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**JOINT STAFF WORKING DOCUMENT**

**Second progress report on the implementation by the Republic of Moldova of the Action  
Plan on Visa Liberalisation**

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### **Second progress report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation**

*This document is a Commission and European External Action Service Staff Working Document for information purposes. It does not represent an official position of the Commission and European External Action Service on this issue, nor does it anticipate such a position.*

#### **I. Background**

The EU-Republic of Moldova Visa Dialogue examining the conditions for visa-free travel for citizens of the Republic of Moldova to the EU was launched on 15 June 2010. The Action Plan on Visa Liberalisation (VLAP) was presented to the Moldovan authorities by the Commission on 24 January 2011. In line with the methodology of the VLAP, the Commission has to report regularly to the European Parliament and to the Council on the implementation of the VLAP. The First Progress Report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation (First Progress Report) was presented on 16 September 2011 (see SEC (2011) 1075 final).

A Senior Officials Meeting took place on 7 October 2011, during which the First Progress Report was presented and the next steps in the process were discussed. Evaluation missions on Blocks 2, 3 and 4 of the VLAP were organised in the second half of October and at the beginning of November 2011 involving experts from EU Member States accompanied by officials of the Commission services and the EEAS. The cut off date for submission of the legislative framework to be covered by assessment missions was 15 October 2011. Draft legislation submitted by then was also considered. The purpose of the expert missions was to assess the legislative, policy and institutional framework under the first phase benchmarks of the VLAP and its compliance with European and international standards. The expert reports were finalised by the end of November and beginning of December 2011.

The Republic of Moldova provided its second progress report on implementation of the VLAP and the accompanying legislative framework, translated into English, on 28 November 2011.

The EU-Republic of Moldova Visa Facilitation and Readmission Joint Committees met back to back on 12 May 2011. The Commission services took note of the overall satisfactory implementation of the EU-Republic of Moldova Readmission and Visa Facilitation Agreements. Both sides exchanged experiences with implementation of the Readmission Agreement and no particular problems were raised. As regards implementation of the Visa Facilitation Agreement, the Joint Committee regularly addressed the issue of fraud in supporting documents. The Republic of Moldova reported that it had designated contact points within its administration to allow Member States' consulates quickly to verify the authenticity of certain categories of supporting documents.

## II. Assessment of measures under the four blocks of the Visa Liberalisation Action Plan

### Block 1: Document security, including biometrics

#### General assessment

The legislative framework is generally in place. A clear schedule has been provided for the complete roll-out of International Civil Aviation Authority (ICAO)-compliant biometric passports, including at Moldovan consulates abroad, as well as for the complete phasing-out of non-ICAO compliant passports.

#### Detailed comments

- **Consolidation of the legal framework for the issuing of machine-readable biometric passports in full compliance with the highest ICAO standards on the basis of secure identity management (civil registry and breeder documents) and taking into account adequate protection of personal data**

The legal framework for issuing machine-readable biometric passports, in full compliance with the highest ICAO standards, has been supplemented by two laws adopted on 9 June 2011 and a Government decision adopted on 10 May 2011. These additional provisions ensure a consolidated framework for secure identity management.

- **Adoption of an Action Plan containing a timeframe for the complete roll-out of ICAO-compliant biometric passports, including at Moldovan consulates abroad, and the complete phasing out of non-ICAO-compliant passports**

Regarding this benchmark, an Action Plan with a clear schedule has been adopted.

- **Establishment of training programmes and adoption of ethical codes on anti-corruption, targeting officials of any public authority that deals with passports, as well as identity cards and other breeder documents**

The 'Ethical Code for staff working in civil registration and document issuance' was adopted on 1 April 2011. It refers to the Labour Code for sanctions in the event of violation. It introduces provisions on conflicts of interest, incompatibilities and obligation to report irregularities.

The Order 'on some prevention measures against corruption and protectionism' was approved on 31 May 2011 by the Director General of the CSIR '*Registru*' and was followed by the 'Risk Management Action Plan on corruption risks in the area of population documentation and civil status registration' on 11 August 2011. Training courses for the employees of the territorial subdivisions for population documentation were given during the first ten months of 2011.

## **Block 2: Irregular immigration, including readmission**

### **General assessment**

In the area of border management, most of the relevant legislation has been adopted and the remaining elements are pending approval by Parliament. The institutional framework is in place, including provisions on training and ethical codes to fight corruption. With regard to migration management, the Republic of Moldova has made very good progress on laying down a comprehensive basis for an efficient migration management system. The relevant legislative framework is largely in place, with some of its elements pending approval by Parliament. Although some improvements are necessary, the instruments adopted and the drafts are largely in line with European and international standards. Most of the institutional framework is in place, although more resources should be allocated to implementation of the relevant provisions. In the area of asylum, there is a solid legislative basis largely in line with European and international standards, which will be completed once the Law on Integration is approved by Parliament. One important gap is the lack of travel documents for refugees.

### **Detailed comments by policy area**

#### **1 Border management**

- **Consolidation of the legal framework for border management including adoption of a new Law on the State Border, allowing the Moldovan Border Guard Service to participate in the detection and investigation of cross border crime in cooperation with all competent law enforcement authorities and extending its area of responsibility to the whole territory, as well as a legal framework for efficient inter-agency cooperation between the Border Guard Service, law enforcement agencies and other agencies involved in border management**

The 'Law on the State Border' was adopted on 4 November 2011. It follows the definitions and framework of the Schengen Borders Code (Regulation (EC) 562/2006) and also takes into account the European Union legal framework for carriers' liability. As such, it provides a good framework for other legislation and policy papers.

Three laws are pending approval by Parliament: the draft 'Law on Border Police', the draft 'Law amending some legislative acts in order to grant the Border Guard Service competencies for prosecution and examination of administrative offences, inspection of travel documents, liability of carriers for transportation of foreigners without necessary legal documents and detection and investigation of cross-border crime, of smuggling and of trafficking in human beings' and the draft 'Law on Carriers'. The Republic of Moldova intends to have the legislative framework and the policy package in force by July 2012. The draft 'Law on Border Police', as it currently stands, provides a good basis for demilitarisation and professionalisation of the Border Guard Service, which will be transformed into a Border Police. The law will lay a solid foundation for modern border management. It will also confer the competences and executive powers necessary for efficient border policing.

In particular, the legislation will allow the Border Police to participate in detection and investigation of cross border-crime in cooperation with all competent law enforcement authorities. It will also extend the Border Police's area of responsibility to the whole territory. Furthermore, the law provides a legal framework for efficient inter-agency cooperation between the Border Police, other law enforcement agencies and other agencies involved in

border management. However, cooperation arrangements, operational procedures and the division of tasks should be clarified before the new legislation and policy framework enter into force. In particular, procedures for surveillance of aliens and for dealing with detected illegal immigrants and asylum-seekers should be agreed through cooperation protocols at least.

The Moldovan Border Guard Service has cooperation agreements and protocols with the neighbouring countries, namely Romania and Ukraine, which provide a basis for cooperation with border guards in those neighbouring countries. Cooperation agreements have been signed with several EU Member States (Latvia, Lithuania, Estonia, Hungary and Poland), as well as with Russia and Georgia. The Border Guard Service intends to finalise cooperation agreements with the border guard services from Belarus and Kazakhstan in 2012. A working arrangement with FRONTEX was signed in August 2008 and the Republic of Moldova is fully committed to and active in its cooperation with the EU Border Assistance Mission (EUBAM).

- **Adoption of an Action Plan for the effective implementation of the National Integrated Border Management Strategy, containing a timeframe and specific objectives for the further development of legislation, organisation, infrastructure, equipment, as well as sufficient financial and human resources in the area of border management**

The National Strategy on Integrated Border Management (IBM) for 2011-2013 was adopted on 27 December 2010. It addresses all topics relevant for efficient border management and is in line with European standards and best practices.

The IBM Action Plan for 2011-2013 was approved on 16 May 2011. It contains more detailed plans on how the national IBM Strategy will be implemented, including concrete objectives and actions. Like the IBM Strategy, the IBM Action Plan is well drafted and includes all topics relevant for implementing the IBM Strategy. The main objectives cover areas connected with improving the legislative and policy framework, border control and inter-agency and international cooperation and with developing the organisational structure, management of human resources, logistics and a risk analysis system. When implemented, the IBM Action Plan should be supplemented by more detailed plans which include inter alia numbers and locations of equipment and devices, as well as plans on establishing coordination centres, an Air Surveillance Service and a Document Examination Centre.

