

**Project APE: “Civic Monitoring on the implementation of the Visa Liberalization Action Plan with the European Union”**

**Anti-corruption reforms in the context of the visa liberalization dialogue with the EU**

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***I. Executive summary***

Signing the "EU-Republic of Moldova Action Plan on Visa Liberalization for Citizens of the Republic of Moldova in the European Union" led to the development and implementation of some policy papers dedicated measures and commitments set out in that Plan, driving the implementation of policies and actions from other relevant areas. We can conclude at this point that one of the undeclared, still obvious goals of the Action Plan, consisting of the convergence of views, efforts and actions of several authorities undertaken toward a common pragmatic and resultative goal - visa liberalization - was achieved during the implementation period.

Although there are some obvious positive results, which were confirmed by the opinion and decisions of the Community institutions<sup>1</sup>, the pace for implementing some actions set by the Plan was not upward enough, while the manifestation of the political will and administrative capacity for undertaking the announced anticorruption reforms did not have the necessary vigour to reach the goals envisaged within the planned periods of time<sup>2</sup> or even before the deadline, which might be a sign of major responsibility and the irreversibility of the anticorruption reforms.

The following period is a propitious time for the Moldovan authorities, which could prove the mobilization of efforts and promotion of the anticorruption policy as a priority, which is essential for the progress in the liberalization of the visa regime with the European Union. And at this very important stage, the focus on the political or group interests and ambitions, which often causes delays of the initiated reforms and inherent actions, regardless of the objective or subjective reasons, which would justify delays, may harm a lot the entire process.

***II. Implementing the Action Plan***

At a formal level, there are two governmental planning documents, specifically dedicated to implementing the Action Plan on visa liberalization:

1. The National Implementation Programme of the European Union - Republic of Moldova Action Plan on visa liberalization;

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<sup>1</sup> Report of the European Commission on the implementation by the Republic of Moldova of the Action Plan in the visa liberalization field, [http://ec.europa.eu/home-affairs/doc\\_centre/external/docs/COM%20Report%20VLAP%20Moldova%20June%202012%20FINAL.PDF](http://ec.europa.eu/home-affairs/doc_centre/external/docs/COM%20Report%20VLAP%20Moldova%20June%202012%20FINAL.PDF); On 27.06.2012, the European Commission decided to take the Republic of Moldova to the second stage of visa liberalisation with the EU, additional facilities being already promoted in the Agreement on the visa liberalisation.

<sup>2</sup> According to the Action Plan approved by the Government of the Republic of Moldova in March 2011 (GD no.122 of 04.03.2011), all legislative-regulatory and institutional reform actions were to be undertaken during the first stage, until the end of 2012.

## 2. Additional measures to implement the National Implementation Programme of the European Union - Republic of Moldova Action Plan on visa liberalization.

By the end of the third quarter of 2012, several important actions/measures of the actions/measures expressly provided for in the two documents have not been carried out or have been partially carried out.

### **1. Adoption of the draft law on the protection of whistle-blowers<sup>3</sup>**

Initially, it was planned and promoted the passing of a law-framework on whistle-blower protection, which is required taken into account that the legislation of the Republic of Moldova has not previously regulated such institutions and procedures, which are innovatory for the Moldovan legal system. Along the way, the passing of an organic law-framework was substituted by passing brief legislative amendments, aimed at protecting the public servants who communicate about acts of corruption (related, acts of corrupt behaviour) by enshrining administrative measures, some insignificant protection measures and determining reduced administrative liability if taking protective measures fails.<sup>4</sup> Although the respective legislative amendments came into force on the 1st of February 2012, their application does not result in the necessary effects, due to the lack of an effective mechanism to protect and stimulate the integrity of the whistle-blowers, the weak protection mechanism, the insignificant sanctions.<sup>5</sup>

### **1. Ensuring adequate human and material resources of the subdivision to prevent and combat corruption at the Centre for Combating Economic Crimes and Corruption (CCECC)<sup>6</sup>**

CCECC reform implementation deadlines have been considerably delayed, the basic law in this case is to enter into force until October 1, 2012, the related laws and regulations (Reform strategy, Code of conduct, structure and manpower limits, Grant procedures and so on) have not yet been examined by the Parliament, while some have not been prepared yet. Accordingly, as CCECC is under reorganization, there were no additional insurance activities using resources of the subdivisions of the institution and thus, the action remains suspended.

