Warsaw, 18 August 2025

Opinion-Nr.: GEN-MDA/520/2025 [NS]

PRELIMINARY OPINION ON THE DRAFT CODE ON THE ORGANIZATION AND FUNCTIONING OF THE PARLIAMENT (REGARDING PARLIAMENTARY OVERSIGHT, TITLE III)

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 (ODIHR).

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

ODIHR welcomes the initiative of the Parliament of Moldova to undertake a fundamental reform of the Parliament through the Code on the Organization and Functioning of the Parliament (hereinafter referred to as "the Draft Code") with a view to enhance the openness, transparency, accountability, inclusiveness and effectiveness of the institution.

Parliamentary oversight is one of the fundamental functions of parliaments, along their legislative and representative roles, and it constitutes an essential component of the system of checks and balances that characterizes democratic systems based on the rule of law and holds the executive accountable. To perform effective oversight, the parliament should also work closely with other bodies, including the national human rights institution and ombudspersons, audit institutions, data protection authorities, as well as civil society organizations.

Title III of the Draft Code that specifically deals with the oversight functions of the Parliament, while providing a foundational basis for effective oversight, reveals several areas where further legal and procedural refinement could enhance the oversight capacity of the Parliament.

In particular, while offering a comprehensive set of oversight instruments such as hearings, inquiries, oral and written questions, interpellations, and *ex post* evaluations, to fully operationalize these tools, it would be beneficial to introduce more consistent definitions, procedural safeguards, and enforceable obligations on the executive and other entities to co-operate in good faith with parliamentary oversight mechanisms. Clearer provisions are needed to compel timely responses to parliamentary questions and interpellations, along with appropriate consequences for non-compliance.

Strengthening the role of the opposition in oversight activities – through broader guaranteed representation in parliamentary structures and oversight mechanisms, the ability to initiate inquiries, and opportunities to submit dissenting or minority reports – would significantly enhance institutional balance and democratic legitimacy. Equally, fostering systematic engagement with other bodies, including independent oversight bodies, such as the People's Advocate and other independent audit institutions, as well as civil society organizations, would ensure that the Parliament benefits from specialized expertise while respecting the autonomy of such institutions.

Key aspects that would deserve more substantive elaboration is the budget and financial oversight, the oversight over security sector institutions, which is a challenge also in other countries across the OSCE, and effective parliamentary oversight mechanism over the proclamation of state of emergency or other emergency legal regime and implementing measures.

A gender-sensitive approach should also be embedded throughout the oversight framework, both in terms of inclusive language and the composition and focus of

oversight bodies. Public engagement mechanisms – such as petitions and hearings – would benefit from greater clarity, accessibility and inclusiveness.

Finally, provisions on *ex post* legislative evaluation should be further elaborated to ensure a systematic review of laws' effectiveness, impact on fundamental rights, and compliance with Moldova's international obligations. This includes introducing mandatory evaluation for legislation affecting core democratic institutions, human rights, or involving significant public expenditure.

Throughout the process of developing the Draft Code and to ensure the increased use of oversight instruments in practice, it is also important to raise awareness among Members of Parliament (MPs) and the Secretariat staff members of the importance of a "culture" of effective parliamentary oversight in a democratic society while also increasing parliamentary oversight capacities to carry out such functions.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further strengthen the Draft Code's provisions on the oversight function of the Parliament:

A. Regarding parliamentary questions and interpellations:

1. to link duties of the respective officials to respond to questions and interpellations with corresponding sanctions in cases of non-compliance; [para. 42]
2. to ensure fair treatment of opposition MPs, offering some level of priority and ensure equality when posing questions, for instance by having the right to open question time and to ask for at least equal number questions to the Government and members of the majority; [para. 41]

B. Regarding ex-post evaluation of laws:

1. to indicate more detailed criteria for selecting the laws for ex post evaluation, while also specifying the type of laws, which need to be mandatory assessed (e.g., those impacting human rights, including gender and diversity, those impacting the efficiency, effectiveness and independence of democratic institutions, civil society, critical environmental policy); [para. 58]
2. to specify that ex post impact assessments of laws should include social impact, including impact on employment and local communities, impact on business environment, human rights impact as well as impact on gender equality, environmental impact and sometimes anti-corruption impact; [para. 59]
3. to consider involving other bodies to conduct ex post evaluation of laws, while ensuring the availability of sufficient human and financial resources and capacities for the standing committees assigned to perform this task; [para. 62]

C. To supplement Article 235 of the Draft Code to require institutions to provide in their annual reports information on any follow-up actions taken in response to specific requests or recommendations made by the Parliament during the

reporting period as well as disaggregated data on the representation of women within the respective institutions, at all levels of decision-making; [para. 77]

D. Regarding specialized parliamentary scrutiny and engagement with other bodies:

1. to delineate and mutually reinforce the respective oversight roles of the Parliament and the People's Advocate, taking a due regard to the safeguards for the People's Advocate's independence; [para. 89]
2. to include a detailed timeline for reviewing of the reports from the Court of Accounts by the relevant standing committees and the plenary of the Parliament, while also aligning these timelines with those related to the preparation and discussion of the state budget for the following fiscal year; [para. 96]
3. to substantively elaborate the provisions of the Draft Code pertaining to the oversight of the Security and Intelligence Service (SIS), including with respect to the mandate and powers in relation to specific aspects of the work of security and intelligence services, such as overseeing information collection measures, co-operation and information exchange with foreign services, the use of personal data, the power to summon officials of the SIS, the ability to launch parliamentary investigations on own initiative, to conduct inspection of SIS facilities, to receive and handle complaints, the power to make public interest disclosures and to have access to classified information; [para. 103]
4. to introduce provisions on parliamentary oversight over the proclamation of state of emergency and other emergency legal regimes and implementing measures, ensuring that the Parliament regularly reviews and ensures the temporariness, appropriateness and proportionality of the emergency legal regime and implementing measures, and that they are eased or terminated as soon as the situation allows; [paras. 108-109]

E. Regarding oversight by parliamentary committees:

1. to supplement the Draft Code with more detailed rules and procedures for the establishment and functioning of special committees, including clear reporting requirements and the roles of committee's members; [para. 116]
2. to provide in the Draft Code for a clear procedure by which committees of inquiry can be established, specifying that a single MP should be able to submit a motion to establish a committee of inquiry, and such a motion would then be granted if it is supported by a qualified minority of MPs; [para. 123]
3. to amend Articles 243 and 246 of the Draft Code to clearly align its provisions with the sub judice rule and ensuring the respect for judicial and prosecutorial independence, while also specifying the respective rights and responsibilities of the inquiry committee, especially when it is supposed to act in parallel with an ongoing judicial proceeding, should be clearly defined by terms of reference; [para. 121]

4. to consider including in the Draft Code additional requirements with regard to the composition of parliamentary committees (whether standing, special or inquiry committees) ensuring adequate – and, preferably, enhanced – representation of members of the opposition, parity in the chairpersonship/deputy-chairpersonship as well as a gender balanced composition; [para. 126]
5. to add to the Draft Code provisions ensuring that individuals providing information to committees of inquiry can benefit from existing legislation on "whistleblower" protection, or, if such legislation does not exist in Moldova, to incorporate in the Draft Code the relevant protection mechanism in line with the international standards; [para. 135]
6. to clarify in the Draft Code that committees of inquiry should have access to all information held by public authorities, subject to limitations in strictly defined cases where there is a real and identifiable risk of significant harm to a legitimate national security interest outweighing the public's interest in disclosure and the stringent non-disclosure requirements may be then applicable, while also ensuring compliance with the principle of necessity and proportionality and taking into account potential conflicts with sector-specific privacy legislation (e.g. in the field of health); [para. 132]
7. to include in the Draft Code clear provisions requiring all committee sessions to be open to the public except in limited and well-defined, strictly justified circumstances, while ensuring that parliamentary records are freely, publicly available and accessible, along with other documents related to the work of committees including agendas, witness testimonies, transcripts and records of committee actions; [para. 137]

F. To consider adding to the Draft Code an express reference to gender equality as an issue that should be addressed by the Parliament and its oversight bodies in all aspects of parliamentary oversight, and in relation to all government activities. [para.143]

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE 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 (hereinafter "ODIHR") and the Head of the Committee on Legal Affairs, Appointments and Immunities of the Parliament of Moldova have been discussing ways to support parliamentary reform, more enhanced democratic governance and inclusive political participation in the Republic of Moldova. During a country visit of ODIHR representatives to Moldova in September 2024, the Head of the above-mentioned Committee reiterated interest in requesting ODIHR to prepare a legal review of the *Draft Code on the Organization and Functioning of the Parliament of Moldova* (hereinafter the "Draft Code"). This forms part of the effort to fundamentally reform the Parliament with a view to enhance the openness, transparency, accountability, inclusiveness and effectiveness of the institution.

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

3. The present legal review focuses primarily on Title III of the Draft Code, as well as other relevant provisions of the Draft Code governing or impacting the oversight functions of the Parliament. Given the need to get a better understanding of the challenges in practice, ODIHR decided to prepare a preliminary analysis of these provisions to formulate initial recommendations. ODIHR would be willing to present and discuss the preliminary findings and recommendations with all relevant stakeholders to gain a better understanding of the local context and challenges. The main findings and recommendations from the Preliminary Opinion would then be revisited and fine-tuned in the Final Opinion based on the information thus collected.

4. This Preliminary Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States (hereinafter "pSs") in the implementation of their OSCE human dimension commitments.[3] This legal review was funded by the Project Stronger Democratic Institutions in Eastern Partnership Countries, an ODIHR project supported and funded

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

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

3 In particular, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, OSCE, 29 June 1990, Section III, para. 26; *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, 19th OSCE Ministerial Council, Dublin, 6-7 December 2012; see also OSCE, *Decision No. 5/14 on the prevention of corruption*, 21st OSCE Ministerial Council, Basel, 4-5 December 2014; *Decision No.4/16 on Strengthening Good Governance and Promoting Connectivity*, Hamburg 2016; and *Decision 6/20 on Preventing and Combating Corruption through Digitalization and Increased Transparency*, Tirana 2020, which calls upon participating States to prevent and combat corruption by, inter alia, *"[e]nhancing good governance, including the principles of transparency and accountability, and promoting integrity and oversight"*.

by the European Union and co-financed by the Government of France, Italy, Norway, Switzerland.[4]

II. SCOPE OF THE PRELIMINARY OPINION

5. The scope of this Preliminary Opinion covers only the Draft Code submitted for review, with a particular focus on aspects relating to the oversight function of the Parliament. Thus limited, it does not constitute a full and comprehensive review of the entire legal and institutional framework regulating parliamentary oversight in Moldova. This Preliminary Opinion should be read in conjunction with ODIHR's other opinions on this Draft Code, especially those covering the representative functions and inter-institutional relations.

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

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

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

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

5 See the *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Moldova acceded to the Convention on 1 July 1994.

6 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

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

III. PRELIMINARY LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL AND REGIONAL STANDARDS AND OSCE COMMITMENTS

10. Parliamentary oversight derives from the broad principles of democracy and the rule of law and the principle of the separation of powers.[7] Parliamentary oversight is one of the fundamental functions of parliaments, along their legislative and representative roles, and it constitutes an essential component of the system of checks and balances that characterizes democratic regimes based on the rule of law and holds the executive accountable.[8] Parliamentary oversight plays a vital role in democratic governance by preventing and detecting potential abuses of power, arbitrary actions, or unlawful and unconstitutional conduct by the government and public agencies; it serves as a mechanism for holding the executive to account, enhancing the quality and legitimacy of public policies, programmes, and practices, and ensuring their effective implementation.[9] Moreover, it contributes to greater transparency in governmental operations and fosters public confidence in the integrity of government and public institutions.[10]

11. Effective oversight power entails both a capacity (legal mandate) and sufficient resources (financial, human and organizational) to carry out the necessary tasks. Moreover, to be effective, the Parliament should also work closely with other bodies, including the audit institutions, national human rights institutions (hereinafter "NHRIs") and ombudspersons, as well as civil society organizations (hereinafter "CSOs"). Lastly, robust behavioural standards for parliamentarians, such as codes of conduct, conflict of interest policies also play a key role in enabling and ensuring effective oversight. Parliaments do not only have a crucial role to exercise general oversight over the executive but given their lawmaking functions, have a specific role to play in terms of *regulatory oversight* specifically.[11]

12. There are no international or regional legally binding norms and instruments focusing specifically on parliamentary oversight as such. At the same time, several international and regional legal instruments, standards, and authoritative texts provide a normative

7 See DCAF, ODIHR and UN Women (2019), "Parliamentary Oversight of the Security Sector and Gender", in Gender and Security Toolkit, Sub-Section 2.1 on Parliamentary Oversight. As the European Commission for Democracy through Law (Venice Commission) points out, the rule of law is "*a concept of universal validity*" (Venice Commission, *Rule of Law Checklist*, 11-12 March 2016, par 9). For an overview of international and regional instruments referring to the principle of the rule of law, see paras. 9-23.

8 See e.g., OSCE Parliamentary Assembly, *St. Petersburg Declaration – Resolution on Correcting the Democratic Deficit of the OSCE* (1999), page 5, paras. 2-3, which stress "*the crucial role Parliaments and Parliamentarians play as guardians of democracy, the rule of law and the respect of human rights at both the national and international levels*" and underline that "*democratic oversight and accountability are essential elements of transparency, credibility and efficiency*".

9 Inter-Parliamentary Union (IPU), Tools for Parliamentary Oversight (2007), pp. 9-10, where "parliamentary oversight" is defined as "*the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation.*"

10 Inter-Parliamentary Union (IPU), Tools for Parliamentary Oversight (2007), pp. 9-10.

11 See OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, Annex II, Glossary, where regulatory oversight is defined as "*a system of continuous scrutiny that aims to ensure that, from policymaking to ex post evaluation of laws, the competent bodies do not go beyond their scope and authority, and to verify that they comply with applicable laws and rules of procedure for the development and adoption of legislation, as well as constitutionality and coherence with international obligations, while also ensuring a degree of quality control of regulatory management tools and aiming to evaluate and improve regulatory policy*".

framework supporting and guiding the exercise of parliamentary oversight, especially in relation to democratic governance, public accountability, human rights, and the rule of law. Parliamentary oversight is intrinsically linked to the right to participate in public affairs, as reflected in Article 25 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR").[12] Several guiding principles set out in the *United Nations (UN) Convention against Corruption* (hereinafter "UNCAC")[13] are also of relevance, especially the emphasis on the promotion of public participation and respect of the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.[14]At the Council of Europe (hereinafter "CoE"), the relevant case law of the European Court of Human Rights (hereinafter "ECtHR") and documents of the European Commission for Democracy through Law of the CoE (hereinafter "the Venice Commission") are also of relevance to this Preliminary Opinion, in particular, the Venice Commission's Checklist on the Relationship between the Parliamentary Majority and the Opposition in a Democracy.[15]

13. Given the EU candidate status of the Republic of Moldova and its aim to open 'Cluster 1: Fundamentals' of the EU accession negotiations, which focuses *inter alia* on the functioning of democratic institutions, rule-of-law and public administration reform, the reform of parliamentary processes should be among the key priority for the country. In this respect, the key findings and recommendations from the European Commission's Republic of Moldova 2024 Report,[16] which notes the need to further strengthen the exercise of the Parliament's oversight functions to improve government accountability, and from the OECD-EU Joint Initiative Support for Improvement in Governance and Management in Central and Eastern European (SIGMA) Monitoring Report on Public Administration in the Republic of Moldova (hereinafter "2023 SIGMA Monitoring Report"),[17] are of particular relevance and will be referred to as appropriate in this Preliminary Opinion.

