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POST-LEGISLATIVE SCRUTINY

Practices, experiences and recommendations

Chisinau, January 2017

This report has been drafted as part of the project “Post-legislative Scrutiny: enhancing ex-post parliamentary scrutiny of legislation in the Republic of Moldova” which aimed to strengthen parliamentary oversight, one of the core functions of parliament. In particular, the project aimed at strengthening skills and knowledge of Moldovan MPs and staffers in relation to ex-post legislative scrutiny.

The report analyses current strengths and weaknesses in the implementation of parliamentary oversight and provides recommendations for an enhanced tailor-made post-legislative scrutiny procedure for Moldova.

The report will support the leadership and members of the Moldovan Parliament as well as the leadership and staffers of the Parliament Secretariat in defining priorities, drafting action plans and adjusting the legal framework regulating parliamentary oversight.

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1. SUMMARY

In order to further strengthen one of the critical functions of the Parliament of the Republic of Moldova, and based on state of the art international practice, this report, which is the result of consultations with parliament as well as of a series of three seminars for parliamentary staff on post-legislative scrutiny, analyses in detail the potential for the introduction of a functional system of post-legislative scrutiny.

The concept of 'post-legislative scrutiny' or '*ex-post* evaluation' has been developed in the 1990s as a result of reviews of legislative practices by a number of governments and international organizations, including the European Union.

Oversight of the implementation of legislation and the underlying policy objectives contributes to more effective governance and improved transparency. It also allows the introduction of correction mechanisms when necessary, in reply to concerns from stakeholders involved.

Experiences in other parliaments where post-legislative scrutiny has been implemented, such as the UK and Sweden, prove that such approach increases the effectiveness of oversight in general and contribute to a more consistent implementation of legislation.

The ongoing European integration process, based on the Association Agreement with the European Union, signed in 2014, results in a comprehensive review of legislation and the introduction of an extensive package of new legislation. What matters in the end however is the quality of the implementation of legislation and connected policies. As the examples of the UK and Sweden prove, parliaments can play a key role in this regard. Based on a series of findings, resulting from the analysis of the current situation in the Moldovan parliament, the report recommends the Moldovan Parliament to further strengthen its practices and procedures related to monitoring and evaluation of adopted legislation by introducing an up to date post-legislative scrutiny process.

2. INTRODUCTION

In order to further strengthen parliamentary oversight in the Republic of Moldova as one of the key tasks of parliamentarians and supported by the Heads of Standing Committees, who all expressed their interest in increasing parliamentary oversight of approved legislation, we started with an analysis of specific areas where the impact of an improved oversight would be most effective, taking into account the existence of up to date methodologies in other parliaments. This resulted in a series of 3 seminars in 2016, organised for parliamentary staff in Chisinau, focusing on post-legislative scrutiny. This report analyses the current situation concerning the ex-post review of legislation in the Republic of Moldova, provides a few case studies on other parliaments to underscore the effectiveness and importance of post-legislative scrutiny and concludes with a series of recommendations concerning the possible implementation of post-legislative scrutiny in the Parliament of the Republic of Moldova. In addition, it provides an outline of a possible step by step approach on the implementation of parliamentary post-legislative scrutiny.

2.1 Importance of post - legislative scrutiny

Despite its importance for the rule of law, it is not uncommon that the process of implementation of legislation is overlooked. This can set problematic precedents when laws are approved, but not or only partially implemented, when secondary legislation is lagging behind or when information about the impact of the implementation of legislation is lacking.

The swift development of legislation, without sufficient planning and programming in advance, can lead to unexpected, often negative social and budgetary implications. Poorly drafted provisions endanger basic rule of law principles, including the principle of legal certainty: the application of legislation must be foreseeable for individuals as well as institutions, companies and organisations, and this can be achieved only through clear and accessible legal provisions.

The legislative experience of European countries revealed that legislation has become quite often too complex, and its implementation difficult due to contradictory or non-convergent interpretations provided by numerous legal acts adopted on the basis of permanently changing political objectives and processes.

In this context, an increasing number of parliaments are interested to monitor and evaluate the implementation of legislation and the achievement of its objectives as a key component of parliamentary oversight. In general, this activity pursues two objectives: (1) monitoring the implementation of

legislation and, in particular, the adoption of the necessary secondary laws and (2) evaluation of broader policies, results and impact of the legislation.

The need to monitor the implementation of legislation and to evaluate the impact of legislation is based on four key arguments:

1. the requirements of democratic governance and the need to apply the legislation adopted by Parliament in accordance to the principles of legality and legal certainty;
2. the need to act preventively with regard to potential adverse effects of recently adopted legislation;
3. the need for a consistent appraisal of the responsiveness of the law to the regulated problems and issues; and
4. the need to learn from past experience both in terms of what works and what doesn't, how effective implementation is in meeting objectives, aiming to improve legislation in the future and reducing the need for corrective action¹.

About Parliamentary Oversight

Parliamentary oversight is “the review, monitoring and supervision of government and public agencies including the implementation of policy and legislation”. This definition emphasizes more on the nature and purpose of oversight rather than the oversight procedures. The robust monitoring of the executive by the parliament is an indicator of good governance. The key objectives of parliamentary oversight can be summarized as follows (International Parliamentary Union (IPU), 2007):

- To ensure transparency and openness of executive activities by shedding light on the operations of government. It provides a public arena in which the policies and actions of government are debated, scrutinized, and subjected to public opinion.
- To detect and prevent abuse, arbitrary behavior, or illegal and unconstitutional conduct by the government and public agencies.
- To provide financial accountability. Parliament approves and scrutinizes government spending by highlighting waste of misuse within publicly-funded services. Their aim is to improve the economy, efficiency, and effectiveness of government expenditure.
- To ensure that policies announced by the government and authorized by Parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programs.

¹ The Law Commission, Post-Legislative Scrutiny, Published as LAW COM No 302, London, October 2006, 62 p. Post-legislative Scrutiny – The Government's Approach. Updating and improving the legislative process, Presented to Parliament By the Lord Privy Seal, Leader of the House of Commons and Minister for Women and Equality, March 2008, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228516/7320.pdf

In many countries, whereas parliaments tend to initiate less legislation themselves, they engage increasingly in the monitoring and evaluation process. With this purpose parliaments establish special committees with the mandate to monitor and evaluate the implementation of adopted legislation, or assign this role to existing committees.

