Warsaw, 26 May 2025

Opinion-Nr.: LEGIS-MDA/519/2025 [NS]

PRELIMINARY OPINION ON THE DRAFT CODE ON THE ORGANIZATION AND FUNCTIONING OF THE PARLIAMENT (REGARDING THE LEGISLATIVE PROCEDURE, CHAPTER III)

REPUBLIC OF MOLDOVA

This Preliminary Opinion has benefitted from contributions made by **Dr. Victor Chimienti**, Senior International Lawmaking & Legislative Reform Expert and **Ms. Alice Thomas**, Senior International Legal and Human Rights Expert. It has also been peer reviewed by **Dr. Kirsten Roberts Lyer**, Chair, Human Rights Program, Department of Legal Studies, Central European University.

Based on an unofficial English translation of the Draft Code commissioned by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw

Office: +48 22 520 06 00, Fax: +48 22 520 0605

www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Chapter III of the Draft Code on the Organization and Functioning of the Parliament of Moldova provides a comprehensive legal basis for legislative process within the Parliament. It focuses on different elements of the lawmaking process in the Parliament: identifies different acts of Parliament; defines legislative initiative and continuity of draft legislation in the new Parliament; regulates proceedings in standing committees, the parliament's sitting, procedure for examining draft normative acts by readings, including in urgent, priority and simplified mode, as well as voting procedure.

At the same time, due to some shortcomings, the relevant provisions of the Draft Code would benefit from certain improvements to better comply with democratic governance and human rights standards, OSCE human dimension commitments and good practices and ensure better quality of legislation and enhanced implementation of adopted laws. Ultimately, this should strengthen public trust in the abovementioned procedures and democratic institutions in general.

In particular, the rules on admissibility of draft laws submitted to the Parliament should be enhanced by ensuring an effective screening mechanism, to check, in particular, regulatory impact assessment (RIA) report or justification for not submitting it, with the possibility to return the drafts to the initiator if the content of the requested accompanying documents is manifestly of sub-standard quality. Moreover, separate provisions on unified methodological rules for legal drafting should be added, along with clear and strictly defined criteria and circumstances when the urgent and priority procedures may or may not be used. Finally, legislators should also further elaborate the legal provisions to ensure inclusiveness of the legislative process and due consideration of gender and diversity through different stages such as preparation, drafting, impact assessment, discussions, consultations, adoption and publication.

More specifically, and in addition to what is stated above, ODIHR makes the following key recommendations in order to enhance the legal framework governing the legislative process in Moldova:

A. Regarding acts adopted by the Parliament:

1. to specify under Article 72 (4) of the Draft Code that ordinary laws may regulate any matters, while recognizing matters governed exclusively by organic laws in line with the constitutional requirements; [para. 24]
2. to clarify under Article 61 (6) the cases where resolutions may be adopted and the legal status of resolutions other than those constituting "exclusively political acts"; [para. 25]

B. To add to the Draft Code a separate provision stipulating that all lawmaking actors when drafting laws or other acts to be passed by the Parliament shall adhere to unified methodological rules for legal drafting, which should be sound but not too rigid; [para. 32]

C. Regarding admissibility of draft laws and parliamentary scrutiny:

1. to clarify in the Draft Code all the requirements that draft laws need to meet in order to be registered in the Parliament, including the list and content of accompanying documents, rather than leaving it to the discretion of the Standing Bureau; [para. 40]
2. to introduce in the Draft Code, as part of the parliamentary scrutiny and rules on admissibility of draft laws submitted to the Parliament, specific provisions to ensure effective mechanism to screen draft laws and accompanying documents, including human rights and gender impact assessment, RIA report, and if relevant the Statement of Compatibility and Table of Concordance with EU laws, or justification for not submitting them, while granting the parliament the power to return the draft law with these documents to the initiator if their content is manifestly of sub-standard quality; [para. 45]

D. Regarding examination of draft laws:

1. to consider further extending the deadlines for committees' examination and for the parliamentary readings when the complexity of the matter covered by the draft law, extraordinary circumstances or other valid reasons justify it; [para. 67]
2. to ensure that proper time – taking into account the length and complexity of the draft law – is allocated for interested stakeholders to provide input during the public consultation process; [para. 68]

E. Regarding urgent and priority procedures:

1. to introduce in the Draft Code clear and strictly defined criteria and circumstances when the urgent and priority procedures may or may not be used, requiring the request to use such procedures to be adequately justified, and providing grounds for the Parliament to reject requests not fulfilling the required criteria; [para. 84]
2. to allow for longer/extension of deadlines when examining certain draft laws as a matter of priority, when the complexity of the issue at stake requires so; [para. 80]
3. to supplement the Draft Code by requiring mandatory *ex post* evaluation of laws adopted via the urgent or priority procedure, including consultations on implementation of the law, focusing on possible gaps, inconsistencies, practical implementation issues and potential discriminatory impact on certain groups of society; [para. 85]

F. Regarding gender mainstreaming and diversity considerations:

1. to explicitly mandate the Parliamentary Committee for Human Rights and Inter-Ethnic Relations or a separate dedicated gender equality parliamentary body/mechanism to consider all draft laws' compliance with national and international gender quality standards and commitments before their consideration in the sitting of the Parliament; [para. 95]

2. to supplement Article 92 (2) of the Draft Code to require the report of the standing committee for the first reading to comprise a gender impact assessment; [para. 96]
3. to consider introducing gender balance and diversity considerations during the process of appointing the chairpersons/co-chairpersons, deputy chairpersons of the committees while also to consider introducing minimal representation rates for female and male MPs in all parliamentary working bodies and delegations; [para. 97]
4. to envisage mechanisms to ensure that when draft laws may impact stakeholders from certain disadvantaged, marginalized or otherwise under-represented groups, wide-ranging, pro-active outreach measures are undertaken by the Parliament to identify and meaningfully consult all interested and relevant counterparts, including organizations representing historically marginalized or under-represented groups, while ensuring that means of consultation and all relevant accompanying documents are accessible. [para. 100]

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENTS

I. INTRODUCTION

1. Throughout 2024, representatives of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Head of the Committee on Legal Affairs, Appointments and Immunities of the Parliament of Moldova have been discussing ways to support parliamentary reform, more enhanced democratic governance and inclusive political participation in the Republic of Moldova. During a country visit of ODIHR representatives to Moldova in September 2024, the Head of the above-mentioned Committee reiterated interest in requesting ODIHR to review the Draft Code on the Organization and Functioning of the Parliament of Moldova (hereinafter "the Draft Code").

2. On 26 September 2024, ODIHR responded to this request, confirming the Office's readiness to assess the compliance of the Draft Code with international human rights standards and OSCE human dimension commitments. Given the broad scope of the Draft Code, ODIHR also informed that several legal opinions on different components of the Draft Code will be prepared.[1] These legal analyses should be read together with the two ODIHR Opinions on the Draft Law on the Status, Conduct and Ethics of the Members of Parliament of the Republic of Moldova published in 2024.[2]

3. The present legal review focuses on Chapter III of the Draft Code, which deals with the legislative procedure. Given the importance of the reform and the need to get a better understanding of the challenges in practice, ODIHR decided to prepare a preliminary desk review analysis of the relevant provisions of the Draft Code related to the legislative procedure, to formulate initial recommendations. ODIHR would be willing to present and discuss the preliminary findings and recommendations with all relevant stakeholders to gain a better understanding of the local context and challenges. The main findings and recommendations from the Preliminary Opinion may then be revisited and fine-tuned based on the information thus collected.

4. Upon request, ODIHR stands ready to proceed with a more comprehensive assessment of the broader legal and institutional framework governing the lawmaking process in its entirety, from the initial stages of the policymaking to the preparation, drafting, impact assessment, discussions, consultations, adoption, publication, communication, monitoring of implementation and evaluation, considering the role of the different actors of the lawmaking process. Information for the preparation of such a Comprehensive Assessment Report will be based on the Preliminary Opinion on the Draft Code together with a preliminary analysis of other relevant domestic legislation governing the lawmaking process as well as additional information collected through semi-structured field interviews with pre-identified interlocutors, and through compiling other information and statistics on the practice of lawmaking in the country. The purpose of such a Comprehensive Assessment is to collect, synthesize and analyse information on both the legal and practical aspects of the legislative process with sufficient objectivity and detail to support credible recommendations for reform tailored to the particular needs and context in Moldova. The recommendations contained in the Comprehensive

1 These legal reviews are focusing on the legislative procedure (Chapter III), the constitutional revision procedure (Chapter IV), procedure for declaring a state of emergency, siege or war (Chapter V), inter-institutional relations with other powers (Chapters VI to IX and XI-XII of the Draft Code), parliamentary oversight (Title III of the Draft Code), parliament's representative role and co-operation with civil society (Chapter X), and/or a combination of these and other issues as deemed appropriate.

2 See ODIHR, *Opinion on Certain Provisions of the Draft Law on the Status, Conduct and Ethics of the Members of Parliament of the Republic of Moldova* (26 March 2024), in English and in Romanian; and *Opinion on the Draft Law on the Status, Conduct and Ethics of the Members of Parliament of the Republic of Moldova* (11 December 2024), in English and in Romanian.

Assessment Report may then serve as a working basis for, upon the request and in close consultation with all relevant stakeholders: (i) discussing and initiating regulatory reform, including amendments to relevant legal documents; (ii) developing and/or conducting capacity development initiatives, and/or (iii) supporting relevant stakeholders to develop tools and other guidance documents for lawmakers, to render the lawmaking process more effective, transparent, accessible, inclusive, accountable and efficient.

5. The Preliminary Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[3] This legal review was funded by the Project Stronger Democratic Institutions in Eastern Partnership Countries, an ODIHR project supported and funded by the European Union and co-financed by the Government of France, Italy, Norway, Switzerland.[4]

II. SCOPE OF THE PRELIMINARY OPINION

6. The scope of this Preliminary Opinion covers only the Chapter III of the Draft Code and other provisions of the Draft Code dealing with the legislative procedure. Thus limited, it does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the lawmaking process in Moldova.

7. The Preliminary Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Code. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE pSs in this field. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since

3 In particular, specific OSCE human dimension commitments relating to law-making, including the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), which states: "*Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (…) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone*" (para. 5.8); and Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), which provides: "*Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*" (para. 18.1). OSCE participating States also specifically committed to ensure equal opportunities for the effective participation in political and public life of women, persons belonging to national minorities, Roma and Sinti, especially of Roma and Sinti women, persons with disabilities; see e.g., OSCE, *Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 44(d); *2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, para. 88; OSCE Ministerial Council, *Decision No. 4/13 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children* (2013), para 4.2; *Report of the CSCE Meeting of Experts on National Minorities* (Geneva, 1991); OSCE/CSCE *1991 Moscow Document*, para. 41.