14. OSCE pSs have agreed that it is a "*duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law*" and that "*the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law*."[18] Furthermore, OSCE pSs have committed to a form of government that is representative in character, "*in which the executive is accountable to the elected legislature or the electorate.*"[19] This was reinforced by the pSs through common stance that "*Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially*."[20] Furthermore, relevant OSCE commitments specifically refer to parliamentary oversight over military and national security matters, namely, "*effective arrangements for legislative supervision of all such forces [i.e. military and paramilitary forces, internal security and intelligence*

12 See the *UN International Covenant on Civil and Political Rights* (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Moldova acceded to the Covenant on 26 January 1993. See also UN Human Rights Committee, *General Comment No. 25*, 1996, para. 8.

13 See *United Nations (UN) Convention Against Corruption*, adopted by the General Assembly of the United Nations on 31 October 2003. The Republic of Moldova ratified the UNCAC on 1 October 2007.

14 See in particular Articles 5 and 13 of the UNCAC.

15 Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, CDL-AD(2019)015.

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

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

18 See *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, Copenhagen, 29 June 1990, paras. 5.3 and 5.5 respectively.

19 *Ibid*, para. 5.2.

20 See *Charter of Paris for a New Europe*, Paris 1990.

services, and the police'], services and activities" [21] and "*legislative approval of defence expenditures*."[22] Accountability of the executive to the elected legislature, coupled with the obligation of public authorities to comply with the law, both stemming from the OSCE commitments, are most effectively achieved through a functional system of parliamentary oversight. In 2024, ODIHR published the *Guidelines on Democratic Lawmaking for Better Laws*[23] (hereinafter "ODIHR Guidelines"), which provide an overview of the guiding principles of democratic lawmaking, including on parliamentary *regulatory oversight*.

15. A number of other documents of a non-binding nature elaborated in various international and regional *fora* are useful as they provide more practical guidance and examples of practices to enhance parliamentary oversight regulation and practices, including the 2021 ODIHR Guide on Realizing Gender Equality in Parliament – with a dedicated section on gender-sensitive parliamentary oversight,[24] and the 2019 OSCE Tool on Parliamentary Oversight of the Security Sector and Gender[25]. Moreover, publications of the Inter-Parliamentary[26] as well as OECD's publications relating to good public governance and accountable and effective public institutions[27] are useful reference documents. In particular, the OECD Recommendation on Regulatory Policy and Governance stipulates that states should establish institutions and mechanisms that actively oversee regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality. It recommends that states should establish a standing body for regulatory oversight to ensure: quality control of regulatory management tools; guidance on the use of regulatory management tools; coordination on regulatory policy; and systematic evaluation of regulatory policy. The functions of such a body should include, among others, reviewing regulatory impact assessment (hereinafter "RIA") (and returning draft laws where they were inadequate in that respect), and its own performance should be evaluated periodically (either by the body itself or third parties) with evaluation focusing on the regulatory body, the overall regulatory policy or individual performances. It is important that regulatory oversight bodies have a consistent mandate, with a full range of powers to control, supervise and influence the activities of administrations in charge of policy- and lawmaking, including also consultation processes and *ex post* evaluations.[28]

16. Finally, the Republic of Moldova is also a member state of the Open Government Partnership (hereinafter "OGP"),[29] which views parliamentary oversight as "*an essential component of democratic governance, encompassing the set of practices and mechanisms employed by a legislature to scrutinize and evaluate the actions, policies,*

21 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 25.3.
22 CSCEOSCE, *Budapest Document 1994 - Towards A Genuine Partnership In A New Era*, para. 22.
23 See OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024.
24 See OSCE/ODIHR, *Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region* (2021), Section 4.
25 In May 2025, ODIHR also published a study on *Parliamentary Oversight of the Executive in the OSCE Region*, that provide overview of different parliamentary oversight mechanisms in OSCE pSs.
26 See Inter-Parliamentary Union (IPU), *2007 Tools for Parliamentary Oversight*. See also *Plan of Actions for Gender-sensitive Parliaments* (2012), pages 8-9, which defines a gender-sensitive parliament as "*a parliament that responds to the needs and interests of both men and women in its composition, structures, operations, methods and work. Gender-sensitive parliaments remove the barriers to women's full participation and offer a positive example or model to society at large. They ensure that their operations and resources are used effectively towards promoting gender equality. […] A gender-sensitive parliament is therefore a modern parliament; one that addresses and reflects the equality demands of a modern society. Ultimately, it is a parliament that is more efficient, effective and legitimate*". See also the 2022 IPU Kigali Declaration and IPU Strategy 2017-2021. See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*. See IPU-UNDP, *Global Parliamentary Report 2022 - Public engagement in the work of parliament*.
27 See <Public governance - OECD>.
28 See OECD, *Recommendation of the Council on Regulatory Policy and Governance*, 2012
29 OGP - a platform that includes 77 member states and 150 local governments. See Open Government Partnership | Committed to making governments more open, accountable, and responsive to citizens

and decisions of the executive branch. This function aims to ensure transparency, accountability, and the proper functioning of government institutions."[30]

2. BACKGROUND, GENERAL COMMENTS AND ROLE OF THE OPPOSITION

17. Several provisions of the Constitution of the Republic of Moldova provide the foundations of parliamentary oversight and elaborate the relationship between parliament and the executive branch. Article 66 (f) of the Constitution specifically provides that the Parliament "*exercises parliamentary control over executive power in the manners and within the limits provided for by the Constitution*". The Parliament also approves the State budget and exercises control over it (Article 66 (h)) and may initiate investigations and hearings concerning any matters touching upon the interests of the society (Article 66 (n)). Under Article 104 of the Constitution (and Article 2 (6) of Law no. 136/2017 on the Government), the Government is responsible for its work before Parliament and will provide information and documents requested by Parliament, its committees and members. Article 104 (2) also provides the mandatory participation of members of government in Parliament sessions if so requested. Other articles further elaborate some of the modalities of parliamentary oversight, such as questions and interpellations[31] (Article 105), vote of no confidence (Article 106), motion of censure upon the Government's engagement of responsibility on a programme, statement of general policy or a draft law (Article 106[1]).

18. The Law No. 797/1996 on the Rules of Procedure of the Parliament, as amended (hereinafter "RoP")[32] adopted according to Article 73 (3) (c) of the Constitution – i.e., as an organic law – further details the different parliamentary oversight mechanisms, including oversight of legal acts implementation, simple motion, motion of no confidence, questions to members of the Government or to officials from other public authorities, interpellations, parliamentary hearings over government activity, and commissions of inquiries.[33] The RoP will be repealed as of the date of entry into force of the Draft Code in case of adoption.

19. It is understood that some of the key challenges of the existing parliamentary oversight mechanisms are not so much the lack of relevant legal provisions or tools, but rather the under-use of the existing parliamentary oversight instruments.[34] At the same time, the

30 See *Open Government Partnership – Parliamentary Oversight*.

31 In general, an "interpellation" is a formal request for information on or clarification of the government's policy; although the meaning of the term and procedural modalities differ from country to country, in many cases, it is more formal than the ordinary questions and take the form of a written request for information with the intention to launch a debate, and is often followed by a vote of censure or vote is taken on the motion for a resolution. Given the possible serious consequences of interpellations, in order to reduce the risk of abuse of the right of interpellation by minority MPs, a threshold requirement may be introduced for such motions (requiring that interpellation requests are supported by a qualified minority of the MPs). See IPU, *2007 Tools for Parliamentary Oversight*, pp. 59-61; and Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, CDL-AD(2019)015, para. 127.

32 See <LP797/1996> (in Romanian).

33 It is rather common in the OSCE region for parliamentary rules of procedure and similar regulations to provide a more detailed, relatively comprehensive framework for oversight activities, though often without explicitly referring to the concept of "parliamentary oversight"; see e.g., OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 15.

34 See <Republic of Moldova | Parliament | Oversight | IPU Parline: global data on national parliaments>, reporting four written questions asked in 2023, only two responses from the government; no parliamentary inquiries in 2023. In the 2024 Enlargement Report, the EU noted that the efficiency of parliamentary oversight over the management of public funds needs to be improved, further stating that: "*Only part of the parliamentary oversight instruments was used, in particular interpellations and parliamentary hearings. The replacement of the Central Bank Governor by parliament was carried out without a parliamentary inquiry. No effective parliamentary oversight mechanism was adopted to cover the activities of the Commission for exceptional situations between February 2022 and December 2023. Cooperation among the parliamentary majority and opposition political forces should be strengthened to increase trust and build consensus. Only a few plenary sessions were dedicated to opposition draft bills, disregarding the applicable provisions of the rules of procedure*"; see European Commission, *2024 Communication on EU Enlargement policy (Republic of Moldova 2024*

European Union (hereinafter "EU") in its Enlargement Reports has made some concrete recommendations for enhancing some of the existing mechanisms, including with respect to the need to strengthen the working methods of special investigative parliamentary committees,[35] to establish in law a mechanism for effective parliamentary scrutiny of decisions of state institutions issued during states of emergency,[36] the need to improve parliamentary oversight over the management of public funds,[37] while enhancing openness and transparency by better planning and informing about parliamentary oversight activities and public hearings, and involving civil society in this process.[38] The new provisions of the Draft Code do not seem to fully address these recommendations and may not on their own, in practice, trigger a greater use of the contemplated oversight instruments. Indeed, **it is also important to raise awareness among MPs and the Secretariat staff members on the importance of a 'culture' of effective parliament oversight in a democratic society while also increasing parliamentary oversight capacities to carry out such functions. Hence, it is important that the process of developing the Draft Code be participatory and inclusive, so that it may also be used for that purpose**. It is also fundamental to provide training for new MPs and parliamentary staff to ensure a focus on oversight in their respective work, and make all actors feel more confident in their oversight role, while also investing in specific research capacity/institutional structure to support oversight. In addition, standing committees of the Parliament should be empowered to undertake the oversight role and to become the parliamentary oversight driving force via strategic scrutiny and reporting. This is especially important for the Committee on Foreign Policy and European Integration which conducts the scrutiny of legal approximation with the EU acquis and is also the channel of communication of the EU integration messages to the population.[39] (see also sub-section 7.1. on Standing Committees).

20. As a general comment, and as analysed in greater detail below, the Draft Code does not always include provisions that would strengthen the role of the opposition, as highlighted in the aforementioned EU Reports. Article 38 (3) of the Draft Code provides that one Vice-Speaker shall be from the opposition. Article 30 of the Draft Code lists a number of rights of the opposition, including to "*raise issues and inform the public about the shortcomings of the work of the parliamentary majority*" or "*to express from the rostrum of the Parliament its official criticism of the government program*". While the above provision provides for a general framework of the opposition's engagement, further procedural details to ensure its practical implementation are necessary. Article 30 (5) outlines an opposition day which is supposed to take place twice during a parliamentary session – which is considered a good practice,[40] although as noted above, this right tends

Report), October 2024, page 22. In the 2023 Enlargement Report on the Republic of Moldova, the EU noted that "*Parliament's oversight role, control of the government and scrutiny of legislative developments are in place. Annual reports by public institutions are submitted on time, and Parliament is making efforts to organize hearings on the reports during the plenary. However, implementation of some methods and instruments of parliamentary control, including ex-post impact assessments, should be improved, especially for legislation related to EU integration. The working methods of special investigative parliamentary committees should be strengthened as they have so far failed to deliver tangible results*"; see European Commission, *2023 Communication on EU Enlargement policy (Republic of Moldova 2023 Report)*, October 2023, page 13.

35 See European Commission, *2023 Communication on EU Enlargement policy (Republic of Moldova 2023 Report)*, October 2023, page 13.

36 *Ibid.*, page 15, where the Republic of Moldova 2023 Report specifically noted that "*A mechanism for effective parliamentary scrutiny of the decisions issued by the Commission for Emergency Situations is needed, in line with the Siracusa Principles. The adoption of a related law should be accelerated*." See also *Siracusa Principles* on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984).

37 See European Commission, *2024 Communication on EU Enlargement policy (Republic of Moldova 2024 Report)*, October 2024, page 22.

38 For a more comprehensive analysis of modalities of public engagement in the work of the Parliament and practical recommendations in this respect, see ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament) – available at: <Moldova | LEGISLATIONLINE>.

39 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, p. 103.

40 See Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, CDL-AD(2019)015, para. 97.

to not be exercised in practice.[41] Apart from Article 241 (2), which envisages that the opposition shall hold the chairpersonship of the Subcommittee on the exercise of parliamentary scrutiny of the implementation of judgments and decisions of the European Court of Human Rights and the Constitutional Court, the Draft Code does not specify any particular role for the opposition in the parliamentary oversight process. In addition, the Draft Code does not mention the involvement of external actors, such as the media or civil society representatives in the parliamentary oversight activities (apart from Article 228 of the Draft Code envisaging involvement of experts, specialists, civil society and other interested parties in different forms of parliamentary hearings). Such participation enhances the transparency, effectiveness and accountability of parliamentary oversight.

21. Moreover, the existence of strong oversight powers *per se* is not enough to ensure that parliament is engaged in vigorous scrutiny of the government's work in practice. As the Inter-Parliamentary Union's (IPU) Guide on Parliament and Democracy points out, "*oversight may be blunted through the way power is exercised within the ruling party or coalition, or the way competition between parties discourages internal dissent within parties from being publicly expressed. So, while the interest of opposition parties lies in the most rigorous oversight of the executive, members of a governing party can use their majority so as to ensure that ministers are not embarrassed by exposure or a critical report*."[42] The IPU goes on to observe that "*it is minority or opposition parties within a legislature which give a necessary 'edge' to the different modes of oversight.*" Bearing this in mind, many parliaments have developed solutions aimed at increasing the role of the parliamentary minority or opposition in the oversight context. These include the ability to sometimes set the parliamentary agenda, to hold public hearings, to provide minority reports, the triggering of oversight procedures, including the creation of an inquiry commission or similar body by a minority quorum, the right to obtain information, and enhanced representation of the opposition in oversight committees.[43] **It is recommended to consider additional modalities of strengthening the role of the opposition or minority parties in parliamentary oversight.**

22. Moreover, the Draft Code lacks procedures for the initiation and dismissal of other officials appointed by Parliament, including the Governor of the Central Bank, although Articles 202-209 define general provisions related to procedure of appointment to and dismissal from public office. Additionally, there are no provisions specifically addressing the activities of the Commission for Exceptional Situations between February 2022 and December 2023 – although this may be regulated by separate legislation – or more generally **effective parliamentary oversight mechanism over the proclamation of state of emergency or other emergency legal regime and implementing measures** (see *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Chapter V, Procedure for Declaring a State of Emergency, Siege or War)*, which provides specific recommendations in this respect).

23. The Draft Code offers a comprehensive set of oversight tools such as hearings, inquiries, the review of reports submitted by executive bodies, oral and written questions to the executive, interpellations, and votes on motions of no confidence against the Government. However, **the Draft Code would benefit from greater consistency in defining the powers which are granted to parliamentary oversight bodies**. **The need**

41 See European Commission, *2024 Communication on EU Enlargement policy (Republic of Moldova 2024 Report)*, October 2024, page 22.

42 See IPU, *Parliament and Democracy in the Twenty-First Century: A guide to good practice* (2006), p. 135.

43 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd edition, 2020), paras. 127-128, on the Rights of Parliamentary Opposition Parties. See also Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, CDL-AD(2019)015, paras. 122-138.

for creating a mechanism to enforce parliament's demands in the context of its oversight activities is often overlooked in the Draft Code. Therefore, **greater detail in the regulation of some of the mechanisms of parliamentary oversight would also enhance the Draft Code**.