The implementation of legislation is often a complex process, and the monitoring and evaluation of the implementation of adopted legislation requires, on the one hand, the institutional and organizational capacities of the Parliament, and on the other hand active involvement of all stakeholders, such as the Government, independent agencies, expert, CSOs, and citizens at large.

The current Parliament of the Republic of Moldova started its activity on December 29, 2014. One of the main objectives is the implementation of the Association Agreement with the European Union, signed in 2014. Achieving this goal requires, based on well-defined policy objectives, a considerable increase of the number of legislative acts which must be drafted, approved, implemented and reviewed.

Although over time the Moldovan Parliament and its parliamentary standing committees have invested in professionalization, resulting in an increase of activities, they continue to face substantial challenges. On the one hand, Parliament still needs to further develop its organisational capacities, which affects the quality of parliamentary work. On the other hand, the requirements and expectations in general, related to the quality of parliamentary work as well as its legislative function have substantially increased.

The complexity of the processes related to European integration requires Members of Parliament to master an increasing number of skills in policy analysis. This should allow them to effectively adjust the legal framework of the Republic of Moldova to the requirements of the *acquis communautaire*. It also includes a focus on oversight, i.e. monitoring and evaluating adopted legislation². The EU Association Agreement is not only about drafting, approving and amending legislation and not about copying and pasting legislation as such. More important is how legislation is implemented and how problems with the implementation can be detected and corrected. This is one of the key-tasks for Parliament. By introducing a system of post-legislative scrutiny, it is possible to monitor effectively the implementation of legislation and related policies.

As a result of this increase on the demand side, we observe a substantial increase of expectations regarding the work of parliamentary committees,

² See also the National Action Plan for the Implementation of the Association Agreement (PNA AA) for 2014-2016 period (approved by Governmental Decision No.808 dated 07.10.2014 and amended by the Decision No.713 dated 12.10.2015)¹, including strengthening the institutional coordination and monitoring mechanism.

Parliament subdivisions and parliamentary staff, with focus on their knowledge and capacity to provide the necessary technical assistance and effective support to parliamentarians.

In the next chapters, we will explain in detail how post-legislative scrutiny is functioning in other parliaments and what its potential is for Moldova. In addition, we will provide a series of recommendations to build an performing scrutiny system within parliament, allowing a swift introduction of post-legislative scrutiny.

3. POST-LEGISLATIVE SCRUTINY IN INTERNATIONAL PRACTICE. CASE STUDIES: THE UK AND SWEDEN

3.1 Context

The concept of 'post-legislative scrutiny' or 'ex-post evaluation' has been developed in the 1990s as the result of reviews of legislative practices by a number of governments, the European Union and various international organizations³.

Initially, the efforts for improving the regulatory practices have been focused on the preparatory phases of the legislative process and resulted in the development of methodologies related to the impact assessment of regulations. Although very important, the exclusive use of such methodologies and practices cannot provide the desired effects and guarantee the quality of policies and legislative acts.

To ensure a more comprehensive approach to the quality of legal texts, it is necessary to expand the area of examination to the full cycle of laws and policy development and implementation, which includes the phases of conception, drafting, implementation, evaluation, and revision. Over time, more and more countries shifted the focus in relation to the evaluation of legislative practices towards 'ex-post evaluation'.

Ex-post evaluation is designed "to assess whether the objectives, the anticipated effects, costs and benefits of a piece of legislation have been realized, and to identify any difficulties or unintended effects that may have arisen from the legislation. Ex-post evaluation is crucial in ensuring that primary and secondary legislation are implemented in the most effective manner and legislation is revised as appropriate"⁴.

Moreover, ex-post evaluation also assists in:

- *identifying regulatory outcomes;*
- *measuring the overall socio-economic and/or environmental impact of the laws;*
- *providing guidance on the positive effects of the law;*
- *providing guidance on the aspects of the legislation that need to be revised; and*
- *identifying implementation issues and other potential concerns.*

³ See 1995 OECD Recommendation on Improving the Quality of Government Regulation: "Good regulation should: (i) serve clearly identified policy goals, and be effective in achieving those goals; (ii) have a sound legal and empirical basis; (iii) produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels"; "Make effective use of Ex-post evaluation", OECD Guiding Principles for Regulatory Quality and Performance, 2005

⁴ L. Mader, L'évaluation législative. Pour une analyse empirique des effets de la législation, Payot, 1985.

Apart from providing an analysis about the effectiveness of legislation and the need for reform, ex-post evaluation also reinforces two major principles of rule of law: accountability and transparency.

In various European countries, the post-legislative evaluation has a different approach and focuses on different aspects:

- *mandatory regular assessments established by legal provisions enshrined in legislation (France);*
- *standardized assessment techniques based on a standardized methodology and practices (Germany, United Kingdom);*
- *comprehensive (thematic) review, that concerns not only one piece of legislation, but several laws that have been adopted over the years in the same field;*
- *including in the Law (or at least in the parliamentary report on a law) a precise date when the law should be reviewed.*

3.2 Practices of post-legislative scrutiny in the UK Parliament

Examinarea post-legislativă a actelor juridice este o practică relativ recentă, Examining legal acts ex-post is a relatively recent practice which was introduced in the British Parliament's activity in 2004 after a Constitutional Commission report from the House of Lords.

In its report, the Committee stated that adopted legislative acts do not return to the attention of Parliament, and the degree to which objectives have been achieved is not examined, except in cases where the effects of the law were extremely negative. The Committee considered that post-legislative evaluation will encourage the Government to measure its success not only by the fact that the projects submitted were approved by Parliament, but also by measuring the impact of these laws. The Committee concluded that the purpose of such examination must be to find out if the legislation works as intended by Parliament, if the legislation produced the expected changes, if the objective of public policy was achieved and if the legislation is known, understood and implemented in the necessary way.

