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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON THE CONFLICT OF INTEREST
IN MOLDOVA

THE MOLDOVAN PARLIAMENT

DRAFT Conflict of Interest Act

Be this Act enacted by the Parliament as follows:

Chapter I

GENERAL PROVISIONS

Article 1. Scope of the Act

This Act deals with incompatibilities and limitations imposed on persons who hold public offices and other offices specified therein, conflict of interest settlement, and conflict of interest report filing by persons who hold public offices.

Article 2. Main Definitions

In this Act:

conflict of interest means a situation where a person holding a public office shall make a decision or participate in making a decision, or take other actions in performing his/her duties, which influence or may influence personal interests of such a person or his/her close relatives;

public interest means general interest of the society that persons who hold public offices to make in performing their duties impartial and lawful decisions;

close relatives mean spouses, persons related by blood or adoption (parents, children, brothers, sisters, grandfathers/grandmothers, grandchildren, nephews, aunts, uncles), and persons related by affinity (parents-in-law, sisters-in-law, brothers-in-law, sons-in-law, daughters-in-law).

Article 3. Persons Covered by this Act

- (1) This Act covers persons holding public offices in public authorities.
- (2) The provisions of this Act also refer to the following persons:
 - a) President of the Republic of Moldova;
 - b) Members of Parliament;
 - c) Members of Government;
 - d) Judges, the Constitutional Court judges;
 - e) Councillors of the village (community) councils, town (municipal) councils, district councils and Chisinau municipal council, Members of the People's Assembly of Gagauzia, mayors and deputy mayors, district chairpersons and their deputies, praetors of Chisinau municipality;

f) Public prosecutors and their deputies, criminal prosecution officers, diplomatic service officers, customs officers, law enforcement officers, officers in the Centre for Combating Economic Crimes and Corruption, state security officers, officers and non-commissioner officers in the national armed forces.

(3) This Act covers heads and their deputies of public institutions, state or municipal enterprises, businesses where the State is a major shareholder.

(4) This Act shall be also applicable to persons empowered under the legal acts and regulations to take decisions on public property assets or administrative-territorial entities' assets, including financial resources, or entitled to manage such assets, as well as to persons who are not civil servants, but the State temporary delegated to them one of such duties.

Article 4. General Principles of Conflict of Interest Settlement

A person who holds a public office shall be bound when performing his/her official duties and functions to observe the following general principles to solve the conflict of interest:

- a) to serve the public interest with impartiality and objectivity;
- b) to ensure transparency and supervision of the activity of persons holding a public office;
- c) individual responsibility and personal example.

Article 5. Serving Public Interest with Impartiality and Objectivity

(1) When considering concrete cases, the person holding a public office shall take decisions and to provide recommendations being governed by the applicable legislation and the state policy in the respective field, bearing in mind public interests and excluding personal interest.

(2) The person holding a public office shall exclude any influence of personal interests that may compromise official decisions taken with his/her participation, or shall abstain from participation in the decision-making or implementation of such decisions, if they may be compromised by his/her personal interests as a private person or his/her membership in certain organisations.

(3) The person holding a public office shall not be entitled to:

- a) to use or to allow usage of inside information or any other information related to his/her work in any other way than specified by the law;
- b) to use his/her official duties to obtain any unfair profit;
- c) to make use of advantages of his/her official office or the office held before;
- d) to use directly or indirectly any public property asset in his/her personal interest or in the interest of his/her close relatives.

Article 6. Ensuring Transparency and Supervision of the Activity of Persons Holding Public Office

(1) The work of persons holding a public office shall be open and available for public supervision.

(2) The person holding a public office shall perform his/her official duties impartially and in good faith.

(3) The person holding a public office shall be bound to declare his/her membership in a party or organisation.

(4) Public authorities shall ensure consistency and high degree of transparency in the process of settlement of conflict of interest situations.

Article 7. Individual Responsibility and Personal Example

(1) The person holding a public office shall assume responsibility for the way he/she operates as a private person when he/she is appointed in public office and during his/her term of office.

(2) The person holding a public office shall assume responsibility for conflict of interest avoiding, identification, reporting and resolution in favour of the public interest.

Chapter II

CONFLICT OF INTEREST AND ITS RESOLUTION

Article 8. Obligations of Person Holding Public Office

(1) The person holding a public office shall inform immediately in writing his/her immediate superior or the higher agency on:

a) his/her personal interest or his/her close relatives' interest concerning a decision he/she should make personally or participate in such decision making or concerning an action he/she should take while performing his/her duties;

b) his/her capacity or his/her close relatives' capacity as founders, shareholders, associates, and membership in the board of management, control or audit board of any (commercial or non-commercial) legal person, if such a legal person got from the public authority (public institution, state or municipal enterprise) for which it works assets, including funds, state guaranteed credits or local government guaranteed credits or a public contract.

(2) The President of the Republic of Moldova, Members of Parliament, Members of Government and other officials in public authorities shall inform the Main Ethics Committee about their conflicts of interest specified in paragraph (1).