4 The content of this legal review represents the views of ODIHR only and the European Commission does not accept any responsibility for use that may be made of the information it contains. Stronger Democratic Institutions in Eastern Partnership Countries is a four-year project, implemented between 1 January 2024 and 31 December 2027. The project has the objective to support democratic institutions and processes in Armenia, Azerbaijan, Belarus*, Georgia, Republic of Moldova, Ukraine to be more inclusive, accountable, resilient, transparent, human rights and rule of law compliant. Within the framework of this project, states will be offered assistance to benefit from ODIHR's full array of tools. These will be provided in accordance with ODIHR's mandate and established methodology, and in synergy with EU priorities in the region. This will allow States to implement more effective and efficient policies, as well as evaluate progress towards accountable and inclusive democratic institutions, stronger public integrity systems, human rights compliant legal frameworks, political party regulation, as well as participation of historically under-represented groups in political life and decision-making. ** In the implementation of activities, it will be taken into consideration that the EU has stopped engaging with official representatives of Belarus public bodies and state-owned enterprises further to the Council Conclusions of 12 October 2020 and the European Council Conclusions of February 2022.*

it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

8. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[5] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[6] and commitments to mainstream gender into OSCE activities, programmes and projects, the Preliminary Opinion integrates, as appropriate, a gender and diversity perspective.

9. This Preliminary Opinion is based on an unofficial English translation of the Draft Code commissioned by ODIHR, which is annexed to this document. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

10. In view of the above, ODIHR would like to stress that this Preliminary Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Moldova in the future.

III. PRELIMINARY ANALYSIS AND RECOMMENDATIONS

1. Relevant International and Regional Standards and OSCE Commitments

11. Legislation has a profound impact on everyday life, on people's rights and livelihoods and it is thus fundamental that laws are of good quality, meaning that they should be consistent, clear and intelligible, foreseeable, transparent, accessible, human rights-compliant, effective, non-discriminatory, gender-responsive and reflective of gender diverse groups in society, both in terms of wording and in practice, once implemented.[7] The quality of laws is a direct consequence of the manner in which they are developed, drafted, consulted and discussed, scrutinized, amended, adopted and published, and later monitored and evaluated. A number of guiding principles are essential to ensure the quality of the lawmaking process: lawmaking procedures and practices should follow democratic principles, adhere to the rule of law and be human-right compliant.[8] At the same time, they should be evidence-based, open and transparent, participatory and inclusive, and subject to effective oversight.[9] In principle, a democratic lawmaking process not only leads to better quality laws but also tends to improve the implementation of adopted laws and should ultimately enhance public trust in the abovementioned processes and democratic institutions in general.

12. More generally, OSCE participating States have committed to build, consolidate and strengthen democracy as the only system of government,[10] and have recognized it as an

5 See the *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Moldova acceded to the Convention on 1 July 1994.
6 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
7 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), p. 10.
8 *Ibid.* Principles 1 to 3.
9 *Ibid.* Principles 5 to 10.
10 Preamble, CSCE Charter of Paris for New Europe, 21 November 1990.

inherent element of the rule of law.[11] Democracy is likewise one of the universal core values and principles of the United Nations,[12] the Council of Europe,[13] the Organization for Economic Co-operation and Development (OECD)[14] and the European Union (EU).[15] Respect for human rights and fundamental freedoms is an essential part of democracy and the rule of law.

13. There are no international or regional legally binding norms and instruments focusing specifically on the legislative procedure as such, although this topic is intrinsically linked to the right to participate in public affairs, as reflected in Article 25 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR").[16] The UN Human Rights Committee in its General Comment No. 25 (1996) noted that the right to participate in public affairs requires that *"[c]itizens also take part in the conduct of public affairs by exerting influence through public debate*".[17] In addition, the modalities of citizens' participation, which include public debate and dialogue, should be established by the constitution and other laws of the state concerned. The UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention),[18] to which Moldova is a State Party is also of relevance, especially Article 8 on effective public participation during the preparation by public authorities of generally applicable legally binding rules that may have a significant effect on the environment.

14. As Moldova is a Member State of the Council of Europe (hereinafter "CoE"), the relevant case law of the European Court of Human Rights and documents of the European Commission for Democracy through Law of the CoE (hereinafter "Venice Commission") are also of relevance to this Preliminary Opinion. In particular, the Venice Commission's Rule of Law Checklist[19] provides useful guidance, especially regarding the lawmaking procedure, the implementation of the law, legal certainty and equality before the law and non-discrimination.

15. The need for open and democratic lawmaking procedures is clearly set out in relevant OSCE commitments. The 1990 Copenhagen Document speaks of legislation, adopted at the end of a public procedure, as being "*essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings*".[20] The 1991 Moscow Document echoes these findings, by committing OSCE participating States to formulate and adopt legislation "*as a result of an open process reflecting the will of the people*".[21]

---

11 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (1990 OSCE Copenhagen Document), 5 June-29 July 1990, para. 3.

12 As stated on the website of the UN Office of the High Commissioner for Human Rights, at <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/Democracy.aspx>.

13 European Commission for Democracy through Law (Venice Commission) of the Council of Europe: *Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, 24 June 2019, para. 10. See also European Court of Human Rights (ECtHR),: *Hyde Park v. Moldova (No. 1)*, no. 33482/06, 31 March 2009, para. 27, where the Court reiterates that democracy "*is the only political model contemplated in the Convention and the only one compatible with it*."

14 Organization for Co-operation and Development in Europe (OECD), *Recommendation of the Council on Open Government* (2017), as well as the *Recommendation of the Council on Regulatory Policy and Governance* (22 March 2012).

15 See Article 2 of the Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390, which states: "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*", as well as Title II.

16 See the *UN International Covenant on Civil and Political Rights* (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Moldova acceded to the Covenant on 26 January 1993.

17 UN Human Rights Committee, *General Comment No. 25*, 1996, para. 8.

18 *UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*, adopted on 25 June 1998. Montenegro acceded to the Convention on 2 November 2009.

19 Council of Europe's Venice Commission, *Rule of Law Checklist*, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), para. 18.

20 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (1990 OSCE Copenhagen Document), 5 June-29 July 1990, para. 5.8.

21 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 18.1.

OSCE participating States also specifically committed to ensure equal opportunities for the effective participation in political and public life of women, persons belonging to national minorities, Roma and Sinti, especially Roma and Sinti women, young people, and persons with disabilities,[22] among others. OSCE participating States should also seek to "*secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society*"[23] as well as to enable civil society organizations (hereinafter "CSOs") to contribute to matters of public debate and, in particular, to the development of laws and policies at all levels, whether local, national, regional or international.[24] Furthermore, the importance of pluralism with regard to political organizations[25] along with institutional and individual integrity of parliaments and parliamentarians and public accountability have been recognized by OSCE participating States as core aspects of political life.[26]

16. In 2024, ODIHR published the *Guidelines on Democratic Lawmaking for Better Laws*[27] (hereinafter "ODIHR Guidelines"), which provide an overview of the guiding principles of democratic lawmaking and concrete, practical recommendations on how these principles can be adhered to at each stage of the legislative cycle to achieve good-quality laws.[28] These principles and standards underlie the process of preparing, discussing, adopting, implementing and evaluating laws.

17. A number of other documents of a non-binding nature elaborated in various international and regional *fora* are also useful as they provide more practical guidance and examples of practices to enhance national lawmaking processes, including rendering them more gender- and diversity-sensitive.[29] The key findings and recommendations from the European Commission's Republic of Moldova 2024 Report[30] and from the OECD-EU Joint Initiative Support for Improvement in Governance and Management in Central and

22 See OSCE, *Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 44(d); *2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, para. 88; OSCE Ministerial Council, *Decision No. 4/13 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children* (2013), para 4.2; *Report of the CSCE Meeting of Experts on National Minorities* (Geneva, 1991); OSCE/CSCE *1991 Moscow Document*, para. 41. See also OSCE High Commissioner on National Minorities (HCNM), *Ljubljana Guidelines on Integration of Diverse Societies*, 7 November 2012, where it is noted that *"[d]iversity is a feature of all contemporary societies and of the groups that comprise them*" and which recommend that the legislative and policy framework should allow for the recognition that individual identities may be multiple, multi-layered, contextual and dynamic.

23 *OSCE Maastricht Document 2003*, para. 36.

24 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 43.

25 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 5.

26 See e.g., OSCE, *Charter of Paris for a New Europe*, Paris, 19 - 21 November 1990, which states that *"[d]emocracy, with its representative and pluralistic character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially".* See also *1999 OSCE Istanbul Document*, 19 November 1999, where OSCE participating States committed to strengthen their efforts to *"promote good government practices and public integrity"* in a concerted effort to fight corruption.

27 See, ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024.

28 *Ibid.* p. 10, where "good-quality laws" are defined as laws that are "*clear, intelligible, foreseeable, consistent, stable, predictable, accessible, compliant with rule of law and human rights standards, gender-responsive, diversity-sensitive and non-discriminatory, in both content and practice, while being proportionate and effective*".

29 See e.g., ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, 2019, including a checklist with further detailed guidance on pages 110-117; ODIHR, *Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit* (2022), including specific *Tool 2 on Addressing Violence against Women in Parliament* (2022); ODIHR, *Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region* (2021); ODIHR, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017). See also e.g., Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Regulatory Policy and Governance* (2012); *OECD Good Practice Principles for Deliberative Processes for Public Decision Making;* OECD, *Best Practice Principles for Regulatory Policy, Regulatory Impact Assessment (2020);* OECD, *Better Regulation Practices Across the European Union* (2022); Inter-Parliamentary Union (IPU), *Gender-responsive Law-making, Handbook for Parliamentarians (2021);* IPU, *Plan of Actions for Gender-sensitive Parliaments* (2012), IPU, *Global Parliamentary Report 2022 - Public engagement in the work of parliament*; IPU and UNDP, *Diversity In Parliament: Listening To The Voices Of Minorities And Indigenous Peoples*, 2010. See for further resources, e.g., <Public governance - OECD>, as well as OECD-EU Joint Initiative Support for Improvement in Governance and Management in Central and Eastern European (SIGMA).

30 See European Commission, *Republic of Moldova 2024 Report - Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions*, 30 October 2024, especially Sub-Section 2.1.

Eastern European (SIGMA) Monitoring Report on Public Administration in the Republic of Moldova (hereinafter "2023 SIGMA Monitoring Report"),[31] which deals extensively with policy- and lawmaking are also of particular relevance and will be referred to as appropriate in this Preliminary Opinion.

18. In light of the principles stated above and further elaborated in this Preliminary Opinion, it is essential that the Draft Code be subject to transparent, inclusive, and extensive consultations at all stages of the development and adoption process, including before the Parliament.[32]

2. BACKGROUND AND GENERAL COMMENTS

19. The third Section of Chapter IV on the Parliament under the Title III of the Constitution deals with "Legislation". Article 72 underlines the typology of laws (constitutional, organic or ordinary, see also para. 19 *infra*). According to Article 73 of the Constitution, the right of legislative initiative belongs to Members of the Parliament (hereinafter "MPs"), the President of the Republic of Moldova, the Government, as well as the People's Assembly of the autonomous territorial-unit of Găgăuzia. The Parliament adopts laws – the majority required depending on whether it is an organic law, adopted by a majority of the elected MPs following at least two readings, or an ordinary law, adopted by a majority of MPs who are present (Article 74). The draft laws submitted by the Government, as well as legislative initiatives brought forward by MPs and accepted by the Government are examined by the Parliament in the manner and according to the priorities established by the Government, including in the emergency procedure (Article 74 (3)). Once a law is adopted by the Parliament, it is submitted to the President for promulgation (Article 74 (4)). The law shall be published in the official gazette or it is deemed inexistent (Article 76 of the Constitution).

