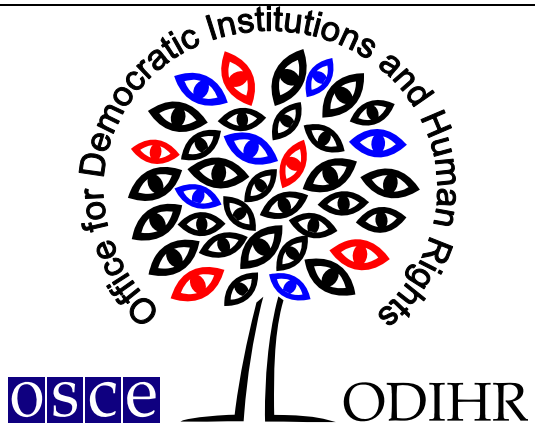
Warsaw, 18 September, 2008 Legis Paper-Nr.: 118/2008 (MASz/DP) www.legislationline.org	

Preliminary Report on the Legislative Process in the Republic of Moldova

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[1] The Report is divided into four sections each with a Roman numeral; paragraphs are numbered separately within each section and are referred to in the Report by section and paragraph number thus: III: 4.7.

I INTRODUCTION

1. Background

In May, 2006 an ODIHR delegation, visited the Republic of Moldova, with the purpose of establishing whether there exists a need to conduct a full-scale assessment of the legislative process in view of identifying deficiencies, if any, and possible solutions for making it more transparent and effective. Following standard ODIHR practice on such initial visits, the ODIHR limited its interviews to civil society representatives, academics and international organisations operating in the Republic of Moldova and did not seek interviews with members or officials of state institutions.

In order for the ODIHR to conduct a full scale assessment, according to its developed methodology, an official request from the Moldovan authorities is required, and the ODIHR welcomes any such expression of interest.

Furthermore, a full-scale assessment would necessarily involve re-visiting many issues contained in this Report, as well as adherence to ODIHR methodology by way of semi-structured field interviews with pre-identified interlocutors, including all governmental and parliamentary bodies involved in law-making activities, with the purpose of providing an illustration of the practice in the process of law making in the Republic of Moldova and recommendations on improving its efficiency and transparency.

2. Nature and Scope of Report

This Report seeks to build on the initial visit of the ODIHR, mentioned in section 1 above, but like that visit its preparation has been intentionally circumscribed in various ways. The Report is based predominantly on a reading of the framework legislation governing the law making process in Moldova. The Report describes the Moldovan legislative process, and then analyses, based on a legislative review, the procedures for developing legislative policy and for consulting civil society, the style and quality of legislative drafting and vulnerabilities in the legislative

The Report should not be viewed as aspiring to be a full-scale ODIHR assessment in any manner or form, but rather the purpose of this Report is to provide a description and systematic account of the legislative process in the Republic of Moldova. The Report also aims to offer an analysis of identified vulnerabilities in the legislative process and how they may be addressed.

The Report has been prepared without a subsequent visit to Moldova or direct contact with anyone in the public or private sector there. As mentioned already, it is based on an analysis of the Constitution and some of the relevant domestic legislation (detailed below) and other national and international contextual material.

A text-based analysis provides a somewhat two-dimensional view of a process; it does not reveal how procedures are used, or principles applied. However, examining the product of the process, in this case legislation, will be somewhat revealing of such

matters. The Report therefore considers the drafting of a range of provisions, both as illustrations and also to provide some of this form of compensation.

In view of the above mentioned constraints and conditions in which the Report has been drafted, the description and analysis provided in this Report shall be without prejudice to any description and analysis that the ODIHR may have the opportunity to make in the future.

Furthermore, as the analysis has been based on unofficial English translations of the Constitution and legislation, the ODIHR also wishes to note the possibility of misinterpretation that may result from the translation of provisions into the English language.

The following texts regulating the Moldovan legislative process fall within the scope of the Report (the short reference used for them in the Report is provided in parentheses); other legislation is also considered, less systematically, in the Report for illustrative purposes:

1. *Constitution of the Republic of Moldova* [Constitution]

2. *Law on the Government* No. 64-XII, 31.05.90 [Law on Government]

This law provides for the role of the Government, its relationship with other state bodies and institutions, and its principal areas of authority, its general structure and the making of subordinate legislation.

3. *Law on the adoption of the Regulation of the Parliament No. 797-XIII 02.04.1996* [Law on Regulation of Parliament]

The Law was republished in *Monitorul Oficial* (the Official Gazette) No.50/237 07.04.2007, with all the amendments to it and with a re-numbering of the articles. This law provides for the establishment of the main parliamentary institutions (including its committees) and the appointment of its principal officers, together with their respective powers and duties, detailed rules on the legislative procedure, and other parliamentary procedures including the election of the President of the Republic, a function of the Parliament.

4. *Law on International Treaties of the Republic of Moldova* No. 595-XIV 24.09.1999 [Law on Treaties]

This law provides for the domestic procedures for negotiating and concluding treaties, their ratification (formal approval in domestic terms) by the Parliament and by the President (signing the instrument of ratification in accordance with international practice), together with procedures for compliance with, and for suspension and denunciation of, treaties, and their registration and domestic publication.

5. *Law on Legislative Acts* No. 780-XV 27.12.2001
[Law on Legislative Acts]

This law categorises the forms of primary and subordinate legislation, and provides for the procedures for initiating primary legislation, drafting and amending it, and also contains rules on the structure and style of primary legislation.

6. *Resolution of the Parliament on Co-operation with Civil Society* No. 373-XVI 29.12.2005 including an Annex [Annex]

This Resolution reaffirms the parliamentary commitment to such co-operation, and the Annex provides some principles and procedures for consultation with, in the main, civil society organisations.

Following the Roundtable on Policy Development and Drafting of Good Legislation organized by the OSCE ODIHR and the OSCE Mission to Moldova, held on 14-15 October, 2008 in Chisinau, the Report shall be updated with information on the Law on Normative Acts No. 317-XV, 18.07.2003 and the Regulations on the Government from 25 January, 2001.

3. Executive Summary

- *Policy development:* no substantial statutory procedures have been identified for the policy development of either primary or subordinate legislation drafted within Government, although some 75% of legislation is government initiated; by contrast the statutory procedures for the policy development of primary legislation initiated in the Parliament are to some degree over elaborate and may be difficult to implement in practice.

- *Civil society consultation:* again the identified consultation procedures on legislation in Government are much less developed than in the Parliament. The parliamentary procedures, although progressive, are somewhat restrictive on who can make submissions and on the period in which they can be made; and they are severely restricted by the accelerated legislative process available for Government draft legislation.

- *Legislative drafting:* legislation provides procedures for drafting legislation in Parliament, and on structure and drafting style; no parallel legislation has been identified which regulates drafting within the Government. The procedural aspects of this regulatory framework do not appear from the legislation examined to ensure that all aspects of matters to be regulated are addressed, and consistency with existing legislation is often achieved by vague referential drafting; the detailed rules are more satisfactory, with some exceptions.

- *Legislative Process:* the parliamentary consideration of draft legislation is not entirely text based, in that legislative initiatives can be by legislative proposal without a text and the same is true of amendments; procedurally, more than one text can be before the Parliament at the same time; and although legislation is formally enacted in the State language, parliamentary working documents prior to enactment are also available in Russian, and it is not clear which text is binding in the event of discrepancies. All these are factors which may create ambiguity and confusion.

II THE MOLDOVAN PRIMARY LEGISLATION PROCESS[2]

1. INSTITUTIONAL BACKGROUND

1.1 The *Parliament* is unicameral with 101 members, elected by direct universal suffrage. It normally sits in two ordinary sessions each year; the first begins in February and cannot extend beyond July and the second begins in September and cannot extend beyond December[3]. However, it does have the capacity to sit in extraordinary or special sessions outside these periods[4].

1.2 The Chairman (Speaker) of the Parliament, the Standing Bureau, and the standing and special committees are the central institutional elements in the legislative process.

1.3 The *Chairman* is elected by an absolute majority of the MPs in secret ballot for the term of the Parliament[5], from candidates proposed by the recognised factions in the Parliament[6]. In addition to exercising significant influence, not least in chairing the Standing Bureau, the Chairman has formal powers in relation to the legislative process. It is, for instance, the Chairman who formally receives and distributes draft laws and legislative proposals[7], and who signs the laws adopted by Parliament[8] and submits them to the President of the Republic for promulgation.

1.4 The *Standing Bureau* is composed of the Chairman and Deputy Chairmen of the Parliament, *ex officio*, together with representatives of the recognised factions in the Parliament and the number of these representatives is proportional to the number of parliamentarians in each faction[9]. Amongst its formal functions the Standing Bureau proposes, subject to formal parliamentary approval in each case: the structure of standing committees (and presumably the other parliamentary committees), the dates of parliamentary sessions and the agendas for parliamentary sittings[10]. It also establishes the parliamentary procedures for considering draft legislation, including the manner in which public debates on draft legislative acts should be carried out[11], and co-ordinates the activities of the standing committees. [12]. The Standing Bureau is also tasked with ensuring control of timely updating of the Parliament's website with draft legislative acts, agenda, minutes of plenary sittings and other information which is open to the public.[13]

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[2] The subordinate legislative process is described and analysed in Section III, paras 5.13ff
[3] Constitution, Art 67(1); Law on the Regulation of Parliament, Art 37(1).
[4] Constitution, Art 67(2); Law on the Regulation of Parliament, Art 37 (2)-(4)
[5] Law on the Regulation of Parliament, Art 9
[6] For the creation of the factions and their functions generally, see Law on the Regulation of Parliament, Arts 4 and 6
[7] ibid., Art 14(1)(d)
[8] ibid., Art 14(1)(f)
[9] ibid., Art 12
[10] ibid., Art 13
[11] ibid., Art 13(1)(g), although this is also regulated by primary legislation
[12] ibid., Art 13(1)(e)
[13] Ibid., Art. 13 (h)

1.5 There appear to be currently nine *standing committees* of the Parliament, and each MP (other than the Chairman of the Parliament who is not eligible) must be elected as a voting member of one (but not more than one)[14] of the standing committees.[15] MPs may attend and participate in the proceedings of standing committees of which they are not members.[16] In terms of the legislative process, standing committees consider draft primary legislation and legislative proposals referred to them, and prepare reports and advisory notes on them for plenary consideration of the legislation[17]; they also draft legislation to implement legislative proposals which have been approved by Parliament[18]; and, in undertaking these tasks, they have the capacity to establish working groups (with a membership which includes specialists who are not MPs)[19]. There is also a capacity for standing committees to hold joint sittings[20]. The standing committees may also issue consultative notes "to ensure the uniform application of [...] legislation"[21].

In addition to the standing committees, the Parliament may also establish *special committees* to, inter alia, scrutinise and report on draft legislation of greater than usual complexity. These special committees perform the same functions as standing committees in this respect[22]; and, like standing committees, the membership of the special committees is proposed by the Standing Bureau and subject to parliamentary approval[23].

1.6 It may be convenient here to observe that the Parliament is essentially in control of its own budget. The parliamentary budget is prepared by the Standing Bureau[24], and it includes a specific fund for the preparation of legislation and related activities[25]. The Parliament approves its own annual budget[26] The Chairman manages the budget and reports monthly to the Standing Bureau on its management[27].

2. LEGISLATIVE PROCESS: A "ROAD MAP"

In procedural terms, there are three basic categories of primary legislation enacted by Parliament: legislation to amend the Constitution[28]; organic laws, relating to specified subjects and further subjects which the Parliament recommends should be regulated by organic laws[29]; and ordinary laws, which regulate other matters[30]. Ordinary laws

[14] ibid., Art 17(6)
[15] ibid., Art 18; the Deputy Chairmen may be elected to standing committees but it is not mandatory for them to members of the committees
[16] ibid., Art 21; but, by implication, not vote in their deliberations
[17] ibid., Art 27(1)
[18] Law on Legislative Acts, Art 16
[19] Law on the Regulation of Parliament, Art 27 (4) and also sub-committees [ibid., Art 27(5)-(7)]
[20] ibid., Art 30
[21] ibid., Art 27(3); it is not evident what the status or scope of these notes is
[22] ibid., Arts 32, 33(1) and (3); it has not been ascertained how frequently special committees have been established to undertake these scrutiny functions
[23] ibid., Art 33 (2)
[24] Law on the Regulation of Parliament, Art 13(1)(l)
[25] Law on Legislative Acts, Art 60
[26] Law on the Regulation of Parliament, Art 150
[27] ibid., Art 14(1)(j)
[28] Constitution, Arts 72(2), 141-143
[29] Constitution, Art 72(3)

may be enacted by the Parliament after a first reading (although commonly it is after a second reading)[31]; organic laws may only be enacted after a minimum of two readings[32]; laws making constitutional amendments and organic laws on the budget, financial matters, or which are complex, important or will incur substantial public expenditure may be given three readings before enactment[33].

Laws making constitutional amendments require a vote of two-thirds of the MPs (an absolute majority of two-thirds) to pass[34]; organic laws require a majority of MPs (a simple absolute majority) to pass[35]; and ordinary laws require a vote of the majority of MPs in attendance to pass[36].

Legislation can be initiated either in the form of draft legislation or as a legislative proposal. In both cases they are first considered by a parliamentary standing committee to which the draft or proposal is allocated by the Chairman (hereinafter, referred to in the Report as "the committee of reference" or "CoR") . At this stage, civil society organisations may make submissions; and other standing committees, the legal staff of the Parliament and, where it is not a Government initiative, the Government, may all submit advisory notes[37]. This material is considered by the standing committee.

