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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

DRAFT LAW
FOR AMENDING SOME NORMATIVE ACTS

Translation from Romanian into English

Draft

PARLIAMENT OF THE REPUBLIC OF MOLDOVA

LAW for amending some normative acts

The Parliament adopts the present organic law.

Art. I. - Article 4 of Law on state tax no. 1216/1992 (republished in the Official Gazette of the Republic of Moldova, 2004, no. 53-55, art. 302), with the subsequent amendments, shall be amended as follows:

in paragraph (1) point 9), after the words "People's Advocate for Children's Rights" shall be completed with the text " , People's Advocate for Entrepreneurs' Rights";

in paragraph (5), the words "and the People's Advocate for Children's Rights " shall be replaced by the words", the People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights"

Art. II. – In article 3 letter c) of Law no. 39/1994 on the status of the deputy in the Parliament (republished in the Official Gazette of the Republic of Moldova, 2005, no. 59-61, art. 201), with the subsequent amendments, after the words "People's Advocate for Children's Rights " shall be completed with the text "People's Advocate for Entrepreneurs' Rights".

Art. III. - In article 3¹ paragraph (2) letter i¹) of Law no. 273/1994 on Identity Documents of the National Passport System (Official Gazette of the Republic of Moldova, 1995, no. 9, art. 89), with the subsequent amendments, after the words "People's Advocate for Children's Rights" shall be completed by the words "People's Advocate for Entrepreneurs' Rights".

Art. IV. - Article 25 of Law no. 317/1994 on the Constitutional Court (Official Gazette of the Republic of Moldova, 1995, no. 8, art. 86), with the subsequent amendments, shall be completed by letter i²) with the following content:

" i²) People's Advocate for Entrepreneurs' Rights;".

Art. V. - In article 38 of the Constitutional Jurisdiction Code no. 502/1995 (Official Gazette of the Republic of Moldova, 1995, no. 53-54, art. 597), with the subsequent amendments, paragraph (1) shall be completed by letter i²) with the following content:

" i²) People's Advocate for Entrepreneurs' Rights;".

Art. VI. - Article 100 paragraph (1) of Law on the adoption of the Regulation of the Parliament no. 797/1996 (republished in the Official Gazette of the Republic of Moldova, 2007, no. 50, art. 237), with the subsequent amendments, after the words, "People's Advocate for Children's Rights" shall be completed by the words "People's Advocate for Entrepreneurs' Rights,".

Art. VII. – In article 90 paragraph (3) point 9) of the Criminal Procedure Code of the Republic of Moldova no. 122/2003 (republished in the Official Gazette of the Republic of Moldova, 2013, no. 248-251, art. 699), with the subsequent amendments, after the words

"People's Advocate for Children's Rights", shall be completed by the words "People's Advocate for Entrepreneurs' Rights,".

Art. VIII. - In article 85 paragraph (1) letter e) and article 134 letter h) of the Code of Civil Procedure of the Republic of Moldova no.225 / 2003 (republished in the Official Gazette of the Republic of Moldova, 2018, no.285-294, art.415), with the subsequent amendments, after the words "People's Advocate for Children's Rights", shall be completed with the text "People's Advocate for Entrepreneurs' Rights".

Art. IX. - In compartment II of Annex no. 1 to Law no. 245/2008 on the state secret (Official Gazette of the Republic of Moldova, 2009, no. 45-46, art. 123), with the subsequent amendments, shall be completed with the position 9¹ with the following content:

"9¹. People's Advocate for Entrepreneurs' Rights ".

Art. X. - Article 320 of the Contravention Code of the Republic of Moldova no. 218/2008 (Official Gazette of the Republic of Moldova, 2017, no. 78-84, art. 100), with the subsequent amendments, shall be amended as follows:

1. In the name of the article, the words "and the People's Advocate for Children's Rights" shall be replaced with the text, "the People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights".

2. In the dispositive part of the article, the words "and the People's Advocate for Children's Rights" shall be replaced with the text, "the People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights".

