Assessment on the implementation of the Action Plan for an Open Government 2016-2018 in the Republic of Moldova
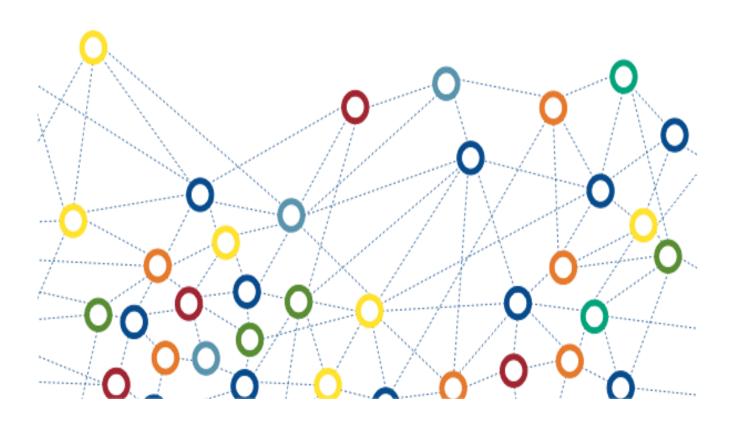
Chisinau

2018

TRANSPARENCY
INTERNATIONAL
MOLDOVA

Content:

Assessment on the implementation of the Action Plan for an Open Government 2016-2018 in the Republic of Moldova

Executive Summary

Following the signing of the Declaration of Principles on Open Government Partnership in 2012, Moldovan authorities have taken important steps to implement the objectives of this partnership, creating in particular multiple information platforms, including data.gov.md, particip.gov.md, services.gov.md, cariere.gov.md, amp.gov.md, aiming at the transparency of the activity of public institutions, the provision of electronic services and the creation of conditions for increasing public involvement in decision-making.

Even though a number of important anticorruption laws were adopted in 2016-2017, their application is delayed. The operation of the National Integrity Authority has not been insured, the Agency for Recovery of Criminal Assets is non-operational for the time being. On the background of the theft in the banking system of the Republic of Moldova of approximately one (1) billion US dollars (circa 13% of the GDP) and of laundering over 22 billion US dollars via the judiciary system, the attempts of governors to legalize assets of fraudulent origin and release themselves from criminal liability for offenses committed in the banking system, insurance system, and capital market. Among the legislative initiatives that affect the public interest are to be noted: draft law "liberalization of capital", regulations on offering citizenship of RM against alleged investments in state securities and the real estate market, the draft on "decriminalization of economic crimes".

The state authorities did not take any real actions to call the persons involved in the theft of the billion USD in the banking system and officials who allowed the fraud to liability; they carried out court proceedings of resonance behind closed doors; they persecuted civic activists, whistleblowers, attorneys, and judges. The above-state practices speak about corruption at the highest level, including political corruption, which has led to capturing of the state.[1] In such conditions, the implementation of veritable reforms, including in the area of open governance, encounters serious obstacles.

The draft Open Governance Action Plan (OGAP) for 2016-2018 was developed by Government, in collaboration with the civil society. Thus, even if the Government informed the public about the drafting of OGAP 2016-2018, and organized discussions over the draft Plan, the public having the possibility to contribute to its drafting, there are concerns that the Government has filtered the proposals provided by the civil society, excluding the inconvenient commitments.

It is difficult to appreciate the Plan as an ambitious one, although some sub-actions, for example, the development and launching of the Scorecard tool, e-Legislation software promotion, and M-Tender software launching, could be considered as such. A big part of the commitments included in this Plan are found in other public policy documents as well, including in the Strategy for Public Administration Reform for 2016-20120, Action Plan for the Modernization of Public Services, Public Procurement System Development Strategy for 2016-2020, and Action Plan for its implementation, etc. On the background of some obvious overlapping, and of the lack of correlation between certain documents/actions, the latter decrease the added value and innovatory character of the OGAP 2016-2018. Given the fact that a number of sub-actions and result indicators in the Plan are unclear, it is difficult to check their accomplishment.