24. The structure of the Draft Code's Title III in its current version would benefit from additional streamlining, since it contains some duplication, fragmentation and inconsistency between some provisions. This will most likely improve as work on the Draft Code advances. Nevertheless, additional efforts should be taken in ensuring that general provisions on oversight contained in Chapter XIII of the Title III are improved in terms of better defining the types and forms of the parliamentary scrutiny (which often seem to be unclear and overlap with each other, unless this is due to errors in translation of relevant terms) and providing a clearer distinction between them. For example, so-called "indirect" type of scrutiny (mentioned in English version of the Draft Code) under Article 213 (3) of the Draft Code may be referring to and could be framed as *specialized oversight and collaboration with independent institutions*, reflecting nature and purpose of this type of oversight. **Thus, it would be advisable to ensure consistency and clarity of the terminology used, potentially considering to rely on clearer typology of the available oversight tools, such as informative, *ex ante*, hybrid and *ex post* oversight tools.**[44]

25. Some of the provisions included under Title III do not relate to parliamentary oversight as such and/or would appear better placed in other parts of the Draft Code.[45]. Moreover, Chapter XV (Article 222) contains general provisions on enforcement of laws, which could also be a part of the Chapter III of the Draft Code on the legislative procedure since the implementation of laws constitutes a logical stage of the lawmaking cycle. In general, when addressing the oversight functions, it is recommended to make proper cross-references to the relevant provisions regarding public involvement. For example, Article 229 (Hearings in the plenary session of the Parliament) features under Title III, Chapter XVI on parliamentary control procedures, whereas parliamentary hearings are also fundamental elements of an open and inclusive legislative procedure or to ensure public participation more generally.

26. In any case, Chapter XV would be better placed at the end of the Title III since it deals with *ex post* oversight tools aimed at assessing implementation of laws and government's performance, while, for example, Chapter XVI (Hearings and Reports) and Chapter XVII (Specialised Parliamentary Scrutiny) contains rather informative tools aimed at collecting evidence in order to enable MPs to have an informed debate with the Government and should normally precede overseeing the implementation stage.

27. Finally, as will be discussed in greater detail below (see paras 131-135 *infra*), the protection of witnesses coming forward to expose instances of corruption and mismanagement (so called "whistleblowers") should be explicitly addressed in the Draft Code through the inclusion of a dedicated article. It should be defined who qualifies as a whistleblower, guarantee confidentiality or anonymity where appropriate, and protect individuals from liability for good faith disclosures made to Parliament. Parliamentary committees should also be empowered to hold closed sessions or redact records as necessary to safeguard the whistleblower's identity. These regulations should be

44 See *Parliamentary oversight of the executives: Tools and Procedures in Europe*, Elena Griglio, HART, 2022, p. 81.

45 For instance, Chapter XIV of Title III contains Article 221, which regulates "petitions" and enables individuals and legal entities to address the Parliament, working bodies and members of Parliament (hereinafter "MPs") with petitions concerning "*national security issues, the legitimate rights and interests of large groups of citizens, the execution and enforcement of laws or proposals for the amendment of legislation*". At the same time, petitions as such constitute a useful element of the deliberative democracy rather than an oversight tool and should be better placed in the respective parts of the Draft Code related to the Parliament's engagement with citizens (for example, Chapter X of Title II)

provided either in the Draft Code or the Law of Moldova no. 122/2018 on Whistleblowers could be extended to reports and testimony made to parliament.

3. PARLIAMENTARY QUESTIONS, INTERPELLATIONS AND PETITIONS (CHAPTER XIV)

28. In Chapter XIV, the Draft Code addresses "*Informing Parliament, Questions, Interpellations, and Petitions*" listing the authorities from which the Parliament may request information, including "*Government, central public administration authorities, authorities with autonomous status, local public administration authorities, including those of ATU Gagauzia*" (Article 215 (1)). At the same time, consideration could be also given to allowing the Parliament, its bodies and MPs to request necessary and relevant information from broader range of bodies entrusted by law, contract or other legal act with the management, use or disposition of public funds or public assets, or performing a public-service obligation on behalf of the State.

29. Notably, Article 215 allows the Parliament, its bodies, and MPs to request a broad range of information relevant to their work, with the exception of materials classified as state secrets, access to which must be granted in accordance with the law. However, the provision does not outline criteria for assessing the relevance or necessity of the requested information. It also makes no mention of procedures for negotiating extensions in cases involving voluminous material, or mechanisms to challenge overly broad or vague requests. **Therefore, it is recommended that Article 215 be amended to clarify that such requests should, at a minimum, be clearly formulated, necessary, and directly relevant for the purposes of the oversight, with due regard to explicit limitations related to access to personal data, commercial secrets, and legally privileged information**.

30. Additionally, while the Draft Code stipulates that requested information must be provided to the Parliament within 30 days (Article 215 (2)), it does not outline any consequences for these bodies if they fail to submit the information within the prescribed deadline. While several elements contribute to the effective response of the Government, it is important that the Parliament be equipped with adequate means or powers to ensure compliance, which may range from publicizing the issue, potential sanctions, including administrative fines, to, in extreme circumstances, motions of no confidence.[46] At the same time, while binding mechanisms and sanctions may reinforce the oversight function of the parliament, sanctions should not remain the sole basis of a long-term strategy to advance parliamentary oversight, which should also include, among other, public communication on the role of the parliamentary oversight to ensure better understanding and compliance among the parliamentary scrutiny stakeholders[47]. **Thus, consideration could be given to supplementing Article 215 of the Draft Code to specify the consequences in case of non-compliance.**

31. Article 216 (1) further specifies that MPs may put questions and interpellations to the Government, ministers, other heads of public administration bodies, requesting an oral answer, a written answer or a written and oral answer. Questions may be put in writing

46 See e.g., See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, pp. 27-31. In some countries there are provisions allowing to bring in front of the Parliament by law enforcement authorities representatives of the institutions who failed to testify in front of the parliament committee in its oversight role: see, for example, Saeimas kārtības rullis.

47 Parliamentary Oversight of the Executive in the OSCE Region | OSCE, p.49.

or orally at the end of the plenary sitting of Parliament (Article 216 (2)), while interpellations shall be submitted in writing only (Article 216 (3)).

32. As with Article 215, while Article 216 (4) states that the respective authorities "*shall be obliged to answer questions or interpellations*" raised by MPs, "under the conditions provided for by this Code", it fails to specify consequences if they do not fulfil this obligation. **It would be beneficial to elaborate in greater detail within Article 216 (4) the specific conditions, such as timelines and the content of the responses, under which the respective authorities are required to respond to the questions and interpellations, along with clear sanctions for those who fail to do so within the prescribed timeline.**

3.1. Questions

33. According to Article 217 (1) of the Draft Code, the questions from the Parliament should consist of a request for an answer to the question "whether a fact is true", "a piece of information is accurate", or "whether the Government, public authorities or autonomous authority intends to take a decision on a given matter". **To avoid restricting MPs in the exercise of their oversight duties and ambiguity regarding the scope of questions that MPs can pose, this provision should either be clarified in more detail or removed entirely, as it may unduly limit MPs in raising the legitimate questions.**

34. Article 217 (2) states that MPs may not address questions in plenary to the President of the Republic of Moldova, representatives of the judiciary, local public administration authorities, "*nor pose questions that: a) concern matters of personal interest; b) seek, exclusively, legal advice; c) relate to court proceedings or may affect the outcome of pending cases; d) concern the activity of persons who do not hold public office*".

35. This provision aims to clarify that MPs are restricted from directing questions to certain public office-holders—such as members of the judiciary—in order to safeguard judicial independence and uphold the principle of separation of powers. Similarly, the prohibition on questioning local public authorities reflects the principle of local self-governance and administrative autonomy. However, the blanket restriction on addressing questions to both the President and local authorities may be viewed as overly rigid and potentially detrimental to democratic accountability. In general, MPs should have the right to pose questions broadly across all levels of government that exercise public power or spend public money subject only to legitimate separation of powers.

36. Notably, the prohibition concerning local authorities appears inconsistent with Article 194 of the Draft Code, which grants standing committees the right to request information from local public administration bodies on matters related to finance, the economy, social and cultural affairs, education, legality, public order, and the protection of constitutional rights and freedoms.

37. To ensure coherence between these provisions, a possible solution would be to allow parliamentary committees to conduct "dialogues" or "hearings" with representatives of local authorities. This would enable oversight and information-sharing as part of the parliamentary function, without classifying such interactions as formal "interpellations."

38. According to Article 217 MPs are also barred from asking questions related to specific content, including with respect to ongoing court cases, to protect judicial independence and avoid interference, or concerning persons who are not public officials, as the purpose of parliamentary oversight is to hold the executive accountable, not private individuals. It also does not allow to pose questions concerning "matters of personal interest" (Article

217 (2) (a)). At the same time, further clarifications should be provided with respect to what qualifies as "personal interest" to avoid possible misuse.

39. Regarding the questions which "*relate to court proceedings or may affect the outcome of pending cases*" (Article 217 (2) (c)), as previously noted by ODIHR, any parliamentary inquiry or similar processes should comply with the *sub judice* rule that is, refraining from taking actions or pursuing lines of inquiry that could prejudge or influence the outcome of an ongoing case or investigations or trials that are or are about to be initiated.[48] Otherwise, parliament's oversight function over the judiciary may raise concerns regarding the separation of powers and respect for judicial independence.[49] At the same time, this should not be understood as a general prohibition for the parliament to engage with members of the judicial branch, especially in the context of judicial reform, in order to develop a clear understanding of systemic challenges and develop appropriate legislative solutions in accordance with their mandate.[50]

40. Finally, excluding the possibility to ask questions related to the activities of individuals who do not hold public office (Article 217 (2) (d)) could be unduly limiting. It should not be read as protecting persons who, although not public office-holders, are entrusted with the management, use or disposition of public funds or public assets, for example, contractors or any other natural or legal person acting in a fiduciary capacity vis-à-vis the State, as well as considerable private donors to political parties and electoral candidates or lobbyists on behalf of concrete industries and should therefore be accountable to report on their use. **It may, thus, be advisable to clarify this in Article 217 (2) (d).** It should also be clarified that this provision does not exclude questions related to the activities of individuals who formerly held public office when such questions relate to their activities in that office.

41. Article 217 (3) states that "[t]wo separate questions may be posed in plenary". **However, it should be clarified whether the number of questions is limited both per plenary session and per MP**. As indicated above, the Draft Code lacks comprehensive provisions that would strengthen the role of opposition MPs in overseeing the executive. In this regard, **it is recommended to ensure fair treatment of opposition MPs, offering some level of priority and ensure equality when posing questions,** for instance by having the right to open question time and to ask for at least equal number questions to the Government and members of the majority.[51]

42. The Draft Code stipulates that the presence of the representative of the relevant authority, to whom questions have been addressed, is mandatory at the session where answers are provided. However, Article 218 (3) lacks clarification on the consequences of the designated representative's failure to attend the session. As already mentioned above with respect to other provisions of the Draft Code, **it would be beneficial to link duties of the respective officials to respond to oversight bodies with corresponding sanctions or other consequences in cases of non-compliance.** At the same time, consideration could be given to distinguishing between the executive and public administration, on the one hand, and autonomous authorities, on the other. This would help prevent potential misuse of the questioning or interpellation process—such as subjecting autonomous bodies to repeated or short-notice appearances—which could undermine their independent functions. In this regard, it may be appropriate to limit the

48 See OSCE/ODIHR, *Opinion on the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic*, 24 May 2023, para. 73.
49 See OSCE/ODIHR *Note on Parliamentary Inquiries into Judicial Activities* (2020).
50 See OSCE/ODIHR *Note on Parliamentary Inquiries into Judicial Activities* (2020), p. 2.
51 See Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, CDL-AD(2019)015, para. 123. See also Parliamentary Assembly of the Council of Europe (PACE), Resolution 1601 (2008) Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament, para. 2.2.3.

use of questions and interpellations to executive and administrative bodies that Parliament is constitutionally mandated to oversee, while establishing a separate, tailored procedure for engaging with independent institutions. Article 218 outlines the process for answering questions, specifying both oral and written responses, with a deadline of 15 working days for written answers. It further states that postponement of the hearing of the answer in the Parliament may take place only in "*duly justified cases*" where *"the person concerned under the legislation in force or the public authority concerned cannot be present, which the Speaker of the Parliament shall be notified of in writing, within one day before the sitting*". However, the Draft Code does not specify the possible grounds that may justify that an invited official may be excused from appearing before the Parliament. **Moreover, it would be helpful to clarify who may represent a public authority to respond to a question directed to an institution**. **While ideally the response should come from the highest-ranking official within the institution, if that person is unavailable to attend, the Draft Code should offer an alternative solution, ensuring the MP receives an answer**. Postponements should be generally discouraged, and provisions that allow for delays should be minimized in the Draft Code to ensure an efficient and effective oversight mechanism. Notably, Article 218 (8) provides that only the author of the question may follow up with a reply, clarification or comment on the oral answer. At the same time, no possibility is envisaged for other MPs (e.g. from another faction) to seek clarifications at that point, which may limit scrutiny. It would be, thus, advisable to clarify this aspect in the Draft Code.

3.2. Interpellations

43. Article 220 of the Draft Code regulates interpellation as a means of parliamentary oversight. It requires a minimum of five MPs or a parliamentary faction. From a comparative perspective, given the potential serious consequences generally attached to an interpellation (parliamentary debate that may lead to the vote of a motion of no confidence), in order to reduce the risk of abuse of the right of interpellation by minority MPs, interpellation requests would generally require to be supported by a qualified minority of the MPs.[52] The threshold required by the Draft Code for initiating an interpellation is therefore not uncommon providing that parliamentary minorities have the means to exercise their oversight competences.

44. While Article 220 outlines the procedure for submitting and answering interpellations, it does not address situations where no answer is provided. **It is recommended, therefore, to provide for a more detailed regulation of the consequences in case of the executive branch's failure to respond to interpellations**.[53]

45. Furthermore, MPs who are not satisfied with the answer given to the interpellation may initiate a simple motion on the issue (Article 220 (8)). This would imply that no motion of no confidence may be triggered following an interpellation. This is not uncommon as the procedure of interpellation varied greatly depending on the country.

3.3. Petitions

46. Article 221 covers the petitions filed to the Parliament, limiting them to subjects "*concerning national security issues, the legitimate rights and interests of large groups of citizens, the execution and enforcement of laws or proposals for the amendment of*

52 See Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, CDL-AD(2019)015, para. 127. See also IPU, *2007 Tools for Parliamentary Oversight*, p. 60.

53 In this respect, the practice varies greatly among OSCE participating States; see ODIHR *Note on Parliamentary Inquiries into Judicial Activities*, 2020, para. 43 and references therein.

legislation". All other issues should be addressed to the "bodies or official persons directly competent to deal with them" and that petitioner should be informed about it (Article 221 (2)). While not all parliaments treat petitions as oversight tools *per se*, petitions allow citizens to raise concerns, request investigations, or call parliament's attention to government actions (or inaction), which may then trigger hearings, questions, or even interpellations. The aforementioned criteria regarding the material scope of potential petitions appear to be quite vague and might complicate determining which topics qualify for acceptance as parliamentary petitions resulting in potential misuse or unnecessary rejection on questionable grounds. This is particularly relevant for the provisions that are difficult to define, such as "legitimate rights and interests" and what constitutes "large groups of citizens". In general, for the petition mechanism to be effective and generate trust, there is a need to concretely determine their thematic scope, number of signatures, channels of submission (including possibilities to sign electronically), as well as the procedure and timeframe of parliamentary scrutiny once the set thresholds are met.[54]

47. According to Article 221 (4), "*anonymous petitions and those submitted without indicating the postal address, those without meaning, those with unclear meaning, those containing uncensored or offensive language*" shall not be examined. At the same time, the above reasons for not examining submitted petitions are insufficiently detailed, potentially leading to rejections based on unclear or unfounded grounds, such as petitions being deemed meaningless or lacking clear meaning.

