

# CSO METER

Assessing the civil  
society environment in the  
Eastern Partnership countries

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**Moldova**

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Promo-LEX Association is a non-governmental organization established in 2002. It aims to advance democracy in Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring democratic processes, and strengthening civil society.

Promo-LEX Association operates through two programs:

- (1) The Human Rights Program, which aims to promote and implement international human rights standards in Moldova.
- (2) The Monitoring Democratic Processes Program, which aims to improve the quality of and to increase citizen's trust in democratic processes in Moldova.

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TABLE OF

# CONTENTS

<b>I. Executive Summary</b>	<b>3</b>
<b>II. Introduction</b>	<b>6</b>
<b>III. Context &amp; Background</b>	<b>8</b>
<b>IV. Key Findings on Enabling Environment</b>	<b>11</b>
4.1 Freedom of association	11
4.2 Equal treatment	17
4.3 Access to funding	20
4.4 Freedom of Peaceful Assembly	23
4.5 The right to participate in the decision-making process	27
4.6 Freedom of Expression	32
4.7 Right to privacy	36
4.8 State duty to protect	38
4.9 State Support	42
4.10 State-CSO Cooperation	48
<b>V. Conclusions &amp; Recommendations</b>	<b>51</b>
<b>VI. Annexes</b>	<b>54</b>
6.1 Annex 1 – References	54
6.2 Annex 2 - Results of questionnaires	65

# ABBREVIATIONS

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CPA	Central Public Authorities
CSO	Civil Society Organisation
ECtHR	European Court of Human Rights
GD	Government Decision
LPA	Local Public Authorities
MECR	Ministry of Education, Culture and Research
MF	Monitoring Framework
MoJ	Ministry of Justice
NPC	National Participation Council
PSA	Public Services Agency
SC	State Chancellery

# I. EXECUTIVE SUMMARY

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This Report is an assessment of the enabling environment of civil society organisations in the Republic of Moldova in 2017-2018 with key updates from 2019. It does not cover the environment of civil society organisations (CSOs) from the Transnistrian region<sup>1</sup>, an integral part of the Republic of Moldova, which is not controlled by the Moldovan constitutional authorities. The document contains a range of observations, findings and conclusions about the situation of CSOs and its compliance with international standards in ten key areas.

CSO Meter Moldova Report was prepared by Promo-LEX Association from January to June 2019 following a unique methodology developed by a group of international experts during 2017-2018 and piloted in parallel in all Eastern Partnership states.

The enabling environment of the CSOs was studied by using various quantitative and qualitative methods for processing, summarising and analysing the information. The methodology included, among others, the review of statistical data, existing research and studies on the civil society environment applicable for the monitored period, analysis of the legislation passed and amendments made during 2017-2018, a questionnaire for CSOs, focus groups with representatives of CSOs and interviews with representatives of civil society and relevant public authorities.

The context of CSOs' activity in the Republic of Moldova is marked by various problems that shaped the social, economic and political environment. The massive emigration of the population during the past decades resulted in the depopulation of rural areas. Due to the emigration of about 22% of its citizens, the Republic of Moldova is facing a major demographic and social crisis. Threatened by the presence of Russian troops in the Transnistrian region, with a political class traditionally divided into pro-European and pro-Russian forces, the Republic of Moldova made slow steps to get closer to the European Union. After the theft of a billion dollars from the banking system, the anti-oligarchic political discourse and the populist projects of politicians with criminal ties grew in popularity. Due to weak institutions and a corrupt and compromised judicial system, the Republic of Moldova has become known as a *state captured by oligarchic interests*<sup>2</sup>.

In the background of these evolutions, CSOs significantly contributed to building a progressive social framework and developing democratic institutions. At the end of 2018, civil society comprised over 12 thousand registered organisations, though the number of active organisations was uncertain. Affected by the crisis of human resources and limited funding resources, CSOs largely adopted an operating model dependent on international funding without maintaining a close relationship with the community. Despite some sound achievements in various fields, CSOs are in a crisis of legitimacy and only 19% of the population trust

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1 Promo-LEX, Human Rights in the Transnistrian region of the Republic of Moldova, 2019, [https://promolex.md/wp-content/uploads/2019/03/Raport\\_NED\\_7-12\\_2018\\_OM-eng.pdf](https://promolex.md/wp-content/uploads/2019/03/Raport_NED_7-12_2018_OM-eng.pdf)

2 European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova [http://www.europarl.europa.eu/doceo/document/TA-8-2018-0458\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0458_EN.html)

them<sup>3</sup>.

The assessment found that freedom of association is broadly respected in the Republic of Moldova, with only isolated cases in which certain categories of officials and non-resident non-citizens face limitations. The registration of non-commercial organisations is not expensive, but is more complicated and takes longer than in case of commercial organisations (15 days vs. 3 days). Also, there are some doubts whether the procedure is accessible. In 2018, 88% of the organisations registered in a single multifunctional centre in Chisinau and CSOs complained about irregularities in the multifunctional centres in the regions such as repeated requests / submission of documents, taxation with fees for commercial organisations, unmotivated return of documents.

CSOs are free to set their objectives and choose their activities without any government interference as long as they are not explicitly prohibited by law. On the other hand, state institutions can obtain information about all aspects of CSO work and may apply sanctions that could lead to suspension or forced dissolution of an organisation. CSOs can operate without being registered, but in this case they have quite limited operational options and the measures promoted by the state do not specifically encourage the existence of informal CSOs.

Non-commercial organisations enjoy certain tax benefits and can freely access financial resources from various national and international sources, but remain largely dependent on international grants. In 2017, the government tried to restrict, by a draft law, the participation of externally funded organisations in promoting public policies, but the attempt was countered by the effort of CSOs.

The government provides financial and in-kind support to CSOs through Central Public Administration and Local Public Administration, but the volume is still modest compared to the needs of CSOs. The legal framework allows CSOs to obtain income from other sources such as philanthropy, economic activity, social entrepreneurship, and providing services, but they have been so far used to a very limited extent, due to the poorly functioning regulatory framework. When competing for resources, small organisations outside the big cities are the most disadvantaged, because of the shortage of human resources and limited administrative capacities.

CSOs and their representatives enjoy freedom of expression, but the means of expression are getting more and more limited. The main media outlets with national coverage are controlled by several interest groups, and free speech is limited to several TV and radio stations that are not yet politically affiliated. At the same time, the informational space is subject to techniques of misinformation and limitation of freedom of expression, which induce a general state of fear and self-censorship.

CSOs were able to assemble freely without any administrative barriers, and for the most part assemblies took place without obstacles. However, several peaceful assemblies were the target of aggression. Law enforcement bodies, despite the progress made in protecting some organisations, were not consistent and had reprehensible behaviour in case of certain organisations that criticized the government. These CSOs did not receive the necessary pro-

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<sup>3</sup> IPP, Public Opinion Barometer, 2004-2019, [http://ipp.md/wp-content/uploads/2019/02/Anexele-BOP\\_02.2019.pdf](http://ipp.md/wp-content/uploads/2019/02/Anexele-BOP_02.2019.pdf)

tection, or even had their assemblies suspended.

The legal framework provides various mechanisms for CSO-government cooperation in terms of participation in the decision making or promoting policies in various areas. However, the cooperation between CSOs and the government has been deficient in recent years. The participation of CSOs in the decision making was affected by the government's reluctance to cooperate and interact with CSOs that had a critical attitude. Public institutions are still somehow open to CSOs providing social services the activity of which has a minimum impact on justice, democratic institutions or the business environment. Several laws were adopted in violation of decision-making transparency procedures, and in other cases, decision-making transparency mechanisms were observed rather formally, without intending to actually consult public opinion.

After several organisations criticized a number of laws adopted by the government, CSOs became the target of a series of informational attacks by political leaders, media, bloggers, trolls and politically affiliated analysts. Various CSOs reported cyber-attacks, interception of communications, or even wire-tapping. In this context, the general perception is that the empowered state institutions do not take measures to protect the CSOs.

Over the past few years, CSOs have spoken publicly on various occasions about the deterioration of the environment for CSOs and media in the Republic of Moldova and that the situation is getting worse in the context of regional dynamics and models promoted by certain states in the region.

# II. INTRODUCTION

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## What is the CSO Meter?

The CSO Meter is a tool developed to support the regular and consistent monitoring and assessment of the environment in which CSOs operate in the Eastern Partnership countries. It consists of a set of standards and indicators in 10 different areas to measure both law and practice. It is based on a review of international standards and best regulatory practices.

The CSO Meter was developed through a highly consultative and collaborative process, supported by the European Center for Not-for-Profit Law (ECNL). It was co-drafted by a core group of local experts and consulted in three rounds with more than 807 CSOs across the region. A local partner in each of the five Eastern Partnership countries supported the process - Transparency International Anti-Corruption Center (Armenia); MG Consulting LLC (Azerbaijan); Civil Society Institute (Georgia); Promo-LEX Association (Moldova); Ukrainian Center for Independent Political Research (Ukraine).

## What are the key elements of an enabling environment for CSOs?

For the purposes of the tool, the term “CSO” is used to define voluntary self-governing bodies or organisations established to pursue the non-profit-making objectives of their founders or members. CSOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based. CSOs can be either informal bodies or organisations, which have legal personality. They may include, for example, public associations, foundations, non-profit companies and other forms that meet the above criteria. The CSO Meter does not consider the environment for political parties, religious organisations or trade unions.

The CSO Meter is split into two main parts:

- **Fundamental rights and freedoms** are essential for the existence of civil society and include: (1) freedom of association, (2) equal treatment, (3) access to funding, (4) freedom of peaceful assembly, (5) right to participation in decision-making, (6) freedom of expression, (7) right to privacy and (8) state duty to protect.
- **Necessary conditions** ensure additional support for the development of civil society (though their existence without fundamental rights and freedoms is not sufficient to ensure an enabling environment) and include: (1) state support and (2) state-CSO cooperation.

## How was the report developed?

The report was prepared by the local partner of the project in the Republic of Moldova – Promo-LEX Association, following a joint methodology for all six Eastern Partnership countries. The report focuses on the evolution of the CSO environment in the Republic of Moldova dur-



ing 2017-2018. The process has included data collection (through an online questionnaire with 61 respondents from CSOs, 3 focus groups with 28 participants, 19 interviews, desk-top research) and analysis of the collected information.

The report reviews the 30 standards that are part of the CSO Meter and provides recommendations for improvement in each of the 10 areas covered. It also outlines the most important findings and recommendations in the end. The recommendations could serve as a basis for future reforms that the government can undertake to improve the environment for civil society in the Republic of Moldova. The findings and conclusions of the study do not cover the enabling environment of CSOs from the Transnistrian region of the Republic of Moldova, which is not controlled by the Moldovan constitutional authorities.

# III. CONTEXT & BACKGROUND

## Basic data about the country

**Capital:** Chisinau

**Population:** 2,681,734<sup>4</sup>

**GDP per capita (PPP):** \$3,189.356 (2018)<sup>5</sup>

**Freedom in the World:** 61/100 (Partly Free)<sup>6</sup>

**World Press Freedom Index:** 31.21<sup>7</sup>

**Number of CSOs:** 12,298<sup>8</sup>

## Overall situation and state of civil society

Since its declaration of independence, the Republic of Moldova has constantly faced social, economic, political and security problems that have left it one of the poorest countries in Europe by per capita income. Instability and economic difficulties resulted in steady emigration of people in recent decades. As a result, at least 22% of the population left the country for seasonal work, studies or in order to settle for good abroad.<sup>9</sup>

With a constant security threat caused by the stationing of Russian troops in the Transnistrian region, the Republic of Moldova has weak democratic institutions and suffers from a corrupt justice system that was used to legalize over USD 20 billion from the Russian Laundromat<sup>10</sup>. While corruption (117<sup>th</sup> out of 180 states in 2018<sup>11</sup>) is a major subject for public debates, after the failed justice reform, the Republic of Moldova was soon defined as a *'state captured by oligarchic interests, with the economic and political power concentrated in the hands of a small group of people who have influence over the parliament, the government, political parties, state administration, police, judicial system and media'*<sup>12</sup>.

Over the past few years the political situation has been profoundly influenced by the theft

4 National Bureau of Statistics of the Republic of Moldova, [http://statbank.statistica.md/pxweb/pxweb/en/20%20Populatia%20si%20procesele%20demografice/20%20Populatia%20si%20procesele%20demografice\\_\\_POPrec\\_\\_POP010/POP010100rcl.px/table/tableViewLayout1/?rxid=b2ff27d7-0b96-43c9-934b-42e1a2a9a774](http://statbank.statistica.md/pxweb/pxweb/en/20%20Populatia%20si%20procesele%20demografice/20%20Populatia%20si%20procesele%20demografice__POPrec__POP010/POP010100rcl.px/table/tableViewLayout1/?rxid=b2ff27d7-0b96-43c9-934b-42e1a2a9a774)

5 The World Bank, <https://data.worldbank.org/country/moldova>

6 Freedomhouse, <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

7 World Press Freedom Index, <https://rsf.org/en/ranking>

8 State Registry of Non-Commercial Organisations <http://date.gov.md/ckan/ro/dataset/18516-date-din-registrul-de-stat-al-unitatilor-de-drept-privind-organizatiile-necomerciale>

9 page 9, Statistical Compendium of the Extended Migration Profile of the Republic of Moldova for 2014-2016

10 <https://www.rise.md/articol/operatiunea-ruseasca-la-laundromat/>  
<https://www.rise.md/english/the-russian-laundromat/>  
<https://www.reportingproject.net/therussianlaundromat/russian-laundromat.php>

11 Transparency International, Corruption Perception Index, 2018 <https://www.transparency.org/cpi2018>

12 European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova [http://www.europarl.europa.eu/doceo/document/TA-8-2018-0458\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0458_EN.html)

of USD 1 billion from three Moldovan banks in 2014. The secret decision of the government to save the three banks resulted in a hole in the public budget and a public scandal that reshaped the political landscape. In 2016, the former Prime Minister, Vlad Filat was convicted in a criminal proceeding and sentenced to nine years of prison, which led to the disintegration of his party. Earlier that year, a new parliamentary majority was formed by the Democratic Party and several defecting MPs from other parties. Former President Nicolae Timofti rejected the candidacy of Vladimir Plahotniuc (Chairperson of the Democratic Party) proposed by the new majority for the position of prime minister, because of reasonable suspicions of integrity<sup>13</sup>. Subsequently, the parliamentary majority voted a government led by the democrat Pavel Filip, who held the position until June 2019.

In 2018, the invalidation of the elections of the General Mayor of Chisinau municipality provoked a loud social protest with a strong anti-oligarchic discourse, which took place in the context of the traditional division of the population into pro-Europeans and pro-Russians. At the same time, several populist political projects promoted by leaders with criminal ties grew in popularity. During this time, the public attention was concentrated on corruption scandals and on the eventual parliamentary elections of February 2019.

The main media resources have been concentrated for several years in a number of media conglomerates affiliated and controlled by the entourage of political parties. 70% of the TV market in Moldova was owned in 2017 by the Chairperson of the Democratic Party, Vladimir Plahotniuc who held a quasi-monopoly on the TV advertising market<sup>14</sup>. According to the Press Freedom Index<sup>15</sup>, the Republic of Moldova has the status of country with a partially free media and lost 15 positions since 2016, ranking 91<sup>st</sup> in 2019, in the group of countries with visible problems.

At the end of 2018, there were 12 thousand civil society organisations in the Republic of Moldova, of which an unknown number were active. Most CSOs follow a grants-based model and depend strongly on foreign financial support. Alternative sources of income such as direct funding from the state budget, percentage designation mechanism, social entrepreneurship, donations or procurement contracts are hindered by regulatory and attitude barriers and represent only a small part of the operational revenue of the CSOs.

Legal and administrative requirements for CSOs are relatively simple and do not create special burdens for the organisations. Online reporting and the recent optimisation of reporting formats have simplified some of the administrative duties of organisations. Despite these circumstances, civil society organisations contribute significantly to the development of society and democratic institutions, support human rights and help build a progressive legal and social framework.

Overall, the CSO environment is quite diverse and fragmented, but one can speak of a conceptual division between the organisations from Chisinau (and a few more towns) and from the small localities. The hard core of CSOs consists of a series of organisations with experience,

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13 <http://www.presedinte.md/eng/comunicate-de-presa/presedintele-nicolae-timofti-respinge-candidatura-domnului-vladimir-plahotniuc-la-functia-de-prim-ministru>

14 Freedom House, Nations in Transit Ratings and Averaged Scores, 2017, [https://freedomhouse.org/sites/default/files/NIT2017\\_Moldova.pdf](https://freedomhouse.org/sites/default/files/NIT2017_Moldova.pdf)

15 <https://rsf.org/en>

visibility and reputation, which are constantly active in the public space, but also in relation to state institutions and development partners.

Beginning with 2016, when various organisations strongly criticised a range of adopted laws (change of the electoral system, capital amnesty or citizenship for investment program) CSOs became the target of constant denigration campaigns. A monitoring<sup>16</sup> carried out during 2017-2018 documented at least 60 situations concerning officials, political leaders and affiliated media resources that organised media attacks against CSOs, especially in terms of foreign funding and the alleged involvement of the organisations in the domestic political process.

According to the views expressed by CSO representatives, this state of affairs worsened the perception of insecurity among active organisations and resulted in a general self-censorship among all CSOs that want to maintain a good relations with public authorities.

Very few CSOs in the Republic of Moldova have a well-developed relationship with the population. People's involvement in CSO activities is largely based on contractual relationships, with little membership or volunteer involvement. CSOs are not always effective in communicating the results of their work to the public, and public perception is also influenced by numerous attacks that denigrate CSOs, which are accused of unprofessional behaviour and hidden agendas. As a result, most people do not have a favourable opinion about CSOs. The 2018<sup>17</sup> opinion polls show a 19% trust in CSOs, the same as the trust in the government (19%), but more than the level of trust in the parliament (13%) and political parties (12%) and less than the confidence in the police (31%), the army (32%) and the media (35%).