In this context, the Constitutional Committee recommended that all Government departments should carry out a post-legislative evaluation of all primary legal acts three years after their entry into force and to present the reports (memoranda) of implementation to the standing committees of the House of Commons. These reports (memoranda) should be examined by committees of the House of Commons and used as a starting point for their own assessment, to ensure that adopted legislation achieves the policy objectives. If the House of Commons does not hold an inquiry on the effects

of the act, the House of Lords may appoint a committee to conduct its own post-legislative examination.

The Constitutional Committee recommendations have been accepted by the Government, which, however, insisted that the post legislative evaluation is not necessary for all primary and legislative acts and would be carried out selectively. Since 2005, the Government departments have begun to produce evaluation reports for part of the legislation, after 3-5 years of entry into force, and some of them became subject to comprehensive reviews by the House of Commons.

The practices of post-legislative evaluation were further developed and extended by the Legal Commission of the House of Commons, which in 2008 proposed a series of models and assessment mechanisms, including the establishment of a Joint Commission for Post-legislative Evaluation composed by members of the House of Commons and the House of Lords and extending the mandate of the Scrutiny Unit (a subdivision created in 2005 for the assessment of legislation and legal drafts) from evaluating draft laws submitted to the Parliament (ex-ante assessment) to the assessment of the adopted legislation (ex-post assessment).

Current procedure

Currently, the post-legislative evaluation practices are based on the creation of ad-hoc committees that have a specific mandate and limited duration of activity (usually up to 9 months). The Committee is usually assisted by a Secretariat composed of three parliamentary assistants, including a consultant / expert on the issue under evaluation and the assessment subdivision of the parliamentary apparatus. The commission's activity is considered as completed when an evaluation report has been submitted with conclusions about the implementation of the legal act, the pursued political objectives and recommendations to the Government and/or the Parliament.

In the two months following submission of the report, the Government shall submit a written response to the evaluation report, in which it has to explain if and why the Commission's recommendations are accepted or not and what will be the subsequent actions of the Government.

For now, the less developed part of the ex-post evaluation process is related to the actions following the Government's response. Normally, by this time the Commission de-facto no longer exists and a renewed convocation becomes difficult. As a result, there is a limited capability to analyze to what extent the Government complies with the Commission's recommendations and implements them.

Strengths and challenges

The post-legislative evaluation practices have highlighted a number of strengths and challenges of the assessment process. The assessment has a positive impact on the quality of legislation and the effectiveness of the implementation process, allows consideration and review practices for developing and implementing laws and offers the possibility of examination and thorough, multilateral, evidence-based research and comprehensive analysis. At the same time, the evaluation is not required by the Government and depends solely on the political will of Parliament.

On the other hand, the most important challenges experienced so far are the fact that the evaluation needs assistance from the Government, which could be different in terms of structure and quality (1), that the evaluation has a reduced level of continuity (2) and that the ability to measure the impact is limited (3).

Findings

- The post-legislative assessment practices in the UK Parliament are based on the establishment of ad hoc committees, which have a concrete mandate and a limited duration of activity (usually up to 9 months). This approach however makes it difficult to follow-up the implementation of recommendations from the evaluation report by the Government.
- A Committee is usually assisted by a Secretariat composed of parliamentary assistants and an evaluation subdivision (*Scrutiny Unit*) of the parliamentary apparatus. The combination of both is ideal as it provides the necessary in-depth expertise in a particular area as well as on the evaluation process itself.
- The ministries are required to submit to the permanent parliamentary committees a memorandum of preliminary evaluation of how a law has been implemented and its impact after 3-5 years following the adoption of the law. The timeframe of 3 to 5 years is necessary to allow the Committee to make a balanced evaluation.

3.3 Evaluation practices in the Parliament of Sweden

The Parliament of Sweden has 15 parliamentary committees, each composed of 17 members. Each committee has its own Secretariat headed by the Commission's Secretary and including five to ten parliamentary consultants, who assist commission members on the drafting of reports on draft decisions to be examined by Parliament. The committees have the task to ensure that all the requirements of parliamentary activity are fulfilled before

any decision is adopted. At the same time the committees have the task to monitor and evaluate the implementation process of the decisions adopted by the Parliament and conduct research, planning and development in the assigned areas.

Committees' meetings are convened on Tuesdays and Thursdays. Commission members are obliged to consult with the parliamentary group on the issues examined by the commission and to present at the committee meeting the position of his/her parliamentary group.

Examination of adopted legislative acts

In Sweden, the ex-post evaluation has been introduced in public administration in the mid-1980s. In 2001, the Parliament of Sweden introduced post-legislative evaluation as a mandatory mission of parliamentary committees and approved the first plan of action of parliamentary committees in this area. From 2011 the post-legislative assessment obligation has become a constitutional norm.

The assessment mission is not linked to any indicator of cost or the financial impact of a law and does not have any specifications about the aspects of the approved laws to be assessed.

The obligation of post-legislative assessment also exists at the executive level. This is established by Government Ordinance regarding regulatory impact analysis from 2007, which specifies the conditions to carry out an impact analysis of a regulatory act, and how this assessment is done.

The responsibility for the evaluation of acts adopted by Parliament is attributed to permanent parliamentary Committees. The assessments are initiated by the parliamentary Committees and the idea behind this decision is that the committee which has prepared a law should also be responsible for the evaluation of the results and the impact of this law.

Evaluations are carried out either by the Committee with its own personnel/resources, or with the involvement of experts. Some committees have established special groups that include assessment support and other members of Parliament. In addition, committees are able to use special funds for an assessment by external evaluators.

In 2002 a special Unit for Evaluation and Research was created as part of the apparatus of Parliament with the task to support the parliamentary committees in exercising the post-legislative assessment function. This unit has the following competencies:

- support committees in planning, execution and use of evaluations;
- identification and contracting of external experts;

- elaboration of the primary analysis at the request of committees, conducting research for further use within the evaluation process;
- liaison between the agencies responsible for implementing legislative acts;
- quality assurance assessments (drawing up terms of reference, criteria and indicators for research and analysis, methods and topics of assessment, etc.).

If a Committee decides to assess a law, it decides between two types of evaluation: simple evaluation or thematic 'in depth' evaluation. The first type of evaluation is applied when new laws are prepared related to the same domain, or when the budget is being prepared, and aims to assist committees in setting priorities and provide guidance for discussion with the Government. The purpose of the in-depth thematic assessments is to consider whether the objectives set by law have been met. The evaluation results are public and are published on the official website of the Parliament.

