Warsaw, 19 May 2025
Opinion-Nr.: CONST-MDA/522/2025 [TN/TO]

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)

REPUBLIC OF MOLDOVA

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

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Constitutional revision provisions, along with statutory rules detailing and operationalizing them, are a special category of norms. They outline the process for amending constitutions, while ensuring respect for principles of rule of law and human rights and maintaining continuity and effectiveness in governance. Since amendment procedures must be considered in light of the overall constitutional system and often reflect historical experiences in dealing with constitution making or modification, it is challenging to define universally applicable norms and standards for constitutional revision. However, there are several soft law principles and key considerations, as well as "good practices" that may guide their design. Constitutional amendment procedures should balance the need to preserve constitutional stability, predictability and protection, while allowing over time to adjust to important political, economic and social transformations. Constitutional reforms should be grounded in broad consensus, garnering support across the political spectrum. Constitutional revision procedures should be transparent, accessible and inclusive, allow sufficient time for institutional and public debate, which are important to ensure legitimacy and credibility of the amendment process.

Chapter IV of the Draft Code on the Organization and Functioning of Parliament of Moldova submitted for review further elaborates, supplements, and operationalizes the constitutional revision procedure set out in Articles 141 to 143 of the Constitution of Moldova.

Given the importance of constitutional revision rules, embedding such provisions in an organic law through the Draft Code is commendable, insofar as these provisions are confined to specifying and operationalizing the constitutional revision procedure laid out in the Constitution. In addition, many features of the constitutional revision procedure foreseen in the Draft Code are welcome as they contribute to striking a balance between flexibility and constitutional stability, while also aiming for political consensus following thorough and comprehensive debate during the constitutional revision process. This is notable in provisions governing the interval between the initiative and the first reading, other timing requirements, the necessity of multiple readings, special voting thresholds, and additional procedural safeguards for revising specific constitutional provisions.

At the same time, several provisions may raise some concerns and could be further improved or clarified. Firstly, while the current Constitution envisages a referendum for amendments concerning the sovereignty, independence, unity and permanent neutrality of the state, the Draft Code introduces a possibility of a direct constitutional referendum on any subject matter, thereby providing an alternative route for constitutional revision initiatives alongside the traditional parliamentary process. In line with the principles of constitutional supremacy and the rule of law, any new route to constitutional revision should be explicitly provided in the Constitution rather than in organic statutes. Acknowledging that constitutional amendments may not be envisaged at the moment, reflecting the Constitutional Court's decisions, which have constitutional status, into ordinary legislation may be considered acceptable as far as legislative changes strictly follow the Constitutional Court's decisions. However, in the long run, reflecting such changes in the Constitution would be advisable. The Draft Code may also consider formally referencing the caselaw of the Constitutional Court when defining the constitutional revision procedure.

Secondly, the requirement for the Constitutional Court to prepare an advisory opinion on draft constitutional laws before their submission to parliament, although required by Article 141(2) of the Constitution, would benefit from further clarification with respect to the scope and the effects of the advisory opinion. Although it is relatively rare for constitutional courts to review the substantive constitutionality of the proposed amendments, their role may be particularly important in verifying constitutional amendment procedure is strictly followed, thus ensuring that the requirements of the constitution are fully respected. In addition, several provisions of

the Draft Code lack clarity that could lead to conflicting interpretations and controversies in their implementation. In addition, Chapter IV could be enhanced to promote a more transparent, inclusive and participatory constitutional revisions process.

More specifically, ODIHR makes the following recommendations to improve the Draft Code in line with international standards and OSCE commitments:

A. Regarding the involvement of the Constitutional Court:

1. To specify the legal impact of the negative opinion of the Constitutional Court, as well as clarify procedures for resubmitting a draft constitutional law in case of a negative opinion of the Constitutional Court before its submission to parliament, in line with the caselaw of the Constitutional Court. [para. 47]
2. To ensure that the Constitutional Court may issue a disaggregated opinion on the constitutionality of each provision of a draft constitutional law – in the Law on Constitutional Court or other applicable legislation, while defining the grounds for such reviews and ensuring consistency across the relevant legislation. [para. 48]

B. To revise Article 127.3 of the Draft Code by:

1. Including a specific time limit for the Speaker of Parliament to issue the resolution introducing the draft constitutional law into the legislative procedure; [para. 55]
2. Either listing the "legal requirements" that a draft constitutional law must meet or providing clear cross-references to their sources; [para. 56]
3. Specifying the timeline for rectifying any non-compliance with the legal requirements and resubmitting the draft constitutional law to parliament, instead of an ambiguous reference to Article 70 of the Draft Code. [para. 57]

C. To prescribe a specific timeline for distributing the draft constitutional law to all parliamentary factions, the Directorate General for Legal Affairs and the Government, while clarifying that the endorsement by the Government is not a requirement for the parliamentary process to advance and that a governmental decision to oppose a draft constitutional law shall not preclude its debate and consideration in parliament. [paras. 59-60]

D. Regarding the examination of the draft constitutional law by the committee on the merits of the case:

1. To consider introducing additional criteria beyond proportional partisan representation for the membership of the committee, including in terms of gender balance, to ensure greater inclusivity, and establish participatory mechanisms, such as mandatory public hearings on the draft constitutional law, ensuring that public consultation mechanisms are inclusive, and/or the publication of the draft constitutional law for public inputs with timely, meaningful and qualitative feedback mechanism; [paras. 63-65]
2. To define the majority required for the committee to adopt amendments to the draft constitutional law. [para. 66]

E. Regarding the suspensive veto of the President of the Republic over constitutional laws:

1. To clarify which procedure the Parliament should follow when considering the President's objections to a constitutional law; [para. 87]
2. To explicitly cross-reference Article 115.2 in Article 134.2 of the Draft Code, in order to clarify that a two-thirds majority of all MPs is required for adopting a constitutional law following re-examination; [para. 88]
3. To specify if promulgation shall become obligatory once a constitutional law has been approved by referendum according to Article 136 of the Draft Code, while also clarifying whether a similar constitutional revision proposal could be resubmitted

through the parliamentary process of constitutional revision if it previously failed to gain support during the consultative referendum, and under which conditions and modalities. [para. 89]

F. To supplement Article 136 of the Draft Code:

1. To specify the majority required for the Parliament to approve or reject a proposal to revise the Constitution via constitutional referendum; [para. 92]
2. To clarify what steps the Parliament should follow to address the substance of the proposed constitutional revision, if it rejects the referendum proposal but opts to resolve the issues "through parliamentary means". [para. 94]

These and additional recommendations are included throughout the text of this Opinion, highlighted in bold.

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 human dimension commitments and provides concrete recommendations for improvement.

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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 the Republic 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 its 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 prepare several legal opinions on the compliance of different aspects of the Draft Code with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above-mentioned request. ODIHR conducted this assessment within its general mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers the Chapter IV – Constitutional Revision Procedure (i.e., Articles 125 to 136) of the Draft Code submitted for review, which further elaborate, supplement, and operationalize the constitutional amendment procedure set out in Articles 141 to 143 of the Constitution of Moldova.[2] Therefore, this Opinion also references relevant provisions of the Constitution, where appropriate. The scope of this Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating constitutional revision in Moldova.
5. The Opinion raises key issues and provides indications of areas of concern. In the interests of brevity, the Opinion focuses more on those provisions that require improvements rather 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 participating States and beyond in this field. When referring to comparative good practices, ODIHR does not advocate for any specific model; any country example should be assessed with caution since it cannot necessarily be replicated in another country and should always be considered in light of the broader national

1 See in particular OSCE, *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, MC.DOC/2/12, Dublin, 7 December 2012; see also *OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area* (2008), point 4, where the Ministerial Council "*[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention […]*".

2 *Constitution of the Republic of Moldova*, Title VI, Articles 141 – 143.

institutional and legal framework, as well as the country's legal system, social context and political culture.

6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality* and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.[3]

7. The Opinion is based on an unofficial English translation of the Draft Code, which is attached to this document as an annex. Errors from translation may result. Should the Opinion be translated into another language, the English version shall prevail in case of discrepancies.

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

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Standards, OSCE Human Dimension Commitments, and Key Considerations

9. In democratic societies, a constitution establishes the fundamental principles and rules of state governance, defining the formation, structure, functions, and powers of state institutions, along with their limitations. It also recognizes, defines, and safeguards individual rights and freedoms, serving as the overarching framework for governance within a given jurisdiction.[4]

10. Provisions, regulating constitutional revisions, should primarily be contained in the constitution itself. Constitutional norms along with statutory rules that detail and operationalize them are a special category of norms, as they outline the process for amending these fundamental rules while maintaining continuity in governance.[5]

11. Experience has demonstrated that constitutions may need to be adjusted over time for a variety of reasons, including adapting provisions that have proved to be inadequate or unworkable, responding to political, economic and social transformations or evolving public demands, or strengthening the resilience of the constitutional framework against potential backsliding attempts, among others.[6] Nearly all extant constitutions contain constitutional amendment provisions, regulating the conditions and procedures for formal amendments.[7]

3 See the *UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, adopted by General Assembly resolution 34/180 on 18 December 1979, acceded to by the Republic of Moldova on 1 July 1994; and the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

4 See e.g., International IDEA, *What is a Constitution? Principles and Concepts*, Constitution Building Primer 1, Bulmer, E. 2017.

5 As stated by the Venice Commission, "*the question of constitutional amendment lies at the heart of constitutional theory and practice*"; see Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 5.

6 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, paras. 5 and 107; see also International IDEA, *Constitutional Amendment Procedure, Constitution-Building Primer* 10, Böckenförde, M., 2014; International IDEA, *Designing Resistance: Democratic Institutions and the Threat of Backsliding*, Bisarya .S, Rodgers, M., 27 October 2023.

7 According to the *Constitute Project database*, 98 per cent of constitutions currently in force contain a constitutional amendment procedure.

12. From a comparative perspective, amendment norms are a peculiar category that is amongst the most variable between constitutions. There are multiple design options for formulating an appropriate constitutional revision procedure. However, since amendment procedures must be considered in light of the overall constitutional system and often reflects historical experiences in dealing with previous constitutions, it is challenging to identify universally applicable standards and 'good practices', there is no single 'best model'.[8] Similarly, given the sovereign and foundational nature of a country's constitution, international human rights law does not prescribe specific standards for constitutional amendment procedures.

13. International human rights instruments do not establish binding legal standards for the design of constitutional amendment provisions. International law simply sets forth minimum obligations for participation in constitutional reform processes. The right to participate in constitutional reforms stems from the right of self-determination enshrined in Article 1(1) of the ICCPR, which includes the collective right to choose the form of the constitution and government, and from Article 25 of the ICCPR, which requires that "*every citizen shall have the right and the opportunity (…) to take part in the conduct of public affairs, directly or through freely chosen representatives*".[9] Similarly, applicable regional human rights instruments do not provide binding standards for designing constitutional amendment procedures. The only hard law standard at the regional level comes from outside the OSCE region. The African Charter on Democracy, Elections and Governance (ACDEG) requires States Parties to ensure that "*the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum*".[10]

14. A number of soft law international and regional documents provide further guidance that may inform the design of constitutional revision provisions to ensure the effectiveness and legitimacy of the amendment process and revised constitution, particularly the UN Secretary-General's 2020 Guidance Note on UN assistance to constitutional reform processes, the reports and opinions of the Venice Commission of the Council of Europe, and the International IDEA's Primer on Constitutional Amendment Procedures. [11]

15. On this basis, as a matter of principle, the provisions governing the constitutional revision procedure should balance the need to preserve constitutional stability, predictability and protection while being flexible enough to adjust to political, economic and social transformations.[12] As underlined by the Venice Commission, *"[t]he point of balance between rigidity and flexibility may be different from state to state, depending on the political and social context, the constitutional culture, the age, detail and characteristics of the constitution, and a number of other factors*".[13]

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8 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 7.

9 *UN International Covenant on Civil and Political Rights (ICCPR)*, adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966, Articles 1 and 25. The Republic of Moldova acceded to the ICCPR on 26 January 1993.

10 African Union, *African Charter on Democracy, Elections and Governance*, 30 January 2007, Article 10.2.

11 See in particular, UN Secretary General, *'Guidance Note on United Nations Constitutional Assistance'*, September 2020, which advocates for inclusive, participatory and transparent constitutional reform processes; Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, particularly paras. 8, 12, 60, 88, 104, 105, 106 and 107; and Venice Commission, *Updated Compilation of Venice Commission Opinions and Reports Concerning Constitutional Provisions for Amending the Constitution*, CDL-PI(2023)012, 31 May 2023, pp. 20-24. See also International IDEA, *Constitution Building Publications*, particularly *Constitutional Amendment Procedure, Constitution-Building Primer* 10, Böckenförde, M., 2014; *Practical Considerations for Public Participation in Constitution Building*, Policy Paper no. 24, Houlihan, E., and Bisarya, S., 2021; *Designing Resistance: Democratic Institutions and the Threat of Backsliding*, Bisarya .S, Rodgers, M., 27 October 2023; *Constitution Assessment for Women's Equality*, 2016.