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16 LRCM, Radiography of Attacks on Nongovernmental Organisations in the Republic of Moldova, „2018, <http://crjm.org/wp-content/uploads/2018/03/2016-2017-radiography-NGO-attacks-EN.pdf>

LRCM, Radiography of Attacks on Nongovernmental Organisations in the Republic of Moldova in 2018, 2019, [http://crjm.org/wp-content/uploads/2019/03/2019-03-20-timeline-atacks-OSC\\_2018\\_final.pdf](http://crjm.org/wp-content/uploads/2019/03/2019-03-20-timeline-atacks-OSC_2018_final.pdf)

17 IPP, Public Opinion Barometer, 2004-2019, [http://ipp.md/wp-content/uploads/2019/02/Anexele-BOP\\_02.2019.pdf](http://ipp.md/wp-content/uploads/2019/02/Anexele-BOP_02.2019.pdf)

# IV. KEY FINDINGS

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## ON ENABLING ENVIRONMENT

### 4.1 Freedom of association

#### **STANDARD I. EVERYONE CAN FREELY ESTABLISH, JOIN, OR PARTICIPATE IN A CSO.**

The freedom of associations is observed for the majority of the population, but the right to set up a CSO is limited for certain officials, foreign citizens, business entities and persons with limited legal capacity.

The legal framework provides at least two terms to designate a CSO. In a broad sense, the notion of non-commercial organisation designates the legal entity forms of organisation that do not seek profit. There are several legal forms of non-commercial organisations, such as the public association, trade union, religious organisation, political party, socio-political organisation, philanthropic organisation. In a narrow sense, there are three types of non-commercial organisations: the public association, the foundation and the private institution. The current report is focused on these three types of organisations, which will hereafter be referred to as CSOs, except for the references to one of the specific forms.

Individuals with full legal capacity and public associations can establish public associations<sup>18</sup> and foundations<sup>19</sup>. In the case of foundations, any legal person can be a founder. The legislation provides for some limitations with regards to setting up CSOs by certain categories of persons<sup>20</sup>. CPAs, LPAs and budgetary institutions cannot establish foundations<sup>21</sup>. Foreign citizens and stateless persons can establish public associations on the same terms as citizens, but only if they have their legal residence in the Republic of Moldova. Persons younger than 18 years, business entities or members of the government and public officials, who work at the registrar of CSOs, control or promote the state policy in the priority areas for them, do not have the right to found public associations<sup>22</sup>. Since 2019, when the legal form of “union of legal persons” was removed from the legislation, business entities may not register public associations, but only foundations and employers’ associations.

In 2018, the parliament passed in the first reading a draft law<sup>23</sup> on non-commercial organisations that provides for a simplified registration procedure and eliminates the restrictions for certain categories of persons to establish and participate as founders, members or leaders in CSOs, eliminates territorial restrictions for CSOs and provides clear regulation of the structure of self-administration bodies.

Individuals and legal entities can be involved in the activity of public associations either as

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18 Article 11, Law on public associations 837/1996

19 Article 6, Law on foundations, 581/1999

20 LRCM, Solutions for a legal framework adequate to the needs of non-commercial organisations, 2016, [http://crjm.org/wp-content/uploads/2016/03/CRJM\\_03.2016-DPP-ONG.pdf](http://crjm.org/wp-content/uploads/2016/03/CRJM_03.2016-DPP-ONG.pdf)

21 Article 6 (4), Law on foundations, 581/1999

22 Article 4 (4), Law on public associations 837/1996

23 Draft Law on Non-Commercial Organisations, prepared by a working group consisting of CSO experts, passed by the Parliament in the first reading in 2018: <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4154/language/ro-RO/Default.aspx>

members, or by supporting or participating in the activities of the association or by volunteering. Any person from the age of 10 and 14 can become a member of a public association (children organisations and youth organisations respectively)<sup>24</sup>. At the same time, full legal capacity (18+ years) and residence in the Republic of Moldova remain conditions for the founders and leaders of the CSO. Any requirement to indicate the membership in a CSO in official documents is inadmissible<sup>25</sup>.

In 2018,<sup>26</sup> the territorial limitation that divided the organisations into local, national or international was eliminated. CSOs may act with or without legal personality<sup>27</sup>, but the latter cannot open accounts, make financial transactions or formalize the activity of volunteers. The law does not prohibit the online association, but the legal framework does not favour the unconventional and less formal forms of association that are directly linked to communities and social dynamics at the grassroots level. The answers of the CSOs participating in the survey show that 66% of the respondents stated that the activity of an organisation in the Republic of Moldova was difficult or very difficult, and 27% of the organisations reported obstacles imposed by the state.

#### **STANDARD II. THE PROCEDURE TO REGISTER A CSO AS A LEGAL ENTITY IS CLEAR, SIMPLE, QUICK, AND INEXPENSIVE.**

The registration of CSOs is relatively quick and inexpensive, with some challenges still in place, such as complexity of the required documents and the accessibility of registration services outside of Chisinau.

In order to be officially registered, a CSO should submit<sup>28</sup>, within one month after the internal approval of its statute by the founding members, a set of documents which, according to the law, may not be extended. The list includes the application, statute, copies of the protocol confirming the establishment, the list and identification documents of the founders, a document on the location of its office, evidence of registration fee payment and the opinion of the relevant unit of the public authorities in charge of specialised organisations (for example, the opinion of MECR for sports federations).

Within 15 days<sup>29</sup> (a term reduced from 30 days in 2018<sup>30</sup>) from the receipt of documents, the public authority must adopt and communicate in writing the decision about the registration or reasoned refusal of the registration. The law explicitly provides six grounds for the

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24 Article 12(5)(6), Law on public associations government 837/1996

25 Article 3(3), Law on public associations 837/1996

26 Article 3(1), Law on Amending and Supplementing Certain Legal Acts 31/2018

27 Article 17(2), Law on public associations 837/1996

28 Article 17(5), Law on public associations 837/1996

29 Article 18, Law on public associations 837/1996 and Article 13, Law on foundations, 581/1999

30 Law on Amending and Supplementing Certain Legal Acts 31/2018

refusal<sup>31</sup>, including the submission of an incomplete list of documents, although in practice in some cases extra time is provided for submitting missing documents. Since April 2018, the newly created Public Services Agency (PSA) is in charge of registering CSOs (instead of the LPA and the Ministry of Justice) via 36 of the 39 multifunctional centres. In 2017, 507 new organisations were registered. In 2018, 436 organisations were registered, of which 36 organisations were registered by the multifunctional centres from 34 districts of the Republic of Moldova, and 258 organisations were registered by the multifunctional centre from Chisinau<sup>32</sup>. The organisations registered in 2017-2018 reported some issues in the registration process: When registering, PSA requests<sup>33</sup> a document confirming the availability of the name of the organisation and *declaration of the legal entity's beneficial owner*<sup>34</sup>, in addition to the documents mentioned above. In case of the latter<sup>35</sup>, the manager of the organisation must sign a confirmation about being the beneficial owner of the CSO, although *de facto* and *de jure*, an unlimited range of social groups and institutions can be beneficiaries of the CSO.

Availability of the name is checked during a three-day period and costs EUR 3.5 or EUR 14 in case of expedited registration – i.e. registration within one hour<sup>36</sup>. The need for a separate name checking procedure is unclear, especially because PSA both checks the name availability and also keeps the State Register of Legal Entities<sup>37</sup>. In case of commercial organisations, the name is checked online, at the counter.

The registration fee for public associations is EUR 4.5, plus EUR 3.5 for the name check and EUR 2 for issuing, editing and approving the name. The registration fee for trade unions is EUR 58<sup>38</sup>, and for foundations<sup>39</sup> – a minimum guaranteed salary in the real sector (EUR 135)<sup>40</sup>. Excerpts from the Register used to be issued by the MoJ for free. Since taking over the registration task, PSA have been issuing them against the fee of EUR 6, set for the issuance of the excerpts from the State Register of Legal Entities and of individual entrepreneurs<sup>41</sup>.

The change in the registration authority led to cases when public associations were charged the same fees as commercial organisations or when the organisations were requested to re-submit their registration documents. This was explained by lack of experience or expertise among regional PSA employees, who had interacted only with commercial entities until 2018.

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31 Article 21, Law on public associations 837/1996. This is the full list of refusal grounds:

- a) Statute contravenes the legislation;
- c) A public association with the same name is already registered;
- d) The request for registration of the public association was submitted before the expiration of one year from the day on which the court decision regarding the termination of the activity of the respective association remained final;
- e) The submitted documents contain inauthentic information;
- f) The name of association affects public morals, national and religious feelings of the people;
- g) The list of submitted documents is incomplete.

Article 15, Law on foundations, 581/1999, repeats the situations a), c), e) and g) from the Law on public associations

32 <http://asp.gov.md/ro/node/2413>

33 <http://asp.gov.md/sites/default/files/documente-necesare/asociatiei-obstesti.pdf>

34 Articles 5 and 14, Law on Preventing and Combating Money Laundering and Terrorism Financing 308/2017

35 Article 3 of the Law on State Registration of Legal Entities and Individual Entrepreneurs 220/2007

36 [http://asp.gov.md/sites/default/files/pdf/acte-institutionale/Anexa\\_2\\_Lista\\_serviciilor\\_CIS\\_08\\_02\\_2019.pdf](http://asp.gov.md/sites/default/files/pdf/acte-institutionale/Anexa_2_Lista_serviciilor_CIS_08_02_2019.pdf)

37 <http://date.gov.md/ckan/ro/dataset/18516-date-din-registrul-de-stat-al-unitatilor-de-drept-privind-organizatiile-necomerciale>

38 <http://asp.gov.md/node/3352>

39 Article 12(5), Law on foundations, 581/1999

40 GD on the minimum guaranteed salary in the real sector 165/2010

41 <http://asp.gov.md/sites/default/files/documente-necesare/asociatiei-obstesti.pdf>



Due to these problems, 88% of the CSOs decided to get registered at PSA's Chisinau Office in 2018.

During 2017-2018, several cases were reported when incomplete files or non-compliant statutes served as basis for rejecting registration applications. The period for reviewing and supplementing the files extended the de facto period of registration beyond the legal deadline. The rejection of incomplete files was not always reasoned. Thus, the CSOs did not always know the reason for the refusal. In 2018, PSA formally recorded two cases when the registration was refused. Refusal may be challenged in court. The few court cases that have taken place over the past few years have involved sports federation (only one for each sports discipline). The most memorable case was the case of the National Rugby Federation, which has been involved in a dispute over the leadership of the organisation for over 8 years<sup>42</sup>.

### **STANDARD III. CSOS ARE FREE TO DETERMINE THEIR OBJECTIVES AND ACTIVITIES AND OPERATE BOTH WITHIN AND OUTSIDE THE COUNTRY IN WHICH THEY WERE ESTABLISHED.**

CSOs may freely establish their objectives and activities, but are exposed to the legal right of authorities to obtain information about all aspects of registered organizations' activity.

CSOs may be established and operate in any area that is not prohibited by law<sup>43</sup>. CSOs are not obliged to coordinate their activity with public authorities; setting the organizations' objectives and deciding how to achieve them falls within the competence of founders and internal governance structures. PSA has no authority to review the objectives of the CSO; it may only refuse the registration if the CSO has an illicit goal. The registration authority has the right to obtain information about all aspects of the CSO's work, to get acquainted with the CSO's documents and to monitor all of its actions<sup>44</sup>. Although this is not applied in practice, this provision may threaten the independence of CSOs. Unfounded interference of government institutions and officials in the activity of CSOs is inadmissible<sup>45</sup> except for explicitly provided cases.

Public authorities do not impose any obvious obstacles in the current activity of CSOs, which are free to operate in any lawful area. The obstacles faced by the CSOs are rather linked to the public authorities' unwillingness and reluctance to cooperate.

Public associations may form unions of associations, establish direct links with or become members of international organisations, networks or federations<sup>46</sup>. Although the law no longer imposes territorial limits, the public association must stipulate in its statute<sup>47</sup> the territory where it wishes to operate. Public authorities do not monitor how this requirement is enforced in practice. International organisations may operate in the Republic of Moldova by either providing funding for CSOs or setting up representative offices. Commonly, Moldovan CSOs do not operate abroad.

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42 <http://www.rugby.md/cotruta-prima-conferinta-octombrie-2017.html>

43 Article 2(1), Law on public associations 837/1996; Article 15 (1)(a) and Article 35 (c) Law on foundations, 581/1999

44 Article 38(1), Law on public associations 837/1996

45 Article 7(6), Law on public associations 837/1996

46 Article 6(1), Article 44, Law on public associations 837/1996

47 Article 16(1)(c), Law on public associations 837/1996



**STANDARD IV. ANY SANCTIONS IMPOSED ARE CLEAR AND CONSISTENT WITH THE PRINCIPLE OF PROPORTIONALITY AND ARE THE LEAST INTRUSIVE MEANS TO ACHIEVE THE DESIRED OBJECTIVE.**

Sanctions for operational violations are clear and predictable. However, the legal sanctioning mechanisms allow suspending or liquidating an organisation, including for minor violations.

Registered CSOs are accountable for breaching the law, within the limit of the sanctions applicable to all legal entities according to the tax, civil and criminal law, which are clear and predictable. Additionally, CSOs that violate the law could be warned by the MoJ and if they do not eliminate the violations within 10 days, their activity may be suspended for a term of six months<sup>48</sup> by court judgement. The public association may also be terminated by a court judgment if it plans and carries out actions<sup>49</sup> against the government, constitutional order or people's rights and freedoms, or if it does not comply, within a year, with the requirements of PSA to eliminate the violations. The definition of 'violation' does not specify the gravity of the violation, which allows for a disproportionate possibility to suspend or liquidate an association for minor violations. The foundation may be terminated<sup>50</sup>, at the request of the MoJ, by a court judgement if the annual value of the patrimony falls below the value of the original patrimony, if it derogates from the statutory purposes, if the purpose or the means used have become illicit or contrary to public order or moral principles, infringes the principles of the rule of law or the sovereignty, independence or territorial integrity of the Republic of Moldova, or if it does not submit, within two years, to the MoJ the annual report on the activity, the sources and the total value of the means used, and the beneficiaries of the foundation. The court decisions can be appealed and annulled by a higher court<sup>51</sup>. In 2017-2018 no cases of suspension or forced dissolution of a CSO were registered.

**STANDARD V. THE STATE DOES NOT INTERFERE IN INTERNAL AFFAIRS AND OPERATION OF CSOS.**

The organisation and the internal operations of CSO are not subject to state interference.

Establishing governing bodies and internal operational procedures is the exclusive prerogative of the CSO. The information about the structure, governing, control and revision bodies and the membership (in case of public associations) must be included in the statute of the CSO, which is submitted to the registration authority<sup>52</sup>. The subsequent changes in the structure and governing bodies must be communicated to the registration authority.

Formally, the authority that registered the organisation has the right to obtain information about all the aspects of the CSO's activity, to review the CSO's documents and to monitor all of its actions. Although in practice CSOs have not reported such measures, these prerogatives

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48 Article 43, Law on public associations 837/1996

49 Article 36(4)(a) preparation and/or conduct of actions to change the constitutional regime or undermine the territorial integrity of the Republic of Moldova through violence, b) preparation and/or conduct of actions to overthrow the legally established public authorities, c) incitement to hate and social, racial, national or religious hatred and discord, d) violation of people's legal rights and freedoms, e) establishment of paramilitary formations, Law on Non-governmental Organizations 837/1996

50 Article 35, Law on foundations, 581/1999

51 Article 37, Law on public associations 837/1996

52 Chapter II, Article 16, Law on public associations 837/1996; Article 11, Law on foundations, 581/1999

represent a latent threat to the independence of CSOs.

All registered CSOs are required to submit periodic reports about their financial and tax situation (e.g. monthly: report on the withholding of the income tax, the mandatory health insurance and the mandatory social insurance contributions; quarterly: consumables and expenditures of non-commercial organisations or yearly: financial situation). Until 2016, all CSOs had to submit annual activity reports to the registration body. Since 2016<sup>53</sup>, this obligation has been applicable only in case of organisations with public benefit status and those that were funded from public funds during the previous year. 66% of the surveyed CSOs consider that the reporting is neither simple nor complicated, and 12% regard it as simple and very simple. 29% of the respondents consider the reporting to be proportional, and 27% consider it disproportional while 44% consider it neither proportionate, nor complicated. Reporting can be done both online and off-line. Even though online systems had malfunctions, most CSOs prefer the online format that makes the reporting easier. In 2018, the reporting was optimised<sup>54</sup> by combining and reducing the number of requested reports. Besides the already mentioned reports, CSOs have to submit the report on the use of funds received as percentage designation, the report of the host volunteer organisation<sup>55</sup> or the report concerning the security incidents for personal data operators<sup>56</sup>.

The sources of income, amount, payment of taxes and other financial activities of the CSOs are subject to financial and tax control by governmental institutions. Financial controls<sup>57</sup> of CSOs are not a current practice and sanctioning of CSOs is rather an exceptional measure applied for violations of the law (i.e. failure to submit the reports on time, failure to register with the National Health Insurance Company, etc.) CSOs that provide medical and social services are regularly checked by specialised institutions for compliance with hygiene and sanitary conditions. There is no practice of applying warnings or sanctions for purported violations in CSOs' activity.

#### SPECIFIC RECOMMENDATIONS FOR AREA 1:

- The parliament should pass the Law on Non-Commercial Organisations in the second reading, without any amendments or addenda that would affect the essence of the law compared to the version adopted and submitted by the government, with the consultation of the amendments with the broad public.
- Simplify the CSO registration procedure and perform the name check at the counter (with the possibility to check it in advance with the State Register of Legal Entities).
- PSA should adopt a set of methodological norms on the state registration of non-commercial associations, in order to standardise the practice of CSO registration and eliminate confusion and arbitrary interpretations of the legislation by PSA officials.