Once the committee of reference has reported on draft legislation, the legislation is given a first reading in plenary session. This appears to be a rather formal general debate and, at its conclusion, the Parliament may enact the legislation (but only if it is an ordinary law), refer it back to the standing committee to finalise the text, refer it to the committee to prepare it for a second reading, or simply reject it. Where a legislative *proposal* is approved by the Parliament the committee of reference will usually establish a working group to draft legislation to implement the proposal.

Where the draft legislation is subject to a second reading, following a further report of the committee of reference, the second reading must take place within 45 days of first reading approval. It is possible to submit further amendments to the committee within 10 days of first reading approval. The second reading debate consists of the presentation of the report of the committee of reference, and consideration and vote on the articles of the draft, article by article, and amendments to them, together with thereafter, if considered necessary, a vote on the draft as whole.

Any draft legislation may be enacted (adopted) at second reading stage, but the Parliament may decide that there should be a third reading of drafts within the

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[30] Constitution, Art 72(4)
[31] Law on the Regulation of Parliament, Art 60(1) and (2)
[32] Constitution, Art 74(1); Law on the Regulation of Parliament, Art 60(3)
[33] Constitution, Art 143; Law on the Regulation of Parliament, Art 60(4)
[34] Constitution, Art 143(1); Law on the Regulation of Parliament, Art 87(1)(a); it is not made explicit whether this majority is required at each stage of the legislative process or only at the final reading.
[35] Constitution, Art 74(1); Law on the Regulation of Parliament, Art 87(1)(b); it is not made explicit whether this majority is required at each stage of the legislative process or only at the final reading.
[36] Constitution, Art 74(2); Law on the Regulation of Parliament, Art 87(1)(c); it is not made explicit whether this is a majority of MPs in attendance at the sitting or a majority of those in attendance and voting, and again it is not made explicit whether this majority is required at each stage of the legislative process or only at the final reading.
[37] See para II: 4.1

categories indicated above, and also where the legislation was substantially amended at second reading or the second reading amendments would result in substantial public expenditure. The committee of reference may then be required to report on the economic and financial implications of the amendments and how they may be met, and the Government may be asked to submit an advisory note on the same matters.

The debate at third reading is limited to those articles of the draft legislation to which amendments were made at second reading and is informed by the committee of reference report and the Government advisory note. Participation in the debate is largely curtailed to the factions and individual members who proposed amendments at second reading which were not accepted by the committee of reference.

If the outcome of the third reading debate substantially modifies the legislative text, it may be referred back to the committee of reference for editing and presentation for the final reading, and this will occur with complex drafts and codes. The period for such editing is set by the Parliament and cannot exceed 30 working days, with the exception of complex draft legislation and codes where it may a maximum of three months. The edited draft legislation returns to a plenary session for final enactment (adoption), and at that stage no further amendment is permitted, unless to rectify a discrepancy between the approved third reading text and the edited version.

The approval of the legislative text at this point is the adoption of the legislation by Parliament. It is then signed by the Chairman of the Parliament and sent to the President for promulgation. However, if the President has objections to any of its provisions, the President may within a two-week period refer the legislation back to the Parliament to consider the Presidential objections. The Parliament may accept the objections and amend the legislation accordingly, or it may choose to maintain the original text in which case the President is then obliged to promulgate the legislation.

After promulgation, the legislation must be published in the *Monitorul Oficial* (the Official Gazette) and until it is published it cannot have any legal effect. Once enacted the legislation must also be registered and recorded, and the original text must be retained in the Parliamentary Archive.

Subsequently, there is statutory requirement to review the machinery for enforcement of the legislation within six months of it coming into force; and primary legislation generally is required to be reviewed and systematised at least every two years.

3. INITIAL STAGES

Legislative Initiative

3.1 Members of Parliament, the President of the Republic of Moldova, the Government and the People's Assembly of the autonomous territorial-unit of Gagauzia all have the right to initiate primary legislation[38]; and in the case of a

[38] Constitution, Art 73

proposal to initiate an amendment of the Constitution, the initiative can also be by a citizen's petition[39].

The initiative may be in the form of draft primary legislation or, in the case of the President and of parliamentarians, where there is considered to be a need for a range of legislation in respect of an issue, it may simply be a legislative proposal rather than draft legislation[40]; if the proposal is approved by the Parliament the draft legislation is usually drafted by a working group of a standing committee[41]. At least in respect of primary legislation initiated by Parliament, there must be a prior wide-ranging investigation of the contextual implications of the legislation[42] and, similarly, where a standing committee working group is drafting primary legislation in implementation of a legislative proposal it must first conduct a similar broad analysis of the implications of the proposed legislation[43]. In each case, this background material must be submitted with the draft legislation[44].

The Parliament is also required to adopt a legislative programme, encompassing new legislation and necessary amendment of existing legislation, and the programme may be amended on the proposal of the initiator of individual draft legislation[45].

Registration and Allocation

3.2 Draft primary legislation and legislative proposals are registered by parliamentary officials in the order that they are submitted[46].

3.3 On registration, draft primary legislation submitted in compliance with the Law on the Regulation of Parliament[47] is circulated to all the standing committees[48], and allocated by the Chairman of the Parliament to the appropriate standing committee for consideration and report and, where necessary, it may be also allocated to other

[39] ibid., Art 141(1)(a); an initiative to amend the Constitution may also be by a third of the members of Parliament or by the Government: ibid., Art 141 (1) (b) and (c); in all three cases, it can only be submitted to Parliament accompanied by an advisory opinion of the Constitutional Court adopted by at least four of its six judges; there are also restrictions on the substance and the timing of such amendments: ibid., Arts 142, 143; in each case the primary legislation amending the Constitution must be adopted by two-thirds of the MPs (presumably at each reading): ibid., Art 143 (1). There are specific procedures which apply to legislation which amend the Constitution [see Law on the Regulation of Parliament, Arts 76-86] but these are not considered in detail in this Report.
[40] Law on the Regulation of Parliament, Art 47; Law on Legislative Acts, Art 15; and that also appears to be the case where there is a citizen's petition to amend the Constitution, see fn 36.
[41] Law on Legislative Acts, Art 16
[42] ibid., Art 12
[43] ibid., Art 16
[44] Law on the Regulation of Parliament, Art 47(6)
[45] Law on Legislative Acts, Art 14
[46] Law on the Regulation of Parliament, Art 48(1); this appears to be synonymous with the concept in that legislation of being "introduced into the legislative procedure", and, although is not made explicit, this Report proceeds on that assumption; the date of registration, on this basis, then becomes a significant base date for other stages of the process.
[47] Where it is not, the Standing Bureau may suggest to those submitting it that it be brought into compliance (ibid., Art47 (11)) which suggests that registration is under the direction and scrutiny of the Standing Bureau.
[48] ibid., Art 48(1)

standing committees with a view to a joint report[49]. The draft legislation is also submitted to the legal service of the Parliament and, "where applicable"[50] to the Government and (unspecified) "interested institutions" for comment[51].

Publication on Parliamentary website

3.4 Within *5 working days* of their registration, draft primary legislation, together with the background documentation which is required to be submitted with it, must be placed on the Parliamentary website[52]. The background documentation includes, inter alia, an explanation of the objective, purpose, place within the existing regulatory framework (legislation already in force) and its socio-economic effects. It must also contain information about who took part in the elaboration of the draft and include the results of expertise and research performed. Furthermore, information on "the financial, material or other costs" must be provided.[53] In case the draft in question requires the elaboration of other legislative acts for the purposes of implementation (*assuming this refers to secondary legislation*), a list of such acts or their drafts, should also be attached.[54]

4. PRELIMINARY CONSIDERATION BY STANDING COMMITTEE

4.1 The committee of reference has *60 working days* to consider and report[55].

Within that period, the committee may receive various submissions on the draft legislation within the timeframes indicated: submissions from civil society organisations (within 15 working days of the draft legislation being placed on the website[56]); advisory notes prepared by other standing committees (within 30 working days[57]), advisory notes prepared by Parliament's legal staff (within 30 working days[58]) and, in cases where it has not prepared the draft, advisory notes from the Government (within 30 working days or such shorter period as the Chairman of the Parliament determines[59]); and, finally, proposed amendments to the draft legislation may be submitted by MPs, standing committees or parliamentary factions – these amendments must be reasoned and normally in writing, but can be textual

[49] ibid., Art 49(2); there are procedures for resolving conflicts between the committees over their competences to consider draft legislation allocated to them: ibid., Art 50.
[50] Presumably where the Government itself does not initiate it.
[51] ibid., Art 48(1)
[52] ibid., Art 48(2); oversight and management of the website is a statutory responsibility of the Standing Bureau: ibid., Art 13(1) (h); operational management of the website is a duty of the staff within parliamentary administration: ibid., Art 141(5).
[53] ibid., Art. 47(6)
[54] Ibid., Art. 47(7)
[55] ibid., Art 52
[56] Resolution on Co-operation with Civil Society, Annex, para 4
[57] Law on the Regulation of Parliament, Art 53
[58] ibid., Art 54
[59] ibid., Art 58; in the case of advisory notes from the Government and also those from other standing committees, the relevant provision provides that the failure to provide them does not impede the progression of parliamentary consideration of the draft legislation.

amendments or proposals for amendments (within 30 days from receiving the draft legislation[60]).

4.2 Where the committee of reference has under consideration more than one piece of draft legislation regulating the same matter in the same manner[61], it is required to examine them individually but may report that they be integrated as one text for consideration at the second reading stage[62]. However, where there is more than one draft legislative text regulating a matter but in different ways[63], the committee of reference may propose that a specified text be treated in plenary session as the principal draft and the others as alternative drafts[64].

4.3 Once the committee of reference reports, its report (together with the advisory notes it has received from other standing committees and the Parliament's legal staff[65] is circulated to MPs and the initiators of the draft legislation[66]. It is also submitted by the committee of reference, with additional information, to the Standing Bureau, which determines when the draft legislation should be placed on the agenda for a plenary meeting of the Parliament[67]. Draft primary legislation is usually put on the agenda within 10 days of the report of the committee of reference being received[68].

4.4 The period in which the committee of reference has to report may be varied by the Standing Bureau[69].
In particular, the Standing Bureau may reduce the period at the request of the Prime Minister, where the Government considers a draft law it has initiated is a matter of priority[70]. If the Standing Bureau accedes to that request, the period for the committee of reference to report must be set at a maximum of *10 working days* and, once received, it must be placed on the agenda for the *next plenary sitting*[71].

5. FIRST READING

5.1 The first reading debate consists of a series of short speeches[72]. The initiator of the draft legislation presents the legislation[73] and also has a right of a final

[60] ibid., Art 59
[61] ibid., Art 56 (3) which in translation provides "regulating the same issue based on the same concept" but it is assumed this is what is meant.
[62] ibid., Art 56(3); it may make a similar recommendation where it has under consideration several pieces of draft legislation to amend the same existing law [ibid., Art 56(5).
[63] ibid., Art 56(4) which in translation provides "regulating the same issue, however based on different concepts", but again it is assumed this is what is meant.
[64] ibid., Art 56(4)
[65] And presumably any advisory notes from the Government, although this does not appear to be specified.
[66] Law on the Regulation of Parliament, Art 57(1)
[67] ibid., Art 57(2); proposed agendas are prepared by the Standing Bureau on a two-week cycle; ibid., Art 39
[68] ibid., Art 41(2)
[69] ibid., Art 52; in the case of a legislative proposal, the Parliament having approved it sets a timetable in which legislation is to be drafted to implement it: Law on Legislative Acts, Art 15(2).
[70] Law on the Regulation of Parliament, Art 43
[71] ibid., Art 47 (2) and (3)
[72] e.g. of their regulation: ibid., Art 61(4)
[73] ibid., Art 61(1)(a); it has not been established how this procedure operates where the initiator is not a member of Parliament.

intervention at the end of the debate[74]; the report of the committee of reference is presented by the chairman or other member of the committee[75]; representatives of parliamentary factions and other MPs may also speak[76]; and MPs may ask a maximum of two questions each of the CoR rapporteurs[77]. The ability to make substantive comments on the draft legislation appears, however, to be curtailed[78].

5.2 At the conclusion of the first reading, the Parliament may: (i) , if it is an ordinary law, enact ("adopt") the law, (ii) refer it to the CoR or other specified committee to make final adjustments to the text, (iii) approve it at first reading and refer it to the relevant committee to prepare the draft for a second reading or (iv) reject it[79].

5.3 Also at this stage Parliament decides on any recommendations of the committee of reference on amalgamating alternative drafts or treating on draft as the principal text and other drafts as alternative drafts – as outlined in paragraph 4.2 above[80].

6. POST-FIRST READING FINALISATION OF TEXT

Where the Parliament decides at the conclusion of the first reading that the legislative text simply requires to be finalised by the committee of reference, the initiators of the draft legislation are entitled to attend and participate in the meeting of the committee when this is done[81].

7. PRE-SECOND READING STANDING COMMITTEE CONSIDERATION

7.1 Although this may be a misreading, it would appear, that it is at this stage that the committee of reference considers the documentation which was submitted to it under time-limits prior to its initial pre-first reading consideration of the draft legislation[82]. Nevertheless, within 10 days after the approval of the draft legislation at first reading, MPs, standing committees and parliamentary factions have a further opportunity to submit amendments to the committee of reference[83].