The legislative framework provides for sufficient financial and human resources in the area of border management.

- **Establishment of training programmes, and adoption of ethical codes on anti-corruption specifically targeting border guards, customs and any other officials involved in border management**

A number of training programmes, both theoretical and practical, have been established, at both basic and university level. Continuous training for (internal and external) staff aiming to raise the level of professionalism is also provided. The training programmes in place offer a good framework to provide for professional border management staff.

An appropriate policy framework for corruption prevention and for ethical behaviour of officers is in place. The Deontological Code for border guards, including rules on behaviour in case of a conflict of interests and principles for the use of force was approved on 13 June 2008. The Customs Service has a similar ethical code. Moreover, the draft Law on Border Police spells out border police officers' rights and obligations and, in this context, also includes ethical norms. The IBM Strategy and the IBM Action Plan include measures on corruption prevention. They take into account the Schengen Catalogue's recommendations and best practices. In addition, several anti-corruption activities have been launched under the auspices of the EUBAM.

## **2. Migration management**

- **Consolidation of the legal framework for migration policy, including measures for the reintegration of Moldovan citizens (returning voluntarily or under the EU-Republic of Moldova readmission agreement) and the fight against irregular migration (including efforts to conclude readmission agreements with main countries of origin and inland detection of irregular migrants)**

A new 'Law on foreigners' in the Republic of Moldova was adopted on 16 July 2011. It is a framework law on the legal procedures for granting residence rights to foreigners in the Republic of Moldova. Its extensive provisions cover all fields of immigration matters. Additional operational procedures have been in place since July 2011, bringing greater clarity to the new law. However, some older national laws still apply to legal stays of foreigners in the Republic of Moldova. In order to increase legal certainty, they should be repealed and integrated into the new law (see also below under Block 4).

The draft 'Law amending the Contravention Code of the Republic of Moldova introducing the necessary amendments for the identification and regulation of carriers involved in the transportation of persons from / to the Republic of Moldova' is pending approval by Parliament. It is in line with European standards.

A 'one-stop-shop' was established within the Bureau for Migration and Asylum (BMA) under the new 'Law on foreigners' in January 2011. The new law makes procedures for applying for visas, residence and work in the Republic of Moldova clearer and simpler. It is an important step forward in development of a migration management system.

The draft 'Law on Integration of Foreigners' is pending approval by Parliament. When adopted, it will bring greater legal certainty with regard to the integration rights and facilities that are to be provided for all foreigners eligible for the integration process in the Republic of Moldova. It will be an important legislative achievement and a step towards the establishing an integration mechanism in the Republic of Moldova, including involving the relevant central and local authorities.

Concerning the reintegration of Moldovan migrants back into the country, the Republic of Moldova is developing a new Action Plan to replace the former Plan on fostering the return of Moldovan migrant workers from abroad. A number of activities have been implemented, such as the PARE 1+1 Programme, which foresees training on entrepreneurial skills as well as financial assistance for business start-ups. In addition, activities aimed at improving the system for the recognition of skills and qualifications, as well as strengthening the local labour market have been implemented, including in the context of the EU-Republic of Moldova Mobility Partnership.

The draft 'Law on the Republic of Moldova's accession to the Convention on the Status of Stateless Persons' (adopted on 28 September 1954 in New York) and the draft 'Law on the country's accession to the Convention on the Reduction of Statelessness (adopted on 30 August 1961 in New York)' are pending approval by Parliament (see also below under Block 4). These draft laws will fill the legislative gap in this field.

The Republic of Moldova issued Methodological Recommendations on fight against illegal stay of foreigners, which provide operational guidelines for immigration officers working at local level.

With regard to institutional capacity, the BMA was empowered with complex prerogatives, as the main body responsible for managing migration flows on the territory of the Republic of Moldova. Further capacity building of the BMA is needed, especially at local level, as well as establishing cooperation protocols between the relevant bodies of the Ministry of the Interior, which would clarify the division of competences during the immigration procedures.

The Republic of Moldova is party to following readmission agreements with the European Union (in force since 1 January 2008), Ukraine (1997), Switzerland (2004 and 2010), Norway (2006), the Former Yugoslav Republic of Macedonia (2008), Serbia (2011) and Denmark (2011). Between 2009 and 2011, the Republic of Moldova signed additional implementing protocols to the EU-Republic of Moldova Readmission Agreement with 11 EU Member States. Negotiations are under way with another 11 EU Member States.

At the same time, negotiations to readmission agreements with the main countries of origin of irregular migrants continued. In 2007, a draft intergovernmental agreement on readmission of persons residing without authorisation was approved and sent to the following countries: Russia, Uzbekistan, Tajikistan, Georgia, Azerbaijan, Armenia, Kazakhstan, Belarus, Kirghizstan, Turkmenistan, Turkey, Syria, Bangladesh, India, Lebanon, Pakistan, Jordan, Afghanistan, Iran, Iraq, China, Bosnia Herzegovina and Montenegro. Negotiations are under way with Russia, Montenegro and Bosnia Herzegovina. Negotiations on the signing of a new readmission agreement with Ukraine have been launched. Some developments have been reported in the negotiations with Turkey. The Turkish authorities have asked the Moldovan authorities for a visa free regime. According to the Republic of Moldova, one of the conditions is conclusion of a readmission agreement with Turkey.

- **Adoption of a National Migration Management Strategy for effective implementation of the legal framework for migration policy and an Action Plan, containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The National Strategy on Migration and Asylum was adopted on 6 July 2011. It is an important policy tool for managing migration flows. The Strategy identifies objectives for a sufficiently long period of time (2011-2020) and defines principles that will ensure comprehensive and consistent implementation of policies. It also assigns the role of coordination of activities regarding the migration process in the Republic of Moldova to a Governmental Commission. The Strategy will be implemented through the Action Plan (2011-2015) that was adopted on 8 November 2011. The Action Plan contains detailed activities for achieving the long term objectives of the Strategy, the funding allocation, the institutions responsible, deadlines and progress indicators.

Appropriate human resources should be made available for the relevant authorities (especially the BMA) to fulfil their tasks for overall implementation of the Strategy.

- **Establishment of a mechanism for the monitoring of migration stocks and flows, defining a regularly updated migration profile for the Republic of Moldova, with data both on irregular and legal migration, and establishing bodies responsible for the collection and analysis of data on migration stocks and flows**

The complex Extended Migration Profile exercise, carried out by International Organisation for Migration (IOM) Republic of Moldova with financial support from the European Commission, is well advanced. This tool will help Moldovan authorities to manage migration better and to include migration issues in other policies, such as employment and social policy, for the overall development of the country. The Migration Profile was considered best practice at the Global Forum on Migration and Development (GFMD) which took place in October 2011 and Moldovan authorities have been active in sharing their expertise in that regard.

The “Migration and Asylum” Informational Integrated Automatic System has not been established yet. Inter-agency cooperation with regard to collecting and analysing data on migrants, including the extent of interconnection between information systems containing data about migrants remains to be clarified.

### **3. Asylum policy**

- **Consolidation of the legal framework for asylum policy through adoption of legislation on the integration of refugees or beneficiaries of other forms of protection**

The Republic of Moldova has adopted a solid legislative framework for asylum in a very short period of time. The most important law is the 'Law on Asylum', which was adopted on 18 December 2008 and entered into force on 13 March 2009. It provides the necessary institutional framework, legal procedures and principles and is largely in line with European and international standards. However, some of its elements require improvement. The law foresees the possibility for refugees to apply for a travel document. However, the authorities are under no obligation to grant one (it is a 'may' clause). Moreover, in practice, no travel documents are issued. There is an urgent need to ensure that beneficiaries of international protection can obtain a travel document. The authorities plan to be able to issue the documents by July 2012. In addition, the law foresees wider grounds for exclusion from refugee status and *refoulement* than the 1951 Convention. It should be amended accordingly. Some improvements should also be made to the law to allow the asylum-seekers the possibility to clarify any inconsistencies and gaps in their account and have access to the content of the interview report.