<sup>53</sup> Law on Amending and Supplementing Certain Legal Acts 188/2016

<sup>54</sup> [http://www.fisc.md/raport\\_activitate\\_SFS.aspx?file=11984](http://www.fisc.md/raport_activitate_SFS.aspx?file=11984)

<sup>55</sup> Law on Volunteering 121/2010

<sup>56</sup> GD approving the Requirements for ensuring the security of personal data during their processing by the information systems of personal data 1123/2010

<sup>57</sup> Title V, Chapter 11, Tax Audit, Tax Code of the Republic of Moldova

- Train the PSA staff from all the territorial centres so that they comply with the law during CSO registration.
- Review the procedure of requesting the statement of CSO's beneficial owner and apply a mechanism by using a term according to the lexical meaning and logic of the definitions stated in the Law on Preventing and Combating Money Laundering and Terrorism Financing.
- Adjust the regulatory framework in order to remove or reduce fees charged by PSAs for CSOs for the registration and issuance of excerpts or other services

## 4.2 Equal treatment

### STANDARD I. THE STATE TREATS ALL CSOS EQUITABLY WITH BUSINESS ENTITIES.

The CSO registration procedure is slower, more complicated and less accessible than for commercial entities. Commercial entities are favoured in terms of public procurement, but are more exposed to tax audits.

At the beginning of 2019, there were over 12,000 non-commercial organisations and about 124,000 commercial organisations<sup>58</sup> and individual entrepreneurs registered in the Republic of Moldova<sup>59</sup>. Commercial organisations are also registered by the PSA, but within 24 hours<sup>60</sup>. The procedure is quick thanks to an automated registration system developed by the State Registration Chamber for commercial organisations before merger with PSA. Although the number of documents requested for the registration of commercial entities<sup>61</sup> is largely the same as in case of non-commercial ones<sup>62</sup>, the procedure of commercial organisations registration is simpler. The requirements for the statute of a non-commercial organisation are much more complex (while the commercial organisations receive at the counter pre-set forms that they use for registering, CSOs develop a statute that includes, inter alia, a description of the purposes of the CSO, the conditions and procedure for accepting and withdrawing members, the rights and obligations of members, potential beneficiaries, the structure of the CSO, competence and duration of the mandate of the governing bodies, executive bodies, control and review bodies of the CSO). In addition, non-commercial organisations need to submit documents that prove that they have an office, which is not required from commercial organisations. PSA requires an additional certificate for the name check for a non-commercial organisation, which is issued within three days, while the name of the commercial organisations is checked at the counter.

The registration costs are higher for commercial units – at least EUR 58 (24 hours), compared to the cumulated amount of EUR 10 in case of non-commercial units (taking 15 days).

58 <http://cis.gov.md/statistica>

59 <http://asp.gov.md/node/1658>

60 Calculated from the working day immediately following the day when the documents necessary for the registration were submitted (actually 3 days) Article 5(2) of the Law on State Registration of Legal Entities and Individual Entrepreneurs 220/2007

61 <http://asp.gov.md/node/9>

62 <http://asp.gov.md/node/3352>  
<http://asp.gov.md/sites/default/files/documente-necesare/asociatiei-obstesti.pdf>

The voluntary dissolution of the legal entity (non-commercial or commercial) involves the liquidation procedure, which lasts longer than the registration<sup>63</sup>, followed by the deletion from the registry. The deletion from the state registry of commercial and non-commercial organisations is free of charge and is performed within three days. In 2018, PSA de-registered, upon request, 40 non-commercial organisations.

At the operational level, in terms of reporting or banking operations, there are no significant differences between commercial and non-commercial entities. Generally, the work of CSOs is less susceptible to irregularities such as tax evasion, 'under the table' salaries, or other similar violations. Therefore, commercial organisations are checked more often by state institutions. During the period of 2017-2018, according to official data, the State Tax Service carried out almost 65,000 checks and inspections in commercial organisations and 419 in non-commercial organisations, which represents a 15 times higher incidence of controls in commercial organisations (reported to the number of registered organisations)<sup>64</sup>. Only 20% of questionnaire respondents believe that public authorities apply a preferential treatment to business entities.

Access to funding, including from outside the Republic of Moldova, is subject to similar conditions irrespective of for-profit or not-for-profit form of the legal entity. Access depends rather on the conditions imposed by donors and does not require government registration or approval.

CSOs may participate in regular public procurements with business entities, but the legal framework does not provide an appropriate mechanism for contracting non-commercial organisations, and the requirements and the Terms of Reference are usually adapted to business entities. For example, in the Terms of Reference for the expert review of public policies<sup>65</sup> for CSOs, the SC initially used standard requirements for 'economic operators'. The phrase was eliminated later.

## **STANDARD II. THE STATE TREATS ALL CSOS EQUALLY WITH REGARD TO THEIR ESTABLISHMENT, REGISTRATION, AND ACTIVITIES.**

The state has clear criteria for the CSOs that want to obtain operational benefits. The state provides unjustified preferential funding to some organisations and marginalizes combative organisations.

The regulatory framework provides some small distinctions between the organisational forms and the registration costs of different types of CSOs. All registered CSOs, regardless of form, citizenship or founder, are subject to the same registration, taxation and reporting procedures. State institutions should not give preference to any of the public associations operating in the same field.<sup>66</sup>

CSOs have the legal possibility to obtain some preferential treatment from the state through different mechanisms, like the certificate of public utility, percentage des-

63 Article 86. Dissolution of Legal Entity, Civil Code of the Republic of Moldova

64 The information was provided by the State Tax Service at the request of Promo-LEX Association.

65 <https://e-licitatie.md/public/acquisition-view/2802>

66 Article 8, Law on public associations 837/1996

ignation, status of host volunteer organisation or accreditation for medical or social services<sup>67</sup>. The conditions for obtaining these advantages are provided by the regulatory framework, and each organisation can try to meet them under the same grounds.

Despite the legal provisions, 41% of the respondents believe that public authorities apply preferential treatment in relation to certain organisations. In some cases the preferential treatment is expressed through the practice of direct funding. As an example,

*The annual State Budget includes allowances for subsidizing three large organisations for people with disabilities (Society of Invalids of the Republic of Moldova, Society of Blinds of the Republic of Moldova and Association of Deaf of the Republic of Moldova)<sup>68</sup>. Other CSOs in the field do not benefit from these allowances.*

Most of the time, however, GONGOs or CSOs that are loyal to the government are suspected of receiving preferential treatment. The recent contracts for expert review and evaluation of public policies amounting to EUR 500,000<sup>69</sup> were regarded by many CSO representatives as a way of the government to compensate loyal organisations.

During 2017-2018, more vocal and combative CSOs who expressed critical opinions on a number of laws (Law on the Mixed Electoral System<sup>70</sup>, Law on Fiscal Amnesty<sup>71</sup>, amendments to the Law on Non-Commercial Organisations, etc.) adopted by the government became the target of attacks<sup>72</sup> by political leaders or by their affiliated media, trolls, bloggers and 'experts'. These CSOs could continue their activity without administrative restrictions or repercussions, but they were frequently subjected to moral and verbal aggression in the offline and online informational space.

#### SPECIFIC RECOMMENDATIONS FOR AREA 2:

- PSA should implement an automated system for the registration of non-commercial organisations similar to the one for commercial organisations, which would simplify the processing and reduce the registration period.
- Create mechanisms for the equitable distribution of annual allowances dedicated for the problems of people with disabilities to various CSOs.
- State institutions should stop attacks against CSOs, stop the denigration and blaming campaign against them in the information space, and apply sanctions to the perpetrators.

67 National Council for the Accreditation of Social Service Providers

68 Article 36(2), Law on Social Inclusion of Persons with Disabilities 60/2012

69 <https://e-licitatie.md/public/acquisition-view/2802>

70 Law on Amendments and Addenda to Some Legislative Acts 154/2017

71 Law on Voluntary Compliance and Tax Incentives No 180/2018

72 LRCM, Radiography of Attacks on Nongovernmental Organisations in the Republic of Moldova, 2018, <http://crjm.org/wp-content/uploads/2018/03/2016-2017-radiography-NGO-attacks-EN.pdf>

LRCM, Radiography of Attacks on Nongovernmental Organisations in the Republic of Moldova in 2018, 2019, [http://crjm.org/wp-content/uploads/2019/03/2019-03-20-timeline-atacks-OSC\\_2018\\_final.pdf](http://crjm.org/wp-content/uploads/2019/03/2019-03-20-timeline-atacks-OSC_2018_final.pdf)

## 4.3 Access to funding

### **STANDARD 1: CSOS ARE FREE TO SEEK, RECEIVE, AND USE FINANCIAL AND MATERIAL RESOURCES FOR THE PURSUIT OF THEIR OBJECTIVES.**

CSOs seek, receive and use financial and material resources from multiple sources, of which international grants are the main source.

Public associations have the right<sup>73</sup> to receive various forms of financial or in-kind support. The legislation explicitly states the following forms of support: the right to access grants and scholarships from other countries, from national and international foundations and organisations and from individuals, and the right to participate in national and international contests in order to obtain social contracts and state allocations. CSOs have the right to conduct economic activities, to conclude agreements with individuals and legal entities on technical-scientific, economic and financial cooperation, on manufacturing, on performance of works and provision of services in order to fulfil the statutory goals and duties.

In practice, according to the questionnaire, during 2017-2018, most of the CSOs were funded from international grants – 75% and from local non-state sources – 53%. External funding is also the main source of independent investigative media. Other sources of income used by CSOs were traditional donations – 36%, or crowdfunding, SMS or online donation, 41% - benefited from the percentage designation mechanism, 30% - collected membership fees, 20% – received support from the state, 20% – support from business entities, 21% – carried out economic activities.

CSOs receive and use the resources in line with the procedures imposed by funders and are not required to obtain approval from state institutions (except in the case of state funding) and all transactions are done through banks. Although the allocation of foreign funding for CSOs does not fall under the competence of the state, there were cases when public institutions took control of these flows. For example:

On 29 June 2017, the National Coordination Council for TB/HIV excluded<sup>74</sup>, with violations of the procedure, the Centre for Health Policies and Studies from the process of implementing and managing the funding provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria. The right to coordinate, implement and monitor the projects was attributed to a government public institution.

The conditions for accessing the resources for CSOs depend on the funder and it is generally proportional to the offered budget. Consequently, there is certain stratification between organisations that compete for budgets in three categories: small, medium or large. Small organisations outside the big cities are the most disadvantaged when they compete for resources. Because of the migration, most of all they lack human resources, they have limited capacity and expertise in identifying the sources and formulating the requests for funding and managing the financial resources. The activity of many CSOs depends on the competen-

<sup>73</sup> Article 24, Law on public associations 837/1996

<sup>74</sup> <http://www.pas.md/en/PAS/News/Details/41>



cies of one or two key people, and when they leave, the organisations stop operating.

Very few CSOs in the Republic of Moldova developed a healthy relationship with constituents. Most organisations operate on the basis of contractual relationships, and the voluntary and unconditional involvement is very limited. In this way, initiatives and projects are mostly determined by the funding opportunities and depend less on the real needs of those for whom they are intended.

#### **STANDARD II: THERE IS NO DISTINCTION IN THE TREATMENT OF FINANCIAL AND MATERIAL RESOURCES FROM FOREIGN AND INTERNATIONAL SOURCES COMPARED TO DOMESTIC ONES.**

International and national resources are dealt with identically. The government attempted to restrict the work of CSOs that benefit from international resources but did not succeed.

The current legislation does not restrict CSOs' access to foreign or international funding. CSOs can use funds received from foreign sources and funds from the Republic of Moldova without barriers, under the same tax conditions. If international financing takes place under a technical or investment assistance project that falls within the scope of international treaties the Republic of Moldova is party to, such resources may benefit from tax and customs benefits<sup>75</sup>.

In 2017, the Ministry of Justice introduced<sup>76</sup> in the new draft law on non-commercial organisations several articles on CSOs benefiting from foreign funding. These CSOs were to be banned from participating in the development and promotion of public policies. In addition, these CSOs were requested to report on their income and on representatives of their governing structures. Due to the prompt reaction of the civil society<sup>77</sup> and of the international community, the government dropped the proposals and the draft law was voted by parliament in the first reading in the form developed by the working group with the participation of the civil society.

There has been speculation about the foreign funding of CSOs during the past few years in the Republic of Moldova. Political leaders and affiliated media promote rhetoric similar to that in Russia or Hungary as regards organisations funded from foreign resources. CSOs are often labelled as consumers of grants or as defenders of foreign interests. Some of the attacks refer to the involvement of CSOs in political debates, which the accusers claim is driven by financial rewards CSOs receive from outside.

'They do nothing but write projects, get funding from abroad and they have to consume that money. They got used to organise protests in this day of the year. Besides organising a protest, you better come to help and do something' (3 May 2018, Andrian Candu, Speaker of the parliament of the Republic of Moldova)

75 GD on how to apply the tax and customs facilities related to the implementation of investment and technical assistance projects that fall within the scope of international treaties that the Republic of Moldova is party of 246/2010

76 [http://justice.gov.md/public/files/transparenta\\_in\\_procesul\\_decizional/coordonare/2017/iulie/11/2017\\_07\\_11\\_proiect\\_lege\\_ONG\\_final.pdf](http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/iulie/11/2017_07_11_proiect_lege_ONG_final.pdf)

77 <https://promolex.md/9842-tentativa-de-a-limita-finantarea-din-exterior-a-ong-urilor-pune-in-pericol-functionarea-democratiei-in-republica-moldova-si-nu-poate-fi-acceptata-sub-nicio-forma/?lang=en>

The threat to restrict international funding for CSOs remains open and is regularly brought into public discourse through the State leaders:

'A new Law on Non-Profit Org's was passed in the 1st reading in the [@parliament\\_RM](#). The goal is 2 adjust 2 a simplified rule of establishment&operation 4 NGO's. There are still some challenges - improper foreign donations 2 influence Moldova's political system should be banned'<sup>78</sup> (Andrian Candu, Speaker of the parliament of the Republic of Moldova)

'The initiative promoted by our Hungarian partners<sup>79</sup> as regards the foreign funding of NGOs is very interesting and I think it could also be applied in Moldova' (26 may 2017, Igor Dodon, President of the Republic of Moldova)

#### SPECIFIC RECOMMENDATIONS FOR AREA 3:

- Political leaders and government officials should completely refrain from any attempt to restrict the work of CSOs that benefit from foreign assistance.
- State institutions should stop attacks against CSOs, stop the denigration and blaming campaign against them in the information space, and apply sanctions to the perpetrators

<sup>78</sup> <https://twitter.com/AndrianCandu/status/992133673880293376>

<sup>79</sup> <http://presedinte.md/rom/comunicate-de-presa/in-cadrul-vizitei-de-lucru-la-budapesta-igor-dodon-a-avut-o-intrevedere-cu-presedintele-ungariei-janos-ader>



## 4.4 Freedom of Peaceful Assembly

### **STANDARD I: EVERYONE CAN FREELY ENJOY THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY BY ORGANIZING AND PARTICIPATING IN ASSEMBLIES.**

Anyone may organise and attend peaceful assemblies. During the monitored period there were cases of law enforcement interference in peaceful assemblies, and suspicions of forced participation in assemblies.

The right to free assembly is guaranteed by the Constitution<sup>80</sup>, and the way of organising and conducting public assemblies is regulated by one of the most liberal laws in the region<sup>81</sup>. Assemblies may be organised by individuals with full exercise capacity, groups of persons, and legal entities<sup>82</sup>. The right of public associations to organise assemblies is additionally provided for in the Law on Public associations<sup>83</sup>.

Assemblies are held in any places open to the public, including in the form of spontaneous, simultaneous assemblies or counter manifestations. Participation in assemblies is voluntary and anyone can participate, attend and record images during the assembly. No one may be obliged to attend or participate in an assembly<sup>84</sup>. Despite this, on various occasions, some information appeared in the media<sup>85</sup> about the fact that employees of several public institutions or state-owned enterprises participated in assemblies organised by the governing party, against their will.

In 2017-2018, there were no arrests of the organisers or of people who intended to participate in the peaceful assemblies and the participation in peaceful assemblies was not sanctioned. However, in 2018 there were several cases when some political representatives<sup>86</sup> and authorities intimidated and even physically assaulted the participants in assemblies. The law enforcement bodies, in their turn, stopped<sup>87</sup>, assaulted<sup>88</sup> and prohibited the access<sup>89</sup> or the recording images of several persons during the assemblies. Between 2017 and 2018, several representatives of civil society were subject to wire-tapping because they were involved in anti-government protests<sup>90</sup>. During the same period, based on messages from third parties posted on social networks before anti-government protests, the law enforcement agencies started the criminal prosecution<sup>91</sup> for preparing mass rioting, although the organisers urged people to a peaceful assembly.

80 Article 40, Freedom of Assembly, Constitution of the Republic of Moldova

81 Law on Assemblies 26/2008

82 Article 6(1), Law on Assemblies 26/2008

83 Article 24(n), Law on public associations 837/1996

84 Article 7. Participants in the Assembly (2), Law on Assemblies 26/2008

85 <http://esp.md/podrobnosti/2019/01/24/adminresurs-v-deystvii-kak-sotrudnikov-belckih-gospredpriyatij-ispolzuyut-v-https://occupyguguta.wordpress.com/2018/10/31/iluzia-puterii/>

86 <https://www.facebook.com/marina.tauber.3> , <http://radioorhei.info/fotoreportaj-o-multime-de-la-partidul-sor-contra-catorva-orheieni-din-partide>

87 <https://www.youtube.com/watch?v=3spjEkGIU9Y>

88 <https://www.facebook.com/stefangrigorita/videos/2177395835604794/>

89 <https://www.facebook.com/occupyguguta/videos/514518365731405/?type=2&theater>

90 [https://www.rise.md/articol/ministerul-interceptarilor/?fbclid=IwAR2YlhpYsdLBIZsrbHggjuFXmM6T7AiL5DZB82DAUvU9S2YX\\_s6oVfsx-hA](https://www.rise.md/articol/ministerul-interceptarilor/?fbclid=IwAR2YlhpYsdLBIZsrbHggjuFXmM6T7AiL5DZB82DAUvU9S2YX_s6oVfsx-hA)

91 <https://cotidianul.md/2018/08/24/doc-politia-cu-ochii-pe-facebook-potentialii-protestatari-s-au-ales-cu-dosar-penal-inainte-de-manifestatie/>

## STANDARD II. THE STATE FACILITATES AND PROTECTS PEACEFUL ASSEMBLIES.

LPA applies procedures that facilitate the conduct of assemblies. Various times, LPA made excessive use of a legal provision that facilitates the use of public space by official actions, to the detriment of certain critical organisers.

