Parties, as revised by the draft Amendments. The extent of the deprivation of budget allocations included in 31¹, par 4 should also be assessed solely on the gravity of the offence.

83. Based on the above, it may be best to combine the comprehensive system of sanctioning contained in the draft Amendments, with the more autonomous sanctions of the draft Law in the area of political finances imposed by the Central Election Commission.

[19] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, pars 215&225.