Art. XI. - In the annex to Law no. 199/2010 on the status of persons holding public dignity offices (Official Gazette of the Republic of Moldova, 2010, no. 194-196, art. 637), with the subsequent amendments, after the words "People's Advocate for Children's Rights", shall be completed by the words "People's Advocate for Entrepreneurs' Rights".

Art. XII. - Law no. 52/2014 on the People's Advocate (Ombudsman) (Official Gazette of the Republic of Moldova, 2014, no. 110-114, art. 278), with the subsequent amendments, shall be amended as follows:

1. Article 1 shall be completed by paragraph (3¹) with the following content:

"(3¹) The People's Advocate for the Protection of Entrepreneurs' Rights exercises his duties for ensuring the observance of the rights and legitimate interests of the entrepreneurs by the public authorities, by organizations and enterprises, regardless of the type of property and legal form of organization, by nonprofit organizations and by people with positions of responsibility at all levels.

2. In article 5, paragraph (1) will have the following content:

"(1) The Parliament appoints three People's Advocates autonomous from each other, among them one Advocate is specialized in the issues of protection of children's rights and freedoms, and another Advocate is specialized in the issues of protection of entrepreneurs' rights."

3. In article 6 paragraph (1):

point (b) will have the following content:

"b) no measure of judicial protection is instituted";

letter d) shall be completed by the words "or in the field of entrepreneurial activity".

4. In article 7 paragraph (1), the words "and of the Committee on Legal Affairs, Appointments and Immunities" shall be replaced with the text "of the Committee on Legal

Affairs, Appointments and Immunities and of the Committee on Economy, Budget and Finance".

5. In article 9 paragraph (1), after the text "human / child" shall be completed with the text "/ entrepreneurs".

6. In article 11:

letter d) shall be completed with the text ", as well as in the field of entrepreneurial activity";

letter e) shall be completed with the text ", as well as the rights of entrepreneurs";

in letter f), after the words "human rights and freedoms" shall be completed with the text ", the rights of entrepreneurs";

in letter o), after the words "human rights and freedoms" shall be completed with the text "as well as of the entrepreneurs";

letters p) and q) shall be completed with the text ", as well as of the entrepreneurs".

7. In article 12 paragraph (1) letter (a), after the words "human rights and freedoms" shall be completed with the text "as well as of the entrepreneurs", and after the words "the field of human rights and freedoms" shall be completed with the text ", as well as from the field of entrepreneurial activity".

8. Article 14:

in paragraph (2), the words "Committee for Human Rights and Inter-ethnic Relations" shall be replaced by the words "Committee on Legal Affairs, Appointments and Immunities";

in paragraph (3), the words "of the Committee on Legal Affairs, Appointments and Immunities " shall be replaced with the text "of the Committee on Legal Affairs, Appointments and Immunities and of the Committee on Economy, Budget and Finance".

9. Shall be completed by article 17¹ with the following content:

„Article 17¹. Duties of the People's Advocate for Entrepreneurs' Rights

(1) The People's Advocate for Entrepreneurs' Rights provides protection and assistance to entrepreneurs in order to ensure the observance of their rights and legitimate interests by public authorities, by organizations and enterprises, regardless of the type of property and legal form of organization, by nonprofit organizations and by people with positions of responsibility at all levels.

(2) The People's Advocate for Entrepreneurs' Rights defends the rights and legitimate interests of entrepreneurs by: preventing their violation, monitoring and reporting on compliance at the national level, promoting the rights and legitimate interests of entrepreneurs and their defense mechanisms, applying regulated procedures by the present law, improving the legislation and international collaboration in this field.

(3) The People's Advocate for Entrepreneurs' Rights cooperates with any person, nonprofit organization, institution or public authority with activity in the field.

(4) The People's Advocate for Entrepreneurs' Rights decides on the requests regarding the violation of the rights of the entrepreneurs.

(5) For the purpose of defending the rights of entrepreneurs, the People's Advocate for Entrepreneurs' Rights may notify the Constitutional Court and may file actions in the courts.

