



REPUBLIC OF MOLDOVA

TECHNICAL ASSISTANCE REPORT — COUNTRY GOVERNANCE ASSESSMENT

July 2021

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Country Governance Assessment

JULY-DECEMBER 2020

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GLOSSARY

AML/CFT	Anti-money Laundering and Combating the Financing of Terrorism
APO	Specialized Anti-Corruption Prosecutor's Office
BCBS	Basel Committee on Banking Supervision
BCP	Basel Core Principles for Effective Banking Supervision
CARA	Criminal Assets Recovery Agency
CC	Criminal Code
CDD	Customer Due Diligence
CoE	Council of Europe
CTIF	Center for Information Technology in Finance
EBRD	European Bank for Reconstruction and Development
EDD	Enhanced Due Diligence
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSB	Financial Stability Board
FSAP	Financial Sector Assessment Program
FSO	Financial sector oversight
GRECO	Group of States against Corruption
ICJ	International Commission of Jurists
JSC	Joint Stock Companies
KPI	Key Performance Indicators
LRCM	Legal Resources Centre of Moldova
LT	Long Term
MFA	Macro-Financial Assistance agreements
ML/FT	Money Laundering and Terrorist Financing
MOE	Ministry of the Economy and Infrastructure
MOF	Ministry of Finance
MOJ	Ministry of Justice
MT	Medium Term
MONEYVAL	Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism
NBM	National Bank of Moldova
PFM	Public Financial Management
PIE	Public Interest Entities
PPA	Public Property Agency
S/MT	Short to Medium Term
SOE	State Enterprises
SPCSB	Office for Prevention and Fight Against Money Laundering

ST	Short Term
STS	State Tax Service
TA	Technical Assistance
TI	Transparency International
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Program
USAID	United States Agency for International Development

PREFACE

In response to a request from the authorities of Moldova, a team organized by the IMF's Fiscal Affairs (FAD), Legal (LEG) and Monetary and Capital Markets (MCM) Departments conducted a country governance assessment of Moldova during the period July 24-August 7, 2020. (The "mission")

The Moldova governance assessment is being carried out according to the IMF's Framework for Enhanced Fund Engagement on Governance Issues approved by the Executive Board in April 2018. The team consisted of Ms. Ioana Luca (head), Ms. Kathleen Kao, Mr. Maksym Markevych, Mr. Pasquale Di Benedetto, Mr. Hans Weenink (all LEG), Mr. Kors Kool, Mr. Michael O'Grady, Mr. Yugo Koshima (all FAD), and Ms. Katharine Seal (MCM).

Given the travel limitations related to the COVID-19 pandemic, the team conducted virtual meetings and undertook an extensive desk study to reinforce its findings. The mission met with a wide range of government and central bank officials, multilateral donors, private sector and civil society representatives. The team wishes to express its thanks to the authorities for their cooperation and their hospitality. The mission would particularly like to thank the Prime Minister, Mr. Ion Chicu; the Minister of Finance, Mr. Sergiu Pușcuța; the State Secretary (Ministry of Finance), Ms. Tatiana Ivanicichina; the Governor of the National Bank of Moldova, Mr. Octavian Armașu; the Director of the State Tax Service (STS), Ms. Ludmila Botnari.

The support and guidance provided by Mr. Ruben Atoyan (mission chief, European Department), Mr. Volodymyr Tulin, IMF Resident Representative in Moldova (outgoing), Mr. Rodgers Chawani, IMF Resident Representative in Moldova and his team, significantly improved the effectiveness of the mission.

EXECUTIVE SUMMARY

Despite having legal and institutional frameworks largely in place, Moldova continues to suffer from significant corruption and governance vulnerabilities. These are fairly pronounced in the areas of rule of law, anti-corruption, anti-money laundering and combatting the financing of terrorism (AML/CFT), and SOE governance, while other areas assessed for purposes of this report (PFM, tax administration, central bank governance and financial sector oversight) presented some good progress in mitigating such vulnerabilities.

The rule of law in Moldova is weak, with poor implementation of legal and regulatory frameworks. The justice system is widely recognized as being ineffective and susceptible to corruption and capture, with the main judicial actors (including judges, prosecutors, criminal investigators, and bailiffs) perceived as lacking integrity and independence. These issues also appear to be the main reasons for poor protection of property rights and contract enforcement, as well as inconsistent application of the commercial legal framework. Weak rule of law in Moldova is cited as a deterrent to foreign direct investment and private sector development.

The anti-corruption legal and institutional infrastructure is largely in place, but lacks effectiveness, and needs to be insulated from undue influence. Corruption investigations are focused on petty bribery and private citizens rather than on public officials, while some types of corruption, such as embezzlement, are not adequately prosecuted. Sanctioning in corruption cases appears lenient with wide application of fines and reduced and suspended sentencing. Criminal enforcement efforts need to be better targeted at high-level corruption with the application of dissuasive sanctions.

Moldova's AML/CFT regime, while strong in some areas, is still not sufficiently used to support anti-corruption efforts and shield the country's economy from illicit flows (including those stemming from corrupt acts). Understanding of money laundering risks associated with corruption and application of preventive measures (such as those aimed at identifying beneficial owners and politically exposed persons) are still inadequate. AML/CFT tools could also be better leveraged to support criminal enforcement and asset recovery efforts.

On the issue of state-owned enterprises (SOEs), the institutional framework appears fragmented, prone to sudden changes, and conducive to blurring of institutional responsibilities. This fragmentation is reflected in the composition of the boards of SOEs, which remain populated by several government representatives from different ministries and government agencies. Privatization of state assets and state enterprises remains a grave concern. Recommendations include the development of a triage methodology that justifies state ownership and state divestures along with a state ownership policy that streamlines the institutional framework and spurs board and management professionalism.

On the public financial management (PFM) side, controls and transparency are strong for main budget spending, but less so for spending/transactions outside the "main framework". Recommendations include: establishing a framework for transparency of funds, a framework for

projects outside the “capital investment” framework, monitoring of leasing of Local Public Authorities’ lands, systemic monitoring of procurement, coverage and linkage of IT systems and strengthening capacity for internal audits.

On tax administration, the State Tax Service (STS) has made good progress in reducing corruption vulnerability but community perceptions of corruption in the STS remain high. Recommendations include the following: changes to the law on appointing the STS Director and improvements to corruption risk governance, HR procedures, data security and monitoring of tax auditors. Recommendations around a proposed law change to give the STS criminal investigation powers include postponing implementation until robust procedures and sufficient integrity-vetted and well-trained investigators are in place; and, scaling back the proposed size of the STS criminal investigation sub-division.

On central bank governance, the recent IMF safeguards assessment-found that while the governance structure of the National Bank of Moldova (NBM) with strong independent oversight is broadly appropriate, attempts to dent the NBM’s autonomy have a pervasive impact on the overall system of internal controls. Consequently, amendments to the NBM Law, which is broadly aligned with best practices, are needed to strengthen the NBM’s independence, further improve its governance, and safeguard the operational independence of the NBM’s prudential supervisory function.

On financial sector oversight, the legislative and regulatory frameworks are largely in place, for prudential purposes, reflecting considerable effort, although further amendments are needed to support central bank governance and independence. Good progress has been made in reducing banks’ related party exposures. More broadly, though, practical implementation of the new supervisory standards overseeing corporate governance practices in banks is weak. This is because the transition from a compliance basis to forward-looking risk-based supervision is hindered by consistent challenges to the use of professional judgement which affects all facets of supervision including enforcement actions.

While remaining cognizant of administrative capacity, the report lays out a road map for governance and anti-corruption reforms in the areas listed above (see Table 1 on Priority Recommendations below, as well as Annex 1 for the full table of recommendations). That said, these reforms must be owned by Moldova and further engagement will only be meaningful if the overall direction of governance and anti-corruption reforms enjoys strong and continued political support.

Table 1. Priority Recommendations¹				
Measure	Authority	Objective	Timeline	
I. Rule of Law				
1	Clarify powers and responsibilities of the judicial inspectorate and improve operating procedures.	MOJ, SCM	Judiciary integrity & accountability.	ST
2	Enhance the integrity testing of judges, including checks of asset declarations and conflicts of interest.	MOJ, SCM	Judiciary integrity & accountability.	ST
3	Enhance the SCM selection process, including by establishing an independent commission.	MOJ	Judiciary integrity & accountability.	ST
4	Repeal CC 307 to prevent its use to undermine judicial independence.	MOJ	Judiciary integrity & accountability.	Immediate
5	Limit the powers of court presidents and clearly document their decisions.	MOJ, SCM	Judiciary integrity & accountability.	ST
II. Anti-Corruption Framework				
1	Strengthen the selection process for APO head with participation of international experts, civil society, allowing non-prosecutors to apply.	MOJ, APO	Strengthen the independence of APO.	ST
2	Transfer the disciplinary function from the PGO to the SCP.	PGO, SCP	Promote integrity in prosecution service.	ST
3	Intensify investigations of embezzlement by public officials, illicit enrichment and declaring false information.	APO, NAC	Improve effectiveness of anti-corruption enforcement.	LT
4	Conduct and publish a study of court practice and factors leading to lenient sanctions in corruption cases.	Judiciary, APO, NAC, PGO, MOJ	Improve dissuasiveness of sanctions in corruption cases.	MT

¹ For a full list of recommendations, please refer to Annex I of this report.

5	Prioritize investigation of high-level corruption.	APO	Improve effectiveness of anti-corruption enforcement.	LT
III. AML/CFT				
1	Conduct cross-sectoral thematic inspections of banks based on the the external audit.	NBM	Improve application of preventive measures among reporting entities.	ST
2	Provide the PSA with sanctioning powers for non-compliance with registration requirements re BO info.	MOJ	Improve quality of BO information in company registry.	Now
3	Conduct a thematic inspection re banks' systems for reporting of suspicious transactions, with a particular focus on transactions relating to PEPs.	NBM, SPCML	Improve application of preventive measures by reporting entities.	ST
4	Intensify efforts to investigate and prosecute corruption-related ML in line with risk profile.	NAC, APO	Increase effectiveness of anti-corruption criminal justice.	LT
IV. PFM				
1	Establish a new agency that centralizes the project management of the Ecological Fund with significantly augmented capacity.	MADRM	Strengthen public investment management.	S/MT
2	Amend the PPP Law to strengthen the project appraisal and transparency and introduce strict administrative sanctions against violation of the PPP Law and other relevant laws.	APP	Strengthen public investment management.	S/MT
3	Develop automated interfaces between the RBI, land use records, and register of public patrimony and update three registers based on the actual survey results through the mass delimitation exercise.	APP, ASP, ARFC	Develop a complete register of government owned lands.	MT
V. SOE Governance				
1	Government should issue a policy that specifies ownership, oversight, and policy responsibilities on SOE management.	MOF, MOE, PPA	Streamline government responsibilities on SOE management and oversight.	S/MT

2	Triage of SOE Portfolio	MOF, MOE, PPA	Define rationale for government ownership.	MT
3	Reduce SOEs to one legal form : JSC	MOF, MOE, PPA	Enhance SOE governance.	MT
VI. Tax Administration				
1	Amend Art. 133 of the Tax Code to recruit for STS Director position through competition and for a fixed term.	MOF	Strengthened independence and greater public trust in the STS.	ST
2	Ensure that sufficient safeguards are in place for the proper functioning of the new criminal investigation function and scale back the proposed size.	STS Prosecutor's Office	Increased confidence in procedural safeguards and professionalism of staff.	ST
3	Better monitor the integrity & professionalism of inspectors.	STS	Reduced corruption re tax audit and control.	ST
VII. Central Bank Governance and Financial Sector Oversight				
1	Strengthen the NBM's governance and independence, including the operational independence of the NBM's prudential supervisory function through a amendment to the NBM Law.	NBM (with IMF consultation) Government and Parliament)	Strengthened governance and independence of the NBM and the prudential supervisory function.	S/MT
2	Provide for the courts' deference to complex supervisory assessments undertaken by NBM, unless vitiated by manifest error through amending the NBM Law (and Law on Activities of Banks where needed).	NBM (with IMF consultation) Government and Parliament	Supporting the use of professional judgement by supervisors.	ST

I. INTRODUCTION

1. Moldova is among the smallest, poorest, and least competitive European countries, in part due to systemic corruption and political instability. Despite averaging around 4 percent in recent decades, output growth has been insufficient to raise living standards significantly, with GDP per capita remaining among the lowest in Europe. While corruption and political instability are factors affecting the economic growth of many emerging markets, these factors are often cited as the most problematic for doing business in Moldova.²

2. The pervasiveness of corruption and governance vulnerabilities in the anti-corruption institutional framework, including the judiciary, results in widespread vulnerabilities across other public agencies. The National Anti-Corruption Strategy lists the following areas as particularly vulnerable to corruption: law enforcement, customs and tax, education and health, environment, road construction, subsidies in agriculture, public procurement, administration of public property, local public administration, and management of external assistance. Corruption in law enforcement and the judiciary is particularly dangerous, as it allows for non-prosecution of criminals, facilitating commission of other economic crimes.

3. While the legal frameworks for some of the areas assessed for purposes of this report are largely in line with best practices, we note a lack of implementation of these frameworks, exacerbating governance and corruption vulnerabilities. For example, while the scope of the SOE Law appears adequate, it requires a number of supporting regulations (such as conflict of interest policy and disclosure of beneficial ownerships) to make it effective; without these regulations, there is a risk for SOEs to conduct business as usual, without minimizing political interference in the decision making process. Additionally, while the NBM Law is broadly adequate, further legal enhancements are necessary, notably encoding a definition of “professional judgment” into the law, to ensure the NBM is capable of properly implementing the prudential laws and regulations.

4. The institutional structure in some of the areas assessed lacks clarity as to the mandate of each agency and is not conducive to effective cooperation among agencies, including with respect to mitigating corruption and governance vulnerabilities. In the area of SOE administration, for example, there is fragmentation between the management, oversight, and ownership role of the Public Property Agency (PPA) and the line ministries, which ultimately clouds who is responsible and accountable for SOE performance. Furthermore, cooperation and information exchange between the NBM and Moldova’s financial intelligence unit is vital to support effective AML/CFT efforts.

5. The public sector’s transparency and auditing functions are deficient in several important areas. For example, there is no fiscal report on public corporations and no single framework for fiscal reporting of self-management authorities. Also, the internal and external auditing functions for SOEs are underdeveloped. This undermines the quality and accuracy of

² IMF (2020) Selected Issues Paper.

financial information being provided, and ultimately impacts SOE portfolio analysis at the aggregate level, impairing a clear quantification of the fiscal support that the SOEs may need. This also deprives the authorities of an important source of detection of corruption. Furthermore, transparent dismissal procedures for senior officials, with mandatory publication of the reasons for dismissal are essential for public bodies, such as the NBM. Accountability also needs to be supported through effective codes and practices preventing conflicts of interest, such as equity holdings in supervised institutions.

6. Improving governance and curbing corruption can ensure a more even and sustainable path for economic growth. Governance reforms to improve the rule of law could increase confidence in the public sector (including the judiciary), promote economic certainty and safety of property rights, bolstering investment and private sector development, and improving effective implementation of laws and regulations. Effective anti-corruption measures can safeguard public funds, hold public officials accountable, and lead to recovery of illicit proceeds. Strengthening AML/CFT controls would provide less opportunities for the use and concealment of such illicit gains. PFM reforms could help to improve domestic revenue and expenditure management, while clarifying and streamlining the SOE institutional framework would minimize political interference in the management of public goods.

7. The report is organized as follows. Section II discusses main vulnerabilities to corruption in the ambit of rule of law, focusing on the judiciary and on the protection and enforcement of economic rights. Section III highlights critical weaknesses in the anti-corruption framework, while Section IV assesses the AML/CFT regime and its utility in supporting criminal enforcement and asset recovery efforts. Section V analyzes key vulnerabilities in the PFM area, while Section VI focuses on governance weaknesses in the SOE sector. Section VII discusses governance reforms in the tax administration. Section VIII provides an overview of central bank governance and Section IX focuses on financial sector oversight. The recommendations for improving governance and minimizing corruption for all of these sectors are collated in Annex 1. The list of meetings held by the mission team members with public officials and stakeholders is included in Annex 2, while Annex 3 contains the report's bibliography.

II. RULE OF LAW

8. Rule of law is critical for a well-functioning market economy. Domestic and foreign investors alike need to be assured that their rights will be protected and agreements will be upheld.³ While the IMF’s Enhanced Governance Framework focuses the Fund’s assessment on aspects of rule of law that relate to the protection of property and contractual rights – including the predictability and timeliness of the enforcement of these economic rights – broad rule of law principles are also included in such assessment. Specifically, laws should be accessible and predictable, questions of legal right and liability should be resolved by application of the law rather than discretion, laws should apply equally to all, and public officials should exercise the powers conferred upon them in good faith.⁴ Such an infrastructure for the development and promotion of legal rights is essential for a market economy, and the most important determinant with respect to the enforcement of economic rights is the quality of the judiciary – both in terms of its technical capacity and its independence from private influence and public interference.⁵

9. Rule of law issues in Moldova have been comprehensively analyzed, resulting in an extensive body of literature that uniformly points to significant weaknesses in the judiciary. Domestic and international organizations that have assessed such issues include the Council of Europe (CoE) through its Venice Commission and the Group of States against Corruption (GRECO), the European Bank for Reconstruction and Development (EBRD), the International Commission of Jurists (ICJ), and the Legal Resources Centre of Moldova (LRCM). The European Union (EU) has also issued numerous conditionalities pertaining to rule of law in the context of its macro-financial assistance agreements (MFAs).

10. Moldova has undergone a series of judicial reforms aimed at strengthening the independence, efficiency, and effectiveness of the judiciary, with limited tangible results. Moldova’s National Development Strategy “Moldova 2020”, adopted in 2012, identifies justice reform as a strategic priority, echoed in the 2017–2020 National Integrity and Anti-Corruption Strategy (National Strategy). Moldova adopted an ambitious Justice Sector Reform Strategy (JSRS) for 2011–2016 (extended to 2017). Despite several important legislative initiatives, (amending the Criminal Code, updating the systems for the selection, performance evaluation, and disciplining of judges, addressing governance weaknesses in the Superior Council of Magistrates (SCM), and satisfying 86% percent of the accompanying action plan, according to Ministry of Justice (MOJ) evaluation reports), many of the broad objectives in the 2011 strategy

³ Studies show that investor behavior may be impacted by factors such as predictability of the host country’s legal and regulatory framework, protections for investor and property rights, enforceability of contracts, and quality of judicial proceedings. See Contractor, Farok J., Dangol, Nuruzzamana & Raghunathc, How do country regulations and business environment impact foreign direct investment (FDI) inflows? (2020). See also Ahlquist, J. S., & Prakash, A., FDI and the costs of contract enforcement in developing countries (2010) and Risk and Return: Foreign Direct Investment and Rule of Law, the Bingham Centre for Rule of Law (2014) and Staats, Joseph L. & Biglaiser, The Effects of Judicial Strength and Rule of Law on Portfolio Investment in the Developing World (2011).

⁴ Bingham T (2010) The rule of law. Allen Lane, London.

⁵ IMF Policy Paper, Review of the 1997 Guidance Note on Governance – A Proposed Framework for Enhanced Fund Engagement (2018), p.20.

(e.g., the establishment of a truly merit-based system of selection of judges, enhanced independence of judicial bodies) were considered unmet by a 2017 assessment of implementation carried out jointly by the MOJ and the CoE.⁶ A new Strategy for Ensuring the Independence and Integrity of the Justice Sector for the period of 2020–2023 containing many of the same objectives and deliverables as the previous strategy was adopted on October 28, 2020, and is currently being examined by Parliament. The new Justice Sector Strategy considers the independence of justice to be a basic requirement of the rule of law and recognizes that this requirement demands both the structural independence of the justice system as well as the individual independence of judges. These objectives are also emphasized in Moldova’s National Development Strategy (Moldova 2030).

11. Weaknesses in rule of law in Moldova may have a chilling effect on investment and private sector development. Moldova’s National Development Strategy 2020 recognizes how “an inefficient judicial system endangers the development of all areas, affecting seriously both the business environment in the country and the investment process”. Economic agents consulted for the National Development Strategy pointed to the lack of judicial security and predictability as a critical constraint to development. Similarly, in its 2017 country diagnostic,⁷ the EBRD considered rule of law issues (including weaknesses in the judiciary) to be among primary factors undermining private investors’ trust in Moldova’s economy (echoing findings in 2014 that political instability, corruption, and an unreliable judiciary were major disincentives for investment).⁸ These findings mirror contemporary views of foreign companies operating in Moldova as well as Moldovan businesses and professionals.

A. Main Rule of Law Issues in Moldova

12. Public perception of state capture and corruption in the judiciary: The public exhibits little faith in the ability of courts to render impartial judgements. The justice sector is widely perceived by practitioners and the public as being captured by prevailing political and economic interests and marked by deeply entrenched corruption (a finding reflected in the National Strategy). While perception surveys have inherent limitations (e.g., they provide no insight into the actual percentage of corrupt judges), there is widespread agreement that most (if not all) judges are subject to intimidation and influence both from external sources as well as through internal channels (i.e., exploitation of existing oversight and governance structures).⁹ Judges are said to labor under a long-standing culture of obedience that inhibits independent and free thinking and punishes those who criticize existing practices and abuses. At the same time, judges are also widely described as frequently acting with (and benefiting from) impunity. The

⁶ https://crim.org/wp-content/uploads/2018/02/Moldova-JSRS_assessment.pdf

⁷ See e.g., Moldova Diagnostic: Assessing Progress and Challenges in Unlocking the Private Sector’s Potential and Developing a Sustainable Market Economy, EBRD (2017).

⁸ Moldova Country Law Assessment, EBRD (2014).

⁹ In a 2017 study conducted by USAID for the SCM, 81% of the general population, as well as 81% of people who had contact with the court system, did not trust the judiciary. The same survey found that 75% of population and 83% of those with court experience believed the judiciary to be corrupt.

predominant view among legal professionals, civil society, and citizens at large is that judges are among the most corrupt public officials. For reforms to succeed, state capture and corruption must first be addressed.¹⁰

13. Inadequate safeguards: Procedures governing the functioning, governance, and oversight of the judiciary are not consistently respected and do not sufficiently ensure the independence of the judiciary. Although safeguards to insulate judges from undue influence have been introduced into Moldovan law following critiques by international organizations and donors, such measures remain superficial in nature and reportedly have been skirted in practice. Procedures governing the recruitment, selection and appointment, evaluation, and disciplining of judges are complex and do not appear to be effective or well-implemented in practice. Many of these procedures are reportedly exploited to influence judges. The membership and appointment of the SCM is also an issue of concern, as appointments to the SCM reportedly have a political angle and are determined by a simple majority vote of the parliamentarians representing the governing party, without participation of the opposition. Measures to increase transparency in the functions of the judicial oversight body have produced marginal gains as decision-making remains opaque and poorly reasoned.

14. Unpredictable and inconsistent application of law: Lack of adherence to the letter of the law undermines confidence in the judiciary. Legal and institutional frameworks are largely in place for the enforcement of contracts and the protection of property rights and investment; however, implementation of the law and adherence to legal principles appear to be fickle and can depend on the interests involved. Deviations from the law in the adjudication of commercial and criminal cases (due both to corruption and poor legal knowledge) appear to be frequent and have resulted in a low level of public trust in judicial bodies, discrepancies in case law, and liability for damages at the international level in terms of arbitral awards and damages awarded by the European Court of Human Rights (ECHR).

15. Low capacity: The lack of necessary, specialized expertise and knowledge of the law among judges, stemming in large part from weaknesses in the recruitment and selection processes, is widely reported by legal professionals, international organizations, and civil society as one of the primary reasons for poorly reasoned and inconsistent rulings. Requirements to provide reasoned verdicts only in certain cases have impeded a judicial culture of basing rulings on well-founded legal arguments. Judges are widely believed to be appointed and promoted based on criteria other than merit and legal acumen; the lack of transparency and clearly followed procedures in judicial recruitment and selection have done little to refute these contentions. Additionally, human and financial resources appear insufficient; historically the number of vacancies in judicial positions created a problem, but this has been improving over time.¹¹ Delays and backlogs also contribute to the low level of public opinion of the judiciary.

¹⁰ See e.g., MOLDOVA Improving Access to Justice: From Resources to Results, World Bank (2018).

¹¹ As of November 2020, Moldova had 28 judicial vacancies (Supreme Court of Justice – 11 positions; Chisinau Appellate Court – 8 positions; trial courts – 9 positions).

16. Disorganization: Poor organization and case management are reported by practitioners to have led to delays in court proceedings. Historically, Moldova’s court system has been populated with numerous small courts, often with very few or single judges. Reforms to consolidate courthouses¹² and increase court staff and specialization among judges have been ongoing since 2016 and are anticipated to continue taking place in stages up until 2027. These plans envision the construction of 14 new courthouses, but to date, only one has been built. Some courts have been consolidated administratively, but not physically, which reportedly has led to some “chaos” as judges and case files do not appear to always be physically situated in the same location. A conversion to an electronic case management system, assisted by international donors was implemented in 2020.

B. Organization and Governance of the Judiciary

17. The ordinary judicial system of Moldova is organized as follows: Moldova’s judiciary has 20 courts hearing commercial and criminal matters – 15 first instance courts, 4 appellate courts, and the Supreme Court of Justice (SCJ) as the highest court of appeal. In addition to its direct jurisdictional functions, the SCJ is also tasked with ensuring consistent application of laws by all courts of law in Moldova.¹³ First instance courts are competent in civil, criminal, and administrative matters. Cases are heard by a single judge or, by decision of the court president, by a panel of three judges. As of January 1, 2017, all courts in Moldova are of general jurisdiction.¹⁴ Outside the ordinary judicial system, there is also an independent Constitutional Court, which interprets the Constitution and undertakes reviews of the constitutionality of laws and decisions, decrees of the President, and acts of government. In 2019, Moldova had 386 judges actively hearing cases (20 in the SCJ, 79 in the 4 appellate courts, and 287 in the courts of first instance).

18. The SCM is the judicial governance body. Pursuant to Law 947/1996, the SCM is tasked with judicial self-administration, including submitting proposals on the appointment, promotion, and transfer or removal of judges and court presidents to the President of Moldova, selecting judicial candidates, and preparing the draft budget of the judiciary. Decisions of the SCM are taken in plenary sessions; since 2019, appeals of SCM decisions are heard by the Chisinau Court of Appeals. In 2019, following consultation with the Venice Commission and GRECO, SCM membership was increased to 15 (7 judges, 5 lay members, and three *ex officio* members). Lay members must be full-time law professors and are appointed by Parliament by a

¹² The number of trial courts in Moldova has been reduced from 42 to 15.

¹³ With an eye to improving quality of case law, consideration is being given to transforming the SCJ into a court of cassation, to ensure the consistent interpretation and application of the law by Moldovan courts and to achieve uniformity in case law. Pursuant to draft “Law on the reform of the Supreme Court of Justice and the Prosecutor’s Offices”, the SCJ will no longer be a court of third instance after the appellate courts and hear only appeals on matters of law. This is generally perceived by Moldovan legal practitioners as a positive change, although this reform is currently on pause.

¹⁴ Specialized military and commercial courts ceased operations in April 2017.

majority vote. Judge members¹⁵ are elected by the General Assembly of judges.¹⁶ The *ex officio* members of the SCM are the Minister of Justice, the Prosecutor General, and the President of the SCJ. In November 2020, a bill for amendment of the Constitution to exclude the *ex officio* members from the SCM and reduce the number of SCM from 15 to 12 (6 judges and 6 lay members) was registered in Parliament.

19. Several specialized boards have been established to help the SCM carry out its powers and functions (see Box 1). Members of these boards are partly elected by judges and partly appointed by the SCM. Decisions taken by these boards are validated by and may be appealed to the SCM (in the form of ad hoc panels).

Box 1. SCM Boards

Selection and Career Board (Selection Board): The Selection Board is composed of four judges from the courts of all levels, elected at the General Assembly of Judges, as follows: two judges from the SCJ, one judge from the appellate courts, one judge from district level courts, and three civil society members selected through an open, public competition. Civil society representatives must have an irreproachable reputation; judges are required to have irreproachable reputation to enter the profession. The Selection Board is tasked with grading judicial candidates, promotion of judges, appointment of court presidents and deputies, and transfer of judges.

Evaluation Board: The Evaluation Board is responsible for evaluating the performance of judges and is composed of five judges (two judges from the SCJ, two judges of the courts of appeal, and 1 from district level courts) elected at the General Assembly of judges and two representatives of civil society through an open competition. Civil society representatives must have an irreproachable reputation.

Disciplinary Board: Pursuant to the Law on disciplinary liability of judges, the Disciplinary Board hears disciplinary cases against judges and imposes sanctions. It consists of five judges and four representatives of civil society. The judge members of the Disciplinary Board are elected by secret ballot by the General Assembly of judges. The members of the Disciplinary Board representing the civil society are appointed by the MOJ and are selected through public competition organized by a candidates' selection committee comprising representatives appointed by the SCM. Civil society representatives must have an irreproachable reputation and at least seven years of experience in the field of law.

Judicial Inspectorate: The activities of the Judicial Inspectorate are governed by the Law on Disciplinary Liability of Judges and accompanying regulation and include: (i) verification of the organizational activity of the courts; (ii) examination of petitions regarding the ethics of judges; (iii) verification of complaints regarding disciplinary liability of judges; (iv) verification of applications addressed to the SCM to authorize the criminal prosecution against judges; and (v) examination of the grounds for rejection of the SCM nominees for the office of judge or promotion.

20. Questions about the SCM's independence and the opacity surrounding its activities and decision-making perpetuate misgivings towards the judiciary. The election by Parliament of lay members by a majority vote, rather than a qualified two-thirds majority (as recommended by the Venice Commission), is viewed as insufficient to guard against (and potentially even increasing) the possibility of influence by prevailing political interests through Parliamentary appointments. Further, recent changes have created a rift in the SCM, which is frequently stalled in decision-making due to a division between judge and lay members and has resulted in stalemates (notably with respect to judicial appointments). The SCM also has been criticized for a general lack of transparency in its operations. In its 2016 fourth round monitoring

¹⁵ The proportion of judges' representation in the SCM is 4 judges from first-instance courts, 2 judges from appellate courts, and 1 judge from the SCJ.

¹⁶ All SCM members are seconded for a period of four years. Both judge and lay members are eligible to be President of the SCM.

report, GRECO considered that the SCM's decisions in recruitment, career, and disciplinary matters were not sufficiently justified. In February 2020, the SCM law was amended to abolish in camera discussions,¹⁷ but until recently these amendments were largely ignored; however, following a call by the SCM lay members, as of October 2020, the SCM has been moving towards an open voting system. Although most of the SCM's decisions are now made in open sessions, little information or insight into its deliberations are available to the public. Despite amendments to the law requiring SCM decisions to be reasoned, explanations for decisions taken by the SCM are either not provided in practice or of poor quality, i.e. deviations from the recommendations of its subordinate bodies are not explained and information feeding into decisions are not always documented (e.g. if provided by an intelligence agency) or even made known to candidates who are the subject of such information.