20. The legislative procedure in the Parliament of Moldova is further elaborated in Chapter III of the Draft Code. At the same time, Chapter I of the Draft Code ("General Provisions") also contains some general norms, including on the legislative authority of the Parliament (Article 2), its functions (Article 4) and principles of parliamentary activity as described in Section 1 of Chapter III of the Draft Code, including the principle of legality (Article 5). In particular, according to the Draft Code, the principle of legality underlines the mandatory nature of respect for the Constitution and its legality (Article 5 (1)), while also stating that "*the normative acts adopted by the Parliament shall ensure the security of legal relations for individuals*" (Article 5(2)), thereby highlighting further the importance of legal certainty and stability.

21. Chapter III of the Draft Code focuses on different elements of the lawmaking process in the Parliament and contains eight sections that cover the following topics: acts of Parliament (Section 1); legislative initiative (Section 2); urgent procedure. priority mode and simplified procedure (Section 3); continuity of draft legislation in the new Parliament (Section 4); proceedings in standing committees (Section 5); the parliament's sitting (Section 6); procedure for examining draft normative acts by readings (Section 7); and

31 EU-OECD SIGMA, *Monitoring Report on Public Administration in the Republic of Moldova - Assessment against the Principles of Public Administration* (October 2023), covering 2023 up until September.

32 See in particular, *1990 OSCE Copenhagen Document*, whereby OSCE participating States have committed to ensuring that legislation will be "*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*" (para. 5.8); see also *1991 OSCE Moscow Document*, which provides that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*" (para. 18.1). The ODIHR *Guidelines on Democratic Lawmaking for Better Laws* (2024) underline that "*all interested parties and stakeholders should have the opportunity to access the lawmaking process, be informed about it and be able meaningfully to participate and contribute*" (Principle 7). See also *Rule of Law Checklist*, Venice Commission, CDL-AD(2016)007, Part II.A.5.

voting procedure (Section 8). Some other sections or chapters of the Draft Code are also of relevance to the legislative procedure, especially those related to parliamentary oversight and interactions with civil society and other external actors. A more comprehensive analysis of these sections/chapters is provided in separate Opinions.[33]

3. CATEGORIES OF ACTS ADOPTED BY THE PARLIAMENT

22. According to Article 61 of the Draft Code, but also as prescribed by Article 74 of the Constitution of Moldova, the Parliament adopts the following acts:

- **constitutional laws** (those revising the Constitution) adopted by a two-thirds vote of the elected MPs (as also defined by Article 133 (2) of the Draft Code);[34]
- **organic laws** (for areas defined by the Constitution[35] and the Law No. 100/2017 on Normative Acts) adopted by the majority of elected MPs following at least two readings (as also defined by Article 100 (2) of the Draft Code);
- **ordinary laws** (regulating any field of social relations except for those reserved for constitutional and organic laws) adopted by the majority of MPs present during the respective plenary sitting (as also defined by Article 100 (3) of the Draft Code);
- **resolutions**;
- **exclusively political acts** (hereafter "EPAs"), with Article 62 of the Draft Code being specifically dedicated to EPAs; and
- **motions**.

23. It is commendable that the Draft Code, unlike the existing Parliament's Rules of Procedure (hereinafter "RoP"), which will be repealed upon the entry into force of the Draft Code in case of adoption, expressly lists the categories of acts that the Parliament may issue. However, the structure and wording of both Articles 61 and 62 would benefit from certain adjustments to ensure greater clarity and coherence between them.

24. Firstly, Article 61 (4) describes ordinary laws as those which "*regulate any field of social relations, except those reserved to constitutional and organic laws*". This provision mirrors Article 72 (4) of the Constitution of Moldova.[36] At the same time, it is worth noticing that the legislation is supposed to govern not only social but also economic, environmental and other areas. Unless this is a translation related issue and/or the term has been broadly interpreted to cover all areas of public and private law, **it may be advisable to specify that ordinary laws may regulate any matters – not only social relations – except those reserved to organic laws in line with the constitutional requirements.**

33 All ODIHR opinions on different parts of the Draft Code are available at: <Legal reviews | LEGISLATIONLINE>.

34 See *ODIHR Opinion on the Provisions of the Draft Code on the Organization and Functioning of the Parliament of Moldova Related to the Constitutional Revision Procedure (Chapter IV)*, available at: <Legal reviews | LEGISLATIONLINE>.

35 According to Article 74 (1) of the Constitution of Moldova, organic laws shall govern: a) the electoral system; b) the organization and carrying out of referendum; c) the organization and functioning of the Parliament; d) the organization and functioning of the Government; e) the organization and functioning of the Constitutional Court, the Superior Council of Magistracy, courts of general and administrative jurisdiction; f) the organization of local administration, of the territory, as well as the general regulation of local autonomy; g) the organization and functioning of political parties; h) the procedure for establishing exclusive economic zones; i) the general legal regulation of private property and inheritance; j) the general regulation of labour relationships, trade-unions and social protection; k) the general organization of the education system; l) the general regulation of religious cults; m) the regulation of the state of national emergency, martial law and war; n) criminal offences, punishments and the procedure of their execution; o) the granting of amnesty and pardon; p) other fields where the Constitution provides for the necessity of adopting organic laws; r) other fields where the Parliament recommends the passing of organic laws.

36 Article 72(4) of the Constitution states that the ordinary laws "*shall intervene in any field of social relationships, except for the spheres regulated by constitutional and organic laws*".

25. Secondly, Article 61 (6) of the Draft Code stipulates that "*[r]esolutions shall intervene in cases provided for by law or in other areas not requiring the adoption of laws."* According to Article 229 (4), "Parliament may adopt resolutions on matters discussed at parliamentary hearings in plenary". It is noted that the wording "not requiring the adoption of laws" is rather ambiguous, leaving space for possible diverging interpretation about the cases/areas not reserved for regulation by law. It is also not clear whether such resolutions are legally binding or not. Regarding the legal force of resolutions, Article 62 (2) of the Draft Act explicitly states that EPAs "*produce political effects and do not have the force of normative acts*". Read together with Article 62 (5) of the Draft Code, which provides that EPAs shall take the form of resolutions, this implies that certain types of resolutions, those constituting EPAs, are not legally binding. However, it is not clear whether other types of resolutions – those required by law or those whose scope fall outside of areas requiring the adoption of laws – may have a normative effect |(e.g. resolutions of the Speaker of Parliament, resolutions of the Committee chairperson, etc.). **Article 61 (6) of the Draft Code should be clarified in this respect.**

RECOMMENDATION A.

1. To specify under Article 72 (4) of the Draft Code that ordinary laws may regulate any matters, while recognizing matters governed exclusively by organic laws in line with the constitutional requirements.

2. To clarify under Article 61 (6) the cases where resolutions may be adopted and the legal status of resolutions other than those constituting exclusively political acts.

4. PREPARATION AND REGISTRATION OF DRAFT LAWS

4.1. Legal Drafting

26. In order for legislation to be correctly understood and applied, it is essential to ensure that it is well drafted. Laws must be drawn up in a clear and unambiguous, intelligible and accessible manner, in accordance with uniform principles of legislative drafting, so that public agencies and authorities can implement them, individuals and economic operators can identify their rights and obligations, and courts can enforce them.[37] When laws are drafted, certain requirements need to be fulfilled: the drafters need to be aware of the proper drafting technique and style in use in their state, but also need to know about the subject the law seeks to regulate.[38]

27. Article 65 (6) of the Draft Code stipulates that the draft law submitted to the Parliament shall be drafted "*in accordance with the established requirements and legislative technical rules*". Article 66 further describes the content of explanatory memoranda, which shall "*present and substantiate the proposed regulations*" in an explicit, clear style, using the terminology of the draft normative act which it represents. The draft normative act, the explanatory memorandum and any other related documents shall be submitted in the original, in Romanian, in paper and electronic versions (Article 67).

37 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 122.
38 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 122.

28. However, as noted in the 2023 SIGMA Monitoring Report, there are no uniform rules on methodology and legislative technique in Moldova for drafting legal acts to ensure legal standardization and conformity.[39] The Government RoP and Law No. 100/2017 on Normative Acts provide a basic framework for drafting policy documents adopted by the Government and developing normative acts, including draft laws, although not being enough to ensure overall legal conformity and coherence by all those involved in lawmaking.

29. Although the Ministry of Justice (hereinafter "MoJ") acts as a control body to ensure the quality of legislative drafting – and is formally assigned to conduct quality checks – the quality of legislative drafting is still considered as not reaching the required quality in Moldova, as a high ratio of laws (16%) are being amended within one year of their adoption.[40] In addition to the lack of legislative drafting guidelines, this may be due to the fact that a high percentage of laws are being adopted through extraordinary procedures in the Parliament (see also Sub-Section 6.3 *infra*). As underlined in the 2023 SIGMA Monitoring Report, the overall quality of legislative drafting is also compromised by the lack of coordination in legislative planning between the Government and the Parliament, as well as by the predominance of MP-sponsored laws that often evade strict scrutiny and impact assessments.[41]

30. An aspiring goal for parliaments in the area of legislative drafting is that guidance for clear and effective legislative drafting is set out in a manual or similar document, and is followed in the drafting of all proposals for laws tabled in parliament. It is important, however, that there is only one unified drafting manual that is applied by everybody engaging in law drafting.[42] Legal drafters in the government and parliamentary sectors (and beyond), and government staff responsible for verifying draft policies and laws should adhere to the same drafting manual and instructions or checklists outlining the legislative technique.[43]

31. The Law of Moldova No. 100/2017 on Normative Legal Acts (hereinafter "Law on Normative Acts") provides an overview of key principles governing lawmaking (Chapter I), elaborates on the hierarchy of normative acts (Chapter II), details the stages of the lawmaking process (Chapter III) and also includes dedicated Chapters on the Structure and Content of a Normative Act – including some provisions on the language to be used. At the same time, its content appears insufficient to provide effective and comprehensive guidance to lawmakers as seen for instance in certain unified law drafting manuals that may have been developed in certain countries.[44] While it is welcome that a specific Handbook on Legal Approximation (2022)[45] has been developed in Moldova, it is important that more general uniform rules on methodology and legislative technique for normative acts are developed and adopted. Such guidance should also promote the use of gender- and diversity-sensitive language in legislation.[46] The question remains, in the Moldovan context, whether to ensure that the rules on drafting are satisfactorily

39 *2023 SIGMA Monitoring Report*, p. 103.
40 *2023 SIGMA Monitoring Report*, p. 27. See also the *2023 Annual Report of the Parliament on Transparency in Decision-making*.
41 *Ibid.* p. 49.
42 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 137.
43 For example, for more than ten years, the Joint Practical Guide has proven to be a valuable tool in ensuring that the legal acts drawn up by the European Parliament, the Council and the Commission are drafted clearly and precisely. The principles set out in the Guide are the point of reference for matters of legislative drafting for the three institutions. The Joint Practical Guide is a 'platform' of general drafting principles. Each institution uses the Guide alongside other instruments which contain specific standard formulations and more detailed practical rules. See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 137.
44 See, for instance, in France, the *Guide de légistique* (as updated in December 2024), which provides detailed explanations and concrete examples about the process and content; or in Albania, *Law Drafting Manual – A Guide to the Legislative Process in Albania* (2009).
45 See Handbook on Legal Approximation (2022), available at: <handbook-on-the-legal-approximation_varianta-de-tipar-no-copy_0.pdf>.
46 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 223.

developed, formulated, and then used in practice by all those engaged in lawmaking, this would be enough that they are determined non-normatively in some guidelines or manual, for example.