(6) In his activity, the People's Advocate for Entrepreneurs' Rights is assisted by a specialized subdivision within the People's Advocate Office. "

10. In article 21 paragraph (5) letter (a), article 22 paragraphs (1) and (2), article 25 paragraph (1) letter (b) and paragraph (2), after the words "and human freedoms" shall be completed by the words "and of the entrepreneurs."

11. In article 24 paragraph (1), after the words "and human freedoms" shall be completed by the words "and of the entrepreneurs".

12. During articles 27 and 28 after the words "and human freedoms" shall be completed by the words "and of the entrepreneurs".

13. Article 29:

in paragraph (1), after the words " and child's freedoms" shall be completed by the words "a chapter devoted to the situation regarding the observance of the rights of entrepreneurs";

paragraph (4) shall be completed by the following sentence "The Parliamentary Committee on Economy, Budget and Finance will present to the Parliamentary Committee for Human Rights and Inter-ethnic Relations its opinion on the information in the annual report on the situation regarding the observance of the rights of entrepreneurs."

14. In article 34 paragraph (5), after the words "and human freedoms" shall be completed by the words "and of the entrepreneurs".

Art. XIII. - Law no. 164/2015 for the approval of the Regulation on the organization and functioning of the People's Advocate Office (Official Gazette of the Republic of Moldova, 2015, no. 267-273, art. 504), with the subsequent amendments, shall be amended as follows:

1. In article 1 letter (b), the text "65 units" shall be replaced by the text "76 units".

2. In the annex to the law:

in point 2, point 7, sub-point 6), point 9, point 10, point 20, sub-points 2) and 7) and point 36, after the words " People's Advocate for Children's Rights ", in any grammatical form, shall be completed by the words "People's Advocate for Entrepreneurs' Rights", in the corresponding grammatical form;

during points 7, 8, 32, 34 and 40, after the words "and human freedoms" shall be completed by the words "and of the entrepreneurs";

point 8:

in sub-point 1), the words "and the People's Advocate for Children's Rights" shall be replaced with the text ", "the People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights";

sub-point 11), the words "natural persons" shall be replaced by the text "natural persons / legal persons";

point 14 will have the following content:

"14. The duties of the People's Advocate for Children's Rights are regulated by art.17 of the Law on the People's Advocate, and the duties of the People's Advocate for Entrepreneurs' Rights are regulated by art.17¹ of the mentioned law. The People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights will submit to the People's Advocate proposals related to the planning of the Office's activity, to the elaboration of the draft budget and to the reporting ";

point 20:

in sub-point 10), the words "and of the People's Advocate for Children's Rights" shall be replaced with the text, "of the People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights";

in sub-point 19), the words "and the People's Advocate for Children's Rights" shall be replaced with the text, "the People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights";

in point 32, the words "and the People's Advocate for Children's Rights" shall be replaced with the text, "the People's Advocate for Children's Rights and the People's Advocate for Entrepreneurs' Rights";

in point 40 sub-point 1), the words "natural persons" shall be replaced with the text "natural persons / legal persons";

Art. XIV. - In the section "Other functions of public dignity at central level" from table 1 of Annex no. 3 to Law no. 270/2018 on the unitary pay system in the budgetary sector (Official Gazette of the Republic of Moldova, 2018, no. 441-447, art.715), with the subsequent modifications, after the position A1015, position A1060 is introduced with the following content:

„A1060	People's Advocate for Entrepreneurs' Rights	124	13,09”.
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Art. XV. - (1) This law enters into force on the date of publication in the Official Gazette of the Republic of Moldova.

(2) The Parliament, within 1 month from the date of entry into force of this law, shall organize the competition for the selection of candidates for the position of People's Advocate for Entrepreneurs' Rights.

(3) The Government, within 3 months from the date of entry into force of this law, shall bring its normative acts in accordance with it.