One of the main deficiencies in the existing Moldovan protection system is the lack of a special law on integration of foreigners, including beneficiaries of a form of protection. This gap will be filled by the new draft 'Law on the Integration of Foreigners' (see also below under Block 4), approved by the Government on 9 November 2011 and currently pending approval by Parliament (planned entry into force is on 1 July 2012). It contains provisions on how to put into practice the rights for refugees and beneficiaries of humanitarian protection described in the 'Law on Asylum'. To that end, the draft law provides the necessary institutional framework, legal procedures, mechanisms and principles. It also creates coordination mechanisms with central and local public authorities. In order to facilitate the



integration process, the Republic of Moldova should also consider lowering the residency requirement for acquiring citizenship by refugees, beneficiaries of humanitarian protection and stateless persons from the current requirement of eight years of legal and habitual residence to five years or fewer.

The Regulation on the Activity of the Centre for accommodation of asylum seekers is largely in line with European and international standards. The most important rights, duties and procedures are covered. Some improvements could be made, however, including with regards to special provisions for vulnerable groups or making the right to psychological and social assistance unconditional.

### **Block 3: Public order and security**

#### **General assessment**

The Republic of Moldova has made good further progress towards adopting the legislative framework required in the area of public order and security.

The legislative framework on combating organised crime is under finalisation, the draft 'Law on organised crime' being expected to be adopted soon. The current draft should be further aligned with the relevant international instruments. The Strategy and the accompanying Action Plan have both been approved. However the Action Plan should contain specific timeframes and detailed indicators, as well as the necessary human and financial resources, in order to provide a good basis for implementation of the Strategy. An effective institutional setting for combating organised crime should also be ensured.

The legislative and policy framework on combating trafficking in human beings is consolidated and advanced, in line with the international standards. The Action Plan for the period 2012-2013 should be approved soon. It should allocate the necessary human and financial resources.

Regarding the fight against corruption, a comprehensive legislative and policy framework is in place and in an advanced stage of consolidation. The Republic of Moldova has passed and is about to pass a considerable number of legislative amendments aimed at aligning the legislative framework with the main European and international instruments. However the high number of legislative amendments could affect legal certainty and create difficulties in implementation if no coherent vision is ensured. There are still some outstanding recommendations from the second round of Group of States against Corruption (GRECO) evaluation that remain to be addressed. A National Anti-Corruption Strategy was adopted by Parliament in July 2011, with detailed provisions on the monitoring process. It is imperative for the Strategy to be accompanied by a budget breakdown and for human and financial resources needs to be defined in detail and secured. The Strategy must also be complemented by an Action Plan that should set out concrete actions and results to be achieved, detailed measurable indicators, detailed budget and clear responsibilities for each activity. The institutional framework on preventing and fighting corruption, in place since 2002 and restructured several times, is also undergoing substantial reform. It is essential to ensure a coherent approach, as well as a clear distribution of powers between the institutions, guarantees for independence, efficiency and adequate human and financial resources. Concrete further actions are needed to put in place the institutional framework on verification of conflicts of interest, incompatibilities and asset declarations, as well as a reformed institutional setting for the Centre for Combating Economic Crimes and Corruption.

Good progress has been achieved on combating money laundering and the financing of terrorism. The legislative and policy framework is largely consolidated and increasingly compliant with international standards.

Regarding law enforcement cooperation, the level of coordination should be improved in order to allow an effective exchange of information.

As mentioned in the First Progress Report, the Republic of Moldova has acceded to all UN and Council of Europe conventions in the area of public order and security and to the vast majority of UN and Council of Europe Conventions regarding the fight against terrorism.

Additional contacts have taken place but, nevertheless, further steps remain to be taken to negotiate agreements with Europol and Eurojust, and in this respect the required data protection standards have to be ensured, including the effective implementation of Council of Europe Convention 108 and its Additional Protocol.

Very good progress has been made towards consolidating the legislative and institutional framework on data protection, namely ratification of the Additional Protocol to Council of Europe Convention 108 and the adoption of a new data protection law, further aligning the Republic of Moldova's data protection legislation with European standards. The institutional framework is in place and the independence and powers of the data protection supervisory authority, operational since 2009, have been strengthened by the new legal framework.

The Republic of Moldova took further steps for adopting the legislative and institutional framework required in the domain of the anti-drug policy, in line with European and international standards.

Progress has been made towards consolidating the legislative framework regarding judicial cooperation in criminal matters. Nevertheless Republic of Moldova has neither signed nor ratified the 2<sup>nd</sup> Additional Protocol to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters.

It is important to note that the assessment of the legislative framework under this block requires a complex evaluation of the wider and more comprehensive legislative and institutional context, bearing in mind *inter alia* the relevant provisions of the Criminal Code and Criminal Procedure Code as well as ongoing reforms of their provisions. Important reforms, relevant for the whole area of public order and security, like the reform of the Ministry of the Interior and its subordinated and decentralised institutions, the Justice Reform, and the reform of the Centre for Combating Economic Crimes and Corruption, were developed and are currently being implemented. It is encouraging that the institutional structures and competences are being addressed through a series of reforms. It is nevertheless important that coherence is ensured in conducting these parallel reforms and that clear objectives are articulated.

## **Detailed comments by policy area**

### **1. Preventing and fighting organised crime, terrorism and corruption**

- **Adoption of a law and comprehensive strategy on preventing and fighting organised crime, together with an action plan containing a timeframe, specific objectives,**

## **activities, results, performance indicators and sufficient human and financial resources**

Work has been progressing towards the finalisation of the legislative and policy framework on preventing and fighting organised crime. The draft 'Law on Preventing and Combating Organised Crime' was approved by the Government on 22 June 2011 and is expected to be adopted by Parliament soon. Regarding the policy framework, the Strategy for Preventing and Fighting organised crime for 2011-2016 was approved by the Government on 22 June 2011 and the Action Plan on 11 November 2011.

The draft 'Law on Preventing and Combating Organised Crime' clarifies the institutional framework in this area, redefining the activities and competences of the authorities responsible for preventing and combating organised crime, as well as the process of recruiting and training of officers. It establishes the tools for prevention and combating organised crime and introduces provisions on international cooperation. This draft law introduces some elements originating from international conventions, such as the United Nations Convention on Transnational Organised Crime (UNTOC), but it is more limited in scope. In addition to the draft law, provisions on preventing and fighting organised crime are to be found in the Criminal Code and in the Criminal Procedure Code.

The Strategy for preventing and fighting organised crime for 2011-2016 foresees permanent assessment of the threats and risks of organised crime. It establishes basic principles for fighting organised crime, general objectives as well as competences of line authorities. The main objectives of the Strategy are to promote institutional and functional development, to improve management capacity, to harmonise the law, to improve operational activity, to consolidate of international cooperation, and to strengthen cooperation between national authorities. It provides a good basis for tackling organised crime as long as the methods and the measures chosen are effective.

The accompanying Action Plan approved on 11 November 2011 covers the following areas: operational and institutional development, strengthening of inter-agency and international cooperation, strengthening and modernising management capacity, strengthening institutional capacity and adjusting the legal framework to the EU standards. The Action Plan is not entirely satisfactory. It includes a number of general objectives, which are adequate, but does not set deadlines for every measure. Most of the progress indicators are not measurable and not precise enough (for example "achieving a productive cooperation", "organising a democratic decision-making process", "removing the competence and organisational barriers" or "enhancing the efficiency of the targeted law enforcement"). The Action Plan should clearly mention the human and financial resources needed.

Regarding the institutional framework, several entities in preventing and combating organised crime: the General Prosecutor's Office, the Ministry of the Interior, the Security and Information Service, the Centre for Combating Economic Crimes and Corruption, the Customs Service and the Border Guard Service. The General Prosecutor's Office coordinates all the operative activities of these entities. Despite this coordinating function, the role and involvement of the General Prosecutor should be increased in order to allow an efficient fight against organised crime. It is important that the reconsideration of the role of the General Prosecutor is consistent with the ongoing institutional reforms, in particular the Justice and Criminal law reforms.

- **Consolidation of the legal framework on preventing and fighting trafficking in human beings and regular updating of the respective National Plan, including a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The legislative and policy framework on preventing and fighting trafficking in human beings (THB) has been in place for a number of years already and consolidated, as noted in the Visa Dialogue gap analysis of October 2010. The framework 'Law on Preventing and Fighting Trafficking in Human Beings' was adopted in 2005 and has been supplemented by a number of other legal acts, including the relevant provisions of the Criminal Code and Criminal Procedural Code as well as international conventions.