The performance audits conducted by the National Audit Office (Riksrevisionen) are an important element in the context of the assessment mission of the parliamentary committees. Traditionally, the Government is obliged to respond in writing to all reports drafted by the National Audit Office within four months. Since January 2011, the National Audit Office submits its performance audits also directly to the Parliament.

The ex-post evaluation system in Sweden includes the following players:

- Commissions of inquiry – established by the Government/Ministers to answer specific technical questions that require expert knowledge. These committees are usually formed by departmental experts. If the Government decides that a specific legislative domain must be assessed, it may create a Commission of inquiry. Evaluation committees are created to develop legislative proposals.
- The Agency for Public Management (Statskontoret) – carries out evaluations of laws and activities financed with public funds at the request of the Government and ministries.
- Government agencies and small institutions specializing in evaluation – the Government can request specific evaluations.
- The Regulatory Council of Trade and Industry and the National Regulatory Board – perform impact analysis of draft laws. (The activity of these councils does not include ex-post evaluation).
- The National Audit Office, through their performance audits directly submitted to parliament.

Findings

- An important aspect of the experience of organizing the parliamentary activity in Sweden, which deserves to be examined carefully, is the central role of the 'Research and Evaluation Unit' – a parliamentary unit with interdepartmental coordination. By introducing this support function, the Swedish Parliament provides methodological competence to assessments, which cannot be maintained at a sufficient level by the standing parliamentary committees only.
- The Swedish system of evaluation is multi-institutional, based on the existence of several institutions that can carry out assessments. These include Parliament, the Agency for Public Management, specialized institutes, government commissions of inquiry and, of course, the National Audit Office. Each of these institutions has a role and responsibilities in the ex-post exercise, which contributes to increased efficiency of this evaluation, quality assurance and efficiency of the legislative implementation-process.

3.4 Conclusion

The two cases presented here prove that an effective post legislative scrutiny is possible, on condition that sufficient support is provided to the evaluation committee. This support should include technical expertise on the topic as well as expertise on how to effectively conduct an evaluation. In addition, the evaluation committee should rely on available information from various assessments carried out by Governmental and independent institutions. Evaluations should ideally be conducted 3 to 5 years after adoption of legislation. Finally, it is important to follow-up on the implementation of the recommendations of the evaluation report by the Executive.

4. LEGAL FRAMEWORK OF PARLIAMENTARY OVERSIGHT IN THE REPUBLIC OF MOLDOVA

4.1 The powers of parliamentary oversight established in the Parliamentary Regulations

The tools and mechanisms for implementing the parliamentary oversight function are described and explained in the Parliamentary Rules of Procedure⁵. One of the main Rules of Procedure related to this function is Article 111 '*Oversight of and reporting on Implementation of Legal Acts*', which provides important details on how the parliamentary oversight function over the adopted legislation has to be implemented:

- (1) The responsible parliamentary committee with the assistance of the Legal Affairs Department of the Parliamentary Secretariat and other committees created for this purpose by the Parliament shall normally perform the oversight of legal acts implementation (publishing before the deadline, study of legal provisions, etc.) by the competent bodies and persons, as well as the determination of effectiveness of the legal act.
- (2) Upon the performed oversight, the parliamentary committee shall prepare recommendations to the Government and/or other public authorities, and, as appropriate, shall present reports on legal acts implementation to the Parliament, normally within six months from coming into force of the concerned legal act.
- (3) In the legal texts the Parliament may specify a shorter or longer period of time for preparing and submitting the report on implementation of a legal act.

The article 111 '*Oversight of and reporting on the implementation of legal acts*' is the only provision in the Rules of Procedure referring specifically to parliamentary oversight over adopted legislation.

The provisions of this rule indicate that there are at least two key elements explaining to some extent the deficiencies in the area of parliamentary oversight over the implementation of legal acts. First, Article 111 doesn't introduce a mandatory assessment. Second, this Article states that the reports on the implementation of laws will be presented to the Parliament, "normally within six months from coming into force of the concerned legal act." Such period of law implementation is too short to evaluate the impact of the implementation of the law. To do this successfully, in general an implementation period of 3 to 5 years is necessary.

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The Law on approval of the Regulation of the Parliament. Nr.797-XIII, passed on 02.04.1996.

4.2 The role and tasks of standing committees in parliamentary control

The main bodies responsible for the implementation of parliamentary oversight are the Parliamentary Committees. According to the Law on Parliament the committees are „*working bodies of the Parliament created for carrying out the parliamentary activity*”⁶. From this perspective, the clear definition of the powers of standing committees is particularly important for ensuring the efficiency and effectiveness of Parliament in general. Specifically through the standing committees the parliamentarians can carry out the function of parliamentary control in a more consistent and effective manner.

In accordance with the national law, the powers of standing committees are established by the Parliamentary Rules of Procedure (Law No. 797-XIII from 02.04.1996):

The analysis of the Committees’ mandate definition highlights that the Law does not specify important committee functions like their leading role in the legislative proceeding of draft legislation relating to their area of responsibilities, their function of supervision over the Executive power within their area of responsibilities, their obligation to participate in the development of the sectorial policy, their responsibility for the quality of the sectorial legislation and the impact of adopted legislation, etc.

This model of defining the responsibilities and tasks of the standing committees in fact contains no ‘motivations’ for a proactive attitude in implementing the parliamentary oversight function, for a real focus on a specific area, for assuming responsibility and for accountability regarding the situation in the attributed area. This is certainly one of the main issues indicating how focus on the real priorities can be further improved.

4.3 Implementation of parliamentary oversight

The evaluation of the implementation of parliamentary oversight by the Parliament of the Republic of Moldova is a difficult exercise because of the absence of comprehensive analytical information relevant to this topic. The information available is limited to some facts regarding the use of available tools for parliamentary oversight, but does not provide any example of parliamentary oversight on adopted legislation.

It is a common practice to measure the performance of the implementation of parliamentary oversight by the number of public hearings, reports, questions and field visits initiated by parliamentarians. Such quantitative evaluation of the parliamentary activity is sometimes used in public speeches and reports about the activity of the Parliament or parliamentary committees in various countries.

