

Re: Comments on the EU-Republic of Moldova Association Agenda (version of 21 March 2017)
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The LRCM appreciates the opportunity to provide comments on the draft EU-Republic of Moldova Association Agenda. We appreciate the approach taken regarding the priority activities for 2017-2019, in particular prioritization of activities and their classification in short-term (on which significant progress should be achieved by end 2017) and medium-term priorities (on which significant progress should be achieved in the following 2 years). Below is a list of suggestions for amending the draft text, intended to improve and update the text to the latest needs and developments.

Recommendation No. 1: 2.1 Key priorities; 1. Independence of the judiciary and law enforcement agencies

We recommend amending the phrase “Carry out transparent merit-based recruitment of judges and prosecutors through a single entry point into the judiciary” as follows (additions highlighted): “Carry out transparent merit-based recruitment of judges ~~and prosecutors~~ through a single entry point into the judiciary and transparent and merit-based promotion of judges. Carry out transparent merit-based recruitment and promotion of prosecutors in line with the new legal framework”.

Arguments: judiciary and prosecution service have distinct recruitment procedures and bodies, therefore these should be included separate. Promotion of judges is also a priority and therefore it should be included alongside with the recruitment requirement. The prosecution service has a new legal framework that sets the conditions for merit-based recruitment and promotion and we recommend that this is also included as a priority.

Recommendation No. 2: 2.1 Key priorities; 2. Prevention and fight against corruption, fraud and conflict of interest

- 1) Move the text: “Fully implement the law that requires all relevant officials to provide a declaration of the assets they and their relevant close relatives own and to report on potential conflicts of interest in relation to their personal interests or those of close relatives, and ensure the effective implementation of the enforcement procedure.” to the beginning of the paragraph.
Arguments: Integrity package of laws and their implementation is of crucial importance and urgency, especially given the fact that the predecessor institution, the National Integrity Commission, did not function in 2016. It is also important to highlight the implementation obligations of Moldova in this area, rather than focusing on new legislation. In 2016 important legislation was adopted on integrity (related to assets declarations) that is still not implemented;
- 2) Add the following text after the paragraph above: “Ensure a transparent and merit-based selection of the leadership of the National Integrity Authority (NIA) and of the integrity inspectors, adequate funding for NIA full operation and effective functioning of the e-integrity system (online submission

and verification of asset declarations).”

Arguments: It is crucial that the National Integrity Authority is fully staffed and operational in 2017 and the e-integrity system is ready for launching by the end of 2017.

- 3) Add the following text: “Narrow the mandate of the Anticorruption Prosecution Office to high-level corruption and transfer small corruption cases to ordinary prosecutors. The Anticorruption Prosecution Office shall be adequately staffed and its capacities in the fight against high-level corruption strengthened.”

Arguments: High-level corruption will continuously be disregarded if the Anticorruption Prosecution Office has a large mandate and is not adequately staffed. Moreover, there is no legal justification for maintaining petty corruption under the competencies of the Anticorruption Prosecution Office. Moldova undertook this commitment under the 2016 Roadmap and still has not implemented it.

Recommendation No. 3: 2.2 Political dialogue, Good Governance and Strengthening Institutions

(i) Strengthening the stability, independence and effectiveness of institutions guaranteeing democracy and the rule of law in Moldova, including through a comprehensive public administration reform and a reform of the public financial management

- 1) Exclude the word “public” from the following short-term priority: “Amend the Law on Access to Public Information to improve its implementation and set the necessary arrangements to monitor its implementation”. The official name of the law is access to information.
- 2) Replace the following text: “Assess the possibility to enable direct financing of the political parties activity, of electoral campaigns/electoral contestants by citizens of Moldova, from revenues, obtained outside the country, preventing at the same time foreign citizens, persons and states, from direct or indirect interference with political activity in Moldova” with the text: “Reduce the cap of private donations to political parties to 4-5 average salaries; remove the ban for small donations from citizens residing abroad; review the mechanism of state funding of political parties in order to ensure a fair distribution of funds” and move it from medium-term to short-term priorities.

