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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

OPINION

ON

**THE LAW ON THE PARTIAL IMPLEMENTATION
OF THE POSTAL VOTE**

**Approved by the Council for Democratic Elections
at its 80th meeting (Venice, 20 June 2024) and
adopted by the Venice Commission
at its 139th Plenary Session (Venice, 21-22 June 2024)**

On the basis of comments by

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Table of Contents

I. Introduction	3
II. Background.....	3
III. Analysis.....	4
A. Procedural aspects.....	4
1. Stability of electoral law.....	4
2. Procedure for the adoption of the law.....	6
3. Constitutional position of organic law	7
4. Legislative technique: a permanent or transitory piece of legislation?	7
B. Substantive aspects.....	7
1. Out-of-country voting	7
2. Postal vote as an alternative voting method.....	9
3. The territorial scope of the legislation and its conformity with the principle of equality	10
4. Other issues.....	11
IV. Conclusion	13

I. Introduction

1. By letter of 3 May 2024, Mr Igor Grosu, President of the Parliament of the Republic of Moldova, requested an opinion of the Venice Commission on Law no.109 of 26 April 2024 on the partial implementation of the postal vote ([CDL-REF\(2024\)019](#); “the Law”).
2. Mr Richard Barrett, Mr Eirik Holmøyvik and Ms Inga Milašiūtė acted as rapporteurs for this opinion.
3. On 28 May 2024, a delegation of the Commission composed of Mr Barrett, Mr Holmøyvik and Ms Milašiūtė, accompanied by Mr Pierre Garrone and Mr Vahe Demirtshyan for the Secretariat, held online meetings with members of Parliament and the Central Electoral Commission, as well as with representatives of civil society. The Commission is grateful to the Moldovan authorities and the Council of Europe Office in Chişinău for the excellent organisation of these meetings.
4. This opinion was prepared in reliance on the English translation of the Law. The translation may not accurately reflect the original version on all points.
5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 28 May 2024. It was approved by the Council for Democratic Elections at its 80th meeting (Venice, 20 June 2024) and, following an exchange of views with Mr Vitali Gavrouc, member of the Commission on Human Rights and Interethnic Relations of the Parliament of the Republic of Moldova, it was adopted by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

II. Background

6. The Republic of Moldova is one of the countries with the highest proportion of its citizens living abroad (around one third). According to the Ministry of Foreign Affairs and European Integration of the Republic of Moldova (MFAEI), the number of Moldovan citizens living abroad ranges between 1.11 and 1.25 million people, while the resident population is around 2.5 million people.¹ The votes of Moldovan citizens abroad amounted to 14.3% of all votes cast in the 2021 parliamentary elections.²
7. Citizens of the Republic of Moldova abroad have the right to vote. Before the adoption of the Law, this right could only be exercised in polling stations abroad (including but not limited to diplomatic and consular missions). This will still be possible in the countries where postal voting will be applied.
8. According to Article 1(2), the Law is intended to “create the necessary normative framework for the partial implementation of the postal voting in order for the citizens of the Republic of Moldova to exercise the right to elect by an alternative voting method, as well as for the verification of the timeliness of such method implementation on a permanent basis.” Whilst the legal framework established by the Law is permanent due to the lack of a sunset clause, the final and transitory provisions in Article 35(5)-(7) require an evaluation of the legal framework after the “partial implementation of the postal vote” with the aim of making amendments before the law is implemented for subsequent elections. Taken together, these articles imply that the implementation of the Law for the next elections and referendum is to be considered a trial. It is however not clear if the trial will concern only the October 2024 presidential elections and referendum or also the next parliamentary elections to be held no later than 11 July 2025. The

¹ See for example [Emigrant Moldova and the Changing Concept of Migration – ERI \(eurasian-research.org\)](#).

² ODIHR Election Observation Mission Final Report, Republic of Moldova, Early Parliamentary Elections, 11 July 2021, p. 30.

hasty adoption of revised legislation between the October 2024 presidential elections and the 2025 parliamentary elections should be avoided.

9. According to Article 8 of the Law, postal voting will not be possible in all countries. Moreover, a final and transitional provision (Article 35) provides, at least for the 2024 elections and referendum, for postal vote only in six countries (United States, Canada, Norway, Sweden, Finland and Iceland). The scope of these provisions will be discussed below. Even if exact data on the number of Moldovan citizens in each country are difficult to find, the communities in the six mentioned countries clearly amount to less than 10 % of the Moldovan diaspora.