(3) If applicable, the person who holds a public office and is in one of the situations specified in paragraph (1) shall renounce his/her personal interest, which may influence

the performance of his/her official duties. If this is not possible, he/she shall resign from the conflict office he/she holds as a private person. Information on such actions shall be immediately provided to the immediate superior or the higher agency.

(4) The administrative acts issued/passed or legal documents concluded by civil servants in violation of paragraph (1) shall become null and void.

(5) Legal effects specified in paragraph (4) shall not refer to issuance, approval and passing of regulatory enactments.

(6) Violation of paragraph (1) shall entail, as appropriate, the disciplinary, administrative, civil or criminal liability under the law.

Article 9. Obligations of Head of Public Authority (public institution, state or municipal enterprise, businesses where the State is a major shareholder)

(1) The head of public authority (public institution, state or municipal enterprise, businesses where the State is a major shareholder) shall be bound not to allow persons working within such authority (public institution, state or municipal enterprise, businesses where the State is a major shareholder) ruled by him/her to perform their official duties in the conflict of interest situations.

(2) Should the head of public authority (public institution, state or municipal enterprise, businesses where the State is a major shareholder) to receive any information concerning a conflict of interest or to find out about such a situation in the institution he/she rules, he/she shall be bound to issue a written order on the temporary transfer of certain functions or duties to another civil servant with the same professional qualification and experience until the conflict of interest situation is settled.

(3) The head of public authority shall be bound to inform the Main Ethics Committee about findings of any violation of this legal act.

(4) If after the legality supervision of legal documents concluded or issued by the persons specified in paragraph (1) it has been found out that the concerned civil servant gained any material benefits, the head of public authority shall seize the court and notify the criminal prosecution agencies.

Article 10. Rights of Aggrieved Person

The persons who deem that their rights are affected as a result of the conflict of interest and disagree with the decisions taken by the agency or the official shall be entitled to bring an action before the court of administrative offices.

Chapter III

INCOMPATIBILITIES AND LIMITATIONS

Article 11. General Provisions on Incompatibilities

Incompatibilities with regard to the public office are dealt with in the Constitution, legal acts regulating the activity of public authorities where the persons holding a public office or a senior public office operate, in this Act, in the civil service legislation, the Local Government Act, and other legal acts.

Article 12. Limitations Related to Ceasing the Operation of Persons Holding Public Office

(1) The person holding a public office shall be bound to inform the head of the authority he/she operates about all the job opportunities if such jobs may generate a conflict of interest.

(2) Civil servants may not gain any illegal benefits from the public office or official position held before, including the inside information got during their term of office, in particular when they look for employment or another position after they do not already hold any public office.

(3) The persons specified in paragraph (1) who ceased to perform their duties in civil service, and had direct duties to supervise or control an enterprise during the last year of work, shall not be entitled to get employed during one year in the administration, audit or supervisory structures of such enterprises.

Article 13. Limitations on Trade Contract Concluding

(1) The person who ceased to perform his/her duties in the public authority or enterprise where he/she or his/her close relatives are social shareholders or work in the management or audit structures shall not be entitled during one year to conclude commercial contracts with the institution for which he/she worked before.

(2) Limitations specified in paragraph (1) shall not be applicable if the contract was concluded before the employment of the person holding a public office or if the contract was concluded by means of public tender.

Article 14. Limitations on Representation

(1) A person that ceased to perform his/her public duties can not represent during a year the interests of an individual or legal entity within the authority he/she worked, as well as he/she can not represent individuals or legal entities in issues related to the official duties he/she performed before. This provision shall not be applied to lawyers.

(2) A person that holds a public office shall be prohibited to have any relations with a person that worked before within a public authority if he/she falls under the restrictions set in para. (1).

(3) A person that holds a public office shall be bound to inform the leadership of the public authority within which he/she works about such kind of job relations.

(4) A person that holds a public office can not represent private groups or individuals and protect their interests within public authorities, save the actions undertaken as a legal representative. Drafting and considering of the petitions shall not be deemed as representation of a private group or individual.

Article 15. Gifts

(1) A person that holds a public office can not accept gifts or services if they are offered or rendered in a direct or indirect relation with the performance of the official duties.

(2) The interdiction specified in para. (1) shall not be applied when receiving gifts according to the protocol.

(3) It shall be prohibited to receive gifts according to the protocol if their value exceeds once the minimum wage in the country established by a Government decision. The value of the gifts received and of the services accepted during a calendar year should not exceed the quantum of a minimum wage. Gifts received by violation of the provisions set in this paragraph shall be deemed as public ownership and shall be sent to a special State fund as provided for by legislation.

Article 16. Limitations on Advertisement

(1) It shall be prohibited to a person that holds a public office, one of those provided for by this Act, to use the official symbols linked with the performing of his/her official duties in private interest.

(2) It shall be prohibited to use or allow to use the name accompanied by the capacity of the person that holds a public office, one of those provided for in this Act, the image, voice or signature for any kind of advertisement of an economic agent, as well as of some national or foreign commercial product, save free advertisement for charitable purposes.