### **3. Passing the CCECC Reform Strategy<sup>7</sup> and implementing the CCECC Reform Strategy (including maximizing the confidence, increasing the level of professionalism)<sup>8</sup>**

The Government approved the CCECC Institutional Strengthening Strategy at the end of June 2012, with a delay of 3 months from the deadline stated in the Plan, and only after the Parliament passed the Law on the CCECC Reform.<sup>9</sup> This way, the legal regulatory framework was dispersed and distorted, while the legislative and policy documents have been promoted and linked together, ensuring by that the corresponding plan of reform implementation, with adequate resources and mechanisms for an effective implementation. The NAC Reform/Institutional Strengthening Strategy could be examined only during the autumn-winter session of the Parliament, after the deadline for the Law entering into force is not met and the deadline to appoint a new leadership of the NAC is not met. Since neither the Reform Strategy, nor the implementing provisions of the Law

<sup>3</sup> Measure provided for in the National Programme to Implement the Action Plan, pnt.53.

<sup>4</sup> The administrative sanction applicable to a person holding an important office is established within the range of 1000-3000 lei (65-200 euros), with other complementary sanctions not being established (prohibition of holding some offices).

<sup>5</sup> The discussions with employees of the anticorruption bodies resulted in the fact that there were no officials who would denounce corruption acts committed within the bodies where they operate, while the passed regulations had no mobilizing effect.

<sup>6</sup> Measure provided for in the National Programme to Implement the Action Plan, pnt.54.

<sup>7</sup> Action included in the Additional Measures, pnt.56.

<sup>8</sup> Actions included in the Additional Measures, pnt.59-60.

<sup>9</sup> Law No.120 of 25.05.2012.

on the CCECC reform are passed and implemented, the CCECC reform itself and the founding of a National Anticorruption Strategy are locked up for an indefinite period of time, for the time being.

The efforts undertaken to implement the CCECC reform are to be coordinated and accelerated, but they can be affected by certain political interferences, generated by the interest of some ruling parties in the Republic of Moldova.<sup>10</sup> Although the accusations of political sharing of the CNA leadership were denied by the component parties of the Alliance for European Integration (AEI), the deficiencies to start the contest for the position of the CNA director<sup>11</sup> and the Contest Regulation itself leaves room for extensive discretion, for different kinds of interpretation and even misuse, with the possibilities for some members of the Committee to favour specific individuals.<sup>12</sup> Nor are the legislative regulations on the contest conditions and qualities of the candidates sufficiently clear, leaving space for biased interpretations.<sup>13</sup>

## **2. Ensuring the enforcement of the anticorruption legislation in the implementation of the National Integrity Commission<sup>14</sup>**

The procedure to state and control the assets, incomes and interests of the officials and public officials, as an anticorruption measure, was subjected to constant criticism on the part of authorities, law enforcement agencies, civil society and the mass media.<sup>15</sup> The need for clear and effective regulations in the field was mentioned on several occasions by the international institutions, including the community ones, even in the context of visa liberalization. The legislative - regulatory measures came into being by essentially amending the legislation in this field<sup>16</sup>, but the new regulations, although they came into force on the 1st of March 2012, are not applicable for more than half a year because of the late establishment of the National Commission of Integrity (CNI) and because of the total non-functioning of this Commission.<sup>17</sup> Moreover, while appointing CNI member and later on, political interests have been externalized, which, besides causing the non-functioning of the Commission and the non-application of the legislation in this field, have already affected, in advance, the credibility of the institution, undermining its image as an independent and unbiased institution<sup>18</sup>, a regrettable situation that should be addressed immediately.

<sup>10</sup> In 2011, the office of the CCECC director was politically attributed, through the annex to the Agreement establishing AIE -2.