In addition to this, the 'Law on Ratification of the Council of Europe Convention (Lanzarote Convention) on the protection of children against sexual exploitation and sexual abuse', was approved by the Government on 26 August 2011.

The National Plan for Preventing and Combating THB for 2010-2011 was approved on 13 September 2010 and included measures to tackle this phenomenon. An Additional Plan to the National Plan for Preventing and Combating THB for the years 2010-2011, was approved on 21 December 2010 providing for more concrete measures. One of its goals was to improve of the mechanism for investigating and prosecuting the involvement of civil servants in THB cases. It also aims at increasing protection of children who are victims of trafficking, which still remains an issue of concern. It addresses national and international cooperation, awareness raising and information.

Both these Action Plans include most of the elements required: a timeframe, specific objectives, activities and expected results but without performance indicators. Nor do they include specific figures on budgetary and other resources (only information on source of funding), especially in the field of investigation and prosecution. In addition, as far as assistance and protection of victims are concerned, the expected results indicate mainly the amount of funds allocated, rather than the number of persons assisted and the quality of the services rendered.

The new Action Plan for 2012-2013 is being drafted and is expected to be approved soon. It is important that the effectiveness and impact of all the measures taken so far is assessed, and the elements missing in the previous Action Plans included. One example is prevention/protection of vulnerable groups against the risk of becoming victims of trafficking, especially children left behind, known as social orphans. Activities proposed should ideally be based on identified trends/statistics, hence the importance of data collection. The Action Plan should describe measures and indicators of performance in more detail (e.g. number of cases, duration of investigation, number of victims identified, number of persons assisted, figures on assets seized etc, plus cases by region and by month). It should specifically mention the human and financial resources allocated and should contain a clear timetable. It should also foresee a strict monitoring mechanism.

The institutional framework is in place and consolidated. The Centre for Fighting Trafficking in Human Beings was established in 2006 and is fully operational. The relevant structures in these areas are both at administrative level, namely the National Committee for fighting trafficking in human beings, which is a consultative body within the Government and at prosecution level which is monitored by a Coordinating Council, chaired by the General Prosecutor, which appears to be fully involved in the fight against THB.

- **Adoption of legislation on preventing and fighting corruption and consolidation of the anti-corruption function of the Centre for Combating Economic Crime and Corruption; strengthening coordination and information exchange between authorities responsible for the fight against corruption**

The framework 'Law on Preventing and Fighting Corruption' was adopted in 2008 and subsequently amended. It has been supplemented by a significant number of relevant legal acts (e.g. the Law on Conflict of Interest, the Law on Code of Conduct for Public Servants, the Law on the Civil Service and the Status of Civil Servants, the Law on Declaring and Monitoring the Income and Assets of State Dignitaries, the Law on Public Procurement, etc), including the relevant provisions of the Criminal Code, the Criminal Procedure Code and the Code of Administrative Offences.

Steps have been taken to improve the legal framework with a view to aligning the national legislation with European and international requirements. A considerable number of pieces of legislation have been prepared in 2011, while at the same time strategic documents have either been adopted (i.e. National Anti-Corruption Strategy) or are at an advanced stage of preparation (i.e. reform of the Centre for Combating Economic Crimes and Corruption – CCECC). To mention just a few, the recently introduced legal provisions include: establishment of a new institutional framework (National Integrity Commission) for monitoring conflicts of interest, incompatibilities and asset declarations, broadening the scope of corruption offences to foreign and international public servants; broadening the scope of bribery offences by extending the elements of crime included in this offence (e.g. 'offering', and 'giving'); introducing criminal liability for corrupting voters; setting out special confiscation and precautionary measures to compensate for damage and measures on third party confiscation in cases the third parties were aware of the illegal origin of the assets; amendments to the system for sanctioning protectionism and conflicts of interest set out in the Code of Administrative Offences; introducing liability of legal persons for active corruption offences.

Other pieces of legislation, aimed at complying with GRECO recommendations or United Nations Convention against Corruption (UNCAC) requirements, are being finalised, most of them pending Parliamentary debates: e.g. criminalisation of false accounting, strengthening the system for sanctioning breaches of the civil servants' Code of Conduct, strengthening the requirements for reporting corruption offences and the provisions on protection of whistleblowers.

A number of outstanding recommendations from the second round of GRECO evaluation remain. Mention should be made in particular of the recommendations to bring the legislation on special investigative measures in line with the provisions of the Council of Europe Criminal Law Convention on Corruption to allow use of these measures in cases regarding ordinary (i.e. not only 'serious') corruption offences and to introduce liability of legal persons for trading in influence. The same goes for the recommendation on the efficiency of the supervision mechanism for conflicts of interest and asset declarations in which regard some steps were taken through the establishment of a new institutional framework, but where further measures are needed to ensure a sound working methodology and make the new National Integrity Commission operational.

The third round of GRECO evaluation concluded that several deficiencies remain in alignment of the national legislation on criminalisation of corruption offences with the Council of Europe standards. The Republic of Moldova has already taken some measures to

follow the GRECO recommendations in this regard and should continue this process. The outstanding recommendations mainly refer to: the scope of active and passive bribery which must cover all possible categories of domestic and foreign public officials; the consistency of criminalisation of bribery in the public sector; strengthening the provisions on criminalisation of bribery in the private sector, in particular as regards the scope of these offences (*rationae personae* and *rationae materiae*); criminalisation of active trading in influence and further strengthening of the legislation on passive trading in influence; the revision of the provisions on 'effective regret', etc.

Although some steps have been taken, financing of political parties and election campaigns remains an area of concern where GRECO has highlighted a number of significant shortcomings that need to be addressed as a matter of priority in order to ensure full transparency, efficiency of supervision and an effective, proportionate, and dissuasive sanctioning system for both regular party financing and funding of election campaigns. Currently the checks on party and election campaign financing are carried out by the Central Electoral Commission which comprises nine members (of whom only three are permanent). The current framework does not offer all the necessary guarantees for detection and effective sanctioning of all cases of illegal party financing.

In relation to conflicts of interests, incompatibilities and asset declarations, a comprehensive legislative framework is in place. The most significant shortcoming concerns the efficiency of the verification and sanctioning mechanisms. In July 2011, a new law was adopted, reshuffling the legal framework for checking conflicts of interests, incompatibilities and asset declarations and creating the basis for setting up a single institution in charge of such checks: the National Integrity Commission (NIC). The law has not yet entered into force and it is expected that the NIC will become operational on 1 May 2012. The president and vice-president of the NIC are to be appointed by Parliament. The law sets out the tasks and the powers of the NIC, its organisation and the procedures to follow. The NIC is not given any direct sanctioning powers or writ of execution for its decisions. In case of 'obvious difference' (not defined by the law) between an official's income and assets, the NIC can notify the prosecution services, if there are any suspicions that a crime has been committed, and the tax authorities. No specific powers are given to the NIC to propose confiscation of unjustified wealth. When conflicts of interest or incompatibilities are found, the NIC will issue an 'act of infringement' and may ultimately ask the public authorities to take disciplinary action or terminate the mandate or contract of the official in question. It may also ask the courts to cancel the administrative act adopted by the public official found in conflict of interest or in a situation of incompatibility. It remains to be seen whether the powers and the guarantees of independence granted to the NIC will be sufficient to ensure an efficient supervision and sanctioning mechanism in practice. This can only be tested against the track-record of finalised cases. It is of utmost importance that the necessary human and financial resources are secured and that the appointment and selection procedures for both the management and the NIC staff follow objective and merit-based criteria.

Other legislative amendments provided a more detailed template for asset declarations, an introduced an obligation to post them on the website of the NIC. This would be a positive step towards giving the general public wide access to the asset declarations and potentially increasing the rate of detection of cases of unjustified wealth.

Public procurement remains a sensitive area and prone to corrupt activity. A number of laws have an impact on this area and there have been intense discussions as to whether the definitions in those laws are sufficient given the high risks involved. The current system

includes a mandatory requirement to publish a procurement intention announcement prior to drawing up a procurement process plan. However, often no announcement is published and no plan is drawn up. The sanctioning system is inefficient. Further measures need to be taken to ensure a fully transparent public procurement process and dissuasive sanctions in case of breach of the legal requirements.