10. The next presidential elections in the Republic of Moldova will take place on 20 October 2024 in conjunction with a referendum on joining the European Union.³ Parliamentary elections should follow at the latest on 11 July 2025.

III. Analysis

A. Procedural aspects

1. Stability of electoral law

11. The Law is to be applied to the presidential elections and referendum of 20 October 2024. This means that the amendments to the voting procedure have been adopted less than five months before the election and after the date for the election was announced and approved by Parliament.

12. The Venice Commission's Code of Good Practice in Electoral Matters⁴ recommends that the fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the Constitution or at a level higher than ordinary law. In reference to this recommendation, the Code's Explanatory Note cautions that in adopting amendments, "care must be taken to avoid not only manipulation for the advantage of the party in power, but even the mere semblance of manipulation [...] Even when no manipulation is intended, changes will seem to be dictated by immediate political interests."⁵

13. The stability principle should be considered in light of the broader principle of legal certainty and aims to prevent late amendments that may undermine the confidence in democratic elections.⁶

14. While there is no European standard regulating the right of citizens residing abroad to vote in national elections (there is no obligation under Article 3 of Protocol 1 to the European Convention of Human Rights for States to allow this), changes to such existing provisions should nonetheless be subject to the same stability requirements as other provisions on the right to vote, which is also a fundamental aspect of electoral law.⁷

³ <https://www.reuters.com/world/europe/moldovan-parliament-votes-hold-referendum-eu-membership-oct-20-2024-05-16/>

⁴ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, II.2.b. See also [CDL-AD\(2005\)043](#), Interpretative Declaration on the Stability of the Electoral Law, and (*mutatis mutandis*) ECtHR, 8 July 2008, *Georgian Labour Party v. Georgia*, no. 9103/04, § 88.

⁵ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, §§ 64-65.

⁶ See [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.B.4.

⁷ Venice Commission and ODIHR, [CDL-AD\(2022\)025](#), Republic of Moldova, Joint Opinion on the draft electoral code, § 59; Venice Commission, Revised interpretative declaration on the stability of electoral law, CDL-AD(2024)027, II.B.5.

15. Essential elements of the voting process are also fundamental and should in principle not be changed less than one year before an election.⁸ Allowing for postal voting as an alternative method of voting may in certain circumstances be considered as a change in the essential elements of the voting process since it opens the election for a new electorate. However, for this to be the case, the amendment must have the potential for a significant impact on the election result. In the present case, the introduction of postal voting is quite limited and is a trial with limited effect on the election result.

16. Regard must however be given to the *overall context*. Elections are not held in a vacuum but in the context of a specific electoral system and a given party system. The Moldovan context of frequent changes to the electoral system and their lack of transparency should be taken into consideration when innovating. Frequent changes can affect voter confidence in the electoral process. Care must be taken by States to avoid not just manipulation to the advantage of the party in power but even the mere semblance of manipulation. Changes of the Moldovan system occurred in 2010, twice in 2013, 2014 and 2017, 2020 and 2022. The short time frame also increases the level of risk.

17. The Parliamentary Assembly of the Council of Europe's report on the 2019 Moldovan parliamentary elections stated (para. 31): "A considerable number of the people with whom the Assembly delegation spoke criticised the criteria for the creation of polling stations in foreign countries. In its statement of 31 January 2019, the pre-electoral delegation underlined that "the Parliamentary Assembly, in its previous observation reports, expressed concern at the lack of transparency of the criteria to determine the number of polling stations abroad. For many stakeholders, these criteria should ensure the voter's right to participate effectively in the elections." For its part, the OSCE/ODIHR Election Report on the Moldovan Parliamentary Elections in 2019 noted: "The background for this election is that there was disaffection with public institutions and allegations of pressure on public employees, indications of vote buying and misuse of state resources. Several ODIHR Election Observation Mission interlocutors voiced concerns that the number of polling stations in certain countries was unreasonably low and did not correspond to the number of voters residing there. The lack of transparency in the decision-making process in this issue contributed to these views. It was recommended that decisions on polling stations should be taken transparently and based on clear and consistent criteria. Such decisions should be taken in broad consultation with relevant stakeholders well in advance of an election."