12 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 239, where the Venice Commission underlines that "*the challenge is to balance these requirements in a way which allows necessary reforms to be passed without undermining the constitutional stability, predictability and protection*".

13 *Ibid.* para. 107.

16. In addition, several other principles and considerations may inform the design of constitutional amendment rules and procedures, particularly the principle of consensus. Constitutional reforms should be grounded in broad consensus,[14] garnering support across the political spectrum - extending well beyond the incumbent ruling party or coalition. Constitutional amendment procedures should also be inclusive,[15] participatory[16] and transparent.[17] Constitutional revision provisions should be drafted in a clear manner and establish structured and balanced procedures allowing sufficient time for institutional and public debate to ensure legitimacy and effectiveness of the amendment process. The process should provide opportunities for civil society organizations, academia, the media and the general public to engage in discussion and provide inputs. Moreover, the principle of transparency implies that the amendment proposals be accessible to the public, and that the *rationale* for any proposed amendments be clearly explained.[18] These principles can only be effectively upheld in an environment of competitive democratic politics, where state authorities fulfil their obligations to ensure the unhindered exercise of the freedoms of expression, of the media, and of peaceful assembly and association.[19]

17. Since the provisions of the Draft Code under review also elaborate regulations on constitutional referendums, the Opinion will also make reference to international standards and good practices in this field.[20]

2. BACKGROUND AND CONSTITUTIONAL FRAMEWORK

18. When assessing the procedure for amending a constitutional text within a given jurisdiction, it is essential to analyse not only the constitutional and statutory rules regulating the amendment procedure but also to consider them within the broader constitutional system. In particular, the overall systems of balance of powers between the different branches of government, the structure of the party system, and the electoral system should be taken into account.[21] Amendment procedures also often

14 Venice Commission, *Chile – Opinion on the Drafting and Adoption of a New Constitution*, CDL-AD(2022)004, 18 March 2022, paras. 19 and 23, where the Commission underlined that constitutional reforms should be based on "*the widest consensus possible within society*". See also Venice Commission, *Final Opinion on Constitutional Reform in the Republic of Armenia*, CDL-AD(2005)025, 25 October 2005, para. 41.

15 The principle of inclusivity requires that key political and social groups, reflecting the diversity of society, participate directly in the constitutional negotiations.

16 Participation in constitutional reform processes may take various forms, depending on the participation mechanisms devised and the stages of the reform process, including: initiating the reform, electing representatives, submitting ideas and proposals, approving or rejecting the reform through referendum, participating and/or contributing to civic education initiatives; see e.g., International IDEA, *Practical Considerations for Public Participation in Constitution Building*, Policy Paper no. 24, Houlihan, E., and Bisarya, S., 2021.

17 Transparency requires that the process of constitutional reform be clear and known to all, including the *rationale* for initiating the reform, the rules governing its debate and adoption, the content of proposed changes and the details of the ongoing debates. Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, paras. 202-205; See also Venice Commission, *Updated Compilation of Venice Commission Opinions and Reports Concerning Constitutional Provisions for Amending the Constitution*, CDL-PI(2023)012, 31 May 2023, pp. 6 – 11.

18 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 16 January 2024, Principle 6 on Openness and Transparency of the Lawmaking Process, which states: "*Transparency means that public authorities promote the disclosure and accessibility of the data and information to foster a general understanding of the lawmaking process and make individuals aware of how they may get involved in the process. Draft laws, all information about draft laws (including updated versions) and the lawmaking procedures should be shared proactively and published, both online and in hard copy and, as far as non-governmental stakeholders and the public are concerned, in a simple and comprehensible manner.*"

19 Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 205.

20 In particular, the Opinion will refer to: Venice Commission, *Revised Code of Good Practice on Referendums*, CDL-AD(2022)015, 20 June 2022; *Compilation of Venice Commission Opinions and Reports Concerning Referendums*, CDL-PI(2022)027, 13 May 2022; and *Code of Good Practice in Electoral Matters*, CDL-AD(2002)23, 30 October 2002, together with the *Interpretative declaration on digital technologies and artificial intelligence*, CDL-AD(2024)044, 10 December 2024.

21 For example, the stringency of a qualified majority vote requirement in parliament depends heavily on the electoral system and the number of significant political parties. A two-thirds majority requirement may be more difficult to achieve in countries with proportional representation systems and a low electoral threshold - which typically give a large number of parties representation in parliament - than in countries with single-member constituencies and first-past-the-post, which tends to result in one party or a coalition securing a majority in parliament; see Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19

reflect historical experiences in dealing with previous constitutions and past experiences with constitutional amendments and very much depend on the political and social context, the constitutional culture, the age, detail and characteristics of the constitution, among others.[22]

19. Articles 141 to 143 of the Constitution of Moldova define the main parameters of the constitutional revision procedure. These provisions prescribe substantive, procedural and temporal constraints on constitutional amendments. The procedure for constitutional amendment can be initiated by 200,000 voters,[23] one third of the members of the unicameral legislature, or the government (Article 141.1). An advisory opinion of the Constitutional Court, adopted by a vote of at least four of the six judges is necessary for the submission of the constitutional amendment proposal to the Parliament (Article 141.2). Once in parliament, the constitutional amendment bill requires a two-thirds majority vote of members of parliament (MPs) to be adopted (Article 143.1). In the case of amendments that affect the sovereignty, independence, and unity of the state, as well as its 'permanent neutrality', a special amendment procedure is outlined, namely a national referendum passed by a majority of registered voters (Article 142.1). The wording of this constitutional provision leaves it unclear whether a prior vote of the legislature - and the applicable threshold - is required before holding such a mandatory constitutional referendum. The Constitution also contains a non-regression clause which imposes a general prohibition on amendments that infringe fundamental rights and their guarantees (Article 142.2). As temporal constraints, proposals for constitutional amendments may be passed no earlier than six months after their initiation and no later than one year after initiation (Article 143.1). Additionally, the Constitution prohibits revisions under a state of national emergency, martial law or war (Article 142.3).

20. Chapter IV – Constitutional Revision Procedure (i.e., Articles 125 to 136) of the Draft Code submitted for review further elaborates, supplements, and operationalizes the constitutional amendment procedure set out in Articles 141 to 143 of the Constitution of Moldova.

21. Since its entry into force on 27 August 1994, the Constitution of Moldova has been amended 14 times.[24] These amendments have addressed multiple issues, including fundamental rights and freedoms and their constitutional guarantees (2001);[25] citizenship (2002);[26] the status of MPs (2002);[27] judicial appointments and tenure, and the composition of the Superior Council of the Magistracy (2002).[28] Other amendments introduced asymmetric decentralised arrangements by granting special autonomy status to Gagauzia (2003),[29] modified the official language (2023)[30] and most recently, enshrined the "EU integration as a strategic objective" of the country (2024).

22. One of the most consequential constitutional revisions was the change of political regime adopted by the Parliament on 5 July 2000, which among others, replaced the

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January 2010, para. 96; and International IDEA, *Constitutional Amendment Procedure, Constitution-Building Primer* 10, Böckenförde, M., 2014, p. 21.

22 *Ibid.* para. 107.

23 Article 141.1.a of the Constitution provides that revision of the constitution can be initiated by 200,000 citizens entitled to vote, provided that at least 20,000 signatures are collected from at least half of the territorial-administrative units of the second level. However, there is a discrepancy between the minimum number of signatures required and the resulting figure when taking into account their required territorial spread. Given that Moldova has currently 35 territorial-administrative units of the second level, this would require a minimum of 20,000 signatures from at least 18 units, amounting to a total of at least 360,000 signatures. See para. 46 of the Opinion below.

24 See *Constitution of the Republic of Moldova* (as amended 2023).

25 See Law n° 351-XV of 12 July 2001, Republic of Moldova.

26 See Law n° 1469-XV of 21 November 2002, Republic of Moldova.

27 See Law n°1470-XV of 21 November 2002, Republic of Moldova.

28 See Law n°1471-XV of 21 November 2002, Republic of Moldova.

29 See Law n°344-XV of 25 July 2003, Republic of Moldova.

30 See Law n° 52- of 16 March 2023, Republic of Moldova.

direct election of the President by popular vote with an indirect election by a three-fifths majority vote of all MPs.[31]

23. Following this constitutional reform, the Parliament failed to elect a president on several occasions, due to the failure to reach the three-fifths majority threshold, which led to government instability and a prolonged constitutional crisis.[32] The crisis was ultimately resolved in 2016 after a decision by the Constitutional Court which declared the provisions of the 2000 amendments related to the indirect election of the President unconstitutional both on procedural and substantive grounds.[33] The decision of the Constitutional Court thus reinstated the direct election of the President while retaining the powers of the President resulting from the 2000 constitutional reform. As a result, Moldova operates as a parliamentary republic, though it retains some characteristics of a semi-presidential regime due to some of the legislative and executive functions of the President.

24. Regarding the electoral system, except for a brief period when a mixed electoral system was used for the 2019 parliamentary elections, members of the unicameral parliament have been elected directly for a four-years term through a proportional representation system.[34] This electoral system, combined with the requirement of a two-thirds majority vote of all MPs for constitutional amendment, has so far mitigated the risk of unilateral constitutional amendments by a ruling majority.

3. Legislative Technique and the Decision to Resort to an Organic Law

25. The Draft Code under review aims to replace the existing Rules of Procedure of the Parliament (Article 269.2 of the Draft Code). The extant Rules of Procedure include a dedicated chapter elaborating the constitutional amendment procedures set out in Articles 141 to 143 of the Constitution.[35] The Rules of Procedure of the Parliament

31 See Law No. 1115-XIV of 5 July 2000, Republic of Moldova. The initial version of the Constitution of Moldova, adopted on 28 July 1994, established a premier-presidential form of semi-presidential regime (whereby only the legislature can dismiss the government as opposed to *president-parliamentary* regimes where both the legislature and the president can dismiss the government without cause). Executive powers were divided between a directly elected president holding a fixed 4-year term and a prime minister and his/her government accountable to and removable by the unicameral legislature. Compared to other semi-presidential regimes, the president was granted limited prerogatives and lacked the constitutional instruments to exert direct control over the parliamentary majority; successive Presidents tried to expand their powers, but the legislature opposed the transfer of power from the legislature or government to the presidency (see International IDEA, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, Discussion Paper 5/2023, Bisarya, S., , p. 10). On 23 May 1999, President Lucinschi held a referendum to gauge public support for transitioning to a presidential system, which was approved by 64 per cent of voters, but the Constitutional Court ruled that constitutional referendum initiated by the president are only consultative (see Constitutional Court of Moldova, *Judgement regarding the interpretation of Articles 75, 141 paragraph (2) and 143 from the Constitution*, 3 November 1999). In response, the Parliament initiated its own constitutional reform to reduce the prerogatives of the President, which led to the adoption, on 5 July 2000, of the Law No. 1115-XIV which shifted the political regime from a premier-presidential regime to a parliamentary regime. This reform brought several significant changes: (1) it replaced the direct election of the president by popular vote with an indirect election by a three-fifths majority vote of all members of parliament; (2) removal of several president's responsibilities, including the power of the president to chair the council of ministers, to propose constitutional amendment and to appoint two members of the Constitutional Court; (3) introduction of presidential term limits (Article 80.4). However, the president retained important responsibilities uncommon for non-executive heads of state in parliamentary regimes, including the power to propose ordinary bills (Article 73), call a consultative referendum (Article 88.f), as well as broad appointment powers (Article 88.d). Concurrently, the amendment strengthened the powers of the government vis-a-vis parliament by introducing a new tacit voting procedure (Article 106.a), a broad mechanism for parliament to delegate law-making to the government with minimal constraints (Article 106.b) and a new requirement for government approval for any legislative changes impacting public revenues or expenditures (Article 131.4).

32 This deadlock prompted the dissolution of the Parliament and the holding of early elections in 2000, 2009 and 2010 (see International IDEA Constitutionnet, *the Hyper Judicialization of Politics in Moldova: Opportunities for Constitutional Reform*, Pozsár-Szentmiklósy. Z., 1 July 2019); all attempts to amend the Constitution to lower the vote voting threshold required to elect a president failed (see International IDEA, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, Discussion Paper 5/2023, Bisarya, S., p. 19).

33 Constitutional Court of the Republic of Moldova, *Judgement n°7 of 04 March 2016 on constitutional review of certain provisions of the Law n° 1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova*, 04 March 2016.

34 See OSCE/ODIHR, *Moldova Early Parliamentary Elections 2021: OSCE/ODIHR Election Observation Mission Final Report*, 22 December 2021, p. 5 and 6.

35 See Republic of Moldova, *Parliament's Rules of Procedure*, Law 797/1996, adopted 02 April 1996, Chapter 3.

were adopted through an ordinary law, and thus hold the status of an ordinary statute within Moldova's hierarchy of norms. By contrast, the Draft Code has been submitted to the Parliament as a draft organic law.