Public assemblies do not require authorisation. The organizer must notify the LPA about the assembly at least five days before the event<sup>92</sup>. The notification is filed following a simple, free-of-charge procedure that does not generate any challenges for organisers or authorities. In isolated cases, organisations from small localities find it more difficult to submit the notification due to the lack of legal culture of the LPA employees. No notification is required for assemblies with less than 50 participants and spontaneous assemblies. In the case of simultaneous assemblies, LPAs summon the organisers to agree on how to divide the public space.

Organisers intensively use social networks and other electronic communication tools to organise their assemblies. Although there are generally no impediments in using social networks to organise assemblies, the civic group 'OccupyGuguta' reported<sup>93</sup> several cases when unknown persons tried to break in or attack their online groups. The entire OG group was targeted by repeated attacks at the place of assembly, which were neither prevented nor investigated by public authorities.

Only the court can ban an assembly or can allow to modify the conditions of conducting it. The legal deadline for court review of notifications does not impede the conduct of assemblies.

LPA (especially from Chisinau) have periodically limited the right to assembly, using a legal procedure<sup>94</sup> that prioritises the official actions and restricts the conduct of assemblies in the same place and time when official actions take place. These decisions have been usually issued by LPA prior the planned date of affected assemblies, but the legal procedure is not subject to court approval. Although the law limits the organisation of an assembly in the same place and time with official actions, there were cases when assemblies were restricted outside this time or place.<sup>95</sup>

## STANDARD III: THE STATE DOES NOT IMPOSE UNNECESSARY BURDENS ON ORGANIZERS OR PARTICIPANTS IN PEACEFUL ASSEMBLIES.

The State does not impose unnecessary burdens to organisers of peaceful assemblies. However, there were situations when the LPA did not provide the required services.

The LPA must ensure all the conditions for the peaceful conduct of the assembly. In order to hold assemblies, the public authorities have to take the necessary actions to ensure the free<sup>96</sup> provision of the services requested by the organiser, which are usually provided by the subor-

<sup>92</sup> Article 10, Law on Assemblies 26/2008

<sup>93</sup> <https://www.facebook.com/occupyguguta/videos/1564784040289828/>

<sup>94</sup> Article 5(3), Law on Assemblies 26/2008

<sup>95</sup> Case study 27.08.2018. Chişinău. Intervention of the lawenforcement at the assembly organised by the Civic Group OccupyGuguta <https://promolex.md/wp-content/uploads/2018/09/Raport-intermediar-de-monitorizare-a-intrunirilor-august-2018.pdf>

Case study 04.10.2018. Chişinău. Parliament and government of the Republic of Moldova. [https://promolex.md/wp-content/uploads/2018/11/Raport-intruniri-nr.-3\\_final\\_foto.pdf](https://promolex.md/wp-content/uploads/2018/11/Raport-intruniri-nr.-3_final_foto.pdf)

<sup>96</sup> Article 20, Law on Assemblies 26/2008

minated bodies and enterprises it manages<sup>97</sup>, such as public lighting, cleaning, access to power source, etc. One of the services that is, however, subject to payment is the connection to the power source; organisers must pay according to market tariffs. During 2017-2018, several situations were registered when the authorities failed to provide the services that they usually provide:

On 1 September 2018, the LPA did not turn on street lights at night during the assembly of a group of unionist organisations that was organised in the centre of Chisinau<sup>98</sup>. Also in 2018, the LPA did not clean the place where the continuous assembly of OccupyGuguta took place.

The organisers and participants are accountable only for their own actions during the assembly. The organiser is accountable for the actions of the participants only if a court proves that the participants acted upon the organiser's call or instigation<sup>99</sup>. LPA together with the law enforcement bodies must ensure, maintain and restore the public order during the assemblies. Public authorities may intervene in an assembly only to eliminate the violence and the ways of intervention are provided for in the law.

In 2018, a case was registered when the police prohibited, without any explanation, the representatives of OccupyGuguta to disseminate, in a downtown square, the information about the assembly they planned to organise<sup>100</sup>.

Graphics or sound equipment, sound devices, temporary constructions and other objects that are specific to assemblies may be used during the assemblies. In general, there are no impediments to the use of the above mentioned elements, but the authorities seized various times the equipment or devices used during the assembly conducted by OccupyGuguta<sup>101</sup>. Everyone has the right, even before the submission of the notification, to disseminate information about the assembly<sup>102</sup>.

#### **STANDARD IV. LAW ENFORCEMENT SUPPORTS PEACEFUL ASSEMBLIES AND IS ACCOUNTABLE FOR THE ACTIONS OF ITS REPRESENTATIVES.**

Law enforcement bodies protect, in general, the peaceful assemblies. However, several times they violated the peaceful assemblies of organisers who criticize the government.

LPA, the Police and the Carabineers are the public authorities that can intervene during the assemblies in order to eliminate violent elements or restore public order, and their intervention procedure is explicitly described in the law<sup>103</sup>. Law enforcement bodies generally comply

97 Article 10(4), Law on Assemblies 26/2008

98 <https://www.facebook.com/ursu.anatol.1/videos/2182276905130163/> , <https://www.facebook.com/ursu.anatol.1/videos/2182259078465279/>

99 Article 23 (3), Law on Assemblies 26/2008

100 <https://www.facebook.com/occupyguguta/videos/721740188165366/>

101 <https://www.facebook.com/occupyguguta/photos/a.1806985826033900/1968340576565090/?type=3&theater>

102 Article 13, Law on Assemblies 26/2008

103 Articles 21 and 22, Law on Assemblies 26/2008

with these obligations. The most telling example is the march organised by the LGBT community in 2018, when all the provocative and aggressive opposing groups were neutralised, including with the use of force or special means.

The procedure and way of using physical force and special means by law enforcement bodies is regulated by a special law<sup>104</sup> and is normally observed by law enforcement bodies. However, in 2018 several situations were registered that raised concerns and serious questions about the proportionality and predictability of the measures applied.

On 27 August 2018, the peaceful assembly of the civic group 'OccupyGuguta'<sup>105</sup> was banned without legal basis, by representatives of law enforcement bodies. A few dozen of police officers and carabinieri in tactical equipment surrounded the group of about 15 peaceful people and asked them to leave the place of their assembly and seized the goods they used for their protest.

Also, on 27 August 2018, Police and carabinieri forcibly evacuated the participants in the assembly of the National Resistance Group ACUM in order to provide the space for an official action planned there.

Police officers or carabinieri are liable to disciplinary<sup>106</sup> or even criminal sanctions<sup>107</sup> for the application of excessive force and failure to protect participants in peaceful assemblies. Police officers and carabinieri who participate in the interventions do not have individual identification marks, making it almost impossible to identify and hold them liable for the committed violations.

#### SPECIFIC RECOMMENDATIONS FOR AREA 4:

- LPA and law enforcement bodies (especially the Carabinieri) should adopt non-violent and non-intrusive assistance and response procedures as regards peaceful assemblies based on the observance of human rights, including in the case of critical and anti-government assemblies.
- LPA and law enforcement bodies should apply legal provisions in a non-discriminatory manner and guarantee the safety and integrity of participants, journalists and peaceful observers regardless of their social and political affiliation.
- Law enforcement bodies should eliminate practices to restrict peaceful assemblies invoking the conduct of official activities and apply the legal provisions limiting only the access to the place and during the time when official actions take place.
- Police and carabinieri should mark the uniforms of the public order officers with visible individual identification numbers.

104 Law on the Use of Physical Force, Special Means and Arms 218/2012

105 Promo-LEX, Final Report | Public Assemblies Monitoring Mission, 1 August 2018 - 28 February 2019, 2019, <https://promolex.md/wp-content/uploads/2019/04/Report-monitoring-FoPA-en.pdf>

106 Article 67, Violation of the Law on Assemblies, Contravention Code of the Republic of Moldova

107 Article 184, Violation of the Right to Peaceful Assemblies, Criminal Code of the Republic of Moldova

- Law enforcement agencies should end the practice of initiating criminal prosecution and wiretapping of peaceful protest organisers.
- LPAs should develop the skills of the staff in charge of public assemblies in the field of legislation, communication, dialogue, mediation and negotiation to facilitate effective assistance of assemblies and communication with the organizers and law enforcement.
- Replicate in the municipalities that host a significant number of assemblies (Balti, Comrat, Cahul, Ungheni, Orhei, Singerei, Edinet) the positive experience of the on-line platform <http://intruniri.chisinau.md/> applied in the municipality of Chisinau for the management of information about the notified public assemblies.

## 4.5 The right to participate in the decision-making process

### STANDARD I: EVERYONE HAS THE RIGHT TO PARTICIPATION IN DECISION-MAKING

The legal framework allows everyone to participate in decision-making process. However, public authorities adopted several laws and decisions without observing the legal procedures of transparency and participation.

Public authorities of all levels are required to submit to public consultations the draft regulatory and administrative acts that can have an impact on society<sup>108</sup>. The authorities must take the necessary measures to ensure the participation of all stakeholders in the decision-making process<sup>109</sup>, by applying the mechanism of public consultation with the civil society<sup>110</sup>. Transparency in the decision-making process is based on the principles of informing and ensuring equal participation opportunities to all stakeholders.

Even though LPAs have various methods to ensure the participation, during 2017-2018 they usually just published the announcements or drafts on the participation platform <http://www.particip.gov.md> and rarely reached out directly to CSOs with expertise. There is a widespread opinion that public authorities consult CSOs on topics with no hidden economic and group interests. CSOs with strong critical positions noted that in the case of sensitive topics that concern public property, human rights, justice or democratic institutions, certain public institutions did not reach out to them for information and did not invite them to public consultations and working groups. In order to maintain the relationship with public authorities, many CSOs adopt loyal and less compromising attitudes.

The transparency of the decision-making process in the case of the parliament is not subject to the Law on Transparency in Decision-making but is ensured in accordance with the parliament Regulation<sup>111</sup>. At the stage of parliamentary consultations, the participation of CSOs is

108 Article 3, Law on Transparency in Decision-making No 239/2008

109 Article 7(1), Law on Transparency in Decision-making No 239/2008

110 GD on the mechanism for public consultations with the civil society in the decision-making process 967/2016

111 Article 7(2), Law on Transparency in Decision-making No 239/2008

challenging because the parliament's Rules of Procedure do not set clear rules for public consultations. It became a regular practice in the parliament to introduce conceptual amendment to the draft regulatory acts during the second reading without holding public consultations.<sup>112</sup>

Adoption of decisions as a matter of emergency is possible<sup>113</sup> without observing the legal steps, only in the case of exceptional situations and in case of documents adopted by Central Electoral Commission during the election period. The failure to observe the provisions is subject to disciplinary sanctions; individuals and those in positions of accountability incur contravention liability<sup>114</sup>. At the same time, the legal framework does not provide for remedies in case of failure to observe the proceedings that ensure the transparency. During 2017-2018, several draft laws were approved without being subject to public consultations.

The draft law on voluntary reporting and tax benefits<sup>115</sup> was registered on 24 July 2018 and adopted in both readings after two days, on 26 July 2018, one day before the closure of the parliamentary session of summer 2018. The Standing Bureau of the parliament did not publish any decision justifying the need to adopt this law as a matter of emergency.

At the local level, outside the big cities, decision-making is less transparent and access to information is limited both due to the reluctance of LPAs and lack of interest, knowledge and abilities of CSOs. Local CSOs are rarely invited to consultations as social service providers established by the authorities are preferred.

#### **STANDARD II: THERE ARE CLEAR, SIMPLE, AND TRANSPARENT MECHANISMS AND PROCEDURES IN PLACE THAT FACILITATE REGULAR, OPEN, AND EFFECTIVE PARTICIPATION OF CSOS IN DEVELOPING, IMPLEMENTING AND MONITORING PUBLIC POLICIES.**

There are clear mechanisms and procedures to follow in public policy elaboration process. Often, the public institutions applied the mechanism in a perfunctory manner, without taking into account the opinions and the critics expressed by the CSOs in the process.

The stages, deadlines and conditions for conducting public consultations in the decision-making process are clearly defined by the legal and regulatory framework. The mechanism of public consultation with the civil society includes different methods of consultation that can be used separately or together: request of the opinion of the civil society, permanent or ad-hoc working groups, public debates, public hearings, surveys and other ways.<sup>116</sup>

CSOs may get involved during the implementation, monitoring or assessment stages of public policies that specifically target civil society and other activity sectors. The CSO survey shows that 68% of the respondents participated in national decision-making processes and 59% in local decision-making processes. 75% of those who participated believe that the processes

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112 LRCM, How can we make the decision-making process in the Parliament of the Republic of Moldova more transparent?, 2018, <http://crjm.org/wp-content/uploads/2019/03/2018-CRJM-PPD-JudTransp.pdf>

113 Article 16<sup>1</sup>, Law on Transparency in Decision-making No 239/2008

114 Article 326<sup>1</sup>, Violation of the Law on Local Public Administration, Contravention Code of the Republic of Moldova

115 <http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/4329/language/en-US/Default.aspx>

116 Article 11, Law on Transparency in Decision-making No 239/2008



were difficult or very difficult.

Public authorities regularly set up working groups or committees and short-term councils, to which CSOs are invited depending on their competencies, but also depending on their relationship with the public authority. At the same time, any organisation may express their opinion and participate in the decision-making process on its behalf without being forced to become part of consultative bodies.

CSOs believe that over the last few years, the participation in the decision-making process has been purely superficial and non-transparent and that their opinions were never taken into account by authorities. 63% of the respondents noted that public authorities did not provide feedback for the proposals and 47% said that their contribution was not reflected in the final policy documents. Among the difficulties the following were mentioned: short time provided for consultation, non-cooperating attitude of the authorities, ignoring the CSO, lack of a deadline for the submission of commentaries, lack of tables of divergences, failure to publish all the versions of the draft laws after the consultations, total lack of consultations in certain institutions. 11% of questionnaire respondents reported that they have been excluded by authorities from participating in the decision-making processes.

### **STANDARD III: CSOS HAVE ACCESS TO INFORMATION NECESSARY FOR THEIR EFFECTIVE PARTICIPATION.**

Public institutions made available a minimum amount of information to the public regarding the topics of the published drafts. Requests of information mainly generate incomplete answers or refusals under the pretext of protection of personal data, trade secret or state secret.

The legislation clearly stipulates the steps (*publication of the announcement, publication of the draft decision, consultation of stakeholders, receipt and examination of recommendations*) aimed to ensure transparency and participation in the decision-making process and sets deadlines for each of these steps. Public CPA institutions constantly publish draft decisions and related materials on <http://particip.gov.md> where they can be viewed by anyone. In 2017, 1,033 drafts were published on the platform by 17 CPA institutions and in 2018, 1,165 drafts by 19 CPA institutions. At the same time, 66% of the CSOs that participated in decision-making processes said that information on the discussed drafts was hardly accessible. According to 77% of the respondents the information was not available in time to allow for their contribution. Various CSOs believe that CPAs observe only the form, but are not interested in the opinion and in the participation of the CSOs and that is why they are reluctant to directly inform CSOs, collect their comments and discuss their opinions.

There were plans to launch an automated “e-legislation” system at the beginning of 2019 available to the public. The system aims to<sup>117</sup> include all the draft regulatory acts developed by public institutions subordinated to the government, summaries of comments and objections, all versions of draft regulatory acts as well as the final adopted version. So far, the stage of implementation of this system is unclear.

Public authorities have the obligation to respond within a maximum of 15 working days to

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117 Law on Regulatory Acts 100/2017

the requests for information of public interest<sup>118</sup>. Answers are usually free of charge, but the authorities may require payments equivalent to the costs of producing the support or of the translation of the requested information. 80% of the interviewed CSOs requested information from the government in the past two years. Of these, 31% received a full response, 51% – a partial response, 6% did not get a response, and 12% received a response for some inquiries, and did not for others. These data confirm the results of a study<sup>119</sup> conducted by Centre for Policies and Reforms<sup>120</sup> in 2017, which found a deficient response by LPAs to inquiries of information of public interest. According to CPR, 71.5% of the inquiries got a response within the legal deadline, 14.3% of inquiries received an answer after the legal deadline and other 14.3% of the inquiries did not get any response. A share of 20% of the responses received refused to provide the requested information, 20% of the answers were irrelevant and 40% were incomplete.

The responses received by applicants are often formal and evasive. The access to information is hindered by deficient interpretation of the legislation, excessive bureaucracy of the procedure for inquiring for information or overlapping with the Law on Petitioning – interpreted to the detriment of the applicant. The practice of refusing to provide the requested information under the pretext of protecting personal data<sup>121</sup> or of state, tax or commercial secrecy has expanded over the past few years.

#### **STANDARD IV: PARTICIPATION IN DECISION-MAKING IS DISTINCT FROM POLITICAL ACTIVITIES AND LOBBYING.**

Political activity and lobbying are not defined by the legislation. The Ministry of Justice tried to prohibit the participation in political activity of CSOs that receive foreign funding.

Political activity is not defined as such in any legal document. According to the legislation, CSOs do not have the right to use money and material assets to support political parties, socio-political organisations, blocks and certain candidates during the elections of public authorities<sup>122</sup>. Involvement in the design, monitoring, or implementation of public policies is not prohibited by law in any way, and CSOs have no obligation to register or comply with other rules in order to engage in lobbying and advocacy. The lobbying activity is not legally regulated in the Republic of Moldova. However, during 2017-2018, CSOs in general and certain organisations in particular have been constantly targeted by smear campaigns by politicians and politically affiliated media, because they used their right to criticize a series of laws passed by the parliament of the Republic of Moldova.

