

European Initiatives Program Soros Foundation – Moldova

FROM EUMAP IMPLEMENTATION TO POLICY MAKING



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LIST OF ACRONYMS

AP	– Action Plan
BCC	– Broadcasting Coordination Council
CA	– Court of Accounts
CC	– Criminal Code
CFECC	– Centre for Fighting Economic Crimes and Corruption
CDF	– Chief Directorate for Refugees
CIS	– Commonwealth of Independent States
CLRACE	– Congress of Local and Regional Authorities of the Council of Europe
CPC	– Criminal Procedure Code
CPT	– Council of Europe Committee for the Prevention of Torture
EAS	– European Administrative Space
EC	– European Commission
ECHR	– European Court for Human Rights
ECMT	– European Conference of Ministers of Transport
ECTS	– European Credit Transfer System
EGPRSP	– Economic Growth and Poverty Reduction Strategy Paper
ENP	– European Neighbourhood Policy
EUMAP	– EU-Moldova Action Plan
EUROSAI	– European Supreme Audit Institutions
FDI	– Foreign Direct Investments
GD	– Government Decision
GDP	– Gross Domestic Product
GPO	– General Prosecutor’s Office
GSP	– Generalized System of Preferences
IMF	– International Monetary Fund
INTOSAI	– International Organization of Supreme Audit Institutions
IOM	– International Organization for Migration
LPA	– Local Public Administration
MCT	– Ministry of Culture and Tourism
MENR	– Ministry of Ecology and Natural Resources
MET	– Ministry of Economy and Trade
MEY	– Ministry of Education and Youth
MF	– Ministry of Finance
MFAEI	– Ministry of Foreign Affairs and European Integration

MHSP	– Ministry of Health and Social Protection
MIA	– Ministry of Internal Affairs
MID	– Ministry of Information Development
MJ	– Ministry of Justice
MLPA	– Ministry of Local Public Administration
MO	– Monitorul Oficial (Moldova’s Official Journal)
MR	– Moldovan Railroads
MTC	– Ministry of Transport and Communications
NAER	– National Agency for Energy Regulation
NARTI	– National Agency for Regulation in Telecommunications and Informatics
NBM	– National Bank of Moldova
NCCHT	– National Committee for Combating Human Trafficking
NCPA	– National Competition Protection Agency
NHIC	– National Health Insurance Company
NHRAP	– National Human Rights Action Plan
NMB	– National Migration Bureau
NPAPI	– National Program for Action Plan Implementation
NSB	– National Statistics Bureau
NSIA	– National Social Insurance Agency
OSCE	– Organization for Security and Cooperation in Europe
PACE	– Parliamentary Assembly of the Council of Europe
PCA	– Partnership and Cooperation Agreement
PMU	– Project Management Unit
PTDI	– Pre-Trial Detention Institution
SAIP	– State Agency for Intellectual Property
SCJ	– Supreme Court of Justice
SCM	– Supreme Council of Magistrates
SEI	– State Environmental Inspectorate
UNDP	– United Nations Development Program
UNO	– United Nations Organization
WB	– World Bank
WHO	– World Health Organization
WTO	– World Trade Organization

Introduction

The EUMAP is doubtless a document which carries major relevance for both Moldovan society and Moldova's relations with the European Union. However, under the influence of a Soviet, paternalistic heritage, political decision-makers tend to approach the implementation at the EUMAP in a rather superfluous manner, focusing on reporting and without genuine involvement in the country's democratic and economic transformations.

Therefore, the tasks of the nongovernmental, civil and academic communities are to support the process of European Integration by encouraging a shift from what seems to be an opportunist choice towards Europe to a genuine movement shared by the whole society.

In this respect, the European Initiatives Program of the Soros-Moldova Foundation has set up—in line with its objectives to promote democratization and the values of an open society—the “Euroforum”, which is a flexible framework for consultation, monitoring and expertise. “Euroforum's” first project is this Report, which is based on individual reports (see “Euroforum” at www.europa.md) contracted from independent experts in various fields, for whose professionalism in carrying out this duty we express our outmost appreciation. The individual reports have been edited in order to reduce the length of the final Report, homogenize the style of the writing and grant to the Report a stronger conceptual base in terms of policy development under the EUMAP and Moldova's future integration into the European Union.

This report tries to contribute to the discussion on European Integration, which is a complex process since it touches on the very essence of Moldova's modernization. Although the responsibilities following from the EUMAP are obviously lower than those deriving from the Stabilization and Association Agreement, our approach is to be understood in the spirit of the *acquis communautaire*. There are two reasons for this: 1) the reform process is essentially more complex than the implementation of any bilateral document; and 2) our belief is that Moldova's place is within the European Union.

We would like to express our hope that this Report, which can be also found at www.europa.md in Romanian and English, along with the sectoral reports that will follow in due time, will contribute significantly to the improvement of the quality of the debates regarding the challenges and opportunities of European Integration.

Dr. Iulian P. Fruntașu
Director, European Initiatives Program

I. POLITICAL DIALOGUE

The international political dialogue reflects the developments in political, economic, military and other relations between the EU and Moldova, thus creating premises for future cooperation between the parties involved in this process.

The political dialogue between the Republic of Moldova and the European Union started after the break-up of the USSR. The content of the dialogue has experienced various changes, but the limits have remained unchanged: nobody tackled the issue of Moldova's accession to the EU as in the case of the countries covered by the EU association agreements.

The political dialogue became more intense for the first time after signing the PCA on November 28, 1994. Moldova thus became a direct partner of the European Union, which, as a matter of fact, gave the young Moldovan state appreciation in its democratization efforts.

The next thrust in the development of the political dialogue took place when the EU launched its ENP; at that time Moldova negotiated and later signed the EUMAP. This document, although still legally based on the PCA, has nevertheless expanded significantly the scope of cooperation between the Republic of Moldova and the EU, enhancing at the same time the importance of the political dialogue between the two parties.¹

In spite of the positive developments in the relations between Moldova and the EU, including the political dialogue, there is uncertainty which surfaces once in a while, in particular when high officials in Brussels make specific statements, but also due to the fact that, until recently, the Chişinău authorities failed to undertake concrete actions. In other words, it is not clear how active the ENP dialogue will be, especially since, as is well-known, this dialogue does not open for Moldova the prospect of EU accession.

¹ Victor Chirilă. "Relațiile Republicii Moldova cu Uniunea Europeană" [Moldova's Relations With the European Union]. *Moldova și integrarea europeană*, Chişinău, ed. "Prut Internațional", 2001, pag.36-65.

The Partnership and Cooperation Agreement

The legal framework for the political dialogue between the Republic of Moldova and EU is directly defined by the PCA². Before the PCA entered into force, the relations between Moldova and EU (then European Communities) were based on the Interim Agreement on Trade and Trade Related Matters between the EC and the Republic of Moldova, which was signed on October 2nd, 1995 and entered into force on the 1st of May 1996. Since this agreement triggered the immediate enforcement of some PCA provisions, among which is Art 2 of Title 1 “General Principles”, we could say that the Interim Agreement had an impact on the political dialogue as well.

According to Art 6-9 of the Agreement, a regular political dialogue was established between the Parties, which would accompany and strengthen a closer interaction between the Communities and Moldova, support the political and economic changes underway in this country and contribute to the introduction of a new form of cooperation.

The Documents of the ENP³

The communiqués of the European Commission, Action Plans, Country Reports and the ENP Strategy are the most important ENP documents, though they are not legal documents per se. For instance, the EC Delegation presented the first draft of the AP as a technical document. After discussions and negotiations both parties agreed to upgrade the status of the AP to the level of a political document. However, some experts believe that for Moldova this is a legal document, as it was signed by the country’s prime-minister and has financial implications.

To comprehend the absence of a clear vision of the ENP, one may note that for the first seven countries, including the Republic of Moldova, the Action Plans, Country Reports and ENP Strategy were developed in an illogical manner: the AP was developed first, followed by the Country Report and ENP Strategy (published on the EU Web page on 12 May 2004).

The EUMAP

The very time frame and substance of the EUMAP negotiations represented a relevant stage in the political dialogue between the Republic of Moldova and EU, since the active phase of the negotiations lasted six months and the most heated de-

² “Partnership and Cooperation Agreement between the European Communities and the Republic of Moldova” DN: PRES/94/28, 28 November 1994, <http://europa.eu.int/rapid>.

³ <http://europa.eu.int/comm/world/enp/>

bates were conducted precisely over the future of the political dialogue. Thus, it was mentioned in the EC's first documents regarding the structure and content of the future action plans that the political dialogue between the EU and the ENP states must be intensified and expanded significantly, taking into account the increasing role of the EU's Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP). More specifically, the political dialogue should have as goals the promotion of political reforms (rule of law, human rights, etc.), settlement of regional and international problems, crisis management, regional initiatives and cooperation, and cooperation within the CFSP and ESDP.

The way the goals were formulated in the first EUMAP's draft meant that these look more like unilateral commitments of Moldova rather than objectives of cooperation between the two parties. Other points that made the Moldovan party bewildered and even feel dissatisfied were the very general and vague way the Transnistrian issue was included in the AP, the absence of references to the cooperation in South-Eastern Europe, as well as the lack of stipulations regarding the specific instruments for political dialogue. However, the EUMAP does mention the PCA, whose institutions would be mandated to monitor the implementation of the AP, but these institutions were set up ten years before the ENP.

Following Moldovan proposals, the EC (and the representative of the Council of the EU) made significant amendments to the AP. Although Chapter 2.1 on "Political Dialogue and Reforms" still had paragraphs regarding democratization and human rights, the issues of Transnistria and cooperation in South-Eastern Europe were given special emphasis, and this structure (the version of May 26, 2004) was practically preserved in the last draft of the Plan: Chapter 2.1: Political Dialogue and Reforms, Democracy and Rule of Law, Human Rights and Fundamental Liberties, The Settlement of the Transnistrian Issue, Cooperation in the Area of Foreign and Security Policy, Conflict Prevention and Crisis Management, and Regional Cooperation.

The effectiveness and power of the legal framework for the political dialogue between Moldova and the EU vary across documents. The PCA can be considered the most important document in this regard, placed by the EU at the foundation of the legal framework of its new relations with Moldova; however, this document largely lacks effectiveness since it is a framework agreement with many vague provisions and which has not been elaborated in various, specific areas (it starts only now). Moreover, out of ten years of validity eight have already passed, and both contracting parties—Moldova and the EU—are now thinking about a new agreement that has to be signed in 2008.

At the same time, all the efforts spent by the current government concern the AP's implementation, although should it fail, no penalties are envisaged (it even

seems that in this case the EU would have fewer problems to deal with). The situation is complicated by some contradictory trends, specifically:

- On the one hand, focusing on objectives which are of rather circumstantial nature, the governing elite is trying to do something that would yield serious political dividends, such as the conclusion of an association agreement and ensuring the free movement of persons. However, for that to occur, more democratic and economic reforms are needed.
- On the other hand, the EU's position on the EUMAP implementation is not very clear either. Indeed, the EU would like to see the declared ENP goals achieved, whereby Moldova (as well as other neighbours) would become a prosperous, democratic and well-governed country. In this regard one could mention such actions as the monitoring of the Moldovan-Ukrainian border, appointment of a special representative for Moldova, opening an EC Delegation in Chişinău, granting of autonomous trade preferences to Moldova, etc. However, in many cases the EU's involvement is formal, shown, for instance, by the Neighbourhood Program which was launched with a serious delay and whose work depends among other things on Romania's co-funding capacity. Another example, already mentioned above, is that the EUMAP is more of a domestic document for Moldova than a document on cooperation between Moldova and the EU.

The implementation (and hence applicability) of the AP depends on the NPAPI. This Program is a large document describing the actions to be undertaken under the AP. The strongest emphasis, in terms of the Action Plan applicability, is placed on its implementation reports. In this respect one should take into account two documents developed by the EC: the working document "EU-Moldova ENP Action Plan Implementation Tool. Key steps by March 2006" (June 16, 2005)⁴, and the background note "Implementation of the EU-Moldova Action Plan. Achievements and Challenges" (23rd of November 2005)⁵.

Generally, the Commission finds that Moldova has made progress in several areas, such as controlling the Moldovan-Ukrainian border and the Transnistrian issue. But even in these areas the implementation of the Plan is assessed as difficult.

⁴ Non-Paper. EU Moldova ENP Action Plan Implementation Tool. Key steps by March 2006. Eastern Europe and Central Asia. Meeting doc. 250/05, CION/SEC, 16.06.2005.

⁵ Background Note. Implementation of the EU Moldova Action Plan. Achievements and Challenges. Eastern Europe and Central Asia. Meeting doc. 417/05, Commission, 23.11.2005.

Conclusion

The political dialogue between the Republic of Moldova and EU was officially launched by the conclusion of the PCA on November 28, 1994, and the dialogue was effectively launched after the PCA entered into force (July 1st, 1998). When the EU launched the ENP and the EUMAP was signed, the institutional framework of the political dialogue remained unchanged, because it was still the PCA which remained, the legal foundation for the cooperation between Moldova and the European Union, after the EU took a unilateral decision in this respect.

Besides the PCA institutions, the dialogue was developed by other means, too—meetings of representatives of EU institutions (European Commission, Council of the European Union, European Parliament, EU Delegation, etc.) with the country's leadership, ministers and MPs during various conferences, summits, and activities conducted under the aegis of the UN, OSCE, Council of Europe and other regional and sub-regional bodies (e.g. Central European Initiative, Southeast European Co-operative Initiative, then later on the Stability Pact and the South-East European Cooperation Process, etc.).

But the main issue of the political dialogue—and probably in the relations between Moldova and the EU as a whole—is the fact that Moldova was not officially offered the prospect of joining the EU. At the same time, the official position of the Moldovan authorities shifted from ambiguity to a clear discourse of the country's irreversible choice in favour of EU accession, which became a strategic objective of Moldova's domestic and foreign policy. The EUMAP implementation was placed at the centre of the government's efforts, a fact acknowledged by the EU institutions. The reports of the EUMAP implementation monitoring, drafted both by the government and civil society, show that the process of amending domestic laws for the purpose of harmonizing them with the *acquis communautaires* has started, with some rather incomplete reforms of the institutional framework.

Currently, the formal legal base on which the relations between Moldova and EU rest, and hence the base for the implementation of the political dialogue, is still the EUMAP (in force till February 2008) and PCA (in force till the 1st of July 2008). Indeed, the ENP has expanded the political dialogue by including such areas as the settlement of the Transnistrian issue, cooperation in South-Eastern Europe, etc., although cooperation in these areas has no legal base and depends on the relations between the parties, and in the case of the Transnistrian conflict, also depends on the status and development of the relations between the EU and Russia, and the EU and Ukraine.

In spite of the undefined legal situation, the outcomes of the political cooperation between Moldova and EU seem to be more visible than in other areas. However, the current legal framework allows the EU to apply accession criteria unevenly, discriminating in a way against Moldova as compared to some Balkan states; a trend takes shape in this respect, whereby the accession criteria for future members become considerably stricter than they have been in previous enlargements. Although it is the right of the EU to establish the criteria, this trend encumbers the development of bilateral relations given a higher degree of unpredictability.

Therefore, one could say that the implementation—even if an excellent one—of the AP in the following two or three years will not result in the development of bilateral relations that include the issue of the country's accession to the EU. This situation yields two important goals:

- for the state authorities: to deepen the political dialogue with the EU through all channels, paying special attention to the parliamentary dimension and to the contacts with European capitals (currently more attention is paid to the relations with the EC);
- for the civil society: to mobilize all domestic forces in order to complement the government's efforts expended on genuine policy implementation toward Moldova's integration into the EU.

II. THE TRANSNISTRIAN ISSUE

Background of the issue

The weakness, in its various aspects, of the Moldovan state, in circumstances whereby there is no interested support from other countries, allowed Russia to turn the Transnistrian issue into a frozen conflict, which yielded the current format of peacekeeping forces created intentionally for the preservation of the *status quo*. In the summer of 1992, the leadership of Moldova faced alone the Russian Federation's aggression and had to sign, on July 21st, 1992, the Agreement on the Principles of a Peaceful Settlement of the Armed Conflict in the Transnistrian Region of the Republic of Moldova. The Agreement was signed by the Presidents of Russia and Moldova, which shows that the real Russian Federation's role was that of *a party* to the conflict. One ought to mention right from the beginning that only the provisions of the Agreement running against the interests of Moldova were observed, while all the other provisions have been ignored to the present day. Thus, the lack of any progress in negotiations was due to the misperception that the conflict was a *domestic* one, in which the population on the left side of the Nistru river was deemed as *a party* to the conflict. Consequently, the Russian citizen Igor Smirnov, who was accepted at the negotiations as the only representative of Transnistria's population, and who was taking his orders from the Kremlin, stalled any progress towards the reintegration of Moldova.

The government of Moldova made a serious mistake—whereby favorable conditions were created for Transnistria's economic survival and massive smuggling of goods—when it signed on the 7th of February 1996 a Protocol Decision on the Settlement of Issues Between the Customs Departments of Moldova and Transnistria. By signing the Protocol Decision, Moldova granted to the Tiraspol regime the customs stamp reading “Republic of Moldova. Tiraspol Customs” and along with it the opportunity to import and export goods without any control by Chişinău authorities. One ought to mention that the Protocol Decision of February 7, 1996 provided for the closure of the customs posts run by the Tiraspol regime along the Nistru river and the creation of joint Moldovan-Transnistrian customs posts along the Transnistrian portion of the Moldovan-Ukrainian border. However, despite Tiraspol's failure to comply with these provisions, Moldova nevertheless granted to the regime the right to use its customs stamp.

On the 1st of September 2001 the Republic of Moldova tried to stop this abnormality by introducing new customs stamps in an attempt to bring Transnistrian businesses back into Moldova's customs jurisdiction. In order to achieve this goal, Moldova hoped to create joint customs posts with Ukraine along the Transnistrian portion (452 km) of the Moldovan-Ukrainian border (1222 km). However, the Ukrainian side refused, numerous times and under various pretexts, to accept these proposals, and continued to receive goods arriving from/going to Transnistria based on the old customs stamp. One should also mention that Ukraine contributed for many years to the preservation of this conflict by competing with Russia in the area, and it was not until the "Orange Revolution" that the situation took a qualitatively new turn.

The overlap of all these factors (wrong approaches in the negotiation and peacekeeping operation processes), combined with the corruption spread among the political class in Moldova, Ukraine and Russia involved in the smuggling of goods across Transnistria, helped the Tiraspol regime grow stronger. Tiraspol took advantage of an incoherent and weak position from the Moldovan side and managed to consolidate a repressive political regime based on intimidation of people and their manipulation by means of heavily censored media. The "Ministry of State Security" in Tiraspol has the role of political police controlling heavily, among other things, the work of NGOs.

The provisions of the EUMAP can be divided into several categories:

- I. Those that became outdated and unfeasible when the Plan was signed;
 - II. Specific actions that could be carried out under the terms of the Plan;
 - III. General wishes that do not imply any immediate impact on the Transnistrian issue;
 - IV. Provisions relating to the post-conflict phase, although the Plan fails to provide a clear and unequivocal answer as to when and how such a phase can be achieved.
- I. The first category concerns the provisions of the Plan ensuing from certain initiatives launched in the process of negotiations that provided for the settlement of the Transnistrian conflict by a process of federalizing Moldova. This refers to the Kiev initiative of July 2-3, 2002 and the "asymmetrical federation" plan proposed by President Voronin on the 10-13 of February 2003. Voronin's plan envisaged the creation of a Joint Constitutional Commission, composed of Tiraspol and Chişinău representatives,

which was to develop a new Constitution whereby Transnistria would become the single subject of an asymmetrical federation; the Constitution was to be approved later by a referendum. The draft plan developed by Voronin was never signed. However, the idea of a federation could be interpreted in so many ways that the Tiraspol administration was not even instructed by Moscow to reject the proposal outright. The Joint Constitutional Commission was created on a parity basis, but it reached a dead end as soon as it tried to move away from general declarations regarding human rights and international law. Although this idea had become obsolete by the time the EUMAP was signed, the provision mandating the EU to support the efforts of the Joint Constitutional Committee was kept in Art. 2.2(16) of the Plan.

- II. The issue of control over the Transnistrian portion of the Moldovan-Ukrainian border belongs to the category of the effective and realistic provisions. The EU started to make steps in this regard as far back as 2003. On May 15, 2003, following the EU's insistence, the Moldovan Customs Department and Ukrainian State Customs Service signed the Protocol on the Mutual Recognition of Customs Documents. Then, both in the EUMAP and EU-Ukraine Action Plan, provisions were included on coordinated actions for the purpose of ensuring "proper management and control of Moldova's entire border with Ukraine, in particular the Transnistria section." (Art. 2.2[16]).
- III. Some provisions in Art. 2.1 of the AP, on Cooperation in the Area of Foreign Policy and Security; Conflict Prevention and Crisis Management relate to a number of issues which are linked, directly or indirectly, to the Transnistrian problem. Specifically, they provide for the continuation and development of political dialogue and cooperation with the EU on Transnistria, and the implementation of the standards laid down in the recommendations of the Working Group on the Fight Against Money Laundering and the Financing of Terrorism. The implementation of the latter provision led to the closure of the correspondent accounts kept by 14 Transnistrian commercial banks in EU member states. As a result, the Transnistrian banking system can operate only through commercial banks in Russia.
- IV. However, we have to emphasize once more that the provisions of the Plan referring to the Transnistrian issue mirrors a wrong approach to the conflict, which is based on the axiom that the conflict is a domestic one. This relates to the commitment to "Constructive participation of Moldova, together with the other party and mediators in the OSCE-led negotiation process aimed at reaching a settlement of the Transnistria conflict". One could assume that the persistent use of this wrong-angle approach is due

to the political factor - although the EU acknowledges Russia's real role in the conflict, it has political and economic relations with Moscow that are too important to risk an eventual deterioration because of the interference into the internal affairs of Moldova.

The constitutional-legal framework

Based on the Moldovan Constitutional provisions, the following points follow:

- a) the issue of the country's reintegration can be solved without necessarily granting a special legal status to the territory on the left side of the Nistru river;
- b) if the "special status" is to be granted, Transnistria can only receive the status of an autonomous region within an indivisible state and it cannot become a "subject of a federation" by any means;
- c) this also means that only the Parliament of Moldova has the right to establish the competences of a possible autonomy and approve a possible "special legal status".

At the same time, Article 11 of the Moldovan Constitution does not exactly fit into the political circumstances that were set up by this conflict. The city of Bender, which is situated on the **right side** of the Nistru river, is controlled by the anticonstitutional regime but is not subject to the effect of Art. 11, while **some villages on the left side of the Nistru river** have defended their right to remain under the jurisdiction of constitutional authorities and do not claim any special legal status.

Indirectly, Art 11 of the Constitution concerns the situation on the left side of the river, since this article (titled "The Republic of Moldova is a Neutral State") stipulates the following:

- (1) The Republic of Moldova proclaims its permanent neutrality.
- (2) The Republic of Moldova shall not allow the deployment of foreign armed forces on its territory.

In spite of the fact that Moldova's neutrality is not recognized internationally, it nevertheless clearly follows from para. (2) of Art. 11 that the presence of the armed forces of the Russian Federation, including under the guise of peacekeeping forces, as well as the existence of the "Transnistrian army" created with direct Russian assistance, bluntly violate the legislation of Moldova.

The situation regarding the conflict under discussion started to change following the political changes which took place in Moldova and Ukraine. After the "Orange Revolution", the new Kiev administration declared its intention to become an important regional actor in its effort towards Euro-Atlantic integration,

which means that the standards and principles championed by these organizations are to be observed. Thus, on the 8th of February 2005 the Ukrainian President Viktor Yushchenko declared that he would propose his own settlement plan of the Transnistrian issue. However, Yushchenko's plan was worded ambiguously in many ways. First, it describes how democratization should be implemented in Transnistria independently from the rest of the country. Later, this polity would have the power to negotiate with the central authorities the conditions under which it would be incorporated into Moldova. This means that the implementation of the Yushchenko plan could have led to a situation similar to that of Kosovo, where there is a local administration recognized by the international community and there is no guarantee of Kosovo's integration into Serbia.

Moldova's authorities chose the tactics to introduce their own content into the Ukrainian initiative. In order to achieve this goal, the legal framework for the settlement of the Transnistrian conflict was complemented by the following documents, passed by the Moldovan Parliament on June 10, 2005:

- The Statement of Moldova's Parliament concerning the Ukrainian Initiative on the Settlement of the Transnistrian Conflict;
- The Appeal of Moldova's Parliament regarding the Criteria for the Democratization of the Transnistrian Region of Moldova;
- The Appeal of Moldova's Parliament regarding the Principles and Conditions for the Demilitarization of the Transnistrian Region.

By adopting these three documents unanimously, the Parliament of Moldova gave formal support to the Ukrainian initiative and, simultaneously, set forth a number of clear-cut criteria for the *demilitarization* and *democratization* of Transnistria. According to the Parliament of Moldova, the process of Transnistria's democratization must take place by its incorporation into the constitutional space of Moldova, which is a radically different approach from that set out in Yushchenko's plan. At the same time, according to these documents the Russian military must withdraw from the Moldovan territory by the end of 2005, and the current peace-keeping forces must be replaced, by the end of 2006, by an International Mission of Military and Civilian Observers, under the OSCE mandate, while the Moldovan-Russian Agreement of July 21st, 1992 would become invalid.

Also in accordance with the provisions and terms of the Yushchenko plan, the Parliament of Moldova adopted on July 22nd, 2005 the *Law on Basic Principles of the Special Legal Status of the Localities from the Left Bank of the Nistru River*. This Law sets forth the basic parameters for a possible special legal status of Transnistria as an inseparable part of the Republic of Moldova and having autonomous powers based on Moldova's Constitution.

International Legal Framework

The 1999 Istanbul OSCE Summit adopted a Declaration in which Art. 18 and Art. 19 related to the conflict in the eastern part of the Republic of Moldova. The Declaration gave unequivocal support to the sovereignty and territorial integrity of Moldova and welcomed the explicit commitment made by Russia to fully withdraw its armed forces from the territory of Moldova by the end of 2002.

However, the OSCE has succeeded to ensure neither the full withdrawal of the Russian troops from Moldova's territory nor any progress towards the settlement of the conflict as a whole. Since any OSCE document or decision can be adopted by consensus only, no positive outcomes towards a settlement have been achieved after the November 1999 Summit, not even a *rapprochement* of the parties, because of the stance adopted by the Russian authorities.

The problem of the Transnistrian conflict is also mentioned in the Friendship and Cooperation Treaty Between the Russian Federation and the Republic of Moldova, signed on November 19, 2001. In the Treaty, the Russian Federation acknowledges the superiority of international law when it comes to the issue of Transnistria. It is also accepted as a "co-mediator and guarantor acting on the basis of respect of the sovereignty and territorial integrity of the Republic of Moldova". Art. 5 of the Treaty states that "each Party shall refrain from any actions which may damage ... the sovereignty, independence and territorial integrity. The Parties denounce separatism in all its forms and undertake the responsibility to refrain from supporting separatist movements". However, Russian behaviour regarding the Transnistrian conflict clearly shows that the Russian Federation fails to abide by the provisions of the aforementioned treaty.

On the 8th of July 2004 the European Court for Human Rights passed a judgement regarding *The Ilaşcu group v. The Republic of Moldova and Russia*, where it is stated that the Russian Federation is a *party* to the conflict with the Republic of Moldova and that it is responsible for the commencement and preservation of the conflict. However, Moldova failed to take advantage of this ECHR judgement within the process of negotiations.

Another international legal document which could be applied in relation to the Transnistrian issue is the definition of aggression, as approved by the Resolution 3314 (XXIX) of the UN General Assembly of December 14, 1974. The actions undertaken by the Russian Federation during the 1992 armed conflict are thus unequivocally defined as an act of aggression against the Republic of Moldova. This international legal document has not been applied due to various political circumstances, one of which is the lack of political will of the Moldovan leadership.

Given all of the above, one could say that currently there is no inter-state legal framework that can be used to solve the conflict.