21. The absence of a truly merit-based system of appointments and promotions remains a significant factor in the low capacity of judges. Anecdotal evidence suggests that, starting from appointment of judges, political bodies are highly involved in the career progression of judges. Although by law, decisions on the appointment of judges should be adopted based on objective criteria, in practice, the scoring of the Selection Board is secondary to the voting of the SCM on individual candidates.¹⁸ Decisions by the Selection Board on the respective merits of candidates are submitted to the SCM for approval, but the SCM is not bound by these decisions and gives no reasoning when it chooses to deviate from them, citing only the number of votes obtained for each candidate. Decisions taken by the SCM do not provide insight on how selection criteria were factored and whether they were apportioned the proper weight. Further, legal practitioners report that procedures to appoint judges to new positions do not often follow stipulated recruitment procedures; one common method is to apply for a temporary transfer and then multiple extensions to circumvent an open recruitment. Judges are also rumored to be appointed and promoted based on political and familial affiliations as well as demonstrated compliance with instructions from other channels (including court presidents, prosecutors, and politically powerful non-judicial actors). Amendments to Law no. 154/2012 on the selection, performance evaluation and career of judges to more clearly elaborate procedures and clear criteria for the selection of candidates have been proposed by the SCM and are still under consideration. The aforementioned practices erode judges' and the public's confidence in the fairness and objectivity of the selection process.

¹⁷ The meetings of the Plenum of the Council are public, except when, at the reasoned request of the President or at least 3 members of the Council decided, by a majority vote of the members present, that the meetings will be closed to the public and when public debate on issues on the agenda could harm the privacy of individuals, the interests of the state or public order.

¹⁸ A 2017 study conducted by USAID and the LRCM analyzing judicial appointments and promotions during the period of January 2013 through May 2017 found that the role of the evaluation by the Selection Board was minimized as the SCM frequently did not nominate the candidates with the highest score from the Selection Board in contests (in contests with more than one participant, 69% of successful candidates for district court positions had lower scores than their competitors, 43% of successful candidates for appellate court positions had lower scores, and 43% of successful candidates for SCJ positions had lower scores). The main gaps identified by the USAID/LCRM study included disregard by the SCM for scores given by the Selection Board without sufficient justification and lack of reasoning. In 7 out of 10 successful candidates in judicial recruitments had a lower score than their opposing candidates.

22. The system of recruitment has not generated an adequate pool of qualified judges.

Practitioners observe that a significant amount of recruitments for judicial posts draw only one or two candidates. The high rate of contests in which only one candidate participated was also noted as one of the main deficiencies in the 2017 study by USAID and the LRCM.¹⁹ Reasons given include: (i) the criteria for judicial posts are quite restrictive and Moldova simply does not have enough qualified candidates; (ii) the judiciary's poor reputation deters many who would otherwise be qualified from entering it; and (iii) the perception that judicial posts are pre-determined and not based on the merits and qualifications of candidates. Anecdotal evidence suggests that preferential treatment begins as early as acceptance to and grading by the NIJ.

23. Evaluation of judges does not appear to be strongly anchored in objective, quantifiable criteria, nor sufficiently transparent.

Judges report that their evaluation system is highly politicized and used for the main purpose for validating promotion and other career-related decisions rather than informing them. The evaluation of judges is governed by Law no. 154 on the selection, performance evaluation and career of judges based on specific criteria.²⁰ As with recruitment of judges, despite the legal requirement to measure judges against quantifiable criteria, in practice, a number of subjective elements may be given more weight in the evaluation.²¹ In some areas, the processes for evaluating and disciplining judges overlap (e.g., judges can be disciplined for non- or "inappropriate" performance of their duties), a practice that has been frowned upon by the CoE as the evaluation and disciplinary processes have very different objectives and should be kept distinct, particularly in an environment where the evaluation system allegedly has been used to punish wayward judges. Ratings do not appear to accurately reflect actual performance. Despite the large number of public complaints against judges and, the vast majority of judges receive positive ratings: in 2019, 36 judges were rated excellent, 103 very good, 6 good, and only 2 evaluated as insufficient.

24. Disciplinary actions do not appear effective in improving the integrity or professionalism of the judiciary.

The disciplinary system does not have clear parameters – as mentioned above, some offences would more appropriately belong to an evaluation procedure (e.g., late, non-, or poor performance) and others appear to be criminal in nature (e.g., illegal intervention or use of the judge's position to settle claims, seek or accept the settlement of personal or others' interests, or to receive undue advantages). Several offences are overly broad or highly subjective (e.g., violation of imperative norms of the law, adoption of an unworthy attitude) The overlap of some of these offences with the Penal Code (namely, CC 307) suggests

¹⁹ 22% of district court contests, 31 percent of appellate court contests, and 26 percent of SCJ contests had only one candidate.

²⁰ Including: level of knowledge and professional skills; capacity to apply the knowledge in practice; the work tenure in prior legal positions; qualitative and quantitative indicators of activities carried out in prior legal work; observance of ethical standards; research and academic activity; extra-judiciary activity.

²¹ The Evaluation Board conducts ordinary (regular) and extraordinary evaluations of judges. A judge is subject to regular performance evaluations once every three years. If a judge receives a rating of "insufficient" in a regular evaluation, he/she is subject to an extraordinary evaluation. Other grounds for extraordinary performance evaluation include a judge's own initiative or upon certain appointments, promotions, and transfers (art. 13, Law 154). Receiving a rating of "insufficient" in two consecutive extraordinary evaluations constitutes a ground for the SCM to initiate dismissal proceedings.

that disciplinary actions are linked to criminal enforcement actions; however, the SCM confirms that such disciplinary actions are not regularly initiated even where a criminal proceeding has commenced, nor are referrals made to law enforcement bodies where possible criminal actions revealed. Finally, the process for the imposition of disciplinary sanctions is highly resource-intensive and inefficient due to the number of bodies and stages of proceedings involved; even the issuance of a simple warning can result in multiple appeals taking up to or over a year. Such flaws in the system of disciplining judges are widely seen as contributing to a process that is ineffective in deterring, detecting, and punishing corrupt acts by the judiciary.²² Proposals to streamline the disciplinary process have been developed by the SCM.

25. The Judicial Inspectorate is insufficiently safeguarded against abuse. By law, the Judicial Inspectorate operates as an independent body, but the common perception among the judicial profession is that, in practice, the Judicial Inspectorate is entirely subordinated to the will of the SCM and is used to target judges who have been disobedient or outspoken. Judges and legal practitioners report that despite having the necessary tools to proactively investigate judges for disciplinary violations, the Judicial Inspectorate almost never acts on its own initiative or in response to a complaint about a judge. All of the disciplinary cases that have been initiated under the current system were reportedly commenced at the instruction of the SCM. The SCM holds a starkly different view on this point in contending that the Judicial Inspectorate is overly independent, lacking sufficient oversight, and not accountable to any particular body. Judicial Inspectors are appointed for six-year terms and are not subject to any evaluation during that period; there does not appear to be any mechanism to sanction or dismiss Judicial Inspectors for misconduct. The SCM has prepared proposals to strengthen the accountability of Judicial Inspectors, including disciplinary mechanisms.

26. The role of court presidents is widely cited as one of the most significant channels for undue influence and intimidation. Practitioners report that court presidents play an important role in how effectively a judge may conduct his/her duties. By law, they are tasked with a wide array of responsibilities directly and indirectly related to the operation of courts (e.g., coordination of the work of judges and distribution of tasks and verifying the random distribution of cases)²³, some of which should be assigned to professional court managers and administrative staff. In practice, these responsibilities have been reported to translate to extensive powers over every aspect of judicial practice, from whether a judge will be allotted an assistant/clerk to the assignment of cases when the automated system is down or the transfer of cases after initial assignment. Court presidents also appear to play an informal role in the promotion, evaluation, and transfer of judges. The position of court president is widely believed

²² For instance, in the last five years, over 7,500 complaints about judges (averaging 1,500 per year) have been lodged with the SCM, but only 250 disciplinary cases against judges have been initiated (although it should be noted that among complaints lodged are those arising from disagreement with the judge's finding).

²³ Law on the organization of the judiciary, art. 161.

to be a purely political appointment (despite being subject to the same procedures as other judicial recruitments).²⁴

27. The current framework and practices do not allow for a sufficient degree of participation by judges in their self-governance. Although judges are involved to a degree in their self-governance processes, practitioners report that this involvement is superficial and has been easily overridden in the past. Judges are not involved in the selection or evaluation of court presidents, nor do they have a voice in the assessment of those appointed to oversee their activities (i.e., SCM and board members), although the new Justice Strategy reportedly contains mechanisms to allow for this type of involvement by judges.²⁵ Further, members of the judiciary do not feel they are sufficiently involved in the planning or development of the judicial budget.

28. Existing measures to ensure the integrity of judges and judicial candidates are not effective, at either the recruitment, evaluation or disciplining stages. Although judges—as public servants—are subject to certain checks and safeguards, domestic stakeholders and international observers question whether such measures are adequately applied. For instance, although judges are subject to requirements to report assets and conflicts of interest, it does not appear that many conflicts of interests and unexplained wealth have been uncovered.²⁶ Similarly, although integrity is a component of judicial appointments, it is unclear how much significance this element carries. As a matter of procedure, the SCM requests information from the National Integrity Authority (NIA) on all judicial candidates; however, little information exists as to how such information is used or weighted, including whether any candidates for judicial positions have been disqualified on the basis of integrity issues. It is further unclear to what extent integrity factors into decisions to promote judges to higher courts or administrative positions (i.e., court presidents or deputy presidents). Finally, existing practices aimed at validating integrity are not always in line with international best practices. By law, candidates are still required to undergo lie detector testing at the time of recruitment – a practice widely considered unreliable not only for the purpose of integrity vetting but even in many countries as evidence²⁷ – although it appears that, in practice, judicial candidates are no longer routinely subjected to a polygraph test.²⁸ The SCM is pushing for amendment of the law to formally remove this

²⁴ This belief is supported by the findings of the 2017 USAID/LRCM study, which found that 100% of judges promoted to an administrative position in the appellate courts scored lower than their competitors (although in district courts, only 32% of judges promoted to an administrative position scored lower).

²⁵ Where dissatisfaction with the SCM membership led to an initiative to convene a General Assembly to vote out existing members, this convocation was refused by the SCM, leading to questions of the legality of such a refusal and the appropriate procedure to be adopted where such a refusal occurs.

²⁶ In 2020, seven inquiries into violations of asset declaration and conflicts of interest provisions were initiated with respect to 7 judges and one violation was found.

²⁷ See *The Promise of an Empty Shell* citing *The Truth About Lie Detectors* (aka Polygraph Tests), American Psychological Association, at <https://www.apa.org/research/action/polygraph.aspx>.

²⁸ The Constitutional Court has ruled that the practice of a successful lie detector test as a prerequisite for public office is unconstitutional (Decision No. 6 from April 10, 2018), but this practice has yet to be officially abolished in the judiciary.

practice, while it still favors polygraph testing of judicial students at various stages (e.g., admission to the NIJ). Checks into judges' and judicial candidates' integrity and backgrounds should be carried out in a regulated and transparent manner following stipulated protocols.

C. Effectiveness of Protection of Economic Rights

I. *Protection of Property Rights*

29. Property rights are formally captured in law, although issues may exist in practice.

A system for recording property titles and mortgages is in place and deemed by the 2019 International Property Rights Index (IPRI) to be quite good. Moldova has a national cadaster for registration of real estate titles. However, issues may exist in practice as to the completeness, transparency, and efficiency of the land cadaster and with respect to property valuation.²⁹ Starting in 1999, with the support of international development organizations, Moldova established a real estate cadaster and conducted systematic registration of about 80% of real estate, following privatization. To date, two thirds of the country's territory is covered by the property register, and about 4.8 million out of the estimated 6.0 million immovables are registered in the Real Property Registry. Due to the lack of financial resources in the state budget required to complete the registration process of private property, Moldova requested financial support from the World Bank in 2018 for a land registration and property valuation project. The project is expected to take place over five years (2019-2023), focusing on developing the regulatory framework to support an efficient land management system and a sustainable mechanism for the valuation and re-evaluation of immovable property.

30. Moldovan courts are not considered reliable in guaranteeing the property rights of citizens and foreign investors. In the 2019 IPRI, Moldova fell in the bottom 15 countries for protection of property rights due to scoring poorly in judicial independence, rule of law, political stability, control of corruption, and property rights protection, indicating that implementation of the legal framework is weak.³⁰ A 2020 study³¹ conducted jointly by USAID and the LRCM on judicial practice in cases of expropriation of immovable property due to unlawful procedures in the issuance of titles and following a good faith purchase found that judges appeared to be unfamiliar with applicable rules in the Cadaster Law, citing a narrower provision from the Civil Code to inform their rulings. The study revealed that inconsistencies existed in both outcomes and reasonings. The lack of uniformity in national jurisprudence is reflected in the number of cases with systematic violations of property rights brought before the ECHR.³²

²⁹ See discussion in paras. 121 et al on the deficiencies in registration and leasing of publicly owned lands.

³⁰ Moldova also fared poorly in terms of intellectual property and copyright protection and lacked data for an assessment of patent protection. These areas are not covered in this analysis.

³¹ Expropriation from Good-Faith Purchasers: Is Judicial Practice Uniform?, USAID (2020).

³² Moldova's National Development Strategy noted that 40% of the total number of breaches found by the ECHR related to property rights during the period of a 1995–2010. Also, of the 33 judgments issued by the ECHR in 2018, six related (continued)

II. Investor Protection

31. Moldova has the necessary legal framework for the protection of investor rights.

Moldova has ratified and/or is party to several multilateral investment conventions and agreements³³ and has signed 39 bilateral investment protection treaties. The Law on Investment in Entrepreneurship provides guarantees for the respect of investors' rights, protection against expropriation without compensation, and payment of damages in the event investors' rights are violated. Domestic courts recognize and enforce foreign arbitral awards and there are no known cases when the Moldovan government denied voluntary payment under an arbitral award rendered against it.³⁴

32. Irregularities in judicial practice, however, call into question the legitimacy and credibility of Moldova's laws. Allegations of judicial malfeasance in recent years relate to rulings on purported illegal dispossessions of investors' property and economic rights. In one recent landmark case, amidst allegations of bribery and corruption, a court of first instance issued a judgement in apparent contradiction of Moldovan law and was upheld by the appellate court. Following the judgment, a hasty legislative initiative was commenced in an attempt to block enforcement of the judgment (although this initiative has not garnered support after the first reading). Cases such as these are troublesome in their own right (as they reveal the letter of the law to be secondary to the will of certain individuals), but they also have the potential to create instability in the legal framework where legislative changes are triggered as reactions to specific events.

III. Contract Enforcement

33. Moldova's commercial legal framework is well developed but inconsistently applied.

While needing some further modernization, Moldovan commercial laws relating to public-private partnerships, public procurement, the energy and telecommunications sectors, capital markets, corporate governance, and insolvency are considered by most stakeholders to be largely adequate. However, the EBRD, in a 2014 study³⁵ on the effectiveness of key commercial laws that directly contribute to creating a favorable investment climate in Moldova noted a lack of implementation across sectors and inconsistent application of laws by courts. Moldova's National Development Strategy arrived at a similar finding – that inconsistent court decisions

to violations of art. 1 (protection of property rights) of the European Convention on Human Rights (including de facto expropriation of the applicants by the state without providing just compensation as required by law).

³³ Moldova has ratified the Convention on the International Center for the Settlement of Investment Disputes (ICSID) and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Moldova is also a party to the Geneva European Convention on International Commercial Arbitration and the Paris Agreement relating to the application of the European Convention on International Commercial Arbitration.

³⁴ United States Investment Climate Statement – Moldova (2019).

³⁵ Commercial Laws of Moldova: An Assessment by the EBRD (2014).

continue to be issued for similar cases, thus disturbing business environment security and generating unequal opportunities.

34. Low capacity of judges and an underdeveloped culture of judicial reasoning weakens the quality of court proceedings and rulings. The 2014 EBRD study on Moldova's commercial laws observed that judges lacked the requisite experience in many commercial and civil matters and therefore often resorted to general legal principles or provisions in the Civil Code rather than more relevant provisions in specialized laws (as demonstrated in expropriation cases described above). Legal professionals and industry representatives affirm that these observations are still pertinent and point to the low level of understanding of the law among judges, often demonstrated by weak or faulty reasoning. Since 2012, in civil cases, district court judges are not required to issue reasoned decisions unless expressly requested by one or more of the parties, or if the decision is appealed, or if the decision is to be recognized and executed in another State. Reasoned verdicts are requested in approximately 25 percent of civil cases; in the remaining 75 percent of cases, no reasoning was requested due to parties not being represented or having missed the statutory timelines, or where a judge was transferred. In a 2018 report on the judiciary, the ICJ considered this practice insufficient to satisfy article 6 of the European Convention on Human Rights (relating to due process and the right to a fair trial) and to facilitate good public understanding of the law.³⁶ Notably, the two-tiered system of delivering judgments (where the ruling is issued first and then subsequently the motivation if needed) has a significant impact on the quality of judicial decision-making as the reasoning follows (and must be tailored to justify) the judge's ruling.

35. Moldova's system of enforcement and debt recovery has improved but remains problematic. Historically, Moldova experienced a systemic problem of non-enforcement of judgments, which led to multiple rulings against Moldova by the ECHR. To address this issue, a system of private enforcement commenced in 2010, transferring enforcement functions from public officials to licensed professionals (bailiffs). According to the EBRD Enforcement Agents Assessment 2013, the enforcement framework and practice showed relatively good results and is considered to be among the best in the region; however, the system of private enforcement remains highly bureaucratic and time-consuming and has resulted in inconsistent practice and some allegations of corruption. The system of enforcement also does not yet appear to be fully equipped with the necessary tools for self-governance (e.g., an effective professional oversight body, disciplinary liability for bailiffs). Signs also indicate that bailiffs are reaching the limit of their capacity; the clearance rate of cases over recent years falls well below 100%, which leads to a constantly growing backlog. Currently, the MOJ and the National Union of Bailiffs are undertaking joint efforts to improve the evaluation of the performance of the system, modernize the case management, and increase the efficiency and the quality of enforcement services.

36. The susceptibility of judges to corruption and influence undercuts the effectiveness of contract enforcement. Corruption is considered to permeate all levels of the court system

³⁶ Only an Empty Shell: The Undelivered Promise of an Independent Judiciary in Moldova, International Commission of Jurists (2018).

from courts of first instance to the SCJ and judges are viewed as showing deference to government bodies and entities in which the state has a substantial interest. Anecdotal evidence indicates that parties will resort to out-of-court measures to settle disputes or recover debt to avoid the formal court system. Judges also report experiencing intimidation through various channels, including the judicial inspectorate and the possibility of being found criminally liable for “illegal” judgments pursuant to Criminal Code art. 307, which penalizes judges for issuing “illegal decisions”.³⁷ In the course of monitoring developments in the judicial sector, the LRCM reports 31 such cases being opened against 28 judges over the period of 2012–2017. Arguments in favor of maintaining article 307 point to the need for holding judges accountable. However, existing mechanisms should be leveraged; disciplinary and evaluation proceedings are appropriate for poor decision making (whether willful or negligent) and Criminal Code provisions on abuse and excess use of power may be applied in more egregious cases (although at present, shortcomings in these provisions limit their applicability to judicial misconduct, see section below on Anti-corruption framework). As it stands, article 307 provides not only a potential channel of intimidation, but also an underhanded mechanism for the state to correct undesirable verdicts and rulings.

37. Alternative dispute resolution mechanisms exist but are ineffective. Although Moldovan law provides alternative dispute resolution mechanisms in the form of mediation and arbitration (following UNCITRAL rules), in practice, these mechanisms are not considered to be effective in reducing judicial case load. Judicial mediation is mandatory for many categories of civil cases, but judges strongly oppose this practice as it continues to add to their workload. In 2019, although the EBRD records 725 mediated cases, only 40 were heard by the Chamber of Commerce’s mediation center, while the rest were mediated by judges. As arbitration remains a relatively novel concept in Moldova, the practice of including arbitration clauses in contracts is not well established. Foreign investors have reported the slow pace of court enforcement of arbitral awards and judges’ excessive discretion over arbitral decisions as discouraging factors.³⁸ Courts are perceived as showing deference to public authorities, including economic entities, where they are involved, regardless of the law. However, while mediation and arbitration are generally perceived as preferable options (due to corruption in the court system), they cannot be used to displace the court system altogether, not in the least because arbitral and mediation decisions must still be enforced by domestic courts and mandatory mediation through the court system is a precursor to seeking recourse in a mediation center.

38. Due process issues in Moldovan courts have led to a number of complaints before the ECHR. In 2018, Moldovans complained to the ECHR two and a half times more than the European average.³⁹ Among the most frequently occurring violations in cases brought before the

³⁷ Article 307 has been reportedly used to penalize judges for disobeying requests by prosecutors or other instructions unofficially delivered on cases. *See* Only an Empty Shell: The Undelivered Promise of an Independent Judiciary in Moldova, International Commission of Jurists (2018).

³⁸ US State Department 2019 Investment Climate Statement.

³⁹ Republic of Moldova at the European Court of Human Rights (2018).

ECHR include the non-enforcement of judgements and the irregular annulment of final judgments. Eleven percent of violations presented to the ECHR in 2018 related to art. 6 (due process/right to a fair trial). Of 33 judgments issued by the ECHR in 2018, six related to violations of art. 6. In two other cases involving art. 6, Moldova acknowledged the violation and provided the applicant with redress out of court. In all cases except for two, the ECHR found Moldova liable for damages. Established violations in 2018 include non-execution of judicial decisions within a reasonable time and unjustified retroactive application of law.

39. Priority/key recommendations address aspects of judicial governance that are considered some of the most critical for removing channels of potential influence over judges and obstacles to autonomy as well as those that may be implemented within a short timeframe. Namely, they relate to placing more importance on checking/assessing the integrity of judges and judicial candidates and to improving the systems in place for the oversight of judges (including for evaluation and discipline). Towards this end, the regulatory framework should clarify the responsibilities of the judicial inspectorate and strengthen its autonomy, as well as strengthen the SCM selection process. The powers of court presidents should be curtailed. Integrity testing of judges should also be emphasized, and procedures clearly enumerated in law. Finally, CC 307 should be repealed or reformed to prevent this legal provision from being abused.

III. ANTI-CORRUPTION FRAMEWORK

A. Corruption Risks, Country Context and Perception Indicators

40. Entrenched and systemic corruption is identified by the public, civil society and the authorities as a fundamental obstacle to Moldova’s development. Pervasive and entrenched corruption is seen as the main pillar of an exploitative system build to use state’s powers and resources for enrichment of economic and political elites and has been recognized by the authorities as one of the most stringent problems in Moldova.⁴⁰ Stakeholders describe corruption as an overarching phenomenon, encompassing all three branches of the government that are vulnerable to political control and undue influence of vested interests, resulting in a condition of “state capture”. The 2019 Parliament Resolution recognizing Moldova as a captured state (the “Resolution”)⁴¹ stressed that endemic corruption is the main danger to freedom, safety and well-being of Moldova and its citizens and that “all the citizens of this country are suffocated by endemic corruption, theft and illicit privatization of public property”, reflecting emerging political support for anti-corruption agenda.

41. Many state institutions, including law enforcement are vulnerable to corruption. The Resolution denounced the unconstitutional and illegal political control over the judiciary, the Prosecutor General’s Office, National Anti-corruption Center (NAC), National Integrity

⁴⁰ Report on the National Money Laundering and Terrorist Financing Assessment (NRA); 2017; p.18.

⁴¹ <http://www.parliament.md/LegislationDocument.aspx?Id=eacdde96-f564-4cf0-acc5-0ccdef439b72>

Authority (NIA), NBM and other agencies, and called for the dismissal of these agencies' leadership. Political influence is considered to have severely affected the functioning of these institutions⁴² and the high-level officials are viewed as part of organized corrupt networks driven by private interests.⁴³ The weak independence of criminal prosecution and the high level of corruption in law enforcement, judiciary and politics is seen as negatively affecting the country's capacity to fight corruption and related crimes.⁴⁴ Thus, the anti-corruption enforcement is considered ineffective and selective, engendering perceptions of impunity.⁴⁵ Notably, in the on-going investigations of the 2014 massive banking fraud a limited number of individuals were touched upon.⁴⁶

42. Corruption extends to various sectors of the economy and facilitates the commission of associated crimes. The National Anti-Corruption Strategy lists the following areas as particularly vulnerable to corruption: law enforcement, customs and tax, education and health, environment, road construction, subsidies in agriculture, public procurement, administration of public property, local public administration, and management of external assistance. Corruption in law enforcement and the judiciary is particularly dangerous, as it allows for non-prosecution of criminals, facilitating commission of other economic crimes. In addition to corruption, the main profit-generating crimes in Moldova are drug⁴⁷ and human trafficking, tax evasion and smuggling,⁴⁸ with some of these activities led by organized crime groups with the support of corrupt officials.⁴⁹

43. Moldovan citizens view corruption as widespread and a major problem in the country, and regard anti-corruption efforts as ineffective. In 2016 TI survey three quarters of respondents considered the members of Parliament corrupt and 42 percent of households paid a bribe to access basic services.⁵⁰ Almost seven in ten people in Moldova say that the officials working in the main public sector institutions are highly corrupt, which is the highest share

⁴² National integrity and anti-corruption strategy 2017-2020; <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=370789>

⁴³ According to the Public Opinion Survey of Moldovan Residents (International Republican Institute), 89% of the population believes that the country is governed by the interests of a narrow group of people.

⁴⁴ p. 53, NRA, http://spscb.gov.md/storage/NRA/NRA_EN.pdf

⁴⁵ The National integrity and anti-corruption strategy noted that corruption of the members of the Government and other public officials, brought to light by investigative journalism, national anti-corruption agencies, and even through prosecutions and convictions, did not lead to these individuals being removed from public service (p.8).

⁴⁶ Anti-money laundering and counter-terrorist financing measures; Republic of Moldova; Fifth Round Mutual Evaluation Report; p. 19.

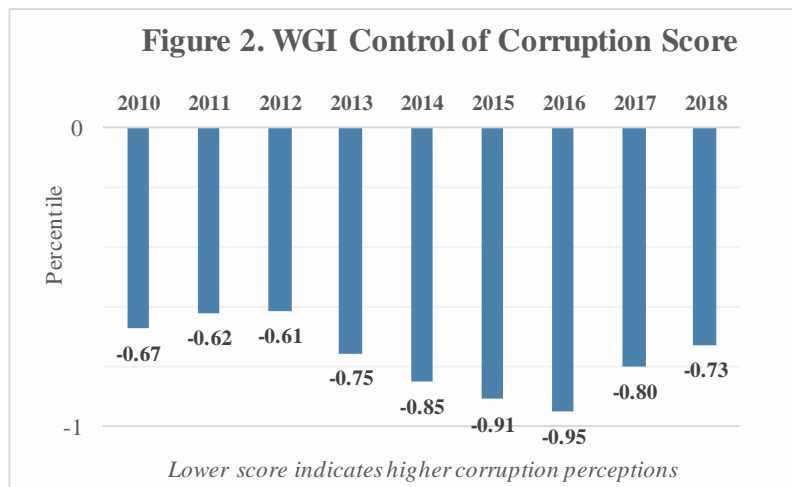
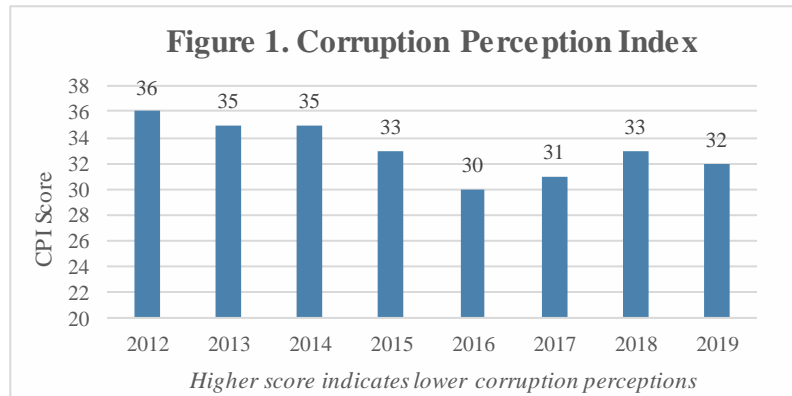
⁴⁷ According to the International Narcotics Control Strategy Report, a major nationwide problem in Moldova is corruption in correlation with drug trafficking. <https://www.state.gov/international-narcotics-control-strategy-reports/>

⁴⁸ Due to its geographical location, the territory of Moldova is used for smuggling goods into and out of the EU and bordering countries; Report on the National Money Laundering and Terrorist Financing Assessment; 2017

⁴⁹ Report on the National Money Laundering and Terrorist Financing Assessment (NRA); 2017;

⁵⁰ People and Corruption: Europe and Central Asia, Transparency International, 2016.

worldwide.⁵¹ The government is also perceived by 84 percent of respondents to be doing badly in fighting corruption,⁵² and a half of respondents perceive the fight against corruption as a political or oligarchical tool, while only a fifth of respondents consider it as the beginning of real reforms.⁵³ The Transparency International Corruption Perception Index and the Worldwide Governance Indicators rankings also show perceptions of high levels of corruption as well as a consistent deterioration in the corruption perceptions from 2012 to 2016 followed by a slight improvement. IMF reports noted that corruption is perceived to be systemic and while anticorruption institutions and legislation are largely in place, enforcement is perceived as poor.⁵⁴



⁵¹ People and Corruption: Citizens' Voices from Around the World, Transparency International, 2017.

⁵² Ibid.

⁵³ Public Opinion Barometer, Institute for Public Policies, 2018

⁵⁴ Republic of Moldova: Staff Report for the 2020 Article IV Consultation and Sixth Reviews Under the Extended Credit Facility and Extended Fund Facility Arrangements.