18. The OSCE/ODIHR Report on the Moldovan Parliamentary Elections of 2020 found that the legal framework for the election provided an adequate basis for democratic conduct in elections, but frequent changes contributed to the lack of stability in the legal framework.

19. In addition, the OSCE/ODIHR Report on the Moldovan Parliamentary Elections of 2021 stated: "In August 2019, the parliamentary electoral system in the Republic of Moldova was changed from a mixed system that had been introduced for the 2019 parliamentary elections back to a fully proportional one... The system was changed more than one year prior to its applicability following an inclusive consultation process, in line with international good practice (in October 2019, three MPs referred to the Constitutional Court the question of which election system would apply to the next elections if they were called early). The court referred to the Code of Good Practice and held that in order to ensure stability of electoral law, the electoral system should be implemented at least one year after the adoption of the changes".

20. The principle of stability of electoral law also implies that the amendments can be properly implemented.⁹ More precisely, any reform of electoral legislation to be applied during an election

⁸ Venice Commission, Revised interpretative declaration on the stability of electoral law, CDL-AD(2024)027, II.B.5.

⁹ Venice Commission, [CDL-AD\(2005\)043](#), Interpretative Declaration on the Stability of the Electoral Law, II.5.

should occur early enough to allow candidates and voters to understand the changes and the electoral management bodies to understand and apply them.¹⁰ The Venice Commission is not in a position to assess the practical arrangements made to apply the legislation but considers that the best way to test the impact of a change of law is to do a controlled experiment in which the law changes for a subset of people. Having a *trial or pilot* is a great way to obtain genuine insight into the likely consequences of a law change.¹¹ A trial of a possible new approach while maintaining the status quo for everyone else may be both politically acceptable and practically workable.¹² The best way of doing a trial is a randomised controlled trial administered by the same institutions that would administer any wider roll-out. However, there should not be any conclusive objections to adopting different approaches for different people during the time required by the trial.¹³ There are examples of Council of Europe member States that allow for trials in their electoral laws.¹⁴ At any rate, it is important to ensure the project can be fully implemented within the time limit and with the necessary measures in place.

21. Under Article 35(6) and (7) of the Law, the Government and CEC “*within 3 months from the date of the publication of this law*” shall make proposals to the Parliament on the amendments needed to implement this law or approve normative acts. This will not take place before June or July 2024. Amendments to primary legislation would not be appropriate in such a short time frame. As for secondary legislation, it should be adopted before the electoral process *stricto sensu* starts – that is before the registration of candidates.

22. The controversy surrounding earlier elections in the Republic of Moldova, the frequent changes, and the added criticism of how expatriate voting was organised undermined the credibility of the voting process. Therefore, the Venice Commission recommends ensuring that any future amendments to electoral legislation are adopted by broad consensus after extensive public consultations with all relevant stakeholders, well in advance of elections, thus ensuring confidence in the electoral process. This recommendation applies in particular to any amendments to be made on the basis of Article 35(5) of the Law.¹⁵

2. Procedure for the adoption of the law

23. The Venice Commission has consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements:

- 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations;
- 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and
- 3) the political commitment to fully implement such legislation in good faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.

¹⁰ Venice Commission, Revised interpretative declaration on the stability of electoral law, CDL-AD(2024)027, II.B.6.b.

¹¹ Learning from Past Failures, Philip Tetlock, Chapter 3, Making Laws that Work, How Laws Fail and How We Can Do Better, David Goddard.

¹² Chapter 10, Making Laws that Work, How Laws Fail and How We Can Do Better, David Goddard, page 94.

¹³ Chapter 10, Making Laws that Work, How Laws Fail and How We Can Do Better, David Goddard, page 95.

¹⁴ One example is Norway, where Article 21-1 in the 2023 Election Act allows for limited trials, for example by alternative voting methods. In the 2011 local elections and in the 2013 parliamentary elections, internet voting was allowed as an optional and alternative voting method in a few selected municipalities as a trial to gather experience.

¹⁵ Promo Lex, in an opinion about the Draft Law from March 2024, stated that while the public received some information from the CEC regarding the pilot of internet voting, postal voting has not been publicised: “The authors have not shared any feasibility studies, specifications, action plans, or other pertinent documents necessary for piloting such a crucial and intricate mechanism”, https://promolex.md/wp-content/uploads/2024/03/Opinie_Promo-LEX_Vot_corespondenta.-ENG.pdf.