26. The main purpose of organic laws is to specify, supplement and operationalize specific provisions of the Constitution, particularly those related to the structure and functioning of state institutions, including the organization and functioning of the Parliament,[36] and key government processes.[37] Organic laws are subordinate to the Constitution, and must therefore comply with constitutional provisions, but take precedence over ordinary statutes.[38] When the Constitution requires the adoption of organic laws for certain subject matters,[39] these laws may also introduce additional detailed rules not explicitly outlined in the Constitution itself, as long as they do not contravene, and remain within the material scope determined by, the Constitution.

27. The Constitution does not require that constitutional provisions regulating constitutional revisions (i.e., Articles 141-143 of the Constitution) be further regulated by organic law. However, it empowers the legislature to regulate, through organic laws, subject matters not explicitly designated as part of the organic legislative domain, "where the Parliament recommends the passing of organic laws" (Article 72.3.r of the Constitution). As mentioned above, the operational aspects of constitutional revisions are currently addressed in the existing Rules of Procedure of the Parliament, which hold the status of an ordinary statute. **Given the importance of constitutional amendment rules** (see paras. 10-11 above)**, it may be preferable to introduce these rules in the Constitution. However, the legislature's proposal to elevate the rules operationalizing the amendment procedure to the level of an organic statute through the Draft Code appears, in overall, to follow the above mentioned Article 72.3 of the Constitution and may thus be acceptable, insofar as the contemplated provisions are confined to specifying and operationalizing the constitutional amendment procedure laid out in the Constitution.**

28. However, the Draft Code goes beyond merely detailing and operationalizing constitutional provisions regulating constitutional revisions. Article 136 of the Draft Code establishes an additional route for constitutional amendment, namely a constitutional referendum beyond the limited cases where mandatory referendum is required for amending specific provisions under Article 142.1 of the Constitution.[40] Such a proposed constitutional referendum could be requested by the government, one third of MPs, or 200,000 citizens (for a detailed analysis of the content of Article 136 of the Draft Code and corresponding recommendations, see Sub-Section 8 below).[41] This option is not mentioned in the Constitution, neither under provisions for constitutional revisions (i.e., Articles 141-143 of the Constitution) nor under Article 75, which explicitly addresses referendum.

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36 See Article 72.3.c of the *Constitution of the Republic of Moldova.*

37 Article 72.c of the Constitution lists 15 subject matters that must be regulated by organic statutes, including the organization and functioning of the Parliament (Article 72.3.c). Furthermore, the Constitution includes 19 other mentions of the necessity of adopting organic laws to establish or further regulate specific institutions, fundamental rights and policy matters; see *Constitution of the Republic of Moldova* (as amended 2023), Articles 3.2, 12.4, 13.4, 17.1, 36.3, 41.3, 61.2, 63.1, 70.2, 78.6, 80.3, 97, 99.2, 108.2, 110.2, 110.3, 115.4, 123.2, and 133.5.

38 In particular, this specific status is reflected in the conditions for their enactment, which are more stringent than for ordinary laws, since they require an absolute majority vote of all members of parliament after at least two readings to be adopted (Article 74.1 of the Constitution); organic laws cannot be subject to legislative delegation to the government (Article 106.b.1 of the Constitution), and they cannot be adopted, amended or abrogated during the period in which the mandate of the outgoing parliament is extended until the newly elected legislature starts its tenure (Article 63.3 of the Constitution).

39 See footnote 46.

40 Including in the case of constitutional amendments that affect the sovereignty, independence, and unity of the state, as well as its 'permanent neutrality'.

41 See footnote 23 above, and para. 46 of the Opinion below.

29. Article 136 of the Draft Code in fact seeks to reflect in organic legislation the constitutional referendum mechanism that has existed in practice in Moldova since 2010, and that has been recently codified in the Electoral Code – another organic law – in 2022.[42] Until 2010, only the parliamentary route to constitutional revision outlined in Article 143.1 of the Constitution was constitutionally possible. However, amid a prolonged constitutional crisis (see para. 23 above), the Constitutional Court of Moldova, interpreting the constitutional provisions on national sovereignty and referendum, declared constitutional an initiative to amend the Constitution via a direct constitutional referendum.[43] The Court has since reiterated this position,[44] most recently in 2024.[45]

30. Hence, while the current Constitution envisages a referendum for amendments concerning the sovereignty, independence, unity and permanent neutrality of the state, the Draft Code introduces a possibility of a direct constitutional referendum on any subject matter, thereby codifying a new alternative route for constitutional revision initiatives alongside the traditional parliamentary process. While this reflects the Constitutional Court's recent case-law validating such a mechanism, in line with the principles of constitutional supremacy and the rule of law, any new route to constitutional revision should be explicitly provided in the constitution rather than in organic statutes.[46] Substantive constitutional changes should follow the prescribed constitutional amendment procedures rather than through actions or interpretations of state institutions. If the interpretation of constitutional amendment provisions changes to such an extent as to create a new route for amending the constitution, this should preferably be put to the test of codification into the constitution through prescribed amendment procedure.[47] Hence, acknowledging that constitutional amendments may not be envisaged at the moment, reflecting the Constitutional Court's decisions, which have constitutional status,[48] into ordinary legislation may be considered acceptable as far as legislative changes strictly follow the Constitutional Court's decisions. However, in the long run, reflecting such changes in the Constitution would be advisable. In any case, it is also important to ensure that all provisions of the Electoral Code governing the organization of referenda for revising the Constitution are consistent with the provisions of the Draft Code. The Draft Code may also consider formally referencing the caselaw of the Constitutional Court when defining the constitutional revision procedure.

42 See *Electoral Code of Moldova*, 8 December 2022, Chapter XIV.

43 Constitutional Court of Moldova, *Aviz Asupra Inițiativei De Revizuire A Art.78 Din Constituția Republicii Moldova Prin Referendum Constituțional Nr. 3 Din 06.07.2010*, 6 July 2010, where the Court interpreted the constitutional provisions on national sovereignty and referendum (Articles 2 and 75 of the Constitution) as entailing the possibility of holding a binding constitutional referendum, upon proposal from the government, one third of MPs or by a popular request supported by 200,000 voters, without requiring prior or subsequent approval by a two-thirds constitutional majority of all MPs. In its jurisprudence the Constitutional Court of Moldova has stated that its decisions have constitutional status. See for example, Constitutional Court of Moldova, *Hotărârea nr. 8 din 11 martie 2024 privind controlul constituționalității Legii nr. 52 din 16 martie 2023 pentru implementarea considerentelor unor hotărâri ale Curții Constituționale (sesizarea nr. 94a/2023)*, 11 march 2024, para 24 where it stated that "*the Court's interpretive decisions are texts of constitutional value and an integral part of the Constitution*."

44 Constitutional Court of Moldova, *Aviz Asupra Inițiativei De Revizuire a articolelor 78, 85, 89, 91 și 135 din Constituția Republicii Moldova prin referendum republican* (Sesizarea nr. 48c/2014), 22 September 2014, paras. 27 and 28.

45 Constitutional Court of Moldova, *Aviz privind proiectul de lege pentru modificarea Constituției prin referendum (aderarea la Uniunea Europeană)* (sesizarea nr. 84c/2024), 16 April 2024, paras. 9 and 10.

46 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 185, where the Venice Commission underlined that "*the use of referendums should comply with the national constitutional system as a whole. As a main rule, a referendum on constitutional amendment should not be held unless the constitution explicitly provides for this"*; see also Venice Commission, *Guidelines on Constitutional Referendum at National Level*, CDL-INF(2001)10, 11 July 2001, guideline B.3.

47 *Ibid*. para. 117.

48 In its jurisprudence the Constitutional Court of Moldova has stated that its decisions have constitutional status. See for example, Constitutional Court of Moldova, *Hotărârea nr. 8 din 11 martie 2024 privind controlul constituționalității Legii nr. 52 din 16 martie 2023 pentru implementarea considerentelor unor hotărâri ale Curții Constituționale (sesizarea nr. 94a/2023)*, 11 march 2024, para 24 where it stated that "*the Court's interpretive decisions are texts of constitutional value and an integral part of the Constitution*."

4. LIMITS ON CONSTITUTIONAL REVISION

31. Article 126 of the Draft Code reiterates the limits on constitutional revision enshrined in Articles 63.3 and 142 of the Constitution,[49] and provides some additional details. The first noticeable difference between the drafting of Article 126 of the Draft Code and Article 142 of the Constitution is the change of order between the paragraphs of each respective article. Article 142 of the Constitution starts with additional requirements for amending specific constitutional provisions (142.1), then provides an eternity clause (142.2), and ends with circumstantial restrictions to constitutional revision (142.3). By contrast, Article 126 of the Draft Code begins with circumstantial restrictions (126.1), then provides additional requirements for amending specific constitutional provisions (126.2) and concludes with an immutable clause (126.3). **Although this difference of order does not raise any legal concerns, it would be advisable to align the ordering of the paragraphs of the Draft Code with the one of the Constitution for consistency and readability.**

4.1. Circumstantial Limits on Constitutional Revision

32. Article 126.1 of the Draft Code reiterates the circumstantial restrictions on constitutional revision defined in Articles 63.3 and 142.3 of the Constitution, and consolidate them into one article. This article of the Draft Code prohibits constitutional amendments "*during a state of emergency, state of siege and state of war, or during the extension of the Parliament's mandate, until the new parliament is legally constituted*".

33. Many constitutions prohibit amendments during exceptional times of crisis.[50] There are multiple reasons why constitutions prevent their own amendment during times of crisis. Emergency unamendability helps prevent hasty constitutional changes driven by immediate public fears, which could undermine constitutional democracy in the long term. It also protects against incumbents exploiting crises to strengthen their powers or entrench themselves in power. In particular, such prohibition ensures that the constitutional provisions governing states of exceptions cannot be altered during a crisis to broaden emergency powers or extend emergency rule. Lastly, emergency unamendability ensures that constitutional changes are not made under duress, when civil and political rights might be restricted and opportunities for public deliberation are limited.[51]

34. Articles 16.2 and 126.1 of the Draft Code also reiterate a fourth circumstantial restriction prescribed in Article 63.3 of the Constitution, whereby no constitutional revision may occur during the period when the mandate of the outgoing legislature is extended until the newly elected legislature starts its tenure.[52] Given the central role of parliament in the constitutional revision procedure, it is important to ensure that it is sitting and properly constituted when constitutional amendments are being considered. The prohibition on amendments during the extension of the parliamentary mandate

49 See para. 19 of the present Opinion.

50 For instance, in the OSCE region, the Constitutions of Albania, Belgium, Estonia, France, Georgia, Kyrgyz Republic, Lithuania, Luxembourg, Moldova, Montenegro, Poland, Portugal, Romania, Serbia, Spain and Ukraine all prohibit constitutional revision during certain exceptional circumstances, such as states of emergency, siege, war or martial law. See also Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 54, where the Venice Commission specifically identified these states of exceptions as the most common circumstantial restrictions across various constitutional systems.

51 See International IDEA, *Emergency Powers*, Constitution-Building Primer 18, Bulmer, E., 2018, p. 31; and *Constitutional Amendment Procedures*, Constitution-Building Primer 10, Böckenförde, M.,, 2014, p. 19.

52 This rule should be considered in light of the constitutional obligation to prolong the mandate of parliament until the newly elected legislature starts its tenure. As the President of the Republic is required to summon the constitutive session of the newly elected parliament within 30 days from the election date (Article 62.2 of the Constitution), the extension of the outgoing parliament's term - and consequently the prohibition on constitutional revision - cannot exceed 30 days.

seems to aim at preventing a legislature on its way out, soon to be replaced by a newly elected one, from seeking to engage in constitutional revision. While such restriction is not found in many constitutions, it seems to aim at ensuring that constitutional amendments are considered by the legislature with the most recent electoral legitimacy and which arguably better reflects the political spectrum of the day.

4.2. Substantive Limits on Constitutional Revision

35. Article 126.3 of the Draft Code, which reiterates Article 142.2 of the Constitution, prohibits constitutional amendments that "*would result in the suppression of the fundamental rights and freedoms of citizens or of their guarantees*".[53] It is a 'non-regression' clause that aims to prevent the suppression of existing fundamental rights or their guarantees via constitutional revision.