<sup>11</sup> Members of the Parliament representing the opposition accused the parties that form the ruling coalition during the meeting of the Committee for legal affairs, appointments and immunities of the fact that they want to take over the NAC leadership, 20.06.2012; the contest was started only on 04.07.2012, while the public announcement was made only on 09/04/2012 (<http://www.parlament.md/Actualitate/Noutati/tabid/89/NewsId/631/Page/0/Default.aspx>).

<sup>12</sup> According to the Regulation on organizing and holding the contest to select the candidate for the NAC director (3d & tabid = <http://www.parlament.md/LinkClick.aspx?fileticket=qK6D11jEjAc%89>), the written tests are not previously developed, they shall be submitted by the Committee on Legal affairs, appointments and immunities only on the day of the contest, while the text of the Regulation does not include information on: - how to prepare and ensure the confidentiality of the written test - procedures to evaluate the results: - procedures to appeal and review the results of the evaluation etc. The Committee that organizes the contest consists exclusively of representatives of political parties, the Committee does not include independent/unaffiliated experts representing educational institutions/research organizations, organizations of the civil society.

<sup>13</sup> The law introduces as conditions for candidates: impeccable reputation (without evaluation criteria) policy non-affiliation (the proof of non-affiliation is difficult, because there is no nomenclature of party members), lack of the criminal record (no indication if they were there before and if they have appeased).

<sup>14</sup> Action included in the Additional Measures, pnt.57.

<sup>15</sup> See the materials of the campaigns - "Making the assets public" ([www.api.md](http://www.api.md)) and "Civic Initiative for a Clean Parliament" (<http://www.moldovacurata.md>), the Analytical study on the declaration of assets and incomes of state officials, judges, prosecutors, civil servants and persons in a leading position ([www.eurasia.md](http://www.eurasia.md)); the ridiculed statements of the Prime Minister on the imperfections of the legislation concerning declaring cousins and incomes, Government meeting of 01.02.2012, <http://gov.md/sedinteviu.php?l=ro&idc=495&id=4712>.

<sup>16</sup> The legislative amendments introduced by Law No. 181 of 19.12.2011 for the Law on declaration and control of incomes and property of state dignitaries, judges, prosecutors, public servants and persons in a leading position, for the Law on the Conflict of interests, for the Civil Code, for the Penal Code etc.

<sup>17</sup> Law on the National Integrity Commission entered into force on the 1st of February 2012 and was to be fully applicable as of the 1st of March 2012, but the Moldovan Parliament has formally appointed the NIC members only on 22.6.2012, even then, without appointing the NIC leadership and without institutionalizing the Committee.

<sup>18</sup> Representatives of all parliamentary parties, members of the Alliance have made contradictory statements on the causes of failure to elect the NIC leadership. Subsequently, a consensus was reached between the LDPM and DPM on the appointment of a politically non-affiliated person as Chairman of the NIC, but the decision was not taken because of the opposition on the part of the Liberal Party, which still claims the leadership of this institution (<http://www.pl.md/libview.php?l=ro&idc=78&id=4052>).

The non-functioning of the CNI leads to cancelling the process to cumulate and verify the declarations of wealth, income and interests, as well as to the failure to carry out in due time the legislative regulations regarding the verification of declarations and applying sanctions in the field.<sup>19</sup> The implementation by the NIC (by the authorities, by default) of some actions set out in the anticorruption policy documents is also blocked.<sup>20</sup> Particular attention after the set-up of the NIC shall be given to the technical and material endowment of this institution, but also to ensuring security and anti-corruption incentives for its members and employees.<sup>21</sup>

### ***III. Implementing policies related to the Action Plan***

The governmental documents adopted by implementing the Action Plan on visa liberalization with the EU include concrete and limited actions, even if the authorities show flexibility and adaptability, by taking additional measures. Meanwhile, for the second implementation phase, the Action Plan itself, signed by the Republic of Moldova and EU, provides for implementing the legislation on preventing and combating corruption, ensuring the effective functioning of an independent body to combat corruption, training in the anti-corruption field of the civil servants involved in law enforcement and the judicial system.