Arguments: it is crucial that amendments to political parties financing are passed as soon as possible. Moldova has clear guidelines in this regard from GRECO/Council of Europe, OSCE/ODIHR and local NGOs. Upgrading the legislative framework regulating party financing is crucial also for reducing the systemic corruption in Moldova, which is heavily supported due to shady donations to political parties and candidates.

Recommendation No. 4: 2.2 Political dialogue, Good Governance and Strengthening Institutions

(ii) Further reforming the justice sector, in particular ensuring the independence, impartiality, professionalism and efficiency of the judiciary, including the prosecution, which should be free from political or any other undue interference. Some elements of the comprehensive reform of the justice sector may require constitutional amendments:

Short-term priorities:

- 1) Replace the text: “Ensure implementation in line with the new legal framework of a transparent system for merit-based recruitment of judges and prosecutors through a single entry point into the judiciary” with the following text: “Revise the legal framework (including secondary legislation and Superior Council of Magistracy by-laws) to ensure a transparent system for merit-based recruitment of judges through a single entry point into the judiciary and transparent, objective and merit-based promotion of judges. The Superior Council of Magistracy shall provide adequate reasoning for its decisions on judges’ career, in particular when ignoring the points awarded by the Judges’ Selection and Career Board. It shall also streamline the contests for vacancies in the judiciary, providing for 2-3 periodic contests per year and the entitlement for applicants with the best evaluations to choose the court

where they want to activate with priority”.

Arguments were provided above for separating the judges and prosecutors. The additional details regarding judges’ recruitment and promotion are based on the current extremely inefficient practice of selection and promotion of judges, whereby the Superior Council of Magistracy arbitrarily selects or promotes judges with lower scores at evaluation, without providing any reasoning. The selection and promotion contests are organized in a chaotic manner, for each position separately and several times per year, which leaves room for corrupt practices.

- 2) Add the following priority: “Carry out transparent merit-based recruitment and promotion of prosecutors in line with the new legal framework”;
- 3) Amend the following text: “Ensure effective implementation of disciplinary rules and codes of ethics including procedural safeguards for judges and prosecutors and the autonomy of the Judicial Inspection towards Superior Council of Magistracy, as well as complaint mechanisms accessible to the public” with the text as follows:
“Amend Law no. 178 on judges’ disciplinary responsibility to provide to the Judicial Inspection with more autonomy from Superior Council of Magistracy and competences in investigating and presenting the disciplinary case;”.
Arguments: (1) the disciplinary mechanism for judges needs legislative amendments. The current inadequate situation is due both to problematic legal framework and insufficient will to effectively apply the system to every judge and not on a selective basis. We recommend that amendment of the legislative framework is included as a short-term priority, while part of the current priority (Ensure effective implementation of disciplinary rules and codes of ethics including procedural safeguards for judges and prosecutors) is included as a medium-term priority, as it will be already about implementation. (2) We recommend including a separate short-term priority regarding prosecutors, as follows: “Ensure effective implementation of disciplinary rules including procedural safeguards for prosecutors in line with the new legal framework”.
- 4) Add the following priority: “Ensure open court hearings and publication of all court decisions, except for circumstances strictly provided by law”.
Arguments: there is a worrying trend in Moldova of closing court hearings in cases of high social resonance, which violates both the right to a public hearing and the society’s access to information of public interest. There is another initiative of amending the rules on anonymization and publication of court decisions, allegedly to protect personal data, de facto for reducing public’s access to court decisions. The priority is proposed to counteract these negative trends.
- 5) Add the following priority: “Ensure full independence of all prosecutors and reduce the oversight role of the General Prosecutor’s Office, as provided by the new Law on prosecution service, including by reducing the number of prosecutors in the General Prosecutor’s Office;”. This recommendation is in line with the spirit of the 2016 Law on prosecution service, which is not implemented from this perspective. The GPO operates based on an organigram adopted before the entry into force of the new law.
- 6) Add the following priority: “Implement transparent and merit-based appointment and promotion of prosecutors in line with the new legal framework on prosecution service, including of more than 50 senior prosecutors, whose positions are currently vacant;”

Mid-term priorities:

- 1) Add the following priority: “Ensure effective implementation of disciplinary rules and codes of ethics including procedural safeguards for prosecutors;”.