B. Anti-Corruption Legal Framework

44. While Moldova’s legal framework is largely adequate, criminalization of abuse of power is not fully in line with the United Nations Convention against Corruption (UNCAC).⁵⁵ Criminalization of corruption offences in Moldova provides a good basis for anti-corruption enforcement.⁵⁶ Article 327 (1) to (3) CC criminalizes the intentional misuse of public office if resulting in significant damage to public interests or to rights and legally protected interests of individuals or legal entities. The requirement for significant damage to have occurred to trigger criminal liability is an additional element not foreseen by art. 19 of the UNCAC (abuse of functions) and can be an impediment to the application of the offence (e.g., with respect to judicial officials whose misconduct may not generate quantifiable damages). Moreover, the scope for application of the abuse of office offence was narrowed after the Constitutional Court of Moldova declared that criminalization of the abuse of office resulting in the damage to public interests is unconstitutional.⁵⁷ The authorities should consider to broaden the application of abuse of power, in particular eliminating the current narrow scope of required consequences.⁵⁸ To limit the vulnerability of the abuse of power offence to political misuse and ensure predictability and legal certainty, the authorities may consider criminalizing only sufficiently grave offences.⁵⁹

Box 2. Criminalization of Illicit Enrichment in Moldova

The illicit enrichment offence allows the state to prosecute corrupt officials and confiscate the proceeds of corruption on the basis that the unexplained wealth is evidence of corrupt conduct. The burden to prove that such wealth is unexplained lies with the prosecution and is not reversed onto a defendant, but there is no need for the prosecution to prove the source of the illegally acquired wealth by identifying and proving the underlying offences, such as bribery, embezzlement, trading in influence, and abuse of functions,⁶⁰ which is particularly relevant in Moldova where these crimes are not sufficiently prosecuted and sanctioned. Illicit enrichment was criminalized in Moldova in 2013 (Article 330/2 CC), defining it as “ownership by a person holding a position of responsibility or a public person, personally or through third parties, of assets, the value of which substantially exceeds the received income, and it is established, on the basis of proofs, that these assets could not have been legally obtained”.

⁵⁵ Moldova ratified UNCAC on 1 October 2007. Please note that this report covers only public sector corruption in line with the 2018 Framework for Enhanced Fund Engagement on Governance.

⁵⁶ Bribery is criminalized in articles 324 (passive bribery of public officials) and 325 (active bribery) of the Criminal Code (CC), covering both direct and indirect bribery, as well as both action or inaction by a public official. Embezzlement, misappropriation or other diversion of property by a public official can be classified as “Abuse of power or abuse of official position” (Art. 327 (2) and 327 (3)), “Use of means from internal loans or external funds contrary to their purpose” (Art. 240 (4), Art. 332-1 (2), Art. 332-2 (2) and (3)), and “Appropriation, alienation, substitution, or concealment of sequestered or confiscated goods” (Art. 251). Trading in influence is criminalized in Art. 326 CC, covering the active form of the conduct, third party beneficiaries, the indirect commission of the offence, and “supposed influence” (“where this person has or claims to have some influence”). Article 332 criminalizes forgery of public documents by a public official with an intent of personal gain.

⁵⁷ The Constitutional Court noted that criminal law does not contain clear, predictable and available criteria for assessing damage to public interests and that the accused are devoid of the ability to unequivocally determine which specific harmful consequences lead to the abuse of office offence. The Constitutional Court concluded that qualification of criminal actions as causing damage to abstract public interests cannot meet the requirements of clarity and predictability, and constitutes a broad interpretation of the criminal law, which worsens the position of the person. The use of public interest concept in the abuse of office offence was established to contradict the constitutional principles of lawfulness of criminal prosecution and punishment and of quality of criminal law.

⁵⁸ For the abuse of office involving economic interests, requiring intent of personal gain, which is currently present (continued)

45. Illicit enrichment is rarely investigated and prosecuted due to the structure of the offence in the CC, despite perceptions of large unexplained wealth of some officials.

Considering the difficulties in detecting and prosecuting corruption in Moldova and recovering its proceeds, illicit enrichment can be an important anti-corruption tool, where significant enrichment of a corrupt official provides a visible manifestation of corruption and a basis to start an investigation. Law enforcement agencies emphasized the difficulties in establishing a case of illicit enrichment due to the need to prove that assets could not have been legally obtained. Law enforcement appear to have interpreted this element as requiring direct proof of illegality, for instance with a link to a specific offence or criminal proceeds, rather than demonstrating that possession/ownership of assets could not be justified by legitimate sources of income. In other jurisdictions that criminalize illicit enrichment this determination gives rise to a presumption that the enrichment is the proceeds of corruption, which then can be rebutted by the public official by providing evidence of the legitimate origin of his/her wealth.⁶¹ Due to the difficulty in finding direct proof of illegality and the recent introduction of the illicit enrichment offence, it remains scarcely tested, with one case regarding a judge and one regarding a customs officer sent to the courts in 2018 and 2019 respectively. One official was convicted of illicit enrichment to a fine.

46. Statutory sanctions for corruption offences appear insufficiently dissuasive for some of the offences. Most corruption offences are classified as serious offences, with a maximum sentence between 5 and 12 years of imprisonment and a minimum of two or three years of imprisonment; however, some corruption offences and non-aggravated money laundering are classified as less serious crimes with maximum sentence not exceeding 5 years of imprisonment.⁶² The sanctions for corruption offences should be revised to increase the sanctions

only in the article 327 (2) CC as one of the aggravating factors, may also be considered appropriate. The authorities can also consider adding to the text of the article 327 CC a specification that only actions in violation of norms contained in a law are considered abuse of power. This would allow to apply abuse of power offence only to the most consequential criminal actions that violate the norms prescribed on the level of a law, as opposed to violation of rules of a lower normative power (e.g. regulations, instructions).

⁵⁹ Venice Commission considers that national criminal provisions on “abuse of office”, “excess of authority” and similar expressions should be interpreted narrowly and applied with a high threshold, so that they may only be invoked in cases where the offence is of a grave nature, such as for example serious offences against the national democratic processes, infringement of fundamental rights, violation of the impartiality of the public administration and so on.

⁶⁰ https://star.worldbank.org/sites/star/files/on_the_take-criminalizing_illicit_enrichment_to_fight_corruption.pdf

⁶¹ Adoption of the illicit enrichment offence by the State Parties to the UNCAC is subject to their Constitutions and the fundamental principles of their legal systems. The Constitutional Court of Moldova noted that constitutional presumption of legality of acquired property doesn't preclude the investigation of the illegal character of the acquired property, but that in order to ensure legal security and legality of property, this presumption implies the responsibility of the state to present evidence of illegality of property.

⁶² Performance of duties in the public sector in situations of conflict of interest (article 326-1), non-aggravated trading in influence (article 326 (1)) and money laundering (article 243 (1))

so all of the corruption offences are classified as serious.^{63 64}

47. Criminal legislation allowing for sentence reduction measures and plea bargaining is overly broad. Article 364-1 CPC allows a sentence reduction by one third (or one quarter in the case of imposition of a fine) if the accused admits committing all the acts listed in the indictment and does not contest the evidence. This sentence reduction is applied automatically and unconditionally. A similar provision is contained in article 80 CC - the sentence can be reduced by a third of the maximum sanction if the accused person enters into an agreement admitting guilt with prosecution. UNCAC reviewers noted that application of this provision should be limited in corruption cases and subject to the cooperation with the competent authorities in identifying other persons involved in the commission of corruption offences.⁶⁵

48. Discretion should be exercised when granting exemptions from criminal liability for active bribery and trading in influence in the case of extortion or a confession. The exemption is applied automatically to the bribe-givers and the influence peddlers if either (i) the bribe or service/exercise of influence were extorted from them or (ii) the person confesses without knowing that criminal investigative bodies are aware of the crime they committed. Considering possible misuse of these exemptions from criminal liability, including due to the information leakages, and the need to consider the specific circumstances of the case, a change from the automatic to optional application of these exemptions can be beneficial. Additional flexibility would allow prosecutors to consider, for example, the level of culpability or participation of the accused and nature of the extortion or denunciation in the decision to apply the exemption from the criminal liability or treat them as mitigating or exceptional circumstances.

⁶³ Classification of some corruption offences as less serious precludes application of several criminal law measures, which may hinder effectiveness of anti-corruption enforcement. Less serious crimes have the statute of limitations of 5 years, which runs from the time of the commission of the offence until the day when the judgement becomes legally enforceable (i.e. following the appeal process if any), which, factoring the length of court proceedings, may not be sufficient, for corruption offences, particularly those that are complex or include evidence located abroad. In addition, application of special investigative techniques (surveillance, monitoring of financial transactions, controlled delivery, etc.), as well as measures to protect witnesses and other criminal process participants are not permitted for less serious crimes. In addition, wiretapping and recording communications cannot be applied in such corruption offences as illicit enrichment, misuse of external funds, forgery of public documents. (Art. 240 (4), art. 332-1 (2), 332-2 (2) and (3) of the CC)

⁶⁴ This deficiency in the Criminal Code was addressed following this governance assessment before the publication of the technical report.

⁶⁵ Application of mitigating and exceptional circumstances in a corruption case provides numerous opportunities to further reduce the dissuasiveness of sanctions. Article 79 CC allows a court to impose a punishment below the minimum limit provided for by law, or of another category, or choose not to apply the mandatory complementary punishment, taking into account the exceptional circumstances of a case. In this context, admission of guilt is one of the general circumstances mitigating liability (Article 76 CC), and cumulative qualification of mitigating and exceptional circumstances, such as admission of guilt, appears possible in sanctioning of corruption cases leading to a disproportionate lowering of sanctions. In addition, Article 55 allows to exempt a person from criminal liability for some less serious crimes, notably for non-aggravated money laundering and performance of duties in the public sector in situations of conflict of interest, applying instead administrative liability. (continued)

49. Legal persons can be held criminally liable for participation in the corruption offences, but no legal person was convicted of corruption offences yet. Pursuing criminal liability of legal persons is particularly important in corruption cases, to ensure that bribery is not profitable for a company and to facilitate confiscation of proceeds of corruption. Article 21 CC provides for the criminal liability of legal entities (except for public authorities)⁶⁶ if guilty of non-fulfillment or improper fulfillment of the direct requirements of the law, and if at least one of the following circumstances is established: the act was (i) committed in the interests of the legal entity by, (ii) allowed, authorized, approved or used by, (iii) committed as a result of lack of supervision and control of, a natural person with managerial functions.⁶⁷ This legal framework appears sufficient to hold legal persons criminally liable, but it is not pursued by law enforcement in the corruption cases, possibly due to inexperience with this relatively novel tool for the Moldovan legal tradition.

50. Moldova has a suitable legal framework on confiscation and provisional measures.⁶⁸ Newly introduced extended confiscation⁶⁹ holds significant potential as an asset recovery tool in corruption and related cases. Extended confiscation can be applied as part of a conviction where financial investigation uncovered a significant discrepancy between the legitimate income and the persons' assets and lifestyle in five years prior and after the commission of the offence. The court can apply extended confiscation to the unjustified wealth, its corresponding value, as well as assets transferred to third parties who knew or should have known about the illegal acquisition of the assets. The Prosecutor General's Guidelines on confiscation outline specifics of financial investigations in the cases of extended confiscation, including both tracing the proceeds of crime and the scrutiny of the stock of assets owned by the suspects, which results in a "financial profile" to determine the possible discrepancies between legal income and unjustified wealth which might be subject to extended confiscation. The extended confiscation provisions establish a rebuttable presumption of the illicit origin of the property of the defendant which does not contradict article 46 of the Constitution (right to private property and its protection).⁷⁰

⁶⁶ This exception does not apply to the SOEs

⁶⁷ Legal persons can be convicted for embezzlement, active bribery and trading in influence offences, and the criminal liability of legal persons does not exclude liability of a physical person for the same offence. Chapter VI of the CPC introduces special procedural rules applicable to criminal proceedings against legal persons. Sanctions against legal persons include fines, deprivation of the right to conduct certain activities and liquidation (Article 63 CC).

⁶⁸ Provisions on confiscation and provisional measures were assessed as compliant with the Financial Action Task Force (FATF) Standards. Anti-money laundering and counter-terrorist financing measures Republic of Moldova, Fifth Round Mutual Evaluation Report, Moneyval, 2019. Article 106 provides for the confiscation of the goods used or intended to be used to commit a crime (instrumentalities), and goods resulted from criminal acts, as well as any incomes obtained from these goods (proceeds). Confiscation also extends to property equivalent in value to the proceeds of crime when such proceeds no longer exist, cannot be found or cannot be recovered. Confiscation may also be ordered in the absence of conviction (art. 106 CC) and in administrative cases. A new chapter „The criminal assets recovery” was introduced to the CPC, which establishes the procedure of tracing the criminal assets and sets out the exhaustive list of offences, which includes all corruption offences, in which CARA is required to trace criminal assets, gather the evidence, evaluate and manage illicit assets. The provisional measure of sequestration (art. 204 CPC) can be applied to secure the eventual special confiscation or extended confiscation of goods, recovery of (continued)

51. The public procurement law includes procurement-specific safeguards against potential corruption, which can be strengthened.⁷¹ These safeguards include a commitment by the procuring authorities to take all measures to eliminate conflict of interest situations and banning participation of bidders convicted of corruption and money-laundering offences. Considering the potential of corrupt actors to avoid these safeguards by abusing legal entities, as well as to facilitate investigation of corruption in procurement, the authorities should collect beneficial ownership information from the bidders for public procurement contracts.⁷² This beneficial ownership information can also be made public to allow for scrutiny by the civil society and market participants, enhancing the detection of corruption.

C. Anti-Corruption Institutional Structure

52. Anti-corruption efforts in the public sector are split among a network of specialized anti-corruption institutions:

- NAC is a preventive and law enforcement agency in charge of investigating corruption and corruption-related offenses and contraventions, performing anti-corruption analysis of draft normative acts, institutional integrity assessments, conducting operational and strategic analyses of corruption and related acts. Within the NAC, the Criminal Assets Recovery Agency (CARA) is responsible for the recovery of proceeds of corruption, money laundering (ML) and other crimes.
- APO conducts (i) prosecutorial oversight of NAC's investigations, (ii) investigations of high-level corruption and (iii) represents the above cases in the courts.
- The Prosecutor General's Office (PGO) is the key body in the system of prosecution, which can lead and conduct criminal investigations in select cases.
- The Service for Prevention and Fight against Money Laundering (SPCML) collects financial intelligence from financial institutions and other reporting entities, analyzes the financial intelligence and disseminates reports regarding potential corruption and other crimes to law enforcement.

damages or the payment of a fine, which applies to movable and immovable assets, bank accounts and bank deposits.

⁶⁹ Extended confiscation (art. 106-1 CC) is defined as "confiscation not only of assets associated with the specific crime, but of additional assets which the court determines are the proceeds of other, unspecified crimes".

⁷⁰ UNCAC Country Review Report of the Republic of Moldova, UNODC, 2016

⁷¹ Additional measures to improve transparency and regularity of public procurement are contained in the Public Financial Management section of this report.

⁷² The Ministry of Finance is working on developing the amendments for the Law on public procurement and the secondary legislation to strengthen transparency and anti-corruption safeguards in public procurement.

- The National Integrity Authority (NIA) controls the assets and interests of public officials and compliance with the rules regarding conflict of interests, incompatibilities, restrictions and limitations.

53. NAC’s main preventive tools are not consistently or fully used. NAC conducts routine anti-corruption analysis of normative acts (581 anti-corruption analysis reports and 562 opinions on draft normative acts issued in 2019), but almost a third of the Government’s acts and about 14 percent of draft laws were not sent to NAC for the anti-corruption expertise, in violation of the law – which is a longstanding issue.⁷³ NAC also performs institutional integrity assessments, which consist of identification of corruption risks in a public body, their sources and issuance of recommendations to address them as well as professional integrity testing of individual officials in the public bodies that are tested. NAC completed institutional integrity assessment of 12 public entities⁷⁴ since June 2016, including five in 2019. Officials were dismissed in only one agency as a result of professional integrity testing since 2016, despite the negative result for most of the tested officials. There were no cases when the implementation of integrity plans was assessed as failed, so no heads of public agencies were dismissed on these grounds.

54. NAC’s strategic and operational analysis is focused on the detection of corrupt acts and corruption risks, but investigative follow-up on operational analysis is insufficient.⁷⁵

Such operational analysis appears to hold potential as a useful source of information for detecting and investigating illicit enrichment and declaration of false information in the asset declarations of public officials, which is currently used insufficiently. NAC also conducts strategic analysis and studies of corruption regarding the corruption sectoral threats and vulnerabilities, trends and relevant activities of public institutions, although the number of published studies and strategic analyses has decreased in the last year. NAC can usefully renew the practice of publishing the corruption studies and analyses to raise awareness and improve understanding of corruption risks and trends.

55. NAC’s investigative jurisdiction extends to a broad range of offences, resulting in an unpredictable caseload with significant share of cases not directly related to corruption.

NAC is in charge of investigating all corruption offences, except the high-level corruption cases under the investigative jurisdiction of APO. In addition, NAC is in charge of investigating a

⁷³ Adoption of the normative acts without the anti-corruption expertise is a longstanding issue – between 30 and 70 percent of the normative acts considered by the Government in the past years missed the anti-corruption expertise. National integrity and anti-corruption strategy 2017-2020.

⁷⁴ City Hall. of Chisinau, National Patrol Inspectorate of the General Police Inspectorate of the Ministry of Interior, Centre for Forensic Medicine, Agency for Energy Efficiency, Fund for Energy Efficiency; Institute of Neurology and Neurosurgery; Institute of Oncology; National Auto Transport Agency; National Agency for Public Health, Agency for Consumer Protection and Market Surveillance, Apele Moldovei Agency, Agency for Public Property, and Bureau of Migration and Asylum

⁷⁵ NAC produced 425 analytical products in 2019: 234 analyses of assets and incomes of public officials, 102 analyses of legal persons activity, including winners of public tenders, 89 analyses of relationships between investigated persons. The analyses of public officials assets and incomes established 31 cases of officials holding unjustified assets, 31 cases of real estate registered under the relatives’ names, 25 cases of suspicious loans, and 51 cases of non-declaring real estate, shares, sources of income and transport units.

broad range of non-corruption economic crimes.⁷⁶ The non-corruption criminal cases initiated by NAC amounted to more than a third of all cases in 2018 and more than a quarter in 2019. Furthermore, in addition to 640 criminal cases initiated by NAC in 2019, 487 criminal cases were transferred to NAC from other investigative agencies and are mostly economic rather than corruption offences.

56. APO was established to investigate high-level corruption, but its investigative jurisdiction is overly broad including investigation of offences not related to corruption.

APO has the mandate to investigate all corruption offences, except illicit enrichment, if (i) they are committed by a high-level official⁷⁷ or (ii) if the value of goods, services, advantages in any form that were claimed, promised, accepted, offered, given or received, approximately USD 15,000 or if the value of the damage caused by the crime exceeds approximately USD 150,000.⁷⁸ Since (ii) is not restricted to crimes committed by officials, APO investigates a range of non-corruption offences and offences in the private sector.⁷⁹ Targeting high-level corruption would require adjusting APO's investigative jurisdiction.⁸⁰ In particular, offences committed purely in the private sector can be excluded from APO's investigative jurisdiction, while investigation of some of the non-corruption offences in the public sector can benefit from APO's specialized knowledge and skills.

57. APO's exercise of prosecutorial oversight over NAC investigations, and its representation of the prosecution in courts, unduly stretches its resources. APO's prosecutorial oversight demands significant resources, due to the broad mandate of NAC and higher number of low-level corruption cases relative to the high-level corruption investigated by

⁷⁶ According to the article 269 of the CPC, NAC also investigates Art. 239 - violation of crediting rules, loan granting policies or rules for granting indemnity/insurance indemnity; art. 239-1 - malpractice or fraudulent management of the bank, investment or insurance company; art. 239-2 - hampering of banking supervision; art. 279 - terrorism financing; art. 328 - excess of power; art. 329 - negligent performance of duties; art. 330-1 - violation of confidentiality of the assets and personal interests' declarations. (Pursuant to Article 45 par. (2) of the Integrity Law no.82/2017, excess of power and negligent performance of duties are classified as corruption related acts).

⁷⁷ 1) An official whose appointment/election is regulated by the Constitution or who is appointed in office by the Parliament, the President of the Republic of Moldova or the Government, another person holding high-ranking public position stipulated by the law; the person to whom the high-ranking public official delegates his/her powers; except for mayors, deputy mayors, local counselors of villages; 2) civil servants holding senior level management positions; 3) criminal investigation officers and investigative officers; 4) lawyers; 5) bailiffs; 6) authorized administrators; 7) persons representing the management of state enterprises, joint stock companies with the state's majority shares, or commercial banks; 8) secretary of the Supreme Security Council, head of the General Staff of the National Army, other persons holding leading positions in the General Staff of the National Army, as well as persons holding a military rank of a General or a special rank corresponding to it.

⁷⁸ The CPC establishes the threshold of 5 000 conventional units (MDL 250 000) and 50 000 conventional units (MDL 2.5 million) respectively.

⁷⁹ The most burdensome of non-corruption offences investigated by APO are fraud and embezzlement. These demanding financial offences amounted to 11 and 18 percent (28 and 7 cases) of all initiated criminal cases in 2019 and first half of 2020 respectively. They account for even higher share of APO cases submitted to court - 14 and 24 percent in the same periods (11 and 4 cases). Overall, categories of non-corruption offences investigated by APO, such as tax evasion, smuggling, crimes against justice, represented more than half of the cases initiated in 2019 and first half of 2020.

⁸⁰ PGO has developed a draft law to amend the CPC to regulate the investigative jurisdiction regarding high-level corruption cases, which was sent to the MOJ in September 2020.

APO.⁸¹ Lifting the burden of prosecutorial oversight function would provide space to strengthen the focus of APO on high-level corruption.⁸² APO represents prosecution (for itself and for NAC) in the first instance courts, while representation in the appeal and cassation instances can be done by the territorial prosecution offices. This may result in unnecessary duplication of efforts, risks to the operational autonomy of APO and potential inconsistency and inefficiency in representation of prosecution.

58. APO doesn't have the necessary degree of procedural, operational and budgetary independence. Importantly, PG can unilaterally withdraw or transfer criminal cases from APO, which undermines APO's exclusive investigative jurisdiction over high-level corruption. Furthermore, the CPC defines PG as hierarchically superior prosecutor to the head of APO, so the PG can request for control criminal proceedings and other documents, alter or cancel acts of the APO head, examine complaints, issue written instructions. The CPC indicates that these decisions should be motivated, but it appears that in practice these motivations are not sufficiently detailed and case specific. Hierarchically superior prosecutors also have a broad range of powers that may limit operational independence, such as cancelling detentions, approving arrest extensions, renew terminated investigations. A single obligatory case management system for criminal investigations that would record all procedural decisions along with higher specification and formalization of motivations for the most important procedural decisions would facilitate consistent exercise of prosecutorial discretion and safeguarding procedural autonomy of prosecutions. APO also doesn't have its own budget, which is envisaged in the law on specialized prosecution, and relies on the Prosecutor General's Office to approve budgetary allocations. The authorities should consider whether the operational autonomy of anti-corruption prosecution function can be achieved under the current system of subordination to PGO or an alternative institutional or legal set-up is required.

59. APO doesn't have sufficient authority over its human resources due to prosecutorial hierarchy, which can negatively affect its investigations. APO is part of the prosecution system, so its prosecutors' background is mostly in prosecutorial oversight and representation in courts rather than evidence collection and investigative activities. As currently APO doesn't have its own investigative officers on staff, it is heavily dependent on seconded and other external staff to perform the core function of investigating high level corruption.⁸³ This reliance on external staff can negatively affect the sustainability and continuity of its investigations. The Supreme council of prosecutors (SCP) and Prosecutor General hold authority over APO staffing, including secondment decisions. The Prosecutor General also proposes to SCP transfer of

⁸¹ The prosecutorial oversight unit in APO employs 12 prosecutors that lead 369 cases, as compared to 19 prosecutors and 178 cases in the investigative unit, reflecting the taxing function of prosecutorial oversight. Furthermore, 85 percent of cases sent by APO to courts in first half of 2020 and 77 percent in 2019 are NAC's investigations. Thereby, APO's function of representing the prosecution in court is also dominated by NAC's cases.

⁸² *"The Anti-corruption Prosecution Office Should Investigate Only High-level Corruption"*, Legal Resources Centre from Moldova, 2018.

⁸³ Seconded investigative officers and consultants comprise more than the majority of APO investigation units personnel (34 out of 60). As an illustration, 27 out of 60 positions for these external staff in the specialized prosecution offices were vacant.

prosecutors between APO and other prosecution offices, which also affects the APO human resources authority.⁸⁴ Given this important role of secondments, they should be subject to the same transfer rules as regular vacancies to ensure equality of opportunity and adequate assessment of candidates' skills and experience. The authorities should consider whether the required degree of operational autonomy of a law enforcement agency focused on high-level corruption can be achieved for the agency that is part of the PGO.

60. APO prosecutors should participate in the selection and dismissal procedures for their peers. The processes for selection and dismissal of APO prosecutors are centralized in the selection and disciplinary boards of the Supreme council of prosecutors (SCP), subject to the approval by Prosecutor General. As investigation of high-level corruption requires a high degree of independence and specialized skills, such as understanding of complex financial transactions, opaque corporate structures and international cooperation, involvement of APO staff in selection of APO prosecutors can be beneficial. To ensure that the board for the appointment of APO prosecutors has adequate depth of experience and skills, at least one member of the board should have experience working in APO. Some degree of APO participation in the disciplinary cases against APO prosecutors can be a useful safeguard against retaliation for investigations of prosecutors or other high-level officials.

61. The selection process for the APO head should include additional safeguards to reflect the importance, and the need for independence of this office. APO heads have the status of deputy PG and their selection process is the same as for the regular prosecutors – selection by the SCP selection board and appointment by the PG. As APO plays a key role in the anti-corruption criminal justice system, the selection process for the head of APO needs to be strengthened to make the process more balanced and transparent. The strengthened process can consist of establishing a commission comprised of members with impeccable reputation and high professional and moral qualities - representatives of civil society with appropriate experience or a record of advocacy in corruption cases and experts with experience in anticorruption prosecution, including relevant experience in other countries. The experts should have a crucial role and decisive vote. The process should also use objective and transparent criteria and allow legal professionals with required years of work experience in law, but without prosecutorial experience to apply. Furthermore, allowing non-prosecutors legal professionals to apply for all positions in the prosecution services, requiring only the corresponding number of years of work experience in law can be warranted given the perceptions of endemic corruption and capture of law enforcement agencies. The appointment process for the NAC head by the Parliament can be similarly strengthened.

62. Integrity criteria should have a higher weight in performance evaluation of prosecutors and should be included in the promotion and transfer decisions for prosecutors. Reputation and integrity accounts for 8 out of 100 points in the scorecard for the

⁸⁴ For example, 8 prosecutors were delegated to APO in 2018, which has spiked to 27 in 2019 - the year when a new Prosecutor General was appointed. As a result, prosecutors transferred from other prosecutorial bodies accounted for more than half of APO prosecutors, while 7 APO prosecutors were suspended or seconded.

performance evaluation for prosecutors, lower weight than for the criterion of respect for established practices and following the instructions of hierarchically superior prosecutors. The integrity criterion includes assessment of professional reputation and respect for professional ethics, which is based on the information from the chief prosecutor, PGO's Inspection of Prosecutors, SCP's disciplinary and ethics board, interviews with judges as well as any disciplinary violations in the last four years. The integrity assessment should also include analysis of publicly available information on the prosecutors' reputation and an assessment of their assets, leveraging the information from the asset declarations. The performance evaluation results in consistently positive assessments - 36 out of 38 prosecutors in 2019 and 155 out of 159 prosecutors in 2018 were assessed as "very good" and no one was assessed with a "failed" or "insufficient" score. Integrity is not one of the eight criteria assessed in decision to transfer a prosecutor, appoint a head prosecutor or a prosecutor to the specialized prosecution offices or PGO.⁸⁵

63. The disciplinary procedures against prosecutors are cumbersome, while the Inspection of Prosecutors is insufficiently independent and subordinated to the Prosecutor General. The complaints and notifications about potential disciplinary violations are registered in the SCP and forwarded to the Inspection of Prosecutors where the disciplinary case is launched only after the PG approval. The PG also appoints and dismisses inspectors and the chief inspectors as well as establishes the structure, budget and composition of the Inspection. This control of the PG may lead to self-censorship in high-profile cases and should be eliminated in favor of higher independence of the disciplinary function of the prosecution. Currently, the disciplinary cases are submitted to the disciplinary board of the SCP after consideration by the Inspectorate, creating a cumbersome multi-staged approach to bringing prosecutors to disciplinary liability, especially considering the one-year statute of limitations for the disciplinary offences. The framework for disciplinary proceedings should be streamlined with an independent disciplinary function a part of the SCP. The prosecutorial bodies may also consider requiring the PG to abstain from participating in SCP voting on decisions related to application of disciplinary liability, promotion, evaluation or other human resources decisions regarding individual prosecutors.

D. Asset Declaration Regime

64. Asset declarations are an important component of an effective anti-corruption regime. They serve a preventive function by requiring civil servants to be accountable for their assets and increasing transparency into the public office (where published). They also serve an enforcement function in facilitating the identification of potential corruption and conflicts of interest and supporting charges of illicit enrichment. Finally, where they are published, they allow for the public to play a watchdog role in monitoring and verifying the assets of public officials.

⁸⁵ The indirectly relevant criteria is on professional ethics, however the assessment is limited to the disciplinary sanctions applied since the last performance evaluation.

65. Moldova’s legal framework for the declaration of assets and personal interests covers a broad range of officials and assets. Law no.133/2016 governs declarations of income and personal assets, conflicts of interest, and incompatibilities, restrictions, and limitations. A wide range of public officials are subject to Law no.133/2016, including both elected and appointed officials, the Prime Minister and Vice-Prime Minister, the President and Vice-President, ministers and deputy ministers, members of Parliament, judicial oversight bodies, and heads of agencies. Income and assets must be declared for subjects under Law no.133/2016 as well as family members and concubines. Assets that must be reported to include both tangible and intangible assets, accounts, debts, shares, and other rights including those situated abroad. Moldova has taken part of regional cooperation in asset disclosure, including the ratification of an International Treaty on Exchange of Data for the Verification of Asset Declaration (the signing of which has been postponed due to the COVID pandemic). The law on asset declarations also requires disclosure of the beneficial owners of financial assets and accounts if their total value exceeds 15 annual salaries.

66. Moldova has a newly implemented electronic asset declaration system. This system was introduced in January 2018, following the e-integrity information system developed with World Bank support, and allows asset declarations to be submitted directly online. All declarations are published on the public portal (on the NIA’s website) in PDF format and are searchable by the name and surname of the official. All previous declarations submitted on paper have been scanned and uploaded into the e-system. The new e-system is linked to the following databases: population, cadaster, registration of transport units, tax service, although automatic cross-checking is not yet possible. In the period of 2018–2020, 212,070 digitally signed asset and personal interests declarations were submitted electronically.