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The Law on approval of the Regulation of the Parliament. Nr.797-XIII, passed on 02.04.1996.

In the case of the Moldovan Parliament, by only using such a set of indicators, neither the Parliament's performance in general, nor the performance of parliamentary committees can be measured. On the one hand, there is an insignificant number of examples when the available tools and instruments of parliamentary oversight have been included in the agenda of the Parliament or parliamentary committees and, on the other hand, there is no public information about the *de facto* results or follow-up of the use of these tools.

On the Parliament's website there is a special webpage referring to parliamentary oversight mentioning the following compartments: Special committees, Commissions of inquiry, Motions, Questions, Interpellations, Hearings, Legislative impact and analysis of laws efficiency, Advisory opinions on applying the legislation, and Reports of State institutions. Analysis of the available information on this web page reveals that during the last two years (01.11.2014-01.11.2016) the following parliamentary oversight activities have been conducted:

- 3 special investigation committees;
- 1 Commission of inquiry (on the situation of the financial market);
- 3 motions of censure for the Government and 9 individual motions regarding the activities of Ministers;
- 12 sessions of Parliament with the topic 'questions' included in the agenda;
- 5 sessions of Parliament with the topic 'interpellation' included in the agenda;
- 2 sessions of Parliament with the topic 'hearing' included in the agenda;
- 26 reports submitted to Parliament by State institutions (National Agency for Regulating the Energy Sector, Prosecutor General Office, Court of Accounts, Coordination Council for Audiovisual activity, etc.).

For this period, there is no listed reference or activity in the section 'Legislative impact and analysis of laws efficiency' and no reference or activity in the section 'Advisory opinions on applying the legislation'.

Neither the statistical reports regarding the legislative process⁷, neither the reports on the activity of the Secretariat of the Parliament contain references to any activity of evaluation of the effectiveness or impact of adopted legislation.

The analysis of the verbatim records of parliamentary meetings, including the subjects of parliamentary oversight, reveals that these activities were

⁷ "Statistical report on legislative process for 2016" <http://parlament.md/LinkClick.aspx?fileticket=4QCMKqQM DNA%3d&tabid=109&language=ro-RO>

mostly formal and limited in time, rather than a professional, technical and detailed examination of the process of implementation of legislation and obtained results.

The analysis of reports submitted to the Parliament by State institutions highlights that these reports, most of the time, refer to the actions undertaken by the Government or other institutions in order to achieve political objectives and implement action plans (governance) and put emphasis on the intentions and on the successes achieved, but do not address sufficiently eventual weaknesses of the legislative framework and do not include detailed evaluations of the impact of policies and legislation.

The quality of parliamentary oversight is visible at the level of the standing parliamentary committees, particularly in relation to article 111 of the Rules of Procedure, which defines oversight and reporting obligations of the committees concerning the implementation of legal acts. Our research didn't result in any report or reference to any actions of the standing committees in relation to the provisions of article 111. Neither did it find any data regarding actions regarding 'control of law implementation by relevant bodies and persons', 'establishing the efficiency of law', 'recommendations for Government and other public authorities', nor on 'reports on law implementation submitted to the Parliament'.

The analysis of the activity of parliamentary committees also revealed that the effectiveness of parliamentary committees is limited by their modus operandi. During the evaluation, a practice (contrary to the one used in other parliaments) was revealed not to draft detailed minutes of issues discussed in meetings of the committees. The absence of such records is detrimental to the effectiveness and continuity of the committees. It is a matter of good practice to leave written records for legal purposes, but also as a matter of transparency and accountability – the citizens have the right to know - and to support clarity in writing referring to well defined objectives, policy priorities and opinions of various parties.

Another aspect of the work of the parliamentary committees which affects the exercise of parliamentary oversight, is the practice of the standing committees to approve draft legislative acts which are not related to the field of responsibility of the respective committees. From the analysis of the different agendas of parliamentary committees, we learned that the agenda's often included draft legislation not directly related to the mandate of the Committee, but subject to approval. This exceeded 80% of the drafts examined in committee. Such a practice limits the available time for the work in line with the committees' focus on a specific sector and doesn't allow for both MPs and staff to really specialise in a particular area, e.g. justice, environment, defence, health care.

The ability of parliamentary committees to exercise effective control over the adopted legislation is also to a large extent determined by the quality and efficiency of the support offered by the committee's consultants. Traditionally, the consultants of parliamentary committees have the mission to support the activity of the committees in terms of setting the agenda, providing analysis and a preliminary assessment of draft legislation, elaboration of reports and drafting of committee decisions, the organization of hearings, meetings, etc. In fact, the current practices of standing committees activity put greater emphasis on the support and administrative services of consultants than offering professional advice and expertise within the specific responsibilities of the Committee⁸.

Shifting the focus to parliamentary oversight will certainly require additional training for staffers to increase their professional competencies in order to allow an efficient and professional functioning of committees (for example, knowledge and use of methodologies for ex post evaluation, cost-benefit analysis, legislative research, etc.). In this context, it is necessary to establish a professional development programme for parliamentary consultants which would include courses, workshops and short internships in EU parliaments (for example, using parliamentary exchange programmes), as well as joint trainings with the participation of members of the Committees.

4.4 Conceptual deficiencies in the exercise of democratic control

A conceptual deficiency which generates a significant part of the problems mentioned above in relation to the implementation of legislation is that, often, the term 'democratic oversight' is misunderstood and promoted in a very simplistic manner without touching the essence of the concept, without being correlated with transparency, accountability and the notion that parliamentarians are elected by the citizens to represent their interests (the eyes and ears of the citizens, where citizens can't come), all these meanings being equally valid in the original concept.

This misreading is promoted over the years and, as a consequence, nowadays the role of the Legislative is limited to approving laws that in order to be considered good and adequate just need some expertise in terms of compliance with European legislative procedures and values. In fact, the working practices rooted within the legislature no longer bring back to the attention of legislators any approved laws for evaluation and review. Once a law is adopted, the problem of the implementation is no longer considered a relevant task for Parliament.