7.2 The committee of reference must report on its consideration of these materials within the timeframe for the second reading in plenary session (see paragraph 8.1).

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[74] ibid., Art 62
[75] ibid., Art 61(1)(b), (2)
[76] ibid., Art 61(1)(c)
[77] ibid., Art 61(3)
[78] The last sentence of the English translation of Art 61(3) reads "comments concerning the presented drafts are not allowed"; this has obviously lost something in translation and the meaning of the sentence is uncertain.
[79] Art 63(1); Art 63(2), which is not altogether clear in translation, provides for the parliamentary decision taken at first reading to be minuted but allows for the Parliament to "decide otherwise", but why it should decide not to minute its decision and the implications of such a decision are unclear.
[80] ibid., Art 64; the implication being that these arrangements are to operate from the second reading stage.
[81] ibid., Art 65(3); it is assumed that the finalised text then returns to a plenary sitting for approval; this is not specifically indicated, but it may be formally a continuation of the first reading procedure.
[82] ibid., Art 65(1); the submissions that may have been made previously are set out in para 4.1.
[83] ibid., Art 65(2)

8. SECOND READING

8.1 As previously indicated, two readings are the norm for legislation and mandatory for organic laws; and the second reading must take place within 45 days of the first reading approval[84].

8.2 At the second reading debate, the report of the committee of reference is presented, and the draft legislation is considered and voted on article by article, together with amendments to each article, and a vote may then be taken on the whole draft[85]. Oral amendments relating to legislative technique and language are permitted during the debate, to which the committee of reference rapporteur may respond[86].

Government representatives may also participate in the second reading debate[87].

9. STANDING COMMITTEE CONSIDERATION PRIOR TO THIRD READING[88]

9.1 As indicated earlier, Parliament may decide on a third reading of laws making constitutional amendments and organic laws on the budget, financial matters, or which are complex, important or will incur substantial public expenditure may be given three readings before enactment[89]. It may also decide to give a third reading to draft legislation which was substantially amended at second reading or where the second reading amendments would result in substantial public expenditure[90].

9.2 The committee of reference may be requested to report within three weeks on the economic and financial implications of second reading amendments and how they might be met. The Government may also be requested to submit an advisory note on these matters within the same timeframe[91].

10. THIRD READING

10.1 The debate at third reading is limited to those articles of the draft legislation to which amendments were proposed for second reading[92] the report of the committee of reference and the advisory note of the Government. Participation in the debate is largely limited to a representative of each parliamentary faction which, and to

[84] ibid., Art 65(4)
[85] ibid., Art 66; the procedure for debate generally, and consideration of, and voting on, individual articles and amendments to them is set out in ibid., Arts 67- 69.
[86] ibid., Arts 67(3), 68(3)
[87] ibid., Art 67(2)
[88] Articles 70 and 71 of the Law on the Regulation of Parliament which deal with the third reading stage, although amended in 2006, appear, at least in translation, to be somewhat deficient in structure and obscure in content, so the analysis of this stage of the legislative process is consequently less secure.
[89] ibid., Art 70 (1), where there is an incorrect cross reference; Constitution, Art 143; Law on the Regulation of Parliament, Art 60(4)
[90] Law on the Regulation of Parliament, Art 70(1)
[91] ibid., Art 70(2); there is no base date given for this time-frame; it may be from second reading approval.
[92] ibid., Art 70(4)

individual MPs who, proposed a second reading amendment and which was not accepted by the committee of reference in its report[93].

10.2 If the outcome of the third reading debate substantially modifies the legislative text, it may be referred back to the committee of reference for editing and presentation for the final reading, and this will occur with complex drafts and codes[94]. The period for such editing is set by the Parliament and cannot exceed 30 working days, with the exception of complex draft legislation and codes where it may be a maximum of three months[95].

10.3 The edited draft legislation returns to a plenary session for final enactment (adoption), and at that stage no further amendment is permitted, unless there is a discrepancy between the approved third reading text and the edited version[96].

11. FINAL STAGES

Signature of Chairman

11.1 Once enacted (adopted) by the Parliament, the legislation must be signed by the Chairman of the Parliament (or, in certain cases by a Deputy Chairman) within 20 days of its adoption[97], and by the next working day following its signature at the latest, the Chairman (or a Deputy Chairman) must send it to the President of the Republic for promulgation[98].

Promulgation

11.2 If the President has an objection to the law as enacted (adopted), the President, on one occasion only[99] and within two weeks of receiving it, may refer it back to the Parliament for reconsideration of the basis of the objection[100].
If the Parliament upholds the original text of the legislation or amends it to accommodate the Presidential objection, then the President is obliged to promulgate it within two weeks[101].
If, having considered the President's objections, the Parliament fails to uphold the law, it is treated as rejected[102].

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[93] ibid, 70(3**)**
[94] ibid., Art 71 (1); it is not entirely clear from the text and context whether this "final reading" is treated as a continuation of the third reading stage or a separate stage.
[95] ibid., 71(2); again no base dates are set for these time-frames, but it may be assumed to be from the date of completion of substantive deliberation at third reading.
[96] ibid., 71(3)
[97] ibid., Art 73
[98] ibid., Art 74(1)
[99] A limitation in the Law on the Regulation of Parliament, Art 74(3), but not found in the Constitution, Art 93.
[100] The reconsideration follows the same parliamentary procedure as for the consideration of amendments: ibid., Art 74(3).
[101] ibid., Art 74(4); the translation makes it uncertain whether this is the original two week period or a period of two weeks from the response of the Parliament being registered by the President's Office.
[102] ibid., Art 75

Publication

11.3 Primary legislation must be published in the *Monitorul Oficial*; if it is not so published, it is of no effect[103].

11.4 The legislation comes into force on the date specified in its provisions or, otherwise on the date of its publication[104].

Registration etc

11.5 Primary legislation is numbered when it is adopted[105] and the originals must be permanently retained in the Parliamentary Archives[106]. Each piece of primary legislation is, in addition, the subject of multiple registration and recording. It is required to be registered in the State Register of Acts and also in the State Register of Legal Acts[107]. A record of primary legislation is required to be maintained by the Parliament (in several formats)[108] and also by the Ministry of Justice[109].

It may be observed in passing that these rather elaborate arrangements do not *ex facie* specifically and definitively address some practical questions: where an enacted text is disputed, which text is to be treated as the definitive text (presumably the archived original?)? which registration or record takes precedence and in what circumstances?

12. CONSEQUENCES OF REJECTION OF DRAFT LEGISLATION

Usually draft legislation rejected by the Parliament cannot be reintroduced in the same session[110].

13. POST-ENACTMENT PROCEDURES

Enforcement of Legislation

13.1 The final and transitional provisions of legislation are required to include necessary provisions for providing that the law is enforced and applied[111]. Normally parliamentary consideration of these matters is by the appropriate standing committee which makes recommendations on enforcement to the Government and other relevant

[103] Constitution, Art 76
[104] ibid.
[105] Law on Legislative Acts, Art 54
[106] ibid., Art 55(2); presumably the "original" is the copy signed by the Chairman and sent to the President for promulgation, and then presumably returned to be archived.
[107] ibid., Art 55(1)
[108] ibid., Art 56
[109] ibid., Art 57(2)
[110] ibid., Art 72(2); the provision in translation reads: "As a rule, draft laws…rejected by the Parliament cannot be *brought in repeatedly* for discussion at the *same sitting*"; it is assumed that the reference to "sitting" is a mistranslation for "session", and that otherwise the text of the Report captures the meaning of the provision
[111] ibid., Art 110; this can include training on the legislative provisions for those tasked with implementing them

public bodies, and reports to Parliament, usually *within 6 months* of the legislation coming into force, but a different period may be specified in the legislation itself[112].

Review of Legislation

13.2 There is a statutory obligation to review legislation at least every two years to determine whether, in broad terms, individual pieces of legislation are effectively achieving their objectives, and also to systematise statutory provisions generally and where appropriate consolidate and codify them[113].

III ANALYSIS

1. INTRODUCTION

The analysis considers a range of vulnerabilities within the legislative process broadly in the chronological order of the process. The first area is the procedure for development of the policy which it is intended that the proposed legislation will deliver (in paragraph 2). This is followed by the arrangements for consulting civil society on the legislative policy and also on drafts of the legislation (in paragraph 3). Then limitations in the procedure for, and the style of, the drafting of legislation are explored (in paragraph 4). Finally, various weaknesses in the legislative process, as described in Section II, are examined (in paragraph 5).

2. DEVELOPMENT OF LEGISLATIVE POLICY

Introduction

2.1 It is a truism of legislative drafting that determining exactly and in detail what is to be achieved by the legislation is the most difficult and important, and often the most time-consuming, aspect of the preparation of legislation. It is an initial task, and one that is often subject to refinement during preparation.

Once what has to be achieved has been determined, the next aspect of the process is to decide how what has to be achieved can best be achieved by the legislation. Then there follows the drafting, and the more carefully the earlier two stages have been conducted the easier the drafting will be.

The development of legislative policy in the Moldovan legislative process is viewed from this perspective.

The Government

[112] ibid., Art 111
[113] Law on Legislative Acts, Arts 50 - 53

2.2 The Government has the constitutional power to initiate primary legislation, in the form of draft laws[114], and also to adopt subordinate legislation in various forms: decisions relating to the implementation and enforcement of primary legislation on direct constitutional authority[115]; and ordinances by virtue of enabling primary legislation[116].

2.3 Informal, but informed, indications suggest that some 75% of primary legislation is initiated by the Government, and it is a reasonable assumption that at least the same, and probably a larger, percentage of subordinate legislation flows from the same source. It is therefore of some concern that no substantial legislative procedures for the policy development of governmental legislation have been identified[117]. However, procedures in the Law on Legislative Acts which apply to parliamentary legislation, enacted in 2001 and brought into force in 2002, require Government action on this and other matters.

Article 61 of the Act provides:

Within a three-months term after this Law comes into effect, the Government shall:

a) present to the Parliament:

- proposals for brining the existing legislation in conformity with this Law;

- a draft law on normative acts of the Government, other bodies of central and local public administration;

b) bring its normative acts in conformity with this Law.

The President

2.4 The President of Moldova also has the constitutional capacity to initiate primary legislation[118], which may be in the form of legislative proposals[119] but whether they may also be in the form of draft laws is unclear from the Constitution[120]. No specific

[114] Constitution, Art 73
[115] Constitution, Art 102; these instruments are translated as "decisions" in the Constitution, but as "regulations" in the Law on the Government; instruments translated as "regulations" in the Constitution (but as "orders" in the Law on the Government) are formal instruments relating to the internal structure of the Government and are not considered in this Report
[116] Constitution, Arts 102, 106b
[117] There are general legislative provisions relating to the implementation of laws, so the Law on Government, Art 10(1), provides in general terms that "In compliance with its authority, the Government shall: (1) implement law of the Republic of Moldova, decrees of the President of Moldova, and control implementation of regulations and ordinances of the Government"; see also ibid., Arts 16(2), 23; and the Government is also required to establish the procedure for developing, considering and adopting ordinances: ibid., 30-2.
[118] Constitution, Art 73
[119] Constitution, Art 15
[120] The President also has the constitutional capacity to issue decrees, some of which must be countersigned by the Prime Minister [Constitution, Art 94], although those that require countersignature [Constitution, Art 86(2) (accrediting and recalling diplomatic representatives); Art 87 (2), (3) and (4) (in respect of national security)] and some other categories are essentially executive in character.

legal procedure for this Presidential power of legislative initiative has been identified, and neither has a procedure for developing policy in relation to such legislation. This omission should attract the same concern as that in respect of the Government.

The Government and the People's Assembly of the autonomous territorial-unit of Gagauzia

2.5 It may also be noted that these bodies also have the constitutional capacity to initiate primary legislation[121] but again no specific procedure for doing so has been identified, and neither has any formal procedure for the policy development of such legislation. This should also attract concern.

The Parliament

2.6 Parliamentarians can also, of course, initiate primary legislation[122] and this may be either in the form of draft legislation or of legislative proposals[123]. In respect of initiating legislation within Parliament, and of drafting legislation to implement legislative proposals, there are statutory procedures on the policy development of the legislation, which were introduced in their present form as amendments to the Law on Legislative Acts in 2006. Unlike the apparent lack of such procedures in other institutions of the state noted above, the concern over these Parliamentary procedures is that they may, in some respects, be too elaborate to be practical. Two provisions of the Law on Legislative Acts may serve to illustrate this.

2.7 Article 13[124] requires a "scientific rationale" as part of the process of initiating legislation. It provides:

(1) Initiation of the procedure for drafting a legal act shall be preceded by a scientific analysis of political, social, economic, financial, legal, cultural, sanitary and psychological consequences of respective norms; a comparative analysis of the norms with those in the respective branch of the Community legislation; identification of incompatibilities between the existing norms and existing public requirements and norms in the respective branch of the Community legislation; or identification of lack of legislative acts in the respective area.

(2) Activities to study and collect materials to justify a draft legislative act shall take into consideration the judicial practice and the respective legal doctrine.

(3) Decisions in the legislative act shall be based on constitutional provisions, the practice of constitutional jurisdiction, provisions of the Community legislation, also on provisions of international treaties that the Republic of Moldova is a party to.

(4) Scientific justification shall result in identification of goals and areas of legal intervention and of means necessary to achieve the goals.