The President of the Parliament

INFORMATIVE NOTE
to the draft law on the amendment of some normative acts
(People's Advocate for Rights)

I. The name of the author and, as the case may be, of the participants in the elaboration of the draft

The draft law on the Entrepreneurs' Advocate (Ombudsman) was drafted by the Inter-institutional Working Group established by the Prime Minister's Decision no. 6 of January 27, 2020. According to point 3 of the mentioned Decision, the Ministry of Economy and Infrastructure is the public authority designated to ensure the promotion of the draft law on the creation of the institution of Ombudsman (advocate) in the field of business activity in accordance with the legislation in force.

Following the approval of the draft law on the Entrepreneurs' Advocate (Ombudsman) (unique number 472 / MEI / 2020), according to the approach of the State Chancellery no. 18-23-5409 of 25.06.2020, the Ministry of Justice and the Ministry of Finance exposed the inopportunity of a new separate law dedicated to this field, and the examination of the solution to complete Law no. 52/2014 on the People's Advocate (Ombudsman) with specific regulations for the entrepreneurs' advocate, according to the example on the normative regulations regarding the People's Advocate for Children's Rights.

In this context, taking into account the principle of coherence of the legislative activity, enshrined in art. 3 of Law no. 100/2017 on normative acts, the mentioned draft law was replaced with the draft law for amending some normative acts, which regulate certain aspects related to the activity of the People's Advocate for Entrepreneurs' Rights.

II. The conditions that imposed the elaboration of the draft normative act and the finalities pursued

The draft law is elaborated in order to ensure the execution of action 4.5.14 of the Government Action Plan for 2020-2023, approved by Government Decision no. 636/2019, which establishes the creation of the ombudsman institution (advocate) in the field of business activity.

Following the analysis of the legal framework in force, related to the business environment and the current investment climate, meant for socio-economic development, it was found that the main factors that determine unjustified spending and unjustifiably obstruct the business environment, from the perspective of public administration, are:

- a) the predictability of the regulation of the entrepreneurial activity;
- b) the deficiencies of the state control system of the entrepreneurial activity;
- c) the level of quality and / or efficiency in the provision of public services imposed by virtue of the law, in particular, deficiencies in the process of issuing permissive documents, making mandatory registrations, expertise, etc;
- d) the quality of the judicial system and the effectiveness of the functioning of the criminal prosecution process.

a) The quality of the regulation of the entrepreneurial activity

In recent years, the Government has developed and implemented several policy documents and laws that had the mission of reforming the regulatory framework of the business environment, and included a huge number of amendments to the normative and institutional framework aimed at creating a better business environment. However, the expected impact of the reforms was not fully materialized. The basic challenge of the policy in

question is to fully capitalize on the achievements so far and to consolidate a favorable business environment, which will encourage new investments and support the competitiveness of domestic enterprises both in the domestic market and in international markets. The low level of regulatory efficiency also derives from the fact that currently, many normative acts are adopted that continue to be expensive, non-transparent and inconsistent with market principles and business realities.

It should be noted that one of the problems of the regulatory process is that the central public authorities (especially with control functions), contrary to the powers established by law, continue to approve departmental / individual acts and impose them either, to approve normative acts under the law, but which substantially exceed the limits established by the legislator.

In order to diminish or even annihilate the effect of these illegal acts, in our view, a considerable effort on the part of the business environment is necessary, namely, it can be used the right to consist in the order of administrative contentious, in court, of abuse actions, it can be requested the exception of illegality, or for the Government Decisions it can be raised the exception of constitutionality.

b) The deficiencies of the state control system of the entrepreneurial activity

Starting with 2016, the Government, with the support of international donors, began a deep institutional and normative reform in the state control system. Within the bodies with control functions, the Dispute Resolution Councils were established, and checklists for their fields of competence were elaborated and approved by the order of the central public authority with competences in the field of control. In this way, besides the improvement of the legislative framework, in the sense of establishing more clearly and in detail the material and procedural rights and obligations within the state control, it is implemented the predictability of the control, but also mechanisms for efficient settlement of disputes resulting from the state control.