In the best case, the parliamentary oversight is limited to the examination of some general reports, submitted annually by several institutions which are

⁸ See the UNDP Report "The functional analysis of the Parliament of Republic of Moldova Device and the assessment of institutional capacities" <http://www.credo.md/pageview?id=211>

required by law to submit activity reports. In most cases these reports are formal, do not relate to the implementation of sectoral legislation or the results of the implementation process and are not considered in detail at the meetings of the standing committees or in plenary sessions.

The Legislative actually does not bear any responsibility for decisions adopted wrongly or for decisions that need to be adopted, but are not. At the same time, the Executive has no responsibilities and no concrete interest to ask the Legislative for anything more than to approve laws and budget.

This distorted situation does not contribute to creation of a favourable environment for mutual trust and effective collaboration between Legislative and Executive. Such relations cannot contribute to consolidation of a democratic and prosperous system of rule of law, based on the de facto implementation of the principles of democratic governance.

4.5 Findings

- Article 111 'Carrying out of control and presentation of reports on implementation of the laws' is the only provision in the Rules of Procedure referring specifically to parliamentary oversight over adopted legislation. There is no reference to a mandatory assessment. In addition, reports on the implementation of laws will be presented to Parliament by the Government "usually after 6 months from the entry into force of a specific law." The absence of a real incentive or obligation to assess legislation as well as the short period – compared to the UK Parliament where a period from 3 to 5 years implementation is suggested – explain why such evaluations don't happen more systematically.
- The Rules of Procedure contain a number of additional provisions that expand the possibilities of Parliament related to oversight over the adopted legislation, but these are not used to create a more advanced good parliamentary practice.
- Although the parliamentary committees are the main parliamentary bodies for implementing the parliamentary oversight function, the Rules of Procedure don't contain provisions officialising the responsibility of committees for the quality of the sectoral legislation and for the impact of adopted legal acts.
- The weaknesses of the regulatory framework contribute to ineffective parliamentary oversight over adopted legislation. Once legislation is adopted, it does not return to the attention of the legislative, the quality of the sectoral legal framework and implementation of legislation are not considered to be important, and the legal provisions regarding parliamentary oversight stipulated in the Rules of Procedure

are interpreted as optional rather than mandatory rules.

- The legislation in force, with some exceptions, does not provide specific provisions for submitting activity reports on law implementation by the Government or specific institutions. This results in a de facto absence of parliamentary oversight.

4.6 Recommendations

In order to improve the quality of parliamentary oversight, in particular over the adopted and implemented legislation, several actions can be initiated by Parliament and the standing parliamentary committees:

1. *To consider and review the recommendations of this report in order to list all provisions related to a necessary revision of the current Parliamentary Rules of Procedure.*
2. *To modify and complete the Rules of Procedure and the Law on drafting the legislation with specific procedures on a mandatory periodic review of the implementation and impact of adopted legislation, as well as a periodic evaluation of compliance of secondary laws to the laws passed by Parliament.*
3. *To enhance the powers of standing parliamentary committees with provisions establishing responsibility for a periodical assessment of the quality of the legislative framework in their areas of responsibility and evaluation of the implementation and effects of the adopted legislation.*
4. *To reconsider the way draft legislative acts are submitted for examination to the parliamentary committees and exclude examination of drafts which do not correspond to the committee mandate and area of responsibility.*
5. *To improve the practice of examination of draft legislative acts by the parliamentary committees by making minutes of the meetings of the parliamentary committees imperative.*
6. *To draft and approve a Parliamentary Action Plan on parliamentary oversight. Such an Action Plan should include specific actions related to planning and carrying out assessments on the effectiveness of the implementation of legislation, and the drafting of annual reports on the implementation of parliamentary oversight by each standing parliamentary committee.*

7. *To introduce mandatory requirements related to specific rules for the examination of the quality of the legal framework and the impact of adopted laws in the areas that are subject to oversight. Such rules should also include a mandatory requirement for the organisation of public hearings as part of the post-legislative scrutiny process.*
8. *To develop and approve a methodology (guidelines) for post-legislative evaluation. The proposals for such evaluation methodology developed in chapter V of this report might be used as reference. The methodology should offer guidance for the evaluation process of adopted legislation and its preparation, the drafting of an impact analysis of the adopted legislation, the requirements for the evaluation reports and suggestions concerning actions following the completion of the evaluation.*
9. *To develop a Capacity Development Plan in the area of post-legislative evaluation for consultants (staffers) working with the standing parliamentary committees and the Secretariat. This training should focus on methodologies for ex-post assessment, evaluation and reporting techniques, cost-benefit analysis, legislative research, etc., to maximize the capabilities of assistance in the exercise of parliamentary oversight.*
10. *To amend the functions of the Secretariat by introducing the responsibility for conducting post-legislative assessments, for the coordination function within the evaluation process and for the development of the annual evaluation plan in close cooperation with the parliamentary committees.*
11. *To create examples of reference for the implementation of the post-legislative evaluation in the Parliament of Moldova through a pilot-project on evaluation of several legislative acts, selected within the area of responsibility of the key parliamentary committees. Within this pilot-project, preferably with external support, the methodology for ex-post evaluation tailored to the specifics of the organization and responsibilities of the institutions of the Republic of Moldova could be developed and tested.*

5. A METHODOLOGY FOR POST LEGISLATIVE SCRUTINY

5.1 The need for a methodology

A post legislative scrutiny methodology is required in order to:

- *set up clear evaluation rules and indicators to enlighten and ease the work of evaluators;*
- *design a clear process and clear division of responsibilities;*
- *have efficient reporting mechanisms in order to get in depth information about implementation successes and failures;*
- *make sure that sufficient means are allocated to design and conduct the evaluation; and*
- *make sure that the results of the evaluation are effectively used to inform future decisions.*

5.2 What is post-legislative scrutiny?

Post-legislative scrutiny represents a tool to improve regulatory policy. It allows to collect data regarding the implementation process of a legal act; whether the anticipated objectives have been achieved; whether the legislation is cost effective, and should list the potential reasons which created unintended effects/difficulties. This information will allow Parliament, in consultation with all relevant stakeholders, to decide whether the considered legal act should be amended, repealed or replaced by another legal act.