Recommendation No. 5: 2.2 Political dialogue, Good Governance and Strengthening Institutions

(iii) Ensuring respect for human rights and fundamental freedoms through comprehensive cooperation on the protection of human rights and fundamental freedoms. This cooperation will include work in the following areas, to:

Short-term priorities:

- 1) Add the following priority: “Review the draft law no. 301 (amendments to the Criminal and Contravention Codes regarding hate crime) to bring it in line with European standards, consult the amended draft law with civil society and public authorities, and adopt the improved draft;”
Arguments: Moldova is due to amend the legal framework on hate crimes for at least two years. It is a recurring issue in both EU-Moldova Human Rights Dialogue, and in the monitoring by Council of Europe (ECRI 2012 monitoring report and priority follow recommendations) and the OSCE/hate crime unit. The draft law no. 301 was adopted in the first reading on 8 December 2016 but needs significant improvement to be in line with European standards. The priority is recommended to boost the process of adoption of this draft law.
- 2) Consider revising the following short-term priority: “Continue to implement the law on access to information”. Under key priorities, the following text is included: “Amend the Law on Access to Public Information to improve its implementation and set the necessary arrangements to monitor its implementation”. Probably these two texts should be aligned or reformulated to “Ensure adequate application of the law on access to information”.
- 3) Add a new priority as follows: “Ensure that no law limiting the freedom on internet or extending the special investigation techniques is adopted without respecting the Council of Europe standards”. This recommendation is made in the context of the Parliament/Government pushing for the adoption of a draft law that imposes restrictions on internet and enlarges the use of investigation techniques in an unjustified manner. The Venice Commission has provided comments and the recommendation is made in view of ensuring that the authorities take that opinion into account.

Medium-term priorities:

- 1) Add to the following priority: “Ensure the application of laws and regulations against discrimination on all grounds, including the Law on Ensuring Equality, and strengthen the capacity of the Council for Preventing and Eradicating Discrimination (‘Equality Council’).” The following text: “In this regard, revise the Laws no. 121 (on ensuring equality) and no. 298 (on activity of the Equality Council) to grant the Equality Council sanctioning powers and establish a single venue for challenging the Council’s decisions, as well as to grant legal standing for the Equality Council before the Constitutional Court”;
- 2) Add the following priority: “Develop a strategy on preventing and combating hate speech in Moldova. The Equality Council, the Ministry of Justice, the Audio-Visual Council, the Press Council, the Central Electoral Commission, the Ministry of Interior (notably, the police), prosecution and the judiciary shall be the main implementers of the strategy;”
- 3) Add the following priority: “Publicly condemn and apply the appropriate sanctions or measures for any hate speech in the public discourse;”
Arguments for 2) and 3): hate speech is growing in Moldova, in particular in political discourse. The presidential elections of 2016 set a dangerous precedent of widespread use of hate speech without any reaction on behalf of public authorities (confirmed by OSCE/ODIHR election monitoring reports; the local NGOs reactions and by the Constitutional Court decision on validating the results). Authorities must be prompted to take action to prevent hate speech escalation.

- 4) Add the following priority: “Adopt measures to reduce the number of unjustified authorisations of arrests;”
- 5) Add the following priority: “Adopt measures to reduce the number of unjustified authorisations of telephone tapping”.
Arguments for 4) and 5): unjustified arrests and telephone tapping are among systemic issues stated by the European Court of Human Rights and local NGOs reports. Authorities must be prompted to take action in this regard.

**Recommendation No. 6: 2.2 Political dialogue, Good Governance and Strengthening Institutions
Freedom of expression**

Add the following short-term priority:

- Ensure that the media market is competitive and that no actor or concentrated group of actors dominate the market.

**Recommendation No. 7: 2.2 Political dialogue, Good Governance and Strengthening Institutions
Civil society cooperation**

Add the following two new priorities under short-term priorities:

- 1) Adopt a new Law on non-governmental organizations, respecting the best international standards on functioning of non-governmental organizations;
- 2) Adopt amendments to the laws on transparency in decision-making, the law on normative acts and the Parliament’s regulation to improve the legal framework for civil society effective participation in decision-making process.