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[121] Constitution, Art 73
[122] ibid.
[123] Constitution, Art. 15; it also has a limited capacity to adopt regulations in matters predominantly, but not exclusively, executive: Law on Legislative Acts, Art 11.
[124] Article 13 was amended by Law No 168-XVI 15.06.2006, effective from 01.09.2006

(5) The Parliament may establish special forms for the justification and for finalizing the scientific rationale.

Several comments may be made about Article 13. If the paragraphs are intended to indicate a priority of tasks in policy development, the priorities appear, with respect, to be impractical. As indicated in the introduction to this section, the issues listed in paragraph (4) should be the most appropriate primary concerns within the context of the matters cited in paragraphs (2) and (3). Embarking first on the objectives listed in paragraph (1) is likely to create an over-elaborate unfocussed exercise. Secondly, it is unclear, at least in translation, to what extent paragraph (2) is directed to an investigation of the manner in which the judiciary has applied, and to that extent interpreted, the existing law. If that is the task envisaged by the paragraph it is an important one.

2.8 Article 17 provides for the functions to be undertaken by working groups established to undertake the task of drafting a legislative text to implement legislative proposals made under Article 15.
While Article 17 is generally sound and practical, paragraph (2) provides:

(2) The working group shall make a comparative analysis of useful information contained in the legislation of other countries, and principles of main legal systems applied in the world, also of their compatibility with the Community legislation. The comparative analysis shall be based on the following principles:

a) sources of law in the compared legislations shall be necessarily studied;

b) only similar institutes of law shall be compared;

c) compared terms shall be considered in the social, political, economic, cultural and actual legal context from which they follow, also an investigation shall be made of their potential consequences in a different legal system;

d) when comparing terms (institutes, provisions, norms), consideration shall be given to their original meaning as well as to the meaning they have acquired in the process of evolution.

The principles to be applied in undertaking the analysis required are sound, but the scope of the analysis itself is unwieldy and unlikely, in most cases, to be cost-effective in terms of resources, time and results.

3. CIVIL SOCIETY CONSULTATION

Introduction

3.1 In developed democracies, there is an increasing emphasis in the legislative process on consultation with civil society. This stems not only from a recognition of the value of such participative democracy but also from an appreciation that it improves the quality and effectiveness (implementation) of legislation.

There is equally a recognition that, while such consultation has value at each stage of the legislative process, consultation at the stage of policy formation and prior to a draft legislative text being received for parliamentary consideration is a particularly effective time for the consultation. It is institutionally easier to take account of the product of consultation at preliminary stages before there is a firm internal consensus on policy and text. There is thus a premium on early consultation.

However, it is in the nature of the legislative process that the full implications of a legislative initiative do not become apparent until policy is reduced to a legislative text and amendments to it are proposed, so consultation continues to have a value throughout the legislative process.

Finally, in this regard, consultation not only has a value for primary legislation, it has a particular value for subordinate legislation. Subordinate legislation tends to be more technical and detailed, and commonly it is not, or little, exposed to the public and political nature of parliamentary scrutiny but is largely the product of purely internal government development. Consequently, consultation with civil society on subordinate (secondary) legislation has particular value.

3.2 In considering consultation with civil society, there is the question of what is meant by "civil society" for this purpose. In developed democracies, where expertise outside the organs of the state often has a broad and politically vibrant institutional structure together with a well-informed electorate, this question may take the form of determining the breadth of consultation that is appropriate in particular circumstances. Should, in basic terms, the particular consultation be with the public at large or with specialists, or both, or with one informing the other? In emerging democracies, the question may also take a different form. For instance, and again in basic terms, should consultation focus on indigenous independent expertise, indigenous expertise which is to a greater or lesser extent externally funded, or on the domestic presence of international NGOs, particularly those which are recognisably apolitical, or should there be no such distinctions drawn in the consultation process?

3.3 Then there is the matter of the nature of the consultation. In essence, this reduces itself to the question: to what extent the consultation is to be a dialogue? And, however willing the organs of the state are to consult civil society, the answer to that question may be circumscribed by available resources.

There are various aspects to the question. Some are operational. Is consultation to admit formal written submissions, formal oral submissions (perhaps based on already recognised expertise, or on the quality of prior written submissions) or consultative meetings of varying degrees of informality, or some or all of these? Other questions are more functional. To what extent is civil society to be directly involved in the process, as advisers at policy development meetings say, or on drafting teams? Some are matters of courtesy and promotion. To what extent is there to be an institutional response to those who participate in the consultation process. Are written submissions to be simply acknowledged, or should the acknowledgement indicate whether the views expressed have been accepted or rejected, and should that include the reason for the decision?

What is certainly true is that responding to those who participate in a consultation will encourage them to participate in future consultations and thus strengthen the consultation process.

3.4 Finally, there is the mundane, but significant, matter of access for civil society to the more public stages of the legislative process. To what extent is there, for example, the ability to attend sittings of parliamentary committees and parliamentary plenary sittings? If considerations of space constrain attendance, to what degree is this ameliorated by broadcasting proceedings?

All these considerations inform the analysis below of the nature and degree of civil society consultation in the Moldovan legislative process.

The non-Parliamentary dimension

3.5 Few legislative procedures for consultation with civil society in the preparation of draft legislation have been identified outside Parliament. In the main, this means that few procedures have been identified for such consultation in the preparation of primary and subordinate legislation by the Government. The most significant legislative requirement in this respect is found in the Law on Government, Art 25, which in part provides:

The Government shall ensure transparency of its activities. For this purpose, the Government by its initiative or on demand shall make a decision on publicizing in media (including electronic media) separate draft legal acts or draft acts of the Government, transcripts of open sessions and other acts pertaining to the activities of the executive body depending on their importance for the public. If necessary, the same decision of the Government shall specify the procedure of public discussion of the legal acts and draft Governmental instruments, for collection, consideration and discussion of proposals presented in relation to them.

Whether or not the Government has issued a decision in implementation of Article 25 has not been established.

Given the particular value of consultation in the early stages of the legislative process, and the very substantial proportion of legislation that is prepared within the Government, if there is just this limited statutory duty, whether or not it has been addressed, it is a significant weakness.

The Parliamentary dimension

3.6 In 2005, the Parliament adopted a formal resolution to confirm the concept of co-operation with civil society in the legislative process[125], to which was annexed some concrete procedural proposals and requirements. The Resolution is to some extent reflected in subsequent legislative amendments, although not directly referred to in them. As it is a focus of parliamentary commitment, the following analysis is structured around the 2005 Resolution.

[125] No. 373-XVI 29.12.2005

3.7 The Resolution may be divided into (i) the formal resolution and (ii) the annex which both describes the concept of co-operation and also how it is to be furthered. The Resolution, apart from resolving to ensure the implementation of the concept, simply resolves to ensure that draft laws will be placed on the Parliamentary website from 1 February 2006 "in the procedure prescribed by law". It is now a legislative requirement that draft legislation, together with the documentation statutorily required to accompany it when submitted to Parliament, be placed on the Parliamentary website within a maximum of "5 working days" from the parliamentary registration of its submission[126].

3.8 The annex does not define "civil society". However, it does make reference to "opinions of …*citizens*" and "broad participation of *voters*" as part of the objectives in establishing co-operation with civil society[127]. Later, it envisages the co-operation as between the Parliament and civil society organizations *registered* in Moldova[128] and requires the Parliamentary bureaucracy which is to be established to manage the co-operation to "keep a record of *concerned* civil society organisations that will include the non-governmental registered in Moldova that express their wish to co-operate with the Parliament"[129]. The implication is that the organisations directly or indirectly should primarily be representing the views of the enfranchised citizen in preference to a wider agenda, and specifically they should not "promote business or political interests in the co-operation process"[130]. There is also a commitment to treat qualified civil society organisations equally in the co-operation process[131], together with a perhaps over cautious protective statement, given the essential nature of the process, that contributions of the organisations are not binding[132].

3.9 The annex indicates the manner in which co-operation is to take place. It requires the parliamentary standing committees to establish panels of experts "from amongst ..representatives of civil society organisations" relating to their terms of reference[133]; and Parliament to hold public hearings at least once a year to consult civil society organisations on issues on the Parliamentary agenda and other national issues[134]; it envisages discretionary ad hoc meetings on such issues, on the initiative of either the Parliament bodies or civil society organisations[135]; and it requires the Speaker to convene an annual conference of representatives of the organisations and of Parliament to review the progress of the co-operation process[136].

In addition to this, the annex provides that "civil society representatives may be included in the (parliamentary) working groups set up….in order to draft or finalise

[126] Law on the Regulation of Parliament, Art 48(2); Art 48 is in redaction of Law No 430-XVI, 27.12.2006 and actually came into force on 23.0.32007. As is indicated earlier, the management of the website is a statutory responsibility of the Standing Bureau: ibid., Art 13(1)(h).
[127] Annex, para 1
[128] Annex, para 3.2; it has not been possible as yet to identify the legislative provision which regulates such registration.
[129] Annex. Para 3.4; the *ex facie* implication is that this record will include organisations that do not require to be registered.
[130] Annex, para 2(e)
[131] Annex, para 2(d)
[132] Annex, para 3.7; presumably not binding on the Parliament.
[133] Annex, para 3.5 (a)
[134] Annex, para 3.5 (d)
[135] Annex, para 3.5 (c)], although no mechanism for this is provided.
[136] Annex, para 3.5 (e)

draft acts"[137]. Legislation provides for a range of private sector specialists to be included in the working groups[138].

The co-operation arrangements contemplated in the annex are certainly progressive, and it would be useful to know to what extent they been established and are operative. However, there are two refinements that could be helpful.

Co-operation, as envisaged in the Resolution quite reasonably embraces both consultation on general issues and on specific legislation. Standing committees, for instance, within their terms of reference consider administrative and policy questions as well as draft legislation and consultative meetings may thus engage wider long term matters than draft legislation presently before the Parliament. However, co-operation in the legislative process would be strengthened by more fully embedding co-operation within the legislative procedure, possibly by seeking to amend existing legislation to do so.

Secondly, co-operation is usually expressed as being with "representatives of civil society organisations". It may be an error to place great reliance on nuances in a translated text, but the phrase seems to imply that the knowledgeable individual is excluded from, or at least discouraged in, engaging in the consultation process. If so, this seems an unnecessary restriction, and participative democracy would be strengthened by encouraging the individual as well as the institutional representative, even if positive results from doing so may be slow to emerge.

3.10 The annex also provides some of the detailed mechanics of the consultation.
The most significant element is that, although it can be varied by the Parliament, the normal requirement, is that submissions on draft legislation by civil society organisations must be submitted within 15 working days from the draft being placed on the Parliamentary website[139], and that must be done within 5 working days of the draft law being registered as received by the Parliament[140].

This requirement has some serious weaknesses as a consultation procedure. The default requirement of submission within 15 working days is a very short period and surely must place considerable pressure on small understaffed civil society organisations, particularly if they aspire to make submissions on a range of draft legislation.

Secondly, the shortness of the submission period does not seem to be justified in terms of the parliamentary timetable. The default procedure is that the committee of reference has 60 working days to consider and report on the draft law[141]. And within that period other parliamentary committees, the legal staff of the Parliament and, in some cases, the Government each have 30 working days to submit advisory notes to

[137] Annex, para 3.6
[138] Law on Legislative Acts, Art 16; these working groups are commonly established by standing committees to draft legislation in implementation of a legislative proposal, and to consider legislative initiatives in the form of legislative texts and to consider proposed amendments to legislation.
[139] Annex, para 4
[140] Law on the Regulation of Parliament, Art 48(2)
[141] Law on the Regulation of Parliament, Art 52

the committee of reference[142]; parliamentarians, standing committees and parliamentary factions have the same period in which to submit amendments to, and legislative proposals regarding, the draft law[143]. And indeed the legislation refers to the committee of reference as being only required to examine proposals from civil society organisations in preparing the draft legislation for a second reading[144]. At the very least there appears to be no compelling argument against the period of submission by civil society organisations being the same as for official bodies, which are no doubt usually better resourced and certainly likely to be more familiar with technical requirements of the parliamentary legislative process.
Finally, if rigorously applied, this timeframe for civil society organisations to make submissions is not only narrow in itself but only allows one opportunity for such submissions in the legislative process. It effectively denies these organisations making submissions on amendments and proposed amendments to the draft law later in the process which is an unsatisfactory and inefficient result[145].

3.11 However, perhaps the most serious weakness in the consultation process is created by the accelerated legislative procedure which may be applied to Government draft legislation, with the approval of the Standing Bureau on the request of the Prime Minister[146]. By this procedure, the standing committee receiving the draft legislation has ten, rather than sixty, days to report and when the report is received the Standing Bureau must place it on the agenda of the next parliamentary plenary sitting[147].

Clearly the adoption of this procedure seriously reduces the opportunity for civil society organisations to make submissions; and indeed others, including the Parliament's legal staff, to provide advisory notes on the draft legislation. This weakening of the consultative system generally in the course of parliamentary consideration of the draft legislation is of somewhat greater concern as no formal detailed consultative procedures during preparation of primary legislation within Government have been identified.

There may well be a need for an accelerated legislative procedure in exceptional or emergency circumstances, but the legislative provisions do not specifically require such circumstances to be established and the only protection against the possible abuse of the procedure is the requirement of the consent of the Standing Bureau to its adoption. A review of the situations in which this accelerated procedure has been used in the past, would be required for any further conclusions to be made.