In 2017, the Minister of Justice introduced<sup>123</sup> several articles in the draft law on non-commercial organisations aiming to prohibit the participation in the ‘political activity’ of organisations

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118 Article 16(1), Law on Access to Information 982/2000

119 CPR, How Does the State Restrict the Access of the Media to the Information of Public Interest?, 2017, <https://cpr.md/2018/06/29/cum-statul-ingradeste-presei-accesul-la-informatia-de-interes-public>

120 <https://cpr.md/en/>

121 Law on Personal Data Protection 133/2011

122 Article 8(5), Law on public associations 837/1996

123 [http://justice.gov.md/public/files/transparenta\\_in\\_procesul\\_decizional/coordonare/2017/iulie/11/2017\\_07\\_11\\_proiect\\_lege\\_ONG\\_final.pdf](http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/iulie/11/2017_07_11_proiect_lege_ONG_final.pdf)



that receive foreign funding. Following a prompt reaction of CSOs<sup>124</sup> those articles were removed, but the need to control the activity of CSOs that receive foreign funding was further reiterated by the Speaker of the parliament<sup>125</sup>.

#### SPECIFIC RECOMMENDATIONS FOR AREA 5:

- All public institutions should ensure a transparent decision-making process by making sure that they use appropriately the public consultation mechanism, provide information in a targeted manner and comply with the legal deadlines at all stages of consulting draft decisions.
- Parliament should regulate the transparency of the decision-making process in the parliament by setting certain stages, terms and ways of consulting that are similar to those provided for in the Law on Decision-Making Transparency.
- Optimise the system of publishing information on parliament's website (the option 'comments', monitoring the legal opinions issued by parliamentary committees).
- Public institutions should ensure good internal management to guarantee correct implementation of the legislation on providing information of public interest.
- Public institutions should regulate and apply sanctions for breaking the requirements of transparency and access to information.
- Implement the e-legislation information system and ensure public access to this system.

124 <https://promolex.md/9842-tentativa-de-a-limita-finantarea-din-exterior-a-ong-urilor-pune-in-pericol-function-area-democratiei-in-republica-moldova-si-nu-poate-fi-acceptata-sub-nicio-forma/?lang=en>

125 <https://twitter.com/AndrianCandu/status/992133673880293376>

## 4.6 Freedom of Expression

### STANDARD I. EVERYONE HAS THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION.

Everyone can express their opinions freely, but the space of expression is limited to a few media that are not subject to political control. Critical and vocal CSOs become the target of smear campaigns. Hate speech is a widespread phenomenon that is hardly ever sanctioned.

Every person (individual or legal entity) has the right to freedom of expression. This right includes the freedom to seek, receive and communicate facts and ideas.<sup>126</sup> Informal groups enjoy the freedom of expression, through the right of each individual in the group. The legislation does not impose any barriers concerning the free use of any media for receiving or disseminating information.

In practice, the expression of opinions has consequences. A large part of Moldovan society shows a low level of acceptance of critical views. Populist political forces use this state of affairs to attract voters and thus indirectly promote the culture of intolerance. A share of 34% of the respondents of the questionnaire believe that CSOs cannot express freely their opinion that criticises the authorities. A share of 75% of respondents expressed their views that criticize public authorities, and 44% of them were pressured after they expressed their opinion. In the past few years, due to the opinions expressed about a number of laws adopted by parliament, CSOs became the target of smear campaigns of politicians, state officials and media groups, bloggers, vloggers and trolls controlled by the politicians. The attacks in the informational space are aimed to install fear in the society and many organisations prefer to use self-censorship in order not to be attacked.

On 10 July 2017, the General Prosecutor's Office invited representatives of Amnesty International Moldova to discuss proposals to strengthen cooperative relations. During the meeting, the representatives of the Prosecutor's Office recommended the organisation to coordinate its reports with the Prosecutor's Office before publishing them.<sup>127</sup>

The access of CSOs to media is selective and restrictive. The main TV channels with national coverage are owned by or are affiliated with politicians. The access to their air time is restricted by criteria related to political preferences. Online media is influenced to a large extent by media sources with obscure owners and interests who set out the public information agenda. Under these circumstances, the space for expression of CSOs is limited to their own sites and several TV and radio stations still open to a wide range of views and opinions.

A CSO that openly criticised the actions of a ministry did not have access to certain TV stations for two years, not even through social advertising for which it was willing to pay.

<sup>126</sup> Article 3(1), Law on Freedom of Expression 64/2010

<sup>127</sup> <https://www.privesc.eu/Arhiva/77141/Sedinta-comuna-pe-teme-de-actualitate-cu-participarea-conducerii-Procuraturii-Generale-si-reprezentantilor-Amnesty-International-in-Moldova>, <https://amnesty.md/en/media/procuratura-general-a-incearca-sa-intimideze-si-sa-descalifice-profesional-miscarea-amnesty-international-2/>

Hate speech in different forms is forbidden<sup>128</sup>, and deliberate actions aimed to incite national, ethnic, racial or religious strife or division constitute an administrative offence<sup>129</sup>. In 2018, in a period of six months, Promo-LEX Association identified<sup>130</sup> 457 cases of hate speech in the informational space. Usually such cases are not sanctioned due to the ambiguous legislation and failure to understand this phenomenon by the competent institutions. The national case law concerning the cases of hate speech is limited and offers more counter-examples on how this phenomenon should be dealt with.

In September 2012, in a TV interview, Marchel, the Bishop of Balti and Falesti Diocese of the Moldovan Metropolitan Church, said that 92% of gay people were carriers of HIV and AIDS and for this reason they should be prohibited from working in educational institutions and public health and nutrition facilities. The Supreme Court of Justice acquitted him in 2015, noting that the bishop's speech was his way of expressing religious beliefs and falls within the freedom of expression.<sup>131</sup>

## **STANDARD II. THE STATE FACILITATES AND PROTECTS FREEDOM OF OPINION AND EXPRESSION.**

There are cases of suppression of freedom of opinion and expression including through limiting pluralistic opinions in media or smear campaigns, while the competent state bodies do not take measures to protect it.

CSOs manage web pages or social network accounts that are not subject to regulations applicable to the media outlets. There are no legal obstacles to using Internet or other means of communication to express opinions. Still, the virtual space is jammed by fake information or clones of media or CSOs' sites. In 2017, a criminal prosecution was initiated against the authors of a series of messages published on Facebook, on the grounds that they were preparing mass disorders.<sup>132</sup>

In 2017, several media organizations launched the <https://stopfals.md/> portal – a campaign against fake and suspicious information under the title STOP FALS! Its clone – <https://stopfals.com/> appeared in September 2017. It illegally took over the campaign's logotype and disclaimer and became the source of fake news and distorted information<sup>133</sup>.

**In practice, there were no cases of blocking online or offline media, but activists often re-**

128 Article 32(3) of the Constitution of the Republic of Moldova, Article 2, Law on Freedom of Expression No 64/2010, Article 2, Law on Equality No 121/2012, Article 2 of the Law on Gender Equality No 5/2006, Article 54. Violation of the legislation on religious groups, Article 69. Insults and Article 354. Disorderly conduct, Contravention Code,

129 Article 346. Criminal Code of the Republic of Moldova

130 Promo-LEX, Hate speech and incitement to discrimination in the public space and the Media in the Republic of Moldova, 2018, <https://promolex.md/15401-raport-discursul-de-ura-si-instigare-la-discriminare-in-spatiu-public-si-mass-media-din-republica-moldova-2019/?lang=en>

131 [https://gdm.md/files/decizie\\_csj\\_marchel.pdf](https://gdm.md/files/decizie_csj_marchel.pdf)

132 [https://www.rise.md/articol/ministerul-interceptorilor/?fbclid=IwAR2YlhpYsdLBIzsrBhggjuFXmM6T7AiL5DZB82DAUvU9S2YX\\_s6oVfsx-hA](https://www.rise.md/articol/ministerul-interceptorilor/?fbclid=IwAR2YlhpYsdLBIzsrBhggjuFXmM6T7AiL5DZB82DAUvU9S2YX_s6oVfsx-hA)

133 <https://stopfals.md/ro/article/falsul-si-furtul-de-imagine-utilizate-in-scop-de-manipulare-180048>  
<http://www.api.md/news/view/ro-atentie-incercare-de-deturnare-a-campaniei-stop-fals-1693?v=1510761685>

ported cyber-attacks on e-mails, websites or other web resources. An exceptional case happened in May 2018, when the print run of the regional newspaper 'Cuvantul' was seized by the police on the grounds that it was being transported without accompanying documents<sup>134</sup>.

The work environment of the media is vulnerable - editorial policy is influenced by the interests of the financiers and the media entities are systematically subjected to attacks by various social actors. During 2017-2018, Republic of Moldova fell by five positions in the Press Freedom Index, from 76 to 81. Censorship is prohibited<sup>135</sup> in public media outlets; applying censorship and obstruction or intimidation of media activities are crimes<sup>136</sup>. Nonetheless, the editorial policy of several media is susceptible to practices contrary to the law and journalistic ethics.

In September 2018, the editorial team of 10TV reported the censorship imposed by the owner of the TV channel and resigned in corpore<sup>137</sup>.

The law protects the confidentiality of journalists' sources of information<sup>138</sup>. At the same time, deliberate dissemination of defamatory and deceitful information is an administrative offence<sup>139</sup> sanctioned by fine, community work or deprivation of the right to hold certain positions for up to one year. During 2017-2018 there were no cases of sanctioning journalists or searching media outlets' editorial offices, but they are drawn in trials with various institutions and are pressured to disclose information sources.

A contravention case was opened against Rise Moldova Investigation Group in order to find out the source, after it published data on the source of the money that President Igor Dodon used for the election campaign. The institution preferred not to disclose the source of information, even if it meant losing the trial.<sup>140</sup>

**Journalists were the target of verbal attacks and restrictive measures by some state institutions.**

In 2017, the administration of the President of the Republic of Moldova denied the access of a journalist<sup>141</sup> to the Presidency's press events after he had asked the President an inconvenient question.

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134 AIP, Report on the Freedom of the Press in the Republic of Moldova (3 May 2018 – 3 May 2019), 2019, [http://api.md/upload/PDF/Memoriu\\_ZLP\\_final.pdf](http://api.md/upload/PDF/Memoriu_ZLP_final.pdf)

135 Article 34 (5), Constitution of the Republic of Moldova, Article 1 (2), Law on Press No 243/1994, Article 5, Law on Freedom of Expression No 64/2010,

136 Article 180<sup>1</sup>. Deliberate obstruction of media activities or intimidation for criticism and Article 180<sup>2</sup> 'Censorship', Criminal Code,

137 <http://media-azi.md/ro/stiri/demisia-corpore-echipei-10tv-%C3%AEntre-cenzura-ce-ar-fi-fost-impus%C4%83-de-conducerea-postului-%C8%99i>

138 Article 13, Law on Freedom of Expression No 64/2010, Article 18, Non-disclosure of information source, Law on Press No 243/1994,

139 Article 70, Defamation, Contravention Code,

140 <https://www.rise.md/articol/procesul-cu-presedintele/>

141 <https://www.zdg.md/stiri/stiri-politice/jurnalitul-constantin-grigorita-reclama-ca-i-s-a-interzis-din-nou-accesul-la-un-eveniment-al-presedintiei-2>

The Law on Protection of Whistleblowers<sup>142</sup> entered into force in 2018, but without implementing acts to ensure the functionality of the law. Since the law has entered into force, there were no official cases related to whistleblowers. During 2017-2018, two resonant cases related to persons that public opinion regarded as whistleblowers, did not come to the attention of the competent authorities<sup>143</sup>. The persons concerned were criminally convicted at the beginning of 2019<sup>144</sup>.

#### SPECIFIC RECOMMENDATIONS FOR AREA 6:

- Specialised institutions should sanction media outlets that violate journalistic legislation and ethical standards.
- The government should introduce a compulsory education module on tolerance and freedom of expression in the Academy of Public Administration curriculum to train civil servants.
- Specialised state institutions should develop practical tools and mechanisms to prevent and sanction hate speech, including the one originating from state officials.
- Government should adopt functional implementing acts to protect whistleblowers.

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142 Law on Whistleblowers No 122/2018

143 <http://moldovacurata.md/news/view/cum-sunt-protejati-avertizorii-de-integritate-de-institutiile-statului-discutii-organizate-de-api-si-moldova-curata>

144 <https://www.zdg.md/stiri/stiri-justitie/gheorghe-petic-condamnat-de-prima-instata-la-3-ani-si-sase-luni-de-inchisoare>, <https://www.zdg.md/stiri/stiri-justitie/sergiu-cebotari-a-parasit-r-moldova-inainte-de-pronuntarea-sentintei>

## 4.7 Right to privacy

### STANDARD I. EVERYONE ENJOYS THE RIGHT TO PRIVACY AND DATA PROTECTION.

The legal framework provides protection of privacy and personal data.

The right to respect for intimate, family and private life, domicile and correspondence of any person is protected<sup>145</sup> for any person and cannot be subject to arbitrary or illegal interference, either in the physical or virtual<sup>146</sup> environment.

The protection of personal data is subject to a special law<sup>147</sup> applicable to any individual or legal entity of public or private law. The law regulates the way of processing, storing and using personal data, while violation of legal provisions entails contravention liability<sup>148</sup>. The National Centre for Personal Data Protection has the duty to monitor and control the observance of the legislation. CSOs are protected on equal footing with other legal entities and are subject to the same obligations and requirements concerning personal data.

The widespread practice of ‘anonymous’ publishing in the media of private images with prominent politicians and other public personalities, without legal consequences for those who publish them has bypassed the CSOs’ representatives.

### STANDARD II. THE STATE PROTECTS THE RIGHT TO PRIVACY OF CSOS AND ASSOCIATED INDIVIDUALS

The right to privacy of individuals associated with CSOs was affected by a large number of interceptions ordered in legal proceedings by state institutions.

CSOs have the obligation to report tax information, financial statements, statistics on consumption and expenses to state institutions. Standard reports do not imply providing personal data or information that would affect the private life of members, donors or the organization’s officials. The personal information managed by organisations is subject to specific procedures of processing, storage and use. The organization that manages personal data has the obligation to register itself as a personal data operator, which many CSOs do.

Surveillance by technical means, wiretapping or search are special investigation measures<sup>149</sup> that are carried out as part of criminal prosecution only upon authorisation of the investigative judge, at the prosecutor’s request<sup>150</sup>. CSOs and their representatives are subject to the general statutory system and enjoy all the guarantees of the criminal procedure law<sup>151</sup>. In 2017, the Chairperson of LRCM CSO found in his office two wiretapping devices. An investigation

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145 Article 28. Intimate, family and private life, Constitution of the Republic of Moldova,

146 Article 177. Violation of Privacy, Article 178. Violation of the Right to Privacy of Correspondence, Article 179. Violation of the Inviolability of the Domicile, Article 193. Trespassing, Article 197. Deliberate Destruction or Damaging of Goods, Article 260<sup>1</sup>. Illegal Interception of an Information Data Transfer, Criminal Code of the Republic of Moldova,

147 Law on Personal Data Protection No 133/2011,

148 Article 74<sup>1</sup>. Personal data processing with violation of the law on personal data protection, Article 74<sup>2</sup>. The refusal to provide information or deny access to the staff of the National Center for Personal Data Protection, Article 74<sup>3</sup>. Failure to implement the decisions of the National Center for Personal Data Protection Contravention Code,

149 Chapter III, Criminal Procedure Code, Law on Special Investigation Activity No 59/2012,

150 Article 18 of the Law on Special Investigation Measures No 59/2012,

151 Article 7. Legality of Criminal Procedures, Article 8. Presumption of Innocence, Article 9. Equal Protection of the Law, Article 10. Observance of Human Rights, Freedoms, and Dignity, Article 11. Inviolability of a Person, Article 12. Inviolability of a Domicile, Article 13. Inviolability of Property, Article 14. Privacy of Correspondence, Article 15. Inviolability of Private Life, Criminal Procedure Code

of RISE Moldova<sup>152</sup> confirmed the wiretapping of several CSOs' leaders, activists and politicians since 2017. There are strong beliefs in the public opinion that the means of communication can be easily wiretapped. According to an LRCM analysis, in 2014 the wiretapping rate per capita was 40 times higher than in the United Kingdom. Since 2014 until 2018, the number of wiretaps in Moldova has doubled. Judges authorised 11,033 requests for wiretapping in 2017<sup>153</sup> and 12,128 requests in 2018. The requests for wiretapping were authorised at a rate of 97.5%. Only 4% of wiretapped people have been informed about it by the prosecutors after the wiretapping stopped<sup>154</sup>.

During 2017-2018, there were no searches in the CSOs' offices or CSOs representatives' homes. A number of CSOs' representatives and investigative journalists reported that they were the target of organised hacking of servers, Facebook accounts and e-mail, but their origin and purpose remained unknown or unconfirmed. To prevent such cases, CSOs take action to secure data, securing electronic access to server, encrypted communication, safe chats.

#### SPECIFIC RECOMMENDATIONS FOR AREA 7:

- The competent bodies should investigate the attempts to hack into electronic and surveillance systems and other interference with private life.
- General Prosecutor's Office should guarantee transparency of information about the use of special means of interception and surveillance investigation.
- General Prosecutor's Office should ensure that prosecutors inform post-factum wiretapped persons in 100% of cases of interceptions.