67. Effective implementation of the asset disclosure regime is hampered by low capacity. Questions have arisen as to the effectiveness of the asset declaration regime. For instance, various stakeholders report that judicial actors, such as judges and prosecutors, often exhibit signs of unexplained wealth and that the prevailing impression is that such officials have corruptly benefited from their position. Although judges and prosecutors have been the subject of administrative or criminal cases stemming from false asset declarations, conflicts of interest, or illicit enrichment, few have been sanctioned.⁸⁶ The National Integrity Agency (NIA) is the body responsible for implementing and overseeing the asset declaration regime. Pursuant to Law no. 132/2016 on the NIA, in addition to its functions related to asset declarations, the NIA’s oversight role entails numerous tasks and responsibilities, identifying violations of conflicts of interest, incompatibilities, and restrictions, and pursuing such administrative cases. As a second primary function, the NIA also issues integrity certificates to candidates for civil service positions, a formalistic and time-consuming procedure that yields little actual value as they attest only to the fact that the candidate has not been sanctioned for asset declaration irregularities or

⁸⁶ In 2019, 9 prosecutors and 8 judges were the subject of administrative cases; 1 prosecutor was found in violation. In the first 9 months of 2020, 15 prosecutors and 7 judges were the subject of administrative cases; 1 judge and 1 prosecutor were found in violation.

conflicts of interests.⁸⁷ The NIA has 76 staff positions, but as of July 1, 2020, only 40 of those positions (52.6 percent) were filled.⁸⁸ NIA may also lack the requisite expertise to coordinate with law enforcement agencies on cases of illicit enrichment.

68. The level of enforcement for violations of asset declaration requirements is incongruous with the corruption risks faced by the country. In 2019, 133 administrative cases resulting in a total of EUR 8,960 worth of fines. NIA initiated more cases in 2020: in the first half of 2020, 103 administrative cases were opened, resulting in a total of EUR 6,540. In the two-year period of June 2018 – 2020, only 15 referrals were made by the NIA for criminal investigation for false statements; these included 1 prosecutor, 1 Member of Parliament, 2 mayors, and 2 heads of districts. Given the widespread allegations that public officials, particularly judicial officials, are flagrantly misusing their positions for private gain, the level of enforcement appears meager.

69. A transition to a market-based declaration system may not be the most effective way to strengthen the asset declaration system. In September 2019, the NIA submitted to the MOJ draft amendments to the Special Laws (Law no. 132/2016 and Law No. 133/2016) to require declarants to declare their assets at the real market price in addition to contract price. A market-based declaration system creates potential new complications while not resolving existing challenges. Firstly, the identification of unjustified variations of wealth requires the value of an asset at the time of the acquisition, not of declaration and the real value as opposed to the market value. Secondly, the market value for many assets is likely to be difficult to determine (if lacking credible quantitative indicators) and may comprise a highly subjective and resource intensive exercise. Moreover, NIA already has tools to combat fraudulent declarations (which is the underlying motivation to amend the system) as it can and should enforce sanctions against false declarations; given the subjectivity of fixing market value, proving a false declaration on market value may in fact be more difficult than proving fraud related the purchase price. Finally, NIA may not have the requisite capacity to administer such a system. Aside from legislative amendments intended to empower NIA inspectors to make assessments and appraisals as well as to allow NIA to recruit additional specialized staff, further consideration has not been given to the concrete aspects of implementation (including which market reference points or indicators will be used to estimate market value, the margin of error that will be acceptable, and how to account for assets who might have appreciated but have not yet been capitalized).

E. Implementation of Anti-Corruption Frameworks and Its Effectiveness

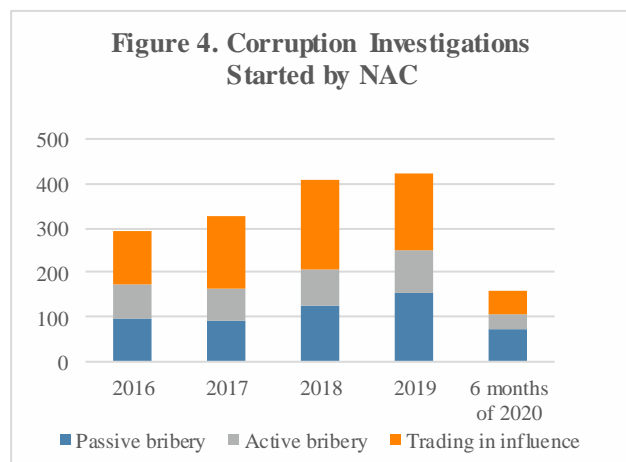
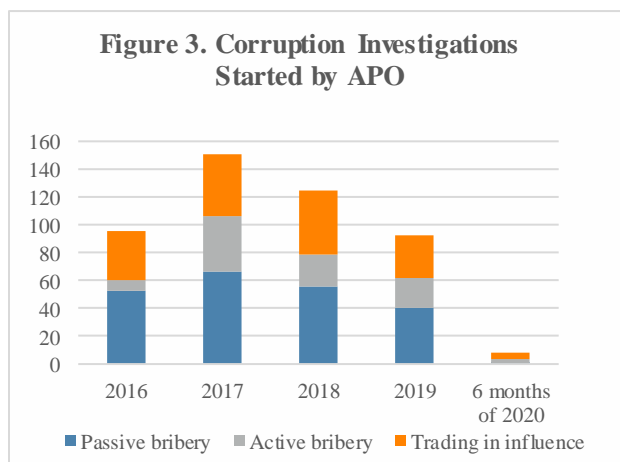
70. The number of anti-corruption investigations launched by APO has decreased recently. APO started 462 investigations with a steady decrease since 2017 and significant drop in the first half of 2020, which the authorities attributed to the COVID-19 pandemic. However,

⁸⁷ 1,083 such certificates were issued by the NIA in the 2019 calendar year and 1,374 in the preceding year.

⁸⁸ The NIA also has a security, audit and integrity verification unit, tasked with carrying out an internal audit function. This unit is meant to be staffed with three senior inspectors/auditors. However, this unit is currently unstaffed and not operational, although the intent is for this unit to become operational soon.

the decrease to 3 initiated bribery investigations in the first half 2020 as compared to 41 average annual launched investigations in the previous years may indicate structural issues. The pandemic could be expected to mainly impact the ability to conduct investigations (e.g. collect evidence, question witnesses), rather than initiating the investigations, especially considering the increasing corruption risks during the pandemic (e.g. corruption in emergency procurement, fraud in pandemic-related ad-hoc support measures). NAC steadily increased the number of corruption investigations⁸⁹ during 2016-2019, starting 1,452 investigations during this period with some decrease in the first half of 2020. NAC and APO use a wide range of sources to initiate corruption investigations and also have had some experience in the past of using financial intelligence disseminated by SPCML for such investigations (e.g. corruption in procurement). NAC and APO received *14 and 22* disseminations respectively in 2019, which amounted to 8 and 13 percent of SPCML's disseminations, which may indicate the potential for a more intensive use of financial intelligence to detect corruption.

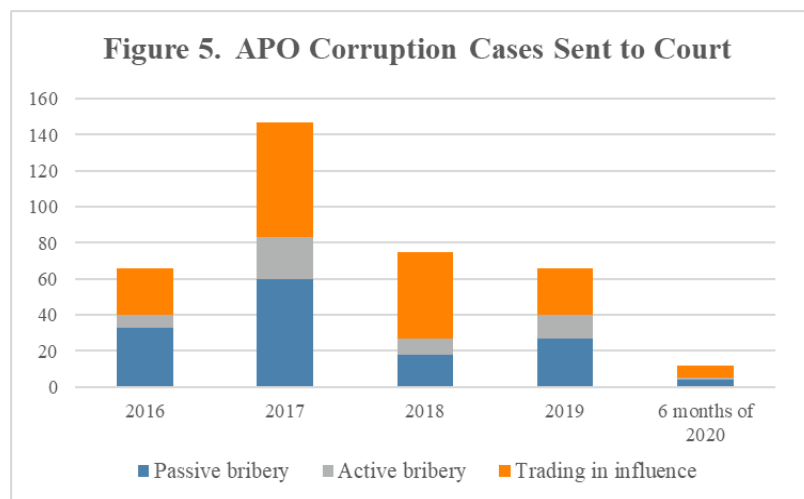
71. The corruption cases sent to court by NAC are disproportionately focused on trading in influence. NAC has sent 668 corruption cases⁹⁰ to court in 2016-2019, more than half of which were trading in influence cases. Notably, less than a quarter of NAC investigations into passive corruption (receiving a bribe) were sent to court (115 cases out of 467 started investigations), as investigations into receiving a bribe are being closed in the highest proportion among the corruption crimes. On the other hand, two thirds of NAC investigations into active corruption (giving a bribe) were sent to court (201 cases out of 326 started investigations). This discrepancy in the approaches to investigating bribery results in almost twice the number of NAC indictments against persons giving bribes, mostly private citizens, as compared to the indictments against officials receiving bribes.



⁸⁹ Articles 324-326 (passive and active bribery, trading in influence).

⁹⁰ Articles 324-326 (passive and active bribery, trading in influence).

72. The number of corruption cases sent to court by APO is decreasing in the last years and also consists mostly of trading in influence. APO has sent 235 corruption cases to court in 2016-2019, and, similarly to NAC, more than half of which were trading in influence cases. The authorities indicated that when bribery is investigated post-factum, collection of evidence to indict officials with active or passive bribery is challenging, and the intermediaries are indicted with the trading in influence. The authorities are encouraged to continue, where possible, the bribery investigations where an intermediary that promises to bribe officials is identified. Around two thirds of APO active and passive bribery investigations were terminated, which may reflect the difficulty of investigating high-level corruption, but almost 80 percent of initiated trading in influence cases were sent to court (121 case out of 155 started investigations). The number of corruption cases sent to court is decreasing in the last several years: from 147 cases in 2017 to 12 in the first half of 2020.



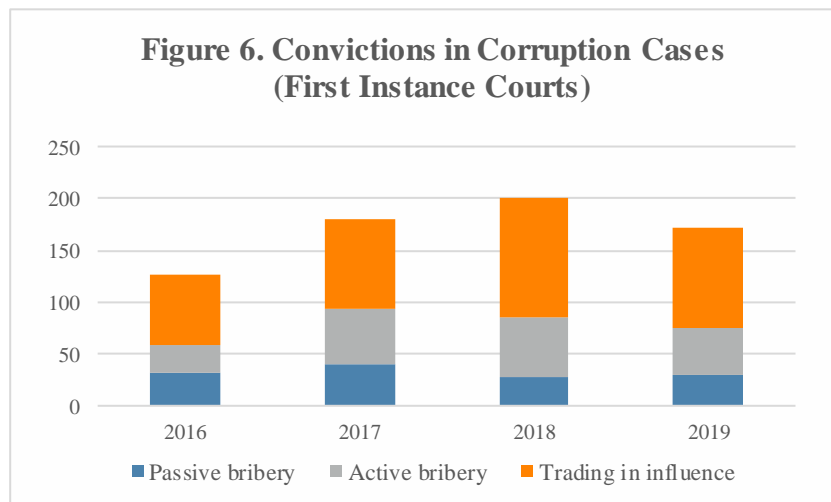
73. The persons indicted in corruption offences are mostly private citizens rather than public officials, and high-level corruption of public officials is not targeted adequately.

APO has sent to courts cases against 2 ministers, 1 member of Parliament, 19 judges and 1 state secretary in 2017. Since 2017, APO also sent to court cases against 2 heads of central agencies, 10 judges, 9 prosecutors and 1 local district president. In addition, cases against 41 mayors were sent to court, but 36 of them were low-level corruption and non-corruption cases; and cases of 69 other civil servants, 30 investigative officers and 104 employees of state-owned enterprises, including 34 administrators, were also sent to court.⁹¹ The category with the highest number of officials sent to courts is employees of Ministry of Internal Affairs (189), which mostly consists of cases against traffic inspectors, followed by the Customs Service, mostly representing customs inspectors. Significant numbers of indicted persons were registered in hospitals (31) and education institutions (54), including cases against 23 doctors and 24 teachers. Thus, the focus in most of the public sector corruption cases appears to be on petty bribery and low-level

⁹¹ The cases against officials mentioned in this paragraph also include non-corruption offences, such as excess of power and negligent performance of duties.

corruption. The category that accounts for the highest number of persons submitted to the court by APO and NAC since 2016 is administrators and employees of private sector companies (216) in addition to the cases against 54 private lawyers. Moreover, almost half of all persons sent to court (994 out of 2154 since 2016) don't have an official status according to the classification above and are mostly regular citizens.

74. Convictions achieved by APO in the courts of first instance do not reflect the corruption risks facing Moldova. Convictions in corruption cases accounted for around two thirds of all convictions achieved by APO, reflecting the broad range of non-corruption investigations conducted by APO and NAC. During 2016-2019, 129 persons were convicted of passive bribery, 183 of active bribery and 366 of trading in influence with several convictions in the abuse of office and forgery cases. These convictions are achieved mostly in low-level corruption cases, as NAC corruption cases accounted for two thirds of corruption cases submitted to court and disproportionately consist of trading in influence cases. Moreover, less than half of officials indicted with receiving a bribe were convicted as compared to the two thirds of persons indicted with giving of bribes or trading in influence. A general tendency is observed of closing the cases of receiving a bribe at a higher rate than the cases of giving a bribe and trading in influence at both the pre-trial investigation and the court trial stages. Notably, cases against 63 persons were terminated as the statute of limitations has expired. As a result, the number of officials convicted of accepting a bribe is more than four times lower than the number of persons convicted of trading in influence and giving a bribe, who are mostly private citizens.



75. Sanctioning in corruption cases appears lenient with a minor share of convictions resulting in imprisonment contributing to the perception of impunity of corrupt officials. Almost half of all convictions in corruption cases results only in a fine. Furthermore, for receiving a bribe, the number of officials sentenced to prison was lower than the number of officials sanctioned only by a fine in the last three years. Out of 42 officials sentenced to prison for accepting a bribe in 2017-2019, only 8 were actually imprisoned, as the rest received suspended sentences. These sanctions do not appear dissuasive, as the public officials may perceive the risk of conviction as low and even the consequences of a conviction and severity of

the applied sanctions are minimal. In comparison, 28 persons were imprisoned for trading in influence and giving a bribe over the same period with additional 221 persons imprisoned for these offences with suspended sentence.

76. The courts have extensively applied provisions to reduce sentencing in corruption cases, reducing the dissuasiveness of sanctions. Notably, provisions of criminal legislation that allow to automatically reduce the sanctioning by a third if the accused admit their guilt were applied for 77 percent of all convicts in corruption cases (425 times in the cases of 552 persons). The authorities should review these provisions to limit their application to the cases where the defendant assists the investigation significantly and reconsider their implementation as a routine process to incentivize shorter court trials, as it negatively affects the dissuasiveness of sanctions. Application of other provisions to lower sanctioning, such as to impose a punishment below the minimum statutory limit or a milder one should be also reconsidered and limited only to exceptional circumstances that are not considered to mitigate the sentencing elsewhere in the trial.

77. Some types of corruption offences are not investigated and prosecuted in line with the corruption risks. Notably, the law enforcement efforts are overly focused on trading in influence, an offence that also includes reception of benefits by facilitators that only claim to have influence on an official. Trading in influence accounts for a third and almost a half of corruption investigations launched by APO and NAC respectively since 2016. Moreover, half of all corruption cases sent by APO to court are the trading in influence cases – an increase in the share of this offence from a third of all started corruption investigations launched by APO. Importantly, the embezzlement by public officials appears to not be investigated in line with the significant risks of diversion of property by public officials in Moldova. Since 2016 APO sent to court 49 cases of abuse of official position,⁹² which may include acts of embezzlement. Despite the widespread corruption and perceptions of large unjustified wealth of officials only two cases of illicit enrichment were sent to court (against a judge and a custom inspector) and no official was convicted for illicit enrichment. Similarly, two cases of declaring false information in the asset declarations were sent to court (against a member of parliament and an investigative officer), but no final convictions were achieved.

78. Despite significant amounts of assets sequestrated at the trial stage, the amounts actually recovered are low in corruption cases. In 2019 almost MDL 1.5 billion were sequestrated to secure eventual special or extended confiscation, damage recovery and potential fines in all APO cases and MDL 1.1. billion in NAC cases, but the confiscations actually applied by courts in corruption cases are significantly lower. Confiscations in high-profile corruption cases in the last three years were mostly limited to several thousands of USD with a maximum of USD 87 000. Moreover, assets actually recovered are even lower – USD 1.3 million was

⁹² This statistics also includes cases of abuse of official position in the private sector.

recovered in five years (2013-2017) in corruption cases.⁹³ The overall value of assets recovered is low in comparison to the extent of corruption in Moldova with no recent progress and significant weaknesses exist regarding application of extended confiscations and the recovery of assets from abroad.⁹⁴

79. Overall, as anti-corruption legal and institutional frameworks are largely adequate, the main emphasis of the report is on the need to strengthen anti-corruption enforcement.

Investigation of high-level corruption and scrutiny of top public officials' wealth using illicit enrichment and declaring false information offences as well as asset recovery should be prioritized. We also recommend strengthening the operational autonomy of anti-corruption institutions and safeguarding them from undue external influences, with a particular focus on APO. Addressing lenient sanctioning in corruption cases to make it more dissuasive would contribute to shifting the perceptions of impunity of corrupt public officials.

IV. AML/CFT

80. Inadequate anti-money laundering and counter-terrorism financing (AML/CFT) controls can undermine macroeconomic stability. AML/CFT weaknesses allow private agents or public officials to conceal the illicit origins of proceeds from corrupt acts. Corruption is well recognized as a drain on a country's economy by diverting resources away from economically and socially productive uses. Corruption also undermines the stability of a country's financial system by exposing it to illicit proceeds, thereby damaging its international reputation.

81. An effective AML/CFT regime is a powerful instrument to support a country's anti-corruption efforts. A country's AML/CFT regime not only can help shield the financial sector from such illicit flows through the application of preventive measures but can also be instrumental in the detection, deterrence, and enforcement of corruption offences. Given the frequent cross-border nature of financial crime, in particular the obfuscation and laundering of corrupt proceeds, international cooperation is often instrumental in the recovery of corrupt proceeds. The AML/CFT regime also promotes transparency of corporate ownership and calls for the identification of the ultimate beneficiaries of assets and financial transactions. Finally, when properly operationalized, the asset declaration system can help detect illicit enrichment and the laundering of proceeds of corruption.

82. The legal and institutional framework for AML/CFT is broadly in place in Moldova. Moldova passed its AML/CFT Law in 2017, with latest amendments in 2018. The main bodies responsible for the detection, investigation, and prosecution of money laundering and terrorism financing (ML/TF) are the SPCML (Moldova's financial intelligence unit), the General Prosecutor's Office, the Prosecutor's Office for Combating Organized Crime and

⁹³ The authorities were not able to provide updated information on asset recovery in corruption cases.

⁹⁴ Anti-money laundering and counter-terrorist financing measures Republic of Moldova, Fifth Round Mutual Evaluation Report, Moneyval, 2019.

Special Causes, the APO, and the NAC. Countries are required by the Financial Action Task Force (FATF), the standard setting body on AML/CFT to identify, assess, and understand the ML/TF risks for the country and take actions to assess and mitigate such risks. Moldova completed and published its National Risk Assessment (NRA) in 2017.

83. In Moldova, corruption offences are recognized by the NRA as among the most relevant crimes generating illicit revenues. The NRA cites corruption as one of the most “stringent” problems in Moldova. The NRA specifically notes the high incidence of bribery (both among households as well as businesses) as a widespread issue. In 2015, the total value of bribes reported to be paid by households was approximately 860 million MDL (43 million EUR) and value of bribes paid by businesses amounted to 381 million MDL (19 million EUR).

84. Weaknesses in AML/CFT regime were identified by MONEYVAL, the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, in its 2019 report. MONEYVAL considered the overall understanding of ML/FT risks across the financial sector to be overly reliant on typologies from two of the most public and well-known money laundering schemes that occurred in Moldova. The application of a risk-based approach by the financial sector was considered to remain a “work in progress”. Customer due diligence (CDD) deficiencies were found in relation to the identification of beneficial owners and politically exposed persons (PEPs). Moreover, MONEYVAL did not consider that money laundering enforcement was fully in line with the country’s risk profile. Although high-level corruption was recognized as one of the major risks in Moldova, only “modest results” were achieved in corruption-related ML cases.⁹⁵

85. Following MONEYVAL’s assessment, the NBM is updating its risk-based supervisory model, but no results are yet available. To this end, the NBM has revised its methodology for institutional risk assessments. In its risk assessment of a financial institution, the NBM looks at the risk of money laundering, the sectoral risk, cross-border relations, complexity of products, the entity’s inherent risk, and geographic risk. The NBM also examines the entity’s control framework: the internal procedures and controls, application of CDD and enhanced due diligence (EDD), transaction monitoring, and corporate governance. In addition to assessing the risk of individual institutions, the NBM will also conduct a risk assessment for each sector pursuant to a methodology, which is currently being finalized. As the NBM’s risk matrices and internal procedures are still being developed, practice cannot yet be assessed. Further, with the assistance of USAID, the NBM is investing in an IT solution that will assist in identifying patterns and linkages in the data that may point to ML/FT risks. It is hoped that the new IT tool will be launched in approximately a year and bidders were being assessed at the time of the mission. Both these initiatives are welcome, though neither were reviewed as part of the mission.

86. Prudential supervision and supervision of AML/CFT has been conducted by separate departments since 2017. This form of organization facilitates the NBM’s ability to

⁹⁵ Fifth Round Mutual Evaluation Report of Republic of Moldova, MONEYVAL (July 2019), p.46.

focus on AML/CFT priorities, although more resources are needed. Greater coordination and communication between the prudential and AML/CFT supervisory Departments is also needed. The quality of the governance, risk management and control environment and management of operational risks, for example, is of equal importance to both departments who need to share their insights and concerns on a systematic, organized basis and not only on request.

87. A relatively recent development is the annual review by external auditors of the AML/CFT standards in banks. The scope of the review is set by the NBM, and the overall approach not only provides important information, it makes the most of the NBM's limited resources. The second review by the external auditors of banks has been recently completed. This is a useful supervisory technique and it is welcome that the NBM has the power—which it has used—to reject external auditor appointments if it deems the auditor to lack the requisite skills and capacity. These reviews have confirmed the view obtained by the NBM's own inspections and off-site activity.

88. Despite the authorities' efforts to improve the awareness of reporting entities, banks still exhibit recurring deficiencies in their application of preventive measures. The NBM has identified a number of continuing deficiencies among Moldovan banks, including: the failure to properly identify customers and beneficial owners, lack of transaction monitoring, failure to verify source of funds, weaknesses in identifying and assessing specific ML/FT risks, failure to apply EDD measures for high risk customers, and failure to identify and report suspicious transactions. A second round of external auditing of the banking sector arrived at similar findings.⁹⁶ The NBM has also offered several clarifications on beneficial ownership, including on verification of beneficial ownership, situations in which the person(s) in a senior management position should be identified, factors requiring an update of CDD, and circumstances necessitating EDD. The SPCML has also issued guidelines on beneficial ownership, although the guidelines take the position that senior management should be listed as the beneficial owner after exhaustion of all possible means to identify the beneficial owner (and where no suspicion exists), which is not a proper interpretation of the international standard and contradicts the instruction to terminate any business relationship where it is not possible to identify the beneficial owner(s). However, the NBM has not yet incorporated these aspects into its system of supervision, such as by conducting sectoral thematic inspections or regular targeted exams. Please see section IX on Financial Sector Oversight for a discussion of recommendations addressed to the NBM in respect to its role in supervising AML/CFT risks in banks.

89. Understanding of beneficial ownership across the banking sector is still lacking and underpinned by difficulties obtaining accurate and up-to-date information. Although a public register for beneficial owners exists, the Public Services Agency (PSA), responsible for maintaining the register, lacks the power to sanction entities for submission of false or incorrect information or where changes are not reported. Due to the absence of enforcement powers, the

⁹⁶ Notably identifying shortcomings in the risk categorization of customers (inconsistencies in the manual classification versus the classification provided by internal systems), bank practices in identifying and verifying the identity of customers (failing to follow internal procedures and use using public sources), failures to update databases and lists .

quality of information contained in the register is questionable. MONEYVAL in its 2019 assessment noted serious deficiencies in the ability of banks to correctly identify the beneficial owner in complex legal structures, implying that accurate and current beneficial ownership information may not always be available. Industry representatives confirmed that companies often try to avoid disclosure of their beneficial owners by either refusing to furnish the requisite documentation or providing false documentation. Banks also appear to possess a limited understanding of some of the more nuanced aspects of beneficial ownership. Some industry representatives reported that if an earnest effort is made and no beneficial owner can be identified, an administrator or manager of the company can be listed. This approach is contrary to the international standard, which allows for management to be listed where no controlling ownership interests exist, and no individual is exerting control through other means (not where one cannot be found). Such a misunderstanding represents either a weakness in the legislation or poor communication of beneficial ownership requirements by regulatory authorities. Some bank representatives also stated that they do not accept foreign beneficial owners, which may incentivize customers to provide false information.

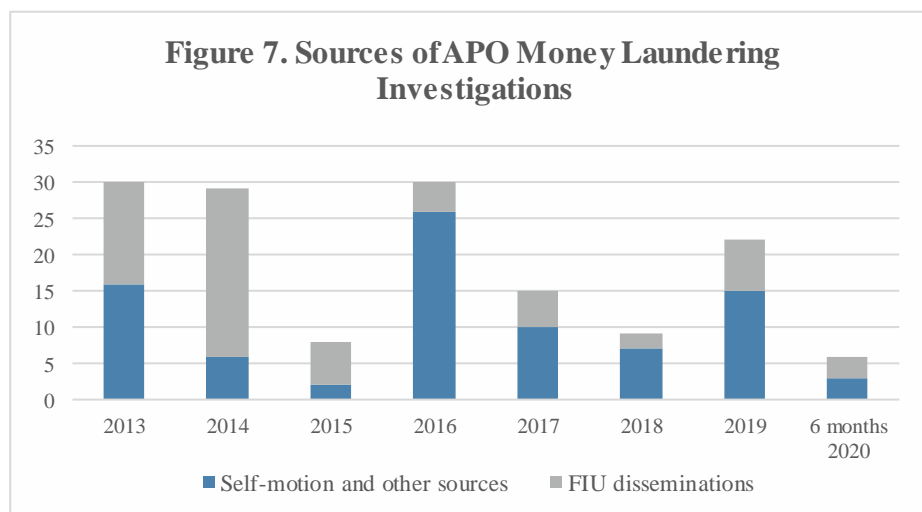
90. Identification of PEPs is a significant challenge for Moldovan banks, which appear to rely largely, if not exclusively, on self-reported information from customers without cross-checking or verification of information provided. Banks do not appear to be sufficiently pro-active in identifying PEPs. Industry representatives, for example, voiced their belief that the onus should be on the regulatory authorities to provide a list of national PEPs. Although the FATF does not promote publication of a national list of names of PEPs (as such lists quickly grow outdated), the FATF recognizes the utility of government issued lists of domestic positions/functions that are considered to be prominent functions. The NBM did not detect any major weaknesses in PEPs in the few targeted exams conducted on the topic, although an inspection conducted in 2019 revealed major AML/CFT violations relating to PEPs and applied sanctions. The external audit also found significant weaknesses in the identification of and due diligence related to PEPs, including failure to update classifications of PEPs, failure to identify family members and associates, failures to properly screen for PEPs, failures to check or verify information submitted by customers, failure to identify PEPs if not self-declared.

91. Improvements in identification of PEPs and SPCML efforts to improve the quality of suspicious transaction reporting (STR) is expected to contribute to mitigation of ML risks posed by corruption. SPCML is working on reforming the STR system, which in the past was mostly based on a list of detailed risk criteria provided by the SPCML. This system resulted in a rule-based approach by the reporting entities, which negatively impacted the quality of STRs and currently the SPCML is promoting a more risk-based, detailed, analytical STR, including corruption-related. SPCML received 889 reports regarding the activity of PEPs in 2019, which amounted to 3.5 percent of all submitted reports. Reporting entities are required by AML/CFT law to apply enhanced on-going monitoring of business relations with PEPs and (as a result) some financial institutions enhanced scrutiny of PEPs, restricted their cash transactions, established lower thresholds for wire transfers and dedicated resources to mitigating risks emanating from PEPs. SPCML's PEP-specific guidance and MoF's AML/CFT guidelines

describe the ML risks emanating from PEPs and recommend measures to mitigate these risks, including for ongoing monitoring.

92. SPCML has experience in generating financial intelligence instrumental for corruption-related ML investigations. The SPCML has achieved some successes in operational analysis triggered by banks' STRs to produce financial intelligence regarding PEPs that was used in ML investigations.⁹⁷ SPCML disseminated 14 financial intelligence reports regarding cases of possible corruption and PEP activity in 2019, as compared to 2 and 5 reports in 2018 and 2017 respectively. APO and NAC also request financial intelligence to investigate ML and predicate corruption-related offences, submitting 117 and 186 requests in 2019, as well as 10 and 11 requests in 2018 respectively. In addition to financial intelligence received from the SPCML, APO has increased the number of ML investigations started based on its own sources.

93. The number of investigations, prosecutions and convictions in cases of corruption-related money laundering are not in line with significant risks of laundering of proceeds of corruption. MONEYVAL assessors noted only modest results in prosecuting and convicting corruption-related ML cases, which appears to be supported by statistics in the years following the MONEYVAL assessment. APO initiated 82 ML investigations and secured 14 conviction sentences in 2016-1H2020, with some deceleration in 2018 and the first half of 2020. APO accounts for more than two-thirds of initiated ML investigations and convictions over the period, but most of the cases were not directly related to corruption, as ML investigations, prosecutions and convictions involving PEPs were achieved since 2018. Overall, corruption-related ML investigations and prosecutions are not fully consistent with the corruption threats, risk profiles and national policies (p.73).



⁹⁷ Page 50, Anti-money laundering and counter-terrorist financing measures Republic of Moldova, Fifth Round Mutual Evaluation Report, Moneyval, 2019.

94. Continuing progress in AML/CFT is critical to safeguard the financial integrity of Moldovan financial system, including from the proceeds of domestic and foreign corruption. Efforts to investigate and prosecute corruption-related ML and the use of financial intelligence to detect corruption and conduct financial investigations need to be intensified. Building on the progress achieved by the NBM and SPCML, we recommend further supervisory efforts to strengthen the application of AML/CFT preventive measures by banks, such as suspicious transaction reporting, particularly to address the risks related to PEPs and non-resident legal entities. To improve the accuracy of available BO information we recommend providing the PSA with sanctioning powers for non-compliance with BO requirements.

V. PUBLIC FINANCIAL MANAGEMENT

A. Budget Preparation and Execution

I. Budget Preparation

95. The budget preparation process and documentation are key ingredients of fiscal transparency and governance. To prevent fragmentation of public financial management (PFM), the budget should comprehensively cover allocations of all general government resources. It should include classification systems that allow tracking of transactions at a granular level. To hold spending units accountable for use of resources, the budget should be prepared through the defined, transparent process and in a timely manner.