36. Non-regression clauses are relatively common in constitutions, especially in newly democratic states, [54] although their scope may vary. The non-regression clauses in the Constitution and Draft Code of Moldova, only prohibit constitutional amendments that would "suppress" or "eliminate" fundamental rights. By contrast, some other constitutions extend the prohibition to amendments that would "diminish" or "restrict" fundamental rights.[55]

37. While it is important to enshrine and protect fundamental human rights in the Constitution, constitutional human rights provisions should also be able to adapt to structural and societal changes and respond to emerging challenges.[56] Therefore, human rights provisions may need to be expanded, supplemented by recognizing new rights, or even in some cases restricting rights granted by the Constitution, subject to strict requirements and providing that this is in compliance with international human rights obligations.[57] In addition, human rights are inherently interconnected and need to be balanced against one another, and this balance may also need to be adjusted over time. If a non-regression clause is drafted and interpreted to prohibit any amendments that restricts existing human rights, it would preclude political deliberation over potentially necessary rebalancing of competing rights. Instead, non-regression clauses should be drafted and may be interpreted to protect the core essence of rights, while allowing amendments that confirm, expand or restrict rights insofar as such amendments comply with international human rights standards. The wording of Article 142.2 of the Constitution of Moldova and Article 126.3 of the Draft Code,

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53 The original Romanian text of Article 142.2 of the Constitution and Article 126.3 of the Draft Code both provide '*Nicio revizuire nu poate fi făcută dacă are ca rezultat* ***suprimarea*** *drepturilor și libertăților fundamentale ale cetățenilor sau a garanțiilor acestora*.' (bold added). The translated version of Article 142.2 of the Constitution available on the website of the Constitutional Court of Moldova reads '*No revision shall be performed if it implies the* ***infringement*** *of fundamental rights and freedoms of citizens or their guarantees*', whereas the translated version of Article 126.3 of the Draft Code provides '*No revision may be made if it would result in the* ***suppression*** *of the fundamental rights and freedoms of citizens or of their guarantees.*'. For the purpose of this Opinion, the term 'suppression', rather than 'infringement', is used as the English translation of the term '*suprimarea'* to ensure consistency with the legal meaning of the original Romanian text.

54 For instance, in the OSCE region, rights non-regression clauses are found in the constitutions of Azerbaijan (*Constitution of Azerbaijan*, Articles 155 and 158), Bosnia and Herzegovina (*Constitution of Bosnia and Herzegovina*, Article X.2), Moldova (*Constitution of Moldova*, Article 142.2), Portugal (*Constitution of Portugal*, Article 288.d), Romania (*Constitution of Romania*, Article 152.2), and Ukraine (*Constitution of Ukraine*, Article 157). Some other constitutions, such as those of Germany (*Basic Law of the Federal Republic of Germany*, Article 79.3) and Greece (*Constitution of Greece*, Article 110.1) designate only certain constitutional rights as unamendable.

55 See for example, *Constitution of Bosnia and Herzegovina*, Article X.2; and *Constitution of Ukraine*, Article 157.

56 See e.g., Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, paras. 148-149, where the Venice Commission noted that "*in general, fundamental rights should be continuously debated and developed*", while explaining that such continuous debate "*in no way contradicts their entrenchment in the constitution or in international instruments*".

57 *Ibid.*, para. 177, which states: "*The Venice Commission holds that constitutional provisions on fundamental human rights should as a matter of principle be open to debate and amendment, whether in order to extend, confirm or even in some cases restrict their reach and contents. This however has to be done in a careful way, and subject to strict requirements so as not to weaken the function that such provisions have in protecting individual and minority interests against the will and whims of the majority. Furthermore, such national amendment processes have to take into account international legal obligations as well as the legitimate role of national and international courts in developing and protecting human rights.*"

which prohibits the "suppression" or "elimination" of "fundamental rights", appears to follow this balanced approach.

38. Constitutional jurisprudence can further clarify the scope of non-regression clauses. The Constitutional Court of Moldova has, on several occasions, evaluated the compliance of draft constitutional amendments with the principle of rights non-regression contained in Article 142.2 of the Constitution.[58]

39. In conclusion, the non-regression clause in Articles 142.2 of the Constitution of Moldova and 126.3 of the Draft Code, insofar as it is interpreted as entrenching a minimum standard of rights protection rather than precluding any revision of constitutional fundamental rights, is in line with the principle of balancing constitutional stability with flexibility.

5. INITIATIVE OF CONSTITUTIONAL REVISION

40. Articles 127.1 of the Draft Code provides that any initiative to revise the Constitution shall comply with the requirements of the Constitution, Law No. 100/2017 on Normative Acts, and the Draft Code. Article 141.1 of the Constitution empowers three different actors to initiate a constitutional revision, i.e., one-third of MPs,[59] the government[60] or 200,000 citizens entitled to vote, provided that at least 20,000 signatures are collected from at least half of the territorial-administrative units of the second level.[61]

41. Globally, the vast majority of constitutions grant the legislature the power to initiate constitutional amendments, although the required number or percentage of MPs varies significantly across jurisdictions.[62] Moldova's threshold of one-third of MPs[63] enables both the parliamentary majority and opposition to propose amendments while mitigating the risk of individual MPs overwhelming the parliamentary agenda with excessive amendment submissions. With respect to the government's initiative, from a comparative perspective, the executive branch often has the power to initiate the amendment procedure, whether through the government,[64] the head of state,[65] or jointly by these two institutions.[66] The exclusion of the President of the Republic reflects Moldova's transition to a parliamentary regime (see paras. 23-24 above). In many parliamentary democracies, non-executive heads of state do not have the authority to propose constitutional amendments.

42. Lastly, constitutional revision can also be initiated by citizens. Comparatively, popular initiative of constitutional revision is less frequent in constitutions, but is increasingly provided for in modern constitutions. The number or percentage of signatures required for a popular initiative for constitutional amendment varies significantly across

58 For example, the Constitutional Court declared unconstitutional a 2021 draft law seeking to amend Article 46 of the Constitution concerning the presumption of legality of asset acquisition to exclude assets acquired by public officials from this presumption because it considered that this proposed amendment amounted to the suppression of the right to private property for individuals exercising public functions; see Constitutional Court of Moldova, *Aviz la proiectul de lege pentru modificarea articolului 46 din Constituție (prezumția dobândirii licite a bunurilor de către persoanele care exercită funcții publice)* (sesizarea nr. 249c/2021), 15 March 2022, para. 38.

59 Article 141.1.b of the Constitution.

60 Article 141.1.c of the Constitution.

61 Article 141.1.a of the Constitution.

62 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 30; and International IDEA, *Constitutional Amendment Procedure, Constitution-Building Primer* 10, Böckenförde, M., 2014, pp. 12–13.

63 Such a threshold is also found, for instance, in the constitutions of Andorra, Serbia, Tajikistan, Türkiye and Ukraine.

64 E.g., Belgium, Croatia, Cyprus, Liechtenstein, Moldova, Montenegro, Netherlands, Serbia, Slovenia, North Macedonia, Russia and Switzerland. See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 32.

65 E.g., Armenia, Azerbaijan, Bulgaria, Croatia, Cyprus, Georgia, Kyrgyzstan, North Macedonia, Russia, and Ukraine. See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 32.

66 E.g., France and Romania.

jurisdictions.[67] In Moldova, the dual quorum requiring a total number of signatures and a geographical spread of support, helps ensure that the initiative is not only driven by a certain regional group. A similar dual quorum is found in the Constitution of Romania.[68] As with all constitutional amendment rules, these requirements are to be read in light of the need to find a balance between constitutional rigidity and flexibility.[69] In essence, such rules should ensure that amendments can be initiated only when supported by a sufficiently broad portion of society but not make it impossible to implement in practice.

43. The Venice Commission has also insisted on the need for clarity and transparency in how constitutional amendment rules are both drafted and applied.[70] With respect to Article 141.1.a of the Constitution of Moldova, there is a discrepancy between the minimum number of signatures required and the resulting figure when taking into account their required territorial spread. Given that Moldova has currently 35 territorial-administrative units of the second level, this would require a minimum of 20,000 signatures from at least 18 units, amounting to a total of at least 360,000 signatures.[71] **Therefore, it is recommended, in the long run, that the Constitution be amended to reconcile this discrepancy between the figures provided in the constitutional text and the actual, significantly higher number of signatures required for a popular initiative for constitutional revision.**

6. INVOLVEMENT OF THE CONSTITUTIONAL COURT

44. Article 127.2 of the Draft Code, which reflects Articles 135.1.c and 141.2 of the Constitution, requires an "opinion" of the Constitutional Court, adopted by a vote of at least four of the six judges, before a proposed draft constitutional law can be submitted to the Parliament. In addition, the Constitutional Court must issue an "opinion" on any proposed amendments to the draft constitutional law prior to its first and second readings in plenary session of parliament.[72] The Constitution and the Draft Code do not provide for a facultative or mandatory *ex ante* review of constitutional laws after their adoption by parliament but before their promulgation. However, the Constitution provides for *ex post* judicial review of laws, without explicitly referring to constitutional laws (Article 135.1.a of the Constitution).

45. The power of constitutional or apex courts with regard to judicial review of constitutional amendments differs widely across jurisdictions.[73] However, the mandatory *ex ante* judicial review of amendment proposals before their adoption by parliament is rare in comparative practice.[74] It may be argued that on the one hand, such mandatory *ex ante* judicial review may guide the constitutional amendment process[75] and prevent constitutional amendments that may be contradicting existing

67 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 33.
68 *Constitution of Romania*, Article 150.
69 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 8.
70 Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 202.
71 The Central Electoral Commission interpreted the threshold as requiring a minimum of 20,000 signatures from at least 18 units, which amounts to a total of at least 360,000 signatures. See Central Electoral Commission of Moldova, *Hotărîrea Comisiei Electorale Centrale nr.4316 din 20.11.2015 cu privire la cererea de înregistrare a grupului de inițiativă pentru desfășurarea referendumului republican constituțional*, 20 November 2015.
72 See Articles 127.8 and 131.2 of the Draft Code. Amendments approved by the Constitutional Court may be included for debate, whereas those receiving a "negative opinion" of the Court are automatically rejected and not included in the draft constitutional law submitted for plenary debate.
73 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, paras. 225-237; see also International IDEA, *The Constitutional Regulation of the Power of Courts to Review Constitutional Amendments*, in Annual Review of Constitution-Building 2021, Abebe, A..
74 Besides Moldova, this arrangement is found in the constitutions of Azerbaijan, Kyrgyzstan, Romania, and Ukraine, although with some variations.
75 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 195.

constitutional norms[76] from being promulgated and entering into force if they are adopted in violation of constitutional requirements. On the other hand, in practice, this may also unduly rigidify the process – especially where multiple court reviews of proposed constitutional revisions are required.[77] In addition, mandatory *ex ante* judicial review before submission to parliament tends to pre-empt parliamentary deliberation and risks politicizing the Constitutional Court, as it denies parliament the possibility to debate and rectify potential issues in draft constitutional laws to ensure constitutional compliance, unless *ex ante* judicial review is required after the adoption but prior to promulgation of the amendments. If the intention behind this arrangement is to ensure that constitutional revisions are adopted in compliance with the prescribed revision procedure and comply with the substantive limits set out in the Constitution, this goal could be achieved by instituting a judicial review of constitutional amendments after their adoption by parliament but before their promulgation. This approach would enable the Constitutional Court to assess the constitutionality of constitutional revisions before their promulgation and entry into force without unduly limiting parliament's power to consider constitutional revision proposals. This approach is also relatively more common in comparative practice of states allowing *ex ante* judicial review. **Therefore, it may also be useful to assess the benefits and effectiveness of the *ex ante* advisory opinion. At the same time, while recognizing that constitutional amendments may not be contemplated at the moment, in the long term, legislators may consider narrowing down the current mandatory *ex ante* judicial review of amendment proposals, possibly considering *ex ante* judicial review of constitutional amendment proposals after their adoption by parliament but before their promulgation.**

46. Beyond this intrinsic concern, the scope of the Constitutional Court's involvement in the constitutional revision procedure lacks clarity. Articles 135.1.c and 141.2 of the Constitution, and Article 127.2 of the Draft Code do not clearly state whether the Court's opinion is limited to reviewing compliance with procedural requirements,[78] or if it extends to assessing compliance with both procedural and substantive requirements, and which substantive requirements.[79] The same concern applies to the scope of the mandatory review by the Constitutional Court on any proposed amendments to the draft constitutional law prior to its first and second readings in plenary session of parliament (Articles 127.8 and 131.2 of the Draft Code). In its case law, the Constitutional Court of Moldova has assessed the constitutionality of draft constitutional laws on both procedural and substantive grounds.[80] **Clarifying the precise scope of the Constitutional Court's review is therefore essential to ensure legal certainty and prevent potential institutional conflicts during the constitutional revision process.**

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76 i.e., constitutional amendments not adopted through prescribed constitutional amendment procedure and/or which do not comply with the substantive limits on amendment powers set out in the Constitution.

77 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 195.

78 At this very initial stage of the revision procedure, this would simply include verifying whether the proposing entity has the authority to submit draft constitutional laws and whether it has been presented as a draft constitutional law.

79 If the opinion of the Constitutional Court includes a review of the constitutionality of the content of the proposed constitutional law, it is unclear whether this involves evaluating compliance with the non-regression clause of Article 142.2 of the Constitution only, or whether it also includes compliance with the requirements of "*unity of the constitutional subject matter and the balance of values enshrined in the Supreme Law*" provided in Article 125.2 of the Draft Code. In their current drafting, Articles 135.1.c and 141.2 of the Constitution and 127.2 of the Draft Code could also be interpreted as a requirement for the Constitutional Court to issue an opinion on the desirability, political merits, and disadvantages of the proposed constitutional amendment.