The pace of adopting new legislation and the coherence and legal certainty of the entire framework deserve further attention. The number of legislative initiatives is quite high, and on many occasions the same piece of legislation undergoes successive amendments in a very short period of time. For example in 2011 several amendments to the Criminal Code and the Criminal Procedure Code were proposed in different legislative initiatives following one another at short intervals. The overall anti-corruption legal framework needs to be coherent, ensuring consistency between the various legal provisions, and thoroughly substantiated by impact assessments and consultations with stakeholders. Also, any changes to the legislation will have to be accompanied by thorough human and financial resources assessments and corresponding decisions on allocation of resources.

The National Anti-Corruption Strategy for 2011-2015 was adopted by Parliament in July 2011 and sets clear priorities and objectives. The Strategy contains a brief assessment of the state of play, looking into a number of surveys that measure perceptions of corruption, as well as a very general analysis of the causes of corruption. It also defines the main principles and directions of action and sets a number of general performance criteria and overall targets to be met at the end of the implementation period. It is not clear whether any consultation with stakeholders took place. The Strategy describes in fair detail the monitoring process of its implementation and places the task of coordination under the responsibility of a Parliamentary Commission. The monitoring working group is made of several stakeholders, including from the private sector and civil society. However the Strategy does not present a budget breakdown and a budget estimate for its implementation, nor an impact assessment identifying the resources needed for its implementation. The Action Plan for the implementation of the Strategy is not yet finalised. It is crucial that adequate human and budgetary resources are presented in detail and secured and that the Action Plan sets out concrete actions and results to be achieved, a detailed budget, clear responsibilities for each activity and measureable indicators.

Regarding the institutional framework, the Centre for Combating Economic Crime and Corruption (CCECC) was established in 2002, as a merger of units previously within the Ministry of the Interior and the Ministry of Finance. The Centre has since been restructured several times. The CCECC's role is to act as a law enforcement body, counteracting corruption and economic, financial and tax crimes, with a central structure and territorial subdivisions. The CCECC also has preventive powers which, however, have been used to a much more limited extent than its repressive powers. The CCECC director (five directors have succeeded one another since the CCECC was established) is appointed by the Prime Minister. Since the CCECC was established, concerns have been raised about its independence, the delimitation of powers between the CCECC and other law enforcement bodies, the lack of focus on high-level corruption, the lack of parallel corruption investigations alongside other criminal investigations, deficiencies in the legislation and in the implementation of international standards.

A substantial reform process of the CCECC's powers and organisation is currently under way. The Strategic Development Plan is expected to be approved by the Board of the CCECC soon in early 2012. The CCECC Reform Strategy aims to redefine the CCECC's powers and

structure, reinforce the guarantees of its independence, increase its capacity for both prevention and repression activities and raise public awareness and public support. This is a key reform process for the overall setting of anti-corruption policies. It is welcome that the Republic of Moldova has organised several public consultations on the reform plans. Irrespective of the solution ultimately agreed, the guarantees of independence, operational autonomy and efficiency should prevail. This should apply not only to the future activities of CCECC, but also to the selection and appointment procedure its staff. It is equally important to ensure that adequate human and financial resources are secured and that coherence, good cooperation and a clear division of tasks between other agencies with anti-corruption tasks is ensured, including the NIC, the Financial Intelligence Unit (FIU), the prosecution services and other law enforcement bodies. The reform of the CCECC should go hand in hand with the reform of law enforcement and of the judiciary in order to produce the expected results.

Regarding the strengthening of coordination and information exchange between authorities responsible for the fight against corruption, it appears that CCECC cooperates with the Ministry of the Interior, the General Prosecutor's Office, the Customs Service, the Border Guard Service, the Security and Information Service, the State Tax Inspectorate and other national central and local authorities. A number of bilateral agreements appear to have been signed. However, it remains to be clarified how the cooperation works in practice and how efficient the information exchange system is.

**Further information is required on:**

- the outcome of the adoption of the CCECC Reform Strategy;
- information on the overall approach for ensuring coherence of the legislative amendments;
- information on the concrete measures envisaged to strengthen coordination and information exchange between authorities responsible for the fight against corruption;
- **Consolidation of the legal framework for the prevention and fighting of money laundering and financing of terrorism in line with international standards set by the Financial Action Task Force on Money Laundering and Terrorist Financing (FATF); regular updating of the respective national strategy; establishment of an independent Financial Intelligence Unit**

As mentioned in the First Progress Report, the legal framework for preventing and fighting money laundering and the financing of terrorism is broadly consolidated. Significant efforts have been made to adopt new legislation and provide guidance to the economic operators on the anti-money laundering regime. The adoption of a new law on 7 April 2011, amending the 2007 'Law on Preventing and Fighting Money Laundering and Financing of Terrorism', represents a further positive step in this direction.

The 2010-2012 Strategy for preventing and combating money laundering and the financing of terrorism and the Action Plan for its implementation had already been approved by the Government on 3 September 2010. The Strategy is a good working basis. Particularly welcoming was the realisation that previous strategies have not been fully effective because measures were removed from the Strategy at the end of the year regardless whether they had been implemented effectively or not. The lessons learned from this have resulted in a new approach of having a five year strategy based on yearly action plans but carrying over outstanding measures into the following year's actions. The Strategy seems to be addressing



the lack of procedures on freezing and confiscating assets without the need to define a predicate offence.

Regarding the establishment of an independent Financial Intelligence Unit (FIU), the Law of 7 April 2011 established the Office for Preventing and Combating Money Laundering as a specialised independent division within the CCECC specifically endowed with the responsibilities of a Financial Intelligence Unit. Several additional Orders on its functioning have been approved.

The Office for Preventing and Combating Money Laundering is fully independent from the Centre for Combating Economic Crimes and Corruption. The FIU must remain independent from other agencies in order to comply with international standards and to continue its functions. The FIU is a recognised member of the Egmont Group and the Camden Assets Recovery Inter-Agency Network (Carin).

The Office for Prevention and Combating Money Laundering produces a national risk assessment on anti-money laundering and measures to counter financing of terrorism. It plays both an operative and an investigative role, conducts criminal prosecutions and mediates between the data received, research and law enforcement bodies.

The conclusions of the progress report of 14 April 2011 by the Council of Europe Committee of Experts on the Evaluation of the Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval)<sup>1</sup> acknowledged the steady progress made in the areas of customer due diligence and reporting. According to Moneyval's conclusions, there is a need for further indications as to the effectiveness of the regime, in particular regarding money laundering convictions and amounts of assets recovered. The 4<sup>th</sup> round evaluation by Moneyval should provide further indications of progress in this regard.

A Moneyval on-site visit took place in November 2011 under the fourth round of evaluation and its draft report will be prepared for review and adoption in December 2012. It should provide further indications on progress in this regard.

Since July 2011 the Republic of Moldova is no longer monitored by FATF.

- **Adoption of a National Anti-Drug Strategy and its related action plan; establishing cooperation with the EMCDDA**

The Republic of Moldova took further steps towards adopting the legislative and institutional framework required in the domain of anti-drug policy, in line with European and international standards.

On 27 December 2010 the Republic of Moldova approved the National Antidrug Strategy for 2011-2018. The Strategy defines objectives, necessary actions and clear responsibilities of all stakeholders involved in combating drug addiction and drug trafficking. It was developed in line with the European Strategy on Drugs for 2005-2012 and the relevant UN Conventions.

The Strategy proposes a comprehensive approach to issues related to drug use, based on complex, interdepartmental, interdisciplinary cooperation at all levels, with three main components: a) reduction of drug supply (exercising legal control over movement of drugs

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<sup>1</sup>

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL\(2011\)6\\_ProgRep2\\_MLD\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL(2011)6_ProgRep2_MLD_en.pdf)

and combating drug trafficking and illicit distribution of drugs); b) reduction of demand for drugs (primary prevention, treatment and rehabilitation of drug users) and c) risk (harm) reduction.

In June 2011 the Government approved a decision on establishing the National Anti-Drug Committee, as a permanent body at Government level. Regarding the law enforcement dimension, there is an Anti-Drug Department in the Ministry of the Interior. Concerning policy coordination, an Interdepartmental Commission is in place. In addition, relevant structures have been established within the Ministry of Health.

Cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has been developing for approximately a year. The Moldovan authorities are providing national data and working on trends. In a letter dated 28 October 2011, the Republic of Moldova requested formalisation of the cooperation with the EMCDDA by signing a Memorandum of Understanding.

- **Adoption of relevant UN and Council of Europe Conventions in the areas listed above and on fight against terrorism**

The Republic of Moldova has acceded to all UN and Council of Europe Conventions relevant to the above-mentioned areas. Regarding the fight against terrorism, the vast majority of UN and Council of Europe Conventions have been ratified and have entered into force in the Republic of Moldova.

## **2. Judicial co-operation in criminal matters**

- **Adoption of a legal framework on mutual legal assistance**

Progress has been made towards consolidating the legislative framework for judicial cooperation in criminal matters. The legislative framework in the area of mutual legal assistance is largely in place, even though some elements are still being prepared.

The Republic of Moldova is carrying out a very broad process of reform of its criminal and criminal procedure legislation. An inter-institutional Working Group on the amendment of the criminal procedure legislation in the areas of operative investigation and prosecution was established on the basis of the Government Decision of 9 February 2011. The Concept Paper on the reform of the system of prosecution and criminal procedure was drafted by the Working Group. Consequently, a draft 'Law on amending of some legislative acts (the Law no. 45-XII of 12 April 1994 on Operative Investigations, the Criminal Procedure Code)' was prepared in order to adjust them to the new provisions on combating cross-border crime and international joint investigation teams, review of national legislation on the interception of telephone conversations and review of relevant legislation in the framework of Police Cooperation Convention for South East Europe. The draft 'Law on Special Investigating Activity' was approved by the Government on 25 October 2011 and submitted to Parliament. The Law on amending some legislative acts (the Criminal Procedure Code) was approved by the Government on 11 November 2011 and submitted to Parliament. These two pending legislative proposals are particularly relevant for judicial cooperation in criminal matters.

- **Accession to the 2<sup>nd</sup> Protocol to the European Convention on mutual assistance**

The Republic of Moldova has not yet signed and ratified the 2nd Additional Protocol to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters.

The Ministry of Justice set up a Working Group on the reform of the criminal procedure legislation in the context of the reform of the justice sector, including the amendment of the legal framework in the area of judicial cooperation in criminal matters and its adjustment to the international instruments on combating cross-border organised crime. In this context, the Law on amending the Criminal Procedure Code on international joint investigation teams was approved by the Government on 11 November 2011 and submitted to Parliament. According to the Moldovan authorities, ratification of the 2nd Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters will not be possible until after the adoption of the amendments.

The Republic of Moldova should urgently seek appropriate solutions allowing the country to make full use of the modern means of cooperation provided for by such legal instruments and should update its domestic legal framework by introducing the possibility to establish Joint Investigative Teams, cross border surveillance and other tools which could enhance judicial cooperation in criminal matters.

- **Conclusion of an agreement with Eurojust**

Eurojust has established a contact point in the Republic of Moldova. Contacts aimed at starting negotiations on an agreement on cooperation between Republic of Moldova and Eurojust have been established since 2006. Three meetings were held between 2008 and 2010 in this context. Full consolidation of the new Moldovan legal framework on data protection for the purposes of judicial cooperation in criminal matters is needed in order to make progress in such negotiations, as ensuring an adequate level of data protection is a precondition for the conclusion of a co-operation agreement with Eurojust (see also below under section 4. Data protection).

**Further information is required on:**

- the timetable for adoption of the relevant legislation and consequently for ratification of the 2nd Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters.

### **3. Law enforcement co-operation**

- **Establishment of an adequate coordination mechanism between relevant national agencies and a common database guaranteeing direct access to relevant officers**

The coordination between relevant national law enforcement agencies is ensured through the activity of the SELEC (The Convention of the Southeast European Law Enforcement Centre)/GUAM (Organisation for Democracy and Economic Development) National Virtual Centre which was established in 2006. It is a subdivision of the Ministry of the Interior which aims to develop the cooperation between relevant national and European agencies on combating cross-border organised crime and on security of borders. The National Virtual Centre SELEC/GUAM ensures the coordination between the following law enforcement authorities: the Ministry of the Interior, the Border Guards Service, the Customs Service, the Security and Information Service and the Centre for Combating Economic Crimes and Corruption. These authorities have direct access to the Centre's database on investigating,

preventing and fighting against cross-border organised crime. The information is exchanged using SELEC/GUAM channels.

The general aims of the National Virtual Centre are: 1) to ensure the organisational framework necessary for cooperation and development of specific actions at national and international levels for preventing and combating trans-border crime and other types of serious crimes in the SELEC and GUAM Member States 2) to exchange information between law enforcement agencies from SELEC and GUAM Member States on preventing and combating trans-border crimes and 3) to analyse, make available and use the information gathered for research and for combating and preventing trans-border crimes.

The Centre uses a database called "*Registru*". This database offers information on persons, vehicles, companies (the owners, kind of activity and means of transport registered in the company's name), driving licenses, check on different types of documents like passports or, birth certificates and border crossings. As there are different types of database, under various operators ("*Registru*" under the Ministry of Information, Technology and Communications, information on crossing the state border from the Border Guard Service, information on real estate "*Cadastru*"), the Centre has access to these databases via the delegated liaison officers.

A 2006 'Law on the Electronic Information System on Recording Crime, Criminal Cases and individuals who committed crimes' established a coordination mechanism between relevant national authorities and a database. Three Common Orders were approved on the coordination mechanism: 1) a 2008 Order on a single record of offences, criminal cases and individuals who committed crimes, 2) a 2006 Order on unique record of operational files (searches and identification) on wanted persons, persons of unknown identity and unidentified bodies, and 3) a 2004 Order on a single record of marked objects, antiques and works of art and lost and found property.

Establishment of an adequate coordination mechanism between relevant national agencies should be further pursued by setting up a coordination committee of all agencies involved in intelligence and investigation. This coordination committee should be chaired by the General Prosecutor who should play a leading role and should be convened regularly.

It is not clear if any inter-agency structure is foreseen to enhance the exchange of information on organised crime or if the above-mentioned National Virtual Centre will play this role. Currently no central structure can provide direct access to all databases that could be of interest, i.e.: population (registry), vehicles, border crossings, stolen goods, finger prints, DNA, tax administration, customs database, Security and Information Service databases, criminal records, persons in jail, cadastre, etc. So far, the existing entities have no direct access to all the available databases, and they have to rely on liaison officers who will contact their administration in order to give them access the information they need.

Given that there is no universal standard on establishment of a "common database", some countries have one, others have separate databases, it is nevertheless important to put in place the tools necessary for proactive consultation of all available databases. The authorities should envisage establishing an interagency tool, such as the planned Information and Analysis Unit, where representatives of all intelligence and law enforcement agencies could have access to the various databases.

The Republic of Moldova reported on a number of training activities in the area of law enforcement cooperation with counterparts in Belgium and Romania.

### **Further information is required on:**

- additional relevant measures taken to establish an adequate coordination mechanism between national agencies
- establishment of a common database guaranteeing direct access to relevant officers and/or the measures taken to establish the tools necessary to ensure proactive consultation of all available databases by the relevant entities;
- establishment of an Information and Analysis Unit within the Police Department of the Ministry of the Interior.
- **Conclusion of an operational cooperation agreement with Europol ensuring an adequate level of data protection**

Conclusion of an operational agreement with Europol is conditional upon assessment by Europol of the relevant data protection standards. Work on this assessment has started (see also below under section 4. Data protection). Europol completed its first scrutiny of the material received and sent additional questions to the Republic of Moldova in January 2011. The Republic of Moldova replied on 23 March 2011 sending supplementary information on personal data protection. Europol is currently proceeding with its assessment of the data protection legislation in the Republic of Moldova, pending any additional information and clarifications on personal data protection that might be necessary. Should Europol come to the conclusion that it is suitable to assess the Republic of Moldova's data protection framework in practice, a data protection visit could be scheduled in 2012.

A decision was taken on 27 July 2011 to second a permanent Moldovan liaison officer to Europol which will be effective once the Liaison Agreement between the Republic of Moldova and Europol is signed.

In parallel with the assessment of the data protection legislation, Europol organised an awareness-raising seminar for Moldovan law enforcement authorities in April 2011 with a view to the future extension of SIENA (System for Secure Exchange of Information) to partners such as the Republic of Moldova.