152 [https://www.rise.md/articol/ministerul-interceptarilor/?fbclid=IwAR2YIhpYsdLBIZsrBHggjuFXmM6T7AiL5DZB82DAUvU9S2YX\\_s6oVfsx-hA](https://www.rise.md/articol/ministerul-interceptarilor/?fbclid=IwAR2YIhpYsdLBIZsrBHggjuFXmM6T7AiL5DZB82DAUvU9S2YX_s6oVfsx-hA)

153 LRCM, 15 years of Work of Investigative Judges – Results and Future Prospects, 2018, [http://crjm.org/wp-content/uploads/2019/04/Judec%C4%83torii-de-instruc%C5%A3ie\\_ENG\\_web.pdf](http://crjm.org/wp-content/uploads/2019/04/Judec%C4%83torii-de-instruc%C5%A3ie_ENG_web.pdf)

154 <http://sic.md/cum-comunica-statul-despre-interceptarile-telefonice/>, <https://www.csm.md/files/Hotaririle/2018/07/119-7.pdf>



## 4.8 State duty to protect

### STANDARD I. THE STATE PROTECTS CSOS AND INDIVIDUALS ASSOCIATED WITH CSOS FROM INTERFERENCE AND ATTACKS.

State institutions progressed in protecting LGBT assemblies. As for the rest, the state institutions are perceived as inefficient or even as the source of interference and attacks.

The obligation of the state to protect implies both positive and negative obligations for the public authorities in their relation with CSOs. Public authorities have the obligation to refrain from interfering with the rights and freedoms of CSOs and associated people. Public authorities cannot intervene in the internal organisation of a CSO<sup>155</sup>, they cannot discuss the opportunity,<sup>156</sup> form, place and conditions of an assembly, and cannot dictate the form and content of the free expressions of any CSO. Participation of any individual or group in CSOs' activity cannot serve as grounds for limiting one's rights or granting privileges. Additionally, any requirement to indicate the membership in some association in official documents is inadmissible<sup>157</sup>.

CSOs and associated parties can challenge the decisions limiting or violating their rights: an organisation can challenge before the court the refusal to register the CSO within 30 days from the date when the refusal was communicated, the court judgment on dissolving the organization, the rejection of the request to assign the public benefit status<sup>158</sup>, or a court judgment prohibiting or changing the conditions of an assembly<sup>159</sup>. CSOs, especially those that do strategic litigation, can represent in court beneficiaries whose rights were violated.

The state has the obligation to actively intervene through competent authorities (law enforcement bodies, investigative bodies or other specialised structures) in order to protect CSOs and associated individuals from attacks and interference on the part of third parties or state bodies' representatives. In practice, state institutions reacted inadequately to cases in which CSOs were targets of attacks or interference, and they took only superficial measures. When asked if they knew of cases of harassment or attacks against CSOs or their members, 44% of survey respondents said they did, and 33% said that the CSOs they represented were under pressure or unlawful interference. When asked if the state took measures to protect them in cases of harassment or attacks, none of respondents believed that the state took measures (59% did not know what the state did and 41% believed that state failed to take measures). The law enforcement bodies, in their turn, went through antagonistic developments in terms of ensuring the physical protection of CSOs' representatives:

In 2018, in order to protect the LGBT rally organized in Chisinau, the law enforcement bodies took extensive safety measures, which for the first time did not interfere with the good conduct of the assembly.

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155 Article 3(2), Law on Non-governmental Organisations No 837/1996

156 Article 4, 12(4), Law on Assemblies No 26/2008

157 Article 3(3), Law on Non-governmental Organisations No 837/1996

158 Article 22, 37, 33<sup>1</sup>(9), Law on Non-governmental Organisations No 837/1996

159 Article 15, Law on Assemblies No 26/2008



The same year, the permanent protest of 'OccupyGuguta' civic group near the parliament building was attacked repeatedly (their tent was sprinkled with unknown substances; protesters' goods and banner were stolen). Despite the presence of law enforcement bodies, they did not ensure protection. Organizers' requests and complaints to several state institutions were never responded to.

During 2017-2018, CSOs were targeted by a range of attacks involving state officials and formal and informal media outlets. The attacks intensified after CSOs criticized several laws adopted in that period. CSOs documented over 60 situations where independent CSOs or their representatives were verbally attacked by politicians, bloggers, politically affiliated 'experts' or affiliated media. A share of 16% of respondents felt that they were targeted by hate speech or stigmatization, and the fact that the competent institutions did not respond encourages the perpetuation of this situation. The same views were noted in a formal context, when a civil servant accused CSOs of being 'foreign agents' (such rating is not legally defined).

In August 2018, leaders of 'Șor' political party threatened that if they came to power, they would close down CSOs and imprison some journalists. At the same event, they assaulted a journalist. A complaint was filed with the Prosecutor's Office, and according to the official answer, there was no reason for investigation because no elements of the offence were found.

CSOs have access to justice and go to courts, but the conditions they can enjoy fall within the limits of the justice framework of the Republic of Moldova, the quality of which is doubtful. A 2018 survey<sup>160</sup> among lawyers showed that only 35% of respondents thought that judges' decisions were fair and adopted without external influence, 81% said that judges were not independent, and 69.7% that the law was not equally applied to all litigants.

In general, experienced CSOs maintain dialogue with international structures and use international tools to monitor and solve the domestic situation, such as the mechanism for challenging national decisions at the ECtHR or periodic reporting to international structures (UPR<sup>161</sup>, CCPR<sup>162</sup>, ECRI<sup>163</sup>, etc.). In March 2017, a group of CSOs filed a joint declaration to the development partners on worsening environment for civil society organisations and mass-media in the Republic of Moldova<sup>164</sup>.

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160 LCRM, The perception of lawyers about independence, efficiency and accountability of the judiciary in the Republic of Moldova, 2018, <https://crjm.org/wp-content/uploads/2019/02/2018-CRJM-Sondaj-Independenta-justitiei-EN.pdf>

161 <https://www.upr-info.org/en/review/Moldova-%28Republic-of%29>

162 <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>

163 <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance>

164 Declaration on worsening environment for civil society organisations and mass-media in the Republic of Moldova [http://crjm.org/wp-content/uploads/2017/03/Declaration-SocCi-Media-RM\\_03-03-2017-final\\_eng.pdf](http://crjm.org/wp-content/uploads/2017/03/Declaration-SocCi-Media-RM_03-03-2017-final_eng.pdf)

**STANDARD II. MEASURES USED TO FIGHT EXTREMISM, TERRORISM, MONEY LAUNDERING OR CORRUPTION ARE TARGETED AND PROPORTIONATE, IN LINE WITH THE RISK-BASED APPROACH, AND RESPECT HUMAN RIGHTS STANDARDS ON ASSOCIATION, ASSEMBLY, AND EXPRESSION.**

The measures based on the counter-terrorism and anti-money-laundering legislation have put some administrative barriers for CSOs in terms of getting registered and performing bank transactions. This context was used by governmental leaders to speculate and launch smear campaigns against CSOs.

The legislation on preventing and combating money laundering and terrorism financing<sup>165</sup> or anti-corruption<sup>166</sup> does not contain provisions to directly restrict or impede CSOs from carrying out their legitimate activities. Normally, CSOs are not the target of direct measures meant to combat these phenomena. Neither are CSOs' beneficiaries or donors directly affected by these provisions. However, upon registration, CSOs have the obligation<sup>167</sup> to submit *the statement on the beneficial owner of the legal entity*. The statement must be signed by the future manager of the CSO's funds, although de facto he/she is not the beneficial owner of the legal entity. CSOs are also affected by measures targeting money laundering prevention, when commercial banks block some international transfers. To unblock them, the banks ask CSOs to provide supporting documents (such as project documentation or any other evidential documents).

According to the information provided by a CSO in Chisinau, during the reimbursement of the balance of a few dozen EUR, the operating bank requested project documents in order to check the existence of the balance and unblock the transfer.

Similar situations have been confirmed by other CSO, which also mentioned that the banks periodically requests the organisation's statute, various certificates, employees' identity cards, arguing that the organisation is in the risk group for money laundering.

A share of 10% of respondents said that their organisation was unreasonably accused of connections with extremism, corruption or money laundering. Sociological<sup>168</sup> and media<sup>169</sup> products supported by political actors have sustained allegations against CSOs connections with these mentioned phenomena, without convincing arguments.

During the monitored period,<sup>170</sup> the 'Open Dialog' Foundation<sup>171</sup> (based in Warsaw and Brussels) found itself at the epicentre of a case of abusive interpretation of the anti-money laundering legislation concerning a CSO. This case was widely debated and covered by the me-

165 Law on Preventing and Combating Money Laundering and Terrorism Financing No 308/2017,

166 Integrity Law No 82/2017,

167 Articles 5 and 14, Law on Preventing and Combating Money Laundering and Terrorism Financing 308/2017

168 [http://imas.md/pic/archives/2/Prezentare%20%5bbsp%5d%20Iulie%202017\\_English.pdf](http://imas.md/pic/archives/2/Prezentare%20%5bbsp%5d%20Iulie%202017_English.pdf)

169 LRCM, Radiography of Attacks on Nongovernmental Organisations in the Republic of Moldova, 2018, <http://crjm.org/wp-content/uploads/2018/03/2016-2017-radiography-NGO-attacks-EN.pdf>

LRCM, Radiography of Attacks on Nongovernmental Organisations in the Republic of Moldova in 2018, 2019, [http://crjm.org/wp-content/uploads/2019/03/2019-03-20-timeline-atacks-OSC\\_2018\\_final.pdf](http://crjm.org/wp-content/uploads/2019/03/2019-03-20-timeline-atacks-OSC_2018_final.pdf)

170 <https://reportaje.moldova.org/cazul-open-dialog/>

171 <https://en.odfoundation.eu/>

dia. The political leadership and affiliated media accused the 'Open Dialogue' Foundation of laundering money, getting involved in the internal affairs of the Republic of Moldova and of having funded some political parties in the Republic of Moldova. Alongside the confrontation with political opponents, the government tried to use this case to legitimise the intentions to limit the international funding of CSOs and restrict the involvement of CSOs in activities that the government rates as 'political'. In November 2018, an Inquiry Committee of the parliament of the Republic of Moldova submitted a report<sup>172</sup> on the interference of 'Open Dialogue' Foundation, in which it recommended, *inter alia*, that the legislation on CSOs' activity and funding needed to be 'improved', in order to 'eliminate the risks to state security' and to ensure 'genuine financial transparency'.

#### SPECIFIC RECOMMENDATIONS FOR AREA 8:

- Competent bodies should apply effective prevention and protection measures in all dangerous situations to which CSOs and their representatives are exposed (cyber-attacks, online environment, public assemblies, etc.).
- Review the criteria for including organisations in the risk group for money laundering, so as to eliminate the commercial banks' unjustified practices of blocking international transfers based on contractual relationships with international funders.
- Review the notion of the CSO's beneficial owner, in line with the lexical meaning and the logic of the notion provided for by the Law on Preventing and Combating Money Laundering and Terrorism Funding.

172 <https://deschide.md/ro/stiri/politic/39733/EXCLUSIV--Raportul-integral-al-comisiei-%E2%80%9EOpen-Dialog%E2%80%9D-inclusiv-paginile-SECRETE.htm>

## 4.9 State Support

### STANDARD I. THERE ARE A NUMBER OF DIFFERENT AND EFFECTIVE MECHANISMS FOR FINANCIAL AND IN-KIND STATE SUPPORT TO CSOS

The state developed several mechanisms for financial support of CSOs, but in general, the volume of their benefits and effectiveness are still modest.

CSOs can be funded from the state budget<sup>173</sup> through mechanisms that include grants, percentage designation, purchase of services from CSOs, social contracts, or direct allocations of subsidise to CSOs. Another legal possibility to support CSOs is the in-kind support, which was requested by 6% of respondents.

A total of EUR 1.9 million was provided from the state budget to CSOs in 2017 and EUR 2.4 million in 2018<sup>174</sup> – albeit growing, it is still a relatively modest source. The CPAs directed most of these resources to a few dozen CSOs through funding programs for youth, cultural, healthcare, social and diaspora projects. There is also a budget available for environmental projects but in the past few years, financing was only provided to state institutions<sup>175</sup>.

Local and regional LPAs have isolated practices of funding CSOs through models focused on small projects. The civic budgeting (EUR 100,000 in 2017 and EUR 150,000 in 2018) granted by the Chisinau City Hall, the funding program established by the Ialoveni District Council, or the grants offered by Balti City Hall are among the few examples of this kind.

Public authorities can also provide in kind support to CSOs. This type of support is not so much tapped into and in most cases it is about providing CSOs with free of charge premises.

The 2% percentage designation mechanism began to operate in 2017. As many as 302 organisations received about EUR 210,000 in 2017 and 393 organisations received about EUR 290,000 in 2018<sup>176</sup>. The mechanism is not sufficiently known by the general public and it had shortcomings in terms of information or transparency. This mechanism is still far from its optimum functionality and full potential of generating income. In 2018, the contributors who used the mechanism, represented 13% of the total number of taxpayers who filed their income tax returns in 2018<sup>177</sup>.

New provisions<sup>178</sup> on entrepreneurship and enterprises came into force in 2018. They enable CSOs to carry out social entrepreneurship activity. However, the regulatory and legislative framework still does not provide social entrepreneurs enough benefits, so the field remains

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173 State Budget Law, Law on Public Procurements No 131/2015, Law on Public-Private Partnership No 179/2008, GD Approving Some Measures to Support Youth Activities No 1213/2010, Framework Regulation on Organisation and Implementation of the Grants Program for Youth Organisations and National/Local Project Contest for Youth Initiative Groups, Regulation on state budget funding of cultural projects implemented by civic associations, adopted by GD No 834/2014, Order of the Minister of Youth and Sports Approving the Framework Regulation on Organisation and Implementation of the Grants Program for Youth Organisations and National/Local Project Contest for Youth Initiative Groups, Regulation on organisation and implementation of the Small Grants Program in the field of active ageing.

174 ECNL, Direct state funding of CSOs in the Republic of Moldova, 2018, <http://ivcmoldova.org/wp-content/uploads/2018/09/Finantarea-directa-a-OSC-in-RM.pdf>

175 <http://www.madrm.gov.md/ro/content/fondul-ecologic-na%C8%9Bional>

176 FSS, 2018 State Tax Service Activity Report, 2019, [http://www.fisc.md/raport\\_activitate\\_SFS.aspx?file=11802](http://www.fisc.md/raport_activitate_SFS.aspx?file=11802)

177 LRCM, Report Two years of implementation of the 2% mechanism in the Republic of Moldova, 2019 <https://crjm.org/bilantul-celui-de-al-doilea-an-de-implementare-a-mecanismului-2/>

178 Law on Amendments and Addenda to Some Legal Acts No 223/2017.

largely untapped.

The practice of the state contracting CSOs' services is limited. CSOs' offer of medical services is used for several years. In 2017 and 2018, NHIC contracted 15 CSOs through the compulsory health insurance system<sup>179</sup>. The contracting of CSOs' social services by the state is much more limited; the hotline for children and the free hotline for victims of domestic violence and violence against women are some of the examples. CSOs' services can be contracted through a procurement procedure. This process is not free of issues though. The task of contracting services rests, most of the time, with the LPAs, which do not have the necessary resources. The legal mechanism for procuring services from non-profit organisations is unclear<sup>180</sup>, there are no well-shaped models and the offer of social services is not well developed. The requested documentation is not adapted to CSOs. The bank certificate (with a 10% bank guarantee for the applicant), the certificate of proper performance of the contract (with a bank guarantee of maximum 15% for the winner) and the post-factum payment for services have been creating obstacles for CSOs that don't have financial reserves.

## STANDARD II. STATE SUPPORT FOR CSOS IS GOVERNED BY CLEAR AND OBJECTIVE CRITERIA AND ALLOCATED THROUGH A TRANSPARENT AND COMPETITIVE PROCEDURE

There is no regulatory framework with clear and objective criteria for transparent and competitive allocation of state support to CSOs.

The mechanisms for distribution of state support in cash or in kind are based on a set of various rules. The procedures of applying for funding differ between authorities. For example, the regulations for funding youth and culture projects make reference<sup>181</sup> to the principles of transparency, diversity, accountability and free access, but there is no general framework with rules and standards to regulate all procedures for selecting, monitoring and assessing CSOs' state funding. Only some regulations provide for the presence of CSOs' representatives in project selection (active ageing<sup>182</sup> or youth projects). As for the rest, the details of organising projects are left at the discretion of management authorities. A share of 31% of organisations that filled out the questionnaire applied for state funding in the recent years, and 38% believed that the procedure was non-transparent.

In late 2018, the State Chancellery launched, for the first time, tenders to procure public policy expertise and assessment services from CSOs in 8 lots, worth a total amount of about EUR 500,000<sup>183</sup>. The ambiguity of guidelines in the terms of reference and the unclear intentions of authorities led to a very small number of offers and, ultimately, to suspicions regarding the selection of the contracted organisations.

179 <http://cnam.md/httpdocs/editorDir/file/doc/2018/Lista%20instituti%20medico-sanitare%20contractate%20de%20CNAM%20C3%AE%20anul%202018.pdf>, [http://cnam.md/httpdocs/editorDir/file/Instituti%20medico-sanitare%20contractate%20de%20CNAM%20C3%AE%20anul%202017\(1\).xls](http://cnam.md/httpdocs/editorDir/file/Instituti%20medico-sanitare%20contractate%20de%20CNAM%20C3%AE%20anul%202017(1).xls)

180 Law on Social Services No 123/2010

181 Order of the Minister of Youth and Sports Approving the Framework Regulation on the Organisation and Implementation of the Grants Program for Youth Organisations and National/Local Project Contest for Youth Initiative Groups No 165/2017, Regulation on state budget funding of cultural projects implemented by civic associations, adopted by GD No 834/2014,

182 GD Approving the Program for Mainstreaming Ageing Issues in Policies No 406/2014

183 <https://e-licitatie.md/public/acquisition-view/2802>

The conclusions of a recent study<sup>184</sup> speak about a number of issues related to the financing of CSOs' by the government. The lack of communication between CPAs and CSOs is one of them. Another major issue is the lack of a unified regulatory framework on the procedure for granting state aid to CSOs. Most of the public institutions do not provide enough information on funding programs, the deadlines for competitions are not always observed. The areas and form of funding are chosen without consultation with the civil society, and some CSOs do not even know about the possibility to be funded by public authorities. The monitoring and assessment of projects are not based on an organised system, financial and narrative reporting does not follow a single format, and reports on project results are not made public.

