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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

**ON THE DRAFT LAW
ON CONFLICT OF INTEREST**

IN MOLDOVA

by

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**This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. The Act is applicable to all persons holding public office irrespective of whether the office is political, independent (as judges, prosecutors, persons in military service) or in state owned enterprises. The obligations and duties provided in the Act are provided in a general manner applicable to all of them. Such regulation might give rise to concern because of lack of legal certainty. The general principles are applied to political positions differently than to ordinary public servants. It would be more appropriate to have distinct regulation on public service and on other public offices respective of their level on independence and need to avoid conflict of interests. E.g. for the judges the regulation is probably included in court procedure laws and further regulation is needed only concerning submitting and publication of their statements of personal interests and prohibition of taking gifts.

2. Chapter II of the Act provides different obligations on persons holding public office. It seems that many of those obligations are not applicable to political offices such as members of parliament, president of the republic or ministers, as they usually do not have superiors or higher agencies. In some cases, constitutional institutions, independent administrative entities and enterprises where state is major shareholder, such immediate superiors or higher agencies are missing.

3. In Article 2, conflict of interest is defined by means of situation where a person holding a public office is in his/her duties influenced or may be influenced by his/her personal interests or those of his/her close relatives. Article 2 defines also close relatives. Such regulation may not avoid all kind of situations where person holding public office should not fulfill his/her duties. Such situations might be where a close friend or spouse of a non-married couple has personal interests in the matter.

4. By Article 8 paragraph 4 the administrative acts issued/passed or legal documents concluded by civil servants in violation of paragraph 1 shall become null and void. Although the provision might be appropriate to guarantee the lawfulness of administrative acts, it has negative impacts on legal certainty. The level of violation is not considered and persons to whom an administrative act is addressed do not know about the violation. The violation of obligation to inform may not have effects on the lawfulness of the document or administrative act itself, if the person holding public office has avoided to take into account his/her personal interests. It could be suggested to leave the nullification to be decided by courts case-by-case.

5. By Article 14 paragraph 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 in cases provided in paragraph 1. It remains unclear why such a far reaching and very strict prohibition is foreseen. The scope of that article is unclear as well.

6. According to Article 17 paragraph 1 candidates have to identify and state the relevant personal interests that could come into conflict with their official duties. It is not clear whether such duty is additional to the duty to submit statements on personal interest within 15 days of the validation of their mandates according to Article 18 paragraph 1. There would be no reason to declare the interest twice in nomination or election procedure.

7. Article 22 provides that the information given in statements on personal interest shall be public. The Act does not provide how the publicity should be guaranteed (via webpage, in official publications, newspaper or on demand). Such regulation could better guarantee the enforcement mechanism.

8. The Act does not provide the sanctions for violation of duties stated by the Act. Disciplinary sanctions are not available for political offices (members of parliament or government or president of the republic, probably also for judges). Violation of the duty to submit the statement of personal interests in time should not be sanctioned by criminal law as well.

9. Articles 21 and 23 regulate the control mechanism for the act. Main duties have been put to the Main Ethics Committee. By Article 23 paragraph 2 the rules of procedure and the composition of the Main Ethics Committee shall be approved by the parliament. It is not clear whether rules of procedure regulate also the rights of the Main Ethics Committee to collect person related data and how it can get information on the interests of persons holding public office. Those provisions should be regulated by law. Similar duties have been put on the leadership of public authorities. It is not clear from the law who is considered among the leadership and what are the means of public authorities to collect information on conflict of interests.