24. The Venice Commission takes note that public consultations were held between the introduction of the draft law (on 1 March 2024) and the adoption of the final text (on 26 April 2024). It also notes, however, that the legislative process was rather hasty (less than two months).

3. Constitutional position of organic law

25. Article 72 of the Constitution classifies laws as either constitutional, organic or ordinary. Constitutional laws revise the Constitution and must be started by popular initiative, or by either one-third of the Parliament or the Government. Organic laws control a range of matters specified in Article 72(3), including electoral matters. Organic laws must be passed by majority vote based on at least two ballots (Article 74(1)). Ordinary laws are passed by a majority vote of present deputies.

26. According to Article 61(2) of the Constitution, organic laws govern the electoral system. However, the scope of the Law is quite narrow and specific and not a fundamental part of the constitutional framework. The classification of the Law as an organic law raises certain questions, such as whether this designation provides stability or if it entrenches provisions such as the list of countries which perhaps should be more flexible.

4. Legislative technique: a permanent or transitory piece of legislation?

27. The Law assessed in this Opinion is entitled “Law on the *partial implementation* of the postal vote”. This leads to some unclarity about its intended temporal scope. On the one hand, it appears as a permanent piece of legislation which will be applied to all future elections – of course as long as it is not amended. On the other hand, a decision on the permanent applicability of postal voting will have to be taken after the next elections (Article 35(5), which provides for possible amendments to the Electoral Code and not to the Law. Moreover, “partial implementation” cannot be understood as just meaning that certain conditions have to be filled to provide for the possibility to vote by post in a certain country, since these conditions are defined in Article 8 as “conditions for the *partial implementation* of the postal vote”. This is confusing and the Moldovan authorities will have to decide after the trial whether they want to deal with postal voting – if kept – in the Electoral Code and/or a special piece of legislation.

28. The Venice Commission takes note that the Electoral Code will be reviewed with a view to amendment after the next elections in conformity with its Article 35(5). This provision should be interpreted as imposing on the Central Electoral Commission to evaluate the trial before making proposals for amendments. If the trial is successful, the Venice Commission recommends giving postal voting abroad a perennial character through a legislative revision to take place after the 2025 parliamentary elections, thus ensuring respect for the principles of stability and legal certainty. In conformity with these principles, changes to be applied to the 2025 elections should be justified in the findings of the trial, and would presumably be of a technical character.

B. Substantive aspects

1. Out-of-country voting

29. Out-of-country voting or voting from abroad is defined as “procedures which enable some or all electors of a country who are temporarily or permanently outside the country to exercise their voting rights from another country”.¹⁶

¹⁶ Out-of-Country Voting, IDEA, 2021 (<https://www.idea.int/sites/default/files/publications/out-of-country-voting.pdf>).

30. Out-of-country voting is not essential or required by international law.¹⁷ However, it is broadly considered to be a positive measure. PACE Resolution 1459 (2005) on the abolition of restrictions on the right to vote states: "Given the importance of the right to vote in a democratic society, the member countries of the Council of Europe should enable their citizens living abroad to vote during national elections [...]. They should take appropriate measures to facilitate the exercise of such voting rights as much as possible, in particular by considering absentee (postal), consular or e-voting".¹⁸

31. Out-of-country voting can help citizens living abroad to maintain a connection with their home country. However, it has also been argued that for countries with a large diaspora, citizens living abroad could have a disproportionate influence on the home country's political landscape.¹⁹

32. The Venice Commission reiterates what it wrote in 2019 about the possibility offered to Moldovan citizens to vote from abroad. This will have to be taken into account in the assessment of the Law:²⁰

59. Voting abroad is a sensitive topic in Moldova and in many other OSCE and CoE member states especially where there is a sizable diaspora. In a previous opinion, the Venice Commission and ODIHR summarised the European standards on voting abroad in the following way:²¹ The trend in recent decades has been for more European states to allow voting from abroad in national elections.²² (...) In its case law, the ECtHR has awarded states a wide margin of appreciation under Article 3 Protocol 1 and has accepted restrictions in voting rights for citizens residing abroad, in particular with residence requirements. It appears from this case law that the test under Article 3 Protocol 1 concerning voting abroad is whether or not there has been an arbitrary or unreasonable restriction on the right to vote.²³ In other words, while the state is free to decide whether or not to allow voting from abroad, if voting from abroad is allowed, restrictions stemming from organisational matters should be justified. Allowing citizens residing abroad to vote entails organisational challenges, which may justify certain restrictions in the exercise of the right to vote.²⁴ Limiting the number of polling stations or restricting voting to embassies or consulates may be necessary due to the extra cost and resources required for organising elections abroad as well as the limitations imposed by the host countries.