### **4. Data protection**

- **Consolidation of the legal framework for the protection of personal data, including accession to the 2001 Additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and trans-border data flows**

Very good progress has been made towards consolidation of the legislative and institutional framework on data protection.

The Republic of Moldova has ratified the 2001 Additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and trans-border data flows. The ratification entered into force on 1 January 2012.

The Republic of Moldova's new 'Law on Data Protection', adopted on 8 July 2011, will enter into force on 14 April 2012. It will repeal the existing Law on Data Protection of 2007 and align Republic of Moldova's data protection legislation with the relevant Council of Europe

instruments and the EU *acquis*. In addition, a 'Law amending and supplementing some legislative acts' was adopted on 21 October 2011, which *inter alia* strengthens the independence and powers of the supervisory authority and introduces sanctions for data protection breaches. These legislative changes will enter into force within six months after publication in the Official Gazette.

Further efforts are ongoing in order to consolidate the legal framework fully by aligning other legislation and Government decrees with the new 'Law on Data Protection'. Particular attention should be paid to data protection rules in the police sector (in particular full implementation of the relevant Council of Europe Recommendation) including, where applicable, the revision of the Criminal Procedure Code and the 'Law on Operative Investigations'. Full consolidation and effective implementation of the legal framework are a precondition for conclusion of operational cooperation agreements with Eurojust and Europol (see above under section 2. Judicial cooperation in criminal matters and section 3. Law enforcement cooperation).

The National Centre for Personal Data Protection (data protection supervisory authority) began its operations in mid-2009 on the basis of the Law on Data Protection of 2007. Its independence and powers have been strengthened by the new legal framework. The Centre is an institution under Parliament and is impartial and independent from any other governmental or administrative bodies.

**Further information, relevant for the whole Block 3, is also required on:**

- developments regarding the institutional structures and ongoing reforms in the areas covered by Block 3 (eg the Ministry of the Interior, law enforcement agencies and the Prosecutor Office).
- any amendments to provisions of the Criminal Code and Criminal Procedural Code relevant for the areas covered by Block 3.

<b>Block 4: External relations and fundamental rights</b>
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**General assessment**

The Republic of Moldova made further progress in adopting the legislative framework, moving swiftly forward with revision of the national legislation to meet the required benchmarks. Some aspects of the new legislation need to be further clarified by the Moldovan authorities. The new draft comprehensive anti-discrimination law is awaiting renewed consideration by the Government, following additional rounds of consultations with civil society and international organisations conducted in the autumn by the Ministry of Justice.

**Detailed comments**

**1. Freedom of movement within Republic of Moldova**

- **Revision of the legal and regulatory framework on registration and de-registration procedures for legally staying foreigners or stateless persons with a view to avoiding unjustified restrictions.**

In May 2011 the Government approved Decision no. 337 amending Government Decision no. 376 of 6 January 1995 on additional measures to consolidate the national passport system.

The Decision was published in the Official Gazette in June 2011 and is in force. It aims to review provisions regarding the rules of evidence of population, in particular it establishes the mechanism for acquiring and processing biometric information and provides for regulation of the legal relations between individuals, legal entities, law enforcement and local government bodies to ensure free movement in the Republic of Moldova and the right to establish domicile or residence anywhere in the country.

In order to prevent and exclude cases of stateless persons in relation to the succession of states, amendments to the 'Law no. 1024-XIV of 2 June 2000 on Citizenship' were adopted by Parliament in June 2011 and published in the Official Gazette on 8 July 2011. In addition, in August 2011, the Government approved a draft 'Law on the country's accession to the Convention on the Reduction of Statelessness (adopted on 30 August 1961 in New York)'. In October 2011, the Government approved the draft 'Law on the Republic of Moldova's accession to the Convention on the Status of Stateless Persons (adopted on 28 September 1954 in New York)'. Both these draft laws are pending approval by Parliament (see also above under Block 2).

On this basis and with a view to establishing a mechanism for determining the status of stateless persons, in November 2011 amendments to the 'Law no. 200 of 16 July 2010 regarding the Procedure for Determination of the Status of Stateless Persons' were approved by the Government and are pending approval by Parliament.

The amendments to the 'Law no. 1024-XIV of 2 June 2002 on Citizenship' aim to adjust the legislation in order to prevent and resolve cases of statelessness resulting from the disintegration of the Soviet Union and issues related to state succession. The Republic of Moldova's accession to the Conventions on the Reduction of Statelessness and on the Status of Stateless Persons will lead to further developments in the mechanism and procedure for determining the status of stateless persons and will provide for the establishment of an institutional framework for determining statelessness. As regards the procedure for determining the status of statelessness, the Republic of Moldova could consider entitling applicants to legal employment pending the procedures, as in the case of asylum-seekers.

Although the new 'Law on Foreigners' adopted in July 2010 does not expressly mention the requirement for an HIV/AIDS test, mentioning only the obligation to hand over a medical certificate showing that the holder is free from diseases that could pose hazards to public health (Articles 32.2 and 46. 2 lit. f), the provisions of the 'Law no. 23 of 2007 on Prophylaxis of HIV Infection' expressly and strictly forbid any foreigner found positive in an HIV test to stay in the country for more than three months. A Working Group was established and tasked with reviewing all relevant legal acts in force with the aim of lifting all unnecessary restrictions concerning compulsory HIV/AIDS tests for foreigners.

### **3. Citizens' rights including protection of minorities**

- **Adoption of comprehensive anti-discrimination legislation, as recommended by UN and Council of Europe monitoring bodies, to ensure effective protection against discrimination**

In addition to constitutional anti-discrimination stipulations and provisions in criminal, civil and administrative laws, a draft comprehensive anti-discrimination law was adopted by the Government in February 2011 and submitted to Parliament for consideration. The sensitiveness of the issue within Moldovan society and political circles prompted the

Government subsequently to withdraw the draft law from Parliament with a view to continuing consultations with civil society stakeholders in order to secure a broader consensus. In June and September 2011, the Ministry of Justice organised a series of national roundtables on anti-discrimination which were attended by local and international civil society experts, Members of Parliament, public officials, civil servants, as well as representatives of foreign diplomatic missions in Chisinau. The recommendations adopted at these seminars were taken into consideration for consolidation of the draft law. The revised draft law is pending approval by the Government.

This framework law will help to ensure more effective protection against all forms of discrimination. The draft law makes explicit reference to Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin and to Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment. It aims to create the framework necessary to apply them and thus to prevent and fight against discrimination and to ensure equal rights for all individuals on the territory of the Republic of Moldova in areas of politics, the economy, social affairs, culture, and other walks of life, making no difference on the basis of race, nationality, ethnic origin, language, religion, belief, sex, age, health status, disability, sexual orientation, opinions, political views, wealth, social origin, membership of a socially disadvantaged group or any other criteria.

A new version of the draft law presented in September 2011 for public consultation seems to meet some additional recommendations made by international organisations and NGOs such as inclusion of protection against discrimination “by association”. It includes rules for exceptions from the general principle of non-discrimination and consequent implementation of the law in relation to employment within religious organisations. For religious organisations or employers whose ethos is based on religion or belief, both EU law and European Court of Human Rights (ECtHR) case law provide for an exception from the principle of a general prohibition of differential treatment, provided certain requisites and criteria are met. If this exception is included in the draft anti-discrimination law within the bounds allowed by Directive 2000/78/EC and if a reference is made to the principle of proportionality between the conflicting interests of the employers on the one hand and employees on the other, then the amended draft law might provide a good opportunity to defuse the conflict with opponents of the bill and subsequently allow Parliament to move forward to adoption of this piece of legislation.

Consideration should be given to including the concept of “housing”, which is explicitly covered by Directive 2000/43/EC, into the scope of the law and to clarify that discrimination is also prohibited in areas in which private bodies offer services on the basis of a contract with public authorities or with other forms of public authorities support.

The new version of September 2011 also contains a derogation clause related to marital and adoption relationships. Whilst the derogation clause related to marital status appears, to a large extent, in conformity with the exception allowed by recital 22 of the Employment Equality Directive, its extension to adoption rules seems very disputable and not in conformity with ECtHR case law. Since the Moldovan legal framework grants unmarried people the possibility to adopt children, it could be in breach of Articles 14 and 8 of the European Convention on Human Rights to deny a request for adoption merely on the basis of the applicant’s sexual orientation.