There is a compelling argument to add protective elements to this accelerated legislative procedure. The most obvious of which is to limit its use to responding to exceptional or emergency circumstances, and to require the Prime Minister in making

[142] ibid., Arts 53(1), 54, 58
[143] ibid., Art 59(1)
[144] ibid, Art 65(1); although this may be a requirement to re-examine them.
[145] Although it does not detract from the force of the argument here, it may be noted that where a parliamentary working group prepares draft legislation to implement a legislative proposal, and the legislation is "voluminous" and "of great importance" the group may prepare papers which are, inter alia, presented for public discussion: Act on Legislative Acts, Art 17(4).
[146] Law on Regulation of Parliament, Art 43. The procedure appears to have been introduced by an amendment in 2006 (Law No.430-XVI 27.12.2006) and came into force on 23 March 2007.
[147] Law on the Regulation of Parliament, Art 44

a request for the use of the procedure to provide a reasoned case to the Standing Bureau as to why there are such circumstances which justify its use.

3.12 Finally, the annex provides for a response to be provided to those who make submissions on draft legislation. Paragraph 4.4 stipulates the procedure and a sound rationale for adopting it. It provides:

The receipt of contributions must be confirmed in view of enhancing the coherence and mutual confidence. According to the number of the received contributions, as well as of the possibilities, the confirmation shall have the form of an answer (by e-mail) where shall be communicated the decision on (full or partial) acceptance or non-acceptance of the contributions, with the argumentation of this decision.

Although this is a valuable innovation, the terms of the paragraph do prompt a number of operational questions. To whom are the submissions received circulated? The decision of what body is communicated to the organisation making the submission? Who determines what were the reasons for the decision and who communicates this to the organisation?

Access to Proceedings

3.13 Reference was made in the introduction to this section to the value, and the symbolism, of permitting ready public access to plenary sittings of parliaments and to sittings of parliamentary committees, while accepting there are circumstances when closed sittings are justified.

The norm is that sittings of the Parliament of Moldova are public, but that sittings may be closed on a majority vote of members[148]. However, the general public may only attend with authorisation or a letter of invitation[149] In addition, there may be direct public service radio and television broadcasting of public plenary sittings[150].

Meetings of the standing committees are also public, but may be closed by decision of the committee[151]. Whether there are, as with plenary sittings, administrative requirements imposed on those seeking to attend these committee meetings has not been identified. The minutes of open standing committee meetings are available to the public; the minutes of closed meetings may also be made available with the preliminary consent of the chairman of the committee[152].

In general, the arrangements for public access to parliamentary deliberations do therefore appear satisfactory.

[148] Law on the Regulation of Parliament, Art 99(1); it is not clear from the translation whether that is an absolute majority or a majority of MPs present.
[149] ibid., 100(1); it is not clear who issues authorisations and invitation letters.
[150] ibid., Art 99(2); it has not been possible to establish in the preparation of the Report to what extent such broadcasting takes place.
[151] ibid., Art 24
[152] ibid., Art 23

4. LEGISLATIVE DRAFTING

Introduction

4.1 Good legislative drafting is the ability to identify the legal objectives and meet them fully by expressing the necessary legal rights and obligations in an accurate clear manner, while also ensuring that the draft complies with superior norms, and that it effectively and consistently relates to existing legal norms.

However, there is a tendency in emerging democracies (and indeed in established ones where there are time pressures) to sacrifice the ideal in favour of a draft that is merely legally effective, and that may be sufficient to satisfy the instructing authorities.
Legal effectiveness is, of course, the essential. However, if the legislative text is merely effective but falls short of the standards of good drafting there may well be long-term and peripheral consequences.
First, legislation which is not clearly, as well as accurately, expressed tends to undermine, or at the very least inhibit, democratic development.

Secondly, if legislation is not properly set in the context of existing norms or it fails to be set in a manner which makes the context readily accessible to the user, the corpus of national legislation becomes over time increasingly chaotic and consequently increasingly difficult to use.

Thirdly, legislation which, although legally effective, is not well drafted wastes public and private sector resources in endeavouring to explain or establish its implications, and ultimately in resolving its application by litigation.

Finally, the quality of legislative drafting may be seen as an advertisement of state competence with some significant marginal economic consequences. So, for instance, with reference to a concrete illustration used subsequently, where the quality of drafting is poor it may be a factor tending to discourage inward investment, where the potential investor has difficulty establishing the relevant legal rights and obligations.

Again, these are all considerations which inform the following analysis.

Institutional Structures and Resources

4.2 In "sessions" of the Government[153], which must be held at least quarterly[154], the matters which the Government is legally required to consider include its general programme of activities, draft laws and conclusions on legislative proposals, as well as the adoption of regulations and ordinances[155].

It is understood that the Ministry of Justice has oversight over the delivery of the Government legislative programme; registering draft Government primary legislation, offering advice and opinions on its structure and style and, to a degree, its substantive

[153] Open, but sometimes closed, meetings of members of the Government, chaired by the Prime Minister or a deputy prime minister: Law on the Government, Art 25
[154] ibid.
[155] ibid., Art 25 (1), (7) and (8)

content. It is also understood that there has been within the Ministry of Justice a centralised drafting unit which drafted at least a significant proportion of Government primary legislation, but this may now have been replaced by a revised institutional structure where this drafting has been redistributed to Ministries responsible for the activities to which the legislation relates, with the Ministry of Justice retaining a monitoring and advice role.

No legislative provisions have been identified which directly supports this account, and it would perhaps be unusual for there to be such provisions, but establishing authoritatively this institutional structure, and the reasons why changes, if any, have been made to it, would be beneficial.

It also has not been possible to establish from the legislation review the number of legislative drafters employed within Government, and a profile of their drafting experience, but again it would be valuable to have an authoritative account of this.

Similarly, there would be a value in establishing authoritatively the institutional arrangements for drafting subordinate legislation within the Government, the number of officials undertaking this function and an indication of their drafting experience.

4.3 Within the Parliament, the parliamentary administration provides general logistic support to the Standing Bureau, standing committees, and the parliamentary factions as well as to individual parliamentarians[156]. The parliamentary administration is led by a Director General who is appointed by the Chairman of the Parliament, after consultation with the Standing Bureau and receiving an advisory note from the Committee for Legal Issues, Appointments and Immunities[157]. The Director General's responsibilities extend to appointing and dismissing parliamentary staff, other than some who are directly appointed by the Chairman.

Amongst the duties of the legal department within parliamentary administration are to provide advisory notes to standing committees on draft legislation and legislative proposals[158] and to assist in the preparation of draft legislation in the implementation of a legislative proposals that are approved by the Parliament[159]. It has not been possible to ascertain the size of the parliamentary administration or of its legal department, but from the Parliamentary website the number of staff in the latter seem modest. Neither has it been possible establish a profile of the professional experience of the staff in the legal department. However, there is some internal evidence in the reviewed legislation that they may not be particularly experienced. So, for instance, the members of the legal department who must be included in parliamentary working

[156] Law on the Regulation of Parliament, Art 141; the parliamentary staff are actually referred to in the English translation of the Act as "the Apparatus of the Parliament"; the detail of the structure of the secretariat and terms of service of its personnel is regulated by Decisions of the Parliament: ibid., Art 141(2).
[157] ibid., 141(3), the Committee is one of the standing committees; the status of the Director General is unclear from the legislation, but an implication of this provision is that the Director General is a member of the Parliament, and may be assisted in the Directors duties by "his/her MPs". This is a matter that could usefully be clarified.
[158] e.g. ibid., Art 54
[159] Law on Legislative Acts, Art 16

groups tasked with drafting primary legislation implementing legislative proposals are only required to have a minimum three year's working legal experience[160].
Again, there would be value in obtaining authoritative information on these matters.

Languages

4.4 Article 13 of the Constitution states that "the Moldovan language" is the state language of the Republic, but also provides that the State shall "acknowledge and protect the right to the preservation, development and use of the Russian language and other languages spoken within the territory of the State"[161]. This Article reflects the duality in the use of the State language and Russian in the Republic, and has an effect on legislative drafting and the legislative process in general.

In terms of drafting primary legislation, the Law on Legislative Acts is quite clear; Article 19 provides that the "text of legislative acts shall be written in the national language"[162]. However, the Law on the Regulation of Parliament, Art. 47 (8) and (10), in respect of legislative initiatives, provides – with some internal inconsistency:

(8) Draft legislative act[s] shall be submitted in the Moldovan language together with the translation into the Russian language.

….

(10) Draft legislative acts or legislative proposals submitted by the MPs shall be presented in Moldovan or in Russian languages. The Apparatus of the Parliament ensures their translation into the respective language.

Presumably, this also applies to proposed amendments to draft legislation, but no specific legislative provision to that effect has been identified[163].

The conclusion would appear to be that the authentic text of enacted primary legislation is only in the State language, but that Russian translations of draft laws, legislative proposals and amendments to draft laws may be working documents in the parliamentary legislative process. Given the complexity of the legislative process it would seem preferable for the rules to clearly state that texts of draft laws in the State language are the binding version in the case that any inconsistencies or discrepancies arise from the process of translation.

Governmental and Parliamentary Dimensions

4.5 Much of what follows in this section on the drafting of legislation makes reference to the Law on Legislative Acts. This legislation relates to legislation drafted in Parliament to implement legislative proposals approved by Parliament, and also to parliamentary consideration of draft legislation submitted by those entitled to do so.

[160] Law on Legislative Acts, Art 16(3)
[161] Constitution, Art 13 (4) requires the enactment of an organic law on languages, but it has not been established whether it has been enacted.
[162] See also, Art. 23(3) of the Law.
[163] Also no provisions have been identified in respect of subordinate legislation, but it is assumed that, as with primary legislation, the authoritative text would be solely in the State language.

However, as discussed in paragraph 2.3 in respect of the development of legislative policy, Art 61 of the Act places commitments on the Government and these are equally applicable to legislative structure and style. No Government legislative response to these Article 61 commitments in respect of this has been identified.

Assuming that legislative response is still awaited, the limitations of some of the legislative provisions considered in subsequent paragraphs of this section may be attributable to some extent to limitations within the Law on Legislative Acts but, given the percentage of primary legislation initiated by the Government, are as likely also to be attributable to the paucity of formal Government protocols on drafting.

Analytical focus

4.6 The Law on Legislative Acts contains quite detailed provisions on the structure and content of legislation, together with some on drafting style, which are considered below under the rubric "Legislative Drafting: Statutory Regulation". However, important macro aspects of drafting are treated in a more general and descriptive manner. This is the case of the requirement to undertake a careful analysis of the scope of the provisions needed, ensuring that all aspects of this need have been appropriately addressed in the legislation as drafted, and that the draft legislation is not in conflict, or apparent conflict, with other provisions. Whether for this reason or not, an impressionistic and unsystematic review of some Moldovan legislation available in English translation suggests that this is not uncommonly a stylistic weakness. Some examples may illustrate the matter.

4.7 An initial example can be found in paragraph III: 4.4. The provisions of the Law on the Regulation of Parliament on the language to be used in legislation have some internal inconsistency and appear to be in conflict with other norms, some of them superior norms. They also address the language to be used in draft legislation and legislative proposals while failing to address specifically the language to be used in proposed amendments.

Another example is the Criminal Code[164], Art 214:

(1) Practicing of medicine as a profession or of pharmaceutical activity by a person without a license or another authorization, if this activity resulted in health damage to a person by negligence,
Shall be punished by a fine in the amount of 200 to 500 conventional units or by jail sentence of up to 2 years.
(2) The same acts, when resulted in the death of the victim by negligence,
Shall be punished by jail sentence of up to 2 years.

This provision is directed at criminalizing practising medicine without a licence or other authority. It addresses the situations where such action results in damage to the health, or the death, of the person treated, but fails to address the circumstance where unauthorised medical practice has not directly harmed that person (but clearly might harm others treated in the future).

[164] No. 985-XV 18.4.2002

A further example is a provision, Art 15(3), of a draft Law on Public Service and the Status of Civil Servants[165]:

A civil servant who has been dismissed or has resigned cannot represent, during a period of 5 years, the interests of natural persons and legal entities concerning problems that were the subject of his job activity and are considered, in compliance with the law, a state secret or another secret protected by the law.

The focus here is to prevent for a period former civil servants using certain confidential information which they obtained during their employment for the benefit of others. However, the provision embraces the civil servant who has been dismissed or who resigns, but fails to address the larger category of civil servants who have retired.

A final example is the Law on Foreign Investments[166], Art 2, which defines "foreign investors", a concept central to the legislation:

Foreign investors in the Republic of Moldova may be:

a) foreign individuals and legal entities, their associations registered in the country of their citizenship, place of residence (permanent place of being), for conducting their entrepreneurial activity;
b) foreign individuals that are not registered for carrying out entrepreneurship activity in the country of their residence (completed by the Law from 27 July 1994, No 197-XIII);
c) citizens of the Republic of Moldova and persons without citizenship, permanently living outside the republic and registered in the country of their permanent place of residence, for conducting their entrepreneurial activity;
d) foreign states;
e) international organisations.

Article 2 fails, for instance, to capture Moldovan citizens who are permanently resident in a state outside Moldova but who are registered in a third state to conduct investment business.