Despite consistent efforts, both on the part of the State Chancellery, as the authority of the central public administration to supervise controls, and of the Ministry of Economy and Infrastructure, in order to implement the reform in the field of state controls, its implementation is delayed. Thus, the lack of viable dispute resolution mechanisms, the low quality of the subsidiary regulatory framework regarding control procedures on concrete sub-domains, the lack of functionality of state information systems in this field (especially the State Register of Controls) are decisive factors in discrediting the effort made to reform the control system, factors that continue to encourage the emergence of conflict situations, to establish unjustified barriers and to exponentially multiply the expenses of the business environment for initiating and carrying out the activity of production, trade and provision of services.

It should be mentioned that, according to the survey reflected in the World Bank report "Cost of State Regulation of Entrepreneurial Activity in 2019" about 46% of respondents believe that Law no. 131/2012 on state control over entrepreneurial activity is always applied selectively within the state control, depending on the attitude of public persons, another 22% partially agree with that statement.

c) Deficiencies in the process of requesting and issuing permissive documents and providing public services

At present, regarding the public services imposed by law, especially the permissive documents, there are a series of deficiencies regarding the quality of their procedural and material regulation, but also the way of observing the regulations by the permitting authorities. Following the reformation of the entire legislative framework regarding the permissive

documents for the business environment (licenses, authorizations, certificates), based on Law no. 185/2017 for the amendment and completion of some legislative acts, it was required an ample exercise of adjustment and completion of subsidiary regulatory framework, which has largely not happened until now.

In accordance with Law no. 185/2017, it was established the information system for management and issuance of permissive documents (SIA GEAP) for requesting and issuing permissive documents, in order to reduce the effort to obtain, abuses and elements of corruption in this regard. SIA GEAP has been operational since July 2018.

However, a major problem is the reluctance of related public authorities (at central and local level) to implement the reform on the optimization of permissive documents, as well as the implementation of one-stop shop solutions.

d) *The quality of the judicial system and the effectiveness of the functioning of the criminal prosecution process*

A series of essential problems can be deduced in the criminal process, in relation to the economic agents. The law enforcement bodies frequently intervene in the business activity in an exaggerated, disproportionate, abusive way, with violations of the legislation and / or using the existing procedural provisions and components of crimes.

Currently, a large part of the active business environment is trying to come up with a real contribution to the quality of the process of regulating entrepreneurial activity through business associations.

At the same time, it is important to mention that the legislator does not attribute to entrepreneurial associations some more special rights, other than those attributed to a public association. In the absence of these attributions and rights, the capacity of the associations to influence the public authorities remains quite incipient.

In many states, governments have created entities that are concerned with protecting the fundamental rights of entrepreneurs, designed to detect systemic problems in the normative framework and to make an important contribution to their elimination. Particular emphasis is placed on supporting small, micro and family entrepreneurs, who are largely disadvantaged compared to other categories of entrepreneurs. Examples of the ombudsman in relation to the business environment are presented in the Impact Analysis on the draft law.

III. Description of the degree of compatibility for drafts aimed at harmonizing national legislation with European Union legislation

The draft law does not aim to harmonize national legislation with European Union legislation.

IV. The main draft provisions and highlighting the new elements

The draft law establishes the function of public dignity - the People's Advocate for Entrepreneurs' Rights, which will be appointed by the Parliament and will act autonomously before the People's Advocate and the People's Advocate for Children's Rights.

The People's Advocate for Entrepreneurs' Rights will specialize in issues of protection of entrepreneurs' rights.

The role of the People's Advocate for Entrepreneurs' Rights will reside in ensuring the observance of the rights and legitimate interests of entrepreneurs by public authorities, by organizations and enterprises, regardless of the type of property and legal form of organization, by nonprofit organizations and by people with positions of responsibility at all levels.

The way of appointing the People's Advocate for Entrepreneurs' Rights will be similar to the way of appointing the People's Advocate and the People's Advocate for Children's Rights, regulated by Law no. 52/2014 on the People's Advocate (Ombudsman).