The promotion and implementation by the Republic of Moldova of justice related reforms and some general anticorruption strategies are important for the purposes of the Action Plan. Accordingly, for a complex assessment of the implementation of visa liberalization commitments, an overall assessment of the implementation of some priority policy documents is required, namely:

1. Justice Sector Reform Strategy<sup>22</sup>, with the associated Action Plan<sup>23</sup>;
2. National Anticorruption Strategy (NACS)<sup>24</sup> and the Action Plan for implementing the NAS<sup>25</sup>.

#### **Justice Sector Reform Strategy**

As a complex and ambitious document, supported as well by the Community institutions, the Strategy requires particular concentration of human, technical and financial efforts and resources, commitment and determination of all actors in achieving the established justice system imperatives and goals. Almost a year after the Strategy has been passed, although it was managed to pass some major legislative amendments, the impact of the reform is not very noticeable. The implementation of the new regulations is postponed and delayed, more specific measures set out in the Action Plan have not been carried out in due time<sup>26</sup>, while certain processes remain poorly coordinated and do not result in the necessary efficiency<sup>27</sup>. One of the basic problems of the Justice Reform is the delayed reform of the Prosecutor's Office, most actions in this area are set out in the Action Plan for a more distant period and are now at an early stage, the one that provides for research and training. The situation in the justice sector is still perceived as being affected by political and administrative

<sup>19</sup> Materials indicating some abuses and activities of the civil servants that fall under the review by the NIC have already been published in the mass media, <http://www.jurnal.md/ro/news/mi-ma-urile-de-la-cotul-morii-339698/>.

<sup>20</sup> The Action Plan for the years 2012-2013 to Implement the National Anticorruption Strategy (Parliament Decision No. 12 of 17.02.2012) sets a number of actions that constitute responsibilities of the NIC, which are to be carried out during the period 2012 - early 2013.

<sup>21</sup> The expected wages for the NIC members and its staff trench low and should be complemented with various anti-corruption and performance-related incentives (benefits).

<sup>22</sup> Approved by Law no.231 of 25.11.2011.

<sup>23</sup> Approved by Parliament Decision no.6 of 16.02.2012.

<sup>24</sup> Approved by Parliament Decision no.154 of 21.07.2011.

<sup>25</sup> Approved by Parliament Decision no.12 of 17.02.2012

<sup>26</sup> See in this regard the analysis of *The commitments due during the monitoring period (second quarter, 2012)*, *The Electronic publication "Euromonitor 24. Implementation of Reforms in the Context of the EU-RM Cooperation, Assessment of the progress during April-June 2012"* <http://www.e-democracy.md/files/euromonitor24.pdf>.

<sup>27</sup> The coordination of the Justice Sector Reform Strategy implementation was maintained at an average level, under the authority of the Ministry of Justice, while the National Council for the Reform of the Enforcement Bodies does not carry out its operations, there is no involvement of this body in the reform coordination and monitoring.

influences, there are dubious and biased court rulings<sup>28</sup>, the involvement of the entire system in promoting and implementing the reforms is not felt, some important political decisions are challenged by the system representatives<sup>29</sup>. The list of the key issues affecting the real changes and reforms in the field includes among others - lack and decrease of the financial resources allocated for this purpose, especially from the public budget<sup>30</sup>, as well as the low pay level and material stimulation of judges and other participants in court proceedings<sup>31</sup>.

## National Anticorruption Strategy

Despite the successes to amend the legislative framework in implementing the NAS, the effects of the institutional reforms are not felt and the implementation of some commitments by the Republic of Moldova in front of the EU is considerably delayed. The following are among the main causes of the reduced impact of the anticorruption reforms - lack of the firmly demonstrated political will, excessive politicization of the administrative and legal institutions that allow and tolerate the activity of the inefficient public servants or public servants with questionable integrity. One distinct problem is the non-functioning and inefficiency of the mechanism to declare and control the assets, incomes and interests of the officials and civil servants, as well as the limited possibilities for confiscation of the inconsistent assets<sup>32</sup>. The public perception of the success of the anticorruption activities is at a minimum level: while a considerable number of citizens think the fight against corruption to represent a priority<sup>33</sup>, the opinion polls show a high perception of corruption within the governing system and a reduced level of satisfaction with the effectiveness of the fight against corruption<sup>34</sup>. At the same time, the expression of some controversial positions and views by senior officials<sup>35</sup> allow for the questioning of their determination to implement measures to combat this phenomenon at the high or system levels.