32. Based on the foregoing, **it is recommended adding to the Draft Code a separate provision stipulating that all lawmaking actors when drafting laws or other acts to be passed by the Parliament shall adhere to unified methodological rules for legal drafting which should be sound but not too rigid.**[47] Relevant parliamentary support staff should be familiar with the instructions and guidelines set out in the unified methodological rules for legal drafting and have the necessary skills and capacities. At the same time, the Government should also ensure that ministerial staff follow the basic rules and principles set out therein to ensure that policies and laws are drafted in a consistent manner, following a similar methodology, legislative technique and terminology. Parliamentary support staff could also be in regular contact with government ministries or other government agencies involved in legislative drafting to share knowledge on drafting techniques and processes[48] (see also Sub-Section 5.2. *infra* regarding mechanisms for controlling the quality of legal drafting).

RECOMMENDATION B.

To add to the Draft Code a separate provision stipulating that all lawmaking actors when drafting laws or other acts to be passed by the Parliament shall adhere to unified methodological rules for legal drafting, which should be sound but not too rigid.

4.2. Admissibility of Draft Laws and Parliamentary Scrutiny

33. Draft laws need to be scrutinized by a legislator throughout the lawmaking process, initially when the draft law is being elaborated, when it is submitted to the parliament, later by parliamentary committees and, finally, during plenary sessions (with additional scrutiny where draft laws initiated by the government are substantially changed within parliament) and onwards, as a part of *ex post* evaluation of legislation (post-legislative scrutiny).[49] To ensure the quality of legal drafting at different stages of the legislative process, it is also important to strengthen regulatory oversight mechanisms. The quality control by the government before draft laws are endorsed for submission to the Parliament should be sound enough, ensuring that it focuses not only on the procedural aspects, but also on the substance, including the substantial quality of the draft proposals, with the possibility to return sub-standard draft laws to the initiators.[50] Similarly, it is essential that there is also an effective screening of the legislative proposals by the Parliament to assess their compliance with the requirements outlined in legislation, including that all supportive documents are attached.[51]

34. In some countries, certain safeguards may also stop a regulation from proceeding to the next step in the legislative process if the quality of the draft law or accompanying

47 Although drafting manuals are different in every state: manuals can be formal or informal, publicly available or private, and in the form of internal documents, or external rules set by the parliament.
48 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 137-138.
49 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 168 and 188. See also ODIHR Preliminary Opinion on the Draft Code on the Organization and Functioning of the Parliament (Title III on Parliamentary Oversight) available at: <Legal reviews | LEGISLATIONLINE>.
50 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 187-192. See also e.g., ODIHR, *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (30 December 2024), para. 145.
51 See e.g., ODIHR, *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (30 December 2024), para. 97.

documents is deemed inadequate, e.g., if the Regulatory Impact Assessment (hereinafter "RIA") is not of the required quality.[52] In other countries, a positive opinion is required for a draft regulation to proceed.[53]

35. The OECD Regulatory Policy Outlook 2015 notes that *"[a]s the institutions responsible for approving legislation, parliaments can exercise oversight and control over the application of better regulation principles for new and amended regulation"*.[54] In this respect an important task of parliaments is to ensure parliamentary scrutiny of the technical quality of draft legislation, especially the draft laws initiated by government, the merits of the respective legislative proposals and underlying policy, as well as the soundness of the policymaking process followed by the government. In this respect submission of RIA report to parliament as part of the documentary package accompanying government-sponsored draft laws helps ensure a comprehensive examination of the merits of the legislative initiative by the responsible parliamentary committee.[55]

36. The current RoP of the Parliament of Moldova provide, in Article 47 (6), that draft laws submitted to the Parliament need to be accompanied, among others, by an analysis of their "*social-economic and other effects*".

37. Article 67 of the Draft Code requires that the draft law be submitted to the Secretariat, along with the explanatory memorandum and "*other related documents in the accompanying file according to the requirements of this Code and Law No. 100/2017 [on Normative Acts]*." Furthermore, Article 92 (2)(c) of the Draft Code states that the report of the Standing Committee for the first reading shall include, among other, the results of: the "regulatory impact analysis"; "*the socio-economic impact and the effects on the macro-economic situation, the business environment, the social field and the environment, including the assessment of costs and benefits; the financial impact on the general consolidated budget, including information on revenue and expenditure*".

38. It is welcome that all draft normative acts appear to be treated the same in the Draft Code, regardless of whether the author is the executive, the President or one or more MPs. It is important, however, that before being submitted to the Parliament, draft laws prepared by MPs follow similar processes of quality checks, regulatory impact assessments – if not exempted, preparation of explanatory notes and organization of consultation procedures, to ensure that all draft laws are of a similar quality. The Draft Code does not set up specific rules for performing quality check/scrutiny of draft laws initiated by MPs, or of substantial amendments to government-proposed laws. In practice, this can hamper the quality of the legislation initiated by MPs as well as implementation of the adopted law at a later stage and make monitoring and evaluation more difficult. This is particularly important since, as already mentioned above, according to SIGMA Monitoring report (2023), most laws adopted by the Parliament are proposed by MPs (164 out of 287 laws adopted in 2022, or 57 per cent).[56] **To avoid this, Article 67 of the Draft Code could be amended to expressly require that draft laws and substantial amendments to Government's draft laws that are initiated by individual MPs also comply with all necessary requirement, similar to those applied to draft laws submitted by the Government to avoid a two-tier level of scrutiny.** At the same time,

52 See e.g., ODIHR, *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (30 December 2024), paras. 70-72.
53 See, ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 189.
54 *OECD Regulatory Policy Outlook 2015*, p. 52.
55 See e.g., ODIHR, *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (30 December 2024), para. 97.
56 See SIGMA/OECD, *Public administration in the Republic of Moldova, Assessment against the Principles of Public Administration*, October 2023, p. 40.

this would require an adequate support to be provided to individual MPs to prepare qualitative drafts and conduct all necessary assessments**.**

39. Overall, the requirements which draft laws need to meet in order to be registered in the Parliament are not properly spelled out in the Draft Code. According to Article 68 of the Draft Code, normative acts submitted to the Parliament shall be received and registered by the Parliament's Secretariat. After registration of the draft normative act, it shall be submitted to the Directorate-General for Legal Affairs (hereinafter "DGLA") for verification of the accuracy of its drafting and the presence of all the necessary documents in the accompanying file according to the requirements of the Draft Code and Law on Normative Acts. DGLA shall, within two working days, issue a note of admissibility, in accordance with the requirements laid down by the Bureau, which it shall submit to the Speaker of the Parliament together with the draft normative act and the accompanying file. Draft normative acts that are proposed as legislative initiatives without complying with the legal requirements shall be referred back, by resolution of the Speaker of the Parliament, to the author for the removal of shortcomings (Article 68 (4)). The requirements for the draft normative acts to be registered in the Parliament, the manner of their referral to their authors for the removal of shortcomings, as well as their circuit in the legislative procedure shall be determined by the Standing Bureau (Article 68 (5)). Draft normative acts that have not been registered in the Parliament in the established manner shall not be accepted for consideration in the standing committees and subdivisions of the Secretariat of Parliament (Article 68 (6)).

40. Article 76 of the Draft Code on rejection by Parliament of draft legislation (located in Section 4 on Continuity of draft legislation in the new Parliament) also does not provide much in terms of clarification here, as the only reasons mentioned for rejecting draft normative acts are cases where they have lost their topicality or where they remain without authors, e.g., where the authors may have lost their official positions in Parliament or Government, or the Presidency. **It is, therefore, recommended to clarify in the Draft Code all the requirements that draft laws need to meet in order to be registered in the Parliament, including the list and content of accompanying documents, rather than leaving it to the discretion of the Standing Bureau**.

41. In accordance with Article 40 of the Law on Normative Acts, the draft normative act is submitted to the public authority vested with the competence to adopt, approve or issue, together with accompanying materials, including, among other, "*if necessary, a report on the ex ante analysis or analysis of the consequences of the regulation*". At the same time, **it would be advisable that the Draft Code explicitly mentions the RIA report, where necessary** (see also para 40 *infra*)**, among the documents needed for registering a legislative proposal with the Parliament.** The lack of a formal requirement to include the RIA form would make it possible, in principle, to register the draft law in the Parliament without the RIA report.[57]

42. Moreover, the Law on Normative Acts is not clear about the circumstances when a report on *ex ante* RIA is required. **It is, thus, advisable that the Law on Normative Acts, but also the Draft Code, clearly elaborate the criteria for exempting certain legislative proposals from the RIA requirements, including in case of limited impact of the planned intervention**. For example, several countries have elaborated criteria to help

57 See OSCE/ODIHR, *Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro*, para. 63.

them decide whether RIA is necessary for a given piece of legislation or not.[58] This would help the Parliament to ensure a proper scrutiny of the governmental legislative proposals.

43. Furthermore, **it is essential to clearly determine the whole range of impacts that shall or may be assessed in RIA.** While the Draft Code mentions "*the socio-economic impact and the effects on the macro-economic situation, the business environment, the social field and the environment, including the assessment of costs and benefits; the financial impact on the general consolidated budget, including information on revenue and expenditure*" (Article 92 (2)), other impact assessments should also be envisaged, including human rights impact as well as impact on gender equality, environmental impact and potential anti-corruption impact. In this respect, and in line with good practice, human rights impact assessments should generally be part of *ex ante* RIA, to ensure that legislation does not unduly interfere with the human rights of individuals or groups.[59]

44. In addition, it is unclear whether the control carried out by the DGLA to decide on the admissibility of a draft law (see para 38 *supra*) is rather formalistic, only checking that required accompanying documents are submitted or also looks into the substance and quality of the draft laws and accompanying file, including RIA. It has been reported[60] that even where RIA reports are prepared and shared with the Parliament of Moldova, deficiencies in RIA quality may still affect Parliament's scrutiny of draft laws. According to OECD SIGMA Monitoring Report (2023), RIA reports, which in Moldova are being prepared by the Government for the draft laws origination from the executive, do not as a rule provide cost and benefit assessments of the preferred option, which makes it difficult to draw an informed conclusion about whether the proposal's overall net impact will be beneficial for society.[61] Since RIA quality control in Moldova is decentralized, no central government body has been designated to coordinate and oversee the whole process.