48. Therefore, the Draft Code could benefit from procedural specifications regarding the handling, processing times, and feedback mechanisms for such petitions, to ensure their practical effectiveness (see also *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament)*[55]). In particular, **it is recommended to more precisely outline the grounds for filing a petition and the material scope that petitions may cover. It should also provide the references to other legislative acts which might regulate petitions as part of parliamentary engagement with civil society and provide more explicit criteria for rejecting petitions while publicly outlining the reason for rejection, to avoid arbitrary rejections and ensure transparency.**

49. In addition, as also further analysed in the *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament)*, the Draft Code should include clear and detailed procedural standards for the handling, processing, and follow-up of petitions under Article 221, to ensure their effectiveness.

RECOMMENDATION A.

1. To link duties of the respective officials to respond to questions and interpellations with corresponding sanctions in cases of non-compliance.

2. To ensure fair treatment of opposition MPs, offering some level of priority and ensure equality when posing questions, for instance by having the right to open

54 See for instance, Rules of Procedure of Parliament of Latvia, Article 5.3 https://likumi.lv/ta/en/en/id/57517-rules-of-order-of-saeima

55 For a more comprehensive analysis of modalities of public engagement in the work of the Parliament and practical recommendations in this respect, see *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament)* – available at: <Moldova | LEGISLATIONLINE>.

question time and to ask for at least equal number questions to the Government and members of the majority.

4. The Implementation and Enforcement of Laws and Ex-post Evaluation of Laws (Chapter XV)

50. Chapter XV of the Draft Code outlines provisions related to the implementation and enforcement of laws, including the performance of controls, the submission of reports on activities related to the enforcement of laws, the explanation of legislation, as well as *ex post* scrutiny of law implementation, impact, and enforcement.

51. Evaluating the implementation and enforcement of laws, as well as assessing their impact and whether they achieved the intended outcomes envisioned by lawmakers, is a crucial part of legislative scrutiny.[56] When done properly and thoroughly, it serves as a valuable tool for both parliaments and governments in deciding whether to amend existing legislation or draft new laws or other non-legislative actions. Given the potential breadth and number of laws enacted, it is essential to allocate sufficient resources and expertise to support this process.

4.1. Role of the Committees

52. According to Article 223 of the Draft Code, parliamentary committees, within their competence, assisted by the Directorate-General for Legal Affairs of the Parliament's Secretariat (hereinafter "DGLA"), "*shall periodically monitor the implementation of the law by the competent bodies and persons, as well as determine the effectiveness of the law*". Following the control carried out, the standing committee shall, where appropriate, submit a report to the Parliament and recommendations to the Government and/or other public authorities. As a rule, the control over the execution of the law shall be carried out by the standing committee on the matter after one year from entry into force of the law, unless the Parliament has set another deadline for the submission of the report on the execution of the law (Article 223 (3)).

53. Given the scale of lawmaking activity, the amount of legislation that (some but not necessarily all) committees have to deal with, the question arises whether the parliamentary committees may have enough time and resources to ensure an effective oversight, including in terms of annual monitoring and evaluation of implementation of laws. While there is no immediate solution to address this challenge, one approach may be to enhance the capacity and resources of the committees. In this respect, ODIHR have previously emphasized the need for appropriate budgeting for the work of committees.[57]

54. Article 224 further describes the right of the Parliament to issue "advisory opinions". In particular, it states that "*in order to ensure the unity of legislative regulations throughout the country*", and pursuant to Article 66 of the Constitution of the Republic of Moldova, the standing committees of the Parliament, assisted by the DGLA, "*shall cooperate with the public administration authorities in order to form a uniform practice of law enforcement*". Moreover, the standing committees may be consulted by the public administration authorities on matters within their field of activity concerning the unity of

56 See, OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 160.
57 See *ODIHR and Venice Commission Joint Opinion on the Draft 2021 Constitution of the Kyrgyz Republic*, para.66.

regulations and the uniform application of laws. The standing committees shall issue advisory opinions following the examination of such requests (Article 222 (2)). Depending on the nature of the issue or its complexity, it may be examined by several standing committees. In this case, one of the committees shall be responsible for formulating the advisory opinion and the others shall present the position of their respective committee. The time limit for consideration of an address shall be up to 60 working days from the date of its registration with the Secretariat of the Parliament (Article 224 (5)).

55. According to Article 66 of the Constitution of Moldova, the Parliament indeed has a power to provide "legislative interpretations" and to ensure "unanimity of legislative regulation throughout the country". At the same time, it is to be noted that the interpretation of the law is not a responsibility that should fall to parliament. As underlined by ODIHR, while the Parliament can adopt legislation that further develops provisions existing in other pieces of legislation, the interpretation of the existing laws normally should belong to the judiciary.[58] Moreover, while Article 224 (10) states that "*the advisory opinion shall not be admissible as evidence in courts of law*", courts are autonomous in determining what evidence is admissible in their proceedings, and this is typically governed by legislation related to court procedures and by discretionary decisions by the judge in charge. Attempting to regulate this within the Draft Code might be problematic, as it could undermine the separation of powers between the legislative, executive, and judicial branches. **This mechanism of providing legislative interpretation should be reconsidered entirely.**

4.2. Ex Post Evaluation

56. Article 225 deals with *ex post* evaluation of legislation which includes *ex post* legal analysis and *ex post* impact analysis. The *ex post* analysis of legislative acts shall be carried out by the standing committees and the DGLA, in accordance with the *ex post* evaluation methodology approved by the Parliament's Bureau.

57. It is noted that *ex post* evaluation of legislation is increasingly recognized as an evolving good practice and important dimension within parliament. At the same time, this should also not create an unreasonable burden on policy- and lawmakers in light of current capacities in the Republic of Moldova. Given the complexity of the implementation process and the frequent lack of information on what happens after a law is adopted, parliaments and elected representatives need mechanisms such as *ex post* RIA to monitor effectively the implementation of legislation and exercise their oversight functions. Asking questions of the executive, as well as interpellations, or establishing investigative or other ad hoc committees will help reveal how laws were implemented and the overall impact that they have had. This could lead to further discussions, political changes or additional laws or legislative amendments.

58. The Draft Code further states that this evaluation is carried out based on a list of normative acts subject to *ex post* evaluation, approved by the Standing Bureau (Article 225 (2)). To avoid discretionary decisions in determining which legislative acts are included on this list, **it is also advisable to indicate more detailed criteria for selecting the laws for *ex post* evaluation**. Ex post evaluation of certain type of laws needs to be mandatory. **The Draft Code should more clearly indicate which types of laws and/or those relevant to which sectors** (e.g., those impacting human rights, including gender and diversity, those impacting the efficiency, effectiveness and independence of

58 See *ODIHR and Venice Commission Joint Opinion on the Draft 2021 Constitution of the Kyrgyz Republic*, para. 71.

democratic institutions, civil society and private entities, critical environmental policy) **must undergo *ex post* evaluation**.[59]

59. Furthermore, while the relevant issues may be further elaborated in the aforementioned methodology for the *ex post* evaluation, it would be still beneficial to clearly define in the Draft Code the whole range of impacts which should be assessed as a part of post-legislative scrutiny. As in case with *ex ante* impact assessment, in addition to an assessment of the economic, budget or fiscal impact of laws, **other *ex post* impact assessments should include social impact, including impact on employment and local communities, impact on business environment (e.g., impact on SMEs, competition and administrative burdens), human rights impact as well as impact on gender equality, environmental impact and when relevant anti-corruption impact**. In this respect, and in line with good practice, human rights impact assessments should generally be part of *ex ante* RIA, to ensure that legislation does not unduly interfere with the human rights of individuals or groups.[60]

60. According to Article 226, the *ex post* legal evaluation shall be carried out by the DGLA of the Parliament's Secretariat, which shall assess whether all normative acts necessary for the implementation of a particular law have been approved, as well as "*the legal obstacles to the practical application of normative acts and the relevant cases in which the norms of normative acts have been the subject of referrals to the Constitutional Court*". At the same time, "*ex post* impact assessment" shall be carried out by the standing committee, which "*shall assess the effectiveness of normative acts and the extent to which the purpose and objectives of the normative acts have been achieved*" (Article 227 (1)).

61. As a result of the "*ex post* legal analysis", the DGLA of the Parliament's Secretariat shall draw up "*a legal report on the organization of the execution of the law, which shall be forwarded to the standing committee on the matter*" (Article 226 (4)). On the basis of the report, the standing committee may organize public hearings on the work carried out by public administration bodies in organizing the execution and implementation of normative acts (Article 226 (5)). Moreover, on the basis of the findings of the public hearings, the responsible standing committee may adopt recommendations to the Government and/or competent public authorities (Article 226 (6)). However, the Draft Code does not define a clear mechanism for following up on these recommendations, nor outlines the consequences for failing to address them. On the other hand, when it comes to "*ex post* impact assessment" evaluating the impact of the law, Article 227 (5) requires the government to respond in writing within two months to parliament's recommendations, including, where appropriate, by submitting a draft law. **It would be advisable to provide for such possibility also with respect to "*ex post* legal analysis".**

62. It is recognised that *ex post* assessment is a quite time-consuming exercise requiring a lot of human and financial resources. While, as part of their general oversight role, it is important for parliaments to engage in *ex post* evaluation of legislation, other special bodies could also be set up to conduct *ex post* evaluation. In those countries that have a proper *ex post* evaluation system, it is usually the government, in particular the competent line ministry, that is responsible for conducting *ex post* evaluations of laws that fall within

59 See OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 165.

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

its purview both because they have expertise of the issue and also a closer relationship with the stakeholders who can provide valuable feedback. Some countries have separate agencies dealing with *ex post* evaluation of laws.[61] **It is therefore, advisable, to consider involving other bodies in the performance of post-legislative scrutiny or to ensure the availability of sufficient human and financial resources and capacities for the standing committees to do so.**

63. Article 227 (6) of the Draft Code provides that the *ex post* impact assessment report prepared by the standing committee and the reply of the Government and/or public authorities shall be transmitted to the MPs and, where appropriate, shall be presented in the plenary session of the Parliament. Furthermore, Article 227 (7) provides that at the decision of the relevant standing committee, "the *ex post* impact assessment report may be submitted to the plenary of the Parliament for hearing". However, it is unclear what the difference between the two procedures is and in which cases each of the procedures may be invoked. **Therefore, the Draft Code would benefit from more precise language, particularly regarding the conditions under which *ex post* impact assessment reports may be presented at plenary sessions or subjected to hearings.**

64. Another important aspect is ensuring that the executive and other state institutions respond to parliament's inquiries when assessing law implementation and its impact. To achieve this, the Draft Code would benefit from establishing clear mechanisms, as well as sanctions for failing to comply with the parliamentary requests. One potential measure could be requiring a formal apology during the next plenary debate. Additionally, maintaining a public record of all requests and responses - whether received or not - would help apply pressure on those responsible to be more responsive to the Parliament's requests.

RECOMMENDATION B.

1. To indicate more detailed criteria for selecting the laws for *ex post* evaluation, while also specifying the type of laws, which need to be mandatory assessed (e.g., those impacting human rights, including gender and diversity, those impacting the efficiency, effectiveness and independence of democratic institutions, civil society, critical environmental policy).

2. To specify that *ex post* impact assessments of laws should include social impact, including impact on employment and local communities, impact on business environment, human rights impact as well as impact on gender equality, environmental impact and sometimes anti-corruption impact.

3. To consider involving other bodies to conduct *ex post* evaluation of laws, while ensuring the availability of sufficient human and financial resources and capacities for the standing committees assigned to perform this task.

5. Parliamentary Hearings and Reports to the Parliament (Chapter XVI)

5.1. Hearings

65. Section 1 of Chapter XVI of the Draft Code addresses hearings, specifying three distinct types of hearings: legislative, supervisory, and investigative. While legislative hearings

61 See OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 168.

are procedures for seeking the opinion of citizens, associations and other interested parties on draft normative acts examined in the Parliament, supervisory hearings are supposed to examine the work of the Government, ministries, other public authorities, in particular "*how they apply the laws, as well as the performance of public officials in managing their professional responsibilities*". Finally, investigative hearings shall investigate suspicions of violations of the law, offensive actions or misconduct of public authorities in the exercise of their official duties (Article 228).

66. According to Article 66 (n) of the Constitution of Moldova, the Parliament can initiate "*investigations and hearings concerning any matters touching upon the interests of the society*". The Draft Code provides that hearings may be conducted in either plenary sessions or standing committees. Plenary hearings and committee hearings are widely used by parliaments to collect information to supplement government reports, but also provide a platform for engaging with experts and a broad range of stakeholders, including CSOs.

67. According to Article 229 (2) of the Draft Code, parliamentary hearings in the plenary of the Parliament shall be organized and held upon the proposal of the Standing Bureau, standing committees or parliamentary factions. **Consideration, however, could be given to expand this right also to deputy groups, as well as ad hoc parliamentary bodies for matters falling within the scope of their jurisdiction**. The date and procedure of the hearings shall be set and notified to the Government by the Parliament (Article 229 (3)). The Parliament may adopt resolutions on matters discussed at parliamentary hearings in plenary (Article 229 (4)).

68. Moreover, the Draft Code does not indicate when and where the information on the topic of parliamentary hearings, the time and place of their holding should be posted. It may be useful to provide for some timeframes in this context which should be sufficient enough to ensure a proper preparation. As mentioned by ODIHR, allowing less than 15 days between the decision to hold a public hearing and the actual hearing is likely to leave insufficient time for potentially interested parties to indicate their interest in the hearing and prepare their submissions.[62] This is especially true for smaller under-resourced organizations that may not have the capacity to prepare a quality submission on short notice. If information about an upcoming hearing is not published immediately after its scheduling, it shortens the notice time for interested parties even further.[63] On this point, the Declaration on Parliamentary Openness recommends that "*parliament shall provide sufficient advance notice to allow the public and civil society to provide input to members regarding items under consideration.*"[64] (see also *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament).*

69. **It is important to ensure openness of parliamentary hearings to a broader range of stakeholders, including interested and affected individuals and CSOs, by publishing the relevant announcement about the hearing on the official website of the Parliament once the decision about conducting such hearings has been approved. Sufficient advance notice about the hearings should be provided to trigger meaningful and inclusive public participation and ensure that relevant stakeholders have sufficient time to become aware of such a hearing** (see also recommendations in the *ODIHR Opinion on the Draft Code on the Organization and Functioning of the*

62 OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 60.
63 OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 60.
64 See *Declaration on Parliamentary Openness*, which was adopted by a global group of parliamentary monitoring organisations and formally launched on 15 September 2015, Article 17.

Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament)[65] to ensure more open, participatory and inclusive parliamentary processes).

70. Article 231 (1) of the Draft Code, which pertains to hearings in standing committees, specifies that the committee chair appoints an MP and a "*consultant responsible for preparing and organizing the hearing*". However, it would be advisable to clarify who the "consultant" is - whether it refers to a parliamentary staffer, an external expert, or another MP, which in this case would following the system of Council of Europe Parliamentary Assembly and European Parliament and serve as a rapporteur.

71. While hiring external experts to assist with scrutiny is considered a good practice,[66] particularly when specialized knowledge is needed to assess the impact and implementation of certain legislative provisions, this approach must be carefully planned. From the standpoint of public perception, as well as parliamentary integrity and accountability, the recruitment of consultants should be open and transparent. In this respect, **clear criteria and merit-based procedures for selecting consultants, along with well-defined consultants' responsibilities and deliverables, should be established. It is advisable to envisage this in the Draft Code, while also clarifying the role of the consultant in organizing/preparing hearings before standing committees**.