Referential drafting

4.8 Incorporating by reference provisions of other legislation is not an ideal drafting technique, but can be justified in some circumstances. It is not ideal because it obliges the user of the legislation to refer to one or more pieces of other legislation to determine the law. However, where the incorporation of other provisions is not by precise reference but by vague generalisation it has to be regarded as poor drafting, whether or not it is technically effective. In that case, it makes it extremely difficult for the user, even the legally qualified user, to determine the law.

[165] It has not proved possible to establish whether this draft Law introduced in, it is believed, 2004 was in fact enacted.
[166] Law No.998-XII 1.4.1992

From the perspective of the drafter it may be a convenience, but it may well also lead to the indiscipline of not carefully checking that parallel or related legislative provisions are consistent with what is being drafted. Unfortunately, incorporation by vague descriptive reference is no doubt often a result of pressures of time, inadequate mechanisms for identifying related legislation or simply limited human resources. Some examples will illustrate aspects of this issue.

4.9 So, for instance, Article 66 of the Constitution lists the "basic powers" of the Parliament; there are sixteen powers listed in separate short paragraphs and then a final paragraph states:

(r) to carry out other powers as provided for by the Constitution and laws.

The reader is thus left to identify the remaining constitutional powers of the Parliament and all the powers granted to it by legislation. The only effective information that the reader is given is that the Parliament has powers under legislation as well as under the Constitution. The drafter, on the other hand, has ensured that technically nothing has been omitted from the list by an oversight.

Similarly, Article 72(2) of the Constitution lists the matters which are regulated by organic, rather than ordinary, laws; these are listed in fifteen brief paragraphs which are followed by a further two:

> (p) other fields for which, pursuant to the Constitution, it is stipulated the adoption of organic laws;
>
> (r) other fields for which the Parliament recommends the passing of organic laws.

Here paragraph (p) creates the same inconvenience for the user and provides the same protection for the drafter as in the previous example. Paragraph (r) peripherally creates or reiterates a power of the Parliament (to recommend matters that should be regulated by organic law), without indicating to which of the bodies that may initiate legislation a recommendation may be directed, and whether the effect of such a recommendation is discretionary or mandatory. In the case of paragraph (r), clearly the matters which Parliament recommend should be regulated by organic law cannot be specified, as it is a parliamentary power to be exercised into the future. However, adding it to the list in this way has perhaps led the drafter to fail to analyse fully what is required in providing for the power[167].

The vague incorporation by reference, in its pure form, can also be commonly found outside public law. Article 1(3) of the Criminal Code provides:

The present Code shall be applied in compliance with the provisions of the Constitution of the Republic of Moldova and with the international acts to which the Republic of Moldova is a party. Wherever contradictions appear

[167] Amongst many illustrations of the latter issue that could be cited is Article 14(m) of the Law on the Regulation of Parliament, which specifies the duties of the Chairman of the Parliament.

with the international acts regarding the fundamental human rights, priority shall be given and directly applied the international regulations.

The second sentence leaves the user to establish the international human rights instruments to which it refers and to identify any conflict between their provisions and those of the Criminal Code. While the sentence may appear to be an insurance for the drafter against error, the truth is that it is the drafter's task to ensure that the provisions of the Criminal Code as drafted are not in breach of international human rights obligations. In fact both sentences anyway seem legally unnecessary as they do no more than reiterate principles of Moldovan constitutional law unequivocally stated in the Constitution[168].

A final example of incorporation by vague reference is taken from commercial law. Article 1 of the Law on Foreign Investments[169] relates to applied law. The Article (in part) provides:

1. The activities of foreign investors and enterprises with foreign investments is regulated: by legislative acts of the Republic of Moldova with exceptions set by the present law; by interstate and international agreements (conventions) with the participation of the Republic of Moldova.
2. If provisions of interstate and international agreements (conventions) with the participation of the Republic of Moldova differ from those set by the present Law, the provisions of the above agreements (conventions) are applied.
3. The provisions of the present Law cannot be modified or completed but through another Law adopted by the Parliament. All the legislative acts that contravene the present Law in the section referring to foreign investments are not applicable. .
…….

5. The minimum level of the public capital of the enterprises with foreign investments is determined in conformity with the legislation in force that refers to public capital of the national enterprises (A national enterprise is an enterprise created on the territory of the republic of Moldova, its equity being formed by legal and physical persons of the republic of Moldova).

Viewed from, let us say, the perspective of the potential inward investor and his or her advisors, the drafting of the Article is overly complex.

Paragraph (1) provides that inward investment is regulated by unidentified domestic legislation, except where this is amended by the present Act, and by unidentified bilateral and multilateral treaties to which Moldova is a party.

If the potential inward investor can identify these treaties, he or she may be reassured in paragraph (2) that their terms prevail over inconsistent provisions of the present Act, but is left wondering whether that applies to other domestic legislation.

In paragraph (3), the potential investor discovers that domestic law in conflict with a described but not specifically identified provision of the present Law is inapplicable.

[168] Constitution, Arts 7 and 4(3)
[169] No 998-XII 1.4.1992, as amended

And finally, in paragraph (5), the investor is informed that the minimum level of capital required of companies with foreign investments is determined by reference to described but unidentified domestic legislation.

This is again a provision which may well be legally secure, but it simply fails to communicate the law effectively.

Statutory regulation

4.10 As indicated earlier, the Law on Legislative Acts to some extent regulates legislative structure and drafting style[170]. These provisions are not comprehensive and are probably not intended to be so. In the main they reflect accepted standards of good drafting practice; some of the less well-founded provisions are the subject of comment in the next paragraph, III: 4.11.

However, there is one general practical weakness in their application. It is not clear who is responsible for determining that draft legislation complies with them; the Ministry of Justice may perform a monitoring function within Government, but there does not appear to be a dedicated parliamentary procedure to monitor compliance.

4.11 The three less well-founded provisions of the Law on Legislative Acts considered here have a common feature. Their application would tend to complicate the corpus of legislation.

4.11.1 *Dividing dispositive provisions from those indicating who attracts rights or responsibilities under them*

Article 29 (2) provides

> (2) Dispositive provisions shall be systematized in the following logical sequence:
>
> a) provisions of substantive law shall precede procedural provisions;
>
> b) provisions containing responsibility shall be grouped, as a rule, in the final part of the legislative act.

Article 29(2)(b) raises concern. A legislative structure which separates rights and duties from the persons to whom they apply is likely to be ponderous, will certainly make it more complex for the user to understand readily, and is more prone to drafting error (as the drafter is more likely to overlook a failure to attach a person to a right or obligation appearing earlier in the text). These consequences will be more pronounced where many pages of legislative text separate the provisions, as would be the case if Art 29(2)(b) were applied to complex legislation.

It is sound drafting practice to attach the "addressee" directly when drafting a right or obligation. An example illustrates why:

[170] Law on Legislative Acts, Arts 19-40

Style A
Article 10: X shall be provided.
Article 110: Y shall be responsible for meeting the obligations in Articles 7, 8, 10, 43, 64, 71 and 84.
Style B
Article 10: It shall be the duty of Y to provide X.

It is difficult to see why in most circumstances Style A would be preferred to Style B.

4.11.2 *Use of legislative identifiers*

Various provisions suggest that in certain circumstances elements of legislation do not need to have a specific identifier. This is not sound practice as it can create unnecessary complication where the legislation is subsequently amended and difficulties if it is necessary to refer to the element in the same or other legislation.

Article 31 suggests that where legislation has a single annex (schedule) it need not be numbered; Article 32(3) requires that, where an Act consists of one article only, the article should not be numbered.
If legislation with a single annex is subsequently amended by adding a further annex, both annexes will then require a number, and the references to the original annex in the Articles will also have to be amended. This can be avoided by numbering the annex initially.
If the lone Article in legislation is unnumbered, it becomes unnecessarily clumsy to amend the legislation (for example to indicate whether a new Article should appear before or after the original Article) or to refer to the lone Article in other legislation; and, again, if another Article is added to the legislation the original Article will then have to be numbered anyway.

In the same vein, Article 32(6) requires subdivisions of subparagraphs of an Article to be bullet points. For the same type of reason, this causes unnecessary complication where there are amendments to the provision
Indeed, Art 35(4) of the Act illustrates the difficulty by requiring a newly inserted bullet point provision in a list of bullet point provisions to be inserted ahead of the existing ones; however, this is too absolute as it may be logically inappropriate to adopt that order. Difficulties would also arise where there is a need to make a reference to such a bullet point in the same or other legislation.

4.11.3 *Republication of legislation and renumbering of provisions*

Article 41 provides for the republication of legislation where there have been substantial amendments to it, and envisages the re-numbering of provisions in the republication. This practice is not recommended[171].
Re-numbering provisions causes difficulties where there are cross-references in the same or other legislation to provisions of the legislation that is republished; the cross-references must be traced and amended and this can be an extensive and complicated exercise.
Also court judgments making reference to the legislation with its original numbering become more difficult to follow if the republished legislation has its Articles renumbered.

Conclusion

4.12 Institutional aspects of drafting and the procedural implications of the use of both the State language and Russian in the drafting process have been sufficiently explored in this section. Other general conclusions on legislative drafting can be usefully drawn together here.

Moldova has followed the pattern of many emerging democracies by placing the procedures for the preparation of legislation, and its structure and style, on a statutory basis. As a limited and somewhat impressionistic analysis shows, this does not always lead to legislation of the highest quality.

As we have seen, these regulatory provisions are generally sound, although containing some technical weaknesses, but they do not formally apply to all legislation, or indeed to most of it; and there appears to be insufficient monitoring of compliance with them in the legislation to which the provisions do apply.

Another reason why these provisions do not necessarily lead to high quality drafting may be that legislation is not necessarily the best vehicle for regulating the process and style of drafting. Primary legislation is not a particularly flexible instrument for the purpose; the formalities of amending it make it cumbersome to respond to evolving drafting practices; and it does not lend itself to illustrative examples of the operation of, for instance, stylistic rules which can be helpful in practice to the drafter.

One solution to this is the compilation of a supplementary, but authoritative, "style book" for drafting legislation. The ideal is a common style book for all institutions with authority to draft legislation but, failing that, possibly parallel compatible versions for Government and Parliament[172]. It would also be valuable for the style book to encompass the preparation and drafting of subordinate legislation; if that were impractical in a single publication, this could be published separately.

In general, a "style book" should include matters of policy analysis; contextual issues, such as referential drafting; as well as the rules of legislative structure and drafting style; and maybe the parliamentary procedural rules with which the drafter needs to be

[171] And indeed seems in essence to conflict with the approach in Article 35(5) which provides that where there are repeals, the numbers of the repealed provision should not be reassigned.
[172] There is some suggestion that the Parliament may have such a style book, and it is possible that there may also been one within the Government. It would be useful to establish these matters authoritatively.

familiar. It can provide practical detail, and illustrations of correct (and possibly incorrect) application of the principles and rules. It would, therefore, be able to include a level of detail, and features, that would normally be considered inappropriate in a legislative text. In short, it would serve as a more functional tool than an Act, and be a "desk book" that individual drafters could have beside them. Other emerging democracies have adopted this approach[173] and it is common in established democracies.

5. THE LEGISLATIVE PROCESS

Introduction

5.1 The legislative process is systematically described in Section II. Here some vulnerabilities in the process are analysed. First, the possibility of a more text-based formal legislative process is explored. Next there follows a description of the subordinate legislation process, and some of its limitations considered. Finally, this paragraph concludes with some consideration of the parliamentary committee structure and of parliamentary staffing

A single text legislative process?

5.2 It is a common experience that parliamentary consideration of legislation operates with more focus and efficiency if the legislature can address a single draft legislative text at each stage of the legislative process. It will be evident from the overview of the Moldovan legislative process in Section II that the process is not entirely a text-based and may anyway encompass consideration of more than one legislative text.

5.3 So, for instance, legislative initiatives of the President and members and factions of the Parliament may either be in the form of a draft legislative text or of a legislative proposal. The relevant legislation does not specify what is required in a legislative proposal, but presumably it would need to be sufficiently reasoned and detailed to attract parliamentary support. Nevertheless, it falls to the committee of reference to evaluate and report on a legislative proposal, and it is clearly more cumbersome to do that than evaluate a legislative text. It is also usually the task of the committee of reference, and more particularly a working group established by the committee, to transform the proposal into draft legislation. So in the first instance the legislative process has to accommodate two rather different kinds of initiative, only one of which is text-based from the outset.

5.4 It might also be argued that legislative initiatives merely in the form of legislative proposals impose something of a strain on a committee-focused Parliament of only 101 members, with a support staff which is apparently neither extensive nor particularly experienced[174]. This might be said to correspondingly reduce the parliamentary capacity to scrutinise Government draft legislation which accounts for some 75% of legislative initiatives. Similarly it may reduce the capacity of the Parliament to undertake its other parliamentary functions, some of them legislation-

[173] e.g. Russia and Albania.
[174] As noted later in the Report, the expertise of the parliamentary staff has been strengthened by a UNDP training programme.

related such as the scrutiny of subordinate legislation. On the other hand, it may be argued that legislative initiative by way of legislative proposal is a convenient mechanism for the individual member and the smaller parliamentary factions.

5.5 The argument in favour of a more text-based legislative process becomes stronger in respect of proposed amendments to draft legislation which appear to be permitted both in the form of texts and also proposals. Again, it is a task of the committee of reference to evaluate amendments in the first instance, and it is obviously a less demanding task if it is a textual amendment to a legislative text rather than a no doubt more amorphous non-textual proposal to amend the text which has to be transposed into a textual amendment. There seems to be no strong reason why a proposal to amend draft legislation should not be required to be in the form of a textual amendment.