Practical aspects

The political representatives of Moldova and Transnistria, of guarantor states (Russia and Ukraine) as well as the OSCE held consultations in Odessa, on September 26 and 27, 2005, on the “elaboration of the Ukrainian initiative”. The outcome of these was the decision to resume the negotiations process and include the USA and EU as observers. Theoretically, the inclusion of the EU as an observer among the parties sitting around the negotiation table could lead to a higher level of direct and trustworthy information about the developments in the negotiation process, the issues raised and the positions of the participants. Beyond this positive change of the negotiations format, its basic shortcoming was not removed, namely the recognition of the Transnistrian leaders as representatives of the population living on the left bank of the Nistru river, which is deemed as *a party* to the conflict.

Another action carried out with the active participation of the EU, Moldova and Ukraine that rejects the Transnistrian claim to be treated as a party to the conflict is the establishment of an effective control at the Moldovan-Ukrainian border. On October 7, 2005, the EC, the Republic of Moldova and Ukraine signed a Memorandum of Understanding regarding the EU Border Assistance Mission. According to this document, the Mission, made up of 65 customs officials and border-guards from EU member States started, as of December 1st, 2005, to monitor the entire Moldovan-Ukrainian border (1222 km), including the Transnistrian portion (452 km). The monitors of the Moldovan-Ukrainian border did not expect to discover cases of illegal arms and ammunition transports. However, cases of blatant and massive smuggling of goods were found, as informed by unofficial sources.

To further implement the policy of establishing an effective border control, a Joint Declaration was signed in Kiev on December 30, 2005 by the Moldovan and Ukrainian prime-ministers. The Declaration provided that Moldova would resume, as of 25 January 2006, the simplified procedure of registering businesses operating in Transnistria. The Ukrainian side, in turn, undertook the responsibility to enforce the provisions of the Protocol of May 15, 2003 regarding the mutual recognition of customs stamps. Corollary to that, the Transnistrian entrepreneurs found themselves pressed to operate within a legal framework set up by the Moldovan central authorities.

On the 3rd of March 2006 the enforcement of the Joint Declaration of December 30, 2005 started at all the customs posts along the border between Moldova and Ukraine. This step triggered a virulent response from the separatist leaders and an obvious negative reaction from the side of Russian diplomacy, which showed once again the true Russian role in the conflict.

Law no. 173-XVI of July 22nd, 2005 on Basic Principles of the Special Legal Status of the Localities from the Left Bank of the Nistru River was followed by Decision no. 814 which confirmed the basic guarantees granted to the population of Transnistria on the 2nd of August 2005. This Decision sets forth a number of guarantees concerning property rights of individuals and legal entities, the preservation of the current level of social protection for all categories of Transnistria's population, and the preservation of the current jobs and recognition of employment period accrued towards pension for various categories of civil servants in Transnistria. Against the background of massive disinformation of the population in the region, Moldova adopted on 24 March 2006 a declaration whereby "all the property currently held by the inhabitants of the Transnistrian region, and the industrial hardware used in their operations by the regional entrepreneurship shall not be claimed by the authorities of the Republic of Moldova".

However, the impact of all these steps made by the Moldovan Government (the Decision of August 2nd, 2005 and the Declaration of March 24, 2006) is currently highly debatable and there is no confidence as to whether the population of Transnistria is properly informed about the existence of such guarantees extended to it by Moldova in the event of reintegration. This happens because Moldova is systematically losing the information war waged by the Transnistrian authorities and underestimates the importance of a dialogue with various segments of the region's population. At the same time, Moldovan leadership has failed for many years to formulate a firm position on various aspects of the Transnistrian issue, including the right to property.

On the 1st of July 2004 the Parliament passed Law no. 222-XV amending the Law on Citizenship of Moldova, whereby the inhabitants of the Transnistrian region were granted a number of facilities in the procedure of acquiring Moldovan citizenship. This step made by the Moldovan Government had a positive impact, since the population of Transnistria faces particular difficulties in applying for Moldovan citizenship. At the same time, both Russia and Ukraine were conducting the policy of granting their citizenship to as many Transnistrian inhabitants as possible. Against all odds, as of April 2006, about 52% of Transnistria's adult inhabitants held Moldovan citizenship. Although Transnistria is practically an occupied territory, the percentage of Moldovan citizens living in the area bears direct significance both when it comes to understanding the nature of the conflict and designing its possible solutions.

Conclusions

The settlement of the Transnistrian problem requires coordinated and coherent actions both at the diplomatic level—i.e. during negotiations, in international fora and organizations—as well as at the citizen level, with the purpose of converting as many Transnistrian inhabitants as possible into supporters of Moldova's reintegration. In order to achieve this goal, systematic and coherent actions are needed in the following areas:

- developing a legal framework for the elimination of barriers existing in the way of the country's reintegration (the region's *demilitarization*, *decriminalization*, etc.);
- developing a legal framework for the period of transition needed for a gradual and managed integration of the inhabitants of Transnistria into the information al legal, socio-economic, political, etc. space of Moldova;
- developing a whole set of indicators which would define the moment when the Transnistrian issue can be considered settled;
- mobilizing the necessary resources and developing mechanisms—both domestically and internationally—in order to achieve the country's reintegration under the indicators defined.

Since the Transnistrian issue is a point where the interests of various actors run into each other, some of the actors (Russia, Ukraine) are doing their best to cater to their own interests by launching draft "statutes", "settlement plans", etc. At the same time, USA, EU member states, NATO and OSCE formulate their attitudes to certain aspects of the Transnistrian issue or become involved in the negotiations process keeping in mind the fact that their own interests cross those of Russia. In order to avoid such undesirable situations and protect itself from initiatives targeting goals that are contrary to a healthy reintegration of Moldova, the government of Moldova should develop a National Strategy for the Reintegration of the Republic of Moldova, which would meet the requirements described above. If such a Strategy were approved by Parliament, it would contribute the following:

- a binding legal framework for the promotion of Moldova's state policies—both domestic and foreign—concerning the issue of Transnistria;
- a clear perspective, including reasonable guarantees protected by law, for the citizens living on the left side of the Nistru river, linked to the implementation of the Strategy;
- a cease to all attempts that other actors are making towards achieving their own interests by initiating documents for the negotiations process, etc.

Today Moldova does not have such a systemic approach to the Transnistrian issue. Moreover, when Moldova's government develops new documents it sticks to the old concepts providing for a "special legal status" for Transnistria with wide powers, three official languages, a local representative body, a local executive, etc. No attention is paid to the opinion of the Moldovan citizens living in the region of Transnistria, who are absolutely against any sort of "special legal status", since they believe it threatens to preserve the current status quo. Similarly no attention is paid to the obviously negative precedent of the Administrative Territorial Unit Gagauz Yeri, which has helped preserve a Soviet, isolationist and even confrontational (opposing Moldova) mentality in this autonomous Gagauz region.

Consequently, all of the above yields the conclusion that for now there is no systemic approach to the Transnistrian issue—neither domestically nor by the EU. Such an approach would produce a viable solution to the conflict and strengthen Moldova's statehood. Some steps made by the EU, such as introducing as of February 27, 2004 travel restrictions to member states for some members of the Tiraspol administration, or the EU Border Mission, have created a foundation for the settlement of the conflict. At the same time the Moldovan state seems to lack the capacity to implement a managed integration of the Transnistrian population into the legal space of Moldova and thus achieve a viable solution to the conflict as a whole. The EU, too, has not shown a systemic and coherent approach to the issue of Transnistria. Under the circumstances, even the implementation of all the provisions in the EU-Moldova Action Plan will not yield by itself a solution to the Transnistrian issue. The situation could be improved by an intensified dialogue between the expert communities from Moldova and the EU.

III. PUBLIC ADMINISTRATION REFORM

In the recent years the EC has strongly emphasised the capacity of public administration to implement the *acquis communautaire*, even though this was not a priority for the accession “waves” prior to 2004. However, that is due mainly to the fact that most areas of government activity involve one way or another the *acquis*, while the majority of the candidate States from Central and Eastern Europe did not meet the initial time-frame of reforms, thus displaying a weak administrative capacity for the preparation, coordination and conclusion of the EU association and accession processes. In this context, the progress of a candidate State is assessed in terms of “administrative and judicial capacity to apply the *acquis*”, which means that the reforms have to result in the implementation of the European administrative standards.

Although there are no specific requirements regarding the overall “architecture” of ministries, agencies, subnational public authorities, systems, structures, processes, motivation, and the way they are supervised, the candidate countries need however to meet what lawyers call “the obligatory results”. At the same time, there is an accepted consensus regarding the key components of good governance⁶: reliability and predictability (the principle of legal certainty); openness and transparency; financial accountability (public justification of expenditures); efficiency and effectiveness; technical and managerial competence; and citizen participation. There is also the Europeanization of public administration through the obligation a state has to enforce community legislation; formal and informal intergovernmental cooperation among member states; the use of new information technologies in administration, etc. All these measures lead to the convergence of the administrative systems in the EU member States, thus generating a genuine EAS⁷. The ENP does not hinder Moldova’s efforts to implement the reforms as suggested by the EU to a candidate State. Moreover, it offers the opportunity of joining the EAS by implementing institutional reforms. The absence of *acquis* in

⁶ European Principles for Public Administration, SIGMA papers: No. 27, Paris, 1998, p. 8.

⁷ *Preparing public administrations for the European Administrative Space*, SIGMA papers: No. 23, Paris, 1998, p. 109.

the area of public administration is partly compensated by the EC's Opinions⁸ whereby the progress of candidate States is assessed.

Government reform

On the 14th of April 2005, the Parliament of Moldova started a full overhaul of the Government's structure, with the particular aim to reorganize the various governmental bodies by mergers, by incorporation into ministries as specialized departments, or by transformation into Governmental bureaus, agencies, centres or services. The new Government had 15 ministries and 13 extra-ministerial bodies as compared to the previous 16 ministries and 15 departments. However, the number of ministries returned more recently to 16 when the MLPA was created.

Since European integration policies require a concerted effort of all public and administrative authorities, there were established four interministerial commissions on August 1st, 2005⁹, while on December 30, 2005 the Government approved "The Strategy and Implementation Plan of the Central Public Administration Reform"¹⁰.

During the period of current analysis, no major institutional changes were observed with regard to "public office holder" reform. The intention to create a unit in the area of human resources management in the civil service is still at a conceptual stage. Such a body could be created when the basic laws in this field are adopted: the Law on Civil Service (new version) and the Status of the Civil Servant. On the 13th of April 2006 the Government proposed the adoption of a Code of Conduct to regulate the norms of conduct for civil servants – its draft will be submitted to the Parliament following consultations with civil society. The regulations regarding salaries in the public sector, adopted in late 2005, provided for a slight increase in pay of executive civil servants and somewhat bigger additional duty pay for the chief executive positions and for the senior level of public officials.

As part of the UNDP project aimed at assisting the Government in Implementing the e-Governance component of the National Strategy for Information Society—"Electronic Moldova"—there was developed a Methodological Norm regarding the training and certification of civil servants in the area of information and com-

⁸ "Administrative Reform in the Commission Opinions Concerning the Accession of the Central and Eastern European Countries to the European Union", By Jacques Fournier // SIGMA papers: No. 23, *Preparing public administrations for the European Administrative Space*, Paris, 1998

⁹ Government Decision on the Coordination of Interministerial Work for the Purpose of Promoting Moldova's European Integration Policy, no.786 of 01.08.2005, *Monitorul Oficial al Republicii Moldova* [Moldova's Official Journal], no.107-109/869 of 12.08.2005

¹⁰ Government Decision Approving the Central Public Administration Reform in the Republic of Moldova, no. 1402 of 30.12.2005, *Monitorul Oficial al Republicii Moldova*, no.1-4/9 din 06.01.2006

munication technologies and electronic governance. A project to create an automated information system, “Electronic Meeting of the Government”, is under way. The Concept of Electronic Governance and its implementation plan are about to be finalized. A Governmental Decision regarding the “Official Web Pages of the Public Administration Authorities”.

Even though 2005 was declared the year of local public administration, no perceptible institutional measures were taken in this area. The state of local democracy is being closely monitored by the PACE and the CLRACE. These two bodies periodically produce reports and recommendations. Thus, the September 16, 2005 Report of the PACE Delegation on the Functioning of Democratic Institutions in Moldova brings to light serious shortcomings and residual Soviet-type legislation in the area of local public administration¹¹.

Shortly after its investiture, the Government approved the EUMAP¹². Although this is a Government Decision which endorses the signing (on February 22nd, 2005) of the EUMAP negotiated earlier by high officials, it also contains some practical provisions which require the ministries and relevant institutions to ensure the implementation of the Plan and report monthly, quarterly and half-yearly in the state language and English on the implementation of the actions planned. In order to bring the administration closer to the citizens, a number of Government decisions were passed regarding the organization of effective public audience¹³.

On the 23rd of December 2005 the Parliament passed the Law on the system of salary pay in the public sector¹⁴, whereby the framework of compensation for the work of civil servants and public officials was amended. On February 9, 2006 a Law was passed on equal opportunities for men and women¹⁵, which provides for equal access to public positions. Here are some other relevant laws and regulations adopted over this period as part of the public sector reform:

¹¹ Functioning of democratic institutions in Moldova, Doc. 10671, 16 September 2005, web: <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc05/EDOC10671.htm>

¹² Government Decision Approving the EU-Moldova Action Plan, no. 356 of 22.04.2005, *Monitorul Oficial al Republicii Moldova* no. 65-66/412 of 29.04.2005

¹³ Decision on Audiences no.533 of 06.06.2005, *Monitorul Oficial al Republicii Moldova* no. 80-82/564 of 10.06.2005; Decision on Making Petition Reviews More Effective and Organizing Audiences, no.141 of 08.02.2006, *Monitorul Oficial al Republicii Moldova* no. 28-30/181 of 17.02.2006.

¹⁴ No. 355-XVI of 23.12.2005, *Monitorul Oficial al Republicii Moldova* no. 35-38/148 of 03.03.2006

¹⁵ No. 5-XVI of 09.02.2006 *Monitorul Oficial al Republicii Moldova* no.47-50/200 of 24.03.2006

- GD on Measures to Prevent Corruption and Protectionism in Public Institutions¹⁶;
- GD on Approval of the Regulation on the Procurement of Services for the implementation of activities on devising public investment¹⁷, adopted under the Law on Procurement of Goods, Works and Services for State Needs no. 1166-XIII of 30 April 1997;
- GD on Approval of the Concept of the Risk Management System in the Customs Service¹⁸, passed in order to improve customs procedures, speed up the flow of goods and persons across the border of Moldova, reduce the time spent on customs clearance and increase the efficiency of customs control;
- GD on State Orders for the Year 2006, concerning professional training of public administration personnel at the Academy of Public Administration¹⁹.

Assessing the impact of institutional and procedural changes

The administrative reform is a long-term process which can be implemented by several consecutive governments. Therefore, one cannot expect immediate effects, as improvements in the performance of public authorities will become noticeable in the medium term.

The government's view of the administrative reform is influenced by a number of policies, practices and elements:

1. The Government reform focused excessively on internal mergers and name-plate changes (at the end of the day the number of ministries remained at 16 and the total number of bodies under the Cabinet's authority did not change significantly). This was done at the expense of genuine administrative reform which ought to streamline the functions of all the public and administrative authorities, including local ones. The change in structure and titles is usually accompanied by a slow-down in the decision-making process and conflicts of competences, because the establishment of a new body comes first, while the competences are defined later. The example of the new MLPA²⁰ epitomized this policy, when the draft law was bounced back and forth among the state institutions without any visible improvement. At the same time, reform has not touched upon local

¹⁶ No.615 of 28.06.2005, *Monitorul Oficial al Republicii Moldova* no. 92-94/679 of 08.07.2005

¹⁷ No. 44 of 13.01.2006, *Monitorul Oficial al Republicii Moldova* no.25-27/142 of 10.02.2006

¹⁸ No.1144 of 03.11.2005, *Monitorul Oficial al Republicii Moldova* no.151-153/1231 of 11.11.2005

¹⁹ No. 114 of 01.02.2006, *Monitorul Oficial al Republicii Moldova* no. 25-27/154 of 10.02.2006

²⁰ Law Amending Art. 24 of the Law no. 64-XII of 31 May 1990 On the Government, no. 25-XVI of 16.02.2006, *Monitorul Oficial al Republicii Moldova* no. 66-69/271 of 28.04.2006

public administration, although the PACE's and CLRACE's reports and recommendations were specific in this respect.

2. It is inefficient to approach separately the three indispensable components of public sector reform: central public administration reform, local public administration reform, and civil service (in some cases separate approaches are applied to the civil servants from the central and local administration). Such a reform represents an appropriate opportunity to decide what activities are to be left within the Government's authority, which activities could be passed to the governmental agencies or local authorities, and which ones can be outsourced or even what kind of units could be privatized. Therefore, the fundamental question is the depth of the reform, because the modernization of the public administration needs a systemic approach²¹, focused on the interactions inside the administrative space.
3. It seems that in the context of systemic changes in the public administration a more appropriate step would be the establishment of a Ministry of Public Administration, which could coordinate the administrative reform and manage the civil service by means of a National Agency of Civil Servants.
4. The set up of the MFAEI is a positive step, although there were some proposals to make a separate Ministry of European Integration. The view of some officials that the development and implementation of the European Integration policies are the primary responsibility of the MFAEI should be changed. However, the Ministry in question will continue to hold a central role since it is seen as a neutral actor in various interministerial conflicts that tend to flare up in the process of European integration.
5. An issue to be aware of is the weak link between the reform of public administration and the process of European integration. Public authorities approach these two processes separately. Though the central public administration implements reforms partly following the EUMAP provisions, these reform measures are not perceived accordingly.
6. The establishment of MID was a step forward in the context of the strategy to build an information society. It is necessary for this institution to increase the use of information technologies in the administration, to develop a culture of innovation among civil servants, to increase the transparency of decision-making in the administration, to simplify administrative procedures, and to increase the quality of the public services provided to citizens and private businesses.

²¹ Such a solution was proposed after all in the respective period within the *ad hoc* Parliamentary Committee for the Local Public Administration Reform

7. A positive step has been the Government's approval of a large number of regulations regarding the structure, staffing and rules of operations of ministries and other central administration bodies. The structural weakness of these institutions is that they do not have public relations units or press offices, with some exceptions (e.g. MFAEI, MEY). We could positively regard the efforts (though somehow irregular ones) of the Parliament, the Government and some ministries to publish on their Web sites the draft normative acts with the purpose of consulting the interested parties.
8. The reorganization conducted since the EUMAP was signed and to the present day has led to a reduction in the number of civil servants in the central public administration, although the official figures in this respect vary²². However, the reform should target a higher quality and not necessarily the number of civil servants²³. Although the reorganization of the Government has led to a high number of vacancies in the public sector, no vacancy notices were publicly issued. The legislation on the public service does not define explicitly the positions to be filled by appointment, selection or competition. Nevertheless, there is an explicit provision that requires the publication of vacancy announcements calling for applications. However, with some minor exceptions concerning in particular public positions in the local administration, no such announcements have been published, not even in the then-state owned papers, at that time - *Moldova Suverana* and *Nezavisimaia Moldova*. These shortcomings often generate accusations—which are sometimes grounded—of nepotism and influence peddling.
9. A modern system of public administration can function only when the salaries paid to the civil servants match their level of training and the relevance of their job. The Law on the system of payment in the public sector, passed in February 2006, defines the salaries of civil servants and public officials. Although the salary increases are insignificant, this mechanism reveals a start in changing the emphasis from the length of service to the performance criteria.

²² On April 26, 2006, during a meeting on the assessment of reform process in the local public administration, attended by the Prime-Minister and Cabinet Ministers, the President of Moldova said that the staffing of the central public administration bodies had shrunk by 1603 positions, which was 39% (web: <http://www.presedinte.md/press.php?p=1&s=3903&lang=rom>). The Government of Moldova Annual Report (February-December 2005) on EUMAP Implementation makes reference to the decrease in the number of civil servants in the central administration which is part of the government, by approximately 25 percent.

²³ Martin Warner, Cezar Scarlat, Daniel Popescu, *ibid.*, p. 65

10. Most normative acts regarding administrative reform were adopted at the end of 2005 and in early 2006. Many of them have not had the time yet to produce effects, since they come into force some time later after the date of adoption. The fragmentary approach to the administrative reform has undermined the associated legislative process, while the frequent subsequent amendments reveal that no serious impact analyses/studies were properly conducted beforehand.

Conclusions and recommendations

The process of administrative reform over the time period assessed has been incomplete and is still evolving. Even though some progress can be observed in certain areas, the approach to reform is still fragmentary. It is not clear how the system of public administration will look at the end of the EUMAP implementation. The slow implementation of administrative reform is due to the following reasons: financial constraints, lack of political will, politicians' and civil servants' inability to rise to the challenges of the time, and the absence of clear regulations regarding the administrative personnel and structures.

The staff recruitment process is not completely fair, while staff assessment is based on no performance indicators. There is no awareness of the fact that the public administration competes with the private sector to attract and keep competent and motivated specialists.

The deadlines for the implementation of the EUMAP actions, according to the NPIP, are too generous.

The delegation of responsibilities to the local public administration, without subsequent support in professional development needed to carry out new duties, generates discontinuity and impedes the reform process. We could anticipate that as a result of the protracted process of devolution and modernization of local public administrations, they will have a low capacity to absorb and manage European funds. This is disappointing, in particular in the context of substantial financial allocations offered by the EU from 2007 for the implementation of the ENP that will target largely local communities. Thus, there is a risk that a big part of these funds will be unused.

The functioning of administrative mechanisms can be improved considerably by an appropriate devolution to the more competent and better specialized levels of public administration.

In order to avoid task jams, it is recommended to prioritize in the short run (by the end of 2006) the activities relating to administrative reform, with a focus on:

- Reform of the civil service (establishing a professional, stable and politically neutral body of civil servants, by adopting and enforcing a single and coherent legal framework);
- Comprehensive overhaul of local public administration by strengthening the process of decentralization and devolution (creating an adequate legal framework for decentralization and devolution in line with Council of Europe recommendations, clarifying the competences of the various tiers of public administration, strengthening the financial autonomy of local public authorities).

In the medium term, emphasis should be placed on integrating the systemic reform efforts in the three areas of the public administration (central public administration, local public administration, and civil service), as well as on:

- Completing by the ministries and other bodies of the central public administration the process of functional analysis and delegation of responsibilities and powers;
- improving the process of public policy development, central-level decision making, and enhancing the transparency of this process;
- accelerating the informatization of the public administration system;
- simplifying administrative procedures and bringing public administration closer to citizens;
- communicating better both internally within public administration and externally;
- professionalizing the civil service;
- implementing rational regional development policies;
- gradual demilitarization of some community services;

Here are some specific actions which we believe should be planned immediately:

- the development of a draft law on the transparency of decision making in public administration;
- the development of a draft Law on decentralization, with public consultations held regarding it and passing it;
- the development of weekly programs for European Integration departments of the central public administration and weekly supervision measures of their implementation;
- the preparation of a legal and institutional framework for the establishment of units in charge of European integration within local public administrations;
- the creation of public relations units and press-offices in ministries;
- the development and approval the Strategy of European Training for Civil Servants (2006-2008).

IV. SOCIO-ECONOMIC REFORM AND DEVELOPMENT

The positive economic developments during 2005 in the context of Moldova – EU relations were the following:

- the signing of the EUMAP;
- the EC approval and subsequent launch of a new TACIS Action Plan for the Republic of Moldova, covering the years 2005-2006, worth 42 million euros;
- strengthened cooperation between Moldovan entrepreneurs and their EU counterparts by means of study visits to enterprises in Western Europe;
- Moldova's inclusion on the EU GSP list as of 01.01.2006; Moldova is also to benefit from the extended trade preferences or GSP Plus, which sets a zero export tax to EU for an extended list of goods;
- the reconfirmation of Moldova's rating for foreign commitments by rating agencies²⁴;
- the expansion of a number of sectors with the participation of foreign capital.

At the same time, negative developments of the year were set in motion by damaging practices that make the business environment highly vulnerable to political factors. A simple political statement can change the way business operates, while a legislative amendment voted by the Parliament can open or close markets. Moldova was also hit by corporate scandals involving government officials. In this respect, we could mention the case of "Victoriabank", or the authorities' request—in the form of an ultimatum—to commercial banks to decrease the interest rates on loans.

On the other hand, the major challenges of this year are generated by the following factors:

- In order to ensure an efficient and transparent absorption of European funds, the Government should establish a system of management either by setting up PMUs attached to each ministry or by establishing a single body to manage the projects of various ministries.

²⁴ Iurie Gotișan, commentary „Deficite externe, inflație, curs de schimb...” [Trade deficit, inflation, exchange rate...], 14 March 2005, <http://www.e-democracy.md/comments/socioeconomic/200503142/>

- It is necessary to increase Moldovan exports to Western markets. The Government ought to show higher effectiveness in negotiating as many advantages as possible in the future Free Trade Area between Moldova and the EU. It must also spend constant efforts in bringing Ukraine and Russia to a situation where they abide by the trade agreements in force, and must be prepared for the moment when Romania will have to withdraw from the free trade agreement with Moldova after accession to the EU. On the other hand, Romania's EU membership will shift business opportunities from Romania's western border to its eastern one. The companies interested in the Moldovan market will have to think about setting up production capacities across the Prut river. The argument in favour of such a development is based, obviously, on the much smaller costs that Moldova will offer.

Supporting sustainable growth

Economic growth in 2005 was somewhat smaller than in 2004. GDP—the main indicator of economic activity—grew by 7.1% as compared to 7.3% in 2004, according to the NSB. Industrial output grew slowly, and this was in fact the sector which pulled the whole economy downwards. This sector developed in 2005 by only 6.3%, matching the level of growth in 2004. The agricultural sector practically doubled its growth in comparison with 2004, achieving an increase of 8%. The sectors which continued improving their performance in 2005 were construction and services. Both grew by more than 8% and together contributed almost 53% to the GDP.

We expected the expansion of the service sector, having in mind the structure of economic activity in the EU, which is the model to which we aspire. While in Moldova this sector contributes 50% to the GDP, in the EU this share is 70%. The dynamic of services development is closely linked to the population's wealth. In this respect, EUROSTAT shows that Moldovans have only 1/10 of the EU-average standard of living. This parameter is assessed based on the GDP per capita of Purchasing Power Parity (in Moldova this indicator is US \$2370/per capita, while the EU average is about \$22000)²⁵.

In 2005 Moldova had **the largest trade deficit** of all the transition years—US \$1.2 billion. Such a deficit is not easy to finance in any economy. At similar levels, Mexico, some Asian countries, as well as Hungary and Poland, all during the last

²⁵ www.europa.eu.int/comm/eurostat

ten years went through financial crises marked by massive devaluations of their national currencies. At the same time, what is important at the end of the day is whether enough funds enter the economy to cover the gaps, and a solution in this respect is healthy financing for the current account deficit. Many experts believe that the remittances sent to Moldova by its citizens working abroad could solve the problem. However, hefty hard-currency remittances represent a short-term solution, as they are going to decrease as time goes by.

On the other hand, as long as there are financial sources to balance the foreign debt the situation is under control. Hence, the Moldovan economy has given to foreign investors an acceptable degree of confidence (with occasional exceptions). For example, the FDI made last year in Moldova were about US \$260 million, which meant that the current account deficit (about \$285 million) was financed at about 90% by these means. The authorities estimate that the FDI this year will rise to \$300 million. We will face problems if we are not able to attract more foreign investment. In other words, since the big privatization projects are coming to an end, while the financial market is opening up to foreign players, what will matter more is the investment in shares of listed companies, investment funds, governmental bonds, etc. (i.e. portfolio investments). However portfolio investments are more volatile than FDI (i.e. money arriving to seek high returns or, as the economists call it, speculative capital). It means that this money will remain here for as long as it can earn high returns, take advantage of a healthy economy, economic growth and stability. A more dangerous situation is when the deficit is combined with slow growth.

We should mention one other extremely important indicator, which changed significantly — **unemployment**. Last year it reached 7.3%, which is a comparable rate to the one registered by countries with a more stable economy. This achievement is due mainly to the labour movement of migrants, but also to the decrease of the fiscal burden, which together have brought to the surface vacant jobs.