80 See, for example, Constitutional Court of Moldova, *AVIZ la proiectul de lege pentru modificarea și completarea Constituției (sistemul judecătoresc [4])* (sesizarea nr. 155c/2020), 3 December 2020, para. 23; Constitutional Court of Moldova, *AVIZ la proiectul de lege pentru modificarea articolului 70 din Constitutie (imunitatea deputatului)* (sesizarea nr. 197c/2021), 26 October 2021, para. 15; Constitutional Court of Moldova, *AVIZ la proiectul de lege pentru modificarea articolului 46 din Constituție (prezumția dobândirii licite a bunurilor de către persoanele care exercită funcții publice)* (sesizarea nr. 249c/2021), 15 March 2022, para. 18;

47. Similarly, while the legal consequences of the Constitutional Court's "opinion" on any proposed amendments to the draft constitutional law prior to its first and second readings are specified in Articles 127.8 and 131.2 of the Draft Code,[81] the legal consequences of the "opinion" of the Constitutional Court on a draft constitutional law before its submission to parliament is not entirely clear. In particular, it is not clear whether the draft constitutional law would be sent back to the initiator with the possibility to re-submit while taking into consideration the concerns of the Court (in case of a negative opinion); or whether the draft constitutional law can still be submitted to parliament with the expectation that parliament will address the concerns of the court while debating and reviewing it. While Articles 135.1.c and 141.2 of the Constitution, and Article 127.2 of the Draft Code, leave room for ambiguity on this matter, the Constitutional Court of Moldova has clarified, through its case law that a positive opinion of the Court is a mandatory requirement for the constitutional revision proposal to go forward and be submitted and considered in parliament. Thus, according to this jurisprudence, in the absence of a positive opinion by the court, the draft constitutional law cannot advance and cannot be submitted to parliament. **It would therefore be advisable to specify in Article 127.2 of the Draft Code, in line with the caselaw of the Constitutional Court, the consequences of a negative opinion of the Constitutional Court on a draft constitutional law *before its submission to parliament*, i.e., that it cannot be submitted to parliament, while clarifying the conditions and procedures for resubmitting a draft after a negative opinion.**

48. In addition, it is not clear whether the Constitutional Court can only validate or invalidate the entire proposal, or whether the Constitutional Court can issue a nuanced opinion validating certain proposed provisions but invalidating those that do not comply with the Constitution. In case of a draft constitutional law containing several provisions, there is a risk that a limited unconstitutionality leads to the invalidation of the whole text. Although the initiator could remove or modify the contested provision of the draft constitutional law and submit a new draft constitutional law, this may unduly delay necessary amendments to be passed. **Therefore, it is recommended that the Constitutional Court be entitled to provide a disaggregated opinion on the constitutionality of each provision of the draft constitutional law before its submission to parliament, indicating also where the draft could be changed to ensure its constitutionality.**

RECOMMENDATION A.

Regarding the involvement of the Constitutional Court:

1. to specify the consequences of a negative opinion of the Constitutional Court on a draft constitutional law before its submission to parliament, i.e., that it cannot be submitted to parliament, while clarifying the conditions and procedures for resubmitting a draft after a negative opinion of the Constitutional Court;

81 For example, amendments approved by the Constitutional Court may be included for debate, whereas those receiving a "negative opinion" of the Court are automatically rejected and not included in the draft constitutional law submitted for plenary debate. Articles 127.8 and 131.2 of the Draft Code, which require a positive opinion from the Constitutional Court for any amendments to a draft constitutional law to be discussed in plenary debate, reflect the case law of the Constitutional Court of Moldova. The Constitutional Court has ruled that its review is required not only for the initial draft constitutional law before submission to parliament but also for any subsequent amendments to the draft constitutional law proposed during the parliamentary process. The Court emphasized that allowing amendments to bypass its scrutiny would undermine its mandate to review draft constitutional laws, as parliament could otherwise adopt amendments to the initial draft constitutional law during the parliament process without judicial review of their constitutionality. See Constitutional Court of Moldova, *HOTĂRÂRE PRIVIND CONTROLUL CONSTITUŢIONALITĂŢII unor prevederi ale Legii nr. 1115-XIV din 5 iulie 2000 cu privire la modificarea şi completarea Constituţiei Republicii Moldova (modul de alegere a Preşedintelui)* (Sesizarea nr. 48b/2015), 4 March 2016, para. 97.

2. to enable the Constitutional Court to issue a disaggregated opinion on the constitutionality of each provision of a draft constitutional law.

7. PARLIAMENTARY PROCEDURE FOR CONSTITUTIONAL REVISION

49. Generally, parliamentary procedures for constitutional revision provide for specific procedural requirements, especially in terms of timeline for adoption and voting thresholds, to ensure sufficient time for thorough deliberation, foster comprehensive debate, and encourage consensus-building among the different factions in parliament.

50. Articles 127 to 135 of the Draft Code give effect and expand the procedural requirements provided in Articles 142.1 and 143 of the Constitution (see para. 19 above).

7.1. Timeline and Temporal Constraints

51. The Constitution of Moldova imposes temporal constraints on the parliamentary procedure for constitutional revision. According to Article 143 of the Constitution, draft constitutional laws may be passed by parliament no earlier than six months and no later than one year after their submission to parliament.

52. The Draft Code further elaborates and operationalizes this timeline. After a draft constitutional law is submitted to the Parliament, the Speaker of Parliament must issue a resolution introducing the draft constitutional law into the legislative procedure (Article 127.3) and refer it to the standing committee on the merits of the case (Article 127.4). Once the draft constitutional law is introduced into the legislative procedure, MPs have 90 days to propose amendments to it (Article 127.8). After the 90-day period, the amendments received by the committee on the merits of the case are submitted to the Constitutional Court for review (Article 127.8) (see Sub-Section 6 above). The Draft Code also prescribes a time delay of six months between the submission of the draft constitutional law to parliament and the first reading in plenary (Article 128.1). Final approval, following a second reading, must occur within one year of the submission of the draft constitutional law to parliament (Article 133.4). In addition, a failed draft constitutional law cannot be resubmitted within one year of its rejection or non-adoption by the Parliament (Article 133.5).

53. From a comparative perspective, many constitutions and parliamentary rules of procedure require an extended timeframe for the adoption of constitutional laws compared to that of ordinary laws.[82] Moldova's provision for a six-month delay between the submission of the draft constitutional law to the Parliament and its first plenary reading, and the requirement for at least two readings, broadly aligns with comparative practices in the OSCE region. Such rules aim to ensure sufficient time for reflection and comprehensive debate on the proposed constitutional revision. The prohibition on resubmitting a failed draft constitutional law within one year is also relatively common in comparative practice. Such restrictions help prevent excessive legislative time from being consumed by repeated constitutional amendment attempts

82 Some constitutions require a certain time delay between the initiative and the first debate in parliament; alternatively, or in addition, many constitutions require at least two readings in parliament, often with a time gap between them; in a few countries, this time gap even includes an intervening legislative election, requiring approval by two successive parliaments (see Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 36).

and deter a persistent parliamentary minority from continually reintroducing the same proposal in an attempt to force its approval.[83]

54. Nevertheless, some aspects of the proposed timeline could be improved, in particular, Article 127.3 of the Draft Code. This article provides that "*On the basis of the resolution of the Speaker of the Parliament, the draft constitutional law shall be introduced into the legislative procedure. If the draft constitutional law does not meet the legal requirements, the provisions of Article 70 of this Code shall apply accordingly".*

55. Firstly, given the strict temporal constraints governing the parliamentary procedure for constitutional revision,[84] it is advisable to introduce a clear deadline for the Speaker of Parliament to issue the resolution that initiates the legislative procedure. Indeed, although Article 127.3 of the Draft Code obliges the Speaker to issue this resolution, the absence of a prescribed timeline could enable the Speaker to unduly delay the start of the parliamentary procedure. In addition, since the one-year deadline for adopting the draft constitutional law begins upon submission of the draft constitutional law to parliament, not from the date of the Speaker's resolution, any delay could compress the legislative process, leading to a rushed debate. **To mitigate these risks, it is recommended that Article 127.3 of the Draft Code be amended to include a specific deadline for the Speaker to issue the resolution introducing a draft constitutional law into the legislative procedure.**

56. Secondly, it is not entirely clear which "legal requirements" a draft constitutional law should complied with according to Article 127.3 of the Draft Code, and where in the Draft Code and/or in other normative acts they are found. **For clarity purposes, and to avoid ambiguity and potential conflicting interpretations, it would be advisable to either explicitly list these legal requirements, or at a minimum, provide clear cross-references to their sources**.

57. Lastly, the reference to Article 70 of the Draft Code within Article 127.3 is also ambiguous. Article 70 pertains to the 'calculation of term limits'. It does not explicitly cover the constitutional revision procedure, and it is unclear how it relates to it. **Therefore, it is recommended to omit the reference to Article 70 of the Draft Code from Article 127.3 of the Draft Code and instead specify the timeline for rectifying any non-compliance with the legal requirements and resubmitting the draft constitutional law to parliament.**

RECOMMENDATION B.

To revise Article 127.3 of the Draft Code by:

1. including specific time limit for the Speaker of Parliament to issue the resolution introducing the draft constitutional law into the legislative procedure;
2. either listing the "legal requirements" that a draft constitutional law must meet or providing clear cross-references to their sources;
3. omitting the reference to Article 70 of the Draft Code and instead specifying the timeline for rectifying any non-compliance with the legal requirements and resubmitting the draft constitutional law to parliament.

83 International IDEA, *Constitutional Amendment Procedures*, Constitution-Building Primer 10, Böckenförde, M., 2014, p. 18.

84 For example, 90 days for MPs to submit amendments to the draft constitutional law, six months for the draft law to be submitted to a first reading, and one year from the date of submission of the draft constitutional law to adopt it.

7.2. The Requirement of Endorsement by the Government

58. According to Article 127.5 of the Draft Code, the draft constitutional law must be distributed to the parliamentary factions, to the Directorate General for Legal Affairs and to the Government for endorsement if it was not initiated by them.

59. The distribution of the draft constitutional law to the different parliamentary factions is a positive component of the parliamentary procedure. It ensures that all political forces represented in parliament have access to the draft law, enabling them to develop their positions on it and eventually submit amendments. This requirement contributes to meeting the need for inclusivity and transparency of constitutional revisions, and is a prerequisite for building a broad consensus on constitutional reforms. **However, to ensure timely access, it is recommended to prescribe in Article 127.5 a timeline for distributing the draft constitutional law to all parliamentary factions, for example no later than one working day after the resolution of the Speaker to introduce the draft constitutional law into the legislative procedure.**

60. The requirement that the draft constitutional law be distributed to the Government is also to be welcomed. Given that draft constitutional laws may contemplate a change in the balance of powers between the different branches of government, it is important that the executive is aware of the contents of draft constitutional laws and has the opportunity to develop a position on it. However, the endorsement by the Government should not be a requirement for the constitutional revision procedure to progress in parliament. While the Government may choose to endorse or oppose the proposal and provide reasons, it should not have the power to block the parliamentary procedure. Allowing such a veto would undermine the parliament's constitutional amendment power and could *de facto* nullify the right of the parliamentary opposition to initiate constitutional revisions. In such scenario, a parliamentary minority could propose constitutional amendments only to have them blocked by the Government before being debated in parliament. **Therefore, it is recommended to clarify in the Draft Code that the endorsement by the Government is not a requirement, and that the decision of the Government to oppose a draft constitutional law shall not preclude its debate and consideration in parliament.**

RECOMMENDATION C.

To prescribe a specific timeline for distributing the draft constitutional law to all parliamentary factions, the Directorate General for Legal Affairs and the Government, while clarifying that the endorsement by the Government is not a requirement for the parliamentary process to advance and that a governmental decision to oppose a draft constitutional law shall not preclude its debate and consideration in parliament.

7.3. Examination by the Committee and Need to Ensure a Participatory and Inclusive Process

61. The Draft Code provides that a draft constitutional law must be considered by the committee on the merits of the case before being submitted to first and second plenary readings (Articles 127.4 and 130.1 of the Draft Code). That committee is tasked with discussing the draft constitutional law and preparing a report to be presented during the first plenary reading (Article 129.1.a). After approval in first reading, the draft

constitutional law is referred back to that committee, which will examine and vote on each proposed amendment that has received a positive opinion from the Constitutional Court (Articles 130.1, 131.2 and 131.3). The committee will then prepare another report on the draft constitutional law to be presented during the second plenary reading (Articles 131.4, 132.1.a).

62. The examination of a draft constitutional law by a parliamentary committee before plenary readings is a near-universal feature of constitutional revision and law-making processes. Parliamentary committees serve as working groups where thorough and specialized scrutiny of the text occurs, and where most of the negotiations and cross-party bargaining often take place.