For the next period, the implementation of GRECO<sup>36</sup> recommendations and some other international institutions in combating political corruption represent a high priority. The "Transparency in Financing Political Parties" GRECO Report assessing the Republic of Moldova includes recommendations on: publishing detailed annual financial reports of the political parties; publication of the donor identity; proper accounting of donations and sponsorships; enabling a central service for independent control of the party and election campaigns funding; introduction of independent audit and appropriate punishment of the committed infringements etc. The comprehensive review of the legislation on financing political parties and election campaigns is to be prioritized<sup>37</sup>. At the same time, the reform of the political funding should be free of political or

<sup>28</sup> Statements made by the Prime Minister of the Republic of Moldova during the meeting with the judges, 08.06.2012, [www.privesc.eu](http://www.privesc.eu).

<sup>29</sup> Moldovan President enacted the legislative amendments providing for the ex officio lifting of the immunity of judges in corruption cases, even if he had a different personal opinion, but the Supreme Court decided on 07.09.2012 to appeal at the Constitutional Court the legal provisions concerning the lifting of the immunity of judges in corruption cases.

<sup>30</sup> The Government and the Parliament decreased the amount of the financial means allocated for the operation of the courts in 2012 (SCM Case no. 462/24 of 17.07.2012, the Law on State Budget Revision for 2012).

<sup>31</sup> The significant increase of wages and provision of better social guarantees for judges, prosecutors, court staff are still only statements, without any applicable decisions in this regard.

<sup>32</sup> Under the Constitution and the legislation in force, only proceeds from crime may be confiscated, while holding improper incomes is not a criminal offense in the Republic of Moldova.

<sup>33</sup> According to data provided by the Public Opinion Barometer (BOP, May 2012), the number of citizens who think corruption to be one of the most important problems to be solved increased by 36%, <http://ipp.md/libview.php?l=ro&idc=156&id=610&parent=0>.

<sup>34</sup> According to the Omnibus Survey, July 2012, only 14.7% of respondents believe that the current government has handled well the "fight against corruption" and about 15% respondents believe that the government is corrupt. BOP data (May 2012) show that only 8% of the respondents are satisfied with the fight against corruption [www.ipp.md](http://www.ipp.md).

<sup>35</sup> The high-ranking officials deny the existence of the high-level corruption ("There is no high-level corruption in the Republic of Moldova"), <http://unimedia.info/stiri/coruptie-la-nivel-inalt-nu-exista-afirma-ghimpu-50128.html>, or the judicial proof of the existence of this phenomenon in specific sectors: statements made by the SCJ Chairman: "from the legal point of view, we cannot state that there is corruption in the system", <http://www.inprofunzime.md/>.

<sup>36</sup> The implementation of the Recommendations of Theme II (Transparency in funding the political parties) has not been carried out, during 2011-2012, the Moldovan authorities have largely failed to implement the recommendations included in the GRECO Evaluation Report on the Theme I "Indictments (ETS 173 and 191, PDC 2)" (Greco Eval III Rep (2010) Md) [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%298\\_Moldova\\_One\\_MD.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%298_Moldova_One_MD.pdf).

<sup>37</sup> GRECO asked the Republic of Moldova to be informed about the implementation of the recommendation until October 1, 2012.

group interests and be achieved through broad parliamentary consensus<sup>38</sup>, while the implementation of new regulations is to be ensured in the shortest periods of time possible<sup>39</sup>.

#### ***IV. Recommendations***

The above evaluations on anti-corruption policies and actions in related fields lead to a number of proposals and recommendations for the Republic of Moldova and the EU institutions involved in monitoring and facilitating the implementation of the Action Plan in the field of visa liberalization.