72. According to Article 232 (2) of the Draft Code, the committee, once the list of persons to be heard has been established, shall send out formal invitations. The invitation shall be sent at least 7 days prior to the hearing, unless the committee decides otherwise, and shall contain the basic information concerning the hearings, including the purpose, subject, date, time and place of the hearing. Persons invited shall be required to appear before the committee and to provide any information and documents requested.

73. At the same time, as also discussed in greater details below with respect to inquiry committees (see Sub-section 7.3 *infra*), the Draft Code in general, and Article 232 specifically, would benefit from including some victim and whistleblower sensitive provisions. Otherwise, the ability of the parliament to compel testimony in the absence of the necessary protections might have a chilling effect on the willingness of people to come forward to the parliament. This should also include that the committee can hold in-camera sessions and reports may be redacted to protect whistleblowers.

74. To ensure the openness and transparency of parliamentary work, it is also crucial to provide free access to the original transcripts of the sessions, so that they are not only available to a limited group of persons, i.e., factions, deputy groups, committees, commissions and deputies. In Article 233 (2), the Draft Code stipulates that reports of legislative and supervisory hearings must be made public within 10 days after the conclusion of the hearing. **At the same time, to ensure compliance with the overall idea of the parliamentary openness and transparency, the general public should have a right to get acquainted with the full case-file of a parliamentary meeting, not only with the report, which is generally a summarized version of the discussions. While consideration could be given to ensuring public access to the full case-file of a parliamentary meeting in the Draft Code, some narrow specific exceptions for confidentiality (e.g. personal data, national security, ongoing criminal investigations, risk to the safety of whistleblowers or human rights defenders) as well as specification on who decides on confidentiality and its duration should be**

65 For a more comprehensive analysis of modalities of public engagement in the work of the Parliament and practical recommendations in this respect, see *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament)* – available at: <Moldova | LEGISLATIONLINE>.

66 OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 86-88.

also envisaged. Provisions for redactions where sensitive information is removed can also preserve transparency while protecting individuals.

75. Furthermore, the Draft Code does not specify a timeline for the publication of reports from investigative hearings, nor does it outline circumstances under which such reports may not be published and should be supplemented in this respect.

5.2. Annual Reporting by Public Institutions

76. Section 2 of Chapter XVI of the Draft Code lists the institutions required to submit their annual reports to the Parliament (Article 234 (2)), specifying the contents of the reports and the submission deadlines. However, Article 234 (5) further states that institutions other than those mentioned in Article 234 (2), must submit their reports within the "*required deadline and in accordance with the legislation in force*". **It is recommended, however, to specify all reporting institutions and the respective deadlines for reporting in the Draft Code or cross-reference the respective provisions of the legislation defining those issues. Moreover, this section would benefit from clarifying which standing committee is responsible for reviewing the annual reports of specific institutions, in order to avoid potential ambiguities.**

77. **Regarding the content of the annual reports, it would be useful to include in the Draft Code a provision requiring institutions to provide information on any follow-up actions taken in response to specific requests or recommendations made by the Parliament during the reporting period**. In addition, with a view to reflect on the CEDAW Committee General Recommendation No. 40, the annual reports could also be required **to include data on the representation of women within the respective institutions, at all levels of decision-making**, disaggregated including by age, ethnic and socioeconomic background.[67] **Article 235 of the Draft Code should be supplemented in this respect.**

RECOMMENDATION C.

To supplement Article 235 of the Draft Code to require institutions to provide in their annual reports information on any follow-up actions taken in response to specific requests or recommendations made by the Parliament during the reporting period as well as disaggregated data on the representation of women within the respective institutions, at all levels of decision-making.

6. SPECIALIZED PARLIAMENTARY SCRUTINY AND ENGAGEMENT WITH OTHER BODIES (CHAPTER XVII)

6.1. General Comments

78. Chapter XVII of Title III outlines the framework for "specialized parliamentary scrutiny", with Article 236 stating that such scrutiny is carried out by the Parliament and standing committees "*through specialized parliamentary scrutiny institutions*". This scrutiny includes reports on the respect for human rights and freedoms, reports such as those from the Court of Accounts (including audit reports), reports from the National

67 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 70 (c).

Bank and the National Committee for the Financial Market, oversight of the Intelligence and Security Service (hereinafter "SIS"), and scrutiny of the implementation of judgments and decisions by the ECtHR and the Constitutional Court.

79. While recognizing that parliaments may not have the time, resources or expertise to carry oversight over the broad range of activities carried out by a modern government, they should be at the apex of the system of scrutiny involving an array of other regulatory or independent bodies, responsible for monitoring the delivery of government services in specific spheres.[68] While many regulatory oversight bodies are located within government, other bodies are increasingly involved in regulatory oversight and legal scrutiny functions, which may verify, among other, the compliance of draft policies and laws with international human rights obligations (e.g., courts, independent institutions, such as NHRIs, other similar independent institutions, regulatory bodies). Many states may have specialized independent and regulatory bodies that oversee certain elements of laws, such as auditors-general, courts of accounts or other supreme audit institutions, anti-corruption commissions, freedom of information or data protection commissioners, national broadcasting commissions, consumer rights agencies or election commissions. These bodies conduct oversight over laws and practices in their fields in a more or less autonomous or independent fashion.[69]

80. These bodies have a dual role in the context of parliamentary oversight. On the one hand, they are generally accountable to the Parliament and, therefore, themselves subject to parliamentary oversight. On the other hand, these bodies too are engaged in the oversight of the executive branch within their respective thematic mandates. **Both of these dimensions should be recognized in the Draft Code. While, it is necessary to clarify the extent to which these bodies can be subject to parliamentary oversight without undermining their independence and special position vis-à-vis other state institutions, the Draft Code should also ensure that specialized investigations conducted by these bodies and their technical expertise are properly fed into Parliament's own oversight work.**[70]

81. In practice, the modalities of interaction between parliament and these special independent regulatory and oversight bodies may include the submission of annual reports to parliament, regular appearances by the heads or senior leadership of these bodies before parliamentary committees, the submission of evidence to committees of inquiry, written answers on the work of these bodies, and plenary debates in parliament on their work.[71] (see also *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament).*

82. Currently, the Draft Code expressly envisages mainly one modality of such interaction, namely, reporting. However, the Draft Code does not specify how these bodies contribute to public hearings and other forms of parliamentary oversight, except in Articles 240 and 241, which broadly enables parliamentary oversight bodies to request "*secret information and information on the day-to-day work of the SIS*" (Article 240 (4)), as well as information on the execution of the ECtHR judgments (Article 241 (4)). Those provisions alone may not be sufficient to ensure regular input of independent oversight bodies in a structured manner that will allow their findings and recommendations to be heeded and

68 OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 35 and references therein.
69 OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, paras. 196.
70 OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 34.
71 OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 34, and references therein.

acted upon by the Parliament. **Therefore, the Draft Code could usefully clarify and broaden the scope of the relationship and engagement between the Parliament and special independent regulatory and oversight bodies.**

6.2. Oversight in the Field of Human Rights

83. The Draft Code establishes some framework for co-operation between the national human rights institution and ombudsperson (People's Advocate) and the Parliament for the purpose of national oversight in the field of human rights. Article 237 of the Draft Code states that the Parliament, through its standing committee on human rights and freedoms, shall exercise specialized parliamentary scrutiny in the field of respect for human rights and freedoms by monitoring the implementation by public authorities of the recommendations of the Ombudsperson, while also requiring the Ombudsperson to submit to the Parliament the annual report on the respect for human rights by 15 March each year, as per Law No. 52/2014 on the People's Advocate. Article 237 (4) of the Draft Code provides that the report shall be heard by the plenary of the Parliament, on which it may adopt a decision. Furthermore, the executive (or other competent authorities) should be required to formally respond to parliament on the follow-up recommendations arising from the Ombudsperson's reports. This would strengthen the impact of the oversight and help the Ombudsperson's recommendations be followed.

84. While it is understood from the above provision that the Parliament of Moldova is tasked with indirectly overseeing other state institutions' respect for human rights, based on the People's Advocate's reports, it leaves open the question of whether the work of the Ombudsperson, as an independent state body, would itself be subject to parliamentary scrutiny. In particular, the Draft Code is not clear about whether the Ombudsperson should submit an annual report on its own activities.

85. Independence is essential to the effective functioning of NHRIs and it implies that any framework governing the interaction and co-operation between NHRIs and Parliament should ensure respect for the NHRI's independence, while at the same time ensuring its accountability to Parliament.[72]

86. According to the *2012 Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments (2012)*,[73] NHRIs should submit to Parliament an annual report on activities, along with a summary of its accounts, and also report on the human rights situation in the country and on any other issue that is related to human rights. Article 29 of Law No. 52/2014 on the People's Advocate further elaborates on the reporting by the Ombudsperson, requiring that that the draft annual report be submitted to public debates at least one month before submission to the Parliament, and published on the ombuds website.[74] Article 19 (3) of the Law No. 52/2014 specifies that the Ombudsperson may be asked questions regarding *its activities* or the report presented, while Article 19 (4) requires the Committee on Human Rights and Interethnic Relations to present the information on the activities of the Ombudsperson prior to the hearing of the annual report on the observance of human rights in Moldova. Article 19 (6) of the Law No. 52/2014 further specifies that the Ombudsperson may also publish thematic human rights reports. It would be important **to clarify that the Ombudsperson should**

72 See paragraph 2 of the *2012 Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments (2012),* which were developed during a Seminar co-organized by the Office of the UN High Commissioner for Human Rights (OHCHR), the International Coordinating Committee of National Institutions for the promotion and protection of human rights, the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the United Nations Country Team in the Republic of Serbia.

73 *2012 Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments (2012)*, para. 15.

74 Law No. 52/2014 on the People's Advocate (Ombudsman), adopted on 3 April 2014.Moldova, available: <LP52/2014>.

submit to Parliament an annual report on the human rights situation in the country, that also includes a report his/her own activities, along with a summary of its accounts, while ensuring coherence between the Draft Code and Law No. 52/2014. In particular, it should be clear that the Committee on Human Rights and Interethnic Relations presents information on the Ombudsperson's activities and that the Ombudsperson may be asked questions on her/his own activities.

87. While the Ombudsperson is empowered to issue opinions on draft normative acts potentially impacting human rights and freedoms and on the compatibility of national legislation with international legal instruments (Article 27 (b) and (c) of Law No. 52/2014), this is not specifically mentioned in the Draft Code. **It is recommended to specifically mention such prerogatives in the Draft Code or make a specific cross-reference to the Law No. 52/2014, to make it clear that the Ombudsperson has the possibility to provide systematic and consistent input on these matters**. Notably, the Draft Code does not envisage a systematic involvement of the Ombudsperson by the Parliament and its bodies when dealing with human rights matters. The *2012 Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments* specifically recommend that "*Parliaments should ensure participation of NHRIs and seek their expert advice in relation to human rights during meetings and proceedings of various parliamentary committees*" and that "*NHRIs should advise and/or make recommendations to Parliaments on issues related to human rights, including the State's international human rights obligations*".[75] **This should be reflected in the Draft Code to ensure meaningful two-way communication between these institutions, consistent with respect for the Ombudsperson's independence.**

88. Useful guidance on how the Ombudsperson can contribute to the oversight activities of Parliament can be found in the *2012 Belgrade Principles*, noted above. Apart from the submission of reports to parliament on the human rights situation in the country or specific human rights issues, other forms of interaction recommended in the Belgrade Principles include, *inter alia*: parliament's debating the most significant reports by the NHRI in plenary; parliament's holding open discussion on the recommendations issued by the NHRI and seeking information from the public authorities on the implementation of those recommendations; designating an appropriate parliamentary committee as the NHRI's main point of contact with Parliament; regular meetings between members of the relevant specialized parliamentary committee and the NHRI; and the NHRI's participation in the meetings of, and provision of, expert advice to various parliamentary committees or plenary at own initiative or upon request.

89. **It would thus be advisable to delineate and mutually reinforce the respective oversight roles of the Parliament and the People's Advocate, reflecting the Belgrade Principles, with proper, explicit cross-references to the Law No. 52/2014 on the People's Advocate and any other legislative acts specifying the nature of the relationship between the Parliament and the Ombudsperson – while respecting the independence of the institution.**

90. Moreover, some provisions of the Draft Code should be approached with caution in order not to compromise the independence of the People's Advocate. For example, Article 237 (5) of the Draft Code states that a standing committee may request the People's Advocate to "investigate" specific human rights violations and submit a report to the committee. It also stipulates that the standing committee may issue recommendations related to the restoration of rights. The UN Principles relating to the status of national institutions (hereinafter the "Paris Principles") specifically envisage the possibility for the

75 *2012 Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments (2012)*, paras. 24-25.

Government, Parliament and any other competent body, on an advisory basis, to request *opinions*, *recommendations*, *proposals* and *reports* from the NHRI on any matters concerning the promotion and protection of human rights; the NHRI may decide to publicize them (Paris Principle A.3.a). While it is common that NHRIs may provide information and advice to parliaments to assist in the exercise of their oversight and scrutiny functions, the prerogative of the Parliament to request the Ombudsperson to "investigate" certain human right violation may raise concerns in terms of respect of the People's Advocate's independence. According to the Venice Commission's Principles on the Protection and Promotion of the Ombudsman Institution ("the Venice Principles"), *"[t]he Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies*" (Principle 16).[76] The Belgrade Principles also make it clear that "*NHRIs may provide information and advice to Parliaments to assist in the exercise of their oversight and scrutiny functions*".[77] Hence, the Ombudsperson should not be obliged to "investigate" human right violations at the request of the Parliament, especially given possible risk of politicization in certain cases when the request for investigation may be simply misused.[78] The above-mentioned provision should be amended to specify that it is not be understood as an obligation for the Ombudsperson to investigate human rights violations. More generally, **it would be, therefore, advisable for the Draft Code to specify the extent of oversight and its modalities with regard to the Ombudsperson, bearing in mind the safeguards for the Ombudsperson's independence and relevant international standards.**

91. Another area of scrutiny specifically addressed in the Draft Code concerns the implementation of judgments of the ECtHR and the Constitutional Court. Article 241 of the Draft Code regulates the subcommittee tasked with overseeing this important aspect (currently regulated under Article 28[1] of the Law on the RoP), which is to be chaired by a representative of the parliamentary opposition. Notably, this is the only provision in the Draft Code that explicitly mentions the parliamentary opposition as part of the oversight process, which, as mentioned above, represents a significant deficiency in the overall framework. Finally, consideration could be given to specific oversight activities related to reporting to UN treaty bodies, including concluding observations of the CEDAW Committee.

6.3. Financial Oversight

92. Financial oversight is addressed in Articles 238 and 239 of the Draft Code, which elaborate on the role and reporting responsibilities of the Court of Accounts, the National Bank, and the National Committee for the Financial Market in this regard. In this respect, it is worth noting the EU's assessment of the legal framework and institutional capacities in this area, as outlined in its 2024 Enlargement Report.[79] In particular, the Report

76 Venice Commission, *Principles on the Protection and Promotion of the Ombudsman Institution* (Venice Principles), CDL-AD(2019)005.

77 *2012 Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments (2012)*, para. 26.

78 European Commission for Democracy through Law (Venice Commission), *Principles on the Protection and Promotion of The Ombudsman Institution* (The Venice Principles), CDL-AD(2019)005.

79 European Commission, *2024 Communication on EU Enlargement policy (Republic of Moldova 2024 Report)*, October 2024, p. 58. In particular, the Report states that "*regarding the constitutional and legal framework, the Court of Accounts is enshrined in the Constitution and operates under a well-developed law. However, certain provisions of the law undermine the Court's organizational, functional, and financial independence. Improvements should be made to strengthen performance auditing. As for institutional capacity, the Court has a broad mandate to audit all public bodies and resources, but Parliament has the power to limit the Court's control over its resources and work programme*". It also underlines the need to "*grant the Court of Accounts full organisational, functional and financial independence*".

concludes that the efficiency of parliamentary oversight of public funds management needs to improve.