63. To ensure that the constitutional revision process involves all political forces, it is important that the parliamentary committee examining the draft constitutional law be inclusive of all political forces represented in parliament. The Draft Code broadly aligns with this requirement by providing that membership of standing committees be allocated in proportion to the strength of each parliamentary faction in the legislature (Article 42.2). As a parliamentary faction can be formed by as few as 5 MPs (Article 20.2), this arrangement would enable a broad spectrum of the political forces in parliament to be represented in the committee in charge of scrutinizing the draft constitutional law. **The Draft Code could go further by considering other forms of inclusion, for example ensuring that parliamentary committees in general are gender-balanced, and possibly reflective of regional, ethnic and/or linguistic diversity.**[85]

64. While Article 20.13 requires that parliamentary factions ensure a balanced representation of women and men in governing bodies, working bodies and other structures, it is not clear whether this requirement also applies to the composition of parliamentary committees; also, there is no mention of the legal consequences in case of non-compliance nor does the Draft Code contain any sanctions or potential incentives. In order for gender balance requirements to be effective, infringements of gender equality provisions should be met with effective, proportionate and dissuasive measures to ensure compliance and have a real deterrent effect and/or with effective incentives.[86] **The Draft Code should be supplemented in this respect**.

65. Article 43 of the Draft Code outlines the main tasks of parliamentary standing committees, including the responsibility to carry out public consultations. **Given the peculiarity and potentially far-reaching implications of constitutional revisions, the Draft Code could place an obligation on the committee in charge to hold public hearings on the draft constitutional law and to ensure that public consultation mechanisms are inclusive**.[87] Indeed, transparency, openness and inclusiveness, as well as adequate timeframes and conditions allowing for a variety of views and proper wide and substantive debates of controversial issues are key requirements of a democratic constitution-making process and help ensuring that the text is adopted by society as a whole, and reflects the will of the people and support of the public.[88] **In addition, the legal drafters could consider introducing other participatory mechanisms, such as a duty to publish for public input the draft**

85 See *Guidelines on Democratic Lawmaking for Better Laws*, OSCE/ODIHR, 16 January 2024, paras. 222 and 229.

86 See e.g., *OSCE Gender Equality in Elected Office: A Six-Step Action Plan* (2011), pp. 33-34; Parliamentary Assembly of the Council of Europe (PACE), *Resolution 2111 (2016)*, especially para. 15.2.2; see also 2010 OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*, para. 136, which presents a variety of sanctions for political parties not complying with legal measures aimed at ensuring gender equality, ranging from financial sanctions, such as the denial or reduction of public funding, to stronger, legal measures, such as the removal of the party's electoral list from the ballot.

87 See e.g., International IDEA, *Constitution Assessment for Women's Equality*, 2016.

88 See *Joint Opinion on the Draft Constitution of the Kyrgyz Republic*, OSCE/ODIHR and Venice Commission, 19 March 2021, para. 32.

constitutional law during a certain period of time, in which case a timely, meaningful and qualitative feedback mechanism should also be contemplated.[89] These participatory mechanisms during the parliamentary procedure could help foster more inclusive public debate and provide opportunities for civil society organizations, academia, the media and the general public to engage in discussion and provide inputs.

66. Additionally, Article 131.3 of the Draft Code indicates that between the first and second plenary readings, the committee is tasked with voting individually on each proposed amendment to draft constitutional laws that have received a positive opinion of the Constitutional Court. However, the Draft Code does not specify the majority required for the committee to adopt these amendments. The voting threshold in the Committee is a critical procedural element that should be drafted in the clearest possible terms. **Therefore, it is recommended to define the majority required for the committee to adopt amendments to the draft constitutional law.**

RECOMMENDATION D.

Regarding the examination of the draft constitutional law by the committee on the merits of the case:

1. To consider introducing additional criteria beyond proportional partisan representation for the membership of the committee, including in terms of gender balance, to ensure greater inclusivity, and establish participatory mechanisms, such as mandatory public hearings on the draft constitutional law, ensuring that public consultation mechanisms are inclusive, and/or the publication of the draft constitutional law for public inputs with timely, meaningful and qualitative feedback mechanism;
2. To define the majority required for the committee to adopt amendments to the draft constitutional law.

7.4. Readings and Voting Threshold

67. Article 143.1 of the Constitution provides that draft constitutional laws require a two-thirds majority vote of all members of the unicameral parliament to be adopted. The Draft Code operationalizes this constitutional provision by foreseeing a multi-stage parliamentary procedure. It requires at least two readings (Article 128.2) and combines different voting majority requirements, with a simple majority vote of MPs present being required at first and second readings (Articles 129.3 and 132.3), and a heightened two-thirds majority vote of all MPs required for the final adoption of the draft constitutional law (Article 133.2). During the first plenary reading, MPs vote on the initial draft constitutional law. During the second plenary reading, MPs vote on the amendments to the draft constitutional law which have received a positive opinion from the Constitutional Court and have been approved by the committee in charge. The final voting procedure consists of a vote on the draft constitutional law in its entirety, incorporating amendments approved in the second reading.

68. From a comparative perspective, almost all constitutions require a vote of the legislature to enact constitutional amendments. In addition, constitutional amendment procedures typically require a higher threshold than that required for the adoption of

89 See *Guidelines on Democratic Lawmaking for Better Laws*, OSCE/ODIHR, 16 January 2024, para. 184.

ordinary statutes.[90] This requirement for a legislative supermajority aims to ensure that any constitutional change is supported by a broad range of political forces, achieves a certain level of consensus, and protects fundamental interests of minority groups.[91] In settings of democratic competitive politics, a qualified majority requirement may prevent the ruling party or coalition to unilaterally approve amendments, and instead compel it to negotiate with the opposition or other parties to make constitutional change.[92] A few constitutions add an additional safeguard by requiring cross-party approval for constitutional changes,[93] which ensures that constitutional amendments are based on broad consensus, even when the ruling party or coalition has a constitutional supermajority in the legislature.[94]

69. The parliamentary procedure for constitutional revision foreseen in the Draft Code, involves a simple majority vote of MPs present in first and second plenary readings, and a two-thirds majority of all MPs for final adoption. Thus, currently Moldova's proportional representation electoral system, combined with the two-thirds majority vote requirement for constitutional revisions, seeks to ensure that amendments are supported by a diverse range of political forces and achieve a certain level of consensus. However, the effectiveness of safeguards against unilateral amendments by a ruling party or coalition ultimately depends more on the political landscape than on the legal framework.

70. At the same time, the provisions related to the possibility of holding an additional reading on a draft constitutional law require further clarification. Article 128.2 of the Draft Code stipulates that the draft constitutional law shall be debated in at least two readings, while Article 133.2 provides that the Parliament may "*order a separate examination of the draft constitutional law at the final reading*". However, the Draft Code does not specify who can initiate this separate examination, the voting threshold necessary to approve it, or what it would entail. **This should be clarified in the Draft Code.**

7.5. Additional Procedural Constraints for the Revision of Certain Constitutional Provisions

71. Article 142.1 of the Constitution provides that *"the provisions regarding the sovereignty, independence and unity of the state, as well as those regarding the permanent neutrality of the State, may be revised only by referendum with the vote of the majority of the registered citizens with voting rights*." Articles 126.2 and 135 of the Draft Code further lay out the procedure to be followed in case of revisions to these constitutional principles. They clarify that revisions to these constitutional principles must first undergo the standard parliamentary procedure for constitutional revision (culminating in a two-thirds majority vote of all MPs for final adoption in third reading), before being submitted to referendum for approval by a majority of registered voters. Such additional requirements and rules should be better aligned with the constitutional requirements. It is extremely important that grounds and procedure for constitutional amendments are clearly spelled out in the Constitution itself. The

90 In unicameral systems, the qualified majority required for constitutional revision ranges from three-fifths to three-fourths of the members of parliament, with two-thirds being the most common; see Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 39.

91 Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 38; see also International IDEA, *Constitutional Amendment Procedures*, Constitution-Building Primer 10, Böckenförde, M., 2014, p.6.

92 International IDEA, *Constitutional Amendment Procedures*, Constitution-Building Primer 10, Böckenförde, M., 2014, p. 6.

93 For example, the Constitution of Thailand provides that constitutional amendments must be approved by an absolute majority vote of all members of the bicameral legislature in a joint sitting but must also receive support from at least 20 percent of members of opposition parties in the lower house; see *2017 Constitution of Thailand*, Article 256.6.

94 International IDEA, *Constitutional Amendment Procedures*, Constitution-Building Primer 10, Böckenförde, M., 2014, p. 13.

ordinary legislation may only elaborate on the constitutional provision or, as mentioned above, reflect on (codify) the decisions of the Constitutional Court.

72. While the Constitutional Court of Moldova may interpret provisions of Article 142 of the Constitution and clarify whether or not it substitutes or supplements the parliamentary procedure for constitutional revision outlined in Article 143 of the Constitution with its decisions having constitutional status, the legislator is limited in its authority to introduce any new rules or procedures related to the constitutional review process through the ordinary legislation. Unless the Draft Code reflects on the case law of the Constitutional Court or well establish interpretation of relevant constitutional provisions, provisions of the Draft Code should be revisited to ensure that they are strictly aligned with the constitutional requirement.

7.5.1. Escalating Entrenchment of Certain Constitutional Provisions

73. Many jurisdictions use escalating entrenchment mechanisms[95] to provide varying degrees of rigidity for amending different parts or subject matters of the constitution, with a view to help provide stability and robust guarantees for some parts of the constitution, while allowing more flexibility for amending others.[96] Escalating entrenchment is either expressed through the requirement of a higher qualified majority vote in the legislature, and/or through supplementary procedural requirements, such as a referendum. The most stringent form of entrenchment is through eternity clauses, which prohibit any revision to certain constitutional provisions (see Sub-Section 4.2 above).

74. Articles 142.1 of the Constitution and 135.1 of the Draft Code provide a higher degree of entrenchment for certain constitutional principles – namely the sovereign, independent and unitary character of the state, as well as its permanent neutrality. These principles, which are also enshrined in Articles 1.1 and 11 of the Constitution, can be revised via the standard parliamentary procedure for constitutional revision followed by a referendum that meets the majority vote of all registered voters. These principles may therefore be modified, but such change must enjoy significant popular support.

75. From a comparative perspective, the constitutional entrenchment of the principles included in Article 142.1 of the Constitution and Article 126.2 and 135.1 of the Draft Code is not unprecedented.[97] While not necessarily tied to the constitutional revision procedure, other constitutions, such as those of Austria,[98] Malta[99] and Switzerland,[100] also make reference to state neutrality and make provisions for its special protection.

76. As explained by the Venice Commission, determining whether any proposals for constitutional revision would undermine these principles is a matter of constitutional interpretation,[101] while recognizing that these principles are dynamic and complex, and evolving over time both at the international and national level.[102] As such, they should

95 Also known as 'tiered' amendment procedures.
96 International IDEA, *Constitutional Amendment Procedures*, Constitution-Building Primer 10, Böckenförde, M., 2014, p. 13.
97 Several constitutions establish similar protections for foundational principles of the state, and contain for instance an eternity clause prohibiting amendment to the independence and territorial integrity of the State (see e.g., the *Constitution of Kazakhstan* (Article 91.3), the *Constitution of Romania* (Article 152.1), the *Constitution of Ukraine* (Article 157)). In Lithuania, the Constitution allows for revision of the provisions related to the independence of the country only after a referendum and with the support of three-fourths of registered voters (*Constitution of Lithuania*, Article 148). Generally, the higher constitutional entrenchment or unamendability of such foundational state characteristics tend to be found in democratizing contexts and where there might be a perceived fragility to the state's existence as an independent, sovereign entity, as well as fears of internal division possibly leading to the break up of the state.
98 *Constitution of Austria*, Article 9.a.1.
99 *Constitution of Malta*, Article 1.3.
100 *Constitution of Switzerland*, Article. 173.1.a and 185.a.
101 Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, paras. 178-179.
102 *Ibid*., para. 179.

be interpreted dynamically, and as facilitating rather than restricting European and international co-operation. Through its case law, the Constitutional Court of Moldova has interpreted the constitutional principles entrenched in Article 142.1 of the Constitution on several occasions, notably with respect to the European integration process.[103]

7.5.2. Mandatory Referendum for the Revision of Certain Constitutional Provisions

77. Comparatively, the use of constitutional referendums in constitutional revision procedures is widespread.[104] Referendums may be mandatory for amending specific constitutional provisions, amending any constitutional provision, or for a total revision of the constitution or adoption of a new one. In the case of Moldova (but also, for example, Estonia, Iceland, Latvia, Lithuania, Malta, Montenegro, Poland, Serbia, and Ukraine), the Constitution requires a referendum for amending certain constitutional provisions. The Venice Commission has warned against the potential misuse of referendums in constitutional revision processes, particularly when the executive seeks to circumvent Parliament via a constitutional referendum.[105] Article 135 of the Draft Code mitigates this risk, by requiring the constitutional referendum to be held only after prior adoption of the draft constitutional law by the Parliament (see para. 74 above). **To further strengthen the safeguards against potential misuse of constitutional referendum to bypass parliament, it would be advisable to also explicitly specify in the Constitution that any draft constitutional law revising these constitutional principles must first be approved by the Parliament, before being submitted to referendum for final endorsement.**

78. The Venice Commission has also established key standards to ensure the proper conduct of referendums, including constitutional referendums. In particular, its *2002 Code of Good Practice in Electoral Matters*[106] and its *2022 Revised Code of Good Practice on Referendums*[107] outline several benchmarks that are relevant to the mandatory constitutional referendum foreseen in Article 135 of the Draft Code. While this Opinion does not provide a comprehensive assessment of Moldova's legal framework regulating the conduct of referendums, several observations can be made about the provisions in Article 135 of the Draft Code.