45. In addition, while the legal conformity of policy proposals prepared by the Government is regularly checked by the MoJ, the financial viability and budgetary impacts of draft acts are not consistently assessed. Overall, a more comprehensive approach to RIA quality checking would be beneficial,[62] including at the governmental level. In addition,

---

58 Some countries have formal threshold tests for determining whether RIA should be applied (e.g., depending on the expected costs/resources or on the overall economic, social or environmental impact). Draft laws covering new topics or those that are expected to impose considerable administrative or regulatory burdens, or otherwise have wide-ranging effects on significant parts of the population, the economy, the state budget, or the environment, should always undergo some form of RIA, though the particular threshold is up to each individual country itself. The RIA thresholds should not automatically exclude secondary laws from the scope of RIA, given that they help bring primary legislation to life and thus are often equally responsible for administrative or regulatory burdens; see OECD: Better Regulation Practices Across the European Union, 2019, Chapter 3: Regulatory Impact Assessment Across the European Union.

59 See e.g., World Bank, Study on Human Rights Impact Assessments (2013), p. 4. HRIAs help assess the short-, medium- and long-term human rights impacts of proposed policies and draft laws. These types of assessments are concerned with how the proposed policy or regulatory proposal complies with the state's international legal obligations to respect, protect and fulfil the human rights of individuals. The process of conducting HRIAs should ensure that a wide array of stakeholders is able to participate and access all relevant information in a timely and comprehensive manner; in this context, the broadest possible national dialogue should be sought, including with marginalized or under-represented groups and those particularly at risk. HRIAs can be both stand-alone assessments or can be incorporated into broader environmental and social impact assessments.

60 *Public administration in the Republic of Moldova, Assessment against the Principles of Public Administration*, SIGMA/OECD, October 2023, p. 44.

61 *Public administration in the Republic of Moldova, Assessment against the Principles of Public Administration*, SIGMA/OECD, October 2023, p. 103.

62 A model which has been praised by the OECD is that of the Italian Parliament, which exercises an important regulatory oversight role. A major part in this regard is played by the Legislation Committee (*Comitato per la legislazione*), which was set up pursuant to an amendment of the Regulation of the Chamber of Deputies – Article 16-bis – which entered into force in 1998. The Legislation Committee is tasked to render opinions on the quality of draft legislation and, interestingly, is the sole parliamentary body with an equal number of government and opposition representatives that takes part in the formation of the law in order to achieve the objective of legislative quality. To that end, it constantly monitors the RIA reports annexed to the measures submitted to the Chamber for consideration and comments on their quality or content. Another body active at the parliamentary level is the Service for the quality of legislation (*Servizio per la qualità degli atti normativi*), which has been operating within the Senate since 2010. As of 2015, the Office

it is recommended introducing in the Draft Code, as part of the DGLA's scrutiny and rules on admissibility, specific provisions to ensure that there is an effective mechanism to screen the draft laws submitted to the Parliament and accompanying documents, including human rights and gender impact assessment, RIA report or justification for not submitting it – and, if concerning EU approximation, the Statement of Compatibility and ToC, with the possibility to return them to the initiator if their content is manifestly of sub-standard quality, for instance when the RIA is missing cost and benefit assessments or other assessments.

46. Finally, it is important that relevant public officials receive regular training on how to conduct proper RIA, including on how to incorporate human rights, gender and diversity considerations, and on how to further improve the existing process of conducting such assessments[63].

47. In the context of the EU accession process, it is also fundamental that draft laws with the EU logo are accompanied by the Statement of Compatibility and table of concordance (hereinafter, "ToC") together with the pieces of EU *acquis* and ratified international agreements which are subject to harmonization.[64] These documents are essential to allow the DGLA to assess the level of approximation of proposed legislation. Amendments submitted by MPs should also be checked against the ToC.

RECOMMENDATION C.

1. To clarify in the Draft Code all the requirements that draft laws need to meet in order to be registered in the Parliament, including the list and content of accompanying documents, rather than leaving it to the discretion of the Standing Bureau.

2. To introduce in the Draft Code, as part of the parliamentary scrutiny and rules on admissibility of draft laws submitted to the Parliament, specific provisions to ensure effective mechanism to screen draft laws and accompanying documents, including human rights and gender impact assessment, RIA report, and if relevant the Statement of Compatibility and Table of Concordance with EU laws, or justification for not submitting them, while granting the parliament the power to return the draft law with these documents to the initiator if their content is manifestly of sub-standard quality.

5. EXAMINATION OF DRAFT LAWS

48. Article 69 of the Draft Code describes the introduction of a legal initiative into the legislative procedure by the Speaker of the Parliament, which involves the designation of the competent Standing Committee.[65]. In case of submission of a draft law with the

publishes a bulletin, on a monthly basis, that monitors the presence of the RIAs in the draft laws of the Government submitted for an opinion of the relevant parliamentary committee.

63 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 147

64 See *Handbook on Legal Approximation* (2022), available at: <handbook-on-the-legal-approximation_varianta-de-tipar-no-copy_0.pdf>. The Statement of EU compliance and ToC are fundamental tools in the EU accession process as they help assessing the fulfilment of legal criteria for accession, i.e., ability of the state to assume obligations from EU membership. These instruments facilitate the procedure of evaluating the level of harmonization, and they also lead to improved readiness of institutions vis-à-vis the negotiation process and quality monitoring of the alignment of national legislation with the EU acquis.

65 If the draft law is considered compliant with legal requirements, and thus "admissible" by the DGLA, it is introduced by resolution of the Speaker of the Parliament, which shall also: (a) designate the competent Standing Committee – and, (b) where appropriate, the

EU logo, the co-report of the European Integration Committee is mandatory (Article 69 (3)). The Standing Committee is responsible for examining the draft law and presenting a report to the plenary of the Parliament and shall also, along with the DGLA, examine and approve the draft normative act. While Article 69 only speaks of approval, the Standing Committee presumably should also have the ability to not approve a draft normative act. Unless it is clear from the practice that the Committee may do so, **it is recommended to clarify the wording of Article 69 to explicitly allow for such a possibility.**

49. Like the current Parliament's RoP,[66] the Draft Code provides that "where appropriate", the opinion of the Government and other authorities shall be sought for certain draft laws (Article 69 (2) (d)). Furthermore, as per Article 90 (1) of the Draft Code, "*the draft normative acts submitted by the President of the Republic of Moldova, Members of the Parliament or the People's Assembly of the Autonomous Territorial Unit of Gagauzia, which have entered the legislative procedure in the Parliament, shall be submitted for opinion to the Government and other authorities in accordance with the requirements of the legislation in force*". A failure to submit the "opinion" within 30 days at the latest, or within a shorter period set by the Speaker of the Parliament, shall not prevent the Parliament from examining the draft, unless otherwise provided by law (Article 90 (2)). Article 90 (7) and (8) further clarifies that a positive opinion is required – as per Article 131 of the Constitution – when draft normative acts or amendments entail an increase or reduction of budget revenues or loans, as well as an increase or reduction of budget expenditures, while a negative opinion means that the draft normative act is deemed to be rejected.

50. Article 69 (5) further instructs the Secretariat to "*ensure that the draft normative act and the explanatory memorandum are forwarded to*" the MPs, parliamentary factions and, where appropriate, to the Government or other competent authorities. On the other hand, Article 69 (6) provides that the "*draft normative act and the accompanying file shall be distributed for examination*" to the appointed Standing Committees (for the examination of its merits), the Co-rapporteur Committee and to the DGLA. While paragraph 5 mentions the explanatory memorandum, paragraph 6 refers more comprehensively to the accompanying file. **For the sake of coherence, and to enable all MPs to fully familiarize themselves with the legislative dossier, the whole accompanying file – not only the explanatory memorandum – should be distributed to both the responsible Committee(s) and MPs**.

51. Furthermore, Article 69 (6) does not identify who – e.g., the Speaker of the Parliament or the Secretariat – must refer the draft law and accompanying file to the responsible Committee, the Co-rapporteur Committee and the DGLA. It would be advisable to specify the authority or body responsible for this task, unless the practice is clear.

5.1. Procedure in Standing Committees

52. Section 5 of Chapter III of the Draft Code deals with the proceedings before the Standing Committees of the Parliament. According to Article 80 (3), decisions of such committees shall, as a rule, be adopted by open vote. There may be cases, however, where members do not wish other members to know how they voted and it may thus be desirable to introduce the possibility of voting by secret ballot, should a committee member wish it.

Co-rapporteur Committee – responsible for examining the draft law and presenting the report to the plenary of the Parliament; (c) instruct the Standing Committee and the DGLA to examine the draft law; and (d) seek the opinion of the Government and other authorities, where appropriate.

66 See <Law for the adoption of Parliament's Rules of Procedure>.

It is recommended to consider supplementing Article 80 of the Draft Code accordingly.

53. While Article 82 covers the participation of government representatives and other heads of public administration bodies in committee meetings, Article 83 speaks about the participation of other persons in such meetings. These "other persons" include civil society representatives, interested persons and experts from public administration authorities, as well as officials from the DGLA and from the secretariats of other Standing Committees. **It would be advisable, however, to expand the list of stakeholders set out in Article 83 to also include independent experts who are not from public administration bodies recognizing the advantages of including various types of expertise in discussions on draft laws**. While legal drafters operating within the executive and the Parliament may have a wealth of drafting experience, gaps may remain in areas where additional, external, technical expertise is required. Given the complexity of contemporary legislation, additional technical information or expertise provided by extra-institutional actors can also help inform policymakers and lawmakers about different policy and legislative options. Likewise, verification processes within the Parliament may need to be complemented by legal/human rights expertise, including gender-related, environmental, scientific, economic, academic or other forms of expertise, to ensure that a draft law is on the right path to meet the intended policy objectives.[67] It is good practice for parliamentary Standing Committees to establish and maintain curated merit-based lists of recognized experts, including international experts or reputable organizations, to consult on a variety of topics and have procedures in place to ensure diversity, objectivity and transparency with respect to the experts who are invited to committee meetings.[68] The involvement of such experts should be based on neutral and objective criteria to ensure that a range of credible views is heard on a given topic by a plurality of different objective experts from diverse backgrounds.[69]

54. Article 83 (2) states that Standing Committees shall organize consultation meetings with representatives of civil society, such as representatives of public associations and CSOs, trade unions, as well as representatives of central and/or local public administration, following the proposal of committee members or "interested parties". Pursuant to Article 83 (3), committee members or "interested parties" may propose to organize such consultation meetings. However, the term "interested parties" is not entirely clear (presumably, if these were the authors of draft laws, this would have been specified). **It would be, therefore, beneficial to specify** the term "interested parties" in Article 83(3)**, given that this group of people has powers similar to committee members when it comes to the call for consultation meetings**.