Arguments: the draft law was drafted with involvement of civil society and international experts. It is ready for adoption. Lately, MoJ proved to be reluctant to send the draft to the Government. The new law is crucial for improving the legal environment of civil society organizations’ operation. The priority is proposed to boost this process. The Government undertook to improve civil society participation in decision-making process back in the 2016 Roadmap. Since then only a working group was created to amend the legal framework with no tangible progress. The priority action is proposed to boost this process.

**Recommendation No. 8: 2.2 Political dialogue, Good Governance and Strengthening Institutions
Ill-treatment and torture**

Add the following short-term priority:

- Review the legislation to facilitate efficient investigation and effective sanctions for torture and ill-treatment
Arguments: the current legislation provides for Mandatory psychiatric investigation of victims, which is a serious impediment for victims. Legislation also does not include sufficient provisions on suspension from office of perpetrators, which is a serious barrier for effective investigations.

**Recommendation 9: 2.4 Cooperation on freedom, security and justice
*Prevention and fight against corruption and conflict of interest***

Move two important issues from medium-term to short-term priorities, with slight revisions of the text:

- 1) Current medium-term priority: “Develop transparent, merit and professional based appointment mechanisms for management and integrity inspectors of the National Integrity Authority in order to ensure that the National Integrity Authority is independent and free of any political influences. Ensure that the National Integrity Authority has access to the necessary registers, including all state and

private records, in order to ensure efficient verification of wealth and personal interests and take all measures to put in place the e-integrity system (online submission and verification of asset declarations);”.

Arguments: the respective priority was included as follows as a medium-term priority: “Develop transparent, merit and professional based appointment mechanisms for the Integrity Council, management and integrity inspectors of the National Integrity Authority in order to ensure that the National Integrity Authority is independent and free of any political influences. Ensure that the National Integrity Authority has access to the necessary registers, including all state and private records, in order to ensure efficient verification of wealth and personal interests. Ensure representation of the civil society in the Integrity Council”.

We recommend including it as a short-term priority given the fact that the Law on National Integrity Authority is in force already and the authorities are already lagging behind with its implementation. In addition, we recommend excluding the provisions on Integrity Council since it has already been set up, although with significant flaws.

If this recommendation is accepted, then the phrase “Continue to make public declarations of assets” from the current third short-term priority shall be deleted. We strongly recommend including a clear short-term priority regarding the e-integrity system, since this is a key anti-corruption tool and Moldova has benefited from external assistance in building the database. It only needs final adjustments for being launched. The law provides expressly for its implementation. Given the progress in Ukraine regarding the e-integrity declaration system and the expertise of EU in this regard, Moldova should follow this good practice.

- 2) Current medium-term priority: “Enhance the system for investigation and prosecution of high-level officials for cases of corruption, ensuring the transparency and impartiality of the judicial proceedings by among others creating conditions for open media coverage. In this regard, the Anticorruption Prosecution Office should focus on high-level corruption and strengthen its capacities in the fight against high-level corruption”.

Move to short-term priority and amend to the following text:

“Enhance the system for investigation and prosecution of high-level officials for cases of corruption, ensuring the transparency and impartiality of the judicial proceedings by among others creating conditions for open media coverage. In this regard, the mandate of the Anticorruption Prosecution Office should be limited to high-level corruption and small corruption cases transferred to ordinary prosecutors. The Anticorruption Prosecution Office shall be adequately staffed and its capacities in the fight against high-level corruption strengthened”.

Arguments were provided in the key priorities section for the need for this priority as a short-term priority. Without this amendment, the current status-quo on fighting corruption will be maintained.

Amend the following medium-term priority:

- Replace the following text: “Develop transparent, merit and professional based appointment mechanisms for the Integrity Council, management and integrity inspectors of the National Integrity Authority in order to ensure that the National Integrity Authority is independent and free of any political influences. Ensure that the National Integrity Authority has access to the necessary registers, including all state and private records, in order to ensure efficient verification of wealth and personal interests. Ensure representation of the civil society in the Integrity Council;” with the following text: “Ensure the effective functioning of the e-integrity system (online submission and verification of asset declarations) and the National Integrity Authority;”.

Arguments: we recommended as a short-term priority the setting up of the National Integrity Authority. This recommendation is made for implementation period, to ensure that the Government continues implementing this area.