A complete and comprehensive post-legislative scrutiny process allows the identification of causal effects between the legal framework and all possible consequences, including intended and unintended economic, social, environmental and administrative effects.

Definition of post-legislative scrutiny

Post-legislative scrutiny is a systematic program of a legal framework review against clearly defined political objectives, taking into consideration the costs and benefits, in order to ensure that the legal acts remain up to date, are cost-justified, cost-effective and match the needs. The evaluation includes analysis of economic, social and environmental impacts. It is based on both quantitative and qualitative analyses, including assessments, analyses and research, studies, reports and statistical data.

5.3 The need for Scrutiny

Post-legislative scrutiny is carried out to inform the public authorities about the following:

- a) *Cost efficiency: This is related to cost/benefits analysis of the implementation of the law. Such information is usually available in performance audits from the Court of Audit);*
- b) *Effectiveness: This defines to which extent the law has accomplished its intended aims/purposes and has offered solutions for identified problems;*
- c) *Relevance: Defines whether the law is appropriate to the socio-economic context;*
- d) *Eventual legal inconsistencies;*
- e) *Cases of non-compliance; and*
- f) *Desirable/ undesirable effects which result from implementing the provisions of the law. This can be assessed during hearings with experts and stakeholders.*

5.4 The basic phases of legislative scrutiny

The process of ex-post scrutiny involves the following key phases:

- **Planning:** This includes a selection of legal acts and secondary legislation that needs to be evaluated. Once such list is available, parliament can define the preliminary objectives of the evaluation. Finally, Parliament need to draft an outline including the required conditions for the evaluation process.
- **Design:** This part includes all the details of the organizational and evaluation process. To this aim, parliament will define the aims, objectives, key questions, stakeholders and their responsibilities and agree on a methodology to collect and analyse information, to elaborate the assessment report and consider eventual subsequent actions.
- **Choice of law(s):** Before the start of the examination, parliament should reach agreement about the law or set of laws which are going to be evaluated; the scope of evaluation, goals and objectives; the implementers, involved parties, and target groups; necessary information and the sources of information; the timeframe and schedule of evaluation activities.

5.5 Criteria for selecting legal documents

All legal documents can be subject to an ex-post evaluation, but such an examination is not always required or appropriate. The selection of the law or the set of legal documents for evaluation should take into account the complexity of the legal act, the duration of implementation, the intended or registered impact/outcome, difficulties during implementation, strategic or temporary policy goals, the emergence of new risks and threats as result of law implementation, etc.

5.6 Selection of the evaluation model

There are different models of ex-post evaluation, which can be used in the evaluation process of the adopted legislation. One of the most commonly used models for the evaluation of regulatory policies is the cost-benefit analysis. Although it is often very useful to assess the effectiveness of the legislation from the standpoint of cost, this model is incomplete for assessment of legislative acts adopted to respond not only to questions of cost-benefit, but also to the overall impact of legislation under consideration. Ex-post evaluation must examine:

- *efficiency (achievement of objectives at a reasonable cost)*
- *effectiveness and impact of legal provisions;*
- *unintended impacts;*
- *reasons for failures;*
- *factors that contributed to success.*

Such assessment should include quantitative and qualitative analyses.

5.7 Indicators

In the process of ex-post legislative evaluation, one can use different types of indicators, such as:

- Indicators of effectiveness. This type of indicators compares the initial objectives and the final results and allows to answer the question «to what extent were the initial objectives of the legislative act met?»;
- Indicators of efficiency. This type of indicators compare the initial objectives, the achieved results and the costs and allow to answer the question «to what extent the costs are justified in relation to resulted changes?»;
- Indicators of coherence. This type of indicators evaluate the consistency in the application of the law provisions and provides the answer to the question of “whether all provisions have been implemented in a systemic, logical and coordinated way by all parties involved and

whether there were discrepancies between different institutions”;

- Indicators of opportunity, relevance, usefulness. This type of indicators aims to answer the question of “whether the legislative act and specific provisions have been adopted and implemented at the right time, are necessary and appropriate to the situation and circumstances, are related to the identified problems and real needs, etc.”.

5.8 Scrutiny initiation

Scrutiny can be initiated effectively after a minimum of three to five years following its adoption. Generally, the choice is based on the argument that the scrutiny can be initiated at the moment when the law provisions have generated sufficient visible effects. Definitely, an ex-post scrutiny might be launched earlier in case the law, or some provisions of it, have generated unexpected negative effects.. Ex-post scrutiny can also be launched based on the request of citizens or representatives from civil society or particular target groups who might experience unexpected difficulties due to the implementation of specific legislation.

5.9 Setting scrutiny goals and objectives

When defining the scope of the scrutiny it is important to decide if it is necessary to evaluate:

- *The entire law;*
- *Only a few legal provisions of the law (a specific area covered by law);*
- *Several laws governing together specific area (for example, social welfare, health, business, etc.) eventually as part of a specific policy;*
- *Secondary legal acts ensuring implementation of the law or arising from the basic laws.*

The decision on the assessment area depends on the priorities and strategic objectives of Parliament and Government, the complexity and costs of examination, legal, political, economic and social effects, the innovative nature of the law and specific provisions.

Generally, all the legal provisions which create legal political, economic and social effects on citizens, population and business should be evaluated. However, there are laws which include only a few provisions with an immediate impact, or only a few new provisions. In this situation it would make sense to focus the evaluation only on these specific laws or legal norms.

It is important to take into consideration the cumulative effects of legal, political, economic and social aspects resulting from the simultaneous

implementation of several laws and/or secondary legislation (for example, the effects of implementation of the Criminal Code in some cases cannot be assessed without examination of the Criminal Procedure Code, for the impact assessment of the Law on Police one needs to assess as well the Law on the status of Police officers or the Code of Administrative Procedures, etc.). A similar situation might arise when the primary law is framework legislation, and the legal effects are to a great extent generated by the secondary legislation.

The purpose, objectives and evaluation topics can be determined on the basis of the purpose and objectives pursued at the moment of adoption of the Law. This information is usually available in the legal provisions (general provisions of the law, goals and objectives of the law, etc.), memos, information notes and other explanatory documents that describe the problems, the necessity to adopt the law and estimated the impact.