¹⁷ States are afforded a wide margin of prescribing conditions of the right to vote and the right to stand for parliament by the European Court of Human Rights: *Sitaropoulos and Giakoumopoulos v. Greece* [G.C.], 15 March 2012, application no. 42202/07; as well as by the Court of Justice of the European Union, see *M.G. Eman and O.B. Sevinger v. Mayor and Councillors of The Hague*, C-300/04, 12 September 2006, where it was also noted that "While, in the current state of Community law, there is nothing which precludes the Member States from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held, the principle of equal treatment prevents, however, the criteria chosen from resulting in the different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified."

¹⁸ PACE Resolution 1459 (2005), at 7.

¹⁹ Voting from abroad in European Parliament elections, EPRS, 2023 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751457/EPRS_BRI\(2023\)751457_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751457/EPRS_BRI(2023)751457_EN.pdf).

²⁰ Venice Commission and ODIHR, [CDL-AD\(2022\)025](#), Republic of Moldova, Joint Opinion on the draft electoral code, § 59.

²¹ See Venice Commission and ODIHR, [CDL-AD\(2017\)016](#), Bulgaria, Joint Opinion on Amendments to the Electoral Code, para. 68.

²² See for an appraisal of relevant practice CoE/Congress of Local and Regional Authorities, Electoral lists and voters residing de facto abroad, 28 January 2015 (CG/MON/2015(27)8), p. 15; cf. Venice Commission, Summary report on voters residing de facto abroad, [CDL-AD\(2015\)040](#).

²³ See European Court of Human Rights, *Hilbe v. Liechtenstein* (dec.), 7 September 1999, application no. 31981/96; *Doyle v. United Kingdom* (dec.), 6 February 2007, application no. 30157/06; *Sitaropoulos and Giakoumopoulos v. Greece* [G.C.], 15 March 2012, application no. 42202/07, par. 69; *Shindler v. the United Kingdom*, 7 May 2013, application no. 19840/09, par. 105, 116.

²⁴ See Venice Commission, Report on out-of-country voting, [CDL-AD\(2011\)022](#), § 75.

2. Postal vote as an alternative voting method

33. The Code of Good Practice in Electoral Matters states that

iii. postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible.²⁵

34. As for any other form of remote voting, international standards as developed by the Venice Commission²⁶ and more generally by the Council of Europe²⁷ put the emphasis on the conditions of safety (from interferences) and reliability (proper functioning). The acceptability of the introduction of postal voting has to be assessed in the light of these criteria.

35. Postal voting is allowed in many Council of Europe member States, such as Austria, Germany, Spain and Switzerland. Some States allow it for voters abroad only, such as Andorra, Belgium, the Netherlands and Romania.²⁸ If citizens abroad can only vote in person, the limitation of the number of polling stations in certain countries may have a discriminatory effect, as was criticised in the case of Bulgaria.²⁹

36. Postal voting can be an effective way of making voting more accessible.³⁰ However, it requires effective safeguards against potential fraud, apart from safe and reliable postal service providers.³¹ Less oversight is possible and the potential for manipulation, such as family voting, is increased.³²

37. States are obliged to ensure that the principle of secret suffrage is respected.³³ This is an inherent challenge for postal voting, as well as for other remote voting methods, such as internet voting. Unlike voting in polling stations, there is no way for electoral authorities to monitor the voting procedure of postal voting and to physically isolate the voter when filling out the ballot paper, in order to ensure the secrecy of the vote. Nonetheless, many countries do allow for non-supervised postal voting and this does not go against European and international electoral standards.³⁴ At any rate, the violation of secret suffrage should be sanctioned.³⁵

²⁵ Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev-cor](#), I.3.2.iii.