Inflation in 2005 was 10% according to NBS. This rate matched Governmental and NBM forecasts²⁶. The Government estimates that the inflation rate in 2006 will be at 10%, i.e. the same as in 2005. In fact, inflation in Moldova generally does not have a monetary nature and is generated mainly by non-monetary factors, which in 2006 took the form of the world increase in oil prices, some tariffs for the administratively regulated services, increased prices for imported energy resources (natural gas, electricity), and an increase in the population's purchasing power influenced by growing salaries, pensions and remittances. It is an open secret that

²⁶ National Bureau of Statistics, *Annual Report 2005*

domestic prices rise more quickly to match international prices than do domestic salaries to international ones. Therefore, the NBM will have to intervene on the market and apply adequate monetary instruments in order to keep the soaring prices down.

In 2005 the MF adopted a prudent taxation policy, which contributed to a great extent to the achievement of the strategic goal of macroeconomic stability. At the same time, economic growth based on increased consumption (including of imported goods), triggered a **substantial rise in the budget revenues based on VAT and excises**.

Generally, the year 2005 witnessed some progress and positive expectations in terms of Moldova's relations with its main international creditors. Although the WB approved its new Country Strategy, it also changed substantially its approach to projects in Moldova, while the IMF started preliminary discussions on a new memorandum with Moldova. In early May the IMF Executive Board approved a new agreement with Moldova worth US \$118.2 million for 3 years²⁷. The agreement was approved based on the Economic Growth and Poverty Reduction Mechanism. Besides, in 2005 the budget saw a surplus of about 1.2% of GDP, which was used towards repaying the country's foreign debt.

The budget surplus was determined by actual budget revenues which were higher than forecasted (mainly based on indirect taxes: VAT and excises). The debt of the government sector decreased from US \$700 million as of 31 December 2004 to some \$650 million by the end of 2005. **Domestic public debt increased by about 10%**, reaching at the end of 2005 about 3.79 billion lei²⁸ (US \$293.7 million), while at the end of the first quarter of 2006 domestic debt was about 3.81 billion lei²⁹. We have to underline that the Government's efforts to reduce foreign debt were significantly supported by a decrease in the debt of the private sector to the public budget (the debt reaching about 1.4 billion lei) and by the effective measures against tax evasion. These efforts would also support deflation and limit both domestic and foreign debts. Another commendable fact is that the MF has started to turn more and more frequently to financial instruments used on the market (government bonds) in order to finance the budget deficit instead of requesting direct deficit financing through NBM loans. These developments might improve the "budget discipline". Besides, for the first time in 2005, the state budget was integrated into the national public budget. Also in 2005 the Government raised the

²⁷ <http://www.e-democracy.md/e-journal/20060515/#2>

²⁸ National Bank of Moldova, Macroeconomic Indicators, 2005

²⁹ National Bank of Moldova, Quarterly Report, 2006

issue on VAT collection on natural gas imported from Russia. To date, for reasons which are difficult to comprehend, VAT is not collected at the destination, as it should be according to international practice, but at the source³⁰, which deprives the country's budget of significant revenues every year.

It is necessary to mention that the funds allocated for the support and consolidation of the private sector are extremely scarce: the fund to support small business received only one million lei, while the exports-support fund received two million lei. Also, 2006 is the last year of EGPRSP implementation (2004-6), and the Executive will have to start negotiations with the WB in order to open a new EGPRSP round, after having shown some poorly-thought approaches in the implementation of the first round.

A functional market economy

The **transparency of privatization decreased** in 2005. One example in this respect is the Cojușna winery, which was privatized after a long period of secret negotiations. It is not privatization per se that raises concern but rather the fact that the privatization terms were not made public: price, the investor's commitment to employees, and the time frame of the investments planned.

Regulatory reform was kick-started by the introduction of the "guillotine" Law. The law prescribes that all the legislation and regulations governing entrepreneurial activity are to be revised, and those impeding the free private initiative are to be cancelled. Another step towards a better business environment was the adoption of a new Law on leasing. Besides, during this period of time, the WB assessed positively the implementation of economic reforms, which was an extremely useful signal to the business and investment environment. However, we have to mention that red tape and the small salaries of civil servants working in the regulatory area are one of the main impediments to the implementation of regulatory reform (or the "guillotine" Law).

The government has not been able to refrain from **abusive interventions** in the management of private business. We have noticed that numerous times business people have been subject to administrative and legal pressure for either economic or political reasons. Such pressure continued in January 2006, too. A meaningful example would be the involvement of the Government in the "Victoriabank" case and the allegations made against the Bank's president. There have also been cases

³⁰ Expert-Grup, *Analize de Business și Economie, Economia Moldovei în 2005* [Business and Economic Analyses, Moldova's Economy in 2005]

when the Government came under open pressure exercised by corporate interests, and it acceded to promote them, acting therefore cynically and in disregard of public interest. The story of the *blitzkrieg* dislocation of the NSB from its premises is the most eloquent example in this regard; the public unfortunately did not react in any way³¹.

Social and employment policies

We should underline that no essential changes were noticed on the labour market in 2005. Official data show that in 2005 unemployment was 7.3%, i.e. 0.8% smaller than in 2004—a decrease explained largely by the fact that many young people left to work abroad. A considerable portion of the rural population forms a sort of hidden unemployment, as the rural areas are “overpopulated”. The economic interpretation of such overpopulation is the negative marginal output of agricultural labour. The Government however has a Program on the Consolidation of Agricultural Lands for 2006-2012, whose purpose is to “halt the exodus of labour from the rural sector, increase labour productivity in agriculture, stimulate the land market, and improve the quality of life of farmers”.

Stopping the outflow of labour migrants should be one of the main priorities of the Government program, since it leads to brain drain with a damaging effect on the economy³². However, it is worth mentioning that after peaking in 2003, the rate of remittances decreased significantly in 2004-5.

In 2005 the Wage level increased by 7%, while the average salary in the economy reached 1350 lei (US \$105)³³. The salary level rose due to administrative increases in the public sector. Without the Government’s intervention this real average increase across the economy would be much smaller than in 2004, when salaries grew by 7.6%. In fact, wages in 2005 grew slower than in 2004, despite smaller inflation. On the other hand, some types of household income increased considerably, for example hard currency (remittances are estimated at US \$800 million³⁴). Wage increases across the economy in 2006 are expected to fall into the 5-7% range (except for the public sector where salary increases are expected to be much higher).

³¹ Expert-Grup, *Analize de Business și Economie, Economia Moldovei în 2005* [Business and Economic Analyses, Moldova’s Economy in 2005]

³² Tamas, Kristof, “Moldovan Migration – Not Quite the Savior. A Migration for Development Analysis”, Commissioned by the SIDA-office in Chisinau, April 2006

³³ NBS

³⁴ NBS and NBM data.

In the international context, the average 2005 salary in Moldova—US \$105 per month—takes 7th place among CIS countries. The average monthly salary in Moldova is 5.6 times smaller than in Estonia (US \$593), where this indicator is the highest among the ex-USSR countries.

Rural and regional development

Regional development is closely linked to rural development, as Moldova is primarily a rural country. More than 60% of Moldova's territory represents agricultural, arable land³⁵, and 61% of the country's population live in rural areas, while the share of agriculture in GDP is only 20% (in 2004)³⁶. Thus, the “rural question” can no longer be overlooked, and in fact it is one of the main priorities set in the AP.

The agricultural sector grew by about 9% in 2005, much more than in 2004. This was largely due to favourable weather and agricultural subsidies allocated by the state. However, in spite of these positive signs, agriculture did not become less backward and extensive in practice. The year 2005 brought to the fore the defining features of the negative side of agricultural development in Moldova:

- excessive fragmentation of property;
- a predominance of subsistence, small-scale agriculture (about 60% of the private agricultural farms in Moldova are smaller than 3 ha);
- limited access to markets, which underlines the farmers, inability to trade their goods.

Besides, it is necessary to note that in 2005 some socio-demographic indicators worsened. For instance, the number of divorces in rural areas was higher than in urban areas, despite the conservative nature—until recently—of rural marriages³⁷. At the same time, if we take into consideration the fact that in raions the rural population represents on average about 80%, and that education and life expectancy are poorer in villages, then the following conclusion becomes imminent: human development in the rural environment lags far behind urban areas.

Increasing the well-being of the population

The main legislative document which gives priority to increasing the well-being of the population is the EGPRSP (2004-6), which was approved by Law no. 398-XV of 2 December 2004.

³⁵ Government Decision no. 559 of 10.06.2005 on the approval of the Land Register as of 1 January 2005 (*M. O. R. M.* no. 86-88/636 of 24.06.2005)

³⁶ NBS, Population Census, 2004, www.statistica.md

³⁷ Statistics requested by the author from Central Registrar's Office

Preliminary statistics show that in 2005 the real available income per capita rose by about 18%; which was determined chiefly by increases in salaries, followed by social payments, agricultural revenues, as well as other transfers. In 2005 the inequality of income—which is an important indicator of poverty—decreased slightly, although it is still high compared to the inequality in the EU. Although there was quite a strong economic growth, it did not lead to a proportional decrease in numbers of the poor population. It is difficult to assess Moldova's achievements in the area of poverty reduction in 2005, since the results of the Household Budget Survey (HBS) have not been published yet. However, according to preliminary estimates, poverty did not fall below 25% (the national threshold of absolute poverty). One problem which severely hampers the monitoring of policies is that the Government publishes poverty reports with great delays. Thus, the public is uninformed and policies are not duly adjusted to the context of current developments. Finally, poverty in Moldova is—according to statistics—a very dynamic phenomenon, which means that the conclusions based on data for 2004 could become less relevant for the policies of 2006.

V. TRADE LAWS AND REGULATORY REFORM

After signing the PCA, Moldova started to implement a series of important reforms aimed at improving the investment climate of the country. The regulatory framework governing the entrepreneurial activity was improved by the new Law on State Registration of Enterprises and Organizations, the Law on Protection of Competition, the Law on Entrepreneurial Investments, and other laws and regulations. Moldova joined the WTO and aspires to accede to the EU. In 2004 Moldova made important steps to implement regulatory reform. In the area of intellectual property rights, Moldova joined all the conventions listed in Annex III, para. 1 and 2 of the PCA, and passed laws on patents, trade marks and titles of origin of goods, copyright and related rights, etc.

Although considerable legislative and executive institutional changes have taken place in recent years, there are still many circumstances which have a negative impact on entrepreneurial activity and which represent one of the main obstacles on the way to industrial development and improved competitiveness of Moldovan goods. The cumbersome licensing procedures, various controls to which companies are subject, legislative contradictions and instability, the lack of instruments whereby a healthy competition could be fostered on the domestic market, corruption and the ineffectiveness of the judiciary are the main factors hampering investment activity in Moldova. Moreover, currently we see a high level of copyright and associated rights violations in Moldova.

Legislative aspects

Regulatory reform. Company law

A major step forward in the implementation of regulatory reform has been the adoption of Law no. 424-XV on the revision and streamlining of the regulatory framework governing entrepreneurial activity (the “guillotine” Law), which aimed at abolishing regulations which were not in line with the law and were not conducive to a thriving market economy, as well as making entrepreneurial regulation more stable and of higher quality (Art. 1 and 3 of Law no. 424-XV).

When the EUMAP was signed, company law (the Civil Code, Law on Entrepreneurship and Enterprises, Law on Joint Stock Companies, etc.) contained some inconsistencies concerning the organizational and legal forms in which entrepreneurial activity could be conducted and legal conditions under which enterprises could be organized and operated.

During the reference period steps were undertaken to develop a dialogue with entrepreneurs concerning ways of improving the business climate. The Concept on the Cooperation Between the Parliament and Civil Society was also approved. Another important step was the initiative to publish important draft legislation concerning regulatory reform on the Web, where any interested actor could express his/her opinion on specific draft laws (<http://mec.md/rr.aspx>).

In addition, Moldova continued to spend efforts in abolishing discrimination against foreign investments. Particularly, the Government passed Decision no. 275 of 16 March 2006 amending the GD regarding fees for legal services rendered in the area of industrial property protection.

Competition policy

During the period of evaluation, no single definition was developed for the notion of “state aid”, nor the corresponding concept, system and uniform procedures for state aid transfers. There is no national mechanism for a centralized collection of information on state aid in Moldova. At the same time, the practice of adopting discriminatory legislation continued; based on that, some enterprises received state aid in the form of, among other things, exemptions from taxes and fees or cancelled debts to the state budget (e.g. the Law on the International Free Port Giurgiulesti).

There are three main factors which impede the development of competition in Moldova:

- The absence of an effective NCPA (a body that would supervise the observance of the legal provisions on competition by all actors on the market, including the state). This situation persists despite amendments made to the Law on Competition Protection changing the provisions regarding NCPA functions, anticompetition actions and other related aspects. The positions of NCPA Director General and his/her deputies were not filled during the monitoring period.
- The state’s excessive and unjustified interference in entrepreneurial activities;
- Tax evasion by a significant number of enterprises and avoidance of other responsibilities requiring considerable expenses (violations of labour legislation, copyright and related rights - the “shadow” economy).

Intellectual property rights

In the period under study the Parliament passed Law no. 205-XVI amending some legislative acts. Thus amendments were made to a number of laws governing intellectual property, such as the: Law on Copyright and Related Rights, the Law on Patents, the Law on Trade Marks and Titles of Origin of Goods, the Law on the Protection of Plant Species, and the Law on the Protection of Industrial Designs and Models.

According to SAIP, a working group was created on August 17, 2005 in charge of conducting a study on counterfeiting and piracy in Moldova and a questionnaire was developed for a survey. Currently, data is being collected from holders of intellectual property rights.

The effectiveness of the amendments

1. Regulatory reform. Company law

The programs, plans and strategies mentioned above provide for a number of measures aimed at streamlining the legal framework as part of the regulatory reform under way in Moldova. Some activities stipulated in these documents have already been carried out:

- A Law was passed (no. 376-XVI) on the amendment of a number of laws and regulations, including the Code of Administrative Offences. The amendments cancelled the sanction existing previously for carrying out “entrepreneurial activity ... requiring a license”. However, it is debatable whether this amendment is appropriate, since the Law on Entrepreneurship and Enterprises (Art. 10[4]) contains harsh sanctions for carrying out entrepreneurial activity subject to licensing without holding such a license.
- The enforcement of Law no. 424-XV has started. The outcomes of the reforms governed by this Law have been generally positive.
- All three stages of the implementation regulatory reform have been carried out. The final version of the Register of Official Laws and Regulations Governing Entrepreneurial Activity has been approved by the GD no. 275 of March 16, 2006.
- GD no. 920 approved the Catalogue of Authorizations, Permits and Certificates Issued by Central Authorities and Their Subordinated Bodies to Individuals and Legal Entities Engaging in Entrepreneurial Activities. The goal of this Decision was to limit the number of authorizations and permits, and reduce their costs. GD no. 920 provides for significant guarantees in the area of authorizations. Thus, the fees for authorizations, permits

and certificates issued by administrative authorities that allow for entrepreneurial activities can be charged only when such fees are stipulated by law. In all other cases, authorizations, permits and certificates are to be issued free of charge.

- Another positive piece of legislation was the Law on the Basic Principles and Regulatory Mechanism of Entrepreneurial Activity. Unlike Law no. 424-XV, which revised only the laws, the former tackles regulations, too.
- Some positive trends have been observed in relations between the authorities and the business community. Many draft laws regarding economic issues have been submitted for review to the Economic Council under the Prime-Minister's auspices, and to the Entrepreneurial Regulation Working Group. The opinions of investors and entrepreneurs were taken into account when the introduction of the official acts in the Register of Official Acts Regarding Entrepreneurial Activity and the adoption of new normative acts were under consideration. As far as the efficiency of the White Book is concerned, the recommendations of the Association of Foreign Investors have not been fully implemented, although many of them have been included into the state programs aimed at, among other things, improving the business climate in Moldova.
- The GD no. 275 of 16 March 2006, which introduced amendments to the GD Regarding the Fees for Legal Services in the Area of Industrial Property Protection, resulted in the elimination of discriminatory differences between the fees charged for Moldovan and foreign actors.

At the same time, it is necessary to mention:

- The Law amending Art. 6 of Law no. 1308-XIII of 25 July 1997 on the Normative Price and Procedure of Land Transactions, contains a provision impeding foreign investment. According to this Law, enterprises with foreign capital do not have the right to purchase agricultural land. This ban is an obstacle to attracting foreign investment into the agricultural sector and contradicts one of the EUMAP principles: the removal of discriminatory measures hindering foreign investment.
- The NAER budget for 2006 was approved by GD no. 94 of January 27, 2006, and the NARTI budget for 2006, approved by GD no. 1 of January 3rd, 2006, were discussed in a more or less transparent way. However, the budgets of public bodies must contain detailed information on revenues and expenditures. The budgets of NAER and NARTI fail to observe this principle as they show only the total amounts of revenues and expenditures and no break-downs.

2. Competition policy

Currently, the Law on the Protection of Competition, with the amendments introduced by Law no. 322-XVI, is of a declarative nature as there are no enforcement mechanisms. Moreover, some provisions of this Law contradict the Law on Telecommunications, the Law on Natural Gas and the Law on Electricity in terms of protecting competition and setting up tariffs.

3. Intellectual property law

The questionnaire drafted for the survey on counterfeiting and piracy in Moldova has a number of well-thought questions. At the same time, the questionnaire pays little attention to reasons for the development of counterfeiting and piracy in Moldova. This subject is not tackled multilaterally, although the ways in which intellectual property objects (e.g. trade marks, patents, software, other objects of copyright and related rights) are used, and the ways of counterfeiting and piracy are very different.

Law no. 205-XVI amended some legal acts in order to bring them in line with the Code on Science and Innovation. An important amendment introduced by Law no. 205-XVI concerns the life-span of copyrights. According to Art. 17(3) of the new Law on Copyright and Related Rights, a copyright is valid during the author's entire life plus 70 years after the author's death (instead of 50 years that was stipulated by the old version of the Law). This amendment is debatable because it limits the areas of interested individuals to the cultural treasure of the world. Extending the term of copyright validity is not justified given the augmentation of social processes in the world, including such processes as the use and dissemination of works of art whereby author fees are charged more intensively as well.

Recommendations:

In order to improve the legal framework, the following actions are recommended:

- adopting the Law on the Basic Principles and Regulatory Mechanism of Entrepreneurial Activity;
- revising all the laws containing provisions on entrepreneurial activity in order to bring them in line with EUMAP principles and criteria listed in Art. 3(2) of the Law no. 424-XV;

- revising the legislative regulations included in the Register but which had been adopted in accordance with the laws found in violation fully or partially of the revision criteria;
- revising all the normative acts in the area of organization and functioning of administrative bodies in order to eliminate inconsistencies among them and confusions in their names and powers. For example, the Law on Television and Radio does not stipulate clearly which body issues the permit, which body authorizes TV and radio broadcasting, and which body issues the permit for using the network and which one for the technical license;
- establishing legal liability for the law-making and enforcement of laws in violation of the existing rules concerning the procedure of designing regulations;
- creating a mechanism to ensure the timely development and making of regulations to ensure the implementation of the adopted law. For example, the Law on Competition Protection provides for an NCPA which has not been established in a timely manner.

The following actions are recommended for the area of **licensing**:

- reducing the number of activities subject to licensing, as per Art. 8(1) of the Law on Licensing Certain Activities, so as to ensure full compliance with the criteria set forth in Art. 4 of the above-mentioned law;
- phrasing more precisely certain types of activities subject to licensing;
- revising the legal requirements for renewal and obtaining duplicates of licences towards their simplification, reduction of costs and establishment of reasonable sanctions;
- revising the normative acts regarding licensing requirements with the purpose of their harmonization and removal of inconsistencies;
- excluding the inconsistencies from licensing legislation in the area of TV and radio broadcasting. The difference between the broadcast and technical licenses must be clearly defined or abolished altogether. Also, a precise list of activities in the area of broadcasting is necessary, so that the names used in the Law on Licensing Certain Types of Activities coincide with the names used in the Law on Broadcasting;
- creating mechanisms whereby it will no longer be possible to add into laws new types of activities subject to licensing without corresponding amendments into the Law on Licensing Certain Types of Activities;
- publishing in a timely manner of all the international treaties (including treaties concerning business activity) to which Moldova is a party in

Monitorul Oficial (Moldova's Official Journal), and not only the Decisions whereby such treaties are ratified;

- placing in due time and complete fashion the legislation in force on the official Web sites of state bodies.

The following is recommended in the area of **intellectual property law**:

- establishing cooperation between the SAIP and BCC with the purpose of applying sanctions in an effort to ensure the compliance of broadcasters with copyright and related rights;
- performing controls and sanctioning individuals found in violation of the copyright of software products;
- harmonizing domestic legislation in the area of intellectual property with international standards.

VI. THE FINANCIAL AND BANKING SYSTEMS. FINANCIAL CONTROL. AUDITING

The Relations between Moldova and the IMF

Since 1993 Moldova has signed six agreements with the IMF, receiving US \$408 million as a result. In 2003 the IMF suspended its financing program for Moldova, and it was not until December 2005 that a final assessment was published, following three evaluation missions which had visited Moldova over the year. The assessment referred to the achievements of the Moldovan Government and National Bank in securing macroeconomic stability, but the IMF experts also recommended that the Moldovan authorities to keep under control the trade balance deficit and slow down the increase of state expenditures, which had risen in previous years from 33% of GDP in 2003 to 37% in 2005. The IMF also pointed out in its final evaluation that the main task of the NBM in the short term is to ensure the stability of prices in addition to its task regarding the national currency.

On May 5, 2006 the IMF Executive Board approved a three-year Funding Agreement with Moldova worth US \$118.2 million. This preferential loan was contracted at 0.5% interest for 10 years, with a 5.5 year grace period. The loan is to be used for maintaining the stability of the national currency, the balance of payments and for unexpected crisis situations (the loan could also be used to soften the impact produced on Moldova's economy by the Russian ban on wine exports).

In order to access the entire loan disbursed by the IMF, Moldova has to make sure that the NBM has full control over the monetary policy, and that the Government is no longer credited directly by the NBM. As well, the Government must transfer its deposits from commercial banks to the NBM, except for the accounts of the NHIC, NSIA, and special and reserve funds. The IMF requests an efficient management of public funds; the dissolution of the Council of Creditors, whose functions are to be transferred to tax authorities; the modernization of the financial sector; the improvement of the business environment; the privatization of the Banca de Economii, etc.

These objectives steaming from the macroeconomic program approved by the IMF can be achieved only in the context of measures of reform in other fields, such as those in judiciary, agriculture, and anti-corruption fields, and others.

Consequently, the Paris Club accepted the rescheduling of Moldova's foreign debt, giving the Moldovan government the opportunity to use about US \$100 million for the most urgent needs of the country. The memorandum with the IMF allows for a reactivation of other donors' programs (resuming relations with the IMF is a prerequisite for releasing some other EU programs, too), and the rendering of a new format and content to the EU assistance instrument, which is to replace the current, obsolete TACIS program.

Concerning the *implementation of the IMF recommendations* stipulated by the Financial Sector Evaluation Program, Moldova has achieved some progress in the efficient management of cash in the banking system, the minimization of the country risk by banks, more transparency with regard to owners who strongly influence the management and activities of banks, the development of afferent regulations concerning a consolidated supervision, and the implementation of an automated system of interbanking payments in order to create a mechanism of intraday/overnight crediting in order to ensure the efficient operation of the interbanking system. However, many of the expected changes are only in their draft phase. The lack of a coherent supervision and development policy in the banking sector, sluggish structural reform, weak risk-assessment management, the dependence on remittances, the dollarization accompanied by high volatility of the exchange rate, the state's excessive role in the banking sector, and the Government's access to cheap financing for unproductive purposes are only some of the shortcomings of the financial and banking system.

The actions recommended to improve compliance with the "Basel Core Principles" in the area of country risk entail a regulation or a recommendation for a specific approach to the country risk and developing a reporting system for the country risk/transfer. An assessment of bank vulnerability under crisis (deterioration of credit quality, increase of interest rates for assets and bonds, national currency appreciation/depreciation) was conducted in order to monitor the market risk. The sensitivity tests have not shown major weaknesses in the banking system, although some banks showed constant vulnerability to the tested risks. The stress tests show the permanent vulnerability of the capital of several banks in the face of credit risk, exchange-rate risk and a possible shortage of cash.

The deficiencies of the banking sector, such as weak bank supervision, lack of transparency in the structure of ownership and the weak quality of corporate governance undermine competition and efficient allocation of credits, which reduces the potential for economic growth. Bank ownership is oftentimes concentrated in the hands of a single individual or group of individuals by means of a large number of off-shore companies. This prevents bank supervisory bodies from assessing the integrity of the real owners, as well as from verifying the source of funds used to purchase the corresponding shares. Though the media barely covers such

topics, we could draw from the available information about the scandal surrounding Victoriabank, that in Moldova was established a network of a closed banking system suspected of money laundering through tax havens. National legislation in this regard should be modified in order to include the following elements:

- decreasing the afferent limit of the substantial share from 10 to 5%;
- ensuring the transparency of information about shareholders, whose property rights are registered by the nominal share holder;
- banning transactions involving shares in excess of the substantial share without permission of the NBM;
- setting a ceiling on the aggregate share of capital participation in new banks held by non-banking institutions;
- setting a ceiling on all the shares in a bank held by individuals from off-shore areas equal to the substantial share;
- the NBM should have the right to withdraw the authorization when bank owners fail to comply with legal requirements meant to ensure the prudent and healthy management of the bank or to prevent the effective supervision;
- determining the independence of the bank board and the committee of censors;
- enhancing the sanctions for the violation of laws in force;
- specifying the NBM's right to inspect the offices of Moldovan banks abroad.

In 2005-early 2006 amendments were made to Regulation no. 42/09-01 concerning the ownership of the substantial share in a bank, to the Regulation on "major" exposures, the Regulation on Bank authorizations no. 23/09-01, the Regulation on Ownership by Banks of Shares in Businesses, the Regulation on Permanent Crediting Facilities granted by the National Bank to banks, the Regulation on the Compulsory Reserves, the Regulation on Crediting Operations of Banks working in Moldova, etc. Also, the National Bank amended the Recommendations on Internal Control Systems for Moldovan Banks and changed the Guidelines on the Development and Submission of Financial Reports by Banks.

Banking operation and supervision regulations will improve when Community laws are incorporated into domestic laws. It is well-known that harmonizing legislation requires a careful approach determined primarily by the needs of the country's economy. However, accounting and auditing, as well as banking and insurance convergence with the *acquis communautaire* has a generally positive impact on economic growth, as has been shown by the experience of the new EU member States.

In order to *improve the prudential regulatory framework* covering financial markets and supervision, along with the EU standards, the NPAPI provides for the development and enforcement of measures aimed at a gradual in-

crease of the size of bank capital according to the provisions of Directive no. 2000/12/CE of March 20, 2000 on the start-up and operation of crediting institutions. The Implementation Plan provides as well for harmonizing the insurance legal framework in accordance with EU directives and IAIS standards. The framework of bank supervision and regulation largely complies with the Core Basel Principles for Effective Banking Supervision. However, the objectives have not been achieved yet in the area of bringing the prudential regulatory framework for financial markets and supervision in line with the one existing in the EU, nor in developing the insurance market and creating effective independent supervision authorities in line with international standards (G10, IAIS IOSCO, IASB). In addition, in spite of the existing legal framework, the implementation and enforcement of laws in Moldova is inconsistent.

The institutional structure, implementation and enforcement capacity of insurance supervision, which is currently under the jurisdiction of the MF (through its State Inspection for Insurance Supervision and Non-state Pension Funds) must be expanded. The IMF recommended that the regulatory body develop a database of claims in order to assist insurers and inspectors to estimate accurately the costs of various products. When the new Law on Insurance is adopted, it is expected that an insurance supervision body will be established, which is to operate independently and be financially self-sufficient, and which will have enough powers to be able to supervise and regulate the market effectively.

In the field of *financial control and related matters* some progress has been made, such as the introduction of a mechanism allowing the collection of revenues for the budget of state social insurance directly into the MF's account (opened at the NBM). This removes the intermediary stage in revenue collection.

The need to set up and implement an integrated information system for public finance management was addressed by the ratification in 2005 of the Development Loan Agreement (Law no. 293-XVI) signed between Moldova and the International Development Association (Public Finances Management Project). The official commencement of the Public Finances Management Project took place in February 2006. The implementation of this project will contribute to the reorganization of the financial control system by setting up an effective audit system for the public sector and an integrated public finance management information system. It will bring together into a common information space the Central Office of the MF, the State Treasury's territorial units, central sectorial authorities, tier I and II public administration authorities, and public institutions funded by budgets of all levels.