The evaluation should examine:

- *The impact from a legal, political, social, economic, environmental perspective etc.;*
- *If the primary and secondary legislation are fully implemented in the most efficient manner;*
- *If all objectives of the law were achieved;*
- *If the policy objectives have been met;*
- *If the expected effects, costs and benefits have been met;*
- *If other measures are needed to improve the situation;*
- *If the law has unintended effects (economic, social, environmental etc.);*
- *If there are difficulties in the implementation process;*
- *If the law is still necessary;*
- *If the Law needs to be amended, or if additional secondary legislation is necessary.*

5.10 Identify the implementers, beneficiaries, target groups (all relevant stakeholders)

The implementation of legal provisions involves a large number of implementers (including the authorities of Central and Local public administration) and final beneficiaries (citizens, communities, specific categories of population, business environments, etc.). The stakeholders might be all those who possess and can provide information about the implementation and impact of the law, as well as those who have been impacted by law. For this purpose the following questions are taken into consideration:

- *What social groups are affected?*
- *How big are these groups?*
- *What is the nature of the impact on each group?*
- *How important are these effects?*
- *How long will be these effects provided?*

5.11 Information required for the assessment and sources of information

Each assessment in part requires a specific set of information to be collected and analysed. It is important to determine at the earliest what kind of information is needed and what are the sources (public and/or private) where such information may be collected or requested. The sources of information can be better identified if the implementers will be involved in this process.

As a rule, most of the information can be obtained from the authorities of Central and Local public administration, from independent institutions and implementing agencies which use, collect and analyse information from various sources, statistics and databases. At the same time, at this stage the need for research and in-depth analysis can be identified. Such analysis can be prepared or developed by non-governmental organizations, national experts etc.

A special topic at this stage is to identify data and analyses that do not exist at the moment, but are necessary to evaluate the key topics. In this case it is important to identify how such data can be collected.

The key considerations when planning for data collection are:

- *What data needs to be gathered to give reliable and consistent measurement against policy objectives?*
- *What additional data should be collected to support the planned evaluation?*
- *What information should be presented in writing, what information will be required orally;*
- *What are the quality indicators for the collected data;*
- *What institutions should be involved in primary data collection and analysis;*
- *What are the key timeframes for data collection and analysis;*
- *Who will have responsibility for gathering data;*
- *How do we assure the quality and consistency of information;*
- *What hearings are necessary and who should be invited (representatives of the Government, public administration, civil society, victims, witnesses, etc.);*

- *What field visits are required for data collection and validation of the findings, etc.*

5.12 The timeframe of the evaluation

The timeframe of the evaluation depends on several factors: the complexity of the objectives, the volume and scope of the evaluation, its organisation, the frequency of meetings and the work plan of the Commission, the resources, the quality of analyses and experts, etc. Ideally, the whole process should be completed in 3 - 6 months.

5.13 Organization, roles and responsibilities

Before launching the evaluation process, it is important to establish appropriate organisational structures and procedures, to determine all the parties responsible for carrying out the assessment, all the stakeholders that will be involved, their roles and responsibilities, the terms and outcomes of the process, etc.

Taking into account the structure, organisation, functions and practices of parliamentary oversight established in the Moldovan Parliament, the legislative ex-post evaluation could be led by a standing parliamentary Committee, or an ad-hoc Committee specifically created for this purpose, which would be assisted by a special subdivision within the Parliament's Secretariat.

How to Organize the evaluation process?

Outline for roles and responsibilities of the parties involved

1. Parliament

- Approves the annual plan for post legislative scrutiny;
- Creates committees for ad hoc scrutiny either agrees on allocating this to standing committees;
- Approves the creation of a special subdivision with mission of evaluation support within the Secretariat of Parliament (e.g. Unit for Post-legislative Scrutiny);
- Approves the allocation of financial resources for contracting external experts, organising field visits, etc.

2. Permanent parliamentary committees and ad hoc committees

- Draw up proposals for post-legislative scrutiny;
- Decide on organization and conduct of the evaluation process;
- Establish criteria for the selection of legislative acts subject to

assessment, scope, goal and specific objectives of evaluation, evaluation timeframe, data and analysis necessary for carrying out the assessment, the role and responsibilities of the parties involved;

- Organize and conduct the evaluation process, convene meetings, organize hearings;
- Formulate findings regarding the results of the evaluation, proposals and recommendations for the draft assessment report;
- Approves the draft assessment report.
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3. *The Secretariat of the Evaluation Commission*

- Assists the Commission in organizing and conducting the evaluation;
- Ensure data collection, correspondence and interdepartmental contacts;
- Draw up the minutes of all committee meetings and develop the draft assessment report.

4. *Unit for Post-legislative Scrutiny*

- Provides methodological assistance to the evaluation process;
- Develops proposals regarding the content of the evaluation report;
- Develops proposals regarding the recommendations of the evaluation report.

6. CONCLUSIONS

Post-legislative scrutiny, implemented in line with the methodology developed by parliaments in Europe, offers an excellent opportunity to further strengthen parliamentary oversight as one of the key tasks of the Parliament of the Republic of Moldova. As part of the European integration process, post-legislative scrutiny allows to assess the quality of the implementation of new and amended legislation as part of the overall progress of the association-process. For Members of Parliament, post-legislative scrutiny will provide additional opportunities for interaction with the citizens they represent as well as a tool for effective oversight on the Executive. For the Government, it can provide an additional tool to measure the effectiveness of implementation of legislation and policies in general and create visibility for their actions. Based on the findings of this report, and especially the analysis of the current situation in parliament in relation to post-legislative oversight, the introduction of a mechanism of post-legislative scrutiny in the Parliament of the Republic of Moldova is feasible, and advisable, but shall be based on a thorough review of existing oversight procedures or lack thereof as well as amending the Rules of Procedure. In addition, the case studies prove that the creation of a specific support unit within parliament, which can provide the necessary logistical and substantial support and expertise, as well as the allocation of sufficient funds for the organisation of public hearings and the organisation of field visits, will be necessary. Finally, as part of an extensive coaching program, we suggest the organisation of an initial series of pilot-evaluations. This will allow Parliament to assess the concrete needs for additional capacities and reach agreement on the procedural approach to make the introduction of post-legislative scrutiny a success.



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