²⁶ *Ibid.*, I.3.2.iv (on electronic voting). See also Venice Commission, Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe, [CDL-AD\(2004\)012](#), §§ 15, 18, 65.

²⁷ [Recommendation CM/Rec\(2017\)5](#) of the Committee of Ministers to member States on standards for e-voting.

²⁸ Venice Commission, Report on electoral law and electoral administration in Europe 2020, [CDL-AD\(2020\)023](#).

²⁹ Report on electoral law and electoral administration in Europe 2020, [CDL-AD\(2020\)023](#), § 55.

³⁰ Alternative voting methods and arrangements, benefits, risks and practical considerations in light of international standards and good practice, including in the context of the Covid-19 pandemic, OSCE ODIHR, 2020 (<https://www.osce.org/files/f/documents/2/a/466794.pdf>).

³¹ Guideline I.3.2.iii Venice Commission Code of Good Practice in Electoral Matters, 2002.

³² Alternative voting methods and arrangements, Benefits, risks and practical considerations in light of international standards and good practice, including in the context of the Covid-19 pandemic, OSCE ODIHR, 2020 (<https://www.osce.org/files/f/documents/2/a/466794.pdf>).

³³ Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev-cor](#), I.4.a.

³⁴ See Venice Commission, Report on out-of-country voting, [CDL-AD\(2011\)022](#), §§ 20-23 and 58; Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe, [CDL-AD\(2004\)012](#), §§ 60-64.

³⁵ Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev-cor](#), I.4.d.

3. The territorial scope of the legislation and its conformity with the principle of equality

a. Concerning the trial

38. The trial is limited to six countries (Article 35(2) of the Law) with a relatively low percentage of the Moldovan population abroad. These countries would also fit the general criteria for postal voting in Article 8(1), concerning the lack of polling stations and long distances. For example, there is only a joint Moldovan embassy for Sweden, Finland, Norway, and Iceland, located in Stockholm.

39. Trials imply differential treatment of voters. Limited trials aimed at improving electoral procedures can be considered a legitimate aim for differential treatment. However, any differential treatment that may interfere with the principles of universal and equal suffrage should be proportionate to the legitimate aim pursued.

40. Notwithstanding the trial context of the Law, it introduces an alternative voting method for the next elections and referendum and the votes cast by post will be counted like any other vote. Therefore, the geographical scope of the Law should be carefully considered in order not to appear arbitrary or provide an unreasonable advantage for the political majority.³⁶

41. If the aim of the Law is to test the feasibility of the legal framework and its implementation, countries with comparatively few residents with Moldovan citizenship could be selected so that the effect of postal votes are less likely to have a significant influence on the election result. In line with this reasoning, it would be problematic to select only some but not all countries with a large Moldovan diaspora. At any rate, the trial is made more credible by the fact that the countries chosen in Article 35 involve numbers which are not hugely significant.³⁷

42. As already said, for at least the first presidential elections after the entry into force of the Law as well as for a referendum on an essential issue for the Republic of Moldova, postal voting will be applied only in six countries (Article 35(2) of the Law) and thus for a quite limited number of members of the Moldovan diaspora. Article 35(5) provides that “after the completion of the partial implementation of the postal vote, the Central Electoral Commission (CEC) shall, within three months, draw up and submit to the Parliament a report on the implementation of this alternative voting method, which shall comprise proposals and provisions regarding its permanent applicability, subsequently having to submit corresponding amendment to the Electoral Code no. 325/2022”. According to information provided by the CEC, this means that after the 2024 elections and referendum, the territorial limitation to six countries should not apply anymore and that the CEC will make a proposal for territorial extension of postal vote to the countries corresponding to the requirements of Article 8. The Venice Commission underlines that a trial should be applied to one election only and that permanent rules – confirming or not the introduction of postal voting – should be adopted after that trial.

³⁶ The ECtHR has accepted restrictions on expatriate voting rights for a number of reasons, but has also emphasised that such restrictions should not be arbitrary, see *Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, 15 March 2012, para. 69.