### STANDARD III. CSOS ENJOY A FAVOURABLE TAX ENVIRONMENT

Registered CSOs have some tax benefits, but the legal and regulatory framework can be improved by taking into account the public value of these benefits.

Non-commercial organisations are exempted of income tax, including for economic activity if it supports the statutory purposes<sup>185</sup>. Prior to 2017, non-commercial organisations were required to fill an application to State Tax Service in order to be exempt from taxes on income from economic activity. Non-commercial organisations can also benefit from zero VAT rate projects and tax and customs benefits in order to fund projects under the international treaties<sup>186</sup>. At the beginning of 2019, the list of these beneficiaries<sup>187</sup> included 306 implemented projects (most of them having been implemented by CSOs). However, the registration procedure of zero VAT rate projects is very difficult. In 2018, this tool<sup>188</sup> malfunctioned on the background of the fact that management responsibilities were transferred from the SC to the Ministry of Finance.

A share of 49% of questionnaire respondents believed that the tax benefits were not enough for their organisation. 28% believed that the tax benefits were not enough for their donors, 15% believed that they are enough, while 57% didn't know or didn't answer. A share of 56% believed that the procedure of using tax benefits was not easy and 28% believed that the organisations are not aware of the existing tax benefits, another 28% believed that the organisations are aware and 44% didn't know or didn't answer.

CSOs can obtain the public benefit status<sup>189</sup>, granted by the Certification Committee<sup>190</sup> under the Ministry of Justice. The Certification Committee received 66 applications regarding the public benefit status in 2018, 39 of which were approved and 27 were rejected due to non-compliance with legal requirements. About 133<sup>191</sup> organisations had this status in early 2019. The Public Benefit Certificate is given for a period of three years<sup>192</sup>, through a relatively simple

184 ECNL, Direct state funding of CSOs in the Republic of Moldova, 2018, <http://ivcmoldova.org/wp-content/uploads/2018/09/Finantarea-directa-a-OSC-in-RM.pdf>

185 Article 52 'Non-commercial organisations', Tax Code of the Republic of Moldova

186 GD on how to apply the tax benefits and customs duty breaks related to the implementation of ongoing technical assistance and investment projects that fall in the scope of international treaties that the Republic of Moldova is party of 246/2010

187 [http://www.legis.md/UserFiles/Image/RO/2018/mo333-335md/an\\_1\\_246\(2\).doc](http://www.legis.md/UserFiles/Image/RO/2018/mo333-335md/an_1_246(2).doc)

188 <http://amp.gov.md/portal/>

189 Chapter V, Law on Public Associations No 837/1996

190 <http://www.justice.gov.md/map.php?l=ro&idc=676>

191 [http://www.justice.gov.md/public/files/dir\\_prof\\_si\\_serv\\_jurid/LISTA.pdf](http://www.justice.gov.md/public/files/dir_prof_si_serv_jurid/LISTA.pdf)

192 Article 32<sup>2</sup> (2), Law on Non-governmental Organisations No 837/1996



procedure, and requires organisations to submit yearly narrative and financial reports to the registration authority. The certificate is particularly useful for social or sports organisations, in their relation with public authorities which request the certificate when providing direct financing for sport activities or premises rental and, sometimes, with business entities which ask for this certificate to establish contractual relationships of subsidising or sponsorship. Over the last few years, a number of organisations voluntarily gave up the extension of public benefit status, because it did not provide them benefits.

#### STANDARD IV. BUSINESSES AND INDIVIDUALS ENJOY TAX BENEFITS FOR THEIR DONATIONS TO CSOS.

The Law on Philanthropy does not provide practical tax benefits for potential business donors. Individuals are not entitled to tax benefits for donations.

The Law on Philanthropy and Sponsorship provides only formal<sup>193</sup> tax benefits for business donors. Individuals have been deprived of this right in 2016, after the law on percentage designation entered into force. Taxpayers have the right to make tax-deductible donations (both monetary and non-monetary) during the fiscal year with philanthropic or sponsorship purposes, but they cannot exceed 5% of the taxable income. The threshold has been changed in recent years, from 10% to 2% and, finally, to 5% at present.

The current legal framework does not encourage business entities to engage in philanthropy. Potential donors prefer not to formalise donations in order to avoid the burdensome tax bureaucracy. An analysis<sup>194</sup> shows that the current threshold provides for no tax benefits, even if the deduction would be 10% of the taxable income the donor will practically have MDL zero benefits.

The Law provides for an imprecise framework for philanthropy, using inconsistently the terms of sponsorship and philanthropy without making a clear distinction between them. The Law establishes the form of philanthropic organisation, which so far has not been used by any organisation and does not clearly specify who the beneficiaries of philanthropic activity are.

Under the current circumstances, political parties are the greatest beneficiaries of philanthropic donations. In 2017, all the parties from the Republic of Moldova received donations<sup>195</sup> amounting to about EUR 2.3 million. In 2018, the parties received a total amount of EUR 1.99 million from legal persons and individuals.

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193 Law on Philanthropy and Sponsorship No 1420/2002

194 Fiscal Mechanisms for Stimulating Philanthropy, Expert Grup, 2011, [https://www.expert-grup.org/media/k2/attachments/Mecanisme\\_fiscale\\_de\\_stimulare\\_a\\_filantropiei.pdf](https://www.expert-grup.org/media/k2/attachments/Mecanisme_fiscale_de_stimulare_a_filantropiei.pdf)

195 Promo-LEX, Financing of political parties in the Republic of Moldova. 2017 RETROSPECTIVE, 2018, [https://promolex.md/wp-content/uploads/2018/06/raport\\_finantarea\\_partidelor\\_2017\\_RO.pdf](https://promolex.md/wp-content/uploads/2018/06/raport_finantarea_partidelor_2017_RO.pdf)  
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## STANDARD V. LEGISLATION AND POLICIES STIMULATE VOLUNTEERING

The Law on Volunteering provides a framework that encourages the development of volunteering. At the same time, the legal framework imposes bureaucratic requirements that some CSOs avoid.

The legal and regulatory framework on volunteering<sup>196</sup> was supplemented gradually over the last few years<sup>197</sup>. The Law defines the status of volunteer and provides for the possibility to volunteer with or without contract (if the person is not involved for more than 20 hours per month). Volunteering is formally recognised only in organisations that have the status of host institution. CSOs that want to formalise volunteers' involvement can obtain the certificate of host institution at the MECR Certification Committee. About 100 CSOs had this certificate in early 2019. The host institution must develop a 3-year volunteering program, develop contracts and cards for volunteers and keep registers of volunteers. Starting with 2019, they are supposed to present annual activity reports to MECR. A share of 71% of the respondents of the online survey did not encounter obstacles in involving volunteers.

According to the Law<sup>198</sup>, universities, under cooperation agreements with host institutions, shall annually grant five transferable study credits for internships in areas of public benefit that are related to the volunteer's education profile and speciality, and volunteering shall be also considered as work experience. Volunteering experience makes it easier to obtain dormitory accommodation for the period of studying, and also provides some advantages upon employment.

The Law on Volunteering<sup>199</sup> gives LPAs the legal possibility to grant exemptions from and incentives to institutions hosting volunteers in paying local taxes. However, this was not implemented for the time being. The Law also includes a chapter<sup>200</sup> with policies and measures encouraging volunteering, but without financial allocations. Several organisations have deliberately given up the intention to register as host institution, because of the malfunctioning of several mechanisms (statistical records, granting health insurance and reimbursement of expenses) and the bureaucratisation of the volunteer hosting process.

CSOs involve national and international volunteers in their work. There is also the annual practice of sending a few dozen Moldovan volunteers abroad.

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196 Law on Volunteering No 121/2010.

197 Regulation Implementing the Law on Volunteering, Regulation of the Hosting Institutions Certification Committee,

198 Article 14(6), Law on Volunteering No 121/2010

199 Article 16, Law on Volunteering No 121/2010

200 Chapter IV, Policies and Measures Encouraging Volunteering, Law on Volunteering No 121/2010

#### SPECIFIC RECOMMENDATIONS FOR FIELD: 9

- Adopt a mechanism with uniform conditions and procedures for the direct state funding of CSOs, that should provide for the involvement of CSO representatives in setting up the funding priorities and in selecting, monitoring and assessing funding programs (while observing the principles of transparency, equal access to resources and accountability).
- Develop national mechanisms for LPA support to CSOs on the basis of the best national and international practices.
- Constantly allocate resources from the state budget for contracting services provided by CSOs, with the possibility to further allocate earmarked funds to the LPA budgets.
- Government should adjust the procedures for services procurement using state budget funds in order to remove barriers for CSOs (bank guarantees).
- State Tax Service and other responsible state institutions should widely inform the population about the mechanism on percentage designation and enhance popularization of procedures and results on all aspects of the mechanism.
- Government should adopt implementing regulations on social entrepreneurship in order to boost the development of this instrument.
- Parliament should amend the Law on Philanthropy by rethinking the mechanism for compensation and stimulation of philanthropy, increase the deductibility threshold, including for individuals, clarify who are the beneficiaries of philanthropy and simplify the procedures for tax benefits.
- Simplify the procedure of registration of zero VAT rate projects and tax benefits and customs duty breaks.

## 4.10 State-CSO Cooperation

### STANDARD I. STATE POLICIES FACILITATE COOPERATION WITH CSOS AND PROMOTE THEIR DEVELOPMENT.

The documents (Civil Society Development Strategy and its implementation plan) promoting the civil society development had little efficiency and government supported them with limited financial or human resources.

Over the years, civil society development has been the subject of a range of strategies approved by parliament (2009–2011, 2012–2015 and 2018–2020<sup>201</sup>). The last 2017–2020 Civil Society Development Strategy was approved only on 23 March 2018, although initially it was scheduled for 2017–2020<sup>202</sup>. In this way, the period of 2016–2017 was not officially covered in a policy paper. The strategy was developed in a participatory manner by inter-sectoral working group consisting of representatives of the civil society, government and parliament, with the support of development partners.

The Action Plan implementing the strategy contains 98 actions<sup>203</sup> (with deadlines, responsible parties and indicators) distributed by three objectives: (i) Strengthening the regulatory and institutional framework of civil society participation in the development and monitoring of public policies, (ii) Financial sustainability of civil society and (iii) Strengthening the spirit of active citizenship and volunteering. Of the 98 actions, 58 (59%) are to be implemented '*within the limits of available resources*'. According to estimates EUR 0.72 million are needed for the remaining 40 actions, of which 0.44 million were provided from budget resources and 0.28 million - from other unspecified resources.

The monitoring of the current strategy implies developing annual reports and using three tools: I. Implementation Monitoring Committee, (12 members: CSOs – 3, government – 3, parliament – 3 and development partners (international donors, diplomatic missions and other international institutions) – 3; II. Public hearing and debates; and III. Annual conferences organised by the parliament with the participation of civil society. By mid-2019, the Implementation Monitoring Committee was not established yet and the other tools have not been put into practice. The assessment<sup>204</sup> of the previous strategy showed a modest level of implementation of 27% of the actions, with 9% being under implementation.

### STANDARD II. THE STATE HAS SPECIAL MECHANISMS IN PLACE FOR SUPPORTING COOPERATION WITH CSOS.

The special mechanisms to support cooperation between the state and CSOs were deficient. The bodies created for cooperation were inefficient and quite non-transparent.

A way<sup>205</sup> of cooperation between the state and the civil society are working groups with the

201 The Law Approving the 2018–2020 Civil Society Development Strategy No 51/2018

202 <http://www.parlament.md/LinkClick.aspx?fileticket=Vrb0G5tdGS8%3D&tabid=89&language=ro-RO>

203 The Action Plan implementing the 2018–2020 Civil Society Development Strategy

204 OCT Caraseni, Report on the Final Assessment of Implementation of the 2012–2015 Civil Society Development Strategy, 2016, <http://www.parlament.md/LinkClick.aspx?fileticket=wxleK5LYa3M%3D&tabid=106&language=ro-RO>

205 The Law on Transparency in Decision-making No 239/2008

participation of CPA and CSOs representatives. This kind of groups are created on short term (to develop or consult draft policies), on medium term (e.g. Inter-ministerial Group for Monitoring and Assessing the 2016-2020 Action Plan on Roma People Support ) or on a permanent basis (National Council for Child Rights Protection <sup>206</sup>, National Committee for Combating Trafficking in Human Beings<sup>207</sup>). The Directorate of Permanent Secretariats was created under the SC in 2018. It provides organisational, informational and secretarial assistance to government's consultative bodies<sup>208</sup>. According to CSDS, this body had to coordinate activities related to the collaboration with the civil society, but it has not yet performed this function for the time being. The work of this Directorate had little to no coverage in the media and remained obscure and non-transparent.

Overall, participation in the work of various consultative bodies is formally open to all and CSOs are able to get involved, depending on their experience and expertise. Experience of cooperation in these formats differs among groups and has a variable success in influencing public policies. A share of 55% of survey respondents participated in the work of a consultative body and 49% believe that the consultative body they participated in was established in a transparent manner. Most of the time, participation in the consultative groups is an option primarily for organisations from Chisinau, thanks to CPA institutions' geographical proximity and due to the higher number of CSOs in Chisinau, compared to the rest of Moldova.

In order to facilitate cooperation between the state and the non-governmental sector, consultative bodies consisting of representatives of the government and of the civil society were established. The National Participation Council<sup>209</sup> and the National Council of NGOs<sup>210</sup> are the main bodies of this kind. The National Participation Council is a consultative body the nominal membership of which was approved by government decision<sup>211</sup>, but with obscure selection criteria. The last mandate of the NPC expired in April 2019. The NPC had 9 meetings in 2018, but its work stopped being reflected on the Council's website back in 2014. Representatives of many CSOs believe that during 2017-2018 these bodies were quasi-non-existent and inefficient. They question the representativeness, impartiality and transparency of the NPC. They see it as a body subordinated to the interests of the political parties. The National Council of NGOs<sup>212</sup> is seen as a fragile, non-institutionalised body with little power of negotiation and influence.

At local level, cooperation between CSOs and LPA is much less developed than at central level. In some localities, civil society makes sprawling attempts to establish a collaborative framework. As for the rest, neither public authorities nor civil society comprehend of the need for such cooperation. The LPA prefers to position itself as beneficiary of initiatives implemented with CSOs' efforts.

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206 <https://cnpdc.gov.md/ro/advanced-page-type/membrii-consiliului>

207 <http://antitrafic.gov.md/>

208 GD Amending Some government Decisions No 915/2018

209 <http://www.cnp.md/>

210 <http://www.consiliulong.md/>

211 GD Establishing the National Participation Council No 11/2010, GD No 233/2017 Amending Annex No 1 to GD Nos 11/2010, 233/2017,

212 <http://www.consiliulong.md/>

There is a widespread opinion among CSOs that authorities ‘pretend to cooperate’, but in fact they don’t, and often the CSOs’ contribution is not taken into account in the approved policies, or radically changed in parliament. The results of the questionnaire showed that 46% of respondents believe that decisions of the consultative body were taken into account when developing public policies.

Over the last few years, a number of CSOs mentioned that they were not invited to various working groups or assemblies after they had criticised the authorities. A share of 50% of respondents who participated in working groups believed that all organisations concerned had the chance to participate. In their turn, the representatives of authorities chose to boycott the events of inconvenient CSOs.

#### SPECIFIC RECOMMENDATIONS FOR AREA 10:

- Government and the parliament should allocate sufficient human and financial resources to ensure the implementation of the 2018-2020 Civil Society Development Strategy.
- Government should adopt institutional procedures for direct and open collaboration between the Directorate of Permanent Secretariats of the State Chancellery and CSOs.
- Government should review the format of NPC operation to ensure higher transparency and representativeness of the non-governmental sector in cooperation with the CPA.
- Government should develop a framework mechanism of cooperation between CSOs on one hand and CPA and LPAs of level 1 and 2, on the other, to ensure the representativeness, involvement and development of local CSOs.

# V. CONCLUSIONS & RECOMMENDATIONS

During 2017-2018, the enabling environment of the CSOs of the Republic of Moldova registered deficiencies in several functionality standards. The dynamics of the main indicators suggest a negative trend in this respect. The framework legislation for CSOs activity is morally obsolete, and the new draft law promoted by the CSO representatives, drags in the parliament after it was voted in the first reading at the beginning of 2018.

The registration of CSOs, although possible in each district centre, was confronted with inadequate training of the staff, which determined that 88% of the new CSOs prefer to register in Chisinau.

The administrative requirements did not create particular difficulties for CSOs in accessing finance or in reporting to state institutions. Instead, the participation of CSOs in decision-making processes, where public institutions did not ensure full transparency and involvement, became problematic. Cooperation between state institutions and CSOs, in various formulas, has occurred more formally, with little efficiency and has raised doubts about representativeness and transparency.

The freedom of expression of the CSOs was seriously affected by the shrinking number of means of free expression. A series of systematic attacks by political leaders and politically affiliated media have succeeded in inducing fear and self-censorship in CSOs and society in general. CSO expectations and trust towards law institutions are almost non-existent, given the inability of the institutions to provide the needed protection.

State funding programs, although growing, failed to provide significant support to CSOs. Alternative income generating tools, such as philanthropy or social entrepreneurship, lack an adequate implementation framework. Thus, CSOs remain largely dependent on external grant funding, while state officials have repeatedly stated their intention to restrict the activity of externally funded CSOs.

## KEY RECOMMENDATIONS

Based on the research and analysis carried out, we recommend to address several key problems in order to improve the environment for civil society in Moldova:

- The parliament should pass the Law on Non-Commercial Organisations in the second reading, without any amendments or addenda that would affect the essence of the law compared to the version adopted and submitted by the government, and consultation of the amendments with the broad public.
- The PSA staff from all the territorial centres should be trained so that they comply with the law during CSO registration.
- It is necessary to simplify the CSO registration procedure and perform the name

check at the counter (with the possibility to check it in advance with the State Register of Legal Entities).