Future endeavours should focus on the implementation of the best international practices in budget preparation, implementation and reporting. In order to achieve this, the following objectives need to be met: to revise the current public-sector chart of accounts, to adjust the budgetary classification to international

standards, to improve budget discipline, and to ensure transparency in the accumulation and expenditure of public funds.

In the field of **internal public financial control** Moldova is planning to devise a strategy and a regulatory document for the system of internal financial control, which should set forth strategic guidelines for the area along the following lines:

- existence of a coherent and comprehensive legal framework;
- development of appropriate systems and procedures for internal control;
- independence of internal audit and preventive financial control units;
- establishment of bodies able to prevent and control irregularities (e.g. recovery of advance payments which later on became redundant).

Moldova needs a **Law on Internal Audit** that would establish a legal base for internal financial control harmonized with the *acquis*, and which would provide for the independence of internal auditors; and regulations ensuring the transparency of internal audit operations.

In order to achieve a reliable financial control system, Moldova needs to pass the appropriate laws and create (or develop) the appropriate institutions (e.g. a Central Unit for the Harmonization of Internal Public Audit, as well as an Internal Public Audit Committee which is to advise and liaise with the Unit).

In order to implement the *acquis communautaire* in the area of financial control, Moldova will have to take the following steps:

- ensure the effective enforcement of its legal base;
- develop a financial control and management system (preventive control, revenue control, internal control and audit, external audit);
- ensure the effective operation of the audit system, whereby the independence of such operations could be secured by a specific statute and regulations in line with international standards.

In order to achieve a gradual harmonization with international methodologies and standards (IFAC, IIA, INTOSAI), as well as with EU best practice in the area of public revenues, asset and responsibility control and audit, special emphasis must be placed on the development and consolidation of institutional capacity, as well as on the professional training of financial controllers, and internal and external auditors. These could be done in the framework of an effective cooperation with relevant EU institutions and authorities.

In accordance with the EUMAP, in the field of **external audit** there is a need for a functional and independent Supreme Audit Institution in line with international and EU standards and in compliance with the best practices in external audit (INTOSAI standards). The most important steps made in this direction have been the kick-off of the Strategic Plan for the Development of the CA for the period 2006-2010 and the adoption by Parliament of the laws no.180-XVI of 22.07.2005 and no.

330-XVI of 16.12.2005, which amend the Law on the Court of Accounts with the purpose of strengthening the status and mandate of the CA in its effort to comply with INTOSAI and EUROSAI standards.

The CA of Moldova oversees the accumulation, administration and use of public funds. In this context, it is necessary to mention that the amendment of the Law on the Court of Accounts solved the issue of government interference, since the majority of the Court members (4 out of 7) are appointed by the parliamentary opposition, which is an effective check-and-balance tool. The Strategic Development Plan for the CA 2006-2010 aims at turning the Court into a supreme audit institution that would operate under the highest standards of independence, objectivity and professionalism in carrying out the external control and audit of public finances.

The control over the ways the budgets of territorial administrative units are accumulated and spent show violations—by some authorities—of the budget time-frame, and weak procedures for informing concerning budget preparation and execution. These violations, however, are the result of a set of objective and subjective factors.

One of the shortcomings found in external financial control is the lack of transparency in the activity of the CA, in particular, keeping the findings secret. One example in this respect is classifying as secret the CA Decision no. 55-s of July 10, 2003 regarding the findings of the financial audit performed on the Parliamentary Administration Office in 2002 and Decision no. 56-s of July 11, 2003 regarding the findings of the financial audit performed on the Presidential Administration Office in 2002. The Supreme Court of Justice ruled (October 6, 2005) that classifying the Court of Accounts' decisions as confidential was illegal and ordered their full publication in *Monitorul Oficial*. Other decisions, previously hidden from the public eye, were also published later, in February 2006 (Decision no. 84 of 18.11.2005 on the financial control performed on the State Chancellery and some of its subordinated units covering the period 2003-4; Decision no. 83 of 10.11.2005 on the financial control performed on the CFECC covering the years 2003-4). The CA did not publish the full report of the audit performed at the Centre, claiming that the information in question was a state secret. Also, we could deem as political interference the hindrance of the financial control on the National Broadcasting Company in June 2005 following the request of 30 members of Parliament.

The CA will have to continue to improve its operation methods—based on the operation principles for supreme control bodies set forth by the current legislation and the INTOSAI Lima Declaration—in order to achieve independent, thorough and effective external control over the accumulation and use of public funds and assets. Special attention should be paid to improving the methodology and technical means used in the control operations performed by the CA.

VII. INDEPENDENCE OF JUSTICE, ORGANIZATION OF THE JUDICIARY

An independent, impartial, credible and effective judiciary system is a fundamental condition for a state based on the rule of law. The current system of courts in Moldova is composed of first-instance courts, courts of Appeal and the SCJ. There are also specialized courts tackling certain cases of an economic and military nature. According to the findings of the Council of Europe experts regarding the legislation governing the organization and operation of the Moldovan judiciary, the current system largely falls into the pattern found in most European countries: the system ensures access to two tiers of justice, complies with the principle of access to a judge and basically guarantees the conditions necessary for a fair trial.

The issue of the independence of justice needs to be looked at from the functional and personal perspectives. Functional independence means that, on the one hand, the institutions handing out justice are suitable for this function, i.e. should not belong to the executive or legislative branches of government, while on the other hand courts should be independent in carrying out their duties (i.e. free of interference from the executive, the legislature, and political parties). The legal framework provides, in principle, for functional independence. However, functional independence is not a sufficient condition - it is also necessary to ensure personal independence, whereby a judge's career is protected against the whims of other powers and possible influences from within the judicial service itself.

The personal independence of a judge can be assessed based on the following criteria:

- How judges are appointed. According to the Law on the Status of Judges, the judges of courts of law, including specialized courts and investigative judges, are appointed by the President of Moldova upon a proposal from the SCM. The President can reject only one time a nominee proposed by the SCM and only upon the presentation of unquestionable evidence showing that the nominee is incompatible with the position, that he/she has been found in violation of the law or that the candidate selection and proposal procedure have been violated.

- Duration of appointment. According to the Law on the Status of Judges, the first appointment is made for a period of 5 years, while the next one is valid until the age ceiling is reached.
- Appropriate remuneration for judges. This is another important guarantee of a judge's independence and impartiality (Art. 6.1 of the European Charter on the Statute for Judges). In spite of the fact that judges receive higher salaries than many public employees, their salaries are still not proportional to the degree of responsibility and importance of their duties.
- Initial and continuous training of judges. This should be done in a superior way, so that judges are well trained professionally. As far as this requirement is concerned, we have to mention that currently there is no initial training for judges (it was only in 2006 that the MJ submitted to the Parliament a draft law on the National Institute of Justice), while continuous training is irregular.

The issue of human rights training for justice professionals represents an important element included in the NHRAP for the Period 2004-2008 (Chapter I, Part III), approved by Parliament Decision no. 415-XV of October 24, 2003. One ought to mention in this respect that when Moldova joined the Council of Europe one of its main commitments was to revise the role and competences of the Prosecution Service in order to bring them in line with Council of Europe standards. This commitment has been fulfilled only partially by the adoption of Law no. 1115-XIV of July 5, 2000, according to which Para. (1) of Art. 124 in the Constitution was amended to abolish the power of "general oversight of the strict and even implementation of laws by public administration bodies, natural individuals and legal entities and their associations", and on the 14th of March 2003 a new Law on the Prosecution Service was passed.

GD no. 96 of February 22nd, 1996 set up the Training Centre for MJ and GPO Staff. Currently, the Training Centre for the MJ System, which is a post-graduate establishment, provides professional, theoretical and practical training for judges, advisors, heads of chancelleries, judicial enforcement officers, notaries and professionals from the GPO, as well as individuals who are expected to fill in such positions in the future. The Training Centre is running currently a Council of Europe program concerning the training of judges and prosecutors concerning the Human Rights Convention. Also, a centre for continuous training of GPO staff was set up within the Human Resources Department of the Office by an Order of the Prosecutor General.

A general assessment of the legal framework in force underscores the institutionalization of two permanent arbitration units: the International Arbitration Court attached to the Chamber of Commerce and Industry, and the Specialized Arbitration Court attached to the SAIP.

We should mention however that Moldova has ratified a number of international treaties in the area of arbitration, such as: the Convention on Conciliation and Arbitration within the OSCE, the European Convention on International Commercial Arbitration and the Agreement relating to it, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As far as the tenet and status of mediation are concerned, currently there is no complex and detailed legislation in this area in Moldova.

Below follows a review of the draft laws which are relevant in this context:

- The draft law on the amendment of some legislation, such as the Law on the Organization of the Judiciary, the Law on the Status of Judges, the Law on the SCM, the Law on the Qualification and Attestation Panel for Judges, and the Law on the Disciplinary Panel for and Disciplinary Liability of Judges. The innovative elements of these draft amendments are the following: the establishment of a new unit in the SCM administration that is going to be in charge of court management; specific stipulation of the National Institute of Justice as part of the judiciary system, which one must graduate in order to become a judge candidate; the circumstances in which judges become financially liable; the control functions over the judiciary are transferred from the MJ to the SCM; the principle of random distribution of cases is established, etc.
- The draft law on the amendment of some pieces of legislation with the purpose of strengthening the independence of judges and enhancing their qualifications, as well as providing a transparent process of appointing judges to available vacancies by compelling the SCM to publish the list of vacancies and increasing the degree of responsibility of judges for exercising their direct duties.
- The draft law on the National Institute of Justice and the draft Law on the Status and Operation of Court Registrars, as approved by the Parliament of Moldova in the first reading.
- The draft law amending the Code of Administrative Offences and the Law on the Prosecution Service.
- The draft law on Mediation in Criminal Cases, submitted to the Parliament for review and voting.
- The draft law on Mediation in Civil Cases.

A general assessment of the reforms implemented in recent years in the judiciary reveals that all these measures were fragmentary, without any well-grounded concept or strategy that would define the principles, objectives and end-goals of such reforms. Although for many years discussions have been held within various

public authorities of Moldova regarding the need to develop a new concept of the judiciary and legal reform, so far this has remained only an idea.

The legal framework governing the judiciary could be described in terms of applicability and effectiveness as follows:

- In terms of legislative regulation of the organization of the judiciary, it is not quite clear whether it is appropriate to have special laws on the SCJ and specialized courts (economic and military). A detailed review of the laws governing the economic courts, military courts and the SCJ revealed that these laws duplicate the provisions of the Law on the Organization of the Judiciary and the Law on the Status of Judges. At the same time, another negative phenomenon—a large number of elements concerning the operation of the judiciary system are governed exclusively by organic laws (without concrete references to the Constitution).
- It is high time to think about SCM reform. The Council of Europe experts believe that SCM membership for the Minister of Justice and for the Prosecutor General is not in line with European standards of comparative law, if prosecutors do not have a magistrate status.
- Another problem is the operation of the SCM, which limits its activity to issuing “opinions” on issues such as appointment, career, detachment, transfer, training and disciplinary measures applied to judges, but without any important decision-making power, which would suit it.
- A major flaw in SCM operation is the lack of transparency.
- In a number of European countries one of the most important powers of the SCM is the inspection of courts by means of a permanent service composed of judges detached specially for this job. However, such a mechanism is not institutionalized in the current legislation of Moldova.
- Concerning the criminal liability of judges and their guaranteed inviolability—as provided by Art. 19 of the Law on the Status of Judges—the Council of Europe experts mentioned that it is necessary to create a system able to guarantee the independence of judges, allowing nevertheless for the prosecution of judges under criminal or civil law.
- A recent controversial step was the inclusion in the statutes of judges’ financial liability (the Law on Government Officers and the draft Law on Amending Some Legislative Acts). Thus, the state has the right to claim compensation from persons whose actions—whether intentional or by a serious mistake—have triggered an ECHR decision regarding mandatory financial compensation, or such compensation is reached by an amiable settlement of the case. At a first glance, these provisions should not raise any special criticism, as they largely fall in line with European standards.

For example, para. 5.2 of the European Charter on the Statute for Judges, adopted on July 10, 1998, reads as follows: “Compensation for harm wrongfully suffered as a result of the decision or the behaviour of a judge in the exercise of his or her duties is guaranteed by the State. The statute may provide that the State has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the case of a gross and inexcusable breach of the rules governing the performance of judicial duties. The submission of the claim to the competent court must form the subject of prior agreement with the authority referred to in paragraph 1.3 hereof.”

- The issues concerning the funding of courts are tackled both on the level of the Constitution and on that of organic laws. In reality, however, the size of the budget allocated to justice raises great consternation. A recent study called “Funding Justice in Moldova”, carried out by the Centre of Legal Studies and Policies of Moldova, revealed that starting in 2002, the state budget decreased by 25% the expenditures allocated to the courts of law. Thus, the conditions under which the judiciary operates are precarious. In recent years discussions were held on various levels – within the Parliament, the Cabinet, and the SCM about the necessity to set up a department of judicial self-administration that would have all the powers required for the proper administration of the judiciary system, would implement state policies in this area, and would tackle all the organizational, material, financial, etc., aspects of the work of courts.
- An important element of the EUMAP is to ensure the conformity to European standards of the legal provisions governing the role and powers of the Prosecution Office. However, a recent initiative, which is currently being reviewed by parliamentary committees, raises doubts concerning our country’s commitment to transpose these standards - a proposal to amend the Law on the Prosecution Service in order to establish a special procedure for starting criminal prosecution of judges, which is to be conducted exclusively by the “Prosecutor General in accordance with the procedures provided by the CPC”. This mechanism was also included in the previous Law on the Prosecution Service (no. 902-XII of 29.01.1992), but following severe criticism regarding the necessity to abolish immunity for prosecutors, it was not included in the new law. This initiative will represent a step backward in the reform of the prosecution service and the status of prosecutors.
- Concerning the development of alternative ways for litigation settlements, including mediation and arbitration, it is difficult to make conclusions

about the applicability and effectiveness of adopted provisions, since the area of mediation is not properly regulated. As for arbitration, current legislation is obsolete in this area and contains no modern provisions in line with international standards.

After monitoring the implementation of the EUMAP in the area of “Judiciary Reform”, we conclude the following:

The organization of the judiciary

Given the fact that the Concept of the Judiciary and Legal Reform in Moldova, approved by Parliament Decision no. 152-XIII of 21.06.1994, no longer meets the requirements of the day, a new Concept (strategy) on judiciary and legal reform is necessary, which should take into account Moldova’s aspirations to integrate into the EU. It is also necessary to account for the pieces of the current legal framework in order to assess the regulation opportunities of the SCJ and specialized courts by special laws. In terms of the organization of the judiciary, the following issues need to be tackled:

- improving the institutional capacity and the management of the judiciary;
- developing a special funding program for the judiciary;
- providing access to modern information technologies;
- ensuring the transparency of justice.

The role and powers of the SCM

Concerning the SCM’s status, the following issues need to be tackled:

- establishing whether the SCM’s statute needs to be changed (organizational chart, detached judges, etc.);
- establishing whether the Prosecutor General should be a member of the SCM;
- reviewing the SCM powers (appointing judges, sanctioning judges for disciplinary violations, etc.);
- establishing whether it is necessary to set up a general inspectorate within the SCM administration, composed of detached judges;
- establishing whether it is necessary to create a unit within the SCM administration which would be in charge of technical, material, logistical and financial aspects of the work of courts.

The independence of judges

Concerning the consolidation of the principle of judicial independence, the following activities ought to be undertaken:

- creating a National Institute of Magistrates which would provide the initial training of candidate judges and continuous training of acting judges;
- specifying the mechanism whereby judges can be held financially liable;
- creating appropriate working conditions for judges and offering them salaries that would fit their level of responsibility.

The status of the Prosecution Service and the status of prosecutors in particular

In order to ensure the conformity of the prosecution with European standards, it is necessary to review the legislation governing the Prosecution Service in order to tackle the following issues:

- selecting and appointing the Prosecutor General (so as to exclude him/her from any political influence);
- the status of prosecutors, including immunity.

Human rights training

In order to ensure satisfactory training of judges, prosecutors, and ancillary justice staff in the area of human rights, the SCM, the GPO and the MJ should develop a Training Strategy and enhance their degree of cooperation with civil society.

Developing alternative ways of settling disputes

In order to identify the legislative needs in terms of regulating alternative ways to settle disputes, the current legislation ought to be reviewed along with the experience that other countries have in the area. Such an assessment would cover a number of recommendations on the need to develop a new Law on arbitration, or to institutionalize special bodies for the alternative settlement of disputes.

VIII. MONITORING THE PENITENTIARY SYSTEM

The delegation of the CPT has visited penitentiary institutions and pre-trial detention establishments in Moldova nine times. Three of these visits were made to the institutions situated on the territory of the Transnistrian region, four to the institutions of the rest of Moldova, and two to Penitentiary No. 8 of the city of Bender. The CPT pays special attention to Penitentiary No. 8 because of the extremely poor detention conditions. The CPT has published three reports so far, which have been followed by Governmental responses. Since 2001 Moldova has been making efforts to implement the CPT recommendations, although their number, we have to acknowledge, grows with each new visit.

CPT recommendations were taken into account when drafting the new CC, the CPC, the Enforcement Code, and the Offences Code. However, the incomplete application of these Codes and the unsatisfactory observation of their provision by the law enforcement bodies lead both to new CPT recommendations and ECHR decisions & judgements. The CPT has identified similar violations in prisons and pre-trial detention establishments, such as:

- poor sanitary conditions;
- overcrowding of cells;
- lack of bed lining and places for sleep;
- nutrition below medical requirements;
- no access to healthcare service;
- confinement without recording duration and the health condition of the detainee;
- physical mistreatment of detainees by investigators, etc.

It is important to note that most of the CPT objections do not require additional funding, and must be addressed not only by the MJ but also by the MIA.

Currently, more efforts are spent to improve the material conditions of detention in penitentiaries which are under the authority of the MJ, rather than in the pre-trial detention institutions, which are under the authority of the MIA.

A pre-trial detainee runs a higher risk of being subject to torture, and a higher risk of contracting TB or pneumonia, compared to a detainee imprisoned in an MJ institution. The Government of Moldova is aware of these issues, but for reasons difficult to understand, does not undertake effective measures to fight violence against detainees. For example, the European Court ruled that the Government of Moldova

has to pay 4,500 euro to Mr. Ostrovari and 21,000 euro to Mr. Corsacov for inhuman detention conditions and the violence they were subject to while in police custody.

An effective mechanism for the supervision of detainee rights

After the structural changes within the Prosecutor's Office, the detention institutions of Moldova are now supervised by territorial prosecution offices, although the current system of supervision barely works. The management of detention institutions is outside legal control, as it can block efficiently a complaint raised by a detainee who is subject to torture or inhuman treatment. The CPT identified torture cases that occurred in reality but could not be proven in court because of the circumstances mentioned above, and because of the passage of time that destroys existing pieces of evidence.

A Committee for Prison Detainee Complaints was created in late 2005 (however, this Committee does not deal with pre-trial detainees), according to Article 177 of the Enforcement Code of Moldova. As the Regulation stipulates, the Complaints Committee will impartially review detainee complaints, organize Hearings of petitioners, visit penitentiaries in order to verify the facts described in complaints, and approach appropriate bodies if violations are identified. The Regulation stipulates that the Committee must adopt its decisions within 30 days of the receipt of a complaint, and a Committee decision suspends the enforcement of the act that was the subject of the complaint. However, it is not clear by what procedure such a decision is to be adopted, how it can be appealed and what legal instruments it will contain besides recommendations, so that an act complained of could be indeed suspended. In addition, it is not clear who is to carry out the Committee's decisions and what will happen if a decision is not complied with. The effectiveness of the Complaints Committee will become clear only after about one year of operation, although the shortcomings of the Committee's Regulation already points to the formal character of this institution.

Belated response of the special parliamentary commission which reviewed the situation of the detainees held in pre-trial institution no. 3

On October 14, 2005 the Parliament created a special commission which reviewed the situation of the detainees held in the criminal pre-trial institution no. 3 in Chişinău, and duly made a report. The Commission was set up after the MPs learned that the detainees of institution no. 3 had to wait for years for a court to issue a verdict, while the courts quite often were slow to issue verdicts, therefore keeping citizens in prison unlawfully. It is slightly strange that the MPs learned

about the situation only in 2005, although this problem had existed for a long time and had been singled out in the CPT reports sent to the Government.

Access to the healthcare service

The deprivation of a person of their freedom, either based on an arrest warrant or a court sentence, does not cancel the person's right to healthcare. The quality of healthcare service provided to detainees, as well as the amount and diversity of medication, are not the same in all detention institutions. This results in a high number of cases of TB, hepatitis, and pneumonia, a sudden deterioration of eyesight, and the spread of contagious infections.

Although it is not only the CPT but also the European Court that makes recommendations in this regard (e.g. cases *Șarban v. Moldova* and *Becciev v. Moldova*), the Government of Moldova is not stepping up its efforts to provide to detainees an adequate level of healthcare - this may undermine the implementation of the EUMAP provisions in this area.

Training

There were a number of workshops organized in 2005 and 2006, for the penitentiary system staff, police, and territorial offices of the Enforcement Department of the Ministry of Justice in the area of human rights of detained and arrested persons and the enforcement of the new laws (i.e. the Code of Civil Procedure, Civil Code, CC). All these actions have been supported by the UNDP, OSCE, Council of Europe and various NGOs.

A draft law on the National Institute of Justice was developed that is going to have a say in the training of judges, prosecutors, and civil servants working in the judiciary, MJ, police and penitentiaries. The first draft was ready in September 2004, reviewed by the Council of Europe, and passed by the Parliament of Moldova in the first reading on May 4th, 2006 and in the second reading on June 2nd, 2006.

The existing legal provisions, in particular the Concept of Reforming the Penitentiary System in 2004-2013, approved by GD no. 1624 of December 31st, 2003, aim at improving the situation in this field. The Concept required major amendments when the Enforcement Code entered into force, but what hinders its full and effective application is insufficient funding. In order to implement the new Enforcement Code, a draft GD was prepared to amend the Concept of Penitentiary Reform. One of the planned amendments is to add to the Concept additional wording on "Building Arrest Houses". According to the draft, which has been submitted to the Government, construction works to build arrest houses will start in 2009 and go on till 2013, provided there is enough money available.

In order to implement the Enforcement Code, the Statute of Sentence Service by Convicts was prepared that was approved by the Government of Moldova in March 2006. In addition a Regulation on the Organization and Operation of the Penitentiary Probation Service was prepared.

As a matter of fact, GD no. 415-XV of 24.10.2003 provides that during 2004-2008 the pre-trial detention institutions are to be transferred from the MIA to the penitentiary system, under the MJ's authority, the latter of which will have a system of arrest houses. In order to identify buildings that could be used as premises for penitentiary institutions — conventionally termed Arrest Houses (where the arrest will be served as a matter of criminal punishment, pre-trial detention, and offence-based imprisonment) the Government asked the Heads of the district administrations of Cahul, Căușeni, Edineț, Hâncești, Glodeni, Orhei, Soroca, Șoldănești, Ungheni, as well as the mayors of Bălți and Comrat to consider the possibility of transferring unused buildings that could be refurbished to serve as arrest houses. However, so far no effective solutions were found to this problem.

In July 2005 an Ethics Code of Penitentiary System Staff and the Police Ethics Code was prepared and sent to the Government for approval.

According to the MJ report of November 15, 2005 on the implementation of the NHRAP, the following social-educational activities were developed and carried out:

- weekly lectures of a 10 months course on informing prisoners about their rights and obligations while in detention;
- a program regarding activities for newly arriving detainees, approved by an Order of the Director of Penitentiary Institutions Department no. 27 of the 1st of March 2006 (information, psychological care) assisting them with adaptation to prison conditions;
- training individuals to assist them when they are released;

Recommendations:

- the thorough, full and effective implementation of the CPT recommendations in the area of the penitentiary system, in order to ensure the observation of the rights of arrestees/detainees;
- drafting a separate plan for the implementation of the CPT recommendations, and thoroughly monitoring their implementation;
- providing detailed information on the steps undertaken towards the implementation of the CPT recommendations, identifying specific achievements and impediments in cases mentioned by the CPT reports;
- disbursing sufficient funds for the implementation of the CPT recommendations; the funds are to cover the real needs of detainees;
- full funding for penitentiary institutions, according to the budgets approved;
- adoption of the Offences Code;

IX. INTERNATIONAL PROTECTION OF HUMAN RIGHTS

A. The NHRAP Implementation

Issues and recommendations in the context of NHRAP implementation

The information on the NHRAP implementation, included in the Government's reports in 2005 and in the first quarter of 2006, is insufficient to allow for a thorough progress assessment. We recommend attaching the annual report on the NHRAP implementation to the Government report on the EUMAP implementation.

The Parliament's Decision to approve the NHRAP does not provide for an adequate mechanism against which the NHRAP implementation could be evaluated; it mentions only the supervision bodies and their duty to inform the Parliament on a regular basis on the progress made. Some ministries tend to ignore their obligations and submit token reports which lack substantial information.

The Parliamentary Committee for Human Rights (PCHR), which oversees the implementation, will publish all the reports received from ministries regardless of their length and substance matter, as well as the transcripts of parliamentary public hearings regarding the substance of the reports. These are an important source of information, and citizens are entitled to have access to them, which offers an opportunity for an independent assessment of the work done by each ministry in the area of human rights protection. PCHR plans to publish all the ministry reports and public hearings transcripts on the Parliament's Web site (www.parliament.md) by the end of May 2006.

The activities included in the NHRAP are not always carried out within the stipulated time-frame; the delays sometimes reach 2 years. The timeframe is also sometimes excessively generous for activities that could be carried out much faster.

Ombudsmen can and must play a more important role in NHRAP implementation and human rights protection, and use more effectively the powers they have. In this context, we recommend a review of the Law on Ombudsmen in order to:

- ensure a higher degree of independence of ombudsmen by setting up a procedure whereby their dismissal would be made more difficult;
- introduce a public and transparent procedure for the selection and appointment of ombudsmen, which should include consultations with human rights organizations;
- grant additional powers to ombudsmen in order to give them a stronger hand in stopping human rights violations and punishing the perpetrators.

Additional notes concerning Moldova's accession to international agreements on human rights

- The ratification of some agreements is delayed without reason;
- Citizens have limited access to international agreements in the area of human rights which Moldova has ratified. The MFAEI does not have the electronic version of such agreements in the official language. It is difficult to believe that today state bodies can work efficiently without having the relevant documents in electronic form. A small number of treaties can be found in the legislative database on the Web site of the MJ (www.justice.md), yet some of the treaties published there have mistakes. In print the treaties are published only in the special editions of *Monitorul Oficial*, which runs a small number of copies. Therefore, we recommend to publish all the international human rights treaties to which Moldova is party in the weekly editions of *MO*, and that the MFAEI to create a database of international treaties in the official language and other languages, if needed. All the relevant international treaties must be published on the Internet (e.g. in the legal database on the Web site of the MJ (www.justice.md));
- Sometimes ratification documents that certify accession are sent to international organizations with delay, which in turn delays the entry into force of these documents.

B. The implementation by Moldova of the ECHR Judgements

Until May 29, 2006 the ECHR issued **31** judgements on complaints against Moldova. In **all** of its decisions, the Court found Moldova in violation of the Convention, out of which: 13 decisions concerned the failure to carry out court rulings, 5 concerned the revision of final court rulings, 4—detention conditions, 3—the right to freedom and safety, 3—freedom of expression, 1—mistreatment by police, 1—censorship of correspondence in places of detention, 1—the authorities' refusal to register a religious cult, and in one case concerned the suspension of a political party. The total amount granted by the Court in damages, moral compensation and costs was more than **427,500 euro**.

Though the Convention implies that state authorities have to revise the national rulings found in violation of the Convention, the Code of Civil Procedure states that only the person in whose favour the Court issued a judgement may request that.

The Governmental agent must ensure the translation of the Court's judgements regarding the complaints lodged against Moldova. These are published in special editions of *Monitorul Oficial*, printed usually in 50-70 copies which are not distributed to MO subscribers. The number of judgements translated is insufficient to inform properly all the interested parties.