55. Article 84 deals with situations of conflicts of jurisdiction between two committees. If a Standing Committee has an opinion that a draft law referred to it actually falls within the jurisdiction of another committee, it may request the Speaker of Parliament to refer the draft normative act to that committee (Article 84 (1)). It further states that if such request is rejected by the Speaker of the Parliament, the matter shall be settled by the Parliament. At the same time, **the Draft Code does not specify the procedure to be followed by the Parliament for resolving this issue, and should be supplemented in this respect.** Furthermore, two or more committees may have valid reasons to consider a draft from different angles, and this should be accounted in the Draft Code for by indicating how

67 See, ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 85.
68 See, ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 88.
69 See also ODIHR Preliminary Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representation Functions of the Parliament) available at: <Legal reviews | LEGISLATIONLINE>.

committees may share or divide competence, such as for example through a joint committee, rapporteur, or other coordination mechanism.

56. In practice, it is not uncommon that several draft laws covering the same topic/issue are initiated by different parliamentarians or different political groups, or possibly by different chambers. This multiplicity of legislative initiatives can be dealt with through a common discussion of the concurrent drafts to preserve the right of initiative of the different authors, while at the same time ensuring progression of decision-making in the parliament. The mechanism foreseen by Article 93 of the Draft Code revolves around concurrent drafts (main and alternative draft laws) and whether they are based or not on the "same concept". If yes, the responsible Standing Committee, after having examined each draft separately, proposes to the Parliament that the concurrent drafts be combined (in one single text) for the second reading (Article 93(1)). If not considered as being based on the "same concept", the matter will be referred to the Parliament, which will decide which draft shall be debated as the main text, whereas the other texts shall be considered as alternatives, not put to a vote (Article 93 (2)).

57. However, it may be difficult to assess in practice whether two or more drafts are based on the "same concept", which might relate to whether they share the same objectives, adhere to the same principles of law, and/or follow the same considerations. Moreover, the Draft Code does not provide for a solution for the situation when concurrent drafts are only partially based on the same concept. It is also unclear how the Standing Committee can determine whether the draft laws are based on the same concept without examining them in a comparative fashion. Furthermore, seeking a decision of the Parliament on matters such as combining the concurrent drafts or choosing the main draft may be subject to politicization. By contrast, vesting the Standing Committee with a discretionary power may constitute an effective procedure to prevent obstructionist practices.

58. **It is therefore recommended to merge paragraphs 1 and 2 of Article 93 into one single paragraph, stating that if the Standing Committee has simultaneously on its agenda two or more draft normative acts on the same subject, the committee shall jointly and comparatively examine the concurrent drafts. Based on such examination, the Standing Committee shall proceed to choose one of the draft normative acts as the main draft or may combine the draft normative acts into one single text for the second reading. The alternative draft normative acts shall be considered as a basis for potential amendments.**

5.2. Time-limits for Debates and Public Consultations

59. Article 86 of the Draft Code outlines the time limits for debates by the Standing Committee on the merits of the case. It specifies that the Committee shall debate a draft normative act within no more than 60 working days following its introduction into the legislative procedure, unless the Draft Code or the Speaker of Parliament sets a different deadline. Within this period, MPs may submit amendments to the draft normative act within 30 days at the latest from the introduction of the draft into the legislative procedure (Article 87), while other Standing Committees, as well as the DGLA, have 30 working days to submit their opinions on the draft normative act (Articles 88 and 89). Similarly, local public authorities and, in cases concerning its status, the Autonomous Territorial Unit of the Gagauzia, have 30 days to submit an opinion on a draft normative act at the committee stage (Article 195 (6)).

60. As already mentioned above (see para 48 *supra*), in cases involving draft normative acts submitted by the President of the Republic, MPs or the People's Assembly of the

Autonomous Territorial Unit of Gagauzia, the Government has 30 days to submit an opinion (or less, if so determined by the Speaker) (Article 90 (1) and (2)). After the deadline for tabling amendments has expired, amendments with budgetary impact are then forwarded to the Government, which then has 15 working days to provide an opinion on them (Article 90 (4)).

61. Between the first and second reading of a draft law before the plenary, MPs, parliamentary factions, and Standing Committees have 10 working days from the approval of the draft law for second reading to submit additional amendments to the competent Standing Committee (Article 104 (2)). The Government has 15 working days to submit its opinion on these amendments (Article 104 (5)). The debate on the draft law in second reading shall then take place no later than 60 days from the date of approval at the first reading (Article 104 (9)).

62. First, to ensure the openness and transparency of the lawmaking process, it is essential that **consolidated version of draft laws reflecting amendments adopted during the different parliamentary committee meetings as well as parliamentary readings, should be easily accessible to the MPs as well as the public, prior to adoption of the bills in plenary. The Draft Code should be supplemented in this respect.** There is also a lack of clear criteria with regard to amendments introduced to the draft laws. In particular, it would be preferable to clarify what criteria the committee should use in deciding whether to accept late amendments, and if those late amendments appear rather major, re-examination or additional (shortened) consultation of the draft law should be required. Therefore, **it is recommended that the Draft Code specifies that any amendment proposed after the initial deadline that fundamentally changes the scope of the draft law or has significant human rights implications, shall result in an additional short round of committee review or public consultation, unless the parliament by qualified vote decides otherwise.**

63. Looking at the legislative procedure in general, both before the Standing Committees and when draft laws are brought before the plenary, the process of reviewing and debating draft laws appears to be very tightly regulated, with specific and apparently non-extendable deadlines. These deadlines are also not particularly long: if all parties adhere to the deadlines, draft laws will be reviewed and adopted by Parliament within a period of approximately four months. In cases of a complex legislation such short lawmaking schedule may presumably impose considerable burdens on the committees and other stakeholders involved and may negatively impact the quality of adopted laws. Since committees do not review draft laws consecutively, but often need to examine different legislative initiatives simultaneously, the existing deadlines would appear to render it difficult for committee members and stakeholders to review draft laws properly. This is even more so in case of priority legislation, which needs to be reviewed within even less time (half of the usual deadlines). Depending on how often the Government makes use of this option in practice, this could significantly increase the pressure on committees (see also Sub-Section 6.3. on Urgency, Priority and Simplified Procedures).

64. Moreover, it is also not clear why some of these deadlines are indicated in working days and others are not. While Article 70 of the Draft Code implies that the time limits in the Draft Code "*are calculated in working days, unless otherwise provided by law*", this differentiation does not appear to be clear.

65. It is further noticeable that the Draft Code does not even mention the possibility of extensions of deadlines for committees, MPs and other stakeholders in cases involving particularly lengthy and complex draft laws, though it appears that the Speaker of the Parliament potentially has the power to set longer deadlines, if s/he chooses to do so

(though the Draft Code only ever mentions cases where the Speaker may set shorter deadlines). Even in cases where special committees are created to, among others, draft complex laws and exercise parliamentary scrutiny in certain areas (Article 242), the Draft Code does not foresee longer deadlines for scrutiny and debate.

66. In principle, deadlines for the review of draft laws within parliament, especially at the committee level, should not be too short nor too rigid, to allow flexibility in cases of lengthy or complex draft laws, or prioritization of draft laws with greater political, legal or human rights importance.[70] Moreover, the Draft Code is not always clear on the consequences of non-compliance with the established deadlines. While it is important to adhere to deadlines, having not met this requirement should not serve as a ground for rejection of the draft and more flexibility should be afforded when the deadlines could also be deliberately compromised.[71]

67. Therefore, **it would be advisable to introduce the possibility of further extending the deadlines for committees' examination and for the parliamentary readings when the complexity of the matter covered by the draft law, extraordinary circumstances or other valid reasons justify it**.

68. The above-mentioned short time for parliamentary review of draft laws is also problematic when it comes to the participation of civil society representatives in the lawmaking process, as they only have 15 working days to submit their input. This deadline is calculated from the date when a draft law was made public on the Parliament's website (Article 200 (3)), which may not always be known, thereby shortening even more the actual time limit for contribution. This deadline is even shorter in cases of expedited lawmaking procedures although it may not be shorter than 3 working days (Article 200 (3)). Invitations to public committee hearings need to go out to interested parties at least seven days (not seven working days) prior to the meeting (Article 232 (2)), which also seems to be a quite short amount of time for CSOs and other interested stakeholders to prepare and get themselves organized. It is also unclear why the time limit for CSOs is so much shorter than that offered to MPs, parliamentary committees and other state representatives. For public consultations to be meaningful and effective, participants need to be informed early on about the consultation timeline and to have sufficient time to provide proper input, appropriate to the length and complexity of the draft law.[72] It is noted that in the past, ODIHR has found problematic tight deadlines for committees' and plenary examination, as well as when a very short time period was given to CSOs for written comments on the draft laws, which may put a burden especially on those smaller CSOs, which may be limited in terms of staffing and financial resources.[73]

69. In light of the above, **it is recommended to reconsider relevant provisions in the Draft Code to ensure that proper time – taking into account the length and complexity of the draft law – is allocated for interested stakeholders to provide input during the public consultation process** (see also *ODIHR Preliminary Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representation Functions of the Parliament)*).

70. Finally, according to Article 77 of the Draft Code, draft normative acts that have not been put to a vote in plenary become null and void if more than two years have passed since their registration. It is somewhat unclear what kind of cases this provision is seeking to address – whether these are draft laws that have been registered but for some reason not

70 See, OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 131.
71 *Opinion on the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic*, 2023, para. 56.
72 See, OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 131.
73 See OSCE/ODIHR, *Assessment of the Lawmaking Process in the Republic of Moldova*, 2010, p. 39. See also OSCE Guidelines on the Protection of Human Rights Defenders para 220 (available at: https://www.osce.org/files/f/documents/c/1/119633.pdf)

allocated to a specific committee or those pending with committees that may not have proceeded to the plenary session and voting stages. **Given the consequences set out for these draft laws, some clearer wording would be advisable.**

RECOMMENDATION D.

1. To consider further extending the deadlines for committees' examination and for the parliamentary readings when the complexity of the matter covered by the draft law, extraordinary circumstances or other valid reasons justify it.

2. To ensure that proper time – taking into account the length and complexity of the draft law – is allocated for interested stakeholders to provide input during the public consultation process.

5.3. Urgent, Priority and Simplified Procedures

71. In practice, in Moldova, fast-track procedures are used frequently and a large share of draft laws is being adopted through shortened proceedings, making democratic control and public consultation challenging.[74]

72. Section 3 of Chapter III of the Draft Code deals with urgent procedures, priority mode and simplified procedure. Of note, the section which deals with such extraordinary and exceptional situations and procedures, would appear better placed right before or after Section 5 dealing with the ordinary procedure before the Standing Committees.

73. In accordance with Article 74 of the Constitution of Moldova, a draft law can be examined under urgent or priority procedures, which are governed by Articles 71-73 of the Draft Code. While Article 71 of the Draft Code identifies the authorities that have the right to propose and approve the urgent or priority procedures, Article 72 sets out the procedural rules for urgent procedures, whereas Article 73 regulates the priority procedure.

74. Pursuant to Article 71 (1) of the Draft Code, at the request of the Government, the Parliament "shall" examine draft laws "*as a matter of priority or in urgent procedure*". It further states that draft laws to be examined under the urgent procedure shall be submitted to the plenary session of the Parliament by the Prime Minister (hereinafter "PM") or, in his/her absence, by the First Deputy PM or the Deputy PM (Article 71 (2)). Notably, this provision, while speaking about "urgent procedure", does not mention the priority mode. Therefore, adding the words "*or priority procedure*" to the above provision would be advisable, unless a separate procedure is envisaged for the priority mode, which does not seem to be the case under the Draft Code.