96. The State and local budgets generally provide a robust basis for accountability. The budget process is defined under the Laws on Public Finance and Budgetary-Fiscal Responsibility (No. 181-2014) and Local Public Finance (No. 397-2003). For the State budget, which appropriates expenditure by “programs”, transparency has been improved by publication of “program budgets”, which show breakdown of programs to activities and economic items, together with performance indicators. The MoF did not publish “program budgets” for the 2018 and 2019 budgets for confidentiality concerns but resumed their publication for the 2020 budget. The local budgets use the same detailed classifications as the State budgets. Since 2020, all local budgets have been published in one website (the “register of local acts”).

97. The exceptions to the above are the budget preparation of “funds”, which tends to be less transparent or orderly. A fund is technically part of accounts of the parent ministry but its financial resources are often managed by the subordinated institution through a process different from the budget process. For these funds, the State budget determines only the total expenditure. Allocations to projects/programs are to be determined by the budgets of respective funds. The budgets of some funds (e.g. the Road Fund) are approved by a government decision and published in the online “register of legal acts”. However, the budgets of the following funds are not published on any website for 2020: the National Fund for Development of Agriculture and Rural Environment (FNDAMR), the Vine and Wine Fund (FVV), the National Ecological Fund, and the National Fund for Regional Development (RDF). The expenditure of these four

funds is sizable (1.7 billion lei for 2020 – 3.0 percent of total State budget). While many funds have relatively strong internal controls and thus are experiencing less significant irregularities,⁹⁸ transparency is important for these funds, which finance impactful programs, such as agricultural subsidies and public investments. Some funds (e.g. the RDF) do prepare the budgets in an orderly manner though not published, but the following funds may not do so:

- **The National Ecological Fund**, which finances mainly water and sewage projects, does not produce the annual budget at the beginning of a year. An annual allocation to each project is determined by the Board of Directors on an ongoing basis throughout a year;
- According to the audit report (No. 74-2019), the budgets of **the FNDAMR**, which finances agricultural subsidies, were prepared by a parastatal entity without obtaining the ministerial approval or undertaking stakeholder consultation required by the law;
- According to the audit report (No. 57-2019), the budget of **the FVV** determined by the Board of Directors (composed mainly of wine producers) exceeded by 30 percent the total expenditure authorized in the State budget for 2018.⁹⁹ For that year, the Board planned to use cash surplus remaining in the fund without the approval of the State budget.

II. Public Procurement

98. Transparency and competition in public procurement has generally improved in Moldova in recent years. In 2015, the legal framework was overhauled by approval of the new Law on Public Procurement (No. 131-2015) (LPP), which was assessed by the SIGMA Baseline Assessment 2015 to provide a satisfactory regulatory framework and incorporate the fundamental EU principles. The new law applies to all general government entities. Under the new law, notices of participations are published for all requests for prices. This reduced the share of non-competitive procurement from 5.5 percent of total public procurement in 2014 to 3.4 percent in 2019. Under the old law, 72 percent of procurement procedures were published in the e-procurement system (“eTender”) and the rest was published in traditional Public Procurement Bulletins. After the full implementation of a new e-procurement system (“MTender”) in 2019, all procurement procedures are published in either systems.

99. Actions are being taken to solve shortcomings in MTender, which requires cumbersome operations and poses challenges for a competitive and well-regulated public procurement. MTender relies heavily on uploading of scanned PDF files. Even a small purchase (e.g. purchase of a PC) requires uploading 10 to 20 scanned PDF files. More complicated purchases can require uploading of a few hundred scanned PDF files. As discussed below, this cumbersome requirement has pushed away a sizable amount of procurements from competitive to non-competitive methods. Because scanned PDF files are not searchable, MTender is affecting the ability of the Public Procurement Agency (AAP) to detect irregularities through ex-post

⁹⁸ See, for example, the Decisions of the Court of Accounts No. 65 and No. 74 of 2019.

⁹⁹ In 2018, the outturn was below the amount of the State budget due to the budget under-execution.

monitoring. In addition, MTender was based on the Ukrainian ProZorro system and not fully customized to the Moldova's legal framework when introduced. As discussed below, this led to increase in suppliers' complaints and cancellation of tenders by the National Agency for Settlement of Complaints (ANSC) in 2019. To address these issues, the Center for Information Technology in Finance (see below) is contracted to be a system administrator for MTender and currently improving and testing the revised software.

100. The recent relaxation of thresholds for “low value public procurement” is affecting transparency in public procurement. The LPP does not apply to low value public procurement, which is covered by the Government Decision (No. 665-2016) and mostly undertaken through non-competitive methods. Because the above noted cumbersome operations have discouraged small purchases to use MTender, Parliament changed the law to relax the thresholds from 80,000 lei for goods and 100,000 lei for works to 200,000 lei for goods and 250,000 lei for works in 2019. This appears to be the main cause of the decrease in public procurement subject to the LPP from 10,830 procedures in 2018 to 5,179 procedures in 2019. While the new thresholds are lower than e.g. those in the EU and their impact on competition may be relatively small, an increased number of low value public procurements can affect transparency and regularity of public procurement. Monitoring of low value public procurement is important to detect the potential split of a large purchase into small purchases. The AAP manually receives a large volume of annual reports on low value public procurement, which are, however, not possible to be fully analyzed without a system. To improve the transparency, the MoF is currently preparing a draft regulation that requires low value public procurements to be made through MTender.

101. The emergency COVID-19 procurement has been undertaken based on transparent, competitive principles. The implementation of most of COVID-19 interventions is supported by infrastructures for social security and subsidy schemes, which have experienced less significant irregularities in recent years.¹⁰⁰ However, the emergency COVID-19 procurement has added strain to the health institutions due to its unprecedented quantity. The Center for Centralized Public Procurement in Health (CAPCS) undertakes centralized procurement of medicines and medical goods for 385 public health institutions. The CAPCS has made significant efforts to ensure transparency and competition in the emergency COVID-19 procurement. Unlike many other countries where procurement rules were significantly relaxed for COVID-19 procurement, the Government Decision (No. 494-2020) only shortens a grace period for filing of complaints in case of such procurement. Mass purchases of COVID-19 related medical goods (e.g. masks, gloves, ventilators, sanitizers) were all made through open tenders, in which multiple bidders participated. The MoF and AAP have also solved technical problems in MTender, which initially prevented the CAPCS from using it for COVID-19 related purchases. Since January 2021, all procurements of the CAPCS have been made through MTender.

¹⁰⁰ See, for example, the Decision of the Court of Accounts (No. 74 of 2019).

102. Transparency in contract implementation is limited. Currently, the e-procurement systems tracks a transaction only until a contract award. There is no centralized IT system that keeps track of the status of contracts. Individual agencies (e.g. the SRA and CAPCS) publish annual reports on contract execution, but there is no consolidated report. The implementation of contracts can be, however, an important source of irregularities. In the case of the CAPCS, several contracts had below 50 percent execution rates in 2019, because hospitals often changed their demands after the tender. These resulted in multiple lawsuits being filed against the CAPCS by suppliers. To improve the transparency, MTender is being modified to enable the monitoring of contract implementation through the system. A draft regulation is also being prepared to require all contracting authorities to publish an annual report on contract execution in their websites.

103. The roles of the AAP and the ANSC require some clarification. The ANSC was created in 2016 as an independent procurement appeals body. The filing of appeals to the ANSC increased from 726 cases in 2018 to 1026 cases in 2019. An acceptance rate of cases that were examined by the ANSC also increased from 45 percent in 2018 to 53 percent in 2019. This resulted in the cancellation of a large number of tenders. While this was due mainly to the introduction of MTender, the LPP allows the ANSC to annul procedures on grounds that are not raised by plaintiffs, as long as those grounds are included in Article 71 of the LPP. As a result, it has been argued that the ANSC is acting more like a control body. In contrast, after the introduction of MTender, the AAP no longer undertakes the central control of each procurement but focuses on ex-post monitoring of irregularities. This is a right step and it detected a high level of 3,342 irregularities mainly associated with deficiencies in documentation in 2019. However, under the LPP, the AAP can only provide recommendations to contracting authorities and does not have any power to impose administrative sanctions against irregularities, which are necessary to improve the compliance.

III. Information System Controls

104. Information system controls are fundamental for preventing corruption in PFM. As witnessed in the Capital Hill Cashgate Scandal in Malawi, breaches of information system controls can cause massive corruption and theft of public money. The financial management information systems require the highest level of general controls (including cybersecurity, access controls, and business continuity) and business process controls (including verification of data and elimination of manual interventions). When multiple systems are involved, secured automation of their interfaces is critical to avoid discrepancies and manipulation of data.

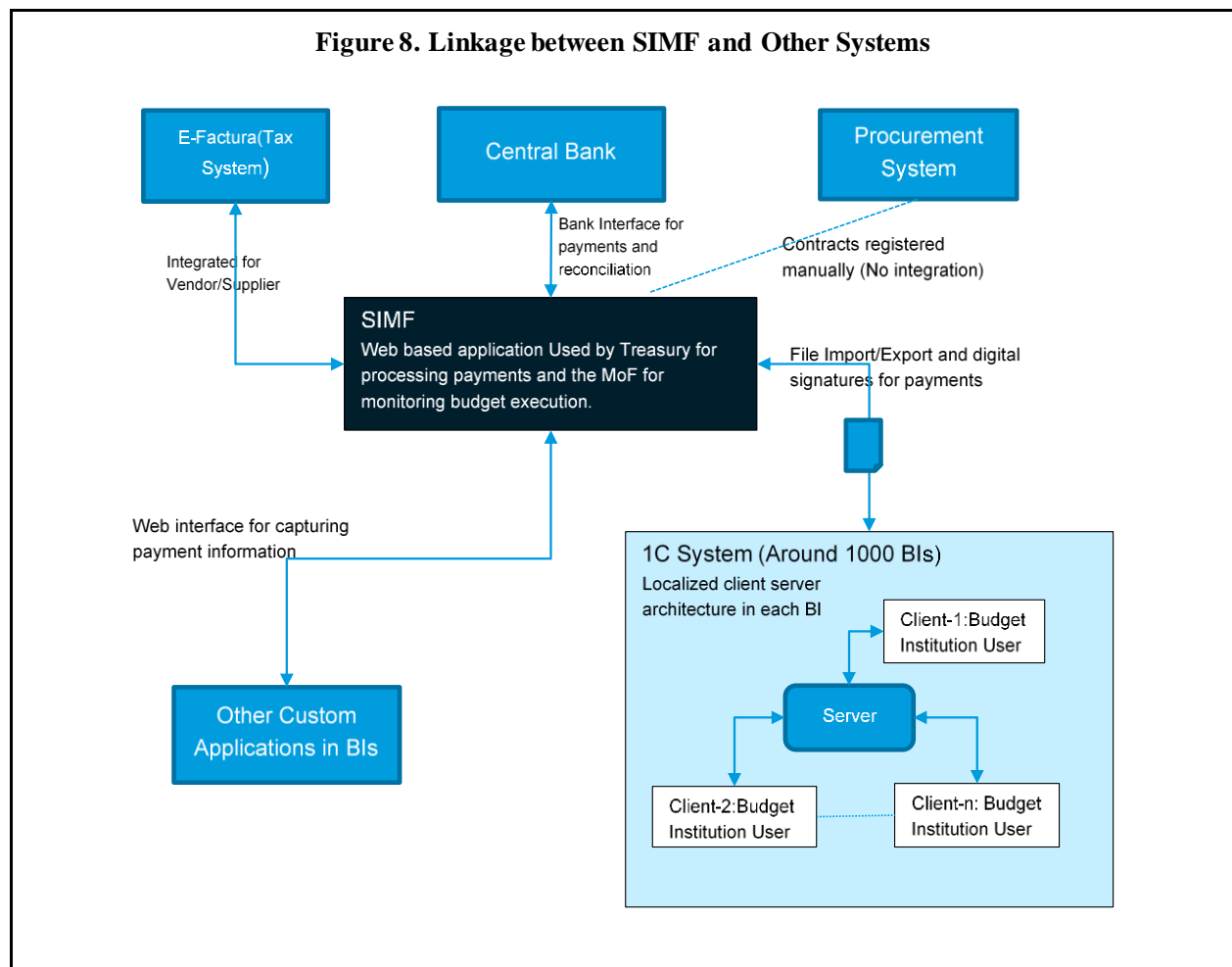
105. Strong information system controls are in place for the MoF's Financial Management Information System (SIMF), with the exception of interfaces with procurement and budget entities' financial management systems. The SIMF has modules and functionality for (i) budget preparation, (ii) registration of contracts, (iii) authorization of payment orders, (iv) issuance of bank instructions, and (v) preparation of cash-based budget execution reports. Currently, there are around 2,600 budget entities both at the central and local levels, all of which have access to the SIMF. Since its operationalization in 2016, various

improvements have been made to the SIMF software. According to the Court of Accounts, most of the recommendations of the MoF's internal audit on the SIMF in 2017 have been implemented. Currently, the SIMF is subject to strong information system controls, with important exceptions, as follows:

- **Application level general controls are strong, with some room for improvement in business continuity areas.** As required by the Government Decision (No. 201-2017), the MoF has documented the comprehensive cybersecurity policies for the SIMF. The logical access controls are implemented by the integration into the e-government platform, which e.g. manages IDs and passwords (MPass) and digital signatures (MSign). The servers are placed in the government data center with adequate physical access controls e.g. fingerprint authentication. The roles of the MoF (owner and user) and the Center for Information Technology in Finance (CTIF) (system administrator), which is the MoF's subordinated institution, are defined by contract. The CTIF annually undertakes security checks and penetration tests for the SIMF. The Business Continuity and Disaster Recovery Plans have been documented. The back-up servers also exist in a separate government disaster recovery (DR) facility. However, no comprehensive simulation exercise has been undertaken to actually switch to the DR site and test all the functionalities. Ideally the system operations should be shifted to the secondary site frequently.
- **Business process for contract registration and payments is centrally controlled by the MoF without manual intervention.** The business process is documented in the MoF Order (No. 215-2015). All contracts are verified by the State Treasury or regional treasuries before they are registered in the SIMF. All payment orders are also verified and authorized by the State Treasury or regional treasuries before bank instructions are generated through the SIMF. This contract registration and payment authorization is done solely in the SIMF without manual intervention. The SIMF database is also secured with referential integrity, and no hard deletions are permitted. All digitally signed records are final, and no rollback of transactions is permitted. All modules of the SIMF are integrated. Possible discrepancies are monitored by the State Treasury by reviewing various fiscal reports.
- **Interfaces with other systems are automated, except for procurement systems and budget entities' financial management systems.** The SIMF has automated interfaces with the following systems: the STS information system, where supplier details are maintained and updated weekly, the Custom Service's system, the banking system of the BNM, the systems of the State Social and Compulsory Health Insurance Funds, and the system of the National Bureau of Statistics (Figure 8). Therefore, for example, data import and export between the SIMF and banking system and the bank reconciliation of Treasury Single Accounts (TSA) are fully automated without any manual interventions. However, there is no interface between the SIMF and procurement system. This poses risks of creating discrepancies in e.g. contract data published through the procurement

system and registered in the SIMF. Interface between the SIMF and budget entities' financial management system (called "1C") is also not automated. To request a payment order, a budget entity needs to manually download a file from "1C" and upload it to the SIMF. While a file is accompanied by digital signature, there is no automated reconciliation between the SIMF and "1C".

106. A significant part of financial management depends on budget entities' systems, including "1C" software. Around 1,000 budget entities are using "1C" software, which has 16 modules with critical functionality of e.g. payroll processing, contract management including authorization of invoices and delivery notes, and accrual accounting, none of which can be done through the SIMF. For the "funds" and self-management authorities, "1C" is also used for the budget preparation and both cash and accrual-basis fiscal reporting, as the SIMF is used only for making payments out of the TSA.



107. Controls of budget entities' financial management systems are highly decentralized and seem to be very weak and inefficient. Configuration of "1C" is solely managed by the CTIF, which ensures the quality of the software. However, application level general controls and business process depend on each budget entity. While there has been no IT audit targeting "1C",

the audit reports of financial statements of individual budget entities often reveal discrepancies in recording of accrual items (e.g. financial and non-financial assets). This implies weaknesses in information system controls for “1C” by each entity. The decentralized structure also requires each of the 1,000 entities to have separate servers and database management software, which impose high IT costs on the State budget. Though database backups are facilitated by the CTIF, these are stored locally and thus unsecured and prone to data manipulations. Furthermore, there are large number of budget and self-management authorities that use other systems (i.e. not “1C”), the quality of which is not ensured by the CTIF. The audit report (No.16-2017) indicated that in case of health institutions, only 43 percent use “1C” and 37 percent use an excel based system and 21 percent have no financial management system at all. Ensuring the security and integrity of budget entities’ financial management systems requires “1C” to be shifted to the centralized platform where servers are administered by the CTIF and accessed by users through online, in a manner similar to the SIMF, and rolled out to all budget and self-management authorities and funds. The CTIF considers that the development of such centralized platform is technically feasible as long as the Government so decides. As discussed in the following paragraph, an IT audit could be undertaken against 1C of major entities, until they are shifted to the centralized platform.

B. Asset and Liability Management

I. Public Investment

108. Public investments tend to have high risks of irregularities and misconduct. A capital project can involve a large amount of procurement and require controls over contractors for multiple years. Irregularities can generally arise from the lack of transparency in project selection, uncompetitive and non-transparent procurement, unpredictable budget allocations, and weak inspection of contractors’ works.

109. In Moldova, there is a framework for public investment management, which however does not cover all capital projects of the general government. The Government Decision (No. 1029-2013) and the MoF Order (No. 185-2015) provide a robust framework for appraisal, selection, and implementation of “capital investments”. This framework captured, however, only 16 percent of total capital expenditures of the general government in 2018. Outside this framework, 12 percent of capital expenditures are for externally financed projects, which are subject to the governance framework agreed with development partners, and 37 percent are for local governments’ projects, which are mainly small capital repairs that do not require complicated project management. However, the remaining 35 percent of capital expenditures, which is mainly financed under the “Good Road Moldova” program or through the “funds” or public-private partnerships (PPPs), sits outside the standard framework and is therefore more vulnerable to irregularities.

110. Several good practices developed for the Good Road Moldova program are not enshrined in the legal framework. The Good Road Moldova is a program to undertake mass capital repairs of townhall (primăria) roads. It started in 2018 and continued in 2019 and 2020

but is not included in the 2021 budget, which increases allocations to other priority areas. However, the Good Road Moldova program was popular among communities, and a similar program may be revived in the future. In the past, similar programs decentralized the project management to townhalls, which do not have engineering capacity, and caused irregularities as mentioned in the audit report (No. 66-2017). Based on this experience, the Good Road Moldova program has centralized the project management in the State Road Administration (SRA), which developed several good practices (Box 3). However, the Good Road Moldova program was operating solely on an annual basis without any multiyear state program document. These good practices are not codified in any law or government decision. They can be undermined easily if the government officials so desire.

Box 3. Examples of Good Practices for the Good Road Moldova Program

- **Allocation to each townhall is rule-based and involves little political interference.** In 2018, each townhall is given 1 million lei, which is adjusted by coefficients of population. For example, if population is between 5,000 and 10,000, the coefficient is 1.3 (i.e. 1.3 million lei);
- **Selection of a project (i.e. road section) is made with expert advice of the SRA.** After 2019, when a townhall council selects a project, the SRA provides expert advice on candidates of road sections that can generate good benefits within the allocated resource;
- **Project preparation and procurement is centralized.** The SRA engineers select designs of roads from 7 standardized specifications, which increase credibility of costing. The SRA is a contracting authority for all projects and uses its expertise to prepare tender documents and evaluate bids;
- **Project implementation is also centralized.** The SRA has stationed in all districts its field engineers who go around sites and supervise contractors;
- **Transparency in project implementation is ensured through publication of detailed project reports.** The SRA has published on its website detailed reports that show length, actual costs, planned and actual dates of beginning and end of construction for thousands of each road section, together with photographs of “before” and “after” the construction.

Source: Mission (meetings with representatives of SRA and MOE).

111. In 2018 and 2019, the Government made large in-year changes in the Good Road Moldova budgets, which created high risks of irregularities. In 2018, the original budget allocated 1.2 billion lei to the program, but the Government cut the budget by 300 million lei during the year. Because works had been already contracted, the SRA asked contractors to complete the work while delaying payments until the next year. This resulted in payments of 288 million lei postponed into 2019. In 2019, the original budget allocated 950 million lei, but the then Government increased allocations to 1.7 billion lei in March. The SRA undertook procurement on this basis. In September, the next Government cut the allocation down to 671 million lei. This created significant confusion in the procurement procedures. In this year, 55 out of 122 SRA tenders were cancelled or unsuccessful. These budget changes in 2018 and 2019 appear to have been driven by political motivation rather than by the economic situation. While external audits are yet to be undertaken for the program, these budget changes are likely to cause procurement irregularities and affect the construction quality, even with the good practices at a technical level. When a similar program is revived in the future, it will be important to establish more predictability in how long the program continues and improve credibility of

allocations in the original budget.

112. The capital projects financed by the Ecological Fund have experienced an unusually high level of irregularities. In 2018, around 14 percent of capital expenditures was made through three funds (the Road Fund, RDF, and Ecological Fund). The Ecological Fund finances around 300 million lei of water and sewerage projects every year. Its project selection is made by the Board of Directors chaired by the Ministry of Agriculture, Regional Development and Environment (MADRM) and includes representatives of various ministries and an NGO. The project appraisal and payments to local governments (which make payments to contractors) are made by a division of the MADRM (FEN Service). The audit report (No. 39-2018) revealed that almost all 31 projects (534 million lei) covered by the audit experienced irregularities, in areas spanning from the project selection to implementation (Box 4).

Box 4. Examples of Irregularities of Projects Financed from the Ecological Fund

- **The project selection process is not transparent.** The Board of Directors typically selects projects only based on a list of projects presented by the FEN Service. Although the law requires expert opinions on selection of projects, their negative opinions are often not submitted to the Board of Directors when they make decisions. As a result, in selecting a project in Băcioi village, an expert’s negative opinion stating the inappropriateness of building a treatment plant 5 km away from another treatment plant was ignored;
- **The procurement irregularities raise a suspicion about uncompetitive practices.** In 27 out of 31 projects covered by the audit, the bidders were not informed about the results of tenders. In 17 projects, the declarations of confidentiality and impartiality were missing; and 4 projects did not have the minutes of evaluation. These irregularities raised a suspicion that there were uncompetitive practices in procurement, given that 5 contractors won 85 percent of tenders. The 2013 audit report also revealed that an “NGO” representative in the Board of Directors had business relations with these contractors and so had severe conflict of interest;
- **The construction is often not verified by the public work inspectors.** Although the law in principle requires public works to be inspected by the Agency for Technical Supervision before payments are made to contractors, this requirement was not followed by several projects financed by the Ecological Fund. As a result, some contractors were paid without completing the work or overpaid by inflating cost or paid for unsatisfactory quality of construction. In case of a project in Galesti village, a contractor did not put a manhole on sewerage pipes, which were buried under mud. The Court of Accounts filed some cases with the Prosecutor’s Office for criminal investigations.

Source: Mission based on the Audit Reports.

113. The decentralized project management for the Ecological Fund does not seem sustainable. The Ecological Fund only provides financing to projects. The project preparation, procurement, and implementation are all undertaken by individual townhalls, which do not have the engineering capacity needed to ensure appropriate design and implementation. The FEN Service has only 10 staff, out of which only a few are engineers. They cannot undertake field visits to all sites but verify public works mostly by examining papers. Nonetheless, tens of new projects have been approved every year. As a result, more than 200 projects have been “ongoing”, in some cases since 2012. This is in contrast to the RDF, which experienced much lower levels of irregularities according to the audit report (No. 65-2019). The RDF’s project management is centralized in three Regional Development Agencies, which have around 100 staff. As planned in a draft regulation, a good option would be to establish a new agency that

centralizes the Ecological Fund’s project management with significantly augmented capacity. There is also a plan to establish a high level “national council” composed of relevant ministers and responsible for decision-making on resource allocations for projects of various funds including the RDF, Ecological Fund, and Road Fund. Establishing such council may have a positive impact on transparency in project selection and regularity of procurement. In any case, the existing projects of the Ecological Fund that are ongoing for a long period of time should be reappraised to determine whether they should be discontinued or restricted in scope.

114. PPPs have been another source of irregularities in public investments in Moldova.

Roughly, annual investments made through PPPs have been at around a few hundred million lei, at the same level as spending of the Ecological Fund. A majority of investments are associated with the Chisinau International Airport project, which has received around 1.5 billion lei of investments since 2014. Few PPPs in Moldova require payments from the budget, as they are typically financed by tariffs. High levels of irregularities were revealed in the three largest PPP projects both at the central and local levels (Box 5). These irregularities rather indicate a possibility that a private partner hides tariff revenue and defrauds government assets, causing revenue loss for the budget.

Box 5. Examples of Irregularities in PPPs

- **Chisinau International Airport project (planned investment: 5 billion lei).** According to the audit report (No. 1-2020), the private partner was selected through an uncompetitive procurement process. The tender was by invitation only, which excluded major international competitors (such as Turkish TAV). An association of Russian companies was selected in a single bidder case, since the other bidder was disqualified. This association has been charging expensive airport tariffs without the approval of the tariff setter (Civil Aviation Authority) and provided 1.7 billion lei of no interest loans to other persons, which were bigger than investments it has made. A money laundering case was filed with the law enforcement authority for criminal investigation. The association has also refused public work inspections which tried to verify the amount and quality of its investments;
- **“Găriile și stațiile auto” project (planned investment: 200 million lei).** This project rehabilitates bus stations of a state-owned bus company. According to the audit report (No. 69-2019), the project selection process was not transparent. Feasibility studies seem to have been produced by the SOE. The APP requested the Financial Inspectorate to inspect an unclear cost structure of the SOE, but feasibility studies were approved by the APP only in 5 days before conclusion of the financial inspection. The tender documents also seem to have been produced by the SOE and were approved by the Selection Committee only in 1 day. An Association of two companies was selected in a single bidder case. After the contract award, one company left the association without the approval of the Monitoring Committee and the investment was delayed;
- **Balti Municipality Solid Waste Treatment Plant project (planned investment: 464 million lei).** This would have been the largest PPP project at a local level if implemented. While external audits are not undertaken yet, the mission was informed that there were irregularities in the project selection, procurement, and implementation. The municipality refused the APP’s participation in the Selection Committee. Allegedly, a Romanian company was selected even though there was another bidder who offered more favorable terms; and it was charging high tariffs while not meeting the specifications. The Supreme Court cancelled the concession (No. 3rh-101/14), but the same year the municipality reselected the same company for the same project. The municipality refused the APP’s participation in the Monitoring Committee and did not provide information, by breaching the law. The project was eventually terminated without any investment being made.

Source: Mission based on the Audit Reports.

115. The weaknesses in the PPP legal framework need to be addressed for prevention of irregularities. In response to these audit reports, the Public Property Agency (APP), which approves feasibility studies and participates in the Selection and Monitoring Committees, is preparing amendments to the PPP Law (No. 179-2008). To prevent PPP irregularities, the following weaknesses in the existing legal framework should be corrected:

- The feasibility studies should not be approved before the completion of the examination by the Agency for Technical Supervision and in case of SOE-related PPPs the financial inspections by the Financial Inspectorate;
- Tender documents (“standard documentation”) and PPP contracts should be published on the APP website, in order to attain at least the same level of transparency as public procurement;
- Single bidder case should be prohibited for the selection of a private partner;
- Performance guarantees from banks should be made mandatory. In the Chisinau International Airport project, performance guarantees were provided by an insurance company, which refused to pay claims against misbehavior of a private partner; Strict sanctions should be introduced for breaches of the law. The violation of e.g. the PPP Law, the Construction Code, and the Anti-Money Laundering Law should trigger the annulment of selection process, termination of PPP contracts, and monetary damages.

II. Cash and Debt Management

116. Safeguarding public money requires controls over cash resources and financing transactions. Consolidation of bank balances in the TSA is the key to prevent irregularities. In general, financing transactions are treated outside the revenue management or expenditure control framework and require strong central controls. Loans and guarantee programs to the private sector require transparent and robust credit risk management, in order to prevent abuse by commercial banks particularly when they are facing financial problems.

117. There are strong controls over cash resources of the general government through the TSA. Most of cash resources are consolidated in the TSA, which covers all budget authorities at central and local levels.¹⁰¹ In case of the “funds”, entities managing the funds (for example, Regional Development Agencies for the RDF) often have accounts with commercial banks from which operating costs of the entities (e.g. salaries) are paid, but payments from the funds (e.g. payments to contractors) are made through the TSA. In case of the self-management authorities, they may have accounts with commercial banks in which own revenue is deposited, but expenditure financed from grants from the State budget and funds is paid from the TSA. For

¹⁰¹ In 2017, the “liquidity reserve” was created by depositing proceeds of government bond issuance into the term deposits with the BNM. The term deposits are remunerated by the BNM at weighted average of government bond yields. Although the liquidity reserve is held outside the TSA, its balance was decreased from 610 million lei in 2018 to 258 million lei in 2019 and is expected to be reduced further in 2020 as the government bonds issued for creation of the liquidity reserve are being redeemed.

example, hospitals receive revenue from the Compulsory Health Insurance Fund and make payments to the CAPCS all through the TSA. Although bank accounts for externally financed projects are outside the TSA, they are held with the BNM and controlled by the State Treasury.

118. A robust framework is in place for public debt management. The Law on State Debt, Guarantees, and on Lending (No. 419-2006) sets out the sole power of the MoF to borrow and provide guarantees and on-lending on behalf of the central government. No other central public authority is allowed to borrow or provide guarantees or on-lending. The Law on Local Public Finance (No. 397-2003) allows local governments to borrow only within the debt limit (20 percent of revenue excluding special purpose transfers), which is subject to the MoF’s monitoring. Data on state debt, guarantees, and on-lending are published on a monthly basis in the MoF website. An annual report on public sector debt, including those of local governments and public corporations, is also published in the MoF website.

119. Transparency in credit risks of loan and guarantee programs needs to be strengthened. At the end July 2020, all outstanding State guarantees (1.1 billion lei) arose from the mortgage guarantee program (“First House”), which started in 2018. The credit underwriting for this program is made by the Organization for the Development of Small and Medium Enterprises (ODIMM), which is a subordinated institution of the Ministry of Economy and Infrastructure (MOE), under the supervision of the MoF. A large part of outstanding State on-lending (2215 million lei by the end of June 2020) arises also from loan programs to the private sector, mainly farmers, managed by the MoF External Assistance Programs Management Office. In these loan programs, financial institutions take credit risks from default of private sector borrowers, although the government still bears credit risks from default of financial institutions. These loan and guarantee programs charge interest and fees and have conservative credit policies.¹⁰² To cover default risks, the loan programs have accumulated 40 million lei of reserve at the BNM account and the First House program has provisioning in the State budget based on estimated default rates. However, credit risk monitoring of existing portfolios is limited to performance and default of underlying loans and does not track changes in credit ratings of debtors or values of houses and collaterals. There is no published report that discloses ratios of non-performing loans or quantity of credit risks in these credit portfolios. Preparation of such report is most likely to require substantial inputs from the BNM and financial institutions.