It is the responsibility of the Governmental agent to supervise the steps taken towards the implementation of ECHR judgements domestically, though the national legal framework does not describe clearly how this is done. However, the Governmental agent can suggest to relevant authorities general measures meant to avoid new violations of the Convention. He/she has the responsibility to inform judges, prosecutors and civil servants on the Court's jurisprudence. The judges, prosecutors and civil servants are informed by summaries of the decisions taken by the Court mailed to the presidents of courts, district prosecutors and managers of public bodies. Such pieces of information are not sent to other judges, prosecutors and civil servants, and such letters are not made public. The Governmental agent does not publish a permanent newsletter, and the MJ Web site does not have any information about the complaints lodged with the Court against Moldova.

In order to prevent similar violations in the future, the Government was going to develop a detailed procedure for summoning suspects of administrative offence (see the decision in the case *Ziliberberg v. Moldova* of February 1st, 2005). So far this procedure has not been very detailed.

In January 2006, the Committee of Ministers found that there was a delay in the full enforcement by the Government of the Court's judgement in the case *Basarabian Metropolitan Church v. Moldova*, which was issued on 13 December 2001, and decided to revisit the issue at a later date in order to define measures to be undertaken if no progress was achieved on the matter.

Recommendations:

- The amounts awarded by the Court should be transferred to the claimant's personal account, should he/she request it;
- If no request is received for a transfer to the claimant's personal account, the compensation amount shall be transferred to the account of the enforcement office of the Department for Enforcing Judicial Decisions in the claimant's territory of residence;

- The claimant or his/her representative should be informed in writing about the payment of the compensation awarded by the Court;
- The compensation is to be paid within a time period short enough to avoid the impression of bad faith;
- The prosecutor or the Governmental agent should request the revision of national decisions issued in civil cases that have led to the violation of the Convention;
- The revision of such decisions should not be conditioned on the possibility of receiving a compensation, while the time period during which a revision request can be filed should start on the day when the Court's decision becomes final rather than on the day when the judgement is pronounced;
- In order to inform adequately the persons interested in the Court's judgements, the number of copies of MO in which judgements are published should be increased, and the judgements should also be published on the Web site of the MJ;
- The summaries of the Court's decisions and judgements made by the Governmental agent should be published on the Web site of the MJ;
- The Governmental Commission for the Enforcement of Final Court judgements should adopt its regulation, while its decisions should be placed on its Web site or on the site of the MJ.

C. Observation of international justice through the ICC

The precise wording of p. 12 of the EUMAP connects the ratification of the Rome Statute of the International Criminal Court (hereinafter "Statute") to "setting up necessary provisions for the constitutional amendments to be included in the new draft Constitution that is being written by the Joint Constitutional Commission". Due to substantial policy changes of the Moldovan Government towards its eastern region, this connection is not deemed valid anymore, and hence the obligation to ratify the Statute should be seen as an independent act.

The phases of implementation

In technical terms, the ratification of the Rome Statute of the International Criminal Court requires the implementation of the following phases, in accordance with domestic law:

- Preparing a draft law on the Statute ratification, a draft law on international legal assistance in criminal matters and on amendments to the Moldo-

van Constitution, the CC and the CPC in order to remove incompatibilities with the Statute;

- Submitting the drafts mentioned above to the Government of Moldova;
- The Constitutional Court should review the compatibility of the Statute provisions with the country's Constitution, and draft the Law Amending the Constitution;
- Provided that the Constitutional Court issues a positive opinion, the Parliament of Moldova should discuss the drafts and ratify the Statute, passing the proposed Constitutional amendments.

Assessment of progress

According to the information available as of 15 May 2006:

- The MJ has finished drafting the Law on the Ratification of the Statute, as well as the draft Law Amending Current Laws and the Constitution when in contradiction to the Statute (a positive fact to mention is that the MJ has held consultations with relevant NGOs, e.g. Amnesty International Moldova). The draft laws mentioned above have been submitted to the Government of Moldova.
- However, deadlines might be violated. In accordance with the NPAPI 2006-2007, the Statute ratification is planned for 2006. Given the fact that Para. (1) Art. 143 of Moldova's Constitution states that the Parliament has the right to pass a law amending the Constitution not sooner than six months after the initiative has been submitted, it will be difficult to keep to the respective time-frame.

Freedom of assembly and association

ECHR standards

So far the ECHR has passed two judgements against the Republic of Moldova, which refer directly or indirectly to Art. 11 of the ECHR—freedom of assembly and association: *Christian Democratic Popular Party v. Moldova*; *Metropolitan Church of Basarabia and Others v. Moldova*.

Issues (legal framework)

The judgements mentioned above, as well as the opinions of experts in the field have underlined the following problems of the relevant domestic legislation:

- a lack of clarity and unpredictability of the legal regime concerning some types of assembly;
- domestic laws are not ready to deal with the violations of the freedom of assembly by public authorities, especially during election campaigns;
- excessive discretionary right of the MJ to suspend political parties;
- the domestic legislation on political parties and other social-political organizations sets overly restrictive conditions for the registration of (the statutes of) political parties and other social-political organizations: they must have at least 5000 members residing in at least half of the territorial-administrative units of the second tier (districts and municipalities), but not fewer than 150 members in each of the territorial-administrative units mentioned.
- there are also problems with the MJ's registration of NGOs. Although the Law on Nongovernmental Organizations establishes an exhaustive list of documents required for an organization to register, the MJ insists in some cases that additional documents must be provided, although such a request is not sufficiently grounded.

Recommendations

- clarification of the legal regulation of some types of assembly: e.g. "meetings with voters" organized by Members of Parliament, or meetings organized during election campaigns;
- strengthening of domestic laws concerning violations of the right to assembly perpetrated by public authorities, especially during election campaigns;
- limiting or clarifying the discretionary power of the MJ to suspend political parties based on Art. 29 of the Law on Political Parties and Other Social-Political Organizations, and/or transferring this power to the courts of law;
- considerable liberalization is needed of the registration requirements set by the Law on Political Parties and Other Social-Political Organizations, especially when it comes to the registration of regional and municipal political parties;
- investigations should be conducted of cases when the local and central administrations obstruct the freedom of assembly, and when government officials exercise pressure on public employees in order to stop them from participating in meetings and other activities of opposition parties;

- revising and liberalizing the procedure by which the Chişinău City Hall can authorize peaceful assemblies, including meetings opposed by some or the majority of the capital's residents, as stated by the ECHR jurisprudence;
- liberalizing the procedure by which the MJ registers non-governmental organizations, including abolishing of the practice whereby the Ministry requests additional documents without sufficient grounds to do that, as well as the complete elimination of the practice when the registration of domestic and international NGOs is delayed.

Support for the development of civil society

Most national experts believe that the following progress has been achieved:

- The free availability of laws and regulations on the Internet site www.justice.md, which has become possible due to legislative amendments (Law on the Publication and Effectiveness of Official Acts);
- The official Web site of the Parliament started to display draft laws in electronic form, which makes it easier for the public to access and comment on them;
- Some public bodies (especially the Parliament, MFAEI, some departments of the MJ) have intensified their dialogue with civil society by organizing more frequent meetings with NGOs operating in relevant areas.

Recommendations

- The public bodies which are not open enough to contacts with civil society (MIA, GPO, etc.) should be encouraged by laws, administrative and political measures to intensify their dialogue with civil society;
- The legal framework regulating the activities of civil society institutions (the Law on Nongovernmental Organizations, the Law on Parties and Other Social-Political Organizations) should be amended especially in order to provide facilities and incentives for the development of NGOs: e.g. by adopting a so-called “1% Law” for the NGOs and providing state funds to political parties depending on the number of votes received in elections and/or depending on the number of members (the subjects of such laws—NGOs and political parties—should be consulted during the process of drafting the amendments);

- Consultation with citizens should be intensified on local issues affecting the community.

D. Freedom of expression

In order to ensure the protection of the right to free expression, we propose the following legislative recommendations:

- the expression “any citizen” in Art. 32 of the Constitution should be replaced by “any person”, and the expression “challenging and defaming the state and the nation” as well as “other actions threatening the constitutional order” should be deleted;
- the expression “desecration of national and state symbols” in Art. 347 of the CC should be deleted;
- in the Code on Administrative Offences, Art. 174/2 “Deliberate violation of the way in which state symbols are used” should be deleted, and punishment in the form of “administrative arrest” should be excluded from Art. 47/2 “Libel”, 47/3 “Verbal abuse” and 174/6 “Abuse against a police officer or a court enforcement officer”;
- a law should be prepared and adopted whereby the European standards of freedom of expression would be introduced into domestic legislation.

E. Prevention of torture

In Moldova torture continues to be systematically applied in all pre-trial detention institutions, police stations and penitentiaries. In most cases torture is used at the beginning of criminal investigation, when suspects are held in the MIA’s institutions and when police officers have unlimited access to them.

The current CPC provides for the possibility of lodging a complaint regarding cases of torture with the Prosecutor’s Office. It also provides for the possibility to bring to the Court the Prosecutions rejection to launch a criminal investigation into alleged cases of torture. Applying the new CCP, it becomes possible to provide an effective protection to victims of torture, but in order to enhance the effectiveness of prevention measures, there is a need to amend accordingly the Law on Forensic Examinations, the Law on Legal Representation, and the Law on the Prosecution Service. Such amendments should provide a higher degree of protection to the victims of torture.

An important issue in the investigation of cases on torture, inhuman and degrading treatment is the fact that prosecutors and judges tend to ignore their obligations which derive from the substantive and procedural provisions already

in force. The opportunities for the effective protection of torture victims are thus reduced dramatically, and the punishment of perpetrators is rendered difficult.

However, in most cases victims of torture are not aware of the mechanisms whereby they defend their rights—i.e. complaints lodged under Art. 274 of the CPC, or challenges made under Art. 313 of the CPC against the failure to start an investigation.

Another procedural problem is the fact that Art. 265 of the CPC, which governs the way in which complaints of torture are to be lodged, does not state a time period during which such complaints are to be reviewed. Therefore, this shortcoming allows for delays in such investigations, which can lead to criminal prosecution, and with as time passes the traces of torture are increasingly more difficult to identify. In order to solve this situation the law should provide for a specific deadline—preferably an exact number of days or hours—within which the responsible institution that investigates should collect the pieces of evidence in a given case.

Conclusions

The professional training courses for lawyers, prosecutors, criminal investigators, prison staff and judges should be organized in such a way as to focus not only on core professional objectives, but should also attempt to change trainees' attitude towards human rights, including the right to physical and psychological inviolability, and the right to dignity.

The daily work in the penitentiary, judiciary, law and prosecution systems should be organized in such a way that it becomes obvious that the failure to abide by the law in this context leads to the unavoidable disciplinary and criminal liability of the staff involved in such deeds.

In order to fight torture effectively, it is important to wipe out the negative practice when prosecutors are not punished for the violations they commit. The failure to prosecute legal violations should be punished under criminal law, as per Art. 331 of the CC.

It is important to mention that individuals detained in pre-trial institutions are practically deprived of the opportunity to write complaints independently, since they do not have even the basic tools for that—pens and paper. On the other hand, police officers simply do not pass such complaints to the legal institutions concerned, while prosecutors turn a blind eye to such facts when they perform supervision visits to detention institutions.

It is practically impossible to provide any effective defence to victims of torture in the eastern part of Moldova. Under these circumstances, the only possibility for Transnistrian detainees is to lodge complaints with the ECHR—after complying with all the prerequisites—against the Russian Federation.

It is impossible to train lawyers, prosecutors, criminal investigators, penitentiary staff and judges from the eastern regions of Moldova, since the local authorities there do not recognize Moldova's jurisdiction. Such training courses, eventually could be organized on the right side of the Nistru river, and funded by the relevant NGOs.

It is necessary as well to set up a new efficient mechanism for the NGO-state authorities cooperation in order to implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments.

X. ORGANIZED TRANSBORDER CRIME AND POLICE MANAGEMENT

Large-scale chaotic migration, as well as the lack of information on laws governing employment and residence in other countries, have created fertile ground for a phenomenon with considerable national and international negative effects—the trafficking in human beings. Trafficking is usually run by well-organized transnational criminal networks, with the final purpose of sexual and labour exploitation of victims.

Moldova is both an origin country of human trafficking as well as a transit route in particular from Asian and CIS countries. According to the MIA, the main destination states are Turkey, Russia, United Arab Emirates, Serbia and Montenegro, Macedonia, Albania, and Israel, as well as some Western European states such as Greece, Italy and others.

Due to legislative, institutional and operational efforts made by the Government, with the multilateral help of the United States and other countries, as well as international organizations and NGOs, there has been a decrease in the growth rate of trafficking. As compared to previous years, more trafficking cases are being uncovered, which reveals an improvement of the operational capacity of state bodies and a gradual suppression of the latent nature of trafficking. A legal framework has been put in place that regulates the control of trafficking and is largely in line with international standards. However, governmental bodies are still not able to provide proper protection to witnesses/victims, nor to offer assistance in the reintegration and rehabilitation of victims. All these issues are left to the international and nongovernmental actors to deal with.

A new phase in countering human trafficking started when the new CC of Moldova was passed on April 18, 2002. Moldova had already signed the UN Convention Against Transnational Organised Crime and the first two Additional Protocols (signed by Moldova on 14 December 2000 in Palermo) when the new CC was drafted and hence, its provisions were largely in line with the standards laid down by these international instruments.

Later on, punishment for human trafficking was made harsher, and the organization of illegal migration became an offence.

An amendment was made to Art. 165 which allows for the criminal prosecution of the trafficker even when the victim agreed to be a subject of trafficking.

Also, the OSCE recommendations stipulated in an evaluation report³⁸ were implemented, which lifted the victim's obligation to cooperate with the investigation body in order to be spared from criminal prosecution for the actions associated with his/her status. Similar amendments were made to the Code on Administrative Offences. Article 362/1 introduced to the CC stipulates sanctions for activities related to the organization of entry, stay or exit of Moldovan citizens abroad or of foreign citizens in Moldova with a profit-making purpose and conducted in violation of the law (organizing illegal migration).

The Law on Countering and Preventing Human Trafficking was adopted on October 20th, 2005. It took into account the recommendations made by the Council of Europe and OSCE³⁹. In terms of international instruments, we could mention that Moldova is a party to the majority of basic treaties in the area of fighting crime and, in particular, fighting human trafficking.

Effectiveness of efforts

The NCCHT manages activities aimed at countering and preventing human trafficking, and ensures cooperation between public authorities and international and nongovernmental organizations. The NCCHT is an advisory body of the Government, whose members and regulations are approved by a GD.

In order to coordinate the activities on fighting and preventing human trafficking, territorial anti-trafficking committees were setup in districts, cities and the autonomous region of Gagauzia, which are attached to the local executives. In Chişinău such committees exist in each of the city's districts.

Nongovernmental and international organizations are still the main actors in the area of victims of human trafficking assistance, reintegration and rehabilitation (e.g. La Strada Moldova, Centre for the Prevention of Women Trafficking, Save the Children Moldova, IOM, the OSCE Mission in Moldova, International Labour Organization, UNICEF Moldova). In 2005, the NCCHT, in cooperation with the territorial subdivisions of the MIA, identified 428 crimes related directly or indirectly to human trafficking. The investigative work conducted in 2005 resulted in the identification and destruction of 39 networks:

- Russian Federation 12 networks (labour exploitation);
- Turkey 16 networks (sexual exploitation);
- Arab Emirates 8 networks (sexual exploitation);
- Other 3 networks (sexual exploitation).

³⁸ *Trafficking in Persons, Witness Protection and the Legislative Framework of the Republic of Moldova: An Assessment*, OSCE Mission in Moldova, December 2003.

³⁹ Government of Moldova Annual Report on EUMAP Implementation (February-December) 2005, p. 15

The Chamber of Licenses conducted 138 planned and surprise controls at travel and employment agencies. In order to inform and educate the population and reduce its degree of vulnerability, the NCCHT published in the media articles on the result of anti-trafficking measures.

As far as problems are concerned, we can point out that part of the trafficking cases sent to court (about 14%) are reclassified and judged as organization of prostitution, and thus a good deal of traffickers are either sentenced conditionally or simply fined.

Of the total number of criminal cases on human trafficking sent to court in 2005, 27 cases were reclassified, and out of 70 suspects only 10 were sentenced to prison terms from 5 to 21 years.

An analysis of the situation reveals that a part of the criminal cases sent to court are considered superficially and in many cases the pieces of evidence are based exclusively on victims' depositions, who frequently change their statements or just leave the country. It would be more useful to commence a smaller number of criminal prosecutions but with more serious pieces of evidence, regardless of victim's depositions at a later stage or the initial confessions of the traffickers.

A part of the criminal cases initiated involve a single trafficker and only his country of origin, while his accomplices in other countries escape prosecution. Therefore, strengthening of international cooperation between the bodies investigating human trafficking. Also some appropriate mechanisms should be set up in order to lessen the traffickers' ability to use financial incentives to persuade victims to change the depositions to their interest. One possible solution is to seek financial compensation for the damages suffered by the victim out of the trafficker's asset. However, in order to do this, a qualitative assessment of the trafficker's assets would be necessary—including the assets earned from illegal activities—so that these could be then arrested and confiscated.

Information exchange and cooperation between the national bodies

The MIA and MID have concluded negotiations on the implementation of an information system called "Border", which is part of the "Access" database, to be set up at MIA's bodies in order to ensure effective border control and improve the identification of criminals and criminal groups moving across borders.

The consolidation of the information base and cooperation in this area are very important processes. Currently, when vehicles are wanted internationally, the information is shared by the MID, Customs Service, NMB and NCB Interpol (this was made possible by a contract signed between the NCB Interpol in Moldova

and MID). As part of a similar procedure, NCB Interpol receives from the Border Guards Service information on Moldovan citizens crossing the state border.

A contract was signed recently with the NMB, based on which the NCB Interpol will supply information online on criminal records and wanted foreign citizens, when foreigners apply for entry visas to Moldova⁴⁰.

Cooperation in this area needs continuous improvement, given the availability of new technologies and proliferation of more sophisticated criminal methods.

Cooperation in fighting cross-border crime

At the regional level, information exchange takes place through the Regional Centre for Fighting Cross-border Crime (SECI Centre), which has contact points in member States. In Moldova this role is played by the National Virtual Centre SECI/GUAM to Counter Terrorism, Organized Crime, Drug Trafficking and Other Types of Serious Crimes (created by Government Decision no. 93 of 27.01.06).

Police management

From the point of view of structure, the Moldovan police force is part of the MIA and operates under the Law on Police no. 416-XII of 18.12.90. The MIA is in charge of police funding, equipment and infrastructure; training and retraining of police staff of all levels; managing secondary, higher-education and other institutions in the MIA system; and creating and managing national information systems.

The Prosecutor General and other prosecutors reporting to him supervise police compliance with the laws.

Professional training of police officers

A strategy regarding the training of MIA staff in the area of human rights was prepared and currently is implemented. It was approved by MIA's Directive no. 471 of December 30, 2005 on the Organization of In-Service Professional Training in the Academic Year 2006.

The MIA and the Council of Europe have cooperated to develop a Police Ethics Code. A draft decision on the approval of the code was submitted for review and approval—along with the endorsements from relevant ministries—to the Government of Moldova. After the Code is approved, a plan will be drafted whereby the Code will be implemented in MIA's bodies or institutions.

⁴⁰ www.mai.gov.md, *Măsuri întreprinse în primul trimestru 2006* [Steps taken in the first quarter of 2006], p. 3

Conclusions

While working in this field the Government of Moldova is clearly open to assistance from international organizations and foreign governments, and the majority of recommendations made by the international community are included in the strategies and action plans of state bodies. This has helped Moldova in developing a legal base which largely is in line with European and international standards and in joining the main instruments regulating the prevention and fighting of human trafficking and crime in general. These are the basic requirements of the EUMAP.

The institutional framework was set up with clearly-defined roles of each constituent actor involved in fighting trafficking. The work of the NCCHT became more effective, although the absence of a permanent secretariat has a negative impact on its activity.

A specialized centre was established that brings together experts from various relevant national services, and has shown good results in its first weeks of operation.

The conditions and formative factors that shape the human trafficking phenomenon are still in place. Therefore, there is still a high degree of risk for a large number of people from vulnerable social groups. State institutions have to develop and apply trafficking prevention mechanisms, including economic and social instruments. Currently, most of the work in this area is done by international organizations and NGOs.

The Capacity-building of bodies involved in fighting trafficking is not a permanent and systematized process. International actors still provide training and modern equipment to the relevant bodies working in this area, which does not encourage institutional responsibility, because this practice develops a sense of dependency that may affect further efficiency.

The Government neither conducted itself nor contracted external agencies to conduct complex studies in order to identify ways of solving the problems existing in this field. The process of developing a comprehensive database on human trafficking is advancing extremely slowly.

In spite of the considerable increase of international operational cooperation following the participation of Moldovan law-enforcement bodies in various regional and international structures, the opportunities for cooperation with the relevant authorities of other countries are not used to their fullest extent. The issue of prosecuting under criminal law traffickers, as well as their accomplices residing in other countries, is high on the agenda.

We should mention that the number of trafficked victims has decreased, while the capacity to discover such cases has increased. However, the criminal prosecution of traffickers has shown insignificant progress.

XI. MIGRATION (LEGAL, ILLEGAL, READMISSION, VISAS, ASYLUM)

Migration is a phenomenon of great significance to Moldova. According to the preliminary census data of 2004⁴¹, about 273 000 Moldovan citizens are temporarily living outside the country, the absolute majority of whom left the country in order to find a place to work. A more detailed study, conducted by the consultancy company CBS-AXA in 2005, reveals that in 2003-2004, 571 000 people were abroad in search of employment⁴². In addition to the numbers of long-term and seasonal migration, the study also included the number of people intending to leave the country in the following six months, which mounted up to a total number of 690 000 *potential migrants*⁴³. If we take into account that the total number of the active population (between age 16 and retirement) is 2 161 000⁴⁴, then migrants represent 12.6%, according to the NSB and 26.4% according to the CBS-AXA. However, the potential number of migrant workers rises to around 40% of the active population.

Remittances are both significant financially and important economically. According to the WB, in 2004 Moldova had the world's second biggest share of remittances (around 27%) in relation to GDP⁴⁵. Although remittances speeded up economic growth in recent years by supporting consumption, their contribution to sustainable economic growth is highly debatable. Remittances are not expected to drop significantly in the short and medium term; however, if we take into account the existing trend of family reunification pursued by family members who received a legal status in the receiving country then the amount of remittances will decrease in the long run because there will be no family members anymore to support back in Moldova.

Migration is a two way road: there are Moldovan citizens who emigrate but there are also foreigners who immigrate to or transit Moldova. According to the

⁴¹ National Statistics Bureau (NSB) of Moldova, <http://www.statistica.md/recensamint.php>

⁴² CBS-AXA, "Migration and Remittances in Moldova", Report prepared for the IOM Mission to Moldova, European Commission Food Security Programme Office in Moldova, IMF Office in Moldova, 2005, p. 6

⁴³ CBS-AXA, "Migration and Remittances in Moldova", Report prepared for the IOM Mission to Moldova, European Commission Food Security Programme Office in Moldova, IMF Office in Moldova, 2005, p. 7

⁴⁴ NSB of Moldova, http://www.statistica.md/recensamint/Grupe_de_virste_apte_de_munca.doc

⁴⁵ World Development Indicators, <http://devdata.worldbank.org/data-query/>

preliminary data of the 2004 census, there are about 180 000 immigrants to Moldova, though the majority of them come from the countries of the former USSR and have resided in Moldova for more than ten years⁴⁶, which means basically that they have integrated into Moldovan society. So far, the immigration trend is much weaker than the one involving the emigration of Moldovans, but we should not underestimate the increase in the number of migrants coming from countries with significantly different cultures and religions as compared to national ones. This phenomenon requires the adoption of policies to manage the immigration flow in order to avoid future social tensions similar to those affecting some European countries.

One of the most important developments of the period under study was closing down the NMB, which used to be the main body in charge of developing and implementing migration policies. According to unofficial pieces of information, most of the NMB functions will be transferred to the MET, and the Refugees Department will be included into the MIA.

However, we believe that closing down the NMB was not very wise. It is true that the Bureau's mandate was perhaps too large: it included such functions as extending visas and registering foreigners, or recruiting migrant workers according to quotas for legal migration stipulated by some bilateral agreements. In the Moldovan case, indeed, it might be useful to have an Agency that would deal with developing state policies in the area of migration, but also conducting research, monitoring and analyses.

Managing the migration flow

Legal framework

In the period under study the issues associated with migration have been tackled in several general Governmental socio-economic strategies:

- The EGPRSP;
- The Program "Country modernization — people's welfare" (2005-2009);
- The National Program "Moldovan Village" (2005-2015).

In order to support policy-making in this area, there were a number of studies and projects carried out:

- "Migration and Remittances in Moldova" (July 2005) by the consultancy company CBS-AXA;

⁴⁶ NSB, http://www.statistica.md/recensamint/Migr_externi_loc_prec.xls

- ”Establishing the Centre of Migration Information Resources” (June 2005) supported by the OSCE Mission to Moldova, aiming at strengthening the information capacity of the NMB and creating an electronic database.

In the context of legislative approximation from the point of view of EU standards that penalize illegal migration, the CC was amended as of 01.01.2006, whereby this criminal offence was properly defined, along with degrees of severity and appropriate punishment. The provisions of the CC concerning violations by foreign citizens or stateless persons were also amended with regard to the residence regulations and to provisions of the Code of Administrative Contraventions concerning violations of the registration or re-registration of identity documents, as well as to the regulations for the provision of documents to foreign citizens or stateless persons allowing them to stay in or transit Moldova⁴⁷.

Moreover, a number of draft laws were prepared, which are now at various stages of legislative procedure:

- the draft GD regarding the approval of the regulation governing the way in which immigrant and repatriated-person status is to be granted and how immigrant certificates, employment permits and repatriation certificates can be issued, extended and cancelled;
- the draft Regulation on Visas;
- the draft “Law on Foreign Migration of Labour”⁴⁸.

Two international conventions in the area were ratified in 2005: the European Convention on the Legal Status of Migrant Workers and the International Labour Organization Convention no. 97 on Migration for Employment.

In terms of readmission agreements, Moldova signed in 2005 one with Norway and one with FRY Macedonia. Generally-speaking, the NMB spent considerable effort on managing and implementing the existing international migration agreements and initiating the conclusion of new ones. Before 2005, the following agreements were signed in the area of cooperation on issues of labour migration: with Russia (1993), Ukraine (1994), Belarus (1994) and Italy (2003). The latter agreement set up a quota for the number of labour-motivated entries into the country. The NMB succeeded in negotiating the quota increase from 2500 (in 2005) to 5000 (in 2006), thus encouraging legal migration. The agreement signed with Azerbaijan in 2005 covered cooperation not just in the area of labour migration but also in the area of social protection for migrants. A similar agreement was initialed with Portugal, which is expected to be signed in 2006.

⁴⁷ MFAEI of Moldova, Annual Evaluation Report of the Implementation of the EUMAP, 2005, p. 58

⁴⁸ MFAEI of Moldova, Annual Evaluation Report of the Implementation of the EUMAP, 2005, p. 58; the information has been supplied by NSB.

For now it is difficult to assess the effectiveness of the amendments made to the legal framework that deal with illegal migration as an offence, since too little time has passed and there is no well-established practice of implementation. The content of some prepared draft legal acts is also unknown, which leads to some degree of legal-institutional uncertainty.

Conclusions and recommendations

Going beyond the EUMAP implementation, we should mention that the Governmental efforts in the last few years to manage the migration flows were just some overdue reactions to the mass migration of the country's citizens. The EUMAP's adoption, as well as the increased attention paid to migration throughout the world, led to the political acknowledgement of the importance of this issue and to a qualitative and quantitative improvement of the actions aimed at tackling such problems. Although one cannot yet speak about the existence of a coherent migration policy, the efforts made in 2005-early 2006 have created a substantial base for a more effective management of migration flows.

The readmission agreements provide for a standard procedure of deporting migrants from the EU member States. The agreements stipulate the responsibility to readmit a country's own citizens as well as a citizens of other countries who have passed through the territory of the country in question on their way to the EU. Readmission agreements with the EU or its member States are a prerequisite for the EU association or cooperation agreements, and therefore the process of signing the former should be accelerated in order to send a positive signal regarding the country's openness to the EU, which could then, in turn, facilitate negotiations in other fields, such as the visa regime.