93. While Article 66 of the Constitution underlines the role of the Parliament to approve the State budget and exercises control over it, the Draft Code does not contemplate a specific role of the Parliament in the budget process. At the same time, effective parliamentary involvement in the budget process help establishing checks and balances earlier on in the process that are crucial for a transparent and accountable government and efficient delivery of public services.[80] Unless provided in another piece of legislation and although going beyond the scope of this Opinion, it is recommended **to consider involving the Parliament throughout the full budget cycle, including from the stage of consultation and development of the budget measures**. Sufficient time should also be dedicated to budget review after submission to the Parliament, allowing for public hearings and input from specialized civil society organizations, economists and other experts. In addition, the Parliament should also receive and assess medium-term and annual budget strategies and be informed of the main assumptions that underlie the annual budget's revenue and expenditure projections, well in advance.[81] There is growing recognition of the importance of public participation across the budget cycle (so-called "participatory budgeting"), which has been reflected in key global standards and principles,[82] and should also be ensured throughout the budget cycle, including when discussed in Parliament. At the same time, this means that the Parliament should also have adequate technical expertise and resources to participate in financial oversight; certain parliaments have established dedicated budget service or in-house specialized units, which may contribute to more effective financial oversight overall, in other parliaments the burden falls on the Budget Committee and its secretariat.[83]

94. Article 238 of the Draft Code only mentions that the reports of the Court of Accounts shall be heard in the relevant standing committee and in the plenary of Parliament, but does not elaborate further on the role of the said committee and specific working modalities to ensure the effectiveness of its work. The Parliament has a dedicated Committee on Public Finance Oversight.[84] To underline the fact that public finance oversight is wholly independent from the government, it is a recognized good practice to ensure that **the relevant committee is headed by an opposition party member, while requiring equal representation of majority and opposition; it is suggested to consider supplementing the Draft Code in this respect**.[85] A number of other aspects should be elaborated in the Draft Code in order to enhance the effectiveness of the committee's public finance oversight, including the guaranteed appointment for the full term, clear elaboration of its role and remits, frequent meetings, hearings open to the public, issuance of formal and substantive reports to parliament at least annually.[86] It is

80 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, p. 63.
81 See e.g., Commonwealth Parliamentary Association | Recommended Benchmarks for Democratic Legislatures | Field Guide (2018), 7.2 Financial and Budget Oversight.
82 In 2012, for example, the Global Initiative on Fiscal Transparency (GIFT) outlined ten high-level principles on fiscal transparency, participation, and accountability. These principles include reference to public participation in fiscal policies; encouraging policy makers to ensure that citizens can exercise the right to participate directly in public debate and discussion over the design and implementation of fiscal policies. Similarly, in 2014, the International Monetary Fund (IMF) updated its' Fiscal Transparency Code (FTC) to include a principle (Principle 2.3.3) around public participation in budget preparation and execution. The *OECD's Principles of Good Budgetary Governance* (2015) also called on member states to "*provide for an inclusive, participative, and realistic debate on budget choices*". See also Transparency International, *Participatory Budgeting – Public Participation in Budget Processes*, 2022, pp. 8-9.
83 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, p. 66.
84 See <Parliament of the Republic of Moldova - Committee Details>.
85 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, p. 65.
86 See Commonwealth Parliamentary Association and the World Bank Institute, 2006. Parliamentary Financial Scrutiny: The Role of the Public Accounts Committees.

also recommended to establish a procedure with the government for following up on its report findings.[87]

95. **If the above-mentioned aspects are addressed in other pieces of legislation, it would be beneficial for the Draft Code to cross-reference them. If not, it is strongly recommended that the role of parliament in budget and financial oversight be explicitly elaborated in the Draft Code, in particular the role of the public finance oversight standing committee.**

96. **Article 238 would also benefit from the inclusion of a detailed timeline for reviewing the reports from the Court of Accounts by the relevant standing committee(s) and the plenary of the Parliament. Aligning these timelines with those related to the preparation and discussion of the state budget for the following fiscal year would help streamline the oversight process.**

97. Finally, the role of the Parliament in ensuring gender- and diversity-responsive budgets that take into consideration the needs and interests of individuals from different social groups (gender, age, ethnic origin, disability, location, etc.) in expenditure and revenue policies is also important to mitigate inequalities.[88] In this respect, the CEDAW Committee specifically recommended to establish mechanisms to monitor gender-responsive budgeting in all sectors.[89] It is understood that with the *Program for promoting and ensuring equality between women and men in the Republic of Moldova for the years 2023-2027*, there is progress in promoting the incorporation of a gender-responsive approach into public financial management system. At the same time, it is important that the Parliament ensures that the budget is responsive to the needs and interests of individuals from different social groups (gender, age, ethnic origin, disability, location, etc.). It is thus recommended **to include specific provisions in the Draft Code for that purpose requiring that parliamentary budget and financial oversight also includes an analysis of the entire budget and resulting impacts from a gender perspective, across sector**.

6.4. Oversight of Security and Intelligence Service (SIS)

98. Parliamentary oversight over the security sector presents particular challenges arising from access to highly sensitive information and its secure handling, a lack of potential expertise on security sector governance and reform (SSG/R) and potential lack of the access to the relevant agencies, possible reluctance of the agencies to share information because of the perceived risks of information leakage, among others. Security sector oversight mechanisms are essential to ensure their greater transparency in the security and intelligence services, including by providing checks and balances that prevent human rights violations, holding those guilty of abuses accountable, and making recommendations to prevent recurrence.[90] Based on their oversight and representational function, parliaments are in a unique position to grant or withhold democratic legitimacy to government's decision about security policy and security reform and to bridge government and citizens in shaping national dialogue on security.[91]

87 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, p. 65.
88 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 225.
89 CEDAW Committee, Concluding observations on the sixth periodic report of the Republic of Moldova, CEDAW/C/MDA/CO/6, 10 March 2020, para. 15 (e).
90 DCAF, OSCE/ODIHR and UN Women (2019) "Parliamentary Oversight of the Security Sector and Gender", in Gender and Security Toolkit, p. 6.
91 DCAF, OSCE/ODIHR and UN Women (2019) "Parliamentary Oversight of the Security Sector and Gender", in Gender and Security Toolkit, p. 6.

99. An area of specialized scrutiny addressed in the Draft Code is the oversight of the SIS, although in a rather summary manner (Article 240 of the Draft Code). In its 2024 Enlargement Report, the EU noted that "*On 20 March 2024, Parliament decided to establish an ad hoc commission to monitor the activities of the Security and Intelligence Service (SIS) and to strengthen parliamentary oversight over the SIS. Members of the opposition and civil society could participate in the commission. The National Security Strategy, adopted in December 2024, stipulates that the Supreme Security Council will inform Parliament annually on the implementation of the strategy*."[92] At the same time, in Article 240, the Draft Code provides for scrutiny of the SIS through "the standing committee on the matter". The Draft Code does not mention the *ad hoc* commission mentioned in the EU report and instead provides for a specialized standing committee. It is good practice that a *special parliamentary committee or body is mandated to oversee security and intelligence services*[93]. Assigning this function to an ad hoc body may pose risks due to potential instability, lack of continuity, and inconsistency in the oversight of such a critical area.

100. At the same time, if such a commission exists, **the Draft Code should make explicit reference to it and clarify its roles, powers, as well as the relationship and respective roles of the relevant standing committee and commission in overseeing the SIS**. In particular, it is fundamental that **the related provisions elaborate on the said commission's or standing committee's oversight mandate and powers in relation to SIS' compliance with law, the effectiveness and efficiency of their activities, their finances and their administrative practices, as well as specific aspects of the work of security and intelligence services, such as overseeing information collection measures, co-operation and information exchange with foreign services, the use of personal data, as well as the handling of individual complaints against security services,** as recommended by the UN Special Rapporteur on the protection and promotion of human rights while countering terrorism (UN SRCT) in its *Compilation of Good Practices on Legal and Institutional Frameworks and Measures that Ensure Respect for Human Rights by Intelligence Agencies while Countering Terrorism, including on their Oversight (2010)* (hereinafter "UN SRCT Compilation").[94] It is also important that the competent parliamentary oversight mechanism has **the power to summon officials, so that they can hold a closed session to discuss matters relating to SIS activities in details, accompanied with sanctions in case of non-compliance with summons.**[95] This may prove more effective than only summoning the representatives of the SIS on a plenary session whereby sensitive information cannot necessarily be shared with the entire parliament.

101. For parliamentary oversight in this sensitive sphere to be effective, the designated parliamentary oversight mechanism should be granted additional powers which should be explicitly mentioned in the Draft Code, unless provided in another piece of legislation, in which case a cross-reference should be made to the said legal text(s). **These should include the ability to launch parliamentary investigations on its own initiative; to conduct inspection of SIS facilities; to receive and handle complaints, investigate them and issue recommendations or binding decisions and follow-up on them;**

92 European Commission, *2024 Communication on EU Enlargement policy (Republic of Moldova 2024 Report)*, October 2024, p. 23.

93 CoE Parliamentary Assembly (PACE), *Recommendation 1713 (2005) on Democratic Oversight of the Security Sector in the Member States* (2005), para. 15d, which states that "*the control of activities of special services should be carried out by a special parliamentary committee"*.

94 See UN Special Rapporteur on the protection and promotion of human rights while countering terrorism (UN SRCT), *Compilation of Good Practices on Legal and Institutional Frameworks and Measures that Ensure Respect for Human Rights by Intelligence Agencies while Countering Terrorism, including on their Oversight (2010)* (hereinafter "UN SRCT Compilation").

95 See para. 14 of the *2010 UN SRCT Compilation*.

and/or being involved in the authorization process of surveillance measures.[96] The legal drafters could also consider giving the designated parliamentary oversight mechanism the powers **to receive and hear protected disclosures from whistle-blowers**, as is for instance the case for Belgium's expert oversight body, which reports to the parliamentary committee.[97] There should also be a clear reference to *in camera* and public formats of the committees' work, as well as procedure for MPs to receive security clearances, if such are needed.

102. The Draft Code should also further elaborate on **parliament's power and authority to make public interest disclosures**. As per the 2013 *Global Principles on National Security and the Right to Information* (The Tshwane Principles), as endorsed in Resolution 2060 of the Parliamentary Assembly of the Council of Europe (PACE),[98] "*the legislature should have the power to disclose any information to the public, including information which the executive branch claims the right to withhold on national security grounds, if it deems it appropriate to do so according to procedures that it should establish"*.[99] This would mean that democratically elected parliamentarians cannot be censured by the security services on the grounds of public security, if the parliamentary committee or designated parliamentary oversight mechanism in accordance to a prescribed procedure (such as committee vote) concludes that there is a greater public interest in disclosing certain information.[100]

103. With respect to oversight of the SIS, parliamentary access to classified information is a key power to effectively perform parliamentary oversight functions and unhindered access to information should be particularly emphasised for the designated parliamentary oversight mechanism. According to Principle 6 of the *Tshwane Principles*, all oversight and appeal bodies, including courts and tribunals, should have full and unhindered access to all information, including national security information, regardless of classification level, relevant to their ability to discharge their responsibilities, as well as information concerning co-operation with foreign state SIS bodies, such as co-operation through the exchange of information, joint security-related operations (e.g., counter-terrorism ops) and the provision of equipment and training. A 2018 survey carried out by the NATO Parliamentary Assembly mapped out member state practices, and found that a great majority of NATO member states grant either all parliamentarians or selected parliamentary committees with access to classified information; furthermore, in two thirds of the surveyed countries, parliamentarians sitting in security-relevant committees do not undergo security vetting.[101] It should be for the Parliament to decide whether members of oversight committees should be subject to security vetting prior to their appointment, and if required, it should be conducted in a timely manner, in accordance with established principles, and free from political bias or motivation.[102] **The drafters may benefit from taking into consideration such practices and consider providing similar modalities concerning access by parliamentarians or committee members to**

96 European Union Agency for Fundamental Rights (EU FRA), *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU* - Volume II: field perspectives and legal update (Luxembourg, 2017), pages 34-35; and EU Fundamental Rights Agency, *Mapping of legal frameworks on Surveillance by Intelligence Services within the EU* (2015), page 35.

97 *Ibid.* page 27 (2015 EU FRA's *Mapping of legal frameworks on Surveillance by Intelligence Services within the EU*).

98 See Parliamentary Assembly of the Council of Europe (PACE), *Resolution 2060 on Improving the Protection of Whistleblowers* (2015).

99 2013 *Global Principles on National Security and the Right to Information* (The Tshwane Principles), as endorsed in Resolution 2060 of the Parliamentary Assembly of the Council of Europe (PACE), Principle 36.

100 This is for instance the case in the United Kingdom where the reports of the Parliament's Intelligence and Security Committee, whether annual or *ad hoc*, usually contains redactions on security grounds suggested by the services – but these must be justified, and the committee has the final say; see EU Fundamental Rights Agency, *Mapping of legal frameworks on Surveillance by Intelligence Services within the EU* (2015), page 88.

101 See NATO Parliamentary Assembly-DCAF, Yildirim Schierkolk, Nazli, *Parliamentary Access to Classified Information* (2018), pages 22-26.

102 2013 *Global Principles on National Security and the Right to Information* (The Tshwane Principles), as endorsed in Resolution 2060 of the Parliamentary Assembly of the Council of Europe (PACE), Principle 35.

state secret and classified information, unless already regulated in another piece of legislation.

104. It must be underlined that operational oversight of security and intelligence services is time-consuming and requires extensive powers of access and substantial time, human and financial resources, not to mention technological expertise to oversee the most technical and complex aspects of the security/intelligence work such as mass surveillance, signals intelligence and so forth. The legal drafters should ensure **the designated parliamentary oversight mechanism has adequate powers, as well as sufficient time and resources to discharge its oversight functions over the SIS,** including the potential use of external and independent experts. Parliamentary oversight mechanisms should have the possibility to exchange information/views with other oversight institutions (e.g., independent oversight bodies, NHRIs or data protection authorities) whose remit encompasses oversight of SIS activities in different ways. Moreover, there should be a possibility to carry out consultations in order to engage with, inform and hear the views of civil society, in particular women's groups and affected communities, including ethnic, religious or other minority populations.

105. The increasing practice in the EU is to establish a separate (independent) expert body exclusively dedicated to overseeing security services with extensive oversight powers, such as authorizing surveillance measures, investigating complaints, requesting documents and information from the intelligence services, and/or giving advice to the executive and/or parliament.[103]

106. **It is also important that parliamentary oversight of the SIS be gender- and diversity-sensitive and this could be expressly stated in the Draft Code**. This means that the parliament should ensure that security needs are defined in an inclusive manner and that laws and regulations concerning security and intelligence address diverse needs, that gender and diversity are mainstreamed for the security sector and parliamentary oversight is diverse and inclusive. In that respect, the *2019 DCAF-OSCE/ODIHR-UN Women Tool no. 7 on Parliamentary Oversight of the Security Sector and Gender* can serve as a useful reference tool.

107. Finally, it is noted that currently, the Subcommittee on the exercise of scrutiny on the activity of the SIS is chaired by a representative of the parliamentary opposition (Article 28 of the RoP). **It is recommended that the role of the opposition in this respect be retained, i.e. in at least one of the leadership positions**.