##### ***For the authorities of the Republic of Moldova:***

1. Depoliticizing, ensuring independence and effectiveness for the institutions engaged in anti-corruption work is an absolute priority and requires a joint effort on the part of the political parties (including the opposition), the Parliament, the Government and the institutions in question, as well as major public involvement on the part of the socially active subjects;
1. The priorities for the current stage of implementation:
  - a) set up and functioning of the National Anticorruption Centre: urgent approval of the strengthening Strategy and strict monitoring of its implementation; conduct fair, transparent, with the utmost integrity and within a limited period of time, the selection of the NAC director and independent appointment of the NAC management (deputy directors, Collegiate Council); foreground approval of laws and regulations for the operation of the NAC; ensure the necessary resources for reform etc. Until the completion of procedures of reorganization and setting up of the new structure, the moment for the entry into force of the Law on the NAC Reform is to be extended by adopting a law amending or interpreting the Law no. 120 of 25.05.2012.
  - b) ensure the functioning of the National Commission of Integrity: urgent appointment of the chairman and deputy chairman of NCI, without accepting the political interests to prevail in this process; set up NIC professional staff; provide resources and facilities for the proper functioning of the institution, including anti-corruption incentives and increases for the NIC members and employed staff; takeover by NIC and start verifying the statements of assets, incomes and interests submitted in 2012; monitor the application of research and punishment mechanisms, with priority review of the legislation, if necessary.
  - c) re-evaluation of the protection and stimulation mechanism of integrity whistle-blowers, review the possibility of adopting a complex legislative framework in the field;
2. The implementation of the anti-corruption measures related to the Action Plan is to be considered as a high priority, because it proves the firm political will and shows the existence of sufficient administrative capacity to achieve selected goals;
3. The components of implementation of the Action Plan are to be constantly reconsidered and adapted, including their complementation by new actions, which will contribute to strengthening the already achieved results and will bring new progress;

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<sup>38</sup> There is a draft law already registered in the Parliament - "On funding political parties and election campaigns" (No. 1245 of 08.06.2012); at the same time, the draft law to amend and supplement certain laws (developed by the working group formed by CEC), which contains a package of comprehensive amendments to the theme of political funding, control and responsibility in the field.

<sup>39</sup> Both draft laws mentioned above make reference to the budgetary (public) funding of the political parties, but the current legislation significantly and repeatedly postponed the implementation of the public funding of political parties, a situation that may be considered a major shortcoming for political corruption.

4. Since most legislative regulations are passed, the efforts should focus on proper implementation, on preventing the unjustified exemptions and on prompt intervention on the issued shortcomings;
5. Providing technical and financial resources to implement the anti-corruption and justice sector reforms shall become internal budgetary priority, the investments in the field are to be recovered in the longer run, but with major and lasting impact, with an influence on all areas of activity, and the entire society;
6. The reform of funding the political parties and election campaigns, as recommended by GRECO and other institutions in the field, are to be considered as a priority, the process itself must be protected from promoting political or group interests, with the basic focus on providing the implementing of international regulations and best practices, to ensure transparency, fairness, accountability and control of the political funding.

#### ***For the Community Institutions***

1. The transition to the second phase of the Action Plan implementation leads to focusing on the result and support provided by the Community institutions that is to be subject to the timeliness, quality and performance of the established and implemented measures;
2. Tolerant positions and appreciations on the part of Community institutions may be submitted when there are objective circumstances, including budgetary restrictions that prevent the development of the anti-corruption policies and reforms of a technical nature. However, the excessive tolerance or superficial treatment on the part of the Community institutions on matters of principle and of major importance shall not be recommendable, especially if they register arrears for a long period of time;
3. The assessment of the *de facto* situation and the efficiency of the reforms promoted as part of the Action Plan should take into account independent views and assessments, formulated by the nongovernmental institutions from the Republic of Moldova and the European Union, both the specialized ones and those that have an impact on the public opinion (opinion leaders, the mass media, political parties and so on). The independent alternative reports could provide sources of qualified and accurate information on reforms in the context of the Action Plan and about their real impact;
4. Depending on the availability, the possibility to supplement the technical and financial support provided within EU-Moldova partnership is to be reassessed to complete the most important anti-corruption reforms and to ensure their vigour at the initial stage.

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