Chapter IV

STATEMENT OF PERSONAL INTERESTS

Article 17. Statement of the Information concerning Personal Interests

(1) A candidate to be elected to, appointed to or confirmed in a public office, as well as a person that holds a public office shall be bound to identify and to state the relevant personal interests that could come into conflict with their official duties.

(2) The statement on personal interests shall be submitted in writing.

(3) The positions and activities that shall be included into the statement on personal interests shall be as follows:

- a) the capacity of founder or management, administration, audit or control positions held within some non-commercial organisations or political parties;
- b) the relation with international organisations;
- c) paid professional activities;
- d) the capacity of lawyer, associate or shareholder of a trading company or of a loan institution, insurance or financial company.

(4) Persons mentioned in para. (1) that do not perform other duties or do not carry out other activities save those related to the office they hold shall submit a statement in this respect.

(5) The responsibility for submitting in time the statement, as well as for the veracity and complexity of the information shall be born by the person that submits the statement.

(6) The requirement concerning the statement on personal interests shall be included in all procedures or contracts that regulate the employment or appointment to a public office.

(7) The submitting of the statements on personal interests shall not exempt the person from submitting other statements according to the law.

(8) Any incompatibility of the job positions of the candidates to the public office should be solved until the appointment.

Article 18. Deadlines for Submitting the Statements on Personal Interests

(1) The statement on personal interests shall be submitted within a 15-day term as of the date of validation of the mandate or, according to the case, as of the date of appointment.

(2) Statement on personal interests shall be updated yearly up to the January 30 of the next year.

(3) Persons that hold public offices shall update their statements on personal interests every time when the information given in art. 17 (3) is changed.

Article 19. Bodies Empowered to Collect the Statements on Personal Interests

(1) The statements on personal interests shall be submitted as follows:

- a) The President of the Republic of Moldova – to the head of the Moldovan President's Office;
- b) MPs – to the Director General of the Parliamentary Secretariat;
- c) members of the Government – to the head of the Government's Secretariat;
- d) court judges – to the chairman of the Secretariat of the High Council of Magistrates;
- e) judges of the Constitutional Court – to the head of the Constitutional Court Secretariat;
- f) prosecutors – to the head of the Human Resources Service of the General Prosecutor's Office;

- g) councillors of local and district councils, mayors, praetors, members of the People's Assembly of Gagauzia – to the secretary of the Council (of the People's Assembly) of the concerned territorial-administrative unit;
- h) civil servants and persons specified in art. 3 (2), (3), (4) and (5) – to the head of the Human Resources Service within the public authority, public institution or, according to the case, the units they belong to.

(2) The statements shall be sent to the Main Ethics Committee by persons that are liable to collect them, and one of their copies shall be preserved at the liable persons within the public administration authorities where the statements have been laid.

(3) Provisions set in para. (2) of this article, as well as in art. 22 shall not be applied to the statements submitted by persons of the military effective of the Intelligence and Security Service.

Article 20. The Form of the Statement on Personal Interests

The form and the rules to fill in the statements on personal interests shall be the same for all public authorities and shall be approved by the Main Ethics Committee.

Article 21. Control of the Information Given in the Statements on Personal Interests

(1) Control of the accuracy of the information given in the statements on personal interests shall be made by the Main Ethics Committee, and upon its request – by the bodies empowered to control the information said in art. 17 (3), according to the law.

(2) The leadership of the bodies provided for in art. 19 (1) and the Main Ethics Committee must undertake without delay the measures needed to avoid the conflicts of interests they got acquainted with and to inform the State competent bodies about the discovered violations of the legislation.

Article 22. Public Nature of the Statements on Personal Interests

The information given in the statements on personal interests shall be public.

Chapter V

LAW ENFORCEMENT SURVEILLANCE

Article 23. Authorities that Control the Enforcement of This Act

(1) The control over the enforcement of the provisions of this Act by persons that hold public offices shall be performed by:

- a) the leadership of public authorities;
- b) the Main Ethics Committee;
- c) other structures if the legislation that regulates the way of operation of these bodies provides so.

(2) The Rules of Procedure and the composition of the Main Ethics Committee shall be approved by the Parliament.

(3) The leaders of the public authorities when controlling the enforcement of this Act, on their own initiative, upon the instructions of the bodies provided for in clause (1) (b) and (c) or when receiving an information that a person who holds a public office and is subordinated to them, during performing his/her official activity, does not meet the requirements set in this Act can check the concerned person's official activity. In order to perform such a control within the concerned bodies the leadership of the public authorities may set up special ethics committees.

(4) The results of the control shall be communicated to the person whose activity has been checked, as well as to the empowered body that takes notice of all these notifications received and to which the information regarding the violations of this Act shall be submitted.

Chapter VI

FINAL PROVISIONS

Article 24

The Government within a 6-month term:

shall submit to the Parliament proposals on bringing the legislation in force in line with the provisions of this Act;

shall bring its normative acts in line with the provisions of this Act.

Chairman of the Parliament