III. Management of Publicly Owned Lands

120. Transparency and controls over publicly owned lands are key for preventing mismanagement of government assets. Generally, infrastructure and lands comprise a large part of government assets. In Moldova, while infrastructure is controlled by central agencies, such as the SRA for roads, management of lands is more fragmented and less transparent. In order to detect and prevent abuse of government lands, their complete registration is needed through delimitation exercises (i.e. land survey to determine a boundary). Particular attention

¹⁰² For example, the First House program guarantees only 50 percent of mortgage principal up to 1 million lei and requires debt to income and loan to value ratios of respectively 50 percent and 95 percent.

should be paid to controls over leasing of lands, which is often used to circumvent an orderly privatization process.

121. Registration of publicly owned lands has been incomplete in Moldova. The mass privatization and registration to establish the private ownership of lands was undertaken between 1998 and 2006. However, the privatization of some agricultural lands was not completed during this period. As a result, the central and local governments still own 43.8 percent of the country's lands, which include not only lands for natural resources and infrastructure but also agricultural and residential use. According to the audit report (No. 2-2018), around 1 million ha of lands, which are one-third of the country's area, remain unregistered. The publicly owned lands may comprise a large part of these unregistered lands. Furthermore, information in the Real Estate Register (RBI) is inaccurate particularly on lands owned by local governments. The said audit report found that thousands of land plots are registered without information on delimitation or purpose of use in some municipalities. In case of Chisinau municipality, there were 2,200 ha of discrepancies in the land ownership reported by the municipal council and the city hall. There have been several disputes between the central and local governments about the land ownership, partly because the RBI started identifying their ownership only in 2007.

122. The government has initiated the mass delimitation exercise, which is yet to be supported by coherent registers. With the support of a development partner, the government approved the state delimitation program 2019-23 where both central and local public authorities undertake mass survey of lands and update and complete the land registration. The new Law on Delimitation of Public Property (No. 29-2018) was approved in 2018 to establish the APP's leadership roles in the initiative. Although the Government Decision (No. 63-2019) standardizes survey outputs, there remain risks of data discrepancies between (i) the RBI (maintained by the Public Service Agency (ASP) and registering cadaster records and rights and obligations over real estate), (ii) the land use records (maintained by the Agency for Land Relation and Cadaster (ARFC)), and (iii) the register of public patrimony (maintained by the APP and registering ownership and value of public property). Because the land use records are updated on a basis of annual reporting from local governments rather than actual survey, they often lack accuracy. Although the APP receives survey outputs of the delimitation exercise and has access to the RBI, the register of public patrimony contains broader and more detailed information, which is annually updated on a basis of reports submitted from each entity, rather than the survey.

123. Lease of local government's lands has been highly vulnerable to irregularities and causing sizable revenue loss. According to the said audit report, the revenue loss arising from irregularities and inefficiencies in leasing of local government's lands was 3.6 billion lei in 2018 (1.9 percent of GDP). This means that own revenue of local governments (4.3 billion lei in 2018, excluding transfer from the State budget) would have been doubled without these irregular leases. Most of these were "leases for construction" where a lessee constructs its building on a government land. Although this type of lease is not prohibited by the law, this effectively causes circumvention of privatization process, as the government cannot use the land for any other purpose once the construction is completed. In this type of lease, discounted value of total rents

is often much lower than the market prices that the government would obtain if lands were auctioned. The audit report revealed numerous irregularities in this type of leasing (Box 6).

Box 6. Examples of Irregularities in Lease of Local Governments' Lands

- Several leases are not based on written contracts or the contracts do not specify the amount of rents;
- Several leases were not renewed at the expiration, but the lessees continued to use the lands for free;
- Lessees enjoyed free use of lands for a long period through an irregular privatization process where lands were privatized without the approval of the municipal council and no sale proceed was paid until the privatization agreement was finally cancelled;
- Lands were leased as agricultural lands, although they were actually water basins that would allow municipalities to charge sizable fishing fees;
- There were “abusive construction” cases where a lessee built frivolous constructions (e.g. a fence) to establish the right to use a government land, which was further strengthened by selling the construction to seemingly unrelated persons;
- Leased lands were illegally resold to multiple seemingly unrelated persons who acquired the ownership through the “innocent purchaser” principle;
- Lands were leased for an irregular concession where a lessee promised to build a cultural facility for children but instead built commercial buildings;
- Lands were leased to build only a temporary booth but a lessee built a permanent building and the city hall, instead of cancelling the lease or applying a sanction, leased additional lands to help the lessee’s construction.

Source: Mission based on the Audit Report (No. 2-2018).

124. The APP’s monitoring is needed to increase transparency in lease of local governments’ lands. Lease of central government’s lands is centralized in the APP, which, in case of lease for construction, scrutinizes an application through the defined procedure in the Government Decision (No. 1428-2008). In case of privatization, transfer of ownership is ultimately visible through the RBI. However, there is no such central monitoring or registration over lease of local governments’ lands. Although leases for a period exceeding three to five years are registered in the RBI, there is no register of leases for a shorter period of time. Municipalities publish no information or report on lease of their lands. The Chisinau city hall, which owns lands of high market value, is using for lease management an obsolete IT system, which has not been updated since 2004. Other town halls may not have any IT system for lease management. In the absence of a system or records, municipalities frequently fail to take legal actions against lessees’ abusive behaviors until it is too late. Although it is important to improve the capacity and system of local governments for management of lease contracts, this may require long-term actions including progress in the mass delimitation. In a short-term, amending the Law on Normative Prices of Land (No. 1308-1997), which requires certain publicly owned lands to be sold and leased at prices fixed in the law, would be useful to discourage irregular leasing practices, since such statutory prices are far cheaper than the market values.

C. Fiscal Reporting and Audits

I. *Fiscal Reporting*

125. Comprehensive fiscal reporting is essential for transparency. As mentioned in the IMF Fiscal Transparency Code, fiscal reports should consolidate all public sector entities and report on each subsector according to international standards. This means that when a public sector entity receives transfers from the State budget, fiscal reports need to show not only the total amount of transfers but also a breakdown of the entity's spending.

126. Moldova's fiscal reports cover comprehensively budgetary authorities but do not consolidate all self-management authorities. The MoF publishes on its website a monthly report on the "National Public Budget", which consolidates all the State and local budgets and the State Social and Compulsory Health Insurance Funds with a breakdown for each subsector. The other funds (such as the FNDAMR, FVV, RDF, Ecological Fund, and Road Fund) are also consolidated as part of accounts of the parent ministries. However, several self-management authorities are not consolidated into this report. For example, there is no breakdown of spending of hospitals financed by transfers from the Compulsory Health Insurance Fund, which are shown in one line (goods and services).

127. There is no fiscal report that consolidates public corporations.¹⁰³ Although a fiscal risk statement published as part of the budget document presents summary financial information of public corporations, its purpose is limited to fiscal risk analysis and it captures only major public corporations owned by the central government.

128. It is necessary to establish first the single framework for fiscal reporting of self-management authorities. Currently, there is no common chart of accounts or accounting policy for the self-management authorities. They are not required to use the charts of accounts of the budget authorities specified in the MoF Order (No. 208-2015) Consolidating the self-management authorities in the National Public Budget report requires the centralization of the "1C" platform and so needs a medium to long-term horizon. To prepare for the further reform, the single framework should be established for the harmonized chart of accounts and accounting standards of self-management authorities.

II. *Internal and External Audits*

129. Internal and external audits are critical to detect and correct irregularities. In accordance with the "Guideline for the Audit of Corruption Prevention" of the INTOSAI, the supreme audit institution identifies irregularities in routine audits and improve methods and tools of combating corruption by: efficiently performing the mandatory annual financial audits, including assessing the reliability of internal controls; submitting recommendations to remove

¹⁰³ Public corporation means an entity that is a market producer and controlled by general government or other public corporation, as defined in the Government Finance Statistics Manual 2014.

any deficiencies identified, publishing audit results in a timely and transparent manner; informing investigation and integrity control bodies on suspicions of fraud and corruption; annual training of the staff in the field of integrity and fight against corruption; implementation of the complaints collection system through the telephone helpline (hotline) and internet technology (official website and e-mail) which ensures the anonymity of the alarms; participation of auditors, as experts, in criminal proceedings initiated on the basis of audit materials. While internal financial controls aim to achieve broader objectives of economy, efficiency, and effectiveness, the legality and general conformity of public entities' activities are integral to such audits and should be objectively assessed by internal auditors.

130. A comprehensive framework is in place for internal audits in the general government. Since 2006, significant efforts have been made to develop the internal audit framework. The Law on Public Internal Financial Control (PIFC) (No. 229-2010) applies to the central and local public administration authorities, public institutions, as well as to the autonomous authorities / institutions that manage means of the national public budget, and requires all ministries, National Health Insurance Company, National Social Insurance House and local public authorities of the second level, to establish an internal audit subdivision (IAS) and defines its functions and independence. The MoF PIFC Division is the central harmonization unit, which has developed a series of governmental decrees, ministerial orders and manuals to implement the Law on PIFC and publishes an annual report on activities of internal auditors. The training of internal auditors is provided by the Ministry of Finance with the support of the CTIF. The internal audit functions are complemented by the Financial Inspectorate, which is a subordinated institution of the MoF and focuses on compliance inspections.

131. The resources available for internal audits are limited but the internal audit recommendations are well followed upon. In 2019, there are 111 IASs in total. While at a central level all ministries have IASs, at a local level only 31 out of around 900 townhalls have IASs. Because 69 IASs have one staff position, there are only 221 internal auditors' positions and 99 positions (45 percent) remain vacant. Due mainly to vacancies, only 65 IASs are functional and undertook 218 audit missions in 2019. Although the number of audit missions are small, the internal audit recommendations are relatively well followed upon and respected by the entities' management. In 2019, 93 percent of recommendations were accepted by the management and 61 percent were implemented within the timeframe suggested by internal auditors. Internal audit reports are generally not published.

132. There are some options to improve further the internal audit quality and the efficient use of scarce resources. The MoF PIFC Division is planning to organize a horizontal audit, where multiple IASs of different entities undertake the audit of the same topic that is of national importance. Because the horizontal audit will be undertaken in accordance with the common methods and templates set by the MoF, it will provide an opportunity for internal auditors to learn audit techniques. In addition, internal audit results are usually reported only to the entities' management and the MoF receives only a report on activities of internal auditors (e.g. number of audit missions etc.). In case of the horizontal audit, audit findings are shared with

the MoF and so help in assessing the IASs' capacity, which can be fed into training programs. To increase efficiency in resource use, there is argument for concentrating internal auditors at the ministerial level. In case of the MADRM, the ministry's IAS has only two internal auditors who need to audit both the ministry and various funds, while seven internal auditors are scattered across subordinated institutions, which have more simple operations. Such concentration of resources would help enabling in-depth audit missions of high-risk areas.

133. The independent Court of Accounts provides high-quality external audits for compliance issues. The Law on Court of Accounts (No. 260-2017) ensures the institutional independence of the Court of Accounts, which reports directly to Parliament. The financial independence was also strengthened by the amendments to the Law on Public Finance and Budgetary-Fiscal Responsibilities (No. 181-2014) in 2018.¹⁰⁴ In addition to the annual audits of the State budget and the State Social and Compulsory Health Insurance Funds, the Court of Accounts published in 2019 more than 50 audit reports, many of which cover compliance issues. As cited elsewhere in this report, these audit reports revealed significant irregularities in various PFM areas. While the Court of Accounts does not have a function to sanction irregularities, it referred 12 cases to the law enforcement authorities for criminal investigation in 2019. To further improve the audit quality, the Court of Accounts implemented in 2019 a certification of public auditors through 168 hours of training and evaluation of knowledge. Introduction of an IT system ("MKInsight") will automate preparation of financial tables in audit reports and increases efficiency in audit activities.

134. The recommendations of external audits are well followed upon. The Court of Accounts uses the IT system ("Register of Audit Missions") to follow up on the audit recommendations. In 2019, the Court of Accounts issued 1,118 audit recommendations. At the central level, 57 percent of audit recommendations were implemented at least with some delay. As cited elsewhere in this report, the audit recommendations are motivating reforms in some areas. For example, the APP is preparing the amendments to the PPP Law in response to the audits of PPP projects.

135. The Court of Accounts could continue undertaking audits of high priority areas, including IT audits. Besides the mandatory annual audits of the State budget, two central public funds and the ministries, the Court of Accounts adopts a risk-based approach to audit mission planning. It is envisaging to undertake audits of some priority areas mentioned in this report, such as the Good Road Moldova program and COVID-19 related procurement, in the near future. The Court of Accounts is also strengthening audit capacities, by diversifying the training of the employees with audit responsibilities. Currently, 7 percent of auditors have IT or engineering backgrounds. Audits with the participation of staff with training / expertise in technical fields in compliance and performance audits are useful to examine e.g. whether contractors' works complied with specifications and cost estimation was not inflated. In financial

¹⁰⁴ Under the revised process, the draft budgets of independent budget authorities including the Court of Accounts are submitted to the Government with an advisory opinion of the MoF. A disagreement between the Government and the independent institution will be settled by Parliament.

audits, the Court of Accounts assesses the IT systems “1C” of individual entities. Information systems can also be evaluated in performance audits. These audits would be also useful to examine their business process controls over e.g. approval and recording of invoices and consistency of contract data recorded in various systems. For example, in the absence of a single system that tracks the status of a contract, data in the procurement system (derived from a “CONTRACTE ATRIBUITE” database in the AAP website) include several contracts with negative value entries. Such data entries imply risks of divergences between contract data recorded in e.g. the procurement and “1C” systems.

Recommendations and Priorities

136. The PFM governance vulnerabilities tend to exist in areas outside the State budget control framework. For example, spending of budget entities and management of cash resources are subject to strong controls and reporting requirements. The governance weaknesses tend to be centered in “funds” and programs outside the ordinary State budget control and management of assets other than cash resources (such as lands). While many funds and programs have relative strong governance framework, some funds and programs have been experiencing high level of irregularities. It is necessary to extend the control framework to these funds and programs, in order to address the PFM governance vulnerabilities.

137. The following provide priority recommendations associated with PFM. A full list of recommendations is provided in Annex I.

- 1) Establish a new agency that centralizes the project management of the Ecological Fund with significantly augmented capacity,
- 2) Amend the PPP Law to strengthen the project appraisal and transparency and introduce strict administrative sanctions against violation of the PPP Law and other relevant laws,
- 3) Develop automated interfaces between the RBI, land use records, and register of public patrimony and update three registers based on the actual survey results through the mass delimitation exercise.

VI. SOE GOVERNANCE

A. Institutional Arrangements (Performance, Legal Framework, and Governing Agencies)

I. Performance of SOE Portfolio

138. Concerns around governance and corruption are high in the Moldovan SOE sector. An inefficient SOE portfolio is a large component of the country’s economy and an impediment to private sector development. While what remains in the hands of the Government continues to present a sub-optimal performance, privatizations occurred over the years have left open legal disputes grounded on corruption accusations related to vested interests, political interference, and

poor disclosure practices. The Government has initiated a reform process, with the passing of the Law 246 of 2017 on State Enterprises and Municipal Enterprises (SOE Law) being a critical piece of the accomplishments. More should be done to continue and support the reform process. An ownership policy is under discussion and should be supported, as it will be instrumental in better defining the rationale for state ownership, the division of roles (institutional arrangements) within the government on exercise of ownership rights and monitoring of the portfolio, and the corporate governance practices of the state enterprises.

139. Moldova currently presents one of the largest SOE sector in the region. SOEs are a significant (and inefficient)¹⁰⁵ component of the public sector and operate in a number of sectors in monopolistic positions and overall in a number of key infrastructure (railways) and utilities sectors (energy), for a total of 19 sectors where SOEs are present. This high presence of the government in the market is perceived to undermine private sector development and to suffocate competition.¹⁰⁶

- On GDP by form of ownership: **the share of public sector in GDP** in 2018 was **14.4%**, of which public administration, defense, health, education and compulsory social security - 7.4%, and other activities – **7,0 %**.
- **Share of the number of employees from public sector** in total number of employees in economy at the end of 2019 was **39,7 %**, of which public administration, defense, health, education and compulsory social security – 22,3%, and **other activities – 17,4 %**.
- According to the data from the financial statements for 2019, **for companies in the non-financial sector**: the share of the public sector **in the value of fixed assets** was **32.6%**.

NBS data

140. Several privatizations have occurred since the collapse of the Soviet Union, leaving murky and complex legal issues to resolve. Corruption has allegedly plagued the sell-off of state assets since the collapse of the Soviet Union. Several reports and investigations point to assets, balance sheets, and pricing mismanagement and manipulation prior to sales, and accuse purchasing companies to be affiliated to vested political interests.

141. Governance shortcomings and corrupt practices appear to be at the core of the current SOE portfolio performance. SOEs continue to suffer from large inefficiencies due to political appointments on boards, low tariffs and subsidized inputs, when they should be profitable (IMF 2019a, World Bank 2019). Local/municipal SOEs (over 400 enterprises, more than 60 only in Chisinau) also appear to bear the burden of mismanagement, with reportedly over 70% of local SOEs with no safeguards on corruption and audit, and a lack of implementing regulations on internal controls to further reiterate principles of accountability introduced by the Law on national and Municipal SOEs.

¹⁰⁵ Performance of the SOE portfolio in Moldova has not kept the pace with the private sector. Compared to private peers, SOEs score low on labor productivity, efficiency, and overall performance. In addition, a large component of the portfolio (more than 50%) are de facto insolvent, and courts have already appointed executive administrators to manage the insolvency proceedings.

¹⁰⁶ World Bank and UK fund for Governance Report on Governance of SOEs (2017), IMF SIP (2019).

142. Political stability will be instrumental to carry our SOE reforms in the medium term. Reforms will require prolonged engagement and will need to range from institutional and ownership arrangements to corporate governance of state enterprises, without losing sight of the local context.

II. Legal and Regulatory Framework

143. The SOE legal framework has transformed over the past decade. Of the current portfolio of over 200 enterprises, only 40 enterprises (JSC) have adopted a corporate form under the Company Law, while the remaining enterprises now operate under the Law 246 of 2017 (SOE Law) on State Enterprises and Municipal Enterprises. The SOE Law attempts to create a single regime for both State and Municipal enterprises on procedure to found and register new enterprises, on criteria to define asset composition and use, and on minimum requirement for capital, as well as liquidation procedures. It also describes role and responsibilities of the founder of SOEs, of the board, of the censor committee, and of the executive administrator.

144. While the scope of the SOE Law appears adequate, it requires a number of supporting regulations to make it effective. The Law falls short on a number of corporate governance measures by not mandating the creation of a corporate governance code for SOEs, the inclusion of independent directors, the creation of an audit committee. While the SOE Law prescribes the need to create internal controls and internal audit processes for SOEs, further definition of these aspects via secondary guidance has not been produced.¹⁰⁷

145. The law on management of public property is also being amended. Two major changes are being discussed: how concession contracts are assigned; and as suggested by the Court of Accounts, the procedure on sale of state assets and public patrimony. Given the legacy left by the past privatizations, it will remain important to monitor how these proposals will shape up.

III. Governing Agencies

146. While the SOE Law assigns a greater SOE management role to the Public Property Agency (PPA), the Line Ministry retains many responsibilities, resulting in a fragmented institutional arrangement and governance vulnerabilities. The MOE is the policy maker for SOEs, as are the line ministries, and the PPA is the implementer of the policies, and plays a coordinating role between the MOE and line ministries. On oversight, The PPA, plays an important oversight role on the operations of SOEs, and so does the MOF via its financial monitoring department.¹⁰⁸ In addition, the Accounting Law 113 of 2007 has introduced the State

¹⁰⁷ The SOE Law foresees a two-year transition period for adoption. As it was adopted at the end of 2017, the year 2020 remains the testing ground for its effective implementation. Yet, without supporting regulations, not much change in current practices is expected.

¹⁰⁸ While line ministries are responsible for SOEs strategic management, the PPA and the Ministry of Finance split the SOE portfolio on the basis of proportion of ownership rights. The Ministry of Finance's financial monitoring department (continued)

Service of Financial Statements (SSFS), in charge of collecting and analyzing SOE financial statements and submitting them to the MOF and PPA. With the Government Decision no. 935/2018, the SSFS is now part of the National Bureau of Statistics, The division of oversight roles among line Ministry, MOF, MOE, PPA, and SSFS may blur responsibilities as to who from the government side is ultimate accountable for the accuracy of financial information of SOEs On the ownership side (appointment of board members), while the MOF has established a working group that follows a specific set of criteria to select ex-officio members to sit on boards, it remains unclear how PPA, MOE, and Line Ministries select their representatives. These functional oversight and ownership overlaps lead to SOE boards filled with government representatives from MOF, MOE, Line Ministries, and PPA, with the risk of paving the way to several political interests and blurring accountabilities for decision making at the board level.

147. The institutional framework also appears prone to changes. The PPA was under the purview of the MOE. It was then moved under the Prime Minister Office and in 2017 (Government Decision No 902) it become a central administrative authority subordinated to the Government and under the MOE. Given the pivotal role that the PPA plays in approving selection of board members, setting remuneration for boards and executives, and overseeing SOE operations, it should not be prone to frequent institutional changes, as this may impact the performance of its operations.

148. The mission of PPA is quite broad and should be streamlined to a couple of essential functions. It administers the public property of the state, the privatization of the public property, the post-privatization process, the public-private partnerships, the recording of public patrimony, and overall ensures observance of the patrimonial rights and interests of the state. The PPA exercises on behalf of the Government the functions of founder of SOEs (either alone or in tandem with the Line Ministries) and of shareholder in commercial companies with public capital or majority public shareholding.

149. The PPA and State Services of Financial Statements present operational challenges. Notwithstanding the commitment to reform SOEs, both agencies remain affected by political instability, weak capacity, high staff turnover, and limited budget resources. Development partners have engaged with a number of capacity building initiatives, but high turn-over and a lack of commitment over the medium term makes these initiatives quite ineffective.

B. Corporate Governance of SOEs

I. Board and Management

150. Board composition remains heavily in the hands of the Government. With an average board size of five, SOE boards are filled with government representatives. Representatives from

monitors all SOEs plus JSC SOEs with over 50% state held shares. The PPA include JSCs with over 25% state held shares in their annual reports and financial analyses.

the MOE and MOF sit on every SOE and JSC board where the government has a majority of shares, and so do Line Ministries and the PPA. De facto, boards are only filled with ex-officio government employees. To date, according to data obtained during the mission, 70 to 80 MOE ex-officio employees and less than 100 MOF ex-officio employees sit on SOE boards. The lack of government ‘outsiders’ makes it hard to keep an arm’s length relationship between SOEs and Government. PPA should have a role to play in coordinating and vetting board appointments, but de facto it records appointment decisions made by Ministries and issues clearance to operationalize their roles.

151. Appointment processes for board and executives are not fully clear. Government, and not the board, appoints the CEO (administrator) in SOEs and recommends the individual in JSCs.¹⁰⁹ While the MOF has established a working group that follows a specific set of criteria to select ex-officio members to sit on boards, it remains unclear how PPA, MOE, and Line Ministries select their representatives and it is also unclear who in the government selects the administrators for SOEs, and what process is followed to identify candidates and ensure their professional experience matches the SOE needs. SOE Law provides for boards to recommend to the Founder candidates for the position of administrator (CEO) after carrying out a competitive evaluation process and that the government has issued detailed regulations for these procedures.

152. Audit committees and independent members are not currently present in the SOE governing body set up. While the JSCs must comply with Company Law requirements that provide for independence on boards and audit committee set up, the vast majority of the SOE portfolio (which is not JSC) is not required to have independent members. It is noted that according to art.44 of the Law no.271 / 2017 on the audit of financial statements, the public interest entity is obliged to set up an audit committee. At the moment, 4 SOEs and 8 JSCs are part of the category of public interest entities and have established an audit committee.

II. Controls and Audit

153. Internal control and internal audit functions are not fully developed in SOEs. Interviews have revealed that several SOEs assume that the government, through its agencies, plays a control function, and therefore several SOEs have not yet set up dedicated internal control departments, internal audit departments, or risk departments. Some internal control

¹⁰⁹ By Government Decision no. 484/2019 on the approval of some regulations providing functioning of the Law No. 246/2017 on the state and municipal companies, were approved: (i) the model statute of the state / municipal enterprise, (ii) the model regulation on the organization and conduct of the competition for filling the vacant position of administrator of the state enterprise, (iii) the model of the individual employment contract of the administrator of the state / municipal enterprise, (iv) the model regulation of the board of directors and the model regulation of the censor committee of the state enterprise.

At the same time, the MOE has elaborated the draft of Government Decision for approving the Regulation on the organization and conduct of the competition for selecting and appointing members of the board of director’s / censor committee of the state enterprise and their remuneration conditions. At the moment, it is in the process of reviewing by the authorities.

functions are performed in SOEs by the censor committee.

154. The Censors' Committee's mandate of control over financial and economic activities encroaches on the normal mandate of a SOE board. Some of the functions assigned to the Censor Committee by the SOE Law overlap with those that would normally be performed by the SOE board, e.g. ensuring the integrity and timeliness of financial information being produced. In addition, the Censor Committee is made up of government representatives (who are not board members) and during interviews, there appeared to be some confusion as the Censor Committee was considered tantamount to an audit committee, which is composed of board members.¹¹⁰

155. Performance monitoring is conducted by MoF and PPA and it is not adequate. According to Government Decision no. 56/2018 for the approval of the Regulation on financial monitoring of self-managed public authorities, PPA annually presents to the MoF information on SOE performance. A set of Key performance indicators have been identified by PPA and MoF, and SOEs are supposed to report on the basis of the agreed indicators but it is not fully clear what are the consequences if indicators and targets are not met, hence unclear the mandatory and binding nature of this oversight function.

156. Performance contracts between SOEs and Government are not a recurrent practice. Performance contracts are meant to bind SOEs to pre-defined targets and create an accountability framework for boards and executives to deliver on what promised. The only commitment that appears to be in place relates to dividend payout.

III. Transparency and Disclosure

157. Hiring external auditors is mandatory for JSCs and PIEs. A large number of SOEs do not fall in any of these categories either because they are not incorporated under company law or they are not large enough to fall under the PIE definition.

158. Financial and non-financial disclosures remain minimal. The SOE Law requires SOEs to produce annual reports and management reports (which include KPIs and overall SOE performance against KPIs) and publish information related to board and employees, financial statements, and auditor report. Notwithstanding the provisions of the law, these requirements are rarely met in practice: many state enterprises do not have a website, while the PPA website does not provide for all the information on SOEs, that is mandatory to be published under the legislation.

159. The State Services of Financial Services has a role to play, but it is not fully operational. The agency is charged to manage the public depository of financial statements, which is supposed to be available to public. But the public depository does not exist or is not

¹¹⁰ In a number of former Soviet countries, the censor committee or revision committee was a sub-optimal control function that has been removed over time and replaced with audit committees of the board, with independent members having a prominent role in discharging the oversight role of audit committee to vet integrity of internal controls, follow up on external auditor recommendations, and overall ensure and monitor that internal controls are properly functioning.

accessible. As a result, financial statements are not available to the public, audit reports are not available and the State Services of Financial Services have revealed that only 50% of the SOEs provide their reports electronically, the other 50% bring hard copies to their offices, some SOEs just don't provide reports at all, and other SOEs that are included in the category of SOEs with a duty to report are simply no longer operative.

160. It remains quite unclear how to collate financial information on aggregate level, and overall which accounting standards apply to the overall spectrum of SOEs. PPA and MoF produce annual reports on their SOE portfolio, yet while JSCs and PIEs will this year allegedly report on the basis of IFRS, pursuant to the 2011 Law on Accounting, the remaining SOEs will continue to report on the basis of the Law 287/2017 on accounting and financial reporting. PPA remains in charge of providing the list of SOEs that are required to submit financials, but how to collate this bundle of information on the basis of difference in standards to account will prove challenging and may create difficulties in understanding how the overall SOE portfolio is performing.

Recommendations and Priorities

161. SOEs in Moldova pose a number of severe and interconnected challenges, hence reforms will have to be prioritized and a medium-term engagement of at least five years will need to be put in motion to begin to see change. Challenges range from portfolio management and institutional and ownership arrangements, to corporate governance of SOEs.

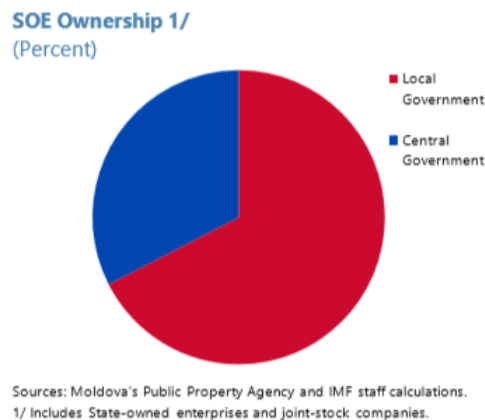
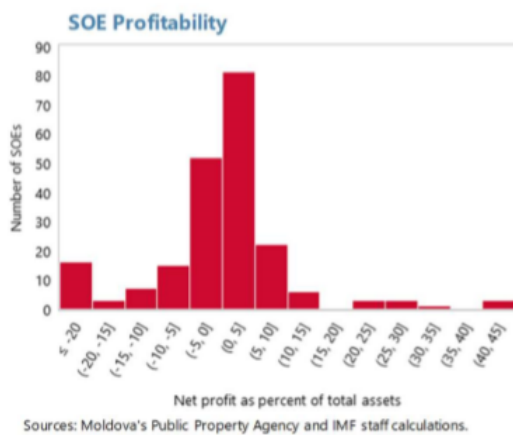
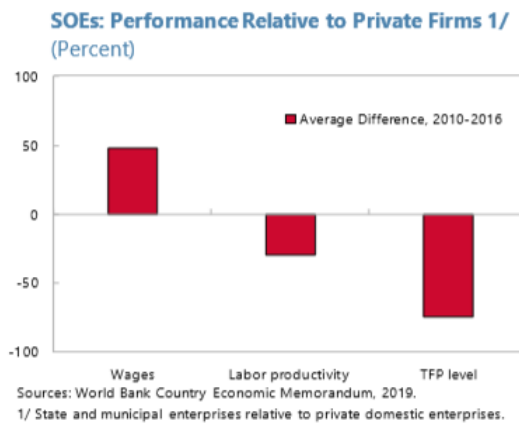
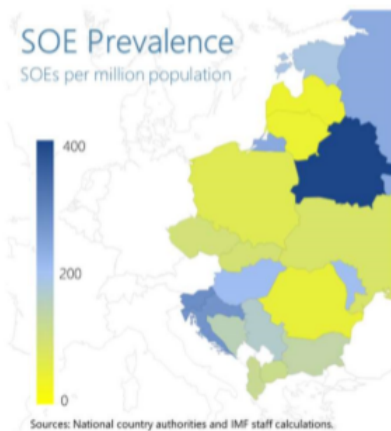
162. On institutional arrangements, there is an urgent need to streamline government functions and rationalize the portfolio, while establishing an arm's length relationship between Government and SOEs. These two activities are usually best achieved if two exercises are run in parallel: triage of SOE portfolio and ownership policy. The triage helps to (i) identify overlapping mandates among SOEs, (ii) eliminate defunct SOEs, and (iii) decide what to retain and where to divest. The ownership policy feeds the triage and the triage feeds back the policy as it crystalizes why the government should retain or divest (the so-called rationale for ownership). The policy also helps to clarify who in the government is responsible and accountable for certain functions. Currently, government presence in SOE governing bodies remains very high, and political interference and vested interests have reportedly already permeated a number of operations, including privatizations, hence the need to streamline government presence and better clarify the accountability framework.