5.6 In the case of both legislative initiatives and amendments, proposals rather than texts not only place a burden on parliamentary committees they also increase the likelihood of misunderstanding and ambiguity. At its simplest, the intention of the proposer may not be correctly or fully conveyed in the transposing text drafted by third parties. This may also result in unnecessary further confusion in plenary debate.

5.7 The recommended and perfectly viable , though radical, solution is to permit legislation only to be initiated by submitting a legislative text and not a proposal. In respect of the President, the Presidential office could draft or contract out the drafting of the text. For individual members of the Parliament and the factions, a small parliamentary drafting office could be created; this would require reorganisation of staff rather than additional staff. The office would draft legislation on the instructions of an individual member or faction, following a formal approval of the proposal by Parliament in plenary session. The same office could also draft amendments to legislation under consideration for the members and factions. In this way the standing committees could focus on considering legislative texts and reporting on them; and members of Parliament in plenary session would only have text of legislation and legislative amendments, and not proposals, before them in the legislative process.

5.8 The Moldovan legislative process also admits, in some circumstances, a principal legislative text and also alternative texts to be under concurrent consideration. This is a circumstance that may arise in the procedure of many parliaments from time to time, and indeed in some situations it can facilitate the legislative process, but as a standard procedure it is not recommended. Where possible separate texts should be consolidated for parliamentary consideration, and the Moldovan legislative process allows for this. Where that is not possible, it is more efficient and much less confusing in plenary consideration and debate for one text to be chosen as the focus for consideration and allow the authors of other texts to present their proposals only as amendments to the text chosen. It would be desirable to amend the relevant legislation to provide for this.

5.9 Finally, in the Moldovan context, there is it seems the added dimension of commonly working in two languages within the legislative process. This matter is explored above in paragraph 4.4 when considering legislative drafting and, of course, it also has real relevance in the legislative process. The conclusion reached in paragraph 4.4 was that as legislation is enacted in the State language language, the

binding text, in case of inconsistencies or discrepancies with Russian translations, should also be the State language.

Greater parliamentary scrutiny of subordinate legislation?

5.10 As a matter of convenience, the adoption of Government subordinate legislation is both described and analysed here.

Government subordinate legislation takes the form of decisions, ordinances and regulations[175].

Decisions are made to enforce laws[176] but appear to be used for wider financial, security and diplomatic purposes[177]; and ordinances are made under enabling legislation to give legal effect to the Government's programme in fields in which organic laws do not apply[178]; regulations are issued by the Prime Minister in respect of the internal structure of the Government[179].

Both decisions and ordinances must be (i) signed by the Prime Minister and countersigned by the relevant ministers with operational responsibility for them[180] (although the Article is silent on the legal effect of there being no countersignature) and (ii) published in the *Monitorul Oficial* [181], and those that are unpublished have no legal effect[182].

Ordinances are effective from their date of publication without being promulgated[183] or from a date indicated in the text not earlier than the date of publication[184], and decisions likewise[185].

5.11 *Ordinances* may only be made within: (i) the subject areas and (ii) the period of time specified in the enabling law[186] and once that period of time has expired they can only be "amended, abrogated or disclaimed (?)" by a *primary legislation*[187].

5.12 The enabling law may also require that ordinances made under it are submitted to Parliament for approval, although this is not mandatory[188]. However, the procedure

[175] Constitution, Art 102(1)
[176] ibid., Art 102(2)
[177] See Law on the Government, Art 30
[178] Constitution, Arts 102(3), Art 106b
[179] ibid., Art 102(5); unlike other instruments, no constitutional provision is made for their publication or promulgation, nor the date from when they take effect. To this extent, perhaps they should not be treated as subordinate legislation but rather as internal Government management circulars.
[180] Law on the Government, Art 30, states in terms that only some need to be countersigned, although ibid., Art 30-2 generally replicates the terms of the Constitution, Art 102(4).
[181] Law on the Government, Art 30, specifies that they must be published within 10 days of being made.
[182] Constitution, Art 102(4); Law on the Government, Art 30, purports to exclude those containing state secrets from this requirement, although this may be intended to apply to decision which are not legislative in character.
[183] ibid.,Art 106b (3)
[184] Law on the Government, Art 30
[185] ibid.,; the Constitution itself does not specify when or by what procedure decisions take legal effect.
[186] ibid., Art 106b (2)
[187] ibid., Art 106b (5)
[188] ibid., Art 106b(4)

for submitting ordinances for parliamentary approval, and the legal consequences of both complying with the procedure and failing to comply with it, are not entirely clear, possibly as a result of translation.

Article 106b(4) of the Constitution provides:

> If the enabling law so request, ordinances shall be submitted to Parliament for approval. The draft law on the ordinances approval shall be presented within the term established by the enabling law. Non-compliance with the term entails the discontinuation of the ordinance's effects. If the Parliament does not decline the draft law on the approval of ordinances, the latter shall remain in force.

The procedure for submitting an ordinance for parliamentary approval, where this is required, appears to be the submission by the Government of the ordinance together with a "draft law" for its approval[189]; this seems very cumbersome procedure and it would really be a sufficient procedure for the ordinance to be submitted with a motion for its approval.

The terms of Art 106(b)(4) indicate that where an ordinance requires to be submitted for parliamentary approval the ordinance can be in force at the time of submission. If it is rejected by Parliament, it ceases to be in force from the effective date of the rejection[190]. If the ordinance is not submitted within the time limit specified in the enabling legislation, it ceases to have effect, presumably from the date when the time limit expires although the ordinance may have been in effect some time earlier.

5.13 A number of observations may be made about this subordinate legislation procedure.

5.13.1 *Policy and Consultation*

As indicated in Section III, paragraphs 2 and 3, there is little evidence from the legislative texts that there is much in the way of systematic procedures within Government in respect of either policy development or of consultation with civic society organisations in respect of ordinances. If correct, for the reasons outlined in paragraph III: 3.1, this is a procedural weakness.

5.13.2 *Procedure for Submission and Consideration*

From the legislation reviewed, although that may be supplemented by other legislation not identified, there is a limited and sparse procedure for the submission of ordinances for parliamentary approval.

There does not appear to be any requirement for the ordinance to be submitted with any supporting and explanatory documentation, revealing the intended purpose, scope and impact of the ordinance; this is in stark contrast to draft primary legislation and here the ordinance is actually in force when it is submitted for approval.

[189] Law on the Government, Art 30-1
[190] Law on Government, Art 30-1

There does not appear to be any time frame in which the submitted ordinance is to be considered and voted on in Parliament, or an indication of the vote required to approve it (whether an absolute majority or a majority of members present, for instance).

5.13.3 *Nature and Scope of Parliamentary Scrutiny*

No statutory procedures for the parliamentary scrutiny of ordinances have been identified.
It is in the nature of subordinate legislation that two distinct matters fall to be considered in such scrutiny: (i) the merits of the policy and substance of the subordinate legislation and (ii) technical compliance with the enabling legislation, together with technical consideration of its consistency with other legal norms, and perhaps also the quality of its drafting. The appropriate standing committee would seem an obvious vehicle to consider and report on these matters before a vote is taken on the ordinance[191].

5.13.4 *Greater procedural flexibility coupled with more extensive parliamentary scrutiny?*

It is particularly in the nature of subordinate legislation that some is of considerably more political and legal importance than others. Consideration might usefully be given to introducing a procedure where most ordinances were submitted to Parliament but there was greater flexibility in the parliamentary procedures for regulating them.

Under the present procedure, an ordinance is in force when submitted to Parliament for approval and, unless rejected, remains in force. Other procedures could be added to this to increase flexibility. For instance, ordinances of substantial political or legal significance might be submitted for parliamentary approval in draft, and once approved then brought into force. And, at the other end of the spectrum, ordinances of minor significance could simply be submitted to Parliament for information without any procedure for approval or rejection.
To balance such increased flexibility, a requirement that most subordinate legislation be submitted to Parliament, rather than some of it, would allow Parliament to be fully appraised of such legislation and to develop appropriate and systematic procedures for scrutinising it

A more focussed parliamentary committee system?

5.14 As is commonly the case in small unicameral legislatures in particular, much technical and detailed parliamentary activity in the Parliament is undertaken in committees. The Parliament currently appears to have nine standing committees, each with 10 or 11 members[192]. The standing committees have a broad range of functions within their subject areas, in particular the scrutiny and, in some cases, the preparation of legislation and also the conduct of inquiries into Government administration. In

[191] Such systematic scrutiny would serve to avoid the apparent difficulties that had to be resolved in 2005 by enacting legislation, commonly referred to as the "Guillotine Law", to revoke a substantial tranche of subordinate legislation found to be in conflict with primary legislation.
[192] See the Parliamentary website, www.parliament.md.

these tasks they are supported by the staff of the Parliament, and by specialists from outside Parliament in the public and private sector.

However, there is some scope for enhancing the work of the standing committees by giving it more focus. Some institutional restructuring of the committees would probably assist this; for instance, a reorganisation of the committees that they more fully mirrored Government ministries and taking fuller advantage of the power to create subcommittees. Restructuring and focussing their functions would also enhance the work of the committees. It has already been suggested at paragraph III: 5.12 that drafting legislation implementing legislative proposals and amendments be transferred to a small department within the Parliamentary administration, to allow the standing committees to focus on assessing draft legislative texts. No doubt there are other areas where similar action might be taken. This would not only allow standing committees to focus on existing activities, but also create capacity to undertake other important scrutiny, not least of subordinate legislation.

Parliamentary staff

5.15 All parliaments rely heavily on their staff. To attract people of good calibre, education and experience it is necessary to provide good management[193], and the prospect of a career structure even though the number of staff is likely to be small as compared to, say, a government department. Given that the staff are likely to be called on to give advice, often on sensitive issues, it also most important that they have the confidence of an independent status.

In Moldova, the administration of the Parliament is led by a Director General who is appointed, after consultation, by the Chairman of the Parliament[194]. The establishment and terms of service of the Parliamentary staff are regulated by Decisions of the Parliament[195]. The Director General controls the appointment and dismissal of most of the Parliamentary staff[196]; although some are appointed directly by the Chairman.

It is common experience that the independence of parliamentary staff is best provided by the staff being formally employed by an institution of the parliament which represents a wide spectrum of the political opinion within it. In the context of the Moldovan Parliament, the most obvious body to act as the formal employer would be the Standing Bureau.

[193] A UNDP initiative in 2006 was designed to provide training for staff and to assist in enhancing management structures.
[194] Law on the Regulation of Parliament, Art 141(3)
[195] ibid., Art 141(2)
[196] ibid., Art 141 (4)

IV CONCLUSIONS AND RECOMMENDATIONS

1. DEVELOPMENT OF LEGISLATIVE POLICY [III: 2.1 – 2.8]

1.1 It is noted that, as compared with the Parliament, no substantial legislative procedures for the policy development of primary legislation initiated by the Government have been identified. No substantial legislative procedures have been identified either for the policy development of subordinate legislation made by the Government.

1.2 In respect of both Government initiated primary legislation[197] and subordinate legislation made by the Government[198], it would appear that the Government is under a degree of statutory obligation to establish such procedures and, at least in the case of primary legislation, to make them public.

1.3 The President of Moldova also has the capacity to initiate primary legislation and a capacity to issue decrees (although the scope of the decrees suggest that relatively few of them would be of a legislative character) and no legislative procedures have been identified for the policy development of legislation which emanates from the President. No statutory duty on the President to establish such procedures has been identified.

1.4 Both the Government and the People's Assembly of the autonomous territorial-unit of Gagauzia have the capacity to initiate primary legislation. No legislative procedures have been identified for the policy development of such legislation nor has a statutory duty to do so.

1.5 In contrast to the foregoing, there are quite detailed legislative procedures on the policy development of both draft legislation initiated within Parliament, and also legislation drafted within Parliament to implement approved legislative proposals. In some respects the concern over these procedures is that they may be too elaborate to be practical.

1.6 *Recommendations*

1.6.1 It should be established whether the Government has responded to the statutory obligations cited in paragraph 1.2 above and, if so, the quality of that response should be assessed; if the Government has not responded to them, it should be encouraged to do so.

1.6.2 It should be established whether procedures for the policy development of legislation initiated by the President of Moldova are in place and, if not, to encourage their establishment.

[197] Law on Legislative Acts, Art 61
[198] Law on Government, Art 30-2

1.6.3 It should similarly be established whether procedures for the policy development of legislation initiated by the Government and the People's Assembly of the autonomous territorial-unit of Gagauzia are in place and, if not, to encourage their establishment.

2. CIVIL SOCIETY CONSULTATION [III: 3.1 – 3.13]

2.1 Consultation over legislation is recognised to be particularly valuable in the early stages of the legislative process, although it continues to have real value at later stages when, for instance, amendments to draft legislation are under consideration. Given this, and that some 75% of legislation is said to be initiated by the Government, it is surprising that only one significant legislative provision has been identified imposing a consultative duty on the Government, in the context of its general duty to ensure transparency in its activities[199]. This provision requires the Government to make a decision in this area, but only if the Government considers it "necessary" does the decision have to specify a procedure for public discussion of Government draft legislation, apparently both primary and secondary. It has not been established whether such a decision has been made and, if so, whether it provides a procedure for public discussion.
This paucity of procedures for public discussion of draft Government legislation is a significant process weakness.