75. Article 71 (3) adds that in cases expressly provided by law, the priority or urgent procedure may also be requested by the President of the Republic. It further states that the priority or urgency procedure for the examination of draft laws shall be ordered by resolution of the Speaker of the Parliament (Article 71 (4)). Finally, Article 71 (5) recalls Article 140 of the Draft Code, which concerns the decision on the declaration of the state of emergency, siege or war, for assessing the admissibility of the urgency procedure. At

74 SIGMA/OECD, *Public administration in the Republic of Moldova, Assessment against the Principles of Public Administration*, October 2023, p. 40, which reports that, in 2022, of 114 laws sponsored by the Government and adopted by the Parliament, 50 were adopted through urgent or priority procedures (43.9%). See also EU, *Commission Staff Working Document, Republic of Moldova 2023 Report*, SWD(2023) 698 final, Brussels, p. 13, which notes that in 2022, a total of 65 draft laws were voted in two readings at the same plenary, and 124 draft laws were adopted in two readings within 30 days (34% of the total) from the moment the draft was registered.

the same time, it is not clear whether this means that an urgency procedure may only be used when a state of emergency, siege or war has been declared. This should be clarified.

76. Regarding the procedural framework for the urgency procedure ("*procedura de urgență*"), Article 72 of the Draft Code provides that the Speaker of the Parliament shall set a deadline for the submission of the report on the draft law by the Standing Committee, which may not exceed ten working days from the introduction of the draft law into the legislative process. After receiving the report of the Standing Committee, the Standing Bureau shall include the draft law on the draft agenda for the next plenary session (Article 72 (3)).

77. The urgency of the procedure is also reflected in the fact that draft laws may be examined at first and second reading in the same sitting (Article 72 (5)) and that the Parliament may limit the time set aside for the debates on the draft law (Article 72 (4)). In addition, MPs may only propose amendments "within a period not exceeding 5 working days" (Article 72 (2)). It is unclear, however, when this term starts running. **It is, thus, advisable, to clarify whether this term runs from the introduction of the draft law, i.e., the resolution of the Speaker ordering the urgent procedure or, which is more preferable, from the date the draft law and accompanying file is distributed to MPs (cf. Article 69 (5)).**

78. Article 73 further states that when draft laws are considered as a matter of priority, the deadline for the submission of the report by the Standing Committee (referred to in Article 72) is halved, meaning that it may not exceed five working days. Finally, Article 74 deals with simplified examination procedure, which is applicable only to draft resolutions of an individual nature that may be examined without being subject to all the prior procedures in the working bodies of Parliament. According to Article 74 (3) of the Constitution of Moldova, the draft laws submitted by the Government, as well as legislative initiatives brought forward by MPs and accepted by the Government, are examined by the Parliament "*in the manner and according to the priorities established by the Government, including in the emergency procedure*". This provision could imply that the legislative agenda of the Parliament should be aligned with the Government legislative programme and thus, certain draft laws, included in this programme, should be examined "as a matter of priority" (see, in this context, Article 46 (2) of the Draft Code, stating that when drawing up its annual legislative programme, the Parliament shall take into account the Government's action plan).

79. At the same time, more clarity regarding the priority mode is needed in the Draft Code. In particular, **the Draft Code should specify whether, when the Government requests priority treatment for a certain draft law, the Parliament may also reject such a request if it considers that there is no justification for such prioritization or that a law is so complex and lengthy that it requires a full and lengthier review**.

80. As already stated above (see para 66 *supra*), the Draft Code does not provide for flexibility in terms of extension of deadlines in cases of complex or lengthy draft laws. **There should also be a possibility, when examining certain draft laws as a matter of priority, to allow for longer/extension of deadlines when the complexity of the issue at stake requires so.**

81. According to international good practice and recommendations, while accelerated lawmaking may at times be necessary, they should only be applied in exceptional circumstances and never on a routine basis or automatically.[75] They must be limited to true cases of urgency, where circumstances do not allow for the usual conduct of

75 See, OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 238.

proceedings, both within government and particularly before parliament or where other circumstances justify prioritization. Such procedures should not be applied simply to achieve policy objectives quickly, or to circumvent rules on public consultation or impact assessments. Such misuse affects the quality of legislation, weakens external checks on the government, disregards the principle of the separation of powers, and affects legal certainty.[76] Moreover, it reduces the opportunity for inclusive legislative processes and meaningful debates. To ensure that the fast-track procedures are not abused, the legislation should outline clear criteria and set out explicitly the limited instances where accelerated proceedings are permissible or not.[77] In addition, the Government and other bodies with the right of legislative initiative shall be obliged to justify in detail the need for expedition, with the possibility for the Parliament to reject the request to apply the expedited procedure where the necessary criteria are not met.[78] In principle, accelerated procedures should be the exception, and should not be applied to introduce important, complex or wide-ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms or introducing permanent structural changes to the functioning of democratic institutions, procedures and mechanisms.[79] Moreover, the processing of draft laws in urgent procedure should also not be used for the regular adoption of the state budget.

82. **It is recommended to more clearly specify the criteria and circumstances where the urgent or priority procedure should not be used.** Furthermore, **the Draft Code should also clarify the process by which the use of accelerated procedures is confirmed by the plenary session (ideally by qualified parliamentary vote). The abuse of the fast-track procedure may also be averted by introducing some additional safeguards to prevent misuse or overuse, such as a threshold to limit the number of bills that may be adopted through the accelerated procedures during a certain period or session**.[80]

83. As noted in the past by ODIHR,[81] with regard to the existing Parliament's RoP, the Moldovan legal framework does not specifically require the circumstances justifying the use of the urgent procedure to be established and the only protection against possible misuse is the requirement of the Standing Bureau's approval.[82] It is clear from the Draft Code who may request the adoption of a draft law by accelerated procedures. However, the relevant provisions do not specify the conditions for the request of the urgency or priority procedure, nor do they provide that the request to use such procedures should be adequately justified in each case or that the request should be rejected when not fulfilling the required criteria. As already noted, Article 71 (5) contains a cross-reference to the conditions provided for in Article 140 of the Draft Code for the purpose of assessing the admissibility of the urgency procedure, but this reference is not entirely clear, considering that Article 140 pertains to the decision on the declaration of the state of emergency, siege or war.[83]

76 OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, p. 136, para. 238.
77 See, OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 239.
78 *Ibid.* paras. 239-240.
79 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 241; see also e.g., Venice Commission, *Turkey - Opinion on Emergency Decree Laws N°s 667-676*, CDL-AD(2016)037, para. 89.
80 For example, in **Italy**, Article 69 of the Regulation of the Chamber of the Italian Parliament provides: "*Upon the presentation of a bill, or even subsequently, the Government, a Group President or ten deputies may request that its urgency be declared*." In 1997, Article 69 was amended to include an additional provision stating that "*[f]or each work programme, no more than five bills may be declared urgent if the programme is prepared for three months, or more than three if the programme is prepared for two months. The urgency of constitutional bills and bills referred to in Article 24, paragraph 12, last sentence, may not be declared*." Similarly, in **Albania**, the Assembly cannot apply the accelerated procedure for more than three bills over a 12-week work programme, and more than one bill over its three-week work programme (see Article 28(5), Assembly's Rules of Procedure).
81 OSCE/ODIHR, *Assessment of the Lawmaking Process in the Republic of Moldova*, p. 40.
82 RoP of the Parliament of Moldova, Article 44 (1).
83 With respect to the functioning of the Parliament during a state of emergency, siege or war, see *OSCE/ODIHR, Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Chapter V)*.

84. In light of the foregoing, the Draft Code does not strictly circumscribe the criteria and circumstances under which urgent or priority procedures may be applied, which creates a significant risk of misuse or overuse, which as underlined above, is currently an issue in Moldova. It is thus recommended **to revise the procedures for the accelerated examination of draft laws in order to: 1) lay down the strict conditions and clear criteria for requesting the urgency and priority procedures; 2) require that the request to use such procedures be adequately justified; and 3) ensure that the request is rejected when it does not fulfil the required criteria.**[84] The clearest safeguard in this respect would be to limit the use of accelerated proceedings to exceptional or urgent situations, and to require the PM when requesting the use of such procedures to submit a well-reasoned justification to the Standing Bureau, explaining the specific circumstances warranting their use.

85. Laws passed by fast-track procedures should be subject to special discussions and oversight. **Where laws are adopted via accelerated procedures, oversight mechanisms need to be in place that take into account the fact that these laws could not be consulted or debated in-depth before adoption. These laws need to undergo mandatory *ex post* evaluation, which could be outlined in the Draft Code**[85].

86. Finally, it has been reported that, in the past, in addition to the emergency procedure foreseen by Article 44 of the current Parliament's RoP, there is a more informal procedure under which, unlike the statutory legislative procedure, the PM does not make a formal request to Parliament and there are no specific time limits for the enactment stages in Parliament.[86] It should be recalled, however, that accelerated procedures should only be possible following a formal request, submitted in accordance with the applicable laws or procedures. Hence, under no circumstances should key elements of the legislative process be shortened or circumvented based solely on informal discussions.[87] To mitigate the democratic risks associated with the "informality" of this accelerated procedure, **the Draft Code should include an additional provision under Article 71 clearly stating that under no circumstances should the examination of a draft normative act be accelerated based on an informal request or decision.**

RECOMMENDATION E.

1. To introduce in the Draft Code clear and strictly defined criteria and circumstances when the urgent and priority procedures may or may not be used, requiring the request to use such procedures to be adequately justified, and providing grounds for the Parliament to reject requests not fulfilling the required criteria.
2. To allow for longer/extension of deadlines when examining certain draft laws as a matter of priority, when the complexity of the issue at stake requires so.
3. To supplement the Draft Code by requiring the mandatory *ex post* evaluation of laws adopted via the urgent or priority procedure, including consultations on implementation of the law, focusing on possible gaps, inconsistencies, practical implementation issues and potential discriminatory impact on certain groups of society.

84 ODIHR has previously noted that the cases of rejections of the requests for accelerated lawmaking by the Standing Bureau were quite rare; see OSCE/ODIHR, *Assessment of the Lawmaking Process in the Republic of Moldova*, p. 40.
85 OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 242.
86 OSCE/ODIHR, *Assessment of the Lawmaking Process in the Republic of Moldova*, pp. 40-41.
87 OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, p. 103, para 173.

6. PUBLICATION AND ACCESSIBILITY OF LEGISLATION

87. Article 69 of the Draft Code provides for the publication of the draft law and accompanying documents on the official website of the Parliament, differentiating between draft laws considered under the ordinary procedure (para. 7) and those processed under urgent or priority procedures (para. 8). In the case of the former, publication should occur "*no later than two working days from the date of its inclusion in the legislative procedure*", while in the latter, it must take place "*within 24 hours*". **It would be advisable, however, to specify that the above deadline starts running from the date of the resolution of the Speaker of the Parliament ordering the urgent or priority procedure** (Article 71 (4) of the Draft Code).