163. The SOE Law has initiated the reform process to improve the corporate governance of SOEs, but much more needs to be done. (for a full list of recommendations please see Annex I) The government should consider a number of aspects on this front:

- Reduce SOEs to one legal form, preferably JSC incorporation for all;
- Include independent directors and audit committees and remove Censor Committee;
- Develop supporting regulations for board member appointment, and especially for board evaluation;

- Develop remuneration policies for executives and board members, and while non-executive independent directors phase in, minimize presence of ex-officio employees on the board;
- Develop supporting regulation on model charters, internal control and internal audit expectations for SOEs, clarify accounting standards, and develop clear and enforceable penalties for failure to report and disclose financial information.

164. There are several development partners already involved or willing to be part of this reform process. IMF should leverage its convening powers and develop a reform strategy with the partners involved to tackle all the reform areas.



VII. TAX ADMINISTRATION

165. This Section assesses corruption vulnerabilities in the Moldovan tax administration. It makes recommendations to strengthen governance in line with the IMF's good governance framework for tax administration, and with the 2018 Framework for Enhanced Fund Engagement on Governance. It also looks separately (in subsection E) at governance issues around a recent, significant proposal to amend the law and give the STS a new competence in criminal investigation.

166. The STS is a separate organization structure within the administrative system of the MoF and is subordinated to the ministry. It is responsible for collecting and administering most of Moldova's tax revenues (apart from import taxes collected at the border). The legislative framework for the STS, as set out in the tax code,¹¹¹ provides that the MoF sets objectives and performance indicators for the STS, approves its structure and administrative budget, and evaluates the performance of the director and deputy directors. The tax code also specifies arrangements for appointment of the director and deputies and provides that the STS has decisional and administrative autonomy. The STS was restructured in 2017 to replace 35 territorial tax inspectorates with a single legal structure. At the same time the headquarters was organized on functional lines and most of the core tax administration operations were consolidated in four regions plus an office dealing with the largest taxpayers, with smaller offices providing service functions only. Since October 2018, it has also been given limited competence to identify criminal tax violations, but is not a criminal investigation body.

A. Tax Policy Context and Perception Indicators

167. Greater stability, simplicity and clarity in the tax code would be helpful to facilitate tax compliance and minimize the scope for discretionary interpretation. The tax system in Moldova suffers from a high level of informality, high compliance costs, and a frequently-changing and often ambiguous tax code. These factors, combined with low trust in state institutions, create an environment in which problems of tax evasion and corruption are more likely to occur.¹¹² The high labor tax wedge in the personal income tax and social security contributions and the differences between regimes for e.g. wage earners and self-employed, contribute to the high level of informality.¹¹³ In addition, tax holidays, exemptions and other preferential regimes make the system more complex and burdensome, for both taxpayers and the tax administration. This opens opportunities for corruption and promoting specific interests. While elements of the tax system have been simplified (the flat-rate income tax), the time needed

¹¹¹ Article 132¹ of the Tax Code

¹¹² See, for example, Besley and Persson (2014), *Why Do Developing Countries Tax So Little?* Journal of Economic Perspectives

¹¹³ Martin Grote c.s., *Moldova: Rebalancing Taxes on Employment, Capital Gains, Energy, and Consumption to Co-Finance Public Pensions*, July 2018, IMF Fiscal Affairs Department

to comply with tax obligations is still too high.¹¹⁴ The Government Action Plan for 2020-2023 includes objectives for reducing tax incentives, replacing them by direct subsidies.

168. The STS has taken a number of significant initiatives to reduce corruption vulnerabilities and increase public confidence in the institution. These include the development of a strong headquarters with greater operational control, direction and oversight of territorial offices since the legal status of the STS was unified in 2017 (previously semi-autonomous territorial offices had separate legal status); the central selection of tax audits based on risk analysis (and recently, the centralization of tax arrears management and certain audit functions); the expansion of electronic services; and an increase in transparency through its website, which has a separate section dealing with integrity-related information. Also, based on civil society monitoring reports,¹¹⁵ STS performs better than many central state institutions in implementing the national anticorruption strategy.

169. Perceptions of STS integrity have been gradually improving but public trust remains low. An analysis of perception surveys indicates a downward trend in the percentage of households and businesses that see the STS a corrupt institution.¹¹⁶ However, the level of public trust in the STS is still low. For example, a United Nations Development Program (UNDP) integrity monitoring report in 2019 indicated that 30 percent of businesses rated the STS to be “pretty corrupt or very corrupt”.¹¹⁷ A selection of STS-related integrity perception studies is in Box 7. The STS should commission regular independent integrity perception surveys and track progress over time.

Box 7. STS-related Integrity Perception Surveys

- Transparency International – Moldova Sociological Studies indicate that the percentage of businesses that frequently (often/always) resort to money, gifts, or personal contacts to solve problems with STS reduced from 41.3 percent in 2015 to 29.7 percent in 2018.
- IDIS Viitorul survey in 2017 indicated that 45.7 percent of businesses had little or no trust in STS and that STS was in the top four institutions where frequent informal payment is made (after health, police, and customs).
- Transparency International – Moldova survey conducted in October 2019 indicated that 26.5 percent of STS staff in central offices considered there was corruption in STS (37 percent of STS staff did not respond to this question).
- STS-commissioned survey of legal entities (January 2019) indicated that 82 percent of participants perceived STS employees as generally honest and work fairly, without the need for gifts or bribes. 22 percent indicated that they would look for known people to solve a problem with STS.
- UNDP integrity monitoring report in 2019 indicated that 30 percent of businesses and 39 percent of the population perceived the STS to be “pretty corrupt or very corrupt”.

¹¹⁴ 183 hours in 2019 – see World Bank (2020) *Paying Taxes*

¹¹⁵ By Transparency International – Moldova. See reports monitoring 13 central authorities, including the STS: “Quality of anti-corruption policies and working climate in central public authorities” (December 2019), and “Monitoring anti-corruption policies in central public authorities: conflict of interest, incompatibilities, restrictions” (2020).

¹¹⁶ See, for example, Transparency International – Moldova Sociological Studies 2015 and 2018, and STS-commissioned survey of legal entities in January 2019 (Magenta Consulting).

¹¹⁷ UNDP, *National Integrity and Anticorruption Strategy Impact Monitoring Survey – Moldova 2019*, p.46.

B. Governance Framework

170. To strengthen the independence of the STS, the mission advises that the Director should be appointed through competition for a fixed term, independent of any change of Finance Minister. Since January 2020, the appointment of the STS Director is at the discretion of the Minister of Finance (subject to minimum requirements being met) without a competition and without a term of office being specified.¹¹⁸ Before this year, the appointment was made by the Minister through competition for a five-year term. Removal from office is allowed (under both pre and post January 2020 arrangements) if there is a breach of certain civil service law provisions (of a serious disciplinary nature) or – without any justification – 6 months after the appointment of a new Minister of Finance. To better insulate the STS from external influence in taxpayer affairs, the pre-2020 law should be restored. Furthermore, the STS Director’s term of office should be independent of the political cycle or change of Finance Minister.

171. Governance arrangements within STS for assessing corruption risks can be improved. Currently, there is no senior management governance group or senior responsible person in STS with a specific mandate for developing and implementing an anti-corruption strategy, including risk assessment and mitigation. While anticorruption action plans address the main high-level issues and comply with national strategy requirements, they do not reflect the degree of detailed risk analysis that might be expected in such a complex institution with a wide range of potential vulnerabilities. A senior STS management group should be established with a specific remit to coordinate the assessment of corruption risks and develop more comprehensive action plans.

C. Staff Integrity Assurance and Internal Controls

172. The integrity and professionalism of tax inspectors can be better monitored through structured and independent post-audit quality controls. Tax audits and other controls present some of the highest corruption risks in any tax administration. While there is some local management review of tax inspectors’ case files following audits, a more structured and independent system of post-audit quality control is needed.

173. Human resource management procedures can be improved in the areas of integrity checking of new recruits, promotion arrangements and staff rotation. Integrity records should be sought from the national anticorruption authorities for all new hires;¹¹⁹ this is already standard for the State Customs Service. A more transparent promotion system, through competition, is desirable to give greater confidence that promotion appointments are merit-based and related to skills/competences. Job rotation, particularly for sensitive posts, is an important protection against corruption. The job rotation policy for sensitive positions needs to be updated and the current legal requirement for prior consent of the staff member should be removed,

¹¹⁸ The changes to STS Director appointment arrangements were made in Law no. 177 of 19.12.2019, in force.

¹¹⁹ The STS has advised that seeking integrity records for new recruits may require a law change.

subject to appropriate staff safeguards.

174. The STS sub-division responsible for staff integrity assurance needs to focus more on corruption prevention and detection (rather than wider disciplinary issues). Currently, this sub-division,¹²⁰ which has a small staff of just 4, is responsible for also monitoring a wide range of staff conduct issues (including time-keeping, dress code etc.). Monitoring these wider disciplinary matters dilutes the focus on their most important responsibility of preventing and detecting corruption.

175. Governance arrangements around STS data security and the relationship with the external IT provider (CTIF)¹²¹ need to be improved. Robust internal controls around data security are essential to any tax administration, given the sensitivity of the information and the potential for fraud and corruption through data manipulation or inappropriate access. The Internal Audit Department has recently developed competence in IT systems audits and early missions have identified vulnerabilities around data security controls that still need to be fully addressed. The audit missions have also highlighted the need for greater clarity on data security and access protocols with the external IT provider (which can be documented in a security regulation document). These protocols should include arrangements for access to data by internal audit. Such arrangements need to be clearly set out in a Memorandum of Agreement, with the security regulation document and further protocols being annexed to it.

176. STS has demonstrated a strong commitment to staff integrity training and to improving transparency. Almost all STS staff have received training during the past two years, with the help of the national anticorruption authorities. Monitoring¹²² of the level of staff knowledge of integrity laws indicates some training weaknesses that may be dealt with by introducing tests as part of the training sessions. The STS has a section of its website dedicated to integrity-related matters.

177. STS is encouraged to more actively engage with its staff and with the business community to encourage reporting of integrity incidents. The exceptionally low level of reported integrity incidents by STS staff and by taxpayers (about the behavior of STS staff) – just a handful over the past three years – is inconsistent with the perception surveys in Box 7. This indicates an unwillingness to come forward and denounce tax administration-related corrupt practices. While it may also reflect a wider distrust of state institutions and a general reluctance to whistleblow, STS needs to more actively engage with its own staff and with the business community to encourage and support such reporting, for example, through improved staff training and specific anti-corruption outreach programs for business.

¹²⁰ The Internal Security and Anticorruption department.

¹²¹ The Center for Information Technology in Finance, which is responsible for IT development, maintenance and infrastructure for all bodies subordinated to the Ministry of Finance.

¹²² By Transparency International - Moldova

D. New Criminal Investigation Competence for STS

178. A recent legal amendment to designate the STS as a criminal investigation body for certain tax and economic crimes raises governance and implementation challenges. This law change provides that the STS will graduate from being a tax crime “establishment” body (which means it can establish evidence of a tax crime but cannot formally investigate such crime under the Criminal Procedure Code) to having full criminal investigation competence – under the supervision of the prosecutor. The proposed commencement date is January 1, 2021. The range of governance issues that need to be considered include procedural safeguards, quality and integrity of personnel, timing of implementation, scale of operation, transparency and collaboration arrangements with other law enforcement.

179. The STS and the Prosecutor’s Office should ensure that this new criminal investigation competence is grounded on comprehensive procedural safeguards and sufficient availability of trained investigators. Given the sensitivities around this new competence, it is important to ensure that robust and integrity-proofed procedures – both internally within STS and with the prosecutor – are in place from the start. Such procedures include adequate working procedures and decision-making authorities around the selection (and de-selection) of cases for criminal investigation to ensure objectivity and prevent prosecution bias. This would come with strong prosecutor oversight mechanisms. Sufficient quality assurance measures need to be in place to ensure that investigations are conducted in line with all legal requirements and quality standards that apply. Investigators recruited to this sub-division need to be subject to strong integrity vetting and must be well trained to take on this challenging role.

180. The proposed size of the tax crime subdivision (70 staff) seems much too high. This represents a significant increase on the current staffing of 17 in the crime “establishment” department. The rationale for such a high increase has not been clearly stated. Consideration should be given to scaling back on the number of criminal investigators – at least until this new STS competence has become well established. Special investigative activity powers, which are being given to the STS in addition to powers under the criminal procedure code, should normally be reserved for suspected significant tax fraud rather than “low-level” shadow economy investigations. Quality is more important than quantity in the initial stages.

181. Collaboration and exchange of information arrangements between STS and other law enforcement bodies need to be reviewed. Tax fraud is often just one element of wider financial crime, such as corruption, money laundering, people trafficking, smuggling or social benefit fraud. The start of a new competence for criminal investigation is an appropriate time for the STS to review arrangements for exchanging information and cooperation with other law enforcement bodies – particularly to ensure that clear legal “gateways” are in place to allow wider financial crime in Moldova to be tackled in a coordinated way. This should be done within a proper legal framework, rather than relying too much on memoranda of understanding.

Conclusion

The STS has made good progress in reducing corruption vulnerability but further action will help reduce remaining risks and improve trust and public perception. Improvements to HR procedures, data security and monitoring of tax auditors will help to further reduce the risks and build trust in agency's operation; community perceptions of corruption in the STS have remained high. Changes are also recommended to the law on appointing the STS Director, and to corruption risk governance. On the latter, the STS should consider the establishment of a senior STS management group to coordinate the assessment of corruption risks, and to develop more comprehensive action plans. Postponing the implementation of the law change to give the STS criminal investigation powers should be considered to allow for sufficient time to set up robust procedures, and in addition, STS may want to consider scaling back the now proposed size of the new sub-division.

VIII. CENTRAL BANK GOVERNANCE

An independent National Bank with an effective governance structure, which includes effective internal checks and balances, is a safeguard against corruption. An update safeguards assessment of the National Bank of Moldova (NBM) was completed in September 2020 in connection with the financial assistance to Moldova under the Rapid Credit Facility and Rapid Financing Instrument ~~as~~ approved by the IMF Executive Board in April 2020. The assessment found that while governance and oversight arrangements at the NBM are broadly appropriate, the NBM had been subject to political attempts to undermine its autonomy via legislative and executive channels. Amendments to the NBM Law are needed to safeguard the NBM's independence, and further strengthening governance arrangements and the operational independence of the NBM's prudential supervisory function.

182. The legal framework governing the NBM consists of the Law on the National Bank of Moldova (the NBM Law). This Law No. 548-XIII was promulgated on July 21, 1995 and was most recently amended in July 2020. The NBM Law is broadly aligned with best practices.¹²³

183. Nevertheless, enhancements are needed to the NBM Law in view of recent political attempts to curtail the NBM's independence. Some examples of the latter are the proposals that would undermine the NBM's financial independence through amended profit distribution rules or the restructuring of long-term government securities issued to cover losses sustained

¹²³ In general, the NBM Law strengthens the mandate, independence and decision-making structure of the NBM. In particular, the following strengths can be highlighted: (i) price stability is appropriately defined as the NBM's primary objective; (ii) the institutional autonomy is ensured by a clear provision prohibiting public authorities from instructing, or seeking to influence the NBM and the members of its decision-making bodies; (iii) provisions on the automatic recapitalization of the NBM and the build-up of its statutory capital in terms of monetary liabilities; (iv) monetary financing is prohibited; (v) a dual-board structure along with requirements for an AC was established; (vi) sound eligibility requirements and incompatibility rules for membership in the Supervisory Board and Executive Board; and (vii) the NBM is subject to a sound accountability and transparency framework.

from the 2014 banking fraud. Moreover, the recent legislative initiative to amend the NBM's coverage of legal representation costs for NBM staff in certain situations was problematic. Finally, the NBM's professional judgment in prudential supervisory decisions has in the recent past come under increased scrutiny and challenge.

184. The remaining imperfections to the NBM's governance and independence should be addressed. This would make it easier to address the aforementioned challenges to the NBM. The need for amendments to the NBM Law covers the following items:

- **The NBM Law's provisions on appointments and resignations.** A sound double veto procedure for the appointment of the Governor and non-executive members of the Supervisory Board would enhance the objectivity and transparency of such appointments. Also, to prevent any governance gap, it should be clarified that the Governor can propose a candidate for appointment as soon as a member resigns; the appointment should then be prepared and made as soon as possible.
- **The grounds for dismissal of the members of the Supervisory and Executive Boards.** The NBM Law contains multiple grounds for dismissal which overlap. Also, under the Asset Declaration legislation, NBM employees are required to declare their assets. The Governor is required to implement certain corrective measures against non-compliant employees. Failure to act in accordance with the requirement may result in suspension of holding his office for six months up to one year. Such a suspension would materially limit his/her necessary security of tenure and could be tantamount to his/her dismissal thereby affecting the governance of the NBM. This long suspension requires reconsideration.
- **The incompatibility rules for the NBM decision-makers.** As part of the work on conflicts of interest, and as noted in the earlier section, NBM decision-makers and supervisory staff should not be permitted to have equity holdings in licensed banks.
- **The statutory safeguard for the NBM's institutional independence.** The prohibition for public authorities to instruct or influence the NBM should be extended to the private sector. Also, Ministers should not have the right to attend meetings of the NBM decision-making bodies.¹²⁴
- **The NBM's governance structure.** The managerial responsibilities of the Governor and the EB overlap.
- **In line with international best practices¹²⁵ prudential supervisors need to have operational independence and have adequate protection against lawsuits for actions**

¹²⁴ It is acknowledged that they do not currently exercise this right.

¹²⁵ The international standard is the Basel Core Principles for Effective Banking Supervision. Please see Section IX on Financial Sector Oversight considers the governance of and by the NBM as a supervisory authority.

taken and/or omissions made by them when they discharge their duties in good faith. In this respect, the Law’s standards for judicial review of supervisory decisions and the definition of professional judgement, as well as the limitation of legal liability of the NBM’s decision-makers and staff merit a review.

IX. FINANCIAL SECTOR OVERSIGHT

185. Financial sector oversight (FSO) in this report considers the governance of the supervisory authority and the supervisory oversight of governance in the banking sector.

The governance framework for FSO is drawn from the Basel Core Principles for Effective Banking Supervision (the BCPs), which is the international standard for banking supervision, and which do not address resolution of banks. This section of the report does not attempt to replicate a full BCP assessment, but uses the lens of the BCPs that relate to governance issues to consider the status and work of the NBM in its role as a supervisory authority, as opposed to the NBM as a central bank. However, this section of the report necessarily picks up key themes that are also considered in Section VIII on Central Bank Governance. The cutoff date for the discussion in this section is end August 2020.

186. The BCPs were last assessed as part of the 2014 Moldova FSAP when a majority of principles now under consideration were assessed as materially non-compliant.¹²⁶ The aspects of governance that are drawn from the BCPs and addressed in this section are as follows: Governance and establishment of the supervisory authority includes consideration of mandate, powers, and independence. The consideration of supervisory practices in governance oversight concerns the use of powers by the supervisor and the active supervision of governance within the financial institutions. The use of powers includes authorisations, permissions for changes of control and corrective actions in the banking sector. Supervision of governance issues within financial institutions relates to corporate governance policies and practices in banks, transactions with related parties and the abuse of the financial services.

187. In evaluating governance issues, it is essential to take account of the wider context, in particular the rule of law, as discussed in Section II. The framework for banking supervision treats the rule of law as a precondition to effective banking supervision, recognizing that if the rule of law is not securely in place, then supervisory efforts and financial sector soundness can be undermined. Notably the BCP assessment of 2014 observed that, “The rule of law was absent in Moldova.” The consequence of the issues identified in the FSAP were illustrated by the failure of three banks, representing a third of the system in October 2015, a year after the FSAP. A forensic audit¹²⁷ revealed that the banks had been subject to a highly

¹²⁶ In 2014 FSAP, the BCPs Principles were assessed as materially non-compliant (which are used in FSO framework too): BCP1 Responsibilities, objectives and powers, BSP2 Independence, accountability, resourcing and legal protection for supervisors, BCP6 Transfer of significant ownership, BCP11 Corrective and sanctioning powers of supervisors, BCP14 Corporate governance, BCP20 Transactions with related parties, BCP29 Abuse of financial services.

¹²⁷ <https://www.bnm.md/en/content/nbm-published-detailed-summary-second-investigation-report-kroll-and-steptoe-johnson>

orchestrated fraud perpetrated by seemingly unrelated shareholders, crystalizing many of the concrete concerns flagged in the 2014 FSAP.

188. Since 2014, considerable efforts have been undertaken to remediate the governance weaknesses and vulnerabilities in the sector. Equal efforts have been made to improve the supervisory and regulatory framework more generally. It is important to continue reinforcement of financial sector oversight, building on the successful reforms already implemented.

A. Mandate and Objectives

189. Revisions to the NBM Law have strengthened the mandate, independence and decision-making structure of the NBM. A number of the deficiencies noted in 2014¹²⁸ have now been remedied. However, as the section VIII on Governance of the Central Bank indicates, there is important scope to make further enhancements. In order to meet the international standards expected in the BCPs, the NBM must act on the recommendations identified by section VIII. Additionally, in order to meet the standard expected by the BCPs to support FSO effectively, further attention is needed on the mandate of the NBM. At present, the objectives of the supervisory role is set out in the Law on the Activities of Banks (Article 99 (1), Law No 202 of 2017), but the overall objectives of the NBM are set out in the NBM Law—in particular Article 4(2) of Law No 548 XIII of 1995. The NBM Law states that, “Without prejudice to the primary objective, the National Bank shall promote and maintain a financial system based on market principles and shall support the general economic policy of the state.” Importantly, this objective does not create an obligation for the NBM to support financial stability and, furthermore, it could be read as creating a problematic expectation that the NBM should support competition in the market. The focus of prudential supervision should be on the soundness of the institutions and of the system, not on fostering competition which might damage some institutions. It is important to avoid potential confusion or dispute between the two pieces of legislation, as well as avoiding a conflict within the mandate for the supervisory authority.

Recommendation

Revise the NBM Law to confirm that the objective of the supervisory mandate is to promote the safety and soundness of the banks and banking sector. This objective should be clearly senior to any obligation to consider the competitiveness of market conditions. a conflict of mandate for the supervisory authority. It is noted that amendments to the NBM Law and the Law on Banking Activity (“to aim at ensuring the stability and viability of the banking system”) were approved by Government Decision no. 810 of 05 November 2020, and were put before Parliament. As of early January 2021, the amendments were expected to be adopted in the near future.

¹²⁸ Refer to Core Principles 1 and 2.

B. Independence and Accountability

190. Amendments to the NBM Law and to the Law of Activities of Banks have strengthened the situation of the NBM since the 2014 FSAP. The independence of a supervisory authority (in this case, the NBM) can be undermined through multiple avenues: exposure to the undue influence of political or industry representatives; insufficient powers to enforce supervision; insufficient resources (numbers, skills) to carry out supervision; lack of legal protection to staff when carrying out their functions in good faith. Significant progress has been made in most of these areas, but further work is needed: once again, please refer to the recommendations made in section VIII on Governance of the Central Bank indicates as these recommendations are equally necessary for the FSO function.

191. Legal protection of staff when carrying out their professional functions in good faith remains a concern. It should be noted that legal protections provided in the NBM Law also apply to criminal liability, but the discussion here relates to civil liability. Legal protection¹²⁹ is a bedrock of effective supervision as staff cannot be asked or expected to pursue vigorous enforcement action, which is at the core of effective supervision, if they are personally exposed to risk by virtue of executing their role. This is not to argue that staff be granted immunity from responsibility. Institutional accountability needs to be in place. However, due process is necessary, and staff must be given protections against frivolous actions. Moreover, the ability to attract and retain high quality staff is undermined in a context where staff knows it is vulnerable to legal actions that can be brought without solid grounds. Legal protections are already set out in the NBM Law, including that staff should not be subject to legal liability except in case of an act or omission in bad faith; that the NBM will cover staff's legal costs and that protection is extended to staff after they have left the NBM. Some amendment is needed, however.

Recommendations

Please also refer to the Recommendations from Section VIII which apply to the NBM as a central bank.

- **Amend legal protections for staff.** It is acknowledged that the current protections, which would be sufficient in many jurisdictions, may not be fully in line with the Moldovan legal tradition so the wording should be amended and aligned as needed to avoid any possible weakness in the protections provided in relation to civil liability. It is noted that this issue is addressed by the draft Law on amending some normative acts (approved by Government Decision no. 810 of November 5, 2020).
- **Transparent dismissal procedures are essential.** There must be a mandatory publication of the reasons for dismissal of the Governor, Deputy Governors and members

¹²⁹ The concept of legal protection used here is taken from the Basel Core Principles, Principle 2, Essential Criterion 7: Laws provide protection to the supervisor and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. The supervisor and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith.

of the Executive Board and Supervisory Board. It is insufficient for such publication to be customary, or generally in place.

- **Conflicts of interest need to be iterated in detail:** the NBM Law, or internal regulations should clearly set out the conditions that would constitute a conflict of interest. As part of the work on conflicts of interest, and as noted in the earlier section, NBM decision-makers and supervisory staff should not be permitted to have equity holdings in supervised banks. Disclosure of equity holdings in a licensed institution, or disclosure of loans taken from a licensed institution, either by Board Members or members of staff, is insufficient to guard against the potential for an individual to act in the interests of the licensed institution, or be seen as acting in such a manner, even if this is not the case. A cooling off period that prevents an NBM supervisor from working in a licensed bank does not mitigate the risks arising from conflicts of interest if supervisors are permitted to have equity holdings.
- **Internal procedures and governance need to be developed further.** Although the process for preparing decisions on supervisory matters is documented internally, enhancements to the internal regulations are needed to ensure full documentation of the meetings at which decisions are taken. Staff who are required to act on the supervisory decisions must have access to these documents. Such improvements to internal governance will support the NBM if it is challenged in respect of its due process when it undertakes supervisory action under the law.
- **Focus on hiring and retention of skilled staff for the supervisory function.** Despite remuneration reform, including the 2018 initiative, it is hard for supervisors to recruit from the market. Further reforms are needed to better identify roles and responsibilities, and more senior positions that may attract and retain mid-career candidates. Periodic reassessment and realignment of the remuneration of grades with the market will be necessary. A strategy of targeting young, professionals who may have high quality training in some of the emerging techniques needed by supervisors; and late career individuals (“grey panthers”) may be worth targeting. However, the success of any recruitment or retention strategy will depend on the success of ensuring appropriate legal protection for staff.

C. Enforcement Powers and Practices

192. The NBM has a broad suite of supervisory powers but faces significant challenges in terms of using its powers effectively. A supervisory authority that cannot pursue corrective actions or sanctions is not a supervisor but a financial monitor. It is notable that many of the corrective and sanctioning actions pursued by the NBM have been challenged in court, although the NBM has not observed attempts to revisit the appropriateness of the decision made by the

NBM and under administrative law, NBM acts can only be tested on their legality.¹³⁰ The context in which many actions are challenged has had the effect, at the NBM's own admission, of making the NBM highly conservative in its legal approach and its corrective and sanctioning actions have focused on clear violations. In other words, although the NBM should be able to take enforcement and corrective actions based on identified weaknesses and vulnerabilities in financial institutions on a forward-looking basis, in practice this has not been a viable approach. The 2014 FSAP observed a very similar dynamic.

193. The consequence of restricting corrective and sanctioning actions to clear legal or regulatory violations is that the NBM cannot develop a functional risk based supervisory approach. In order to meet international standards of forward-looking, risk-based supervision, the NBM needs to use its professional judgment, i.e. use its discretion, to gauge the potential for future weaknesses that could undermine a financial institution and to intervene with remedial and corrective action in a timely manner. At present, the supervisory process is backwards looking, focused on identifying breaches and failures that have already occurred before the NBM uses its powers to act. Until the NBM is able to rely on its use of professional judgement in deciding when and how to use its powers, it will be trapped in the old standards of compliance-based supervision, sometimes termed “tick-box supervision.” All aspects of prudential supervision, including decision making for licensing, revocation and change of control, the supervision of AML/CFT risks and the use of enforcement powers rely on the ability to conduct risk-based supervision.

194. To move the effectiveness of its practices forward, the NBM acknowledges that it needs stronger enforcement powers, as follows:

- **Encode the concept of discretion more strongly into the law.** Confirm, in legislation, that the NBM is expected to use its discretion (i.e. its professional judgement) in reaching decisions in its supervisory actions. That is: clarify the judicial review standards to reinforce the already available basis for NBM discretion, namely by defining a high bar (manifest error test) in order require courts to defer to NBM discretion and expertise. It is noted the draft legal amendments, prepared in consultation with the IMF were: “Provide for the courts’ deference to complex supervisory assessments undertaken by NBM, unless vitiated by manifest error.”
- **Expand the tariffs applied to sanctions.** At present the level of fines is not dissuasive. While some litigious institutions might be willing to take a sanction or fine as “the cost of doing business” – ensuring that the NBM has the ability to levy significant sanctions would broaden the suite of powers available to the NBM.

¹³⁰ NBM noted that in the last two years (June 2018 - June 2020), the banks, their administrators (and former administrators) or their shareholders have filed in total 18 lawsuits (challenging 15 decisions of the NBM Executive Board) in court.