³⁷ The following passage from the ODIHR and Venice Commission Joint Opinion on Amendments to the Election Code of Bulgaria ([CDL-AD\(2017\)016](#)) may be worth taking into account: “When considering the significance of limiting the number of polling stations in non-EU countries, the distribution and number of Bulgarian citizens abroad is important. According to information provided by the Bulgarian authorities, the largest numbers of citizens residing abroad are found in two countries outside of the EU. Around 300,000 Bulgarian citizens reside in Turkey and the same in the United States. According to the same information, the highest number of voters residing in Turkey who have participated in a Bulgarian election is some 72,000, with an average of 35,000-40,000 voters per election. No information was provided on the number of voters in the United States. Based on this information, the limitation of the number of polling stations in non-EU countries appears to be in practice a significant amendment to the Electoral Code, which may have a discriminatory effect, as citizens should be able to vote under the same conditions of rights and access, according to international good practice and jurisprudence”.

b. In general

43. Article 8(1) of the Law sets out criteria for implementation of postal voting as follows:

(1) The countries where the postal vote will be implemented shall be established considering the following criteria:

- a) the lack of polling stations in the host country or long distances to nearest polling stations established previously;
- b) the experience of the postal vote implementation in the host country;
- c) prior registration at the previous elections of at least 30 applications;
- d) safety and reliability of the postal/courier services.

44. It is not clear which body is to decide the geographical scope of postal voting according to the criteria in Article 8. Since the Law lists conditions to be met when deciding on countries, it would be natural to assume that the decision is to be made by an administrative body. However, neither Article 8 nor Article 11 on the powers of the CEC state which body has the powers to decide on the geographical scope of postal voting. Given the conditions in Article 8, it would be natural that the independent CEC be granted the power to allow postal voting. Article 8 is also silent on the timing when this list of countries should be finalised. This should be clarified.

45. While safety and reliability belong to the international standards applying to remote voting and in particular to postal voting, other restrictions should conform to the principle of equality and be reasonable and proportionate. Imposing further conditions should be limited to the cases where the introduction of postal voting in a specific country would lead to stringent difficulties of implementation.

46. It seems that the approach chosen here is a negative one in the sense that postal voting in a country requires advance approval. This should be clarified. An alternative method would be a positive approach, in which postal voting is permitted as a general rule, whilst restrictions must be justified according to criteria set out in the Law. A positive approach would also limit the decision-making to exceptions due to implementation issues and/or the absence of safety and reliability of the postal services.

47. Article 8 (2) prohibits postal voting in countries “with which the Republic of Moldova has not established diplomatic relations, in the countries under military conflicts and in the countries disrespecting the international standards regarding the conduct of free and fair elections.” While this restriction may be justified by the presumption that postal vote is not safe or not reliable in such countries, this presumption should be rebuttable, thus opening the door to postal voting if safe and reliable.

48. The Venice Commission therefore recommends, if the trial is successful, applying postal voting to all countries where postal voting is safe and reliable, to be identified by decisions of the Central Electoral Commission.

4. Other issues

Clarity regarding groups who can use the postal vote

49. A fundamental question that should be clear from the Law is who is entitled to vote by post. It is not clear if it is only intended to capture people who are habitually resident abroad or also people who may be temporarily abroad. Clarity in this regard is essential to reduce the risk of duplicate voting.

Article 6. Place of exercising the right to postal vote

50. There was no *register* for voters abroad for the last elections in the Republic of Moldova.³⁸ Having a list of expatriate voters on a register (see also Article 16(3)) is a very welcome development (despite the fact that this list will not be complete).

51. It should be clear whether persons who register to exercise a postal vote do so only for the specific pending election or if they place themselves on postal voting lists for all future elections.

52. Article 6 suggests that the postal vote must be exercised at the address indicated by the voter. This seems unnecessarily restrictive as it seems logical that persons voting by post fill out the documents wherever they wish to do so, provided they follow the guidance, do not breach secrecy and follow the rules in sending the vote back to the designated committee.

Article 16(4). Data protection

53. This provision appears to respect data protection considerations. However, it should be clear that the data and information included in Article 16(4) cannot be openly accessed on the official web page of the CEC if it includes personal information or any information which would link an individual person to their vote.

Article 17. Registration for postal voting

54. Registration for postal voting requires voters to have internet access in order to register on the website of the CEC, see Article 17(1), and to have an e-mail address, see Article 17(4). Relying on electronic registration and communication with voters abroad is understandable from a practical point of view. However, as with all identification requirements, it raises the issue of accessibility in the sense that the choice of identification method should not disproportionately restrict the exercise of voting rights.