88. Publication of the Parliament's website of all draft laws and accompanying documents is welcome in principle to ensure public access to information. At the same time, online tools should be tailored to enhance inclusiveness, transparency and make participation easier[88] in order not to exclude certain persons or groups. It is thus important that the Parliament's website complies with guidance on web content accessibility for persons with disabilities,[89] while ensuring that when deemed relevant, such documents should also be available in adjusted formats or easy-to-read language.

89. Furthermore, pursuant to Article 76 of the Constitution, primary legislation must be published in the Official Gazette (*Monitorul Oficial al Republicii Moldova*). If it is not so published, it is of no effect. The legislation comes into force on the date specified in its provisions, or otherwise on the date of its publication.

90. A record of primary legislation is required to be maintained by the Parliament. Article 64 of the Draft Code provides in this respect that the "legislative acts" adopted by the Parliament and related files, as well as documents and materials of the Standing Bureau, parliamentary committees, factions and Parliament's Secretariat, shall be deposited annually in the Parliament's archives in the manner laid down by the Standing Bureau. Since the categories of acts that can be adopted by the Parliament pursuant to Article 61 include both normative acts (Constitutional law, organic laws and ordinary laws), as well as motions, resolutions and EPAs, and considering that all acts of Parliament must be properly archived – not just the normative ones – it would also be advisable to remove the word "legislative" from the text of Article 64.

7. GENDER MAINSTREAMING AND DIVERSITY CONSIDERATIONS

91. The Draft Code's provisions related to the legislative procedure would benefit from more prominently reflecting gender and diversity perspectives. This Preliminary Opinion already addressed several aspects pertaining to gender equality and diversity considerations, which should be mainstreamed throughout the policy- and lawmaking processes, including in relation to the preparation of RIA, the inclusiveness of public consultations, legal drafting and accessibility of legislation.[90]

88 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 175. See also Council of Europe Conference of INGOs: Code of Good Practice for Civil Participation in the Decision-Making Process, adopted on 30 October 2019, p. 17. Online tools and websites should be in line with World-wide Web Consortium's guidelines on web content accessibility: <Home | Web Accessibility Initiative (WAI) | W3C>.

89 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 209; and <Home | Web Accessibility Initiative (WAI) | W3C>.

90 See also the two ODIHR Opinions on the representative functions of the Parliament of Moldova and on parliamentary oversight, respectively.

92. Gender mainstreaming[91] implies ensuring that a gender equality perspective is incorporated into policy- and lawmaking so that women's as well as men's respective experiences, needs and concerns – recognizing the diversity of different groups of women and men – are built into the design, discussion, implementation, monitoring and evaluation of policy, legislation and programmes, and that both individual rights and structural inequalities are addressed.[92] Gender mainstreaming implies actively supporting the inclusion of a gender perspective, gender balanced representation in public decision-making at all levels, and the promotion of equal opportunities in activities and procedures of government, parliament, judiciary and other public institutions, and underlying legal frameworks.[93] In line with international obligations and commitments regarding gender balanced representation in public decision-making at all levels,[94] it is important to ensure that women are sufficiently represented in parliaments and governments and their respective bodies, including those involved in the policy- and lawmaking processes. Balanced representation is also fundamental in order to enhance the perception of the legitimacy of the policy- and lawmaking processes and outcomes, i.e., adopted legislation.[95] In light of the latest General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems adopted on 23 October 2024, rules should be adopted to ensure parity in leadership positions in parliaments.[96]

93. Article 89 of the Draft Code stipulates that the DGLA provides a comprehensive opinion on draft laws, which includes an assessment of the draft laws' compliance with "*human rights and gender equality*". Otherwise, apart from a general statement in Article 8 of the Draft Code that *"[t]he protection of human rights and freedoms is a fundamental principle and a priority of the Parliament*" and a few provisions pertaining to parliamentary oversight or mandating the representation of women in parliamentary factions (Article 20) or standing parliamentary delegations (Article 260), the Draft Code does not include comprehensive measures or an institutional framework to mainstream gender and diversity in the legislative work of the Parliament.

94. While the mandate of the Parliamentary Committee for Human Rights and Inter-Ethnic Relations would in principle be of relevance to the assessment of draft laws from a gender perspective, according to Article 88 of the Draft Code, if not appointed as the lead committee for a specific draft law, a standing committee may decide to prepare an opinion on a draft law but is not compelled to do so. More generally, the effectiveness of a gender-sensitive assessment of draft legislation by a multi-portfolio parliamentary body may be questioned.[97] Further, without an explicit mandate of this Committee to review all draft laws from a gender perspective – or without a dedicated, separate parliamentary body or mechanism solely dedicated to gender equality, the assessment of the potential

91 At present, the concept of gender mainstreaming is firmly embedded in the EU Treaties and the EU Charter of Fundamental Rights.
92 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 220.
93 *Ibid.* para. 220.
94 See e.g., Article 7 of the *UN Convention on the Elimination of Discrimination against Women*, which deals with women's equal and inclusive representation in decision-making systems in political and public life, and Article 8, which calls on all States Parties to take appropriate measures to ensure such access; Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), Strategic Objective G.1. "*Take measures to ensure women's equal access to and full participation in power structures and decision-making*"; Council of Europe Recommendation Rec (2003)3 of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public decision-making adopted on 30 April 2002; OSCE Ministerial Council Decision MC DEC/7/09 on Women's Participation in Political and Public Life, 2 December 2009.
95 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 220.
96 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 47 (b).
97 See ODIHR, *Gender-responsive Governance Toolkit - Parliamentary bodies for gender equality — Overview and recommendations — Tool 3* (2024), p. 27.

impact of draft laws from a gender perspective may not be carried out.[98]Such analysis should include disaggregated data by ethnicity, disability, age, and other relevant factors, consistent with CEDAW GenRec40 (2024)[99] to ensure an intersectional approach that identifies and removes multiple barriers.

95. **In light of the foregoing, it is recommended to explicitly mandate the Parliamentary Committee for Human Rights and Inter-Ethnic Relations or a separate dedicated gender equality parliamentary body/mechanism to consider all draft laws' compliance with national and international gender quality standards and commitments before their consideration in the sitting of the Parliament**.[100] Adequate human resources and support should be allocated for that purpose.

96. In addition, the standing committee taking the lead with respect to a draft law should also be mandated to analyse the potential different impact of draft laws on women and men and their different groups. Article 92 (2) of the Draft Code should be supplemented to require that the report of the standing committee for the first reading comprise also a gender impact assessment.

97. While the Draft Code requires parliamentary factions to ensure a balanced representation of women and men in their governing bodies, working bodies and other structures (Article 20 (13)) and to take into account gender balance when composing parliamentary delegations, the Draft Code does not mandate gender parity in all parliamentary bodies and leadership. In light of the latest General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems adopted on 23 October 2024, rules should be adopted to ensure parity in leadership positions in parliaments.[101] When legislatures establish parliamentary committees, care should be taken that such bodies are not only composed of representatives of different political parties, but also of a balanced number of women and men. It would be advisable **to consider introducing gender balance and diversity considerations during the process of appointing the chairpersons/co-chairpersons, deputy chairpersons of the committees, while also to consider introducing minimal representation rates for female and male MPs in all parliamentary working bodies and delegations** [102] .

98. To ensure that laws also address the specific needs, perspectives and experiences of minority groups, or historically marginalized or under-represented groups, it is essential for diversity considerations to be mainstreamed throughout the legislative process. Legislative drafters may need to test their assumptions to ensure that they avoid default scenarios, majority representations or conscious/unconscious biases or stereotypes, and should ensure that laws are also drafted to cover everyone equally.[103]

99. The existing lawmaking rules and practises should reflect diversity perspectives, specifically those related to the *ex ante* impact assessment of draft legislation as well as *ex post* evaluation, inclusiveness of public consultation processes, openness of the policy- and lawmaking processes and accessibility of adopted legislation. In this respect, it is noted that the report prepared by the lead Standing Committee should include a human rights impact assessment. In principle, such assessment should include an analysis of the

98 See ODIHR, *Gender-responsive Governance Toolkit - Parliamentary bodies for gender equality — Overview and recommendations — Tool 3* (2024), p. 27.
99 See CEDAW, General recommendation No 40. on the equal and inclusive representation of women in decision-making systems, 25 October 2024.
100 See e.g., for a similar recommendation, ODIHR, *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (30 December 2024), para. 177.
101 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 47 (b).
102 ODIHR, *Comprehensive Assessment Report on the Lawmaking Process in Montenegro* (30 December 2024), para. 174.
103 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 224.

potential impact that the draft legislation may have on the human rights of individuals or groups, particularly minority groups, or historically marginalized or under-represented groups, which should also include looking at their potential impact on people with overlapping marginalized identities.

100. When a draft law may impact stakeholders from certain disadvantaged, marginalized or otherwise under-represented groups, it is important to offer avenues for them to provide their own perspective.[104] Wide-ranging, pro-active outreach measures by the Parliament should help to identify and include all interested and relevant counterparts, including organizations representing historically marginalized or under-represented groups. When selecting means of consultation, the special situation of marginalized or under-represented groups should be taken into consideration[105] and consultation strategies need to adapt their timing and methods of consultation accordingly. In particular, and as appropriate, reasonable accommodation needs to be provided to ensure that consultations are accessible to persons with disabilities, including by considering accommodative measures – such as communication of information in adjusted formats, easy-to-read language, physical access to events and venues for consultations, etc.[106] (see also *ODIHR Preliminary Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representation Functions of the Parliament)).*

RECOMMENDATION F.

1. To explicitly mandate the Parliamentary Committee for Human Rights and Inter-Ethnic Relations or a separate dedicated gender equality parliamentary body/mechanism to consider all draft laws' compliance with national and international gender quality standards and commitments before their consideration in the sitting of the Parliament.
2. To supplement Article 92 (2) of the Draft Code to require the report of the standing committee for the first reading to comprise a gender impact assessment.
3. To consider introducing gender balance and diversity considerations during the process of appointing the chairpersons/co-chairpersons, deputy chairpersons of the committees, while also to consider introducing minimal representation rates for female and male MPs in all parliamentary working bodies and delegations in general.
4. To envisage mechanisms to ensure that when draft laws may impact stakeholders from certain disadvantaged, marginalized or otherwise under-represented groups, wide-ranging, pro-active outreach measures are undertaken by the Parliament to identify and meaningfully consult all interested and relevant counterparts, including organizations representing historically marginalized or under-represented groups, while ensuring that means of consultation and all relevant accompanying documents are accessible.

[END OF TEXT]

104 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 231.

105 *Ibid.* para. 231. See also *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (2015) prepared by civil society experts with the support of the OSCE Office for Democratic Institutions and Human Rights, para. 19, with reference to the World-wide Web Consortium's guidelines on web content accessibility (1999), now updated here: <Home | Web Accessibility Initiative (WAI) | W3C>.

106 *Ibid.* para. 231. See also OSCE/ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), pp. 87-88.