Compliance of domestic laws with international standards concerning the status of refugees and the right to asylum

The basic law regulating the status of refugees and the procedure of granting asylum is the "Law on the Status of Refugees" of 2003. In order to adjust this Law to international standards, the Parliament passed some amendments in May 2005, which introduced into the Law the notion of humanitarian protection. The Refugees Council received the status of an advisory body, while the Office of the UNHCR was granted free access to places of detention. The CDF started applying the new amendments as soon as they entered into force on 8 July 2005.

In order to implement the “Law on the Status of Refugees and Consolidation of the National Asylum System”, the Government adopted a Decision on the issuance of identity documents to refugees and amended several other decisions concerning the procedure whereby identity documents are issued and persons are registered⁴⁹.

Having similar goals at improving the asylum system, a draft Regulation on Criteria and Procedures for Determining Refugee Status was prepared, with the purpose of tackling the shortcomings in the existing practice in the area and defining a more clear procedure for granting asylum.

In the area of electronic data exchange, the NMB with the IOM support continues to implement the project on Developing the Centre of Migration Information Resources. In 2005 the third module of the project commenced, focusing on refugees and asylum seekers. The module called “Refugees” was to be introduced in the spring of 2006, but it is delayed because the NMB was closed down.

The amendments made to the laws on refugees and asylum seekers have brought the legal framework in this field very close to EU and international standards, in particular when it comes to humanitarian protection.

The most difficult practical problem today is the documentary evidence of refugees. According to the CDF, by the end of 2005 all refugees had IDs, not including persons under humanitarian protection regime. Another problem relates to persons whose applications for asylum have been rejected by a final decision. According to the “Law on the status of Refugees”, such migrants must leave the country within 15 days after a final refusal is issued. The CDF informs the MIA about it, which is the body enforcing the legislation regarding the status of foreigners in the country. However, the MIA quite often is not able to ensure the departure of these individuals.

In this regard it is necessary to set up an appropriate electronic information exchange system. The CDF has a rather simple database it uses for the registration of and record-keeping on refugees and asylum seekers.

One should mention in this respect that as of early 2006, the Moldovan legislation and policy in this area are in line with international standards. The practical problems which still remain, i.e. the provision of identification and travel documents to persons under protection, can and must be solved by the end of 2006.

As mentioned above, closing down the NMB led to a situation of institutional uncertainty and delayed many activities, including the actions managed by the CDF. One thing is sure though: the Department, regardless of its ministerial subordination, should stay as a unified structure with the same high degree of autonomy.

⁴⁹ For a full list of laws, see: MFAEI of Moldova, Annual Evaluation Report of the Implementation of the EUMAP, 2005, p. 59

Visa cooperation

Legal framework

Bilateral agreements on visa facilitation were signed with Lithuania and Poland in 2005⁵⁰. In the first months of 2006, the MFAEI developed a National Action Plan on the facilitation of the visa regime between the EU and Moldova, which provides for the creation of the conditions needed to achieve a more relaxed visa regime and covers the activities needed to conclude and implement the readmission agreements, border security the improvement of document security standards, and the effective management of migration. The negotiations on the facilitation of the Schengen visa regime for Moldovan citizens started in April 2006.

A law was adopted in May 2006 whereby Moldova abolished unilaterally the visa regime for EU, US, and Japanese citizens, effective as of 01.01.07. The procedure whereby foreign citizens had to register within three days with the local population registration office was abolished in April 2006 and replaced by a similar routine procedure at the border with a computerised entry into the State Population Register.

In December 2005 the Government submitted to the Parliament a draft “Law on Personal Data Protection”, as required by Convention 108 of the Council of Europe on Data Protection, which is planned for adoption in the first half of 2006⁵¹. During the same period machine-readable visas, were introduced, and almost all the Moldovan consular offices abroad were connected to the State Population Register.

It is difficult to assess the relevance and effectiveness of these actions when there are no clear performance indicators. The development of the Action Plan on the Facilitation of the Visa Regime Between Moldova and the EU is the first important step regarding the identification of specific measures to achieve the goals in this field. However, the Action Plan stipulates many elements which depend on factors other than just the effectiveness of Moldovan authorities. For example, one of the provisions in the Plan concerns the strengthening of border control at Moldova’s eastern border with Ukraine, although the experience of recent years has shown clearly that such objectives are difficult to achieve completely, despite the efforts spent. What is sure is that a facilitated visa regime with the Schengen area is an extremely important objective for Moldova.

Although long overdue, the decisions to abolish the visa regime for citizens of EU, US and Japan, and to introduce foreigners’ registration at the border are still extremely beneficial. The decision to abolish the visa regime is an obvious signal regarding the openness and political will to approach the countries concerned.

⁵⁰ MFAEI of Moldova, Annual Evaluation Report of the Implementation of the EUMAP, 2005, p. 61

⁵¹ MFAEI of Moldova, Annual Evaluation Report of the Implementation of the EUMAP, 2005, p. 61

Visa cooperation is closely linked to the management of migration flows, and the success of the dialogue on Schengen visa facilitation seems to be conditioned upon signing and implementing readmission agreements. In this respect, the MFAEI should be more active in signing international agreements, whether these are readmission or migration cooperation agreements.

It is important that the Moldovan authorities spend considerable efforts regarding the implementation of the EUMAP visa facilitation provisions that directly affect the performance in this area:

- activities related to procedures regarding visa issuance for foreign citizens;
- improving the security of travel documents held by Moldovan citizens (the introduction of machine-readable visas has already been achieved.).

In addition to the positive effects involving a better service for citizens, these sorts of achievements can serve as a pertinent argument in the dialogue with EU member States and the Commission in the context of more political and economic openness towards our country.

XII. BROADCASTING

The recent history of broadcasting has been influenced by the substance and the ways the Broadcasting Law (1995) has been implemented. This Law empowered private and public operators, set the licensing procedure, and established the BCC as an “autonomous public institution”. However, public authorities did not display a genuine interest in how broadcasting is developing. That was exposed by keeping some shortcomings in the Law while applying all its other provisions in a reluctant way which pushed broadcasting development in a wrong direction.

Consequently, broadcasting in Moldova found itself as an eclectic set of radio and TV services, having no clear, diverse and comprehensive structure. The biggest mistake however was allowing a large amount of rebroadcasts. This led to a situation when in 2001 only 9% of total programming were original broadcasts produced by the Moldovan radio and TV stations.

Here are some more problems with broadcasting:

- Moldova lost huge broadcasting capacities after the separatists took over the technical base located close to Grigoriopol;
- there is a lack of broadcasting professionals;
- the advertising market is underdeveloped and unregulated in terms of the language used – it takes into account mainly the Russian-language radio and TV stations, and stations that rebroadcast;
- there is no law on local state or public broadcasters;
- The Public Broadcasting Company Teleradio-Moldova is seen by many experts as being “public” only *de jure*;
- the market is dominated by the stations broadcasting mainly music and shows, while news stations are virtually non-existent;
- many stations do not follow the objectives stated in their statutes, e.g. Radio Polidisc, which was supposed to become a station broadcasting about police activities and public security, but turned over its radio frequency wave to the foreign station Russkoe Radio.

In spite of this vicious practice of rebroadcasting foreign stations, and the lack of language regulations which undermine the state language and the national culture by negligence or on purpose, there are several notable exceptions, such as

Radio Noroc, Radio Nova, Radio Vocea Basarabiei, Radio Contact, Radio ProFM, Antena C, Euro TV Chişinău, and DTV.

During the last ten years the Parliament of Moldova passed a number of laws amending and interpreting the Broadcasting Law, most of which were not in line with European standards of democracy. By a number of amendments and interpretations of 1999-2001 (04.06.1999; 22.06.2000; 29.09.2000; 03.05.2001; 07.06.2001), the Parliament changed or cancelled the few provisions in the Broadcasting Law that protected local production, programs in the state language, and the independence of the State Broadcaster's administration.

Although domestic laws stipulate that a technical license must be obtained before broadcasting can commence, the technical and technological practices fall well behind any acceptable standards regarding production.

Even public radio and TV stations in Moldova do not broadcast via satellite, the only exception being the radio station DIXI-Media. At the same time, only TV Moldova1 and Radio Moldova have premises specially designed for this type of broadcasting. Also, only the public TV has a site-reporting truck and has the capacity to broadcast live from various events.

Under the circumstances, we believe that both the BCC and the Telecommunications Regulation Agency should set minimal technical standards and a minimal level for production capacity before a radio broadcaster can receive a technical license. Since no such requirements are enforced, the license holders basically do rebroadcasting, having no incentives to develop their own production capacity.

The regulatory flaws in the area of radio advertising in Moldova distort the media market and obstruct advertisers working in the state language. On the one hand, Moldovan law does not ban advertising in radio and TV rebroadcasts, which spares foreign companies the need to invest in promotional activities in Moldova; while on the other hand, local broadcasters, including cable operators, have the right to insert local advertising in rebroadcast programs, which again does not encourage the development of local production capacities. A meaningful example in this respect is the "Russian TV Pervyi Kanal v Moldove", which produces locally only the weather forecast but has more advertising revenues than the public TV station Moldova 1.

Contrary to international practice, there are no regulations of the language in which advertising is broadcasted, which eventually undermines linguistic and cultural heritage. Unfortunately, the latest draft of the Broadcasting Code also failed to properly address this problem.

Cable operations are not regulated by law as well, which allows them to ignore the production of national and regional/local stations while setting up the package of programs. On the other hand, rebroadcasted programs can include commer-

cial advertising. One solution would be for such stations to produce their own programmes, which would include commercial advertising that, in turn, would stimulate the development of broadcasting.

It is necessary to grant legally to foreign investors from developed countries the right to hold the control stake in Moldovan broadcasters, which would facilitate the transfer of know-how and contribute to the consolidation of professional standards in the field. Tax waivers should also be granted for imports of modern radio and TV equipment, at least for a certain period of time.

Conclusions

The commitments Moldova undertook in the framework of the Council of Europe and within the EUMAP require the revision of broadcasting policies and subsequent legal amendments in the area, so as to contain the proliferation of governmental and special group interests in the field of licensing. Also the editorial policy of broadcasters should be free of any interference from outside.

The ratification of the European Convention on Cross-border Television was a step that consolidated Moldova's European choice. The national legislation regarding broadcasting is currently reviewed, and the public has discussed the Broadcasting Code of Moldova, as well as two draft laws proposed by civil society and some political parties.

More specifically, the following steps ought to be made:

1. It is necessary to prepare and implement a National Broadcasting Development Strategy with specific objectives such as:
 - a relatively even coverage of the country's territory by radio and TV stations;
 - a diversity of programs, both in terms of broadcaster ownership as well as in terms of topics and editorial policies;
 - a reasonable linguistic policy, which would take into account the ethnolinguistic composition of the population, both nationally and regionally/locally;
 - encouraging, by legal means, local production and discouraging rebroadcasts.
2. The Government of Moldova should create a Broadcasting Development Support Fund.
3. We need to have better regulation and development of public broadcasting, and its adequate funding:
 - increasing broadcasting time at TV Moldova-1 to 18-24 hours a day, which means that this would be the first station broadcasting non-stop;

- opening the TV Moldova-2 public channel, which would focus on live programs, promotion of cultural and national values, broadcast of archive materials, production of educational programs, some broadcasting time would be reserved for local authorities to cover community needs;
 - producing and distributing programs to other countries where a higher number of Moldovan citizens temporarily work;
 - setting up regional TV and radio offices (in Cahul, Bălți, Ungheni, Comrat, etc.);
 - producing CDs and DVDs with national heritage art works as well as with original works;
 - re-equipping the production studios;
 - budgeting funds for the production and purchase of new feature films, TV series, music videos, as well as the broadcasting rights for world and European championships, Olympic games, and festivals;
 - providing staff salaries comparable to those provided by private broadcasters.
4. Adopting a new law/code on broadcasting in line with European standards, which should include the following elements:
- A new procedure for the selection and appointment of the national regulatory body (BCC), which should be representative made up of well-known personalities in this field; and who would ensure the regulatory body's independence.
 - Land frequencies, which are a national asset, should be used only for the production and broadcast of national programs.
 - Revising the existing pieces of legislation on advertising in broadcasting, so that advertisers would not have the right to choose the language of the advertising—the language should be in line with programs' indicators and take into account the ethnic-linguistic composition of the population. The advertising of foreign broadcast stations should be blocked and replaced by useful, non-commercial information. Also, advertising should be placed only in and in-between the original programs and in films purchased by the broadcaster.
 - More clear regulations are needed both for the content of licenses and the obligations of cable operators, such as:
 - a. the obligation to give priority in the package of programs to national and regional TV channels;
 - b. the obligation to dub/subtitle foreign programs into the state language;
 - c. blocking the advertising of foreign stations;

- d. the right of the cable operator to develop its own advertising service on a separate, licensed channel;
5. Further developing the Monitoring Centre and using the results of its work for more effective policy-making in broadcasting.
6. Preparing an Ethics Code for broadcast journalists; this would ban abuses and censorship inside the institutions regarding the character of relations between editor-producer-reporter (presenter).
7. Monitoring the implementation of the European Convention on Cross-border Television.
8. The Government to pass decisions facilitating Western investments in Moldovan broadcasting, in line with the National Strategy and relevant laws.
9. The regulatory body's acts, or any other normative acts, should set up advanced technical standards as a condition for the technical license, including for cable operators.
10. Assessing the professional level of media specialists in general and broadcast specialists in particular.
11. Supporting media efforts to set up a trade union of journalists in Moldova.
12. Requesting a grant from the EU for the purpose of launching and developing Romanian-language radio and TV stations, as the Romanian-speaking population represents 80% (about 75% after the reintegration of the country), while such programming currently represents only 15% of the total.

XIII. MEDIA

The media has an unquestionable impact on the development of the Moldovan society, which is confirmed by opinion polls where 63.5% of respondents say they trust the media. This underlines once more the significance of media outlets.

At the same time, when it comes to freedom of the press, formal statements made by authorities do not match the realities on the ground. This situation is confirmed by many international media organizations. Moldova thus falls into the category of countries where the media is not free. For example, the study *Freedom of the Press 2006*, issued by “The Freedom House”, places Moldova 146th of 194 countries, giving Moldova 65 points (the same level as Angola, Bhutan, Cameroon, Malaysia, and the United Arab Emirates)⁵², which is a step back as compared to the situation in 2005 (place 137) and 2004 (place 127). This triggered such pessimistic statements as: “Press freedom in Moldova is getting worse”⁵³. The results of another study, carried out by “Reporteurs sans frontieres”, are not encouraging either, as they show that Moldova comes in 74th of 167 countries (next to Guinea-Bissau and Tanzania)⁵⁴.

It is important to note in this context that the diplomatic missions accredited in Moldova have also expressed their concern in a joint declaration, emphasising that no progress has been achieved in media reform during the last year⁵⁵. On the contrary, there have been frequent attempts made by public authorities to stop journalists from exercising their profession freely: refusing to supply information, preventing them from getting access to meeting rooms of institutions and refusing accreditation without any clear reasons.

It is a natural development indeed, that under such circumstances journalists had to turn to justice. As of 30 September 2005, there were 30 law suits initiated under the provisions of the Access to Information Law⁵⁶. This is not a large number of suits if we take into consideration the fact that in the last 10-12 years the

⁵² [http://www.freedomhouse.org/template.cfm?page=22&country=6792&year=2005&view=mof;http://azi.md/news?ID=39090;](http://www.freedomhouse.org/template.cfm?page=22&country=6792&year=2005&view=mof;http://azi.md/news?ID=39090)

⁵³ <http://www.investigatii.md/index.php?newsID=33#>

⁵⁴ http://www.rsf.org/rubrique.php3?id_rubrique=549

⁵⁵ Joint Declaration on the Press Freedom Day 2006 // <http://www.api.org.md/declaratierom.html>

⁵⁶ <http://europa.timpul.md/Article.asp?idIssue=150&idRubric=1942&idArticle=5100> P>.

courts have reviewed more than 800 cases involving the media. Most of these cases involved alleged libel, and journalists lost the majority of the suits⁵⁷. In spite of this practice, there have been cases when the courts ruled in favour of the media. One such relevant example was the case of the Investigative Journalism Centre, which won for the first time in a suit against the GPO, which had refused to issue accreditation to a reporter⁵⁸.

The government's actions in the area of regulations are not guided by a clear and coherent strategy. The authorities seem to have no concept or systemic view of how media should develop and how to ensure media freedom.

Other shortcomings are, for example, the discriminatory treatment applied to the media loyal to or critical of the government by granting to them different degrees of access to information, advertising preferences, etc. Although the Government relinquished its ownership over the official national publications *Moldova Suverană* and *Nezavisimaia Moldova*, many independent experts in the field assessed this decision as a formal one. The Government displays insufficient initiative either in terms of legislation or in terms of strategy, or operational activity. Journalists are dissatisfied with the way Ministerial press offices work.

The attitude towards the watchdog role of the media has not changed. This role is taken on mostly by investigative journalism, which focuses on socially relevant issues such as the management of public money, personnel policies, corruption, the system of public healthcare, etc. This type of journalism is hit hardest by the policy of obstructing access to information, while the journalists themselves are in a quite difficult situation: "Journalists working on investigations enjoy no guarantees, legal benefits or support by law enforcement bodies"⁵⁹. Moreover, public administration and law enforcement bodies do not react to the results of investigations published by the media. The "uncomfortable journalists" may be subject to intimidation and even physical attacks—in 2005-2006 newspapers announced cases of intimidation and aggression involving journalists (e.g. Alina Anghel, Ion

⁵⁷ Journalists were involved in some ECHR cases that they won: the case of Giulietta Savițchi (judgement of 01.02.2005—violation of art. 10 of the Convention, freedom of expression); Busuioc (judgement of 27.04.2004—violation of art. 10 of the Convention, freedom of expression). – Cf.: *Guvernare și democrație în Moldova. E-journal*, year IV, no. 70, 14-28 March 2006

⁵⁸ In December 2004 the newspaper *Moldavskie vedomosti* lost a law suit against the President's Office of Moldova regarding the accreditation of the paper's editor-in-chief; this case is now pending at ECHR. The Supreme Court of Justice took a similar decision, ruling in favour of the Parliament in a case initiated by the newspaper *Timpul*. The newspaper alleged violations of the Access to Information Law. In May 2004 *Timpul* had requested from the Parliament the transcripts of the autumn-winter 2002 session. The Parliament's administration refused to issue the materials referring to an interdiction in this respect stipulated by the Parliament's regulations (Cf.: http://www.acces-info.org.md/upload/RAPORT_ANUAL_2005.doc)

⁵⁹ Cf.: http://www.acces-info.org.md/upload/RAPORT_ANUAL_2005.doc.

Robu⁶⁰), and pressure was exercised on publications critical of the authorities (e.g. *Moldavskie Viedomosti*, *Unghiul*⁶¹, *Observatorul de Nord*, *Cuvântul*⁶²). The investigative journalists should associate into a professional union, which could support the profession to the benefit of society as a whole.

On World Press Freedom Day, 11 media outlets issued a statement where they emphasized the inappropriateness of removing from the Civil Code the ceiling on financial compensation in libel cases. This issue has been debated for a long time, and the main concern is that journalists have no trust that the courts are independent and impartial. This new provision both encourages self-censorship and represents a tool by which the media could be subject to financial pressure. Thus, the courts can decide on compensations which are far above the financial capacity of media outlets, thus bankrupting them. Art. 16 of the Civil Code, “Protection of Honour, Dignity and Professional Reputation”, places on the defendant the burden of proving the authenticity of the information published, and the publication can be sued along with the source who made the statement, regardless of whether the publication supports or not that point of view. Such legal provisions obviously do not help the development of a truly free media and must be reviewed professionally with the involvement of the relevant actors.

In fact, the consultations between the Parliament and civil society on issues of media freedom are not very effective, a fact revealed during the public debates held on the subject of the draft Broadcasting Code.

Conclusions and recommendations

- There is a need to evaluate the legislation regarding the activity and freedom of the press and review the stipulations criticised by the actors concerned, in particular stipulations limiting the freedom of expression, relating to defamation, state secret, privacy, etc. There are some indications that decision-makers might accept some recommendations made in the context of the EUMAP, for example to include into the newly developed legal acts the notion of the right to rejoinder⁶³, but more effort is needed in this regard.

⁶⁰ Cf.: <http://www.api.org.md/presasubpresa3.html>

⁶¹ Cf.: http://www.acces-info.org.md/upload/RAPORT_ANUAL_2005.doc.

⁶² Cf.: www.acces-info.org.md.

⁶³ The regulation of the Central Elections Commission concerning the media coverage of the Parliamentary elections campaign—<http://www.alegeri2005.md/cecdocs/reflectareamassmedia/>

- Transparency should be ensured during the law-making process; the Law on Transparency of decision-making should be promoted⁶⁴; allowing journalists should be allowed to access public information held by the governmental institutions.
- A modern concept of media support should be developed and enforced, to ensure; effective cooperation between the media and the state.
- The working conditions of the media should be improved, treating the media as an enterprise rather than as a tool of political influence; Western investment into the media should be promoted; economic levers should be used to support the development of independent media, including VAT exemptions or discounts.
- There should be projects implemented to strengthen the local private media.
- The state should contribute to the establishment of an alternative press distribution network.
- An action plan regarding the professional training of journalists should be prepared and implemented, in line with European standards in the media field.
- Independent mechanisms of scientific assessment of media work should be established.
- Draft laws that would regulate issues to emerge in the medium term should be prepared, especially such issues as the concentration of ownership, Internet-based media, building complex communication structures, etc.
- Cooperation and information exchange with Western media outlets should be deepened, as well as with specialized bodies in EU member states.
- Projects to support the development of cross-border media networks should be prepared and implemented.
- There should be adequate assessment of future media regulations and their approximation to EU standards in the field.

⁶⁴ Cf.: www.access-info.md.

XIV. HEALTHCARE AND SOCIAL PROTECTION

Moldova faces complex problems in the area of healthcare:

- there are diseases which are typical for developing countries, such as infectious and parasite-based diseases;
- there is a high rate of diseases characteristic of developed countries, such as cardiovascular diseases, cancer, etc.;
- the population's access to healthcare services has diminished because of poverty, the new system of official fees in healthcare facilities and unofficial payments, and the consolidation of healthcare facilities and their decreasing number. All these developments lead to considerable inequality in the access of different population groups to healthcare, where rural dwellers, elderly people and families with many children suffer most.

In terms of social protection, the situation is even more complicated:

- the social-economic differentiation among the population is increasing, thus strengthening already existing differences;
- the income of more than 70% of the population is not sufficient to cover the subsistence minimum;
- the share of the poor population, whose incomes do not cover even half of the subsistence minimum, is more than 30%;
- the exodus of young and qualified labour is increasing;
- family values are deteriorating, more and more children are left without parental care, which exposes them to various social risks: alcohol, drugs, abuse, human trafficking, etc.;
- the social allowances (13 different types) provided to vulnerable categories of population are insufficient to cover the subsistence minimum despite their periodic rise;
- community services for the protection of vulnerable persons are underdeveloped, residential care being most frequently used.

In the period under study the MHSP, together with central and local public administrations and in cooperation with international organizations, has developed a number of initiatives aimed at reforming the legal framework in the field in line with EUMAP objectives.

Thus, in accordance with EUMAP objective 80, “Increase the level of health security and epidemiological safety in Moldova in line with EU legislation and in cooperation and with the support of the WHO”, the following steps were made:

- The National Strategy of Reproductive Health was approved.
- The draft Law on the Prevention of HIV/AIDS was developed.
- The National Program for TB Control and Prevention for 2006-2010 was approved.
- The draft State Program for the Development of Emergency Care in 2006-2010 was prepared.
- The Emergency National Antiepidemiological Commission was set up due to the spread of bird-flue pandemic in the world, including in neighbouring countries.
- The National Program for Iodine-Deficiency Diseases Elimination until 2010, the Regulation on Conducting Expertise of Foodstuff’s Safety for Health, and the Regulation on Approving New Types of Foodstuff were approved.

In accordance with EUMAP objective 17, “Take significant steps to address poverty, notably by improving targeting and effectiveness of social assistance”, the following has been done:

- The Concept on Making the Social Assistance System More Efficient and the Action Plan to Make Nominative Compensations More Efficient were approved.
- The Decision on the Pilot Project to Test the Nominative Compensations Mechanism in Four Regions of the Country was approved; under the project the incomes of 32 000 beneficiaries of nominative compensations will be tested in February-October 2006.
- The relevant ministries approved the draft Law Amending the Law on Social Assistance, which will allow local public authorities to add to their respective personnel the position of a social worker.
- The draft Law Amending the Law on State Social Allowances for Some Categories of Citizens was prepared, which provides for an increase in the allowance for uninsured persons to 600 lei, in case of death.
- A legislative initiative was launched to improve the method by which is established the amount of care allowances for disabled children under the age of 16 and for visually impaired persons both of grade I of disability.

According to EUMAP objective 18, “Redirect public expenditure to significantly address child poverty and to increase primary school enrolment”, the following has been done:

- A MEY Order was issued concerning the establishment of financial norms for child nutrition in educational establishments (pre-school institutions, orphanages, the national boarding sports school) for the purpose of implementing the relevant requirements regarding the eradication of poverty and social security identified by the EU Food Security Program.
- A GD was passed amending the Regulation on the Method of Calculation and Payment of Allowances to Families with Children; it changed the amount and the way in which some allowances are calculated in order to optimize the benefits addressed to children and render more effective assistance addressed to families in need.
- A GD was approved whereby some child centres were transferred to the MHSP in order to make their management more efficient.

The measures implemented

In the period under study, the actions undertaken by the MHSP and other relevant bodies in the area of Public Health have focused on the implementation of the following EUMAP provisions:

- 1) *Health information and knowledge.* The information campaign continued regarding the content and method of implementation of the National Programs of Immunization; prevention and control of HIV/AIDS and Sexually Transmitted Infections; prevention of hepatitis B, C and D; preventive harm-reduction programs for drug users for 2006; and the National Population Education and Healthy-Lifestyle Program. At the same time, significant steps have been made towards enhancing the skills of healthcare facilities staff.
- 2) *Collecting information on health indicators.*
- 3) *Controlling transmitted diseases and health security.*
- 4) *The healthcare reform* focused mainly on the primary healthcare system, emergency care system, hospital care, etc.

The public system of social protection in Moldova is divided into two separate elements: social assistance and social insurance. In the case of the former, the state and civil society undertake to prevent, limit or eliminate the permanent or temporary effects of events deemed to be social risks (illness, accident, disability, ageing, maternity, unemployment, death), which can lead to the marginalization or social exclusion of individuals and families in need. The latter element concerns only insured individuals who are entitled to payments under specific contract provisions (ageing, disability, death, etc.). Therefore, in order to improve the national social protection system both elements have to be addressed.

In 2005, the relevant administrative bodies (MHSP, MET, MF, etc.) prepared draft laws on the new principle of distributing nominative compensations depending on the family/individual's global income, with certain filters, as well as the following draft laws: Law on Subsistence Minimum and Law on Need-Based (Poverty) Allowance.

February 2006 saw the start of a pilot project aimed at testing the new mechanism of distribution of nominative compensations, based on the family/individual's global income and employing certain filters; the pilot is to last till October 2006. This project is being implemented in the northern, southern and central parts of Moldova (*raions* of Soroca, Orhei, Leova, and the Râșcani district of Chișinău). The incomes of 32 000 beneficiaries of nominative compensations will be evaluated during the project. Its outcomes will be used to develop a new principle of transferring nominative compensations.

Considering the annual growth of the consumer price index and the annual growth of the average salary in the country, the Government decided on the indexation of social insurance payments and some of the state social allowances by 15.7% in 2006. Thus, the indexation of all pensions proceeded as of 01.04.2006—the pensions calculated as per Law on State Social Insurance Pensions, Length-of-Service Pensions, Civil Servant Pensions, Customs Officer Pensions—as well as the disability allowances set up according to the Law on Accidents at work and Occupational Diseases, and the Pensions for Victims of the Chernobyl Disaster.

The average monthly pension as of 01.01.2006 was 383.2 lei, which is 17.8% higher than in the same period of the previous year, while in real terms (adjusted for the consumer price index) the average pensions increased by 5.3%. However, the average pension covers only 59% of the minimal subsistence level of this group of population.