6.5. Oversight Over the Proclamation of State of Emergency or Other Emergency Legal Regime and Implementing Measures

108. In the 2024 EU Enlargement Report, it is noted that "*No effective parliamentary oversight mechanism was adopted to cover the activities of the Commission for exceptional*

103 Among those European countries, Germany and Belgium have set-up powerful expert oversight bodies, namely the G-10 Commission in Germany and the Standing Intelligence Oversight Committee (Committee I) and Administrative Commission in Belgium. The Committee I in Belgium (i) reviews and provides advice on laws, or any other policy documents relating to the governance of security services, while also providing written advice to the judicial authorities on the legality of the way in which information added to criminal proceedings was collected by the intelligence and security services; (ii) conducts ex-post oversight of the implementation of targeted surveillance measures, while the Administrative Commission is in charge of ex-ante authorisations; (iii) oversees strategic surveillance conducted abroad by the military intelligence agency and also oversees the security services' cooperation with their international counterparts, which is a novel approach among expert oversight bodies; (iv) upon complaints, requests by the Parliament or judicial authorities, carries out investigations, including investigations against members of the services who are suspected of having committed a felony or misdemeanour, in a judicial capacity; and (v) serves as an appeal body for security clearances (see <https://www.comiteri.be/index.php/en/standing-committee-i/eight-assignments>). See also European Union Agency for Fundamental Rights (EU FRA), *Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU* - Volume II: field perspectives and legal update (Luxembourg, 2017), page 68, Table 2.

situations between February 2022 and December 2023".[104] Articles 137-139 of the Draft Code elaborates the procedure for declaring a state of emergency, a state of siege or a state of war. Article 141 (6) of the Draft Code only provides that "Following the lifting or prolongation of the state of emergency the Government shall submit to the plenary session of the Parliament a report on the measures taken, the budgetary expenditures, the impact of the measures taken on human rights and freedoms, and their remedy". However, the Draft Code is silent in terms of effective parliamentary oversight mechanism to ensure the continuous necessity and proportionality of the emergency legal regime and implementing measures over time, especially in the context of basic freedoms and human rights, as well as to systematically review decisions and legislation adopted during such time upon the lifting of the legal regime.

109. As underlined in the 2020 ODIHR Report on OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic,[105] during emergency legal regimes, the role of the parliament is essential to oversee the declaration, prolongation and termination of a state of emergency, as well as the application of emergency powers, while ensuring participation of the opposition in such oversight mechanisms to ensure wide consensus. Parliamentary oversight mechanisms should be in place **to regularly review (e.g. every 30/60 days) and ensure the temporariness, appropriateness and proportionality of the emergency legal regime and implementing measures, and that they are eased or terminated as soon as the situation allows, while ensuring that emergency powers, the timeframe and application of the extraordinary measures are subject to periodic and effective parliamentary oversight.**[106] **The Draft Code should be supplemented in this respect** (see also *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Chapter V, Procedure for Declaring a State of Emergency, Siege or War)*, which provides specific recommendations on this and other aspects).

RECOMMENDATION D.

1. To delineate and mutually reinforce the respective oversight roles of the Parliament and the People's Advocate, taking a due regard to the safeguards for the People's Advocate's independence.

2. To include a detailed timeline for reviewing of the reports from the Court of Accounts by the relevant standing committees and the plenary of the Parliament, while also aligning these timelines with those related to the preparation and discussion of the state budget for the following fiscal year.

3. To substantively elaborate the provisions of the Draft Code pertaining to the oversight of the Security and Intelligence Service (SIS), including with respect to the mandate and powers in relation to specific aspects of the work of security and intelligence services, such as overseeing information collection measures, co-operation and information exchange with foreign services, the use of personal data, the power to summon officials of the SIS, the ability to launch parliamentary investigations on own initiative, to conduct inspection of SIS facilities, to receive and handle complaints, the power to make public interest disclosures and to have access to classified information.

4. To introduce provisions on parliamentary oversight over the proclamation of state of emergency and other emergency legal regimes and implementing

104 European Commission, *2024 Communication on EU Enlargement policy (Republic of Moldova 2024 Report)*, October 2024, p. 22.
105 See <ODIHR on states of emergency, Covid-19, democracy & human rights | OSCE>.
106 See 2020 ODIHR Report on OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic, p. 50.

measures, ensuring that the Parliament regularly reviews and ensures the temporariness, appropriateness and proportionality of the emergency legal regime and implementing measures, and that they are eased or terminated as soon as the situation allows.

7. OVERSIGHT BY COMMITTEES (CHAPTER XVIII)

7.1. Standing Committees

110. Article 42 (2) of the Draft Code provides that the numerical and nominal composition of the standing committees, the allocation and appointment to the posts of Chairperson, Vice-chairperson, secretary, member and alternate member shall be determined by a decision of Parliament, with due respect to the principle of "*proportional representation in Parliament*". The Parliament of Moldova currently has eleven standing committees. The composition of a committee will inevitably influence the work that the committee carries out and it is important to seek **to achieve gender parity in the chairpersonships and deputy-chairpersonships of the committees[107] and this should be reflected in Article 42 of the Draft Code**.

111. In addition, while the principle of proportionate party representation is rather common, and it is legitimate for parties/factions to have a role in the process of selecting committee members, if the mechanism of selection triggers strong party control over the committee membership, this may act to limit committees' autonomy in the conduct of their affairs, including oversight.[108] Seeing the low use of oversight tools, there may be value in assessing whether the modalities of selection triggers an overly powerful party control over the committee members, and consider alternatives to reduce such influence.

112. Moreover, another modality that may help strengthening the oversight by standing committees may be the introduction of forms of civic engagement with parliamentary committees, such as reserving some seats in the committees to non-MPs or representatives of civil society.[109] Generally, committees should ensure that the different experiences of people are taken into consideration throughout the inquiry process – for example, those of men and women, children and young adults, older people, and persons with disabilities.[110]

113. Pursuant to Article 43 (9) of the Draft Code, "*at the request of 1/3 of the members of the committee, any Standing committee, according to its fields of activity, may, with the consent of the Standing Bureau, initiate an inquiry into the work of the Government or the public administration*". Article 43 (10) then specifies that to obtain such consent, "*the standing committee shall submit a reasoned request, adopted by a majority vote of the elected members, stating the subject, the purpose, the necessary means of inquiry and the deadline for the submission of the committee's report*". This means that in practice, the standing committees need the support of the parliamentary majority to undertake inquiries. While not uncommon, this limits the possibility for committees to control their agenda and activities, and to carry out their oversight functions autonomously. It is generally recognized as a good practice that parliamentary oversight committees, while being free to agree to consider topics proposed by government and other stakeholders,

107 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 70 (c).
108 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, pp. 49-50.
109 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, pp. 49-50.
110 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, pp. 52 and 104.

should determine their agendas freely and have the ability to initiate their own inquiries, which generally helps to foster independence and a culture of committee.[111] The legal drafters could **consider removing the need for a standing committee to obtain the consent of the Standing Bureau to initiate an inquiry**, while at the same time ensuring that each committee has the right to initiate inquiries.

114. Finally, the Draft Code only specifically deal with the public nature of sittings of Parliament (Article 52) but does not specify whether the work and sessions of the parliamentary committees should be open to the public. A parliament should promote a culture of transparency and accountability and it is good practice that **all committee sessions should be open to the public except in limited and well-defined, strictly justified circumstances**.[112] It is recommended **to supplement the Draft Code in this respect**.

7.2. Special Committees

115. In addition to the standing committees and the permanent oversight they provide, the Draft Code envisages the possibility to create special committees, as outlined in Article 242 of the Draft Code. These committees should be established by parliament "*to draft complex normative acts, investigate and assess certain social and political situations, exercise parliamentary scrutiny in specific areas, and for other purposes*" Article 243 further defines committees of inquiry as those that should be set up by Parliament "*when it is necessary to investigate events or actions that have negative effects on society*".

116. While Chapter XVIII of Title II of the Draft Code provides more detailed provisions regarding the work and procedures for committees of inquiry, the framework for the operation of special committees appears to be quite basic and vague. As a result, it is difficult to distinguish the specific purposes for establishing one type of committee over another, how their functions and roles would differ, and what the threshold or *rationale* would be for initiating the establishment of either type of committee. **Clarifying these aspects would strengthen the parliamentary oversight framework and ensure that the process for creating and utilizing such committees is clear and transparent.**

117. While the Draft Code requires a report as a result of the work of special committees (Article 242 (6)), it does not specify what this report should contain. Most notably, the Draft Code fails to clarify what the decision to establish such a committee should include, although it would normally provide the foundation and framework for the committee's operations. **It is, thus, recommended that the Draft Code be supplemented with more detailed rules and procedures for the establishment and functioning of special committees, including clear reporting requirements and the roles of committee's members.**

118. Additionally, the *rationale* for creating special committees to draft "complex normative acts" is unclear, particularly when compared to the more elaborated provisions governing the creation of investigative committees. Conflating these functions risks creating confusion and may hinder the establishment of a coherent framework for parliamentary committees' work. Moreover, it raises questions about which institution should be responsible for drafting normative acts - particularly those of a complex nature. While individual MPs in Moldova have the right of legislative initiative, alongside the Government, the line ministries or other government agencies would seem more appropriate bodies for drafting such types of complex legislation falling within their

111 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, pp. 50-51 and 56.
112 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, p. 105.

fields of work, though this task may also be assigned to centralized government drafting services (for instance, within the government cabinet).

7.3. Committees of Inquiry

119. Article 243 of the Draft Code, which addresses committees of inquiry, contains provisions that may at times appear to contradict one another. For example, Article 243 (3) states that the inquiry should not establish disciplinary or criminal liability for any individual, while Article 243 (4) allows the Parliament, based on the inquiry's findings, to "*request the competent authorities to take action in accordance with the law*". This could be interpreted as some form of procedure that may lead to the establishment of liability, which may potentially contradict Article 243 (3) of the Draft Code. Moreover, Article 246 (2) states that the committee of inquiry "*may not give indications to the public prosecutor's office regarding the need to carry out any procedural actions*".

120. It is recognized that a parliamentary inquiry may uncover facts and discovers evidence that could potentially warrant the attention of the prosecution and a potential instigation of proceedings, in which case the regulations of some states allow for some forms of co-operation with the prosecution authorities. However, this should be clearly articulated in the Draft Code to avoid vague interpretations of the committees of inquiry's role in this respect. It should be made clear that the work of the inquiry committees remains fully independent and separated from legal proceedings, and that it cannot obstruct judicial proceedings or interfere with judicial investigations in any way, including by expressing opinions on issues discussed in judicial investigations, or prejudging the decision of the court or affecting the procedural status of a person who is accused in criminal court proceedings.[113].

121. **To avoid possible contradictions, it is recommended that the provisions in Articles 243 and 246 be revised to clearly reflect the *sub judice* rule, while also specifying that the respective rights and responsibilities of the inquiry committee, especially when it is supposed to act in parallel with an ongoing judicial proceeding.**

122. Article 244 of the Draft Code states that a committee of inquiry can be established by the Parliament based on a proposal from the parliamentary factions or the Standing Bureau, "*taking into account the proportional representation of the factions in Parliament*". However, the Draft Code does not specify how this "proportional representation" should be ensured, as well as the number of MPs required to approve a proposal to establish the committee of inquiry. In many parliamentary systems, it is common practice to establish such committees with the support of a *qualified minority* rather than a simple majority of MPs. This approach is designed to empower the parliamentary opposition which, in turn, helps strengthen the effectiveness of oversight tools to scrutinize governmental policies and activities.[114] The Parliamentary Assembly of the CoE recommends a quorum of one quarter of all MPs for this type of decisions.[115]

123. **It is recommended that the Draft Code provide for a clear procedure by which inquiries can be requested and committee of inquiry established. Specifically, a single MP should be able to submit a motion to establish a committee of inquiry, and such a motion would then be granted if it is supported by a *qualified minority* of MPs.**

124. In accordance with Article 244 (2) of the Draft Code, the decision establishing the inquiry committee shall include "*the objective of the inquiry, the numerical and nominal*

113 See OSCE/ODIHR *Note on Parliamentary inquiries into judicial activities*, 2020, paras. 39-41.
114 See OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 43.
115 See *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*, para. 13.2.8.

composition of the inquiry committee, the deadline within which the committee's report shall be submitted, including the name of the standing committee responsible for monitoring the implementation of the recommendations contained in the inquiry committee's report after it has ceased its work". The chairperson, vice-chairperson and secretary of the inquiry committee shall be appointed by Parliament on a proposal from the Bureau or parliamentary factions.

125. **The Draft Code could further specify that a decision establishing a committee of inquiry must determine the committee's terms of reference containing detailed tasks and procedural modalities of its work.**

126. Regarding the composition of the inquiry committee, the drafters may consider addressing the representation of parliamentary political groups in such committees. It is usual practice for parliaments to ensure that the membership of inquiry committees reflects the representation of political groups in the chamber.[116] Some parliaments even go beyond merely equitable representation and seek to enhance the role of the opposition. This may be achieved, for instance, by guaranteeing the majority and the opposition equal representation within inquiry committees or by guaranteeing the opposition the chairpersonship position. **It is, therefore, recommended to consider including additional requirements with respect to the composition of inquiry committees in the Draft Code that would ensure adequate – and, preferably, enhanced – representation of members of the opposition beyond mere proportional representation.**

127. I**t would also be advisable to consider the possibility of allowing a member of the minority to chair the committee or serve as a special rapporteur or co-rapporteur on the subjec**t. The Parliamentary Assembly of the CoE has recommended that a member of the opposition should be appointed either as chairperson or as rapporteur of every committee of inquiry successfully requested by opposition members.[117]

128. Moreover, it is crucial to ensure parity in the representation of women and men in parliaments and their bodies – at all levels.[118] In this respect, the leadership and the composition and leadership of parliamentary bodies, including committees of inquiry, should be also gender-balanced and respect diversity.[119] **Therefore, it is advisable to reflect in the Draft Code that when establishing inquiry committees, care should be taken to ensure these bodies are not only composed of representatives from different political parties, but also of a balanced number of women and men.**

129. It is noted that inquiries are a quite powerful tool whereby parliaments can scrutinize governmental policies and activities and hold to account public officials in charge of implementing them. The power of these tools lies primarily in the court-like powers of committees of inquiry, which may compel witnesses to appear and testify before them. Extending the power of committees of inquiry to summon witnesses and access documents beyond the overseen institutions to any third party is crucial for the effectiveness of their investigations.[120]

116 See IPU, *Tools for parliamentary oversight*, p. 41. See also Parliamentary Assembly of the Council of Europe, Report by Mr. Karim van Overmeire, *Procedural guidelines on the rights and the responsibilities of the opposition in* a democratic parliament, Doc. 11465 rev., 3 January 2008, para. 68.

117 See PACE, *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*, par 13.2.8.

118 CEDAW Committee, *General Recommendation No. 40 of the CEDAW Committee on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 70 (c).

119 See OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 222.

120 See OSCE/ODIHR, *Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina*, 29 March 2017, para. 47. See also OSCE/ODIHR, *Note on Parliamentary inquiries into judicial activities*, 2020, Sub-Section 3.2.

130. The Draft Code grants committees of inquiry the power to summon as a witness any person who has information about any fact or circumstance that may be relevant to the investigation of the case. The persons who are summoned shall be obliged to appear before the committee of inquiry. Hearings before the committee of persons summoned shall be held only in the presence of a majority of the members of the committee (Article 245 (2)). Failure of the invited person to show up without justification, as well as failure to submit the requested information or documents or submission of false information or documents shall be penalized according to the legislation (Article 245 (4)). **However, it would be advisable that the Draft Law envisages clear sanctions for cases of non-compliance or explicitly cross-reference specific legislation.**

131. Moreover, Article 245 (4) omits certain procedural safeguards for witnesses that are guaranteed under international standards, such as Article 6 of the European Convention on Human Rights (ECHR). These include, for example, the right not to self-incriminate and the right to be assisted by legal counsel. Additionally, there is currently no mechanism to challenge a request to appear or to provide information. Furthermore, a system of graduated sanctions should be introduced, with the possibility of judicial review to ensure procedural fairness. Special consideration should also be given to the protection of whistleblowers and victims, including safeguards such as confidentiality measures and redactions where appropriate.