79. First, many countries set a specific time limit for holding a referendum after parliamentary approval of the constitutional amendment, which varies between 15 days and 12 months.[108] While the Draft Code does not specify a deadline for the Parliament to initiate the mandatory referendum on constitutional provision, Article 135 (3) makes a cross-reference to the Electoral Code regulating the holding of constitutional referendum. Article 189 of the Electoral Code prescribes a deadline of six months from the receipt of proposals to launch a referendum for the Parliament to take a decision on the holding of a referendum, while Article 190 of the Electoral Code requires the Parliament to set a referendum date at least 60 days in advance.

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103 Notably, the Constitutional Court has assessed whether the process of European integration breaches Article 142.1. of the Constitution, and found integration to be compliant with the sovereignty, independence and unity of the state; see Constitutional Court of Moldova, *Hotărârea nr. 24 privind controlul constituționalității Acordului de Asociere între Republica Moldova, pe de o parte, și Uniunea Europeană și Comunitatea Europeană a Energiei Atomice și statele membre ale acestora, pe de altă parte, și a Legii nr.112 din 2 iulie 2014 pentru ratificarea Acordului de Asociere (Acordul de Asociere RM - UE)* (Sesizarea nr. 44a/2014), 9 October 2014; and, more recently, *Aviz privind proiectul de lege pentru modificarea Constituției prin referendum (aderarea la Uniunea Europeană)* (sesizarea nr. 84c/2024), 16 April 2024, paras. 19-27.

104 Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 47. See also Xenophon Contiades and Alkmene Fotiadou, eds., *Participatory Constitutional Change: The People as Amenders of the Constitution*, Routledge 2017.

105 Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 186.

106 Venice Commission, *Code of Good Practice in Electoral Matters*, CDL-AD(2002)023rev2-cor-e.

107 Venice Commission, *Revised Code of Good Practice on Referendums*, CDL-AD(2022)015-e.

108 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 48.

80. Second, majority requirement in constitutional revision referendums varies across jurisdictions.[109] In Moldova, referendums are subject to a double quorum: a turnout quorum requiring at least one-third of registered voters to participate (Article 211 of the Electoral Code), and a majority vote quorum which varies depending on the type of referendum (Article 208.1 of the Electoral Code). For constitutional referendums under Article 135 of the Draft Code, the approval of an absolute majority of registered voters is required for the constitutional law to be adopted (Article 208.1 of the Electoral Code). This is a higher threshold compared to the simple majority (half of the votes cast) required for other types of referendums (Article 208.1 of the Electoral Code). The Venice Commission has warned against setting quorum and thresholds so high that they may effectively block the possibility of constitutional revision. It notes that high turnout and approval quorums can encourage abstention, enable a minority to veto constitutional changes, and be problematic where a draft constitutional law may be approved by a majority of the votes cast but does not meet the quorum.[110] It has nevertheless deemed approval quorums acceptable for "matters of fundamental constitutional significance."[111] The mandatory referendum procedure outlined in Article 142.1 of the Constitution and Article 135 of the Draft Code is designed to ensure higher constitutional entrenchment of some fundamental principles of the state and the constitutional system. Thus, the turnout and heightened approval quorum required for such constitutional referendums do not appear excessively stringent so as to render constitutional revision impossible.

81. Lastly, the Venice Commission has stressed the importance of clearly defining the legal effects of a referendum, specifying whether it is consultative or legally binding. Article 135(4) of the Draft Code indicates that a positive outcome in the referendum vote mandates the promulgation of the draft constitutional law, thereby confirming its binding nature. The Electoral Code further stipulates the timeline for the law's publication and entry into force (Article 208.2 of the Electoral Code).

7.6. Promulgation by the President of the Republic

82. Once the constitutional law has been duly adopted in Parliament, it is to be sent to the President of the Republic for promulgation (Article 134.1 of the Draft Code). The President of the Republic can either promulgate the constitutional law or, within two weeks of receiving it, send it back to the Parliament for re-examination, eventually with objections (Articles 113.1, 113.2 and 134.2 of the Draft Code). In the latter case, the Parliament has three months to re-examine the law; failure to do so leads to the automatic rejection of the law (Article 114.1 of the Draft Code). Within that period, the president's objections "*shall be examined in accordance with the procedure laid down in the Code for the examination of amendments, on the basis of the report of the standing committee responsible for the law under review and, where appropriate, with the opinion of the General Legal Directorate of the Secretariat of the Parliament*" (Article 114.2 of the Draft Code). The President's objections may then be accepted in whole or in part, or rejected entirely (Article 114.3 of the Draft Code). If Parliament maintains its decision to adopt the law in the same version as already adopted, the President is obliged to promulgate the law within two weeks from the date of sending the law for promulgation (Article 114.4 of the Draft Code).

83. In essence, Article 134 of the Draft Code confirms that the suspensive veto power of the President of the Republic over laws outlined in Article 93 of the Constitution also

109 See Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, paras. 49-50.
110 Venice Commission, *Revised Code of Good Practice on Referendums*, CDL-AD(2022)015-e, paras. 63-64.
111 *Ibid.*, para. 65.

applies to constitutional laws. As the Constitutional Court reviews the constitutionality of draft constitutional laws and their amendments before their approval by the Parliament, the objections of the President of the Republic are most likely to be political rather than constitutional.

84. Presidential suspensive veto power over constitutional laws is found in various constitutional systems.[112] The Venice Commission has itself examined similar provisions and found the president-initiated re-examination to be a potentially beneficial aspect of the constitutional amendment procedure, triggering a period of reflection.[113] In Moldova, whether the President of the Republic should keep their suspensive veto power over constitutional laws even after the transition to a parliamentary regime in 2000 is first and foremost a political decision. However, the practical effects of such presidential power depend on the majority required in Parliament to reject the President's objections and override the presidential veto.[114]

85. As currently drafted, Article 134 of the Draft Code contains some ambiguous provisions that could lead to conflicting interpretations and practical challenges during its implementation.

86. The first ambiguity concerns the absence of a specified timeline in Article 134.1 of the Draft Code for transmitting an adopted constitutional law to the President for promulgation. It is noted that Article 113.1 of the Draft Code addresses this point *vis-à-vis* ordinary legislation, requiring that laws be sent to the President no later than on the working day following the day of signing the law. However, Articles 113 and 114 of the Draft Code seem to apply to constitutional laws only when the President does not promulgate the adopted constitutional law (Article 134.2 of the Draft Code). Therefore, it is not clear whether the time limit specified in Article 113.1 also applies to constitutional laws. **To resolve this ambiguity, it is recommended that Article 134.1 either include a time limit for sending adopted constitutional laws to the President, or explicitly provide that the time limit established in Article 113.1 also applies to constitutional laws.**

87. Secondly, it is not entirely clear whether the Parliament should consider the President's objections following the procedure for the examination of amendments to draft ordinary laws (regulated by Articles 87, 90.4, 104 and 109) or the procedure for amendments to draft constitutional laws (regulated by Articles 127.7, 127.8, 131.3, 132.3 of the Draft Code). If the procedure for the examination of amendments to draft constitutional laws is to be followed, the President's objections would arguably have to be reviewed and given a positive opinion by the Constitutional Court before being discussed and put to a vote in parliament. **Therefore, it is recommended to clarify which procedure the Parliament should follow when considering the President's objections to a constitutional law.**

88. In addition, it is not clear what type of majority is required when (i) the Parliament votes to accept or reject, in whole or in parts, the President's objections, and (ii) when Parliament then takes a final vote on the adoption of the constitutional law, either in its original form or with amendments based on the President's objections. The former depends on the procedure to be followed when examining the President's objections (see para. 87 above). For the latter, Article 115.2 of the Draft Code provides that the same qualified majority vote of two-thirds of all MPs is required. **However, to ensure**

112 See, for example, *Constitution of Georgia*, Article 46; *Constitution of Cyprus*, Articles 51 and 52; *Constitution of Kyrgyzstan*, Article 81.3

113 Venice Commission, *Opinion on three draft constitutional laws amending two constitutional laws amending the Constitution of Georgia*, CDL-AD(2013)029, para. 38.

114 *Ibid.* para. 38.

clarity, it is recommended that Article 134.2 of the Draft Code explicitly reference Article 115.2 to ensure there is no confusion regarding the majority required for adopting the constitutional law following re-examination.

89. Fourthly, Article 135.4 of the Draft Code provides that a constitutional law adopted through *mandatory* referendum must be promulgated and cannot be vetoed by the President of the Republic. However, the Draft Code is silent on whether the President of the Republic can object to a constitutional law adopted through the facultative constitutional referendum mechanism now regulated under Article 136 of the Draft Code. The rationale for precluding the President from reverting a constitutional law for re-examination should apply for this type of constitutional referendum as well: when the people have approved a constitutional law by referendum, it shall not be questioned by the President.[115] **To clarify this gap, the Draft Code should provide that once a constitutional law has been approved by referendum according to Article 136 of the Draft Code, the promulgation shall become obligatory.** If such a provision is added, the Parliament could avoid a suspensive presidential veto by having one-third of MPs call for the revision of the Constitution via facultative referendum under Article 136 of the Draft Code. It would also be advisable **to clarify whether a similar constitutional revision proposal could be resubmitted through the parliamentary process of constitutional revision if it previously failed to gain support during the consultative referendum, and if it may be resubmitted, under which conditions and modalities.**

RECOMMENDATION E.

Regarding the suspensive veto of the President of the Republic over constitutional laws:

1. To clarify which procedure the Parliament should follow when considering the President's objections to a constitutional law;
2. To explicitly cross-reference Article 115.2 in Article 134.2 of the Draft Code, in order to clarify that a two-thirds majority of all MPs is required for adopting a constitutional law following re-examination;
3. To specify that once a constitutional law has been approved by referendum according to Article 136 of the Draft Code, the promulgation shall become obligatory.

8. DIRECT CONSTITUTIONAL REFERENDUM

90. Article 136 of the Draft Code establishes an additional route for constitutional revision, namely a constitutional referendum that can be requested by the government, one third of MPs, or 200,000 citizens. This option is not regulated by the Constitution, neither under the provisions for constitutional revisions (i.e., Articles 141-143 of the Constitution) nor under Article 75, which explicitly addresses referendum. It is also distinct from the mandatory referendum required for amendments to specific provisions under Article 142.1 of the Constitution. Article 136 of the Draft Code in fact seeks to put into organic legislation the direct constitutional referendum mechanism that has existed in practice in Moldova since 2010, and that has been codified in the Electoral Code in 2022[116] (see para. 29 above). **As explained earlier, given the pivotal role and far-reaching implications of constitutional amendment**

115 See e.g., International IDEA Constitution-Building Primer 14, *Presidential Veto Powers* (2017), p. 13.
116 See *Electoral Code of Moldova*, 8 December 2022, Chapter XIV.

rules, any new routes for constitutional revision should be provided for in the Constitution rather than in an organic law (see para. 30 above).

91. Paragraphs 3 and 4 of this Article establish two critical safeguards. First, the proposed constitutional revision shall be reviewed and obtain the "positive opinion" of the Constitutional Court before the request for direct approval by referendum is submitted to the Parliament (Article 136.3 of the Draft Code). Depending on the scope of the control exercised by the Constitutional Court (see para. 52 above), this requirement can ensure that the draft constitutional law complies with procedural requirements and with the substantive limits on constitutional revision. Secondly, the draft constitutional law cannot be submitted to referendum without the prior approval of the Parliament (Article 136.4 of the Draft Code). Indeed, Article 136.4 offers three options to the Parliament to respond to the proposal to submit a draft constitutional law to direct referendum. Within six months from the receipt of the proposal, the Parliament can either (i) approve this proposal, which will lead to the holding of a binding constitutional referendum (Article 136.4.a), (ii) reject it and "*order the resolution of the issues through parliamentary means*" (Article 136.4.b), or (iii) reject it if the proposal was not a popular initiative (Article 136.4.c). Hence, this clarifies that this facultative constitutional referendum is not automatically held once relevant actors trigger the process, but rather that it is a proposal submitted to the Parliament, which retains the discretion to approve or reject it. This requirement may constitute an effective safeguard to prevent circumvention of parliament,[117] while also guarding against the risk of having the executive instrumentalizing the constitutional referendum procedure.[118]

92. At the same time, however, the wording of Article 136 of the Draft Code could be improved. First, Article 136.3 does not determine the scope of the Constitutional Court's review of the proposal to revise the Constitution through constitutional referendum. Second, Article 136.4 does not specify the voting procedure nor the majority required for the Parliament to approve or reject a proposal to revise the Constitution through a constitutional referendum. While determining this threshold is a political decision that should be informed by the broader constitutional framework and political context, it is essential that the threshold be sufficiently high to ensure political consensus beyond the ruling party or coalition. **It is therefore recommended that the Draft Code specifies the majority required for the Parliament to approve or reject such a proposal, in line with the Constitution, which requires a two-thirds majority of the members of parliament.**

93. Second, the Draft Code also does not indicate whether parliament's vote on the proposal would be done after a debate and whether any reports on the initiative would be considered (as is the case in the parliamentary procedure for constitutional revision under Article 129 of the Draft Code).