Article 25. Procedure for the completion of the ballot paper for the postal voting

55. Article 25 contemplates that voters may register to vote by post and even proceed to vote by post but can then present themselves at a polling station in the Republic of Moldova and get a paper ballot. The workability of this provision should be carefully checked as it appears to rely on the efficacy of cancelling the postal ballot in order to avoid double voting.

56. Article 25(1) states that voters fill in a “form of the declaration regarding the abstention from multiple voting and the confirmation of the exercise of the voting right in secret” they receive in the voting material (Article 22(g)). Such legislative requirements can be compared to an oath but do not guarantee secrecy. It is however a “safeguard” found in other electoral systems that allow for non-supervised postal voting.³⁹ Apart from that, it is not clear from Article 25(1) what happens if this form has any identification signs on it (name, surname, registration number, ID number). If so, that would mean that if such a form would be found in the inner envelope that would make ballot papers invalid. This case should be added to Article 28(1) which includes an exhaustive list of cases when the ballot is considered invalid.

57. Article 25(1) also states that the voter fills in the form of the declaration which he/she gets as voting material (Article 22 para g). It is not clear if this form has any identification signs on it (name, surname, registration number, ID number). If so, that would mean that if such a form were found in the inner envelope that would make ballot papers invalid. Therefore Article 28 para 1

³⁸ OSCE/ODIHR Election Observation Mission Final Report Parliamentary Elections 11 July 2021.

³⁹ Venice Commission, Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe, [CDL-AD\(2004\)012](#), § 64.

would have to address the issue as it provides an exhaustive list of cases when the ballot is considered invalid and the issue is not covered by Article 82 of the Electoral Code of the Republic of Moldova.

58. This provision also states that the only way to express the voter's will is marking the ballot paper with a specific "V" sign. This raises the issue of overregulation. According to Article 79 (2) of the Electoral Code of the Republic of Moldova, ballot papers are stamped, not filled in with a pen. *"(2) The voter applies the stamp marked "voted" inside the circle of a single quadrangle of the ballot paper, which means that he/she voted for the corresponding electoral competitor or for one of the referendum options. The circles from other quadrangles must remain blank"*. Persons voting by post cannot use a special stamp which is available only at the polling station. This should not lead to excessive formalism and the ballot paper should be considered as valid if a mark with a pen makes it possible to determine the voter's will.

59. This Opinion does not address Article 36 on "amendments of certain normative acts" which are not related to postal voting of Moldovan citizens abroad.

IV. Conclusion

60. By letter of 3 May 2024, Mr Igor Grosu, President of the Parliament of the Republic of Moldova, requested an opinion of the Venice Commission on Law no.109 of 26 April 2024 on the partial implementation of the postal vote.

61. On procedural issues, the Venice Commission recalls that stability of electoral law is an essential element of legal certainty. In the present case, due the limited scope of the amendments adopted less than five months before the next elections, the principle of stability has not been violated. The Venice Commission notes however the Moldovan context of frequent changes to the electoral system and their lack of transparency, which can affect voter confidence in the electoral system, as well as the hasty process for the adoption of the Law. It also recalls that every effort must be made to ensure that the amendments are properly implemented.

62. On substance, the proposal by the Moldovan authorities to move toward postal voting for citizens abroad is to be welcomed, as the number of Moldovan citizens with a right to vote while living abroad is large by comparative standards, and the arrangements under which they have voted in the past have caused difficulties. A trial of different methods is prudent and will be applied at least to the presidential elections and referendum of 20 October 2024. The limited territorial scope of this trial is acceptable due its application to one vote only.

63. The Venice Commission makes the following main recommendations to the authorities of the Republic of Moldova:

- A. Ensuring that any future amendments to electoral legislation are adopted by broad consensus after extensive public consultations with all relevant stakeholders, well in advance of elections, thus ensuring confidence in the electoral process. This recommendation applies in particular to any amendments to be made on the basis of Article 35(5) of the Law;
- B. If the trial is successful, giving postal voting abroad a perennial character, thus ensuring its stability and legal certainty, and applying it to all countries where postal voting is safe and reliable, to be identified by decisions of the Central Electoral Commission.

64. The Venice Commission remains at the disposal of the Moldovan authorities for further assistance in this matter.