In order to reduce the level of poverty among families with children, the following amounts were raised as of 1 January 2005, in accordance with the relevant laws and regulations:

- one-time allowance upon the birth of a child, from 420 to 500 lei in the case of insured persons and from 380 to 500 lei in the case of uninsured persons;
- monthly child allowance until the age of 1.5 (3), in the case of uninsured persons from 75 to 100 lei, and for insured persons by 20% from the calculated social insurance allowance base, but not less than 100 lei.
- in February 2006 the MHSP submitted to the Government a draft Decision amending some laws, which provides for an increase in the one-time birth-of-child allowance to 800 lei.

One should mention however that, although the monthly allowance for child-care has increased to 100 lei for uninsured individuals and on average to 149.9 lei

for insured individuals, these social allowances cover only 24.6% and 36.6% respectively of the monthly needs of a child, which places children into the category of vulnerable persons.

In order to provide protection to children left without parental care, step-families and foster families for minors are entitled, as of 01.01.2005, to allowances of 200 lei per month for each adopted or foster child. Also, in order to support disabled children, the social allowances for disabled children under 16 were increased in 2005. And in order to provide meals in schools for children from vulnerable families, financial norms were adopted as of 01.01.2006 for nutrition in educational institutions.

In terms of EUMAP objective 23, “Strengthen dialogue and co-operation on social matters. Ensure a closer approximation of the country to EU standards and practices in the area of employment and social policy”, a procedure was adopted whereby employers are encouraged to employ graduates of higher-education institutions whose studies were funded by the state budget. The incentives to employers involve monthly payments in the amount of one minimum salary, during 12 calendar months for each budget-funded graduate employed, provided that he/she is employed for at least three years. For the employment of disabled graduates, the payment is made during 18 months.

In accordance with objective 8, “Ensure equal treatment”, the Parliament passed the Law on Providing Equal Chances to Men and Women, which forbids discrimination based on sex and ensures equal chances in the public area, social-economic area, in education and health, etc. Also, in order to eliminate all forms of domestic violence, a draft Law on Preventing and Eliminating Domestic Violence was prepared. And in order to prevent, curtail and punish trafficking in human beings, especially of women and children, the Parliament of Moldova passed on 20.10.2005 the Law on Prevention and Control of Human Trafficking and the Law Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings.

Conclusions

The actions undertaken in the area of healthcare are acceptable in terms of their content. Even though sometimes the steps planned may be somewhat general, the context as a whole of healthcare reform yields a clear picture of the priority areas. Unfortunately, the same could not be said about social protection in Moldova.

Nevertheless, the actions undertaken by the relevant authorities in the period under study confirm the fact that the implementation of EUMAP provisions is an incontestable priority. The element which raises certain concern is the relationship between the scope of the problems at hand and the time planned for their solution. It will be very difficult to carry out in three years all the commitments subscribed to. There are too many problems to be solved in healthcare and social protection; moreover, these problems are too important—given the deep impact they produce on human beings—to be handled in a superficial manner.

XV. EDUCATION, YOUTH, AND TRAINING

In compliance with EUMAP objectives, the MEY established the following priorities for February 2005-March 2006:

- Writing an Education Code;
- Setting up the Service of Recognition and Validation of Education Certificates;
- Using the opportunities provided by the EU through its YOUTH Program.

Moldova joined the Bologna Process during the Conference of European Education Ministers, which took place in Bergen, Norway, between May 19-20, 2005. The national system of higher education thus started to align itself to European requirements in the field⁶⁵. This requires approximation and harmonization of national legislation taking into account the Community standards.

One should note that the MEY has shown full commitment both during the preparation for the accession to the Bologna Process as well as by launching reform initiatives in education in the short period of time elapsed after the accession. Thus, in 2005 the MEY developed and approved an Action Plan for the Implementation of the Bologna Declaration Objectives⁶⁶. A Government Commission for Monitoring the Implementation of the Bologna Declaration was established.

In order to place the Action Plan within a legal framework, the Government amended in 2005 the Law on Education (1995)⁶⁷ by introducing a higher-education structure based on two tiers:

- tier I—higher university education;
- tier II—master's level education.

Another amendment to the Law concerned the implementation of the European Credit Transfer System (ECTS) in all higher-education establishments. In

⁶⁵ *The European space for higher education*. Joint declaration by European education ministers. (Bologna Declaration). Bologna, 19 June 1999.

⁶⁶ Ministry of Education and Youth of Moldova. Action Plan for the Implementation of the Bologna Process Provisions Into the Higher-Education System of Moldova During 2005-2010. Chişinău, 2005.

⁶⁷ Parliament of Moldova. Law on Education no. 547 of 21.07.1995. *Monitorul Oficial al Republicii Moldova* no. 62-63, art. 692, 9 November 1995. art. 25-31, 34-35, 37 (5), 49.

order to facilitate this process, the MEY prepared a Guide to the Implementation of the National System of Education Credits Earning and Transfer⁶⁸, which is expected to help the harmonization of the curricula and qualifications provided by the various higher-education institutions of Moldova. In March 2006 the ECTS Implementation Guide was distributed to higher-education institutions.

On July 7, 2005 the Parliament approved the List of Vocational Training Areas and Specialities in the First Tier⁶⁹; this document was conceived in line with the International Standard Classification of Education ISCED-1997⁷⁰ by UNESCO and EUROSTAT, with the purpose of training professionals in accordance with labour market requirements.

The GD of August 16, 2005 approved the Education System Modernization Program for the Years 2005-2008⁷¹, which sets basic priorities for the development of education during this period.

Also, the MEY developed a draft Education Development Concept, which establishes the legal framework for education-system reform and which sets the principles and objectives of higher education development.

The MEY prepared a draft Package of Education Laws, also called the Education Laws Code, which contains:

- The Education Framework-Law;
- The General Secondary Education Law;
- The Higher-Education Law;
- The Non-University Professional-Education Law (*the term “non-university” is used inappropriately instead of a more adequate one – secondary professional education or vocational training, recommended by the European Training Foundation [ETF], which is the EU authority in the area of vocational education and training. The notion of vocational training in higher education is not universally accepted; it is used only in specialized literature published in the Russian Federation. See ETF Glossary*).

In 2005 the EC issued a working paper – *Towards a European Qualifications Framework for Lifelong Learning*⁷², which sets the main characteristics of a potential European Framework of Qualifications.

⁶⁸ Ministry of Education and Youth of Moldova. Implementation Guide for the National System of Education Credit Earning and Transfer. Chişinău, March 2006.

⁶⁹ Parliament of Moldova. List of Professional Training Areas and Specialities in the First Tier. Law no. 142-XVI of 7.07.2005.

⁷⁰ International Standard Classification of Education ISCED-1997. UNESCO, 1997.

⁷¹ Government of Moldova. Education System of Moldova Modernization Program for the Years 2005-2008. Decision no. 863 of 16 August 2005.

⁷² European Commission. *Towards a European Qualifications Framework for Lifelong Learning*, 2005.

In order to strengthen the legal framework regarding the participation in youth programs, the process was commenced of writing the Law on Voluntary Service and amending the Law on Youth no. 279-XIV of 11 February 1999.

The amendments made to the Education Law introduced a structure of university education in Moldova based on two tiers, while the draft Education Code provides for three tiers. This confusion of concepts points to a lack of coordination between these draft laws and the rough state of the Code as a whole⁷³.

The most difficult issue in changing the structure of higher education is linked to the third tier—doctoral studies. Traditionally, doctoral studies were seen as a stage in post-university education with an emphasis on research. Today however it seems that we face the dilemma of deciding whether doctoral studies are part of the third tier of higher education or are part of post-university education. Moreover, one more question arises concerning the status of the degree *Doctor Habilitatus*, and whether such a title—originating in the Soviet system of scientific degrees and qualifications—is still necessary, since it is rather an exception across the developed world, including the EU.

Although it has been declared that the Education Laws Package was developed to harmonize Moldova's education laws with the Community requirements, the Package has serious problems, in particular, regarding regulations governing university autonomy, informal education, distance learning, etc.⁷⁴

In accordance with the document signed during the Bergen Conference, the States that are parties to the Bologna Process must develop a National Framework of Qualifications, in line with the benchmark levels and qualifications stipulated in the European Qualifications Framework. These states must also set up conditions to improve the quality of qualifications and their recognition on the domestic and foreign labour markets. The national system of university qualifications must be compatible with the one existing in the European Space of Higher Education, must be associated with the ECTS, and must be reflected in the Diploma Supplement. Also, there has to be a link between the descriptions of the qualifications within each tier of the national system and the description of the qualifications in the European system. It becomes obvious that, under these circumstances, the Classification of Occupations—developed by the Ministry of Labour and in force to the present day—must also be revised and updated.

An important step made towards the European university space is the introduction of the Diploma Supplement in education, which as of 2005, is issued

⁷³ Nicolae TODERAȘ. *Aspectele racordării sistemului de învățământ superior la standardele statelor membre ale Uniunii Europene: politici educaționale și de tineret* [Issues in adjusting the higher-education system to EU standards: education and youth policies]. Expert-Grup/Adept, 2006.

⁷⁴ Ibid.

automatically to graduates of higher-education institutions. This will contribute without any doubt to the consolidation of student mobility and will facilitate the recognition of qualifications and study periods.

Amendments will continue to be made in 2006 to two laws concerning the accreditation of education institutions: the Law on the Evaluation and Accreditation of Education Institutions and the Law Approving the Evaluation and Accreditation Regulation for Education Institutions.

Currently, it is highly important that the secondary vocational education system be reformed, although this is a difficult task to handle given the chronic shortage of funds in this area.

The Presidential Program SALT, launched in 2004, aims at introducing information and communication technologies in education; though, here as well, the lack of adequate funding hinders the implementation of the program.

An important step towards the introduction of IT in education was the development of the MEY Web site, as well as the development of IT training and communication modules for teachers from the country's *raions*.

International cooperation in the area of education and youth is a key element in the process of Moldova's integration into European educational space, which currently takes place through such Community programs as Tempus, Erasmus Mundus and Youth.

Moldova is eligible for Erasmus Mundus, although the advantages offered by this program are not used to the fullest extent. From January 2004 until now only 9 persons from Moldova have participated in the program's individual mobility schemes. The activities undertaken as part of the program are limited to seminars and conferences.

The European Commission's Comenius Program plays an important role in Moldova's European cooperation in school education. Comenius is the second phase of the Socrates Program, focusing on cooperation in the area of education and on teenagers aged 14-17. For now only two pre-university institutions in Moldova have participated in the Comenius Program: the High-School "M. Sadoveanu" from Călărași is involved in the Comenius project "Education for Peace", and the Cahul Technological School is involved in the project Gastronomy Without Borders.

During a meeting held in Brussels in 2006, the EC's experts mentioned that Moldova can participate as a partner in Actions 1, 2 and 5 of the Youth Program. In 2005 about 200 youth from Moldova participated in the Program.

It is known that most countries have national agencies for the implementation of Community programs in the area of education and youth, whose role is to disseminate information and coordinate projects. In Moldova, however, the MEY is only now studying international practices in this regard, in order to set up an office for the promotion of youth programs.

Conclusions

The introduction of the system of two university tiers in all higher-education institutions was done without working out standards in the field for both tiers and without new curricula for each tier, which would take into account the continuity of university education and the adjustment to the demand on the labour market.

The process of improving quality in education so far has been limited only to the establishment of administrative units in universities in charge of quality management, while the National Quality Assurance Agency remained only as a remote idea.

The recognition of diplomas and study periods in Moldova will be in the jurisdiction of the Service for the Recognition and Validation of Study Certifications, set up recently by the MEY. However, the national legal framework in the area still needs to be updated to include the Lisbon Convention principles, such as the mutual recognition of diplomas awarded in two or more SEIS countries and the recognition of informal education.

In terms of university autonomy, the existing legal provisions are only of a declarative nature, and have nothing in common with a genuine autonomy. This situation, in turn, hinders the efforts of higher education in getting real autonomy. In order to change that, the legal framework governing university autonomy needs serious adjustments to include the following European norms and standards⁷⁵:

- Performance standards for universities should be established.
The academic community is responsible for ensuring an adequate performance in teaching, learning, research and services provided.
- The university community should have complete freedom in the selection of academic management bodies (senate and board), rectors and deans.
- The centralised system of student enrolment should be abolished.
The university is to establish independently the number of students it wants to enrol (admission number), the criteria and procedure of admission, and the period of admission exams without interventions from the MEY. Universities should have the power to make decisions concerning the number of fee-based students they want to admit in addition to the students funded from the state budget.
- Budget resources are to be distributed to universities based on a contract with the MEY following a competition of curricula and research programs, and depending on the performance and the number of state-funded

⁷⁵ Andrei MARGA. *University reform today*. Cluj University Press, 2001, p. 110.

places for students. Research in universities should be funded based only on competitions of research projects..

- Universities should have complete autonomy in attracting and spending extrabudgetary resources, with no effect on budget allocations.
- Universities should have the right to hire teachers from other countries.

Moldova's participation in Tempus III. Moldova participated actively in the competitions for Tempus projects. The implementation of Tempus projects led to improvements of institutional management and increased capacities of university curricula development and implementation.

In the future, Tempus projects for Moldova should focus on the following priorities:

- developing university autonomy;
- developing a National Framework of Qualifications;
- high standards of education;
- introducing Master's programs in various areas;
- implementing the ECTS.

Introducing information and communication technologies in education. The implementation of information and communication technologies in education is carried out through the Presidential Program SALT approved in 2004. During its implementation the main issues of concern are linked to the considerable financial expenditures required. The line ministries in charge of implementing the Program are making efforts to attract foreign donors and partners.

Higher-education institutions in Moldova need to participate more actively in building partnerships within the Erasmus Mundus Master's programs.

Although the objectives and actions of the Youth Program were presented during meetings organized in Moldova in partnership with the SALTO-YOUTH Resource Centre for Eastern Europe and the Caucasus, information about participation and opportunities needs to be disseminated more widely in order to ensure more active involvement of Moldovan youth.

It is also necessary to do more for the promotion of non-formal learning for youth in Moldova⁷⁶.

In order to promote youth programs, a National Agency for the Implementation of Community Education and Youth Programs needs to be set up, whose mission should be to inform about and coordinate projects in the area.

⁷⁶ COUNCIL OF THE EUROPEAN UNION. "Draft Conclusions of the Council and of the representatives of the Governments of the Member States meeting within the Council on Common European Principles for the identification and validation of non-formal and informal learning". Brussels, 18 May 2004; YOUTH FORUM JEUNESSE: "YFJ welcomes the Council Resolution on the values of non-formal and informal learning". Press Release. 22 May 2006.

XVI. INFORMATION SOCIETY

The rapid development of information technologies has produced a revolution in Moldova, too, where the level of development in this regard is comparable to neighbouring countries', although it still lags behind in some aspects. Land-line telephone services have developed at a fast pace in the past 10-15 years, as have mobile and Internet services. The range of telecommunications and informatics services have widened: from basic telephone services (local, long distance and international connections) to more diverse services such as pre-paid telephone cards, caller identification, voice mail box, data transmission, Internet, videoconferences, ADSL, mobile data transmission, mobile Internet, cable TV, etc.

In 2005 an upward trend was observed in all the sectors of the telecommunications and informatics market, estimated at about 3.64 billion lei. Land-line telephones still take up the largest share of this market (51.56%), followed by mobile telephone services (37.44%), Internet access (3.59%), cable and over-the-air TV and radio (2.5%), as well as other services (4.92%).

The historic operator "Moldtelecom" is still the main actor on the land-line telephone market, taking up 99.58% of the market by revenues and 99.4% by the number of customers; this shows that at present this market is not free and efficient.

The number of customers in the mobile telephone sector increased by 38.5% in 2005, from 786 900 to 1 089 800 users. This growth is shared by the two providers as follows: 66.3% of new connections at Voxel (+200 800 customers) and 33.7% of new connections at Moldcell (+102 000 connections).

It is interesting to note that in mid-2005 the number of mobile service customers became higher than the number of land-line customers. However, the pace at which mobile services are developing in neighbouring countries (Russia, Ukraine, Romania) is much faster, which could be explained by a more developed economy in those countries.

The total number of Internet connections increased 3.4 times in 2005 as compared to 2004. Opinion polls carried out in 2005 have shown that about 28.5 percent of Moldova's population have access to a computer, of which 10.2 percent own

a computer at home⁷⁷. More than 70 percent of the people using a computer have been doing this for less than three years. Seventy percent of households have a land-line telephone, and 42.8 percent of families have at least one mobile phone.

Thirty percent of Internet users access the Government's Web pages, but this is a rather passive form of communication—data search, downloads of forms, sending proposals to draft documents, etc. However, the government's Web pages are not promoted well enough; they have access problems, no analysis is done of the number of visitors and the issues they raise. The official Web sites are accessed on average by 200 to 800 visitors a day⁷⁸.

In general terms, the current legal and institutional framework does not pose major problems to operators in the field. On the practical side, however, there are problems which need to be addressed. For example, the market players report that they encounter difficulties when establishing interconnections or providing interconnection space, and that delays by Moldtelecom are common. Thus, current legislation and regulations need improving, especially their enforcement. Also:

- There is a clear discrimination of companies depending on their form of ownership.
- The NARTI is not fully independent of the Government (NARTI's budget is approved by the Government, the Tariff Regulations have to be agreed with the Government, and the Administration Board is also appointed by the Government), while the new draft Law on Electronic Communications does not provide for any improvement in this regard.
- The responsibilities of the MID, NARTI and the State Inspectorate for Communications are confusing as to the licensing of frequencies (the law does not divide their responsibilities clearly).
- There are no legal regulations of universal access and service.
- Two public institutions are involved in issuing authorizations for informatics services provided in public places: NARTI (five-year licenses) and municipalities (one-year authorizations for services provided in public places), which makes the procedure of setting up a business in this area quite cumbersome, as the application takes longer and the start-up fees are higher when two authorizing institutions are involved.

⁷⁷ *Utilizarea tehnologiilor informației și comunicațiilor de către populația Republicii Moldova* [How the population of Moldova uses information and communication technologies], Centre for Sociological, Political and Psychological Research and Analysis CIVIS, commissioned by UNDP Moldova under the Building e-Governance in Moldova Program, Chișinău, 2005.

⁷⁸ *Draft Project of e-Governance* (www.mdi.gov.md)

A number of strategic documents provide the guidelines to e-development (EGPRSP, National e-Strategy, EUMAP). The Government of Moldova started the implementation of the e-Governance Strategy and the Action Plan with UNDP support through a program Building the e-Governance Component of the National Strategy “Electronic Moldova”. The main objective of the project is to promote the use of IT and communications technologies in public administration, in order to make its work more efficient and transparent.

In order to put in place a more advanced telecommunications infrastructure, MID, in its capacity of member of the initiative Electronic South-East Europe of the Stability Pact for South-Eastern Europe, signed the Memorandum of Understanding of the Information Society Ministerial Conference (Thessaloniki, 30 June-1 July 2005) and thus became involved in a cooperation process aiming at the development of broadband networks.

In the period February 2005-April 2006 the Government initiated and approved several significant documents, one of which was Law no. 424-XV, also known as the Guillotine Law (effective as of February 7, 2005), which establishes the principles and actions to be undertaken in order to revise the current normative framework with the goal of abolishing regulations which are not in line with the law and represent barriers to the development of business. Here are some other relevant documents:

The GD Setting up the Regulatory Agency. The MET developed a draft law aimed at creating an Agency by merging the NARTI and the National Energy Regulation Agency. Although IMF experts questioned the reasoning behind the merger of two agencies, the Government insisted on it.

The Draft Law on Electronic Communications. The MID submitted to the Government a draft Law on Electronic Communications, which was mentioned in the National EUMAP Implementation Program. The draft does not seem to provide a higher degree of independence for NARTI. Quite to the contrary, the Agency might become more dependent on the Government and/or on the Competition Protection Agency. The draft law undermines the Agency’s power and right to enforce its decisions, even as compared to the ones stipulated by Telecommunications Law no. 520⁷⁹.

⁷⁹ Views of NARTI experts.

The Draft Law on Personal Data Processing. This draft's aim is to guarantee the observation and protection of the fundamental rights and freedoms of individuals, especially the right to privacy, when it comes to personal data processing.

The Regulation concerning the implementation of the Electronic Moldova Action Plan. The Regulation was passed by GD no. 27 of 06.01.06. Its provisions govern the implementation process of the Action Plan, starting from project proposals in the area of IT, the selection of the most successful projects, and approval of funding. In accordance with the Law on e-Commerce and Digital Signature a framework was approved regulating the electronic signature, which sets up the conditions necessary for e-commerce and online services development.

The Third mobile operations license. The "Interdnestrkom" Company, which is the Transnistrian regional telecommunications operator (hence an illegal company), received in 2004 a license for mobile-phone operations in CDMA 800 (and CDMA 2000 450 MHz) to run in Moldova; however, the license was revoked after the Constitutional Court found that it was issued in violation of the Constitution. The NARTI issued the license, based on a GD, for a fee of 1 million US dollars. "Interdnestrkom" paid the fee, which was not refunded after the withdrawal of the license.

In late May 2005 the NARTI made another call for interested parties to buy the third mobile operations license in Moldova in the CDMA 2000 450MHz standard. Although the competition for the license was announced, there were no frequencies available, as the frequencies were already allocated by the MTC to "Moldtelecom" (JSC). Ten days later after the publication of the notice, the process was suspended upon the Prosecutor General's request.

"Interdnestrkom" stated that it still wanted to obtain the CDMA mobile operations license in Moldova. The company is ready to register a daughter company in Chişinău, which would operate under a different brand and would comply with Moldovan law and pay taxes in Chişinău⁸⁰. However, experts believe that "the authorities want to see "Moldtelecom" become the third operator of mobile services in Moldova"⁸¹.

⁸⁰ *Chisinau-16.06.2005/11:58:41/(BASA-press economic)*

⁸¹ *Chisinau-02.06.2005/12:18:56/(BASA-press economic)*

Conclusions

The market of electronic communications in Moldova is clearly influenced by “Moldtelecom”, which is a historic operator and has a dominant position on the market of land-line telephone services. “Moldtelecom” was not included on the privatization list for 2006-2007, which means that the Government is not planning to privatize the company in the next two years. It reveals the attitude of the current government regarding this issue. On the other hand, we are not aware of any strategic partnership initiatives that would involve well-known international companies.

After an analysis of the actions undertaken by the authorities under the Information Society chapter of the EUMAP, we make the following conclusions and recommendations:

- *The Stipulation “Adopt a national policy on the development of the sector”.* The most tangible progress has been achieved under this heading, given the approval of the Policy and Strategy to Build an Information Society “Electronic Moldova”, which was followed by actions and specific projects coordinated by the National Information Society Commission and MID.
- *The Stipulation “Adopt a comprehensive regulatory framework including licensing, access and interconnection, numbering, cost-orientation of tariffs, Universal Service and users rights, privacy protection and data security”.* There is no progress under this heading, except for the Regulation on the Administration and Management of the National Numbering Plan, and the draft Law on Personal Data Processing.
- *The Stipulation “Effective implementation of market liberalisation launched on 1 January 2004 including support of a fully competitive environment.”* Here we have a regress because it became more difficult to enter the market, while market operators believe that the competitive environment deteriorated. Independent operators state that the fees set by “Moldtelecom” for Internet providers are anticompetitive: e.g. operator prices (for Cross-net “IP over EtherNet” services) are 25 times higher than final-user prices (MaxDSL)⁸². This leads to dumping that hits independent operators. One then could assume there is a cross-funding of services, which means the use of the dominant position on the market in order to gain advantages in this segment (a practice banned under Art. 6 of the Law on Competition Protection). The separation of Internet services from “Moldtelecom” into a daughter company would be a fair solution to the

⁸² Operators: TMG, Arax, Starnet, Sun Communications

current competition problems and in line with the WTO principles. In order to create a fair competitive environment on the Internet-provider market there are several options proposed repeatedly by experts in the field. For example:

- a) separating the carrier infrastructure of the country (Chişinău ring and Cross-net) into a separate company;
 - b) a clear separation of costs by services and setting tariffs based exclusively on costs.
- *The Stipulation “Ensure the independence, increase the powers and improve the efficiency of the National Agency for Regulation in Telecommunications and Informatics (NARTI) by providing additional human and financial resources and increasing enforcement powers.”* These were not achieved, except for the allocation of a budget that allows NARTI to carry out its main duties. Moreover, some attempts were made to abolish NARTI by merging it with NAER or by creating an agency of public-utility monopolies regulation, which is not in line with EU practices.
 - *The “Stipulation” Reinforce the commercial capabilities of “Moldtelecom” in the future competitive environment.* Some progress was achieved in this regard. The company’s commercial capabilities were reinforced by the following:
 - a) A substantial increase of revenues.
 - b) The Implementation of CDMA 2000 450MHz technology, limiting mobility and operating on a license for wireless land lines (WLL).
 - c) A Shorter time for telephone connection, especially in rural areas.
 - d) The Implementation of xDSL technologies.
 - e) Increased Internet access capacity.
 - f) The Establishment of the Calls Processing Centre, thereby enhancing the quality of services provided to users.
 - g) The Refusal to lay cables from the operators’ equipment to the router, which stopped the ADSL connection of new customers of alternative operators⁸³.
 - *The Stipulation “Further implement the national policy and strategy for the Information Society and provide sufficient funds for its implementation”.* Considerable progress was achieved here, expressed through the implementation of the Government’s project Building the e-Governance Component of the National Strategy “Electronic Moldova”, supported by the UNDP.

⁸³ According to a note sent to NARTI by alternative operators

- *The Stipulation “Promote the widespread use of new technologies by business and administration, in particular in the health and education sectors (e-commerce, e-government, e-health, e-learning), via the provision of advanced infrastructures, the development of content and the introduction of pilot projects.”* An average level of progress was obtained in this field, with specific projects started in e-governance, e-health, and e-learning with participation from the MID, the Academy of Public Administration and the MEY. No initiatives exist in e-commerce, although the elaboration of the regulatory framework for the implementation of the electronic signature is an important step towards the development of this area.
- *The Stipulation “Improve the use of Internet and online services by citizens via public computer training programmes”.* There were launched no wide public computer training programs. For now there is an insignificant number of free public Internet-access points. Funds should be allocated for computer equipment and Internet connections for public libraries.
- *The Stipulation “Adopt a specific plan to promote the participation of Moldova in the IST part of the 6th Framework Programme”.* No information has been made public on whether such a plan exists. In the period under study the authorities have undertaken no steps in this regard, although universities participate in some FP-6 projects.

XVII. ENVIRONMENT

The EUMAP chapter on the Environment comprises three articles (69-71), which cover an important part of the Government's work, mostly related to the approximation of domestic legislation to EU standards but also to the prevention of further increases in environmental pollution and the improvement of cross-border cooperation in the area. It is also very important—from an environmental point of view—to increase energy efficiency and use renewable energy sources (Art. 66).

One of the main steps towards creating the appropriate conditions for good environmental governance is to enhance the administration and strategic planning capacity in environmental protection, including strategies related to funding and to coordination of efforts amongst relevant institutions. The MENR must go through a reform process both in terms of structure as well as number of staff, who should implement properly the EUMAP measures.

Another EUMAP objective contributing to good governance is to set up procedures on the access to environmental information and public participation in environmental decision-making, including the implementation of the Aarhus Convention, especially by creating structures and methods to ensure an adequate quality of services provided to the public at large.

The threat of long-distance air pollution by noxious emissions originating from industrial enterprises and transportation and discharge of insufficiently treated waste water into flowing waters make the implementation of the Espoo Convention on Environmental Impact Assessment a primary EUMAP priority.

Besides improving the legislation concerning the main environmental sectors (water protection and use, waste management, air protection, the prevention of industrial pollution), the EUMAP also places strong emphasis on the development of specific programs and plans for each of these areas.

It is of high importance to our country to implement the National Water Supply and Sanitation Program, whereby one of the Millennium Objectives will be realized—doubling by 2015 the number of people having free access to quality drinking water.

Given the fact that Moldova has not achieved any progress in energy efficiency enhancement, and given the continuous growth of fuel prices on the world market, it is extremely important to focus more on domestic renewable energy sources.