- PSA should remove or reduce fees charged to CSOs for the registration and issuance of excerpts or other services.
- PSA should implement an automated system for the registration of non-commercial organisations similar to the one for commercial organisations, which would simplify the processing and reduce the registration period.
- Political leaders and government officials should completely refrain from any attempt to restrict the work of CSOs that benefit from foreign assistance.
- Specialised state institutions should stop and prevent attacks against CSOs, stop the denigration and criminalisation campaign against them in the information space, and apply sanctions to the perpetrators.
- LPA and law enforcement (especially the Carabineers) should adopt non-violent and non-intrusive assistance and response procedures as regards peaceful assemblies based on the observance of human rights, applied in a non-discriminatory manner regardless of their social and political affiliation.
- Law enforcement bodies should eliminate practices to restrict peaceful assemblies by applying the legal provisions limiting the access to the place and during the time when official actions take place.
- Police and carabineers should mark the uniforms of the public order officers with visible individual identification numbers.
- All public institutions should ensure a transparent decision-making process by making sure that they use appropriately the public consultation mechanism, provide information in a targeted manner and comply with the legal deadlines at all stages of consulting draft decisions.
- Parliament should regulate the transparency of the decision-making in the parliament by setting stages, terms and ways of consulting that are similar to those provided for in the Law on Decision-Making Transparency.
- Public institutions should ensure good internal management to guarantee correct implementation of the legislation on providing information of public interest.
- The government should introduce a compulsory education module on tolerance and freedom of expression in the Academy of Public Administration curriculum to train civil servants.
- Specialised state institutions should develop practical tools and mechanisms to prevent and sanction hate speech, including the one originating from state officials.
- General Prosecutor's Office should adopt functional implementing acts to protect whistleblowers.



- General Prosecutor's Office should guarantee transparency about the use of special means for interception and surveillance investigation and ensure that prosecutors inform post-factum wiretapped persons in 100% of cases of interceptions.
- Competent bodies should apply effective prevention and protection measures in all dangerous situations to which CSOs and their representatives are exposed (including online).
- Government should adopt a mechanism with uniform conditions and procedures for the direct state funding of CSOs, that should provide for the involvement of CSO representatives in setting up the funding priorities and in selecting, monitoring and assessing funding programs (while observing the principles of transparency, equal access to resources and accountability).
- Government should adjust the procedures for services procurement using state budget funds in order to remove barriers for CSOs.
- State Tax Service and other responsible state institutions should widely inform the population about the mechanism on percentage designation and enhance popularization of procedures and results on all aspects of the mechanism.
- Government should adopt implementing regulations on social entrepreneurship in order to boost the development of this instrument.
- Parliament should amend the Law on Philanthropy by rethinking the mechanism for compensation and stimulation of philanthropy, increase the deductibility threshold, including for individuals, clarify who are the beneficiaries of philanthropy and simplify the procedure for tax benefits.
- The government and the parliament should allocate sufficient human and financial resources to ensure the implementation of the 2018-2020 Civil Society Development Strategy.
- Government should develop a framework mechanism of cooperation between CSOs on one hand and CPA and LPAs of level 1 and 2, on the other, to ensure the representativeness, involvement and development of local CSOs.

# VI. ANNEXES

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## 6.1 Annex 1 – References

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Ana Bezarau (ARTICO Volunteers' Coordinator/Member of the Certification Committee of Institutions Hosting Volunteers)

Cristina Malic (Secretary of the Wrestling Federation of the Republic of Moldova)

(Emilia Cebotari (Head of the Permanent Secretariat Directorate of the State Chancellery)

Galina Climov (Moldovan Alliance of Organisations for People with Disabilities)

Ilie Chirtoaca (Legal Resource Centre from Moldova/NGO Council)

Mihail Sircheli (Pilgrim-Demo)

Ala Revenco (Association of Solidary Parents)

Natalia Camburian (Soros Foundation Moldova)

Olesea Stamate (The Association for Efficient and Responsible Governance)

Petru Macovei (Association of Independent Press)

Sorina Bodiu, Iurie Zotea (Promo-LEX Association)

Stefan Oprea (The Moldovan Association of the Blind)

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Tudor Lazar (Center for Organisational Training and Consultancy)

Veronica Teleuca ('Life without Violence' Coalition)

Victor Munteanu (Soros Foundation Moldova)

Vlada Ciobanu (OccupyGuguta Civic Group)

## 6.2 Annex 2 - Results of questionnaires

The questionnaires were filled out online during March-May 2019. Invitations to fill out the questionnaire were distributed through open sources and were available to any interested CSO.

The number of respondents: 61 representatives of CSOs of the Republic of Moldova, except for the Transnistrian region.

Profile of responding organisations:

### LOCATION OF HEAD OFFICE:

North	20%
Centre	18%
South	8%
Chisinau	48%
ATUG	5%

### YEAR OF ESTABLISHMENT:

2000 or earlier	29.5%
2001-2005	31.1%
2006-2010	18%
2011-2015	11.5%
2016-2018	9.8%

### LEGAL STATUS OF ORGANISATIONS:

Public Association	77.6%
Employers Association	0.0%
Foundation	5.2%
Private institution	12.1%
Union of legal entities	1.7%
Unregistered	1.7%
Other non-commercial organisation	1.7%

### ANNUAL BUDGET

No income	23.3%
Less than EUR 5 000	13.3%
EUR 5 001 - 10 000	5.0%
EUR 10 001 - 50 000	11.7%
EUR 50 001 - 100 000	21.7%
EUR 100 001 - 500 000	18.3%
EUR 500 001 - 1 000 000	3.3%
Over EUR 1 000 000	3.3%

<b>Number of staff/employees</b> We don't have paid employees	21.7%
Less than 5	33.3%
Between 6-10	20.0%
Between 11-20	18.3%
between 21-50	6.7%
More than 50	0.0%

### NUMBER OF ACTIVE VOLUNTEERS

We don't have volunteers	14.8%
Less than 5	26.2%
Between 6-10	23.0%
Between 11-20	18.0%
Between 21-50	6.6%
Between 51-100	4.9%
More than 100	6.6%

1. Overall, in your opinion, how easy is it to operate a CSO in the Republic of Moldova?

Very easy	Rather easy	Neither easy nor difficult	Rather difficult	Very difficult
0,0%	1,6%	32,8%	54,1%	11,5%

2. Has your CSO been established within the last two years?

Yes	No
88,5%	11,5%

3. Answer only if you answered 'Yes' to question 2. How would you describe the registration process according to the following criteria? (DIFFICULTY)

Very easy	Rather easy	Neither easy nor difficult	Rather difficult	Very difficult
5,3%	26,3%	36,8%	26,3%	5,3%

4. Answer only if you answered 'Yes' to the question 2. How would you describe the registration process according to the following criteria? (COST)

Very cheap	Quite cheap	Neither cheap nor expensive	Quite expensive	Very expensive
11,1%	33,3%	44,4%	11,1%	0,0%

5. Answer only if you answered 'Yes' to question 2. How would you describe the registration process according to the following criteria? (TIME)

Very fast	Quite fast	Neither fast nor slow	Quite slow	Very slow
5,9%	11,8%	52,9%	29,4%	0,0%

7. Did you encounter practical obstacles imposed by the state on the operation of your organisation?

Yes	No
27,1%	72,9%

8. In the past two years, have you presented to the relevant authorities any changes in your status, replacement of board members, etc.?

Yes	No
41,7%	58,3%

9. Answer only if you answered 'Yes' to the question 8. How would you describe the process of dealing with registration authorities according to the following criteria? (DIFFICULTY)

Very easy	Rather easy	Neither easy nor difficult	Rather difficult	Very difficult
7,1%	21,4%	42,9%	21,4%	7,1%



10. Answer only if you answered 'Yes' to the question 8. How would you describe the process of dealing with registration authorities according to the following criteria? (COST)

Very cheap	Rather cheap	Neither cheap nor expensive	Rather expensive	Very expensive
24,0%	16,0%	52,0%	8,0%	0,0%

11. Answer only if you answered 'Yes' to the question 8. How would you describe the process of dealing with registration authorities according to the following criteria? (TIME)

Very quick	Rather quick	Neither quick nor slow	Rather slow	Very slow
11,5%	15,4%	38,5%	26,9%	7,7%

13. How would you describe in general terms the requirements of reporting to state institutions according to the following criteria? (DIFFICULTY)

Very simple	Quite simple	Neither simple nor difficult	Quite difficult	Very difficult
1,7%	10,3%	65,5%	19,0%	3,4%

14. How would you describe the reporting requirements to the state institutions according to the following criteria? (PROPORTIONALITY)

Absolutely proportional/appropriate	Quite proportional/appropriate	Not proportional nor complicated	Quite disproportional/oppressive	Very disproportional/very oppressive
1,7%	27,1%	44,1%	25,4%	1,7%

15. In your experience, do state bodies apply preferential treatment towards business sector?

Yes	No	I don't know
19,7%	21,3%	59,0%

16. In your experience, do state bodies apply preferential treatment towards certain CSOs compared to others (e.g. those that are critical)?

Yes	No	I don't know
41,0%	18,0%	41,0%

17. What resources did you use at least once in the last two years? (please select):

Membership fees	29,5%
Grants/donor support from local non-state sources?	52,5%
Support from the state?	19,7%
The 2% percentage designation mechanism?	41,0%
Donations/Grants/Other support from foreign or international sources?	75,4%
Support from business operators?	19,7%
Economic activities?	21,3%
Individual donations: traditional forms?	36,1%

Individual donations: crowdfunding?	9,8%
Individual donations: SMS donations?	1,6%
Individual donations: online donations?	9,8%
Other (specify)	6,6%

18. In the past two years, have you experienced any obstacles from the state in receiving and using funding or in-kind support from the following (please choose all that apply):

Membership fees	0,0%
Grants/donor support from local non-state sources?	4,9%
Support from the state?	11,5%
The 2% percentage designation mechanism?	11,5%
Donations/Grants/Other support from foreign or international sources?	11,5%
Support from business operators?	4,9%
Economic activities?	3,3%
Individual donations: traditional forms?	6,6%
Individual donations: crowdfunding?	0,0%
Individual donations: SMS donations?	1,6%
Individual donations: online donations?	1,6%
Other (specify)	1,6%

19. Is organising and participating in a peaceful assembly\* easy in the Republic of Moldova?\*

\* *The deliberate and temporary presence of a number of people in a public space, outside a building or body, in order to express a common purpose (public rallies, demonstrations, protests or picketing).*

Organising and participating is easy	Organising is challenging but participation is easy (comment below)	Organising is easy but participation is challenging (comment below)	Both organising and participation is challenging (comment below)	I don't know	Other opinion (Specify)
15,0%	11,7%	11,7%	26,7%	35,0%	0,0%

20. Please choose all situations that apply, according to the best of your knowledge, while organising or/and participating in a peaceful assembly:

Arbitrary refusal by the authorities to hold an assembly	11,7%
Dispersal of a peaceful assembly	13,3%
Persons, groups of persons or CSOs forced to or prohibited to participate	20,0%
Individuals were preliminarily detained or intimidated	10,0%
Individuals or legal entities were prosecuted or sanctioned	10,0%
Access to social media was limited as means to restrict the peaceful assembly	3,3%

Unjustified payments were imposed for services that state authorities are obliged to provide	6,7%
The assembly was not protected against a counter-assembly or against disruptors	15,0%
Participants were prevented from gathering spontaneously	10,0%
None of the above challenges were faced by organizers and participants	51,7%

21. Have you participated in decision-making processes\* at the NATIONAL level in the past two years?

\* The development, adoption, implementation, evaluation and reformulation of a policy document, a strategy, a law or a regulation or any process where a decision is made that affects the public, or a segment thereof, by a public authority invested with the power to do so (The Council of Europe's Guidelines for civil participation in political decision making)

Yes	No
68,3%	31,7%

22. Have you participated in decision-making processes \* at the LOCAL level in the past two years?

\* The development, adoption, implementation, evaluation and reformulation of a policy document, a strategy, a law or a regulation or any process where a decision is made that affects the public, or a segment thereof, by a public authority invested with the power to do so (The Council of Europe's Guidelines for civil participation in political decision making)

Yes	No
58,6%	41,4%

23. If you participated in the decision-making process (NATIONAL or LOCAL) how would you describe the process?

The process was easy	It was somewhat difficult or complicated	It was very difficult and complicated (give an example below)	Not applicable in our case	Other opinion (Specify)
12,7%	65,5%	9,1%	12,7%	0,0%

24. If you participated in the decision-making process, judging from your experience, would you say that information on drafts and timelines of participation in decision-making process:

	Yes	No
Was easily accessible?	34,0%	66,0%
Was available at the earliest stages?	31,1%	68,9%
Was available in advance to allow ample time to provide input?	23,1%	76,9%
Did public authorities provide feedback to organisation's proposals?	36,6%	63,4%

Your input was reflected in the final policy documents?	53,5%	46,5%
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25. If you did not participate in the decision-making process on either national or local level, what was the reason for not participating?

We were not interested	We were denied access to participation	Not applicable in our case
8,1%	10,8%	81,1%

26. Have you requested information from state authorities in the past two years?

Yes	No
80,3%	19,7%

27. Did the answers to the information requests provide you the information you were looking for?

Yes	No	I don't know	Partially	Not applicable	Sometimes yes, sometimes not
30,6%	6,1%	0,0%	51,0%	12,2%	12,2%

28. Did you participate in the work of a consultative body on matters interesting to your organisation in the past two years?

Yes	No
55,0%	45,0%

29. What was the reason for not participating in the work of a consultative body?

We were not interested	We did not know about this possibility	We were never invited	We were denied access (comment below)	Other (specify below)	Not applicable in our case
2,6%	15,8%	36,8%	0,0%	0,0%	44,7%

30. Can you evaluate the work of the consultative body:

	Yes	No	I don't know
It was established in a transparent manner	48,9%	14,9%	36,2%
All relevant organisations have the chance to participate	50,0%	20,8%	29,2%
Decisions of the consultative body are taken into account in the development of public policies.	45,5%	20,5%	34,1%
I don't know/I can't assess	0,0%	0,0%	0,0%

31. Do you think that CSOs can freely express their opinion, regardless of whether it is critical of the government?

Yes	No
65,6%	34,4%

32. In the past two years, did you express critical views towards the activity of the public authority (national or local)

Yes	No
75,4%	24,6%

33. Have you or your organisation been pressured for expressing your opinion in the past two years?

Yes	No
43,5%	56,5%

34. Are you aware of instances of harassment or attacks on CSOs and their members?

Yes	No
43,9%	56,1%

35. In instances of harassment or attacks on CSOs, did the state provide measures to protect them?

Yes	No	I don't know
0,0%	40,7%	59,3%

36. Has your organisation endured any form of state pressure or unlawful state interference in its internal matters in the past two years? (please select all applicable situations):

Inspection/control/unauthorised checks	4,9%
Hate speech/stigmatisation	16,4%
Unjustified claims of connections with extremism, corruption or money laundering.	9,8%
Unlawful sanctions	1,6%
Disruption of CSO's ability to send/receive money	0,0%
No, no pressure or unlawful interference were experienced	67,2%

38. Have you applied for state funding in the previous two years?

Yes	No
31,1%	68,9%

39. Answer only if you answered 'Yes' to question 38. How would you describe the procedure of requesting funding from the state, according to the following criteria? (DIFFICULTY)

Very easy	Quite easy	Neither easy nor difficult	Quite difficult	Very difficult
0,0%	0,0%	68,4%	26,3%	5,3%

40. Answer only if you answered 'Yes' to question 38. How would you describe the procedure of requesting funding from the state, according to the following criteria? (TRANSPARENCY)

Very transparent	Quite transparent	Neither transparent nor non-transparent	Quite non-transparent	Very non-transparent
7,7%	30,8%	23,1%	30,8%	7,7%

41. Answer only if you answered 'Yes' to question 38. How would you describe the procedure of requesting funding from the state, according to the following criteria? (CLARITY)

Very clear	Quite clear	Neither clear nor unclear	Quite unclear	Very unclear
0,0%	30,0%	20,0%	50,0%	0,0%

42. Answer only if you answered 'Yes' to question 38. Were the results of applications for funding published in due time?

Yes	No
57,1%	42,9%

43. Have you applied for state in-kind support in the past two years?

Yes	No
6,0%	94,0%

44. Answer only if you answered 'Yes' to question 43. How would you describe the procedure of requesting aid in kind from the state, according to the following criteria? (DIFFICULTY)

Very easy	Quite easy	Neither easy nor difficult	Quite difficult	Very difficult
0,0%	16,7%	41,7%	16,7%	25,0%

45. Answer only if you answered 'Yes' to question 43. How would you describe the procedure of requesting aid in kind from the state, according to the following criteria? (TRANSPARENCY)

Very transparent	Quite transparent	Neither transparent nor non-transparent	Quite non-transparent	Very non-transparent
0,0%	11,1%	22,2%	22,2%	44,4%

46. Answer only if you answered 'Yes' to question 43. How would you describe the procedure of requesting aid in kind from the state, according to the following criteria? (CLARITY)

Very clear	Quite clear	Neither clear nor unclear	Quite unclear	Very unclear
0,0%	0,0%	28,6%	0,0%	71,4%

47. Do you consider that in the Republic of Moldova (please check all that apply)

	Yes	No	I don't know	No answer
Tax benefits are enough for your organisation	21,3%	49,2%	19,7%	9,8%
Tax benefits are enough for your donors	14,8%	27,9%	36,1%	21,3%
The procedure to use tax benefits is simple	9,8%	55,7%	19,7%	14,8%
Organisations know what the current tax benefits are	27,9%	27,9%	24,6%	19,7%

48. Have you encountered obstacles in engaging volunteers?

Yes	No
29,3%	70,7%