132. As noted in the earlier recommendation concerning Article 215 of the Draft Code (see para 32 *supra*), requests for information should comply with the principle of proportionality and take into account potential conflicts with sector-specific privacy legislation (e.g. in the field of health). Information and documents should be sought only when they are clearly relevant and reasonably necessary for the subject matter of the inquiry. Article 245 (8) provides that *"[d]uring investigations, the committee may request access to secret information, in accordance with the legislation in force*". Regarding access to information by oversight bodies, and parliamentary committees of inquiry in particular, it is worth recalling that the right to access information held by public authorities is guaranteed under Article 19 of the ICCPR and Article 10 of the ECHR and should be given effect based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.[121] According to Principle 6 of the *Tshwane Principles*, all oversight and appeal bodies, including courts and tribunals, should have access to all information, including national security information, regardless of classification level, relevant to their ability to discharge their responsibilities (see also Sub-Section 6.4. *supra* with respect to the oversight of SIS).

133. Certain information may legitimately be secret on grounds of national security or protection of other overriding interests listed in international instruments.[122] At the same time, as noted in the *ODIHR Guidelines on the Protection of Human Rights Defenders*, national security is frequently used to justify the over-classification of information.[123] Hence, secrecy laws should define national security precisely and include narrowly and clearly defined prohibited disclosures, which are necessary and proportionate to protect national security. They should indicate clearly the criteria, which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label "secret" for purposes of preventing disclosure of information which is in the

121 See OSCE RFoM together with the freedom of expression mandate-holders from the UN, the African Commission on Human and Peoples' Rights (African Union) and the Organization of American States, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", 3rd paragraph.

122 Article 19(3) of the ICCPR and Article 10 (2) of the ECHR, and related caselaw of the ECtHR. See also e.g., International Mandate-Holders on Freedom of Expression, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", 3rd paragraph.

123 ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), para. 144.

public interest.[124] Moreover, disclosure should not be limited in the absence of the Government's showing of "*a real and identifiable risk of significant harm to a legitimate national security interest*"[125] that outweighs the public's interest in the information to be disclosed.[126] If a disclosure does not harm a legitimate state interest, there is no basis for its suppression or withholding.[127] Furthermore, clear and transparent procedures should be put in place to avoid over-classification of documents, unreasonably long time-frames before de-classification and undue limitations in accessing historical archives.[128] **The Draft Code should specify that committees of inquiry should have access to all information held by public authorities, except in very limited cases where there is a real and identifiable risk of significant harm to a legitimate national security interest outweighing the public's interest in disclosure**. **At the same time, requests for information should comply with the principle of necessity and proportionality and take into account potential conflicts with sector-specific privacy legislation (e.g. in the field of health). Information and documents should be sought only when they are clearly relevant and reasonably necessary for the subject matter of the inquiry.**

134. Moreover, to be effective, it is not enough that committees of inquiry are able to compel individuals, including public officials, to testify. They also should be able to protect so called "whistleblowers". Many countries have some form of "whistleblower" legislation, which protects "whistleblowers" against the disclosure of their identity and retaliation by their employer and may shield them from criminal and civil liability for breaching secrecy rules.[129] A key factor in encouraging "whistleblowers" to share information with authorities, including MPs, is the level of protection offered by the legislation. To be effective in its role, a committee of inquiry could benefit from having the authority to protect the identities of "whistleblowers" and prevent any potential criminal or civil proceedings against them for disclosing confidential information.

135. In this regard, useful frameworks and guidance can be found in the Regional Anti-Corruption Initiative (RAI), of which the Republic of Moldova is a member, as well as in OECD documents and the CoE Resolution on the Protection of Whistleblowers.[130] It is thus recommended **to add to the Draft Code provisions ensuring that individuals providing information to committees of inquiry can benefit from existing legislation on "whistleblower" protection, or, if such legislation does not exist in Moldova, to incorporate in the Draft Code the relevant protection mechanism in line with the international standards.**

136. Moreover, the same as with hearings, according to the Draft Code, inquiries are made public by default with no authorisation envisaged for redactions or closed sessions, which might put victims at risk of retaliation, stigmatisation and secondary victimisation. In this respect, consideration could be given to envisaging provision in the Draft Code which would guarantee the right of victims to address committees (e.g. victims of trafficking, domestic violence, hate crime), as well as procedures for trauma-sensitive questioning,

124 See e.g., International Mandate-Holders on Freedom of Expression, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", 3rd paragraph.

125 See e.g., UN Special Rapporteur on Freedom of Opinion and Expression, *Report on the Protection of Sources and Whistleblowers* (2017), A/70/361, para. 47; and the *Global Principles on National Security and the Right to Information* (The Tshwane Principles), developed and adopted on 12 June 2013 by a large assembly of experts from international organisations, civil society, academia and national security practitioners, Principle 3(b).

126 See e.g., UN Special Rapporteur on Freedom of Opinion and Expression, *Report on the Protection of Sources and Whistleblowers* (2017), A/70/361, para. 10.

127 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 30.

128 ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), para. 146.

129 For more details on whistleblower protections existing in various jurisdictions, see OECD, *G20 Guiding Principles on the Protection of Whistleblowers* (2011), available at: https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf. See also OSCE, *Handbook on Combatting Corruption* (2016), pp. 131-140, available at: http://www.osce.org/secretariat/232761.

130 See Council of Europe Parliamentary Assembly *Resolution 1729(2010) on the Protection of Whistleblowers*, available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17851&lang=en.

and requirements for follow-up. Article 247 (1) of the Draft Code states that if a committee of inquiry fails to submit its report to the Parliament by the deadline established when the committee was approved, and does not request an extension, the case shall be deemed closed. This provision could lead to the practice of having committees of inquiry established but not fulfilling their mandates, with no consequences. If these committees are not led by a minority faction, it is easy to foresee situations where the majority might exploit this administrative loophole to avoid publication of the committee's findings and any potential consequences. This should not be allowed, and the law should not create avenues for such obstacles to oversight. It is thus advisable **to reconsider this provision of the Draft Code.**

137. The Draft Code does not provide detailed guidance on whether the work and sessions of the committee of inquiry should be open to the public. As with respect to the standing committees' meetings**, it is recommended to require that all committee of inquiries' sessions should be open to the public except in limited and well-defined, strictly justified circumstances**. It only specifies that the committee's report must be published after being debated by the Parliament (Article 247 (6)). While the publication of the report is welcome,[131] It is good practice to ensure that a full account of the parliamentary committee sessions is recorded and made freely available in a timely fashion, while ensuring their accessibility, in line with standards for parliamentary openness and transparency.[132] **The Draft Code should be supplemented to ensure that parliamentary records are freely available and accessible, along with other documents related to the work of committees of inquiry are also published, including agendas, witness testimonies, transcripts and records of committee actions.**

RECOMMENDATION E.

1. To supplement the Draft Code with more detailed rules and procedures for the establishment and functioning of special committees, including clear reporting requirements and the roles of committee's members.

2. To provide in the Draft Code for a clear procedure by which committees of inquiry can be established, specifying that a single MP should be able to submit a motion to establish a committee of inquiry, and such a motion would then be granted if it is supported by a *qualified minority* of MPs.

3. To amend Articles 243 and 246 of the Draft Code to clearly align its provisions with the *sub judice* rule and ensuring the respect for judicial and prosecutorial independence, while also specifying the respective rights and responsibilities of the inquiry committee, especially when it is supposed to act in parallel with an ongoing judicial proceeding, should be clearly defined by terms of reference.

4. To consider including in the Draft Code additional requirements with regard to the composition of parliamentary committees (whether standing, special or inquiry committees) ensuring adequate – and, preferably, enhanced – representation of members of the opposition, parity in the chairpersonship/deputy-chairpersonship as well as a gender balanced composition.

5. To add to the Draft Code provisions ensuring that individuals providing information to committees of inquiry can benefit from existing legislation on

131 See OSCE/ODIHR *Note on Parliamentary Inquiries into Judicial Activities* (2020), para. 52.
132 See IPU-UNDP, *Global Parliamentary Report 2017 - Parliamentary Oversight*, p. 105.

"whistleblower" protection, or, if such legislation does not exist in Moldova, to incorporate in the Draft Code the relevant protection mechanism in line with the international standards.

6. To clarify in the Draft Code that committees of inquiry should have access to all information held by public authorities, subject to limitations in strictly defined cases where there is a real and identifiable risk of significant harm to a legitimate national security interest outweighing the public's interest in disclosure and the stringent non-disclosure requirements may be then applicable, while also ensuring compliance with the principle of necessity and proportionality and taking into account potential conflicts with sector-specific privacy legislation (e.g. in the field of health).

7. To include in the Draft Code clear provisions requiring all committee sessions to be open to the public except in limited and well-defined, strictly justified circumstances, while ensuring that parliamentary records are freely, publicly available and accessible, along with other documents related to the work of committees including agendas, witness testimonies, transcripts and records of committee actions.

8. SIMPLE MOTIONS AND MOTIONS OF NO CONFIDENCE (CHAPTER XIX)

138. Chapter XIX of the Draft Code addresses simple motions and motions of no confidence. Simple motions are defined as Parliament's stance on specific domestic or foreign policy issues, or on matters that have been the subject of an interpellation (Article 248 (1)). A motion of no confidence, on the other hand, is limited to withdrawing confidence from the government (Article 248 (4)), further elaborating the procedure set in Article 106 of the Constitution.

139. Chapter XI of the Draft Code elaborates on the modalities and procedures for appointing officials by the Parliament, as well as their dismissal, which is an important component of the oversight functions of parliaments. **The provisions of this Chapter could be supplemented with a view to reflect the objective of gender parity underlined in CEDAW Committee General Recommendation No. 40.**

140. The Draft Code assigns the "committee responsible for approving simple motions" with the task of submitting its opinion to the plenary of the Parliament (Article 252 (5)). Additionally, Article 252 (6) states that "parliamentary factions shall decide on the motion", while Article 252 (8) specifies that a simple motion should be adopted by a majority of MPs present. However, it remains unclear what decision parliamentary factions are expected to make under Article 252 (6), as well as the format and procedure for this decision-making process. **Further clarification is, therefore, needed to ensure a clear and consistent approach when deciding on parliamentary motions.** Article 252 (2) provides that the absence of a quorum at the sitting at which the motion is to be debated shall result in its rejection. At the same time, a postponement rather than automatic rejection would be a more preferable option. Finally, Article 252(3) sets a numerical limit on the number of motions of no confidence that may be submitted. While it is reasonable to impose certain constraints to prevent the abuse of such motions and avoid legislative paralysis, a procedural requirement—such as a minimum number of supporting signatures—would offer a more appropriate and balanced approach.

9. MAINSTREAMING A GENDER PERSPECTIVE IN PARLIAMENTARY OVERSIGHT

141. Ensuring that gender-sensitive language is used in legislation is an important contribution to gender equality and inclusiveness. Gender-sensitive language is the only acceptable standard of legislative expression that promotes legislative effectiveness, equality and inclusivity. This means that the language of the law should explicitly consider its audiences and make specific linguistic choices. Regardless of the language in which laws are drafted, legislation should avoid the use of language that refers explicitly or implicitly to only one gender (gender specific language) or group, or that they do so only when it serves the effectiveness of the law or a specific reason (for example, the law addresses a specific gender).[133] In this respect, the Draft Code should be reviewed to ensure that gender-sensitive language is used throughout. For instance, Article 237 addresses the scrutiny of reports from "Ombudsman", which is not a gender-neutral term and, unless there is an issue of inaccuracy of translation, could imply that the position is occupied by a man only. **To ensure the use of gender sensitive language, it is recommended that, whenever possible, reference to post-holders or certain categories of individuals be adapted to use a gender-neutral word, though ensuring that this does not convey a pejorative connotation**.[134]

142. Apart from that, the Draft Code would further benefit from expressly mainstreaming gender equality, both in the oversight structures and in the substantive scope of oversight, as already underlined above with respect to the representation of women within oversight structures and parliamentary committees, as well as specific modalities of oversight, such as gender-budgeting, disaggregated annual reporting or gender- and diversity-sensitive parliamentary oversight of the security and intelligence sector, among other. It is reminded that, according to the definition used in the 2004 *OSCE Action Plan for the Promotion of Gender Equality*, mainstreaming a gender perspective involves assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels.[135] Helpful guidance on how a gender perspective should be integrated into parliamentary oversight is found in the Plan of Action for Gender-sensitive Parliaments, adopted by the Inter-Parliamentary Union Assembly in 2012.[136]

143. As already mentioned above, the Draft Code does not address the composition of oversight bodies (including inquiry committees). **Nevertheless, the drafters should consider introducing the general requirement of a gender balanced approach to the composition of all oversight bodies**.

144. It is noted that the Parliament of Moldova does not have a permanent Committee on Gender Equality. The IPU Plan of Action for Gender-sensitive Parliaments recommends that, in addition to a dedicated parliamentary committee entrusted with reviewing government policies from a gender perspective, gender equality should be mainstreamed "*throughout all parliamentary work*" and "*throughout all parliamentary committees, so that all committee members – men and women – are mandated to address the gender*

133 See, OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2024, para. 133.

134 See e.g., <*THE UNITED NATIONS Gender mainstreaming in speaking and writing*>. See also, as another example, European Parliament, *Gender-Neutral Language in the European Parliament* (2008, updated in 2018); *European Parliament Resolution on Gender Mainstreaming in the European Parliament* (2021); Council of the European Union, *General Secretariat, Inclusive Communication in the GSC* (2018).

135 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

136 See IPU, *Action Plan for Gender-sensitive Parliaments* (2012), p. 15, available at: http://www.ipu.org/pdf/publications/action-gender-e.pdf. In particular, the Plan recommends that parliaments "*encourage the proportional and equitable distribution of women parliamentarians across all committees, not just those relating to women, children, gender, families, health and education*."

implications of the policy, legislative or budgetary matters under their consideration." It also recommends allocating time in the order of business "for special debates on gender equality or gender-specific questioning of ministers." **The authors of the Draft Code are encouraged to consider adding express references to gender equality as an issue that should be addressed by the Parliament and its oversight bodies in all aspects of parliamentary oversight, and in relation to all government activities.**

145. Finally, gender mainstreaming should be an integral part of all oversight tools and practices, including *ex post* evaluation of legislation. The process of conducting impact assessments, but also public hearings in general, should ensure that a wide array of stakeholders is able to participate and access all relevant information in a timely and comprehensive manner; in this context, the broadest possible national dialogue should be sought, including with marginalized or under-represented groups and those particularly at risk.[137] Wide-ranging, pro-active outreach measures by government and parliament help to identify and include all interested and relevant counterparts, including organizations promoting gender equality and representing historically marginalized or under-represented groups (see also the *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament)*[138] with specific recommendations to ensure more open, participatory and inclusive parliamentary processes).

RECOMMENDATION F.

To consider adding to the Draft Code an express reference to gender equality as an issue that should be addressed by the Parliament and its oversight bodies in all aspects of parliamentary oversight, and in relation to all government activities.

10. MONITORING AND REPORTING ON PERFORMANCE OF PARLIAMENTARY OVERSIGHT ROLE

146. The Draft Code lacks provisions or a system requiring the Parliament to regularly monitor and report on its oversight activities. This would help to make the Parliament itself accountable to the public for its performance. It is recommended to supplement Title III of the Draft Code in this respect.

[END OF TEXT]

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

138 For a more comprehensive analysis of modalities of public engagement in the work of the Parliament and practical recommendations in this respect, see *ODIHR Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament)* – available at: <Moldova | LEGISLATIONLINE>.