Concerning the mechanisms and proceedings provided by the draft anti-discrimination law for remedies against discrimination, it is highly recommended to maintain the provisions on establishing an independent equality body endowed with the power of sanction. Some of the provisions relating to the equality body to be established should be further consolidated in order to allow third-party interventions, i.e. give civil rights groups and NGOs to the right to appear before the body on behalf or in support of individual victims of discrimination, as provided for under the Equality Directives. The extension of the principle of “shifting” of the burden of proof from the applicant to the respondent party, as provided for by the Equality Directives, should also be considered to extend to proceedings before the equality body, as the anti-discrimination body, and not only before a court. It would be important to give the equality body the possibility to levy fines in case of lack of cooperation by respondent persons and offices subject to inquiries for allegedly discriminatory acts. The equality body should also have the possibility to force action or impose sanctions in response to decisions on the existence of a case of discrimination. It is also recommendable to include among the prerogatives of the equality body the possibility to initiate proceedings before the Constitutional Court in alleged cases of discrimination resulting from legislative provisions held *prima facie* to be in breach of the constitutional principle of equality and internationally recognised human rights standards, in analogy with the prerogatives of the Ombudsperson (Centre for Human Rights of the Republic of Moldova).

There is a need to ensure clear legal mechanisms for enforcement of the anti-discrimination provisions in order to comply with the standards on the effectiveness, proportionality and dissuasive nature of sanctions and remedies against discrimination. It therefore remains a matter of concern that, the latest draft law, also fails to give sufficient details of which discriminatory acts could lead to which sanctions and which courts would have jurisdiction on such matters. There is a risk that the lack of provisions for specific and speedy anti-discrimination proceedings in civil cases, or at least of more specific details about jurisdiction in relation to different claims of discrimination, could perpetuate the current lack of judicial practice with the anti-discrimination legal framework, resulting in ineffective implementation of the law.

The authorities should consider the possibility of including in the draft law the concept of “reasonable accommodation” for disabled persons in employment, as underlined by recommendations issued by international organisations and civil society. This is in line with the standard set by both the Employment Equality Directive and the UN Convention on the Rights of Disabled Persons (CRDP), which was ratified by the Republic of Moldova in 2010.

- **Adoption of a comprehensive National Human Rights Action Plan; actively pursue in the respective National Human Rights Action Plan the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/ECRI and international human rights organisations notably in implementing anti-discrimination policies, protecting minorities and private life and ensuring the freedom of religion**

On 12 May 2011 Parliament endorsed a comprehensive National Human Rights Action Plan which builds on specific recommendations by UN bodies, the OSCE/ODIHR, the Council of Europe/ECRI and international human rights organisations. It provides for measures in a large number of areas, including implementing anti-discrimination policies and protecting minorities and private life. The Government was tasked to publish an annual consolidated Progress Report on the implementation of the Action Plan and to submit it to Parliament by 1 April every year. The Progress Report is to be debated in yearly conferences. The Action Plan was prepared in close consultation with civil society and international organisations.

In July 2010 an Action Plan in support of the Roma population for 2011-2015 was adopted after consultations with civil society and with representatives of the Roma community. This was an important step demonstrating the Government's political will to pay special attention to improving the situation of the Roma population. Subsequent discussions with international organisations indicated that there was scope for further consolidation of the Action Plan. The authorities indicated that a new chapter concerning the introduction of Roma mediators would be added to it.

The National Human Rights Action Plan provides information on monitoring and assessment as well as resources to be allocated for its implementation. However, most of the activities are to be financed within the limits of budgetary allocations, and only a few have specific budgetary allocations. The authorities will review the costs of activities each year, based on the priorities, financial possibilities, and the assessment results.

As indicated in the First Progress Report, the National Human Rights Action Plan does not include measures targeting freedom of thought, conscience and religion. These aspects are to be covered in a revised 'Law on Religious Cults and their Component Parts' with a view to bringing domestic law and practice into compliance with international law. This could be a constructive way to create a more positive dynamic than that of previous years in relations with minority religious cults. In this context, in March 2011, the Ministry of Justice officially registered the Islamic League, the first religious denomination representing the Islamic faith to be recognised by the Moldovan authorities under the 1997 'Law on Religious Denominations and their Component Parts' (Law no. 125 of 11 May 2007). The official registration of the Islamic League sparked a nationwide controversy, with harsh opposition, especially from Orthodox religious groups and the political opposition. Finally, the decision allowing registration was contested, a complaint being lodged before the Administrative Court which is still pending. Extensive consultations of civil society and religious cults were launched in order to start the procedure for amendment of the existing legislation. The rights of foreigners to exercise religious activities should be brought into line with European and international standards.

With regard to the Action Plan in support of the Roma population, the introduction of references to Roma mediators together with careful consideration of the entire spectrum of recommendations made by international organisations would be commended. The necessary attention should be paid to the financing of the implementation of the Action Plan and that a clear mechanism for monitoring and evaluating the implementation of the Action Plan should be put in place, making reference to objective social and statistical indicators. The Moldovan authorities should endeavour to do more to encourage higher education for the Roma population by granting scholarships and improving access of the Roma population to the 15% quota reserved for students belonging to vulnerable categories.

- **Ratification of relevant UN and Council of Europe instruments in the fight against discrimination**

The Republic of Moldova will consider issuing a declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) after the adoption of the new anti-discrimination legislation. In 2000, the Republic of Moldova signed Protocol No. 12 to the 1950 European Convention on Human Rights but it has still not ratified it. The Moldovan authorities have expressed willingness to consider the ratification of Protocol No. 12 after adoption of the anti-discrimination law. There are ongoing discussions

within the Government about lifting territorial reservations entered by the Republic of Moldova to the human rights treaties.

The Republic of Moldova is expected to make a declaration under Article 14 of the CERD and to ratify Protocol No. 12 to the European Convention on Human Rights.

- **Specify conditions and circumstances for the acquisition of citizenship of Republic of Moldova**

With reference to the conditions and circumstances for acquisition of the citizenship of the Republic of Moldova, on 3 May 2011 the Government approved amendments to the Law on Citizenship no. 1024-XIV of 2 June 2000 and amended the Government Decision relating to the rules on evidence of population in the Republic of Moldova. The Parliament adopted the amendments on 9 June 2011. The amendments aimed to remove obstacles to the acquisition of citizenship by stateless persons, who, under Article 12 (2) of the Law, meet the grounds for its acquisition, but were sentenced to imprisonment for premeditated crimes and have criminal records or were under criminal prosecution at the time of examination of their applications.

The Government continued to consider the situation in Transnistria carefully. The national registration authority is applying special measures to confirm citizenship and provide access to national ID cards free of charge for inhabitants from the Transnistrian region, in accordance with the amended Law on Citizenship no. 1024-XIV of 2 June 2000 and Government Decision no. 959 of 9 September 2005 on safety measures relating to confirmation of citizenship and the documentation of the population from the districts in the Transnistrian region.

Currently 227,762 persons citizens of the Republic of Moldova residing in Transnistria have been issued with Moldovan passports, out of which 172,848 passports remain valid (i.e. have not expired). By the end of October 2011 the authorities in Chisinau had issued 14 893 biometric passports to residents of Transnistria. The Ministry of Information Technology and Communication in cooperation with the Ministry of Justice and the Ministry of the Interior, has developed the legal framework for the procedures for identification, at first documentation, of persons from the Transnistrian region, based on additional information on family members and relatives (breeder documents of parents, marriage certificates and others).

### **III. Overall assessment and next steps**

As indicated in the First Progress Report, the VLAP is an important tool for advancing reforms in the Justice and Home Affairs area and beyond. This Second Progress Report reflects the state of play until November 2011. Once the Republic of Moldova has provided the additional information and clarifications requested, including on the necessary measures identified in this Second Progress Report, as well as the outstanding legislative and policy framework, the Commission services and EEAS will present an updated report. Moreover, in accordance with the methodology of the VLAP, they will also present "a wider assessment of possible migratory and security impacts of future visa liberalisation for Moldovan citizens travelling to the EU". Building upon the conclusions of the updated report and of the "assessment of possible migratory and security impacts", a decision will be taken whether to initiate the assessment of the second set of benchmarks, in accordance with the VLAP methodology.