2.2 By contrast, the consultation ("co-operation") procedures in respect of legislation initiated and drafted in Parliament contained in the Annex to the 2005 Parliamentary resolution are progressive; for instance, they require a response to be provided, where practical, to those submitting observations, although it would be useful to clarify aspects of how this response system works in practice.

2.3 These procedures embrace public consultation in respect of a range of parliamentary activities in addition to the enacting legislation. It would be desirable, given some of the vulnerabilities outlined below, to embed the procedures more firmly in the legislative process, by legislative amendment.

2.4 The procedures do though appear to be unnecessarily restrictive in determining who may engage with Parliament in the consultation process. The procedures in the Annex to the parliamentary resolution refer to civil society organisations registered in Moldova and apparently a wider list of such organisations maintained by the Parliament, and there is an emphasis on representatives of organisations to the implied exclusion, or at least discouragement, of individuals making submissions.

2.5 However, there are two significant weaknesses in the Parliament's consultation procedure. The first is that the normal period for submissions to be made is 15 working days from the draft legislation being put on the Parliamentary website, although the period can be varied. The shortness of the standard period must put considerable pressure on civil society organisations, particularly if they aspire to make submissions on a range of draft legislation. Neither does the shortness of

[199] Law on Government, Art 25

the period seem to be justified in terms of the parliamentary timetable and it is half the period in which a variety of bodies and individuals within both Parliament and Government, more familiar with the legislative process and no doubt often better resourced, are granted to make their submissions. This apparently sole opportunity for civil society organisations to make submissions also effectively excludes them, at least formally, from making submissions on amendments to draft legislation at a later stage of its parliamentary consideration.

2.6 The weakness which raises most concern in the consultation procedure is the effect of the accelerated legislative procedure which may be applied to Government draft legislation, with the approval of the Standing Bureau of the Parliament, on the request of the Prime Minister[200]. Under this accelerated procedure the standing committee has ten, rather than sixty, days to report and, when it does, the report and the draft legislation must be placed on the agenda for the next plenary sitting. Clearly under this accelerated procedure, the entitlement of civil society organisations to make submissions under the Annex procedures is rendered nugatory. To this must be added the fact that, as indicated in paragraph 2.1, there appears to be little in the way of formal public consultation procedures at earlier stages of the preparation of Government legislation. Certainly there is a place for an accelerated procedure for Government legislation, but it would be advisable for it to be limited to exceptional or emergency circumstances which should be formally identified when the procedure is requested; there is no indication that this is the case in the relevant legislative provision.

2.7 *Recommendations*

2.7.1 It should be established whether the Government has made a decision as required under the legislation to which paragraph 2.1 refers and, if so, whether the decision contains procedures on public consultation over Government draft primary and subordinate legislation and, if so, whether those procedures are satisfactory.

2.7.2 There should be inquiries to establish how the system of providing responses to those who submit observations within the Parliamentary consultation procedure works in practice.

2.7.3 The Parliament should be encouraged to consider embedding its consultation procedures more firmly within the legislative process, by amending primary legislation.

2.7.4 The Parliament should be encouraged to amend its consultation procedures to permit, or emphasise that it is permitted for, a broader range of civil society to make submissions on draft legislation.

[200] Law on the Regulation of Parliament, Art 43

2.7.5 The Parliament should be strongly encouraged to amend its consultation procedures to lengthen the period for initial submissions to be made on draft legislation, and to provide the opportunity for submissions to be made at a later stage of the legislative process when amendments to the legislation are under consideration by the relevant parliamentary committee.

2.7.6 The Parliament and the Government should be strongly encouraged to amend the legislative provision, cited in paragraph 2.6; to require the Prime Minister in requesting the accelerated legislative procedure for draft legislation initiated by the Government to make a reasoned case to the Standing Bureau that there are exceptional or emergency grounds for adopting the procedure.

3. LEGISLATIVE DRAFTING [III: 4.1 – 4.12]

3.1 Government institutional arrangements in most states either have the drafting of primary legislation largely centralised or it is distributed to Government departments with some centralised monitoring and advice to maintain a degree of consistency. The institutional arrangements in Moldova are not revealed by the legislation monitored, but it is believed that the Government may have moved from a centralised drafting unit in the Ministry of Justice to a more distributed arrangement with the Ministry of Justice maintaining a monitoring and advice role. It would be valuable for future co-operation to establish the present Government arrangements for drafting both primary and subordinate legislation, and the number and broad profile of qualification and experience of the drafters.

3.2 Within the administration of the Parliament[201] there is a legal department which assists standing committees in drafting legislation. For the same reasons it would be valuable to establish the number and broad profile of qualification and experience of these drafters.

3.3 The Constitution declares "the Moldovan language" to be the national language of the State, but also requires the State to protect the right to use Russian and other indigenous languages[202]. Consistent with this, legislation states, in respect of primary legislation, that the "text of legislative acts shall be in the national language"[203]. However, different legislation provides, variously, for draft legislation and draft legislative proposals to be submitted to the Parliament in the State language with a Russian translation, or in either language with the Parliament's administration providing a translation into the other[204]. The implication is that, while the authentic text of legislation is in the State language, both Russian and the State language are working languages in the Parliament. To avoid confusion from mistranslation and the nuances of language, it would be desirable to amend the relevant legislation to provide that in the case of discrepancies in translation between the text drafted in the State language and

[201] For its general functions see Law on the Regulation of Parliament, Art 141
[202] Constitution, Art 13; Art 13(4) provides that there shall be an organic law on languages but it has not been possible to establish whether this has been enacted
[203] Law on Legislative Acts, Art 19; it is assumed that a similar rule applies to subordinate legislation
[204] Law on the Regulation of Parliament, Art 47(8) and (10)

the Russian texts, the text drafted in the State language shall be the binding version.

3.4 The Law on Legislative Acts provides, in respect of legislation initiated and drafted in Parliament, procedures for drafting legislation and also rules on legislative structure and style. The procedures are, in the main, general and descriptive and address important matters such as the scope of the legislation required and ensuring that the legislation enacted complies with superior legal norms and that, by drafting and necessary amendment, it and extant legislation remain consistent

However, this is not always achieved and, not infrequently, contextual consistency is achieved technically but by vague referential drafting. Over time, such vague referential drafting has a tendency to make the corpus of legislation increasingly unwieldy and chaotic. Where the law becomes obscure in this way, it is expensive to apply, in time and resources as well as financially.

The detailed rules on legislative structure and style generally, but not invariably, adopt widely recognised good drafting practice.

Systematic training in legislative drafting, based on this legislation and any existing style books, would improve the quality of drafting and might also prove to be a catalyst in identifying useful amendments which could be made to the legislation.

3.5 Moldova, in common with many emerging democracies, has chosen to place drafting procedures and rules on a statutory basis. This may not be the most useful vehicle for such material and is probably less valuable to the practising drafter than a style book with more detail and illustrative material, which is cumbersome to incorporate in legislation. There is no reason why a style book should also not be prepared which would provide a practical supplement to the legislation. It is preferable, but not always possible, to prepare a style book which is common to parliament and the government. It may be that such style books already exist in Moldova and it would be useful to establish this and, if they do, their content. This would be important in the preparation of assistance in legislative drafting training.

3.6 Finally, it may be noted that Article 61 of the Law on Legislative Acts appears to place a duty on the Government to introduce parallel legislation to the Law on Legislative for legislation drafted within Government. It has not been possible to establish whether such legislation has been enacted.

3.7 *Recommendations*

3.7.1 The institutional structure of legislative drafting of primary and subordinate legislation within Government should be established.

3.7.2 The number and general profile of qualifications and experience of those engaged in drafting both in Government and in the Parliament should be established.

3.7.3 It should be established whether an organic law on languages has been enacted and, if so, whether its provisions impact on the use of languages in the legislative process.

3.7.4 The Parliament should be encouraged to enact legislation to provide that text of draft laws in the State language, legislative proposals (if not discontinued) and legislative amendments constitute the binding version, in the event of discrepancies arising from translation into Russian (or other languages).

3.7.5 It should be established whether legislative drafting style books have been developed to supplement the provisions of the Law on Legislative Acts and, if so, review their content.

3.7.6 Parliament and the Government should be encouraged to provide systematic practical training in legislative drafting, based on the Law on Legislative Acts and any extant supplementary style books.

3.7.7 Consideration should be given to offering (i) drafting training and (ii) technical assistance in the preparation or development of a drafting style book.

3.7.8 It should be established whether parallel legislation to the Law on Legislative Acts on legislation drafted within the Government has been enacted and, if so, review its content; and if such legislation has not been enacted, encourage the Government to initiate it.

4. THE LEGISLATIVE PROCESS [III: 5.1 – 5.15]

4.1 It is a common experience that consideration of legislation operates with more focus and efficiency if a single legislative text is before the Parliament at each stage of the legislative process, whether it is the text of draft legislation or the text of a proposed amendment to it The Moldovan legislative process is not entirely text-based and may encompass concurrent consideration of more than one legislative text.

4.2 For instance, a legislative initiative may be in the form of a draft legislative text or of a legislative proposal. Legislative proposals which are approved by the Parliament are usually transposed by a legislative text drafted within a standing committee. Similarly, legislative amendments may be in the form of a text or a proposal, and a text implementing the proposal is usually drafted in a standing committee. Legislative proposals are more demanding to evaluate than legislative texts; and drafting legislative texts to implement proposals is time consuming. All this must put a logistical strain on both the members and staff of

the Parliament, and reduce their capacity to scrutinise draft legislative texts and to perform their other parliamentary functions.

4.3 There is an effective and workable, if somewhat radical, solution to this. This would be to only permit legislation to be initiated by submitting a legislative text and not a proposal. The advantages of adopting this procedural change are that the standing committees could focus on considering legislative texts and reporting on them, and members in plenary sessions would only have the texts of legislation, and not proposals, before them during the legislative process. This reform would of course require legislative amendment; the Report suggests practical measures to implement it should the reform be enacted.

4.4 The legislative process also admits, in some circumstances, a principal legislative text and also alternative texts to be under concurrent consideration. As a regular procedure this is not ideal and is prone to create confusion. Where possible, texts should be consolidated for plenary consideration and, where that is not possible, one text should be adopted for consideration and the authors of alternative texts should be required to transpose their provisions into proposed amendments of the text under parliamentary consideration. This would ensure a more orderly procedure.

4.5 As regards Government subordinate legislation, only some requires to be submitted to Parliament for approval. Where an ordinance is required to be submitted, it is apparently in force before submission and if rejected by Parliament it ceases to be in force from the effective date of its parliamentary rejection. Otherwise, the evidence from the legislation reviewed is that parliamentary procedures with respect to subordinate legislation are limited. No requirement for ordinances to be submitted with supporting or explanatory documentation has been identified. Nor have any procedures for the parliamentary scrutiny of ordinances been identified.

4.6 Subordinate legislation is an important source of law in all modern states, although it is in the nature of this form of legislation that some instruments have more significance than others. However, the legislative process is strengthened by requiring most, rather just some, subordinate legislation to be submitted to parliament to enable the merits of its policy and substance to be considered, as well as technical matters, such as its compliance with the enabling legislation, its consistency with other legal norms and possibly the quality of its drafting. At the same time, to accommodate the variability of its significance a range of parliamentary control procedures could be introduced to create flexibility. The detail of the proposed reforms is set out in the Report.

4.7 Finally, two matters of institutional significance regarding the legislative process fall to be considered. First is the parliamentary committee system. Small unicameral legislatures are very dependent on committees undertaking much of their technical and detailed parliamentary activity. Moldova appears to be no exception to this and much of its parliamentary work is done in nine standing committees with some 10 or 11 members sitting on each of them. The committees have a broad range of functions within their subject areas and these are by no means limited to the legislative process. In this they are of course

supported by parliamentary staff and also by specialists from outside Parliament itself, in both the public and private sector.
There is some scope for focussing the work of these committees and thus improving it. Proposals for this are set out in the Report.

4.8 All parliaments rely heavily on their staff. To attract people of good calibre, education and experience it is necessary to provide good management, and the prospect of a career structure even though the number of staff is likely to be small as compared to, say, a government department. Given that the staff are likely to be called on to give advice often on sensitive issues, it also important that they have the confidence of an independent status.

With one exception, these are not matters which can be readily evaluated by a legislation review and at a distance. That exception is the manner in which the parliamentary staff are employed. The establishment and terms of service of the Parliamentary staff is regulated by decisions of the Parliament. However, head of the parliamentary administration, the Director General, controls the appointment and dismissal of most of the Parliamentary staff. It is the common experience that the independence of parliamentary staff is best provided by the staff being formally employed by an institution of the parliament which represents a wide spectrum of political opinion within it. In the context of the Moldovan Parliament, the most obvious body to act as the formal employer would be the Standing Bureau.

4.11 *Recommendations*

4.11.1 The Parliament and the Government should be encouraged to consider altering the formal legislative process to one that is largely text-based, in the interests of efficiency and clarity.

4.11.2 The Parliament and the Government should be encouraged to introduce a more comprehensive and flexible procedure for the parliamentary scrutiny and approval of subordinate legislation.

4.11.3 The Parliament should be encouraged to review the structure and working methods of standing committees in order to enhance their present functions and also to create capacity to perform other important parliamentary functions, such as the scrutiny of subordinate legislation.

4.11.4 The Parliament should be encouraged to make the Standing Bureau the employer of all staff of the Parliament to enhance their independent status.

[End of Text]