Most environmental laws were adopted in the period 1993-99, and to various degrees they comply with European requirements. The legal framework in this field comprises around 20 organic laws and other sectoral legislative acts that allow for relatively effective environmental protection and nature preservation in the context of a transition economy⁸⁴. In order to implement the EUMAP provisions, Moldova passed a number of documents and normative acts in the area of the environment.

The development of the State Program on Renewable Energy Sources Use in 2006-2010 is in its final stages. The program aims to achieve a share of up to 4% of renewable sources in the country's total energy consumption.

In order to align its practices to international requirements, Moldova ratified 19 global and regional conventions and 4 environmental protocols; 4 additional agreements were signed and are pending ratification⁸⁵. Bilateral cooperation agreements were signed with the Czech Republic, Poland, Romania, Ukraine, and the Baltic States.

After the EUMAP was signed, the Parliament and Government passed a number of normative acts concerning the environment: the Law on Fishing Resources (in the first reading), the Water Supply and Sanitation Program until 2015 (30 December 2005), and the draft Law on the Red Book of Moldova (in 2 readings). The draft Law on Soil and the draft Law on Wild Animals are at the stage of judicial review. The Government passed a Decision amending the Law on Environmental Assessment and Environmental Impact Evaluation.

Some laws transpose European directives into domestic environmental legislation; such laws are currently at various stages of review, coordination or approval. Thus, the draft Law on the Red Book (Directive no. 79/409/EEC, Directive no. 92/43/EEC) was approved by the Parliamentary Decision 325-XVI of 15.12. 2005. The draft Law on the Protection of Animals Used for Scientific Research and Other Experimental Purposes (Directive no. 86/609/EEC) was signed and submitted to the Government for review, while the draft Law on Zoos (Directive no. 99/22/EEC) is pending approval by central public authorities. The draft Law on the National Environmental Network has been submitted to the Government for review.

⁸⁴ *Legislația ecologică a Republicii Moldova* [Moldova's Environmental Legislation]. Volumes 1-3. Chișinău, 1996, 1999, 2001.

⁸⁵ National EUMAP Implementation Program. Chapter on the Environment. May 2006 (electronic version); Annual Report of the Government of Moldova on EUMAP Implementation (February-December 2005).; Internal Quarterly Evaluation Report of EUMAP Implementation. Government of Moldova. September 2005.

Activities have been started to analyze the correspondence of domestic laws to the Water Framework Directive (200/60/EEC).

In order to implement the Stockholm Convention on Persistent Organic Pollutants, the Government adopted Decision no. 1155 of 20.10.2004 on the National Strategy for the Reduction and Elimination of Persistent Organic Pollutants POP and the Implementation Plan for the Stockholm Convention, which is currently being carried out.

Another important document for Moldova is the Kyoto Protocol, which requires a reduction in the amount of greenhouse gas emissions. The Japanese government supported the establishment of the Carbon Finance Unit and the project Strengthening the Capacity for the Development and Implementation of Carbon Finance Projects. One other project linked to the Kyoto Protocol, this time supported by the World Bank, and called Soil Preservation in Moldova, is being implemented by the Forestry Agency and provides for the reforestation of 20,000 hectares of degenerated land, with the transfer of 2 million tons of carbon dioxide—the most important greenhouse gas—to the Global Carbon Fund. The project is in its second year of implementation, in full compliance with its schedule, and it stands a high chance of getting an extension for the next period.

International environmental cooperation in the Danube-Black Sea region may scale up when Moldova takes over the presidency of the Danube Protection Convention on 1 January 2006.

In order to develop their bilateral environmental cooperation, the Governments of Moldova and Romania are implementing the Agreement on Cooperation for the Protection of Water Resources and Regulation of Fishing on the River Prut and in the Reservoir-Lake Costești-Stânca.

Part of the current environmental laws are enforced quite effectively and—with minor improvements—can represent from now on a good legal base in the field. Some of these acts are: the Law on Environmental Protection, the Law on Environmental Pollution Fees, the Law on Environmental Assessment and Environmental Impact Evaluation, etc.

However, there are laws which are quite general and declarative. These are not accompanied by regulations, guidelines, and therefore are difficult to enforce. Largely this situation refers to the Law on Drinking Water, the Law on Green Spaces in Urban and Rural Areas, etc. There is a major problem with the implementation of the plethora of strategies, programs, plans, etc. Most of them do not have complete financial support, which leads to continuous delays in the implementation of the measures stipulated therein.

The Government is not fully aware of the importance of data coordination and exchange among institutions involved in environmental monitoring, and

the MENP does not spend enough effort in this field. This explains why no national Integrated Environmental Monitoring System (IEMS) was set up. The ministerial regulation which established the IEMS in 1998 turned out to be insufficient to support such a system. After the Guillotine Law this document is no longer in force.

The frequent reorganization of national, regional and district bodies after 1998 led to confusion in terms of institutions and procedures, and strained the horizontal cooperation among the authorities enforcing the environmental legislation.

Since only 60% of the financial needs of the SEI are covered by the country's budget, the Inspectorate is forced to provide a large number of paid services (in 2004 the revenues from such services reached about 2.3 million lei), which is in violation of Law no. 424 of 16.12.2004.

It is necessary to change the environmental licenses system, which is currently based on sector-by-sector regulation and which makes it difficult to comply with the law and places a heavy administrative burden on environmental agencies and enterprises subject to regulation. It also makes public participation difficult.

The supervision and control of legal compliance is largely in line with the minimal criteria for environmental inspections (Directive 2001/331/EEC), recommended by the EU. However, the SEI operation is undermined by its small laboratory staff and few inspectors. The punishment of environmental offenders is not effective enough. The SEI should receive the right to apply directly—rather than through the courts—all the fines imposed for administrative breaches (currently this can be done only in the case of violations concerning the use of water resources). The fines should be increased in order to discourage stronger potential offenders. At the same time, enterprises should have the right to appeal.

According to foreign experts' estimates, Moldova possesses major opportunities in energy preservation. The potential of renewable energy sources is not as strong, although currently such sources do not create competition to traditional ones. Given its environmental advantage (e.g. the considerable decrease of pollution), this area becomes increasingly more important among the activities aimed at sustainable development. Even though there is quite a number of laws and regulations, the bodies working in the area (National Energy Preservation Agency and the National Energy Preservation Fund, Coordination Council for Renewable Energy, etc.) fail to carry out their obligations properly, the funding they receive is modest, and some of their functions overlap.

One of the biggest failures in this period is the slow pace of reform aimed at ensuring appropriate conditions for good environmental governance. The MENR staff is already below the acceptable number of personnel: 25 civil servants are not able by definition to stand up to the plethora of issues to be addressed.

Law-making in this area needs a new approach approximating towards the main elements and principles of the EU framework legislation; the environmental laws should be systematized in order to make their interconnections visible, which will enhance the effect of the whole body of laws in the field.

The Government must ensure the good functioning of the National Council for Sustainable Development and Poverty Reduction; one way to achieve this goal is to include the Minister of ENR and one representative of civil society in the Council.

In addition, the three existing environmental assessment instruments (EES, EIM and EEO) could be improved by setting up a stronger link between these three instruments and the EU's EIM directive. Other legal enforcement mechanisms could be used, too, such as the full involvement of the public in decision-making regarding environmental assessment.

It is necessary to develop and implement a program for the rehabilitation of biological treatment stations for residual water, speed up the reconstruction of BTS Chişinău, design and build BTSs in Soroca, Rezina and Criuleni. The water and sanitation tariffs should be revised and brought in line with actual expenditures, and the NAER should be given the power to approve tariffs.

The Government should adopt a decision to create an interministerial coordination body in the area of environmental monitoring and information.

In order to help manufacturing enterprises comply with the EU requirements, the following needs to be done:

- develop the laws and regulations needed to set up a system of integrated licenses for enterprises exercising a considerable impact on the environment, by following the approach suggested by the EU's IPPC Directive;
- include in the environmental licensing requirements regarding the self-control obligation of enterprises;
- set up a simplified licensing procedure for industrial units that exercise a smaller impact on the environment.

The Parliament should improve the system of economic incentives, following the proposals by line ministries (e.g. reducing corporate tax and other taxes if the enterprise engages in waste recycling, reducing the fees for enterprises which decrease the amount of waste they produce, etc.).

In order to improve the situation in the area of air pollution, including long-distance pollution, an interdepartmental working group should be established within the Government, whose task would be to assess the enforcement of the normative documents concerning the development of sustainable road transportation and to develop an Action Plan on Transportation, Environment, and Health (following the example of Central-European countries).

In order to improve public participation in environmental decision making, the following steps should be taken:

- the strict enforcement of the Regulation on the Involvement of the Public in Environmental Decision-Making, adopted by the GD in 2000;
- the Government should approve the Guidelines on the Involvement of the Public in the Development and Endorsement of Laws and Regulations on the Environment and Natural Resources;
- amend the Law on Environmental Protection by adding detailed provisions on public participation in issuing environmental licenses, establishing environmental quality standards and developing laws, regulations, strategies, plans and programs affecting the environment, taking into account the relevant multilateral environmental agreements;
- develop and approve an Action Plan regarding the Aarhus Convention Implementation.

In order to make full use of the potential of civil society, environmental NGOs should be granted funds for projects contributing to the implementation of national and local programs and plans focusing on the protection and rational use of natural resources, as per the Regulation of the National Environmental Fund. Also it is appropriate to think of conditions, as provided by law, regarding the special financial support from the Environmental Fund and other budgetary funds. These amounts would go to NGOs for programs based on contracted environmental works and services. It is appropriate, as well, to make public offers on a competitive basis, for the implementation of various state programs, according to Art. 11 of the Law on Nongovernmental Organizations no. 837 of 17.05.96.

XVIII. TRANSPORT

If Moldova seriously intends to join the EU, then the common transport policy will certainly become a chapter of negotiations. Therefore, it is necessary to analyze the situation in the field, and develop and plan priorities in line with the EU transport policies, particularly the *acquis* related to this field. Unfortunately, the EUMAP does not cover all the actions that should be undertaken in this area. It nevertheless establishes clear directions of activity, and even specific actions in some cases (as in aviation transport for instance).

Infrastructure

The Concept of the Development of the National Network of International Transport Corridors is an important document referring to the development of infrastructure for all transport carriers, including railroads (for goods that need to be transported in large amounts to more than 300 km) and roads (for goods to be transported in smaller amounts and for valuable goods). Moreover, the document sets the basic development directions and road portions to be consolidated, as well as an estimate of the costs, which is approximately 174 mln US dollars. At the same time, the development of railroad infrastructure requires \$208 mln. In accordance with the Concept, two regional projects were developed and discussed with the WB:

- public roads in the *raions* of Ialoveni and Hâncești;
- public roads in the *raions* of Bălți, Telenești and Sângerei.

Also, three road rehabilitation projects have been drafted as part of cross-border cooperation, more precisely along the following road portions: Chișinău-Hâncești, Hâncești-Leușeni and Leușeni-Leova. The estimated cost of these works is US \$9.5 million. So far the Government has not managed to identify the funding sources for these projects.

Road transport

Moldova is an active participant in the ECMT's activities, which distributes ECMT licenses facilitating the transportation of goods by Moldovan operators through the territory of ECMT member States.

On October 21st, 2005 Moldova ratified the Agreement on the International Occasional Carriage of Passengers by Coach and Bus (INTERBUS Agreement), which entered into force in the EU and East and Central European ECMT member States on April 1st, 2006. The INTERBUS Agreement includes the majority of liberalization measures contained in the ASOR Agreement, adding social, taxation and technical measures based on non-discrimination among contracting parties.

On 10 February 2006 the Parliament adopted a decision authorizing Moldova's accession to the European Agreement on Main European Roads E-AGR. Thus, roads of the "E" European network must be built, rebuilt, repaired and maintained in accordance with the general requirements for international road networks. All these requirements concern not only the geometric features of the roads, but also aspects related to the safety of road traffic, environmental protection, and streamlining road flows, as well as the comfort of traffic participants.

The Customs Code (Art. 20 Para. 4) was amended by Law no. 11-XV of 17.02.05 to ban the import of cars older than seven years, effective as of 1 January 2006.

There was written a new Regulation for Passenger and Luggage Transport, which forbids the use of re-equipped vehicles for passenger transportation (effective 1st of July 2006). In addition, it is for the first time that the Regulation establishes very clear rules on the taxi operation. European requirements regarding the equipment of the vehicle (with special focus on the fee meter which must have a fiscal memory and issue a receipt to the customer) have started to be applied.

Railroad transport

In August 1999, a project was developed concerning the Restructuring of the State Enterprise MR with European financial support and consultancy. However, no measures were taken within the framework of this project, which provided for a reorientation of the MR from a "production" strategy to a market one, although such measures are extremely needed to stimulate the development of railroad transport in Moldova. One of the objective reasons hindering the process of MR restructuring and producing a major negative impact on the area was the forceful separation of the railway portion in the Transnistrian region in April 2004, as well as the subsequent actions of sabotage, seizure and illegal confiscation of railroad facilities in March 2006. However, this should not become an excuse for the lack of reforms within the MR.

Additionally, no legal documents have been adopted so far for the creation of a public authority—as required by European directives—in charge of railroad transport safety, as well as railroad operators, products and machinery licensing and authorization.

Aviation

There has been some progress in this area, especially since the “horizontal” Aviation Agreement was signed in Luxemburg between the EU and Moldova on April 11, 2006, allowing European aviation companies to fly between any EU member State and Moldova, and recognizing a common market in this field.

The air-connection Chişinău-Frankfurt-am-Main that was cancelled in 2002 was re-established on 02.07.2005, which avoids more serious problems arising from the non-implementation of bilateral agreements between Moldova and an EU member State.

Efforts are being made to implement the Action Plan for JAA Full Member Status (European Joint Aviation Authorities). Moldova is expected to become a full JAA member in October-November 2006, after the JAA experts visit Chişinău.

Efforts are also being made to implement the National Plan for the Convergence and Improvement of the National Air Navigation System (LCIP, Local Convergence and Implementation Plan) for the period 2005-2009 in the area of air traffic management and the use of air space in line with the ECIP Strategy of the EUROCONTROL (European Organization for the Safety of Air Navigation).

Besides, on April 17, 2006 the State Administration for Civil Aviation submitted to public discussions the Civil Aviation Development Strategy for 2006-2016. The main objective of the Strategy is to make air service more customer-friendly.

The Strategy provides for a gradual liberalization of the air services market, within 2 or 3 years, which would allow foreign traditional and low-cost air companies to penetrate the Moldovan air market.

However, the Strategy does not describe the specific stages of market liberalization and the actions to be undertaken; also, nothing is said about the development of the airports currently existing in Moldova.

Waterway transport

In 2005 Moldova joined the most important International Maritime Organization conventions. Also, domestic procedures commenced to ratify the International Labour Organization Convention no. 185 (revised) regarding the identity documents of navigating personnel. In order to implement the conventions mentioned above, a national Maritime Administration is needed; this body will conduct control of “port state” and “flag state”. Unfortunately, no national policy-making is under way in the area of inland waterway transport, nor has there been any institutional reform considered to support the development of this sector.

Although a number of programs and strategies have been adopted, there is still no fundamental document—a National Strategy for Sustainable Transport—that would set the development priorities of the sector, covering all types of transportation carriers.

Infrastructure

In terms of road infrastructure, Moldova adopted two important documents: the Concept on the Establishment and Development of the National Network of International Transport Corridors and the Presidential Program Moldova's Roads in the 21st Century.

The Budget Law for 2006 allocates to the Road Fund 170 million lei (about US \$13 million), which is 1.7% of GDP (in the EU member States similar needs are covered by 5-6% of GDP). A major part of this amount (40 million lei) will be invested in the construction of two road portions: Anenii Noi-Căușeni-Ștefan Vodă-border with Ukraine and Mihailovca-Sagaidac-Valea Perjei, although these sections are not included in the priorities set by the strategy documents mentioned above.

There is a risk that Moldova may be circumvented by the European Corridor 9 because of the country's poor roads. This tendency follows a pattern if we take into account the recent history of road transit through Moldova: ten years ago our country was crossed by about 50 000 trucks per year, while today this figure has declined to 4 000, which means that Moldova is indeed avoided because of its bad roads.

A solution to this problem would be to create an autonomous, second generation, transparent Road Fund, separated from the State Budget, having as participants the transport operators and being subject to annual external audits.

In the field of road infrastructure there are the following objectives:

- improving the quality of national public roads;
- developing an adequate financial and technical environment for the implementation of European standards in the field;
- developing a network of highways based on comprehensive feasibility studies.

Conclusions

Road transport

There is no transparency in the distribution of multilateral ECMT licenses. According to the experience of other candidate countries, the licenses should be distributed online, which would reduce the subjectivity associated with this process.

Nothing has been done in the area of simplifying Schengen and new member State visa requirements for Moldovan drivers. This leads to major losses for transport operators, reaching 500 000-600 000 US dollars. When Romania joins EU in 2007 this problem might deteriorate further.

Although the import of vehicles older than 7 years was banned, this is not a comprehensive procedure since the import restrictions should be based on technical criteria (i.e. Euro pollution norms) rather than on age.

A new Passenger and Luggage Transport Regulation was indeed necessary, but some of its provisions should become effective after a period of transition of 2-3 years, as it was done in the case of compulsory star classification of buses in accordance with IRU standards.

Railroad transport

As mentioned above, the main document which should guide the operations of the MR is its Restructuring Project, to be implemented in three phases:

1. Separating passenger and cargo services into 2 independent companies, eliminating cross-sector subsidies, and regulating the area by setting up a specialized body for this purpose. Moreover, some units need to be merged, unprofitable routes should be closed, performance should be increased and costs reduced.
2. Eliminating subsidies, introducing infrastructure access fees and promoting competition.
3. Increasing competitiveness and privatizing the companies that emerge after the MR splits, distributing the infrastructure among suppliers, and turning passenger and cargo operations into joint stock companies.

Nothing is being done to power railroads by electricity; Moldova is the only country in the region without railroad power lines. According to a costs-benefits exercise performed by experts⁸⁶, the savings that could be achieved after a transition to electric power, keeping the cargo and passenger loads constant, would reach at least 20 million US dollars, which means that the investment made to electrify the railroad would return in 5 years at most.

Another unsolved problem is the speed at which trains travel in the territory of Moldova, which is extremely low in comparison with European standards. This happens because of old infrastructure and machinery.

⁸⁶ T. Kovalionok, O. Petrov: “Pata albă a rețelei de căi ferate europene?” [The White Spot of the European Railroad Network?], *ECO*, 19 April 2006, p. 5.

A well-thought project is the implementation of Suw 2000 technology allowing the automatic transfer from the 1520 mm gauge to the European 1435 mm gauge at the Moldovan-Romanian border (Ungheni station). This project was included in the National Technical Assistance Program for the years 2005-2006. Unfortunately, it is mid-2006 but there is no information as to the progress of this project, which is a very important one for the country's railroad transportation.

Aviation transport

This sector has the highest degree of harmonization with European legislation due to the fact that this type of transportation is the most closely linked to European regulations.

The main issue in this area is the time needed to enforce the laws and regulations adopted or pending, as well as the development of plans to attract foreign funding, in particular European funding.

Waterway transport

The fact that Moldova joined the majority of conventions in the area allows the maritime and river-transport sectors to develop. But a more active involvement of decision makers from the central public administration is needed to support the few companies operating in this area and to facilitate the development of the sector.

No institutional reform has been carried out so far, and after staff cut-backs in the central public administration there are only a handful of people working in this field, which makes physically impossible to address all the issues existing in this sector.

XIX. TOURISM

The EUMAP tackles tourism in the context of enhancing the dialogue on industrial policy and Moldova's association with the EU initiatives regarding incentives for competitiveness (e.g. information exchange, network participation, education and training). This is in line with the need to develop tourism as a competitive industry able to diversify Moldova's economy.

Tourism contributes about 0.5% to the GDP and is deemed, obviously, as an underdeveloped sector. In Romania and Bulgaria tourism contributes 2-3% to the GDP, which is a considerable share in the economy of some administrative units (e.g. seaside counties, mountain areas). However, 3.5% share of tourism in Switzerland's GDP points to a high degree of economic diversification.

Government and civil society initiatives

The MCT launched in recent years a number of initiatives aimed at solving the existing issues in the sector, the most relevant ones being the following⁸⁷:

- I. Adjusting the legal framework to the volatile situation on the tourism market:
 - Writing draft legislation on tourism development, including the establishment of national tourism areas, rural tourism and social tourism;
 - writing draft legislation regarding the protection of the national cultural heritage and the protection of historic monuments;
 - in the case of some communities, getting the status of spas (as in Cahul and Vadul lui Vodă).
- II. Simplifying the regulatory framework in the area of the tourism business:
 - revising the licensing conditions for tourism agencies (the obligation to have a certain number of foreign clients was cancelled, etc.).
- III. Promoting investment projects:
 - preparing tourism development plans in the districts of Călărași, Orhei, Rezi-na, and Glodeni and providing arguments why the investment should be made in tourism areas (carried out in 2005 with the support UNDP Moldova);

⁸⁷ MCT report on the implementation of the Sustainable Tourism Development Strategy of Moldova, 28.03.06.

- writing the Strategy for the Sustainable Development of the Cahul Spa Area (approved by the Local Council so far);
 - preparing, publishing and disseminating tourism investment projects (5 investment projects were published).
- IV. Increasing the accessibility of Moldova to tourists:
- abolishing visas for the EU, US, Canadian and Japanese citizens (effective as of 01.01.07);
 - writing a draft law on lower consular fees to be paid for visas (discounts of 20-25%, depending on the number of applicants and the number of entries requested);
 - increasing the flight frequency and introducing three new flights (Italy, Germany, and Turkey);
 - facilitating the access of tourists to Moldova during the Wine Festival.
- V. Supporting projects whose aim is to develop tourism resources, elaborating expert studies, strengthening partnerships for tourism sector development:
- developing a working version of the Register of National Heritage database;
 - developing criteria for granting the status of a national tourism unit;
 - developing a study with the purpose of inclusion of the museum complex Orheiul Vechi into the UNESCO world heritage list;
 - developing a national program called Wine Road of Moldova (which has been carried out to the phase of facility inventory and adjustment of 20 of the 30 existing wine enterprises to the National Program requirements);
 - developing and marking tourism routes in the country (already implemented in the districts of Călărași and Glodeni);
 - restoration of national heritage units (already implemented in 3 monasteries, 2 memorial complexes, 4 museums, and other monuments);
 - developing publications aimed at strengthening the entrepreneurial capacity in tourism (the civil society institutions produced the following textbooks: *Rural Tourism Business, Manager's Guide, Tourism in Natural Protected Areas of Moldova, Moldova's Tourism Heritage*, etc.).
- VI. Cooperation within the framework of international organizations:
- full-member status in WTO (achieved in 2002);
 - implementing the UNDP project Sustainable Tourism Development (done in 2000-2006);
 - obtaining grants from various sources for the restoration of cultural-historic monuments (achievements: grants worth 17,350 000 lei attracted in 2003-2005; USAID granted \$350000 for the restoration of the Soroca fortress);
 - developing a technical assistance project for the eradication of poverty by eco-rural tourism development in Moldova (WTO);

- developing a project of eco-rural tourism in the district of Hâncești (Takis CBC, started as of 01.06.2006);
- cooperating within the BSEC tourism working-group and promoting the idea of a joint wine route in the Black Sea countries (negotiations started);
- starting discussions on connecting Moldova to the European Wine Route;
- participating in international exhibitions (MITT, FERIE, Fiera de Madrid, Vacantiebeurse, UITT, AITF, IFT, CTF, and others).

In the new structure of the Government, the Ministry of Culture was joined with the Tourism Development Department to form the current MCT. Such ministries generally exist, though only in some countries, e.g. in Turkey, which is an EU associate State. The EU member States usually have a separate national authority for tourism (office, secretariat, bureau, department, ministry). For example, in France, which is one of the world leaders on the tourism market, there is a Tourism Secretariat, while Spain has a Tourism and Trade Secretariat.

The merger of the two administrations triggered contradictory responses from the professional milieu, which thought a merger with the MET was more appropriate. They argued that tourism was an economic sector, and that the development of the tourism industry could take place at the level of territories without the need to delegate powers to district culture departments, which have neither trained staff nor methodologies to encourage entrepreneurship.

The tourism industry is excessively regulated, which creates access barriers (license, permit for each employee), high start-up costs for some types of businesses (e.g. at least 80 beds for a one-star camp, while in neighbouring countries a tourism community can be validated with only 40 beds), the obligation of annual clearance of lodging units documentation with a large number of authorities (e.g. rural guest houses which have a small turnover of visitors), etc.

At the same time, it is necessary to speed up the adoption of the Tourism Development Law (currently in Parliament), which provides for the creation of a system of national tourism areas in line with practices of the EU member States that are well advanced in this industry (with a clear determination of the status of hotels, local tourism areas, clear conditions for the free transmission to the state of land holding resources and which is managed by local public authorities or private businesses, guarantees for strategic investments in tourism, lowering the entry barriers on the tourism market).

Draft laws in the area of tourism usually have to be endorsed by other ministries, national and international experts are consulted (though their recommendations are sometimes ignored), along with some tourism entrepreneurs. At the same time, only the latest initiative—the draft Law on the Organization and Operation of Tourism Activities in Moldova—was placed on the official Web site www.tourism.md.

Given the high costs of tourism infrastructure and equipment, the only way tourism can develop is by attracting large investments for long periods of time and at a slow return rate.

Depending on the priority tourism is given in the receiving countries, governments support this area to various degrees: from an active promotion of tourism destinations to major tax exemptions for tourism operations. In most countries which have a developed tourism industry—even if it is fully private—the state supports the attraction of investment in and development of tourism by: credits, credit guarantees, subsidies, lower interest rates, tax benefits, etc.

European countries with a developed tourism industry have regional economic development agencies, whose duties include: (1) developing regional and sectoral programs to attract domestic and foreign investment to tourism areas; (2) implementing a single and clear methodology of enforcing the relevant legislation; (3) developing investment proposals, together with businesses; (4) considering investment proposals from foreign partners and defining the actions for their implementation; (5) promoting investment opportunities in tourism areas; (6) providing specialized assistance to the implementation of investments in tourism areas.

The analysis of domestic legislation and situation in the field lead us to make the following recommendations:

- adjusting the performance indicators of the tourism industry (Satellite Tourism Accounts), including territorial development;
- supporting strategic investment in the hotel sector;
- developing business programs for natural and man-made tourism resources;
- setting up an independent tourism authority;
- creating effective instruments to support tourism entrepreneurship, especially in rural underdeveloped areas;
- identifying and eliminating the access barriers to business;
- speeding up the adoption of the Law on the Organization and Operation of Tourism Activities;
- establishing a system of tourism areas in line with practices of the EU States with an advanced tourism industry;
- determining clearly the status of hotels and local tourism areas;
- updating the Sustainable Tourism Development Strategy;
- developing tourism by strengthening the competitiveness of destinations;
- changing the approach to natural and man-made tourism heritage preservation, by allowing its use for non-destructive business activities such as tourism;

- strengthening the capacity of managers for competitive partnerships with actors from the EU-members' tourism industry;
- developing policies to attract international hotel chains;
- ensuring the transparency of tourism information, wider access to tourism statistics, the use of tourism funds;
- liberalizing the requirements for one-star lodging facilities;
- facilitating the access of new entrepreneurs to the tourism business;
- increasing the acceptance of the classification system by the entrepreneurs and managers of lodging facilities;
- developing a feasibility study on the reduction of classification costs in order to support hotel marketing investment;
- facilitating an equilibrium of tariffs in hotel services;
- clearly specifying all the benefits in the legislation in order to reduce the discretionary power of civil servants;
- cancelling the mandatory tourism permit for all employees in the field; this obligation should remain in the case of managers and staff working directly with clients;
- ensuring the protection of permit holders on the labour market and promoting the advantages of professional growth in tourism;
- harmonizing related laws with tourism legislation;
- developing economic mechanisms to encourage the observation of tourism legislation and acceleration of administrative procedures;
- developing and promoting a law on strategic investments in tourism areas;
- preparing a complex study on the need to approximate the tourism legislation with the *acquis communautaires*;
- using the European experience in systematizing the country's territory according to best practices and in creating a territorial body for the industry of tourism, which would be more open to tourism-focused investment in the areas with heritage sites;
- creating instruments for priority development of tourism areas by encouraging the tourism entrepreneurship;
- promoting benefits for investment with a strong impact in tourism areas.