At the same time, in the composition of the Special Parliamentary Commission that will run the competition for this purpose, it is proposed the presence of the representatives of the Committee on Economy, Budget and Finance.

Also, the draft law stipulates the attributions of the People's Advocate for Entrepreneurs' Rights.

The draft proposes the amendment of several normative acts regulating certain aspects related to the activity of the People's Advocate for Entrepreneurs' Rights (his salary, the status of public dignitary, the right to notify the Constitutional Court, the civil and criminal procedural rights, the right to present proposals to amend the normative framework, etc.)

The institution of a new position of People's Advocate for Entrepreneurs' Rights is meant to assist economic agents in counteracting abuses committed, in particular, by public authorities and institutions, and eliminating shortcomings in the normative framework. This assistance in the most direct way will lead to the decrease of the existing expenses for running the business and, accordingly, the increase of the incomes.

V. Economic and financial substantiation

The implementation of the draft law will generate additional expenses to the state budget, because it is proposed to increase the limit staff of the People's Advocate Office by 11 units, these units will assist the People's Advocate for Entrepreneurs' Rights.

Thus, for the salary of the 11 units, an approximate calculation of 955.1 thousand MDL is estimated, of which:

People's Advocate for Entrepreneurs' Rights - 1 person, with a monthly salary of 17000 MDL;

Head of management - 1 person, with a salary of 11000 MDL;

Consultants - 2 people, with a salary of 10000 MDL;

Representatives in the territory (north and south) - 2 people with monthly salaries of 11000 MDL;

Consultants in the legal subdivision (representation in court) - 2 people, with monthly salaries of 10000 MDL;

Administrative-financial subdivision - 2 people with monthly salaries of 8000 MDL and 5000 MDL;

Secretariat - 1 person with a monthly salary of 4000 MDL;

Driver - 1 person with a monthly salary of 3000 MDL.

VI. The way of incorporating the act in the normative framework in force

The draft law provides for the establishment of the function of public dignity - the People's Advocate for Entrepreneurs' Rights, as well as modifies accordingly, several normative acts that regulate certain aspects related to its activity.

VII. Public approval and consultation of the draft

In accordance with the procedures established for transparency in the decision-making process and in order to elaborate normative acts, the draft law, the informative note and the impact analysis on the draft law, following the announcement during the meeting of the general secretaries of state were placed to initiate the approval / expertise procedure and public consultation, on the official website of the Ministry of Economy and Infrastructure

(www.mei.gov.md), the section Transparency / Announcements regarding public consultations, as well as on the website of the State Chancellery (www.particip.gov.md).

Following the replacement of the draft law on the Entrepreneurs' Advocate (Ombudsman) with the draft law for amending some normative acts, the latter was placed on the official website of the Ministry of Economy and Infrastructure (www.mei.gov.md), the section Transparency / Announcements regarding public consultations, as well as on the website of the State Chancellery (www.particip.gov.md).

VIII. Findings of the anti-corruption expertise

The draft law was subjected to anti-corruption expertise. The information regarding the results of the anti-corruption expertise is included in the synthesis of the objections, proposals / recommendations, the draft law being respectively adjusted according to the exposed objections and proposals / recommendations.

IX. Findings of the compatibility expertise

The draft law does not contain norms regarding the harmonization of the national legislation with the legislation of the European Union.

X. Findings of legal expertise

The draft law was submitted to legal expertise. The information regarding the results of the legal expertise is included in the synthesis of the objections, proposals / recommendations, the draft law being respectively adjusted according to the exposed objections and proposals / recommendations.

XI. Findings of other expertise

In accordance with the provisions of point 11 sub-point 2¹ letter a) and letter b) from the Methodology for analyzing the impact in the process of substantiating the draft normative acts, approved by Government Decision no. 23/2019, it was elaborated the Impact Analysis on draft law (the variant subject to the first public approval / consultation), which was consulted with the State Chancellery and the Ministry of Finance.

Minister

/signed electronically/

Serghei RAILEAN