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117 The Venice Commission has repeatedly emphasized that, while referendums may perform a positive democratic function in constitutional amendment processes, "*recourse to a referendum should not be used by the executive in order to circumvent parliamentary amendment procedures. The danger and potential temptation is that while constitutional amendment in parliament in most countries requires a qualified majority, it is usually enough with simple majority in a referendum. Thus, for a government lacking the necessary qualified majority in parliament, it might be tempting instead to put the issue directly to the electorate. On several occasions the Venice Commission has emphasized the danger that this may have the effect of circumventing the correct constitutional amendment procedures. It has insisted on the fact that it is expedient in a democratic system upholding the separation of powers that the legislature should always retain power to review the executive's legislative output and to decide on the extent of its powers in that respect*", see Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 189.

118 The Venice Commission has cautioned against the risk, especially in new democracies, of referendums on constitutional amendment being "*turned into plebiscites on the leadership of the country and that such referendums are used as a means to provide legitimacy to authoritarian tendencies";* see Venice Commission, *Report on Constitutional Amendment*, CDL-AD(2010)001, 19 January 2010, para. 191.

94. Third, there are ambiguities in Article 136.4.b of the Draft Code. This provision covers the scenario wherein the Parliament rejects a proposal to hold a constitutional referendum, but instead opts to resolve the issue through "parliamentary means". In essence, it allows the Parliament to take over the constitutional revision process if it does not consider it opportune to pursue it via referendum. However, it is unclear whether "parliamentary means" will entail the initiation of a parliamentary procedure for constitutional revision, or other actions or measures that do not involve constitutional amendments. **More clarity is needed regarding how the Parliament reaches the decision to reject the referendum proposal and proceed via parliamentary means. In addition, the Draft Code should specify what steps the Parliament must take to address the substance of the proposed constitutional revision.**

RECOMMENDATION F.

To supplement Article 136 of the Draft Code:

1. to specify the majority required for the Parliament to approve or reject a proposal to revise the Constitution via constitutional referendum, in line with the Constitution, which requires a two-thirds majority of the members of parliament;
2. to clarify what steps the Parliament should follow to address the substance of the proposed constitutional revision, if it rejects the referendum proposal but opts to resolve the issues "through parliamentary means".

9. THE LEGISLATIVE PROCESS

95. 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*" (1990 Copenhagen Document, para. 5.8).[119] Moreover, key commitments specify 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*" (1991 Moscow Document, para. 18.1).[120] 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*".[121] The Venice Commission's Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input and may be a useful source of good practice.[122]

96. As such, public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted. Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation.[123] To guarantee effective participation,

119 See *1990 OSCE Copenhagen Document*.
120 See *1991 OSCE Moscow Document*.
121 See *Guidelines on Democratic Lawmaking for Better Laws*, OSCE/ODIHR, 16 January 2024, Principle 7.
122 See *Rule of Law Checklist*, Venice Commission, CDL-AD(2016)007, Part II.A.5.
123 According to recommendations issued by international and regional bodies and good practices within the OSCE area, public consultations generally last from a minimum of 15 days to two or three months, although this should be extended as necessary,

consultation mechanisms should allow for input throughout the process, meaning not only when the draft is being prepared but also when it is discussed before Parliament, be it during public hearings or during the meetings of the parliamentary committees.

97. **ODIHR therefore recommends that the Draft Code be subject to transparent, inclusive, and extensive consultations throughout the adoption process.**

[END OF TEXT]

taking into account, inter alia, the nature, complexity and size of the proposed draft act and supporting data/information. See e.g., ODIHR, *Opinion on the Draft Law of Ukraine "On Public Consultations"* (1 September 2016), paras. 40-41.

ANNEX: ARTICLES 125 – 136 OF THE DRAFT CODE

DRAFT CODE ON THE ORGANIZATION AND FUNCTIONING OF PARLIAMENT *(excerpts)*

TITLE II
SPECIAL PARLIAMENTARY PROCEDURES

Chapter IV
CONSTITUTIONAL REVISION PROCEDURE

Article 125. Constitutional law

(1) The Constitutional Law is the law on the revision of the Constitution of the Republic of Moldova, adopted in special procedure.

(2) The revision of the Constitution of the Republic of Moldova may be carried out by constitutional law in compliance with the principles of the supremacy of the Constitution, its stability, the unity of the constitutional subject matter and the balance of values enshrined in the Supreme Law.

(3) The revision of the Constitution shall be carried out in accordance with the requirements of Articles 141-143 of the Constitution of the Republic of Moldova and the provisions of this Code.

Article 126. Limits to the revision of the Constitution

(1) The Constitution may not be revised during a state of emergency, state of siege and state of war, or during the extension of the Parliament's mandate, until the new Parliament is legally constituted.

(2) The provisions on the sovereign, independent and unitary character of the state, as well as those on the permanent neutrality of the state may be subject to revision by the Parliament, with their subsequent approval by a constitutional referendum.

(3) No revision may be made if it would result in the suppression of the fundamental rights and freedoms of citizens or of their guarantees.

Article 127. Requirements for the special procedure for revising the Constitution

(1) The legislative initiative to revise the Constitution shall comply with the requirements of the Constitution of the Republic of Moldova, Law No. 100/2017 and this Code.

(2) The draft constitutional law together with the opinion of the Constitutional Court, adopted with the vote of at least 4 judges, shall be submitted to the Parliament together with the accompanying file.

(3) On the basis of the resolution of the Speaker of the Parliament, the draft constitutional law shall be introduced into the legislative procedure. If the draft constitutional law does not meet the legal requirements, the provisions of Article 70 of this Code shall apply accordingly.

(4) For the examination of the draft constitutional law, the Speaker of the Parliament shall refer it to the standing committee on the merits of the case. If the standing committee on the merits of the case considers that it is necessary to draw members from other standing committees to examine the draft constitutional law, it shall propose to the Parliament the establishment of a special committee which shall be the committee on the merits of the case.

(5) The draft constitutional law shall be distributed to the parliamentary factions, to the Directorate General for Legal Affairs and to the Government for endorsement if the initiative was not theirs.

(6) Within 90 days from the date of registration of the legislative initiative, Members of Parliament may submit amendments to the draft constitutional law. After the expiry of this period, amendments shall no longer be accepted.

(7) Amendments to the draft constitutional law may be tabled by at least 15 Members of Parliament. Amendments to the draft constitutional law shall respect the principles of unity of subject matter and balance of values enshrined in the Constitution.

(8) After 90 days, the amendments received by the committee on the merits of the case shall be submitted to the Constitutional Court for its opinion. Amendments approved by the Constitutional Court shall be included for debate in Parliament.

Article 128. Debate on the draft constitutional law

(1) The draft constitutional law shall be submitted to the plenary of the Parliament for debate after the expiry of 6 months from the date of registration of the corresponding legislative initiative.

(2) The draft constitutional law shall be debated in at least two readings.

Article 129. Debate on the draft constitutional law at the first reading

(1) The first reading debate on the draft constitutional law consists of:
a) presentation by the author of the draft constitutional law;
b) hearing the report of the committee on the merits of the case;
c) speeches by representatives of parliamentary factions.

(2) When debating a draft constitutional law at the first reading, amendments may not be debated. When the debates are concluded, Parliament shall adopt one of the following decisions:
a) approves the draft constitutional law at the first reading;
b) reject the draft law.

(3) The decision on the draft constitutional law debated in the first reading shall be adopted by the Parliament, in the form of a decision, by a majority vote of the Members of Parliament present**.**

Article 130. Transmission of the draft constitutional law to the Committee on the merits of the case

(1) Once the draft constitutional law has been approved at the first reading, it shall be referred to the committee on the merits of the case for preparing it for debate at the second reading.

(2) If no amendments have been tabled and the committee on the merits of the case proposes that the draft constitutional law be debated at second reading, the Chairperson of the sitting shall put the committee's proposal to a vote.

Article 131. Preparation of the draft constitutional law for debate at the second reading

(1) When the draft constitutional law is referred to the committee on the merits of the case, the latter shall draw up a report presenting the draft constitutional law for debate at the second reading, reflecting the results of the debates in the committee.

(2) In the second reading, only amendments that have been given a positive opinion by the Constitutional Court may be debated and put to the vote. Amendments on which the Constitutional Court has delivered a negative opinion shall be deemed to have been rejected automatically.

(3) The committee on the merits of the case shall debate and vote on each amendment individually.

(4) The committee's report and summary on the draft constitutional law shall be submitted to the Parliament for debate in the second reading.

Article 132. Debate on the draft constitutional law at the second reading

(1) The second-reading debate by the plenary of the Parliament on the draft constitutional law consists of:

a) presentation of the report of the standing committee on the merits of the case;

b) hearing the opinions of parliamentary factions.

(2) If an amendment has not been accepted by the committee on the merits of the case, the author of the amendment may request Parliament to vote on the amendment.

(3) Amendments to the draft constitutional law shall be approved by a majority vote of the Members of Parliament present.

(4) If the amendment fails to obtain the required number of votes, the provisions of the draft adopted at first reading shall be deemed adopted.

(5) At the request of a parliamentary faction, each amendment accepted by the committee may be put to the vote separately.

Article 133. Final voting procedure of the draft constitutional law

(1) After examination of and voting on the amendments, the draft constitutional law shall be put to the vote in its entirety.

(2) The draft constitutional law put to a vote in its entirety shall be adopted by a two-thirds vote of the elected Members of Parliament and shall be deemed adopted at the final reading unless Parliament orders a separate examination of the draft constitutional law at the final reading.

(3) If the draft constitutional law fails to obtain the required number of votes, it shall be deemed rejected.

(4) If the Parliament has not adopted the corresponding constitutional law within one year from the date on which the initiative to revise the Constitution was registered in the Parliament, the proposal shall be considered null and void.

(5) The same legislative initiative to revise the Constitution may be repeatedly submitted to the Parliament only after one year has elapsed since its rejection or nullity.

Article 134. Sending the constitutional law for promulgation to the President of the Republic of Moldova

(1) The Constitutional Law adopted by the Parliament shall be sent to the President of the Republic of Moldova for promulgation.

(2) If the President of the Republic of Moldova does not promulgate the constitutional law, the provisions of Articles 113 and 114 of this Code shall apply accordingly.

Article 135. Referendum to revise the Constitution

(1) When the provisions referred to in Article 142 paragraph (1) of the Constitution are to be revised, the Parliament, after the adoption of the draft constitutional law, shall declare a republican constitutional referendum for the approval of the new provisions.

(2) The date of the constitutional referendum shall be set by decision of the Parliament.

(3) The republican constitutional referendum shall be held in accordance with the provisions of the Electoral Code.

(4) If the constitutional law is subject to approval by a constitutional referendum, the promulgation of the law shall become obligatory if it has been approved by referendum.

Article 136. Proposals to revise the Constitution by a constitutional referendum

(1) The entities with the right of legislative initiative established in Article 141 of the Constitution of the Republic of Moldova may request the Parliament to submit the revision of the Constitution for direct approval by a constitutional referendum.

(2) The legislative initiative for the revision of the Constitution shall be finalized in strict compliance with the provisions of the Constitution of the Republic of Moldova, of this Code, of Law No. 100/2017 and of the Electoral Code.

(3) The legislative initiative to revise the Constitution together with the positive opinion of the Constitutional Court, approved by at least 4 judges, and the draft law file shall be submitted to the Parliament.

(4) Upon the expiry of 6 months from the date of receipt of the proposals for initiating a referendum on the revision of the Constitution, the Parliament shall adopt one of the following decisions:

a) approve the decision on the organization and holding of a constitutional referendum;

b) rejects the initiative on holding a constitutional referendum, ordering the resolution of the issues through parliamentary means;

c) reject the initiative on holding a constitutional referendum if the revision of the Constitution is not a popular initiative.

(5) If the revision of one and the same provisions of the Constitution is initiated simultaneously both through the parliamentary procedure and by citizens, the examination of proposals for the revision of the Constitution through the parliamentary procedure shall cease.