D. Licensing and Change of Control

195. The NBM has a vital role as gatekeeper to the financial sector through its vetting and power of approval or denial with respect to a new entrant to the market or change of control. There have been no new applicants for a license in Moldova in the last seven years, but there have been 6 applications for changes of control within the last three years. In the 2014 FSAP, it was highlighted that more work seems to be needed in establishing full ownership details of banks, including ultimate beneficial ownership and ensuring that Board members, individually and collectively were required to have a sound understanding of the bank's activities. The NBM has remedied these areas in the Law on Banking Activities and the associated regulation (Arts.8-23 of the Law no.202/2017 and Regulation no. 328/2019.)

196. The ability to act as an effective gatekeeper rests, among other factors, on the NBM's decision making practices. There are two aspects to consider in the current context. One is whether the NBM can exercise discretion (i.e. apply professional judgment) in making its approval decisions as discussed above. The other is how the supervisory and authorization departments should respond if the recommendation for approval or denial of the application is overturned by the Executive Board of the NBM.

197. When considering applications, it is critical for the NBM to be able to reach a sound assessment of a number of qualitative factors in addition to the various quantitative requirements. For example, the NBM needs to be able to evaluate the viability of a business strategy, and the suitability of the governance and risk management framework in an institution, in order to make its approval decisions. These assessments and evaluations depend on professional supervisory judgement. Equally, any revocation of an authorization or permission will require the exercise of professional judgement. Hence, the NBM's ability to exercise judgment is central to its effectiveness when determining which individuals and institutions may participate in the banking sector.

198. The NBM's internal processes need to ensure the clear documentation of all decision making under the law, and appropriate follow up. It appears, for example, at present, that minutes of the decisions made by the Executive Board are not available to the staff who must take the actions that have been decided upon.

199. The decision-making powers of the NBM are set out in law and are vested in the NBM Executive Board. In the event that the Executive Board grants an approval against the advice of the NBM staff, it is imperative for there to be a clear record of the grounds for the negative recommendation and the reasons why the recommendation was put to one side. The supervisory department will also need to tailor its supervision carefully to ensure that any concerns identified during the application processes are carefully monitored and acted upon if the need arises.

200. It is important that neither the staff nor the Executive Board should feel under pressure to grant an approval. An application can be denied but the application can be

resubmitted at a later date, providing stronger evidence in support of the case. If it is difficult to reach a soundly based decision in the time period set out in the law (which echoes the EU timetables), then a negative decision should be given and a new application submitted. It is important that the supervisory authority should not be under pressure to give an approval if it is not comprehensively satisfied by the application just because the formal clock is ticking.

201. The legislative and regulatory framework in Moldova for new authorisations and changes of control is largely based on the EU model. The NBM has also made valuable use of guidance from the EBA including, for example, the prudential assessment of acquisitions of qualifying holdings, the assessment of the suitability of members of the management body and key function holders, and Internal Governance. Recent enhancements to the EU legislation¹³¹ have sharpened, not only the requirements for knowledge of the broader group structure of which the new institution will be part, but also in relation to the internal governance of the proposed institution and its risk management capabilities. It would be useful if the Law on Banking Activities (and relevant regulations) is updated to reflect these changes, even though there is already general text in this area.

202. In terms of practices and processes the NBM seeks to be assiduous and aims to have scrupulously high standards. There is still, however, scope for some enhancements to be made and the following recommendations are therefore suggested:

- **Prepare a manual for both authorizations and approvals for change of control.** The NBM has established processes and these are valuable, but a fully articulated manual to support comprehensive analytical work and decision making will support a robust and consistent process for all new entrants to the market.
- **Mandatory interviews for members of the management and supervisory boards.** The NBM is moving increasingly in this direction and a mandatory process would give a clear signal of the importance the supervisor attaches to the individuals being able to give a credible account of their knowledge of the role they wish to undertake and of their experience and what they can offer the institution.
- **Increased use of supervisory judgment in assessing applications and decision-making.** In addition to the need for greater support for professional judgement in the legislation, the NBM also needs to continue to develop the staff's skills so that it is able to conduct good quality assessments of the qualitative aspects of applications, such as banks' strategic and operating plans, business models, system of corporate governance, risk management and internal controls. It is likely that a deeper skillset is located in the Banking Supervision departments rather than the Regulation and Authorization departments, and closer collaboration between the two departments is important, not least as the Supervision department will have to supervise any successful candidate. Over time,

¹³¹ See Article 1(6) of Directive 2019/878/EU (Capital Requirements Directive 5, CRD5) which amended Articles 10 and 74 of Directive 2013/36/EU (CRD4)

when the NBM's overall staffing levels have built up, then a specialized unit set up in the Regulation and Authorization Department could be considered, but in the current context of staff shortages, this is not an immediate priority.

E. Corporate Governance and Related Parties

203. The Moldovan authorities have devoted significant effort to developing their legislative and regulatory framework for the supervision of corporate governance and related parties. Efforts have also been made to enhance their examination processes and to ensure that corporate governance and related parties aspects are embedded into the supervisory review and evaluation process (SREP). Targets, set by the World Bank, for the number of inspections on the theme of corporate governance have been exceeded. Overall, therefore, supervision of corporate governance shows considerable and valuable improvement when benchmarked against the 2014 FSAP findings.

204. Nevertheless, some improvements can be made and some challenges remain. In terms of the regulations it is not wholly clear that a bank will understand that it has a legal or regulatory obligation that calls for the banks to notify the supervisor as soon as they become aware of any material information that may negatively affect the fitness and propriety of a Board member or a member of senior management. A recent regulation (Regulation 292/2018, Chapter II, Section 1) addresses the issue but appears to provide for a full assessment and decision process before the NBM is notified. This does not meet the test of "*as soon as they become aware of any material information that may negatively affect.*" It is therefore suggested that the language is sharpened or supplementary guidance is issued. Although guidance is not, of itself, legally binding, NBM should issue more guidance to banks on its supervisory expectations on corporate governance and observed good practices in order to ensure supervised institutions have a clear understanding of their duties under the law. Supervisory guidance is a commonly used good-practice instrument, particularly in new or relatively new areas of regulation to ensure that the banking industry understands the intent of the regulatory framework and can better assess if the regulatory objectives have been achieved.

205. The NBM acknowledged the challenge of moving to professional judgment in evaluating banks' corporate governance, rather than relying on violation of regulations to be able to act. Please see the discussion above in relation to the importance of the supervisory staff being able to use and act upon their professional judgment. The quality of governance within banks cannot be supervised solely with reference to whether regulations have been breached. Evaluation of the quality and suitability of the governance, risk management and control environment is essential.

206. In practical terms the NBM is advised to continue with its program of on-inspections and off-site analysis of banks' corporate governance. This will allow the NBM to deepen its experience and to hone its skills. In particular, the NBM is recommended to consider using the technique of horizontal or thematic inspections, and cover all of the banking sector.

This enables a better perspective of the range of practice and the ability to feedback information to the banking sector on good and bad examples of practice (on an anonymous basis). The NBM would benefit from a further increase of specialized resources (experts) for the supervision of banks' corporate governance.

207. In terms of supervising related parties, the NBM has again, made significant progress. The supervision of related parties was an urgent matter for attention at the time of the last FSAP and the significance of the topic was underlined by the fraud that caused the three banks to collapse. Unlike the EU, which is silent on the issue, Moldova has developed detailed regulations and banks have been required to manage down their exposures to related parties. All banks have complied with the limits – where the maximum exposure to a related party or group of related parties who are connected to each other is 10 percent and where the aggregate limit for all exposures to related parties is 20 percent. Related party activity is examined as a dimension of credit risk, and thus receives frequent attention from the inspectors (given that credit risk is a core risk). Continued supervisory efforts are needed to monitor the banks' corporate governance requirements on related party transactions (prudent policies, exposures' approval and its oversight by the Board, decision-making by avoiding conflict of interest, etc.).

F. AML/CFT

208. As discussed in Section IV on AML/CFT, the NBM has been strengthening its approach to the supervision of AML/CFT in banks. Vigorous and dissuasive enforcement by the NBM is essential for progress to be made in the banking sector in terms of guarding against AML/CFT risks. It is abundantly clear that the NBM needs to exert and maintain strong pressure on banks to improve their standards. Despite training, communication, guidance, recommendations and outreach by the supervisor, the NBM is conscious that the compliance and control culture in many banks is poor, leaving the banking sector exposed to AML/CFT risks.

209. It is therefore critical for the NBM to be able to have access to and to operate an effective sanctions regime and there are challenges that must be overcome in achieving this. At present the NBM, perforce, must act on the assumption that all of its enforcement decisions will be challenged as this is the current experience. An important test case was before the Constitutional Court, at the time of the mission, in which a bank was challenging the concept of "seriousness" because it had been sanctioned for "serious" breaches. Should the judgement go against the NBM, future opportunities to successfully impose sanctions and operate a meaningful and effective enforcement regime will be further weakened.

210. The NBM's ability to drive progress from an AML/CFT perspective rests in part on its willingness to act as well as on the ability of the enforcement system to operate effectively. Recommendations for the NBM are as follows:

- **Strong coordination and cooperation between the AML and Banking Supervision Departments is needed.** Proactive sharing of information and analysis of banks will support the effectiveness of the work of both departments.

- **Strong pressure on banks concerning any weaknesses in their AML/CFT regimes, with particular attention on PEPs and BOs.** Regardless of the risk of legal challenge, the NBM needs to pursue every weakness that it identifies in banks' management of these risks.
- **The AML/CFT Law should be amended to increase the magnitude of sanctions for AML/CFT failings.**
- **The law needs to be amended to protect the use of professional, risk-based judgment by the NBM.**

Conclusion

211. The rule of law and the supervisor's ability to base decisions and actions on professional judgement (use of discretion) are essential for sound governance with respect to financial sector oversight. These two conditions underpin all the recommendations that are made in this section of the report. While noting that interaction between NBM and courts is not a new issue and was a major concern in the FSAP, the authorities have been improving their framework since 2013, and although judicial review provisions applicable to the NBM have become more advanced than many jurisdictions, the underlying problems connected to the broader governance issues have forestalled meaningful outcomes. Without these conditions, further progress in Moldova is unlikely to be achieved and existing progress will be on fragile grounds. In other words, advances in governance with respect to financial sector oversight cannot be made in isolation from wider and deeper reforms that are discussed in other sections of this report (notably, Section II on Rule of Law and Section VIII on Central Bank Governance). Although some recommended actions will rely upon the NBM to be taken forward, a number of the more fundamental issues require a broader set of actors and rest on the application and interpretation of the relevant laws. The use of professional judgment by the supervisor needs to be protected in law. The supervisory staff require enhanced legal protections (which should not be confused with immunity from gross negligence). These changes can be achieved through legislative amendment. Moreover, the use of suitably amended laws depends on Moldova being able to foster a transparent and consistent application of the law, through an efficient and independent judiciary and the availability of competent, independent and experienced professionals (lawyers). At the time of the 2014 FSAP, there were many weaknesses, and it is clear (See Section II on Rule of Law) that many challenges persist.

ANNEX 1. FULL LIST OF RECOMMENDATIONS

Measure	Authority in Charge	Objective	Timeline (short term/medium term/long term)
Rule of Law			
Improve the procedure for selecting successful judicial candidates and ensure that stipulated procedures are followed in all cases.	MOJ, SCM	Improve capacity and integrity of judges; reduce corruption vulnerabilities.	S/MT
Increase transparency in SCM decision-making to require all SCM decisions to be well-reasoned and for such reasoning to be made publicly available.	MOJ, SCM	Improve integrity and accountability of judiciary.	Immediate
Clarify powers and responsibilities of the judicial inspectorate. Improve procedures for carrying out the conduct of such activities – all communications and inquiries into judges should be properly documented and linked to specific potential disciplinary actions. Judicial Inspectors should also be subject to performance evaluations and sanctions for misconduct.	MOJ, SCM	Improve integrity and accountability of judiciary; reduce corruption vulnerabilities.	ST
Streamline the process for disciplinary proceedings.	MOJ, SCM	Improve efficiency and integrity of judiciary.	S/MT
Ensure that disciplinary proceedings are initiated where judges are subject to criminal proceedings and ensure that referrals to criminal prosecution are made where criminal misconduct is detected.	MOJ, SCM	Improve integrity and accountability of judiciary; reduce corruption vulnerabilities.	S/MT
Enhance the integrity testing of judges. Integrity of judges and candidates should be verified at each stage of their career. Integrity vetting should be done in an official and transparent manner and should include checks of asset declarations and conflicts of interest.	MOJ, SCM	Improve integrity and accountability of judiciary; reduce corruption vulnerabilities.	ST
Enhance the selection process of SCM candidates and members to ensure that its judicial members have impeccable reputation and integrity, including by establishing an independent commission (including international experts and members of the legal profession and civil society) to pre-	MOJ	Improve integrity and accountability of judiciary; reduce corruption vulnerabilities.	ST

screen candidates/nominees to the SCM and assess their integrity.			
Repeal CC 307 in its current form to prevent the use of this provision to undermine judicial independence.	MOJ	Improve independence and integrity of judiciary; reduce channels for corruption and intimidation.	Immediate
Eradicate the practice of lie detector testing of judicial candidates at all stages of a judge's training and career.	MOJ, SCM	Improve independence and integrity of judiciary; reduce channels for corruption and intimidation.	Immediate
Narrow the scope of powers and responsibilities of court presidents.	MOJ, SCM	Improve independence and integrity of judiciary; reduce channels for corruption and intimidation.	ST
Ensure that all transfers are subject to proper recruitment procedures.	MOJ, SCM	Improve integrity and accountability of judiciary; reduce corruption vulnerabilities.	ST
Clarify the procedures of convening of the General Assembly (including by specifying the requirements for convocation and the grounds for denial of a convocation).	MOJ, SCM	Strengthen ability of judges to self-govern.	ST
Establish a mechanism to involve judges in the appointment, evaluation, and removal of court presidents and deputies of the courthouses in which they sit.	MOJ, SCM	Improve independence and integrity of judiciary; reduce channels for corruption and intimidation.	S/MT
Conduct an external audit/assessment of how effectively NIJ is educating judicial trainees and whether recruitment practices are sufficiently merit-based.	MOJ	Improve capacity and integrity of judges; reduce corruption vulnerabilities.	ST
Establish a mechanism to gauge and monitor the effectiveness of reforms, including periodically commissioning external audits of the judiciary to assess independence and effectiveness.	MOJ	Improve capacity and integrity of judges.	ST
Liberalize the justice sector by permitting judges to participate in external meetings without SCM authorization.	MOJ, SCM	Improve capacity of judges.	MT

Strengthen oversight over bailiffs by amending the Law on Bailiffs to establish a disciplinary liability mechanism for bailiffs and defining the role and responsibilities of the professional body.	MOJ	Improve integrity and accountability of justice officials; efficiency of commercial dispute resolution.	Medium term
Streamline mechanisms to trace debtors' assets.	MOJ	Improve efficiency of commercial dispute resolution.	MT
Streamline the procedures for enforcing court judgements.	MOJ	Improve efficiency of commercial dispute resolution.	MT
Remove mandatory mediation from the courts.	MOJ	Improve efficiency of commercial dispute resolution.	MT
Develop the methodology for the of monitoring of implementation of the new National Justice Strategy, including with the development of specific indicators of effectiveness in consultation with designated members of the monitoring group.	MOJ	Improve independence, integrity, and effectiveness of justice sector.	Immediate
Anti-Corruption Framework			
Criminalize abuse of power in line with the UNCAC.	MOJ	Strengthen anti-corruption legal framework.	MT
Review the structure of the illicit enrichment offence, including the interpretation of the burden of proof.	MOJ, Law Enforcement, Judiciary	Strengthen anti-corruption legal framework.	MT
Increase the maximum sanctions for performance of duties in the public sector in situations of conflict of interest, non-aggravated trading in influence and money laundering to at least six years.	MOJ	Strengthen anti-corruption legal framework.	MT
Amend articles 364-1 CPC and 80 CC to limit their application in corruption cases and to condition on accused's assistance to investigation.	MOJ	Strengthen anti-corruption legal framework.	MT
Review provisions on mitigating and exceptional circumstances and their application, which may result in reducing dissuasiveness of sanctions.	MOJ, Judiciary	Improve dissuasiveness of sanctions in corruption cases.	MT

Make application of exemptions from criminal liability for active bribery and trading in influence optional.	MOJ	Strengthen anti-corruption legal framework.	MT
Pursue cases of possible liability of legal persons in corruption offences.	Law Enforcement	Improve effectiveness of anti-corruption enforcement.	ST
Amend the PG Guidelines to make financial investigations into possibility of extended confiscation obligatory in all corruption cases.	PGO	Improve asset recovery in corruption cases.	ST
Ensure full compliance with the requirements of an anti-corruption expertise for normative acts.	Government	Limit anti-corruption risks.	ST
Leverage NAC's operational analysis for detecting and investigating illicit enrichment and declaring false information in the asset declarations.	NAC, APO	Improve effectiveness of anti-corruption enforcement.	ST
Conduct and publish strategic analysis and studies of corruption.	NAC	Increase understanding of corruption risks.	ST
Adjust investigative jurisdiction of APO to target exclusively high-level corruption.	MOJ, APO	Improve effectiveness of anti-corruption enforcement.	MT
Reconsider APO's role in overseeing and representing in court investigations by NAC.	MOJ, APO, NAC, PGO	Improve effectiveness of anti-corruption enforcement.	MT
Transfer the representation of APO cases in the appeal and cassation courts to APO.	APO, PGO	Improve effectiveness of anti-corruption enforcement.	MT
Reduce the reliance of APO on external staff, including by amending the legal framework to hire own investigative officers.	APO	Strengthen the operational independence of APO.	LT
Grant APO authority over its HR, including limiting the PG powers to transfer prosecutors to APO and involvement of APO in selection and disciplining of APO staff.	APO, PGO	Strengthen the operational independence of APO.	MT
Strengthen the selection process for APO head with participation of international experts, civil society, allowing non-prosecutors to apply.	MOJ, APO	Strengthen the independence of APO.	ST

Introduce the integrity criteria, including the scrutiny of assets, to promotion and transfers of prosecutors and evaluation of their performance.	SCP	Promote integrity in prosecution service.	ST
Transfer the disciplinary function from the PGO to the SCP.	PGO, SCP	Promote integrity in prosecution service.	ST
Limit the rights of PG as a superior prosecutor to the APO head and to withdraw or transfer cases from/to APO.	PGO, MOJ	Strengthen the independence of APO.	ST
Grant a separate budget to APO.	PGO, APO, MOF	Strengthen the independence of APO.	ST
Leverage financial intelligence to detect corruption.	APO, NAC, SPCML	Improve effectiveness of anti-corruption enforcement.	MT
Intensify investigations of embezzlement by public officials, illicit enrichment and declaring false information.	APO, NAC	Improve effectiveness of anti-corruption enforcement.	LT
Review and publish a study of court practice and factors leading to lenient sanctions in corruption cases.	Judiciary, APO, NAC, PGO, MOJ	Improve dissuasiveness of sanctions in corruption cases.	MT
Refocus corruption investigations from private citizens to public officials and public sector corruption.	APO, NAC	Improve effectiveness of anti-corruption enforcement.	LT
Intensify efforts in pursuing asset recovery granting CARA the necessary autonomy.	Government, NAC	Improve effectiveness of anti-corruption enforcement.	LT
Prioritize investigation of high-level corruption.	APO	Improve effectiveness of anti-corruption enforcement.	LT
Recruit additional NIA staff to fill all vacant posts.	NIA	Improve effectiveness of asset declaration regime.	Immediate
Refine the assessment of high-risk public officials to be in line with the main corruption risks identified in the country.	NIA	Improve effectiveness of asset declaration regime.	S/MT
In an exceptional exercise (to be repeated periodically), conduct a sectoral verification of all assets of judges and prosecutors.	NIA	Improve effectiveness of asset declaration regime.	ST

Bolster enforcement efforts against non-compliance with asset declaration requirements and impose sanctions that are dissuasive, effective, and proportionate.	NIA	Improve effectiveness of asset declaration regime.	S/MT
Fill all vacant posts in the security, audit, and integrity verification unit and operationalize the unit.	NIA	Improve effectiveness of asset declaration regime.	Immediate
If proceeding with the transition to a market-based declaration system, the NIA should develop a clear plan of verification including which market based indicators are to be referenced and what margin of error is to be acceptable.	NIA	Improve effectiveness of asset declaration regime.	Immediate
AML/CFT			
Conduct cross-sectoral thematic inspections of banks based on the main areas of deficiencies identified by the external audit.	NBM	Improve application of preventive measures among reporting entities.	ST
Conduct regular targeted exams following deficiencies identified in the context of full-scope exams.	NBM	Improve application of preventive measures and understanding of ML/TF risks among reporting entities.	S/MT
Provide the PSA with sanctioning powers for non-compliance with registration requirements relating to beneficial ownership information.	MOJ	Improve quality of beneficial ownership information in company registry.	Immediate
Carry out a comprehensive assessment of ML risks from legal entities and develop risk mitigation strategies.	NBM, SPCML	Improve understanding of ML risks among regulatory authorities and reporting entities.	S/MT
Compile a list of domestic positions/functions that are considered to be prominent public functions for the purpose of identifying PEPs.	NBM, SPCML	Improve application of preventive measures by reporting entities.	S/MT
Impose effective, proportionate and dissuasive sanctions for non-compliance with AML/CFT obligations	NBM	Effectively sanction ML/TF.	S/MT
Considering the reform of STR system, conduct a thematic inspection regarding banks' systems for reporting of suspicious transactions, with a	NBM, SPCML	Improve application of preventive measures by reporting entities.	ST

particular focus on transactions relating to PEPs.			
Conduct a strategic analysis of corruption-related ML trends and methods.	SPCML, APO	Improve understanding of ML risks stemming from corruption.	S/MT
Enhance capacity of law enforcement to use financial intelligence and to conduct financial investigations through targeted trainings.	NAC, APO, SPCML	Improve detection and investigation of corruption and asset recovery.	MT
Intensify efforts to investigate and prosecute corruption-related ML in line with Moldova's risk profile, including by leveraging the evidence in corruption-related parallel financial investigations.	NAC, APO	Increase effectiveness of anti-corruption criminal justice.	LT
Public Financial Management			
Publish in the online register of legal acts the Orders of the Minister or the Board of Directors on the annual budgets of the FNDAMR, the RDF, the FVV, and the Ecological Fund at the beginning of a financial year and their supplementary budgets if any.	MADRAM	Ensure budget transparency of funds.	ST
Customize MTender to publish all information on low value public procurement and monitor contract execution in the system.	AAP, ANSC	Improve transparency and regularity of public procurement.	S/MT
Amend the LPP to clarify the ANSC's jurisdictions and establish the AAP's powers to impose administrative sanctions against irregularities.			
Shift "1C" application to the centralized platform administered by the CTIF and roll it out to all budgetary and self-management authorities and funds.	CTIF, MOF	Strengthen information system controls for financial management.	M/LT
Develop an automated interface between the SIMF and MTender.			
Issue a Government Decision on the project selection and management for capital repairs of townhall roads, by incorporating lessons learnt from the Good Road Moldova program.	MOE, MOF, MADRM, APP	Strengthen public investment management.	S/MT

Reappraise the Ecological Fund projects that have been ongoing for a long period of time to determine whether they should be discontinued or the project scope should be limited.			
Establish a new agency that centralizes the project management of the Ecological Fund with significantly augmented capacity.			
Amend the PPP Law to strengthen the project appraisal and transparency and introduce strict administrative sanctions against violation of the PPP Law and other relevant laws.			
Publish a report that includes classifications of non-performing loans and quantification of credit risks arising from the “First House” and loan programs to a private sector.	MOF, BNM	Enhance transparency in the loan and guarantee programs.	ST
Develop automated interfaces between the RBI, land use records, and register of public patrimony and update three registers based on the actual survey results through the mass delimitation exercise.	APP, ASP, ARFC	Develop a complete register of government owned lands and ensure regularity of their leasing.	MT
Revise the Law on Normative Price of Land to bring prices of sales and lease of publicly owned lands close to market values.			
Establish the single framework for fiscal reporting of self-management authorities based on the harmonized chart of accounts and accounting standards.	MOF	Harmonize the fiscal reporting of self-management authorities.	MT
Continue undertaking external audits of high priority areas (including audits of the Good Road Moldova program and PPPs and IT audits of “1C” systems of major entities etc.).	Court of Accounts	Continue undertaking external audits of high priority areas.	Medium-term
Organize the horizontal audit of topics of national importance by internal auditors.	MOF, MADRM	Facilitate the development of internal audit capacity.	S/MT

Concentrate internal auditors at the ministerial level for large ministries (e.g. MADRM).			
SOE Governance			
Government should issue a policy that specifies ownership, oversight, and policy responsibilities on SOE management.	MOF, MOE, PPA	Streamline Government responsibilities on SOE management and oversight.	S/MT
Triage of SOE Portfolio.	MOF, MOE, PPA	Define rationale for Government ownership.	MT
Reduce SOEs to one legal form, preferably JSC incorporation for all.	MOF, MOE, PPA		MT
Include independent directors and audit committees and remove Censor Committee.	MOF, MOE, PPA	Enhance corporate governance of SOEs.	S/MT
Develop supporting regulations for board member appointment and evaluation.	MOF, MOE, PPA	Enhance corporate governance of SOEs.	S/MT
Develop remuneration policies for executives and board members, and limit to the bare minimum, with a medium-term objective of eliminating completely the presence of ex-officio employees on the board.	MOF, MOE, PPA	Enhance corporate governance of SOEs.	S/MT
Develop supporting regulation on model charters, internal control and internal audit expectations for SOEs, clarify accounting standards, and develop clear and enforceable penalties for failure to report and disclose financial information.	MOF, MOE, PPA	Enhance corporate governance of SOEs.	S/MT
Tax Administration			
Commission regular independent integrity perceptions surveys of the STS.	STS	Increased awareness of community concerns; tracked progress over time.	M/T
Amend Art. 133 of the Tax Code to provide that the STS Director position is filled through competition and is for a fixed term independent of the political cycle or new Ministerial appointments.	MOF	Strengthened independence and greater public trust in the STS.	S/T

Establish a senior STS management group with a specific remit to coordinate the assessment of corruption risks and develop more comprehensive action plans.	STS	A more complete assessment of corruption risks and actions required; a clearer locus of responsibility within STS for anticorruption policy.	S/T
Better monitor the integrity and professionalism of tax inspectors with a structured and independent system of post-audit quality control.	STS	Reduced corruption in the area of tax audit and control.	S/T
Change HRM procedures to (a) request integrity records for all new recruits, (b) make promotions through competition, and (c) update staff rotation policy and remove legal requirement for prior consent.	STS	Reduced corruption vulnerability and greater transparency on promotion appointments.	M/T
Change the mandate of the STS subdivision responsible for staff integrity assurance to focus on corruption prevention and detection.	STS	Increased focus on anti-corruption and greater likelihood of detecting integrity incidents.	S/T
Address weaknesses in data security and formalize security and access protocols with the external IT provider in an MoU.	STS and CTIF	Improved data security; less vulnerability to corruption or fraud.	S/T
More actively engage with STS staff and businesses (through training and outreach programs) to encourage reporting of integrity incidents.	STS	Increased level of reported integrity incidents.	S/T
Ensure that the new criminal investigation competence for STS is grounded on comprehensive procedural safeguards and sufficient trained investigators; and scale back the proposed size of the new sub-division.	STS Prosecutor's Office	Increased confidence that proper procedural safeguards and sufficient high-integrity, professional staff will be in place from the start.	S/T
Review collaboration and exchange of information arrangements between STS and other law enforcement bodies, and put them on a clear legal basis.	STS	More effective inter-agency cooperation in tackling wider financial crime; less reliance on MoUs.	M/T
Central Bank Governance			
Amend the NBM Law.	NBM Government Parliament	(i) Safeguarding the operational independence of the NBM's prudential supervisory function, (ii) strengthening NBM's autonomy and (iii) further	S/MT

		improve its governance and autonomy.	S/MT
Financial Sector Oversight			
Amend the NBM Law (and Law on Activities of Banks where needed).	NBM (with IMF consultation) Government and Parliamentary process	Ensure the legal ability of the NBM to use discretion (i.e. professional judgement) in reaching decisions and taking supervisory actions.	ST
		Amend legal protections for NBM staff, in particular for all personnel in respect of any work carried out in, or in support of the activities of the Regulation, Supervision and AML/CFT Departments.	ST
		Set out detailed requirements to avoid conflicts of interest, for members of the Management or Executive Boards and all staff members of the NBM. Equity ownership of any supervised institution must be prohibited.	S/MT
		Clarify that the objective of the supervisory mandate is to promote the safety and soundness of the banks and banking sector.	S/MT
		Require the reasons for the dismissal of the Governor or any member of the Supervisory or Executive Board of the NBM to be made public.	S/MT
		Increase magnitude of tariffs where sanctions apply, including for AML/CFT failings in banks.	S/MT

Amend internal regulations of the NBM.	NBM Regulation Department and Management and Executive Boards	Develop internal NBM regulations to set out the conditions that constitute a conflict of interest. Undertake a review to identify if any staff member already has an equity holding in a supervised entity and apply mitigating measures if applicable.	MT
Amend internal regulations of the NBM.	NBM Regulation Department and Management and Executive Boards	Internal procedures and governance must establish a comprehensive process for the documentation and decision making on supervisory matters.	ST
Enhance personnel policy.	NBM Human Resources Department and Management and Executive Boards	Focus on the hiring and retention of increased number of skilled staff for the supervisory function.	ST
Institute a mandatory interview for any new Board member.	NBM Regulation and Supervision Departments	To raise intensity of fit and proper assessments of all new members of management or supervisory boards.	Immediate and ongoing
Prepare manuals on authorization and change of control.	NBM Regulation Department	To ensure robust consistency of approach in analysis and decision making.	Immediate and ongoing
Adopt horizontal/ thematic inspections, to cover all banking sector.	NBM Supervision and AML/CFT Departments	To understand range of practice and provide relevant feedback to banks.	Immediate and ongoing
Ensure systematic, regular coordination and information exchange.	NBM Banking Supervision and AML/CFT Departments	To avoid gaps in information and analysis and ensure coordinated action when needed.	Immediate/ST
Initiate legal action for all AML/CFT breaches.	NBM AML/CFT and Legal Departments	To ensure that all AML/CFT breaches are sanctioned in an effective, dissuasive, and proportionate manner.	Immediate and ongoing

ANNEX 2. LIST OF MEETINGS WITH OFFICIALS AND STAKEHOLDERS

Center for Information Technology in Finance

Competition Council

Court of Accounts

EBRD

EU High-Level Advisors in the fields of anti-corruption, anti-money laundering and customs policy

Financial Statements Information Services

General Prosecutor's Office

IDIS Viitorul

Ministry of Economy and Infrastructure

Ministry of Finance

National Anti-Corruption Center

National Bank of Moldova

National Integrity Agency

Public Property Agency

STS

Transparency International – Moldova

UK Fund for Good Governance

United States Office of Technical Assistance

World Bank

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