Regarding the SMART criteria, the OGAP commitments are mainly oriented towards open data and technical aspects, rather than towards responsibility and participation. Most of the commitments have an average degree of specificity. More than half of the commitments would have a minor impact. As the plan was only endorsed by the end of 2016, there are reasonable risks that part of the commitments will not be met within the deadline.

Although starting 2012 three OGAPs have been developed and a mechanism for the implementation and coordination of this process has been created, with the civil society being a party to it, so far, there is no column/chapter designed for Open Government on the webpage of the State Chancellery, where the information about approved action plans and self-assessment reports on their implementation, reports developed under the Independent Reporting Mechanism, alternative NGO reports, and others.

---

[1] http://www.transparency.md/2017/06/16/state-capture-the-case-of-the-republic-of-moldova/

According to the Self-Evaluation Report on OGAP developed by Government, about 40% of the commitments monitored in 2017 were evaluated as carried out, and 60% – in process of implementation. At the same time, the Progress Report on OGAP 2016-2017, developed under the Independent Reporting Mechanism highlighted that the completion status of commitments is limited, with only circa one third of the commitments being evaluated as carried out on time.

The OGAP Self-Assessment Report does not indicate any eventual problems/challenges faced during the implementation. Nevertheless, a brief analysis reveals the following problems:

- Although some actions for improving the databases/information portals are qualified as carried out, the authorities do not insure the updating of information and the use of these tools seems to be doubtful. This reduces the usefulness of such tools, and, as a result, the funds, including those provided by development partners are insufficiently used, and even wasted, which fact would have a negative impact on the long-term implementation of the OGAP objectives;

- Although certain progress can be stated in insuring the transparency of public procurement, including as a result of enforcing the Law on Public Procurement, a number of state enterprises and joint stock companies with state shareholding do not fall within the scope of the law, and there are major risks of non-compliant and abusive use of public funds. Some important public authorities have been exempted from the law;

- There are deficiencies in insuring transparency in the budget process, both at the level of executive authorities, and legislative authorities of central and local level. It happens frequently for the draft budgets not to be published for public debates, as required by the legislation;

- The web pages of CPA are not sufficiently updated, do not contain a range of mandatory information, such as information about: anticorruption activities; planned and executed budgets; plans and results of public procurements; results of inspections carried out at respective authorities. There is no unique approach to webpage interfaces; the searching of information is difficult;

- There is no law that would establish requirements for the web pages of autonomous central public authorities, such as the National Bank of Moldova, Court of Accounts, National Regulatory Agency in the Energy Sector, National Commission for Financial Markets, Competition Council, etc.

Recommendations

– To insure genuine implementation of legislation on access to information, transparency in decision-making, and accountability for decision-makers who fail to ensure compliance;

– To insure the alignment of commitments which will be included in the OGAP to SMART criteria;

– To ensure transparency in the process of drawing up the SGP, in particular the synthesis tables, including the stakeholders' proposals and the reasons for the non-acceptance of the proposals;

– It is necessary to take an „inventory" of the latter and include the relevant ones in the future OGAP. This refers in particular to the development and promotion of e-Petitioning information system that should provide the possibility for sending electronic petitions, viewing the examination process, officials responsible for examining the petitions, their settlement, etc;

– As there are reserves regarding the quality of web pages of the public authorities (PA), it is necessary to update the data, particularly data on budget planning and execution, sectoral expenditure strategies, and reports on public procurements carried out. It is also useful to unify the interface of webpages in order to facilitate the navigation of users;

– It is necessary to develop a law on web pages of public authorities on the internet, which would include mandatory requirements for the web pages of all public authorities (PA), including those of autonomous authorities, NBM, ANRE; NCPF, Parliament, President's Office;

– It is necessary to develop an Autonomous Information System for e-declarations of property and personal interests with modules which would allow automatically searching for data and generating different reports for external users (NGOs and mass media);

– It is important to develop and launch an electronic recording system for construction permits, the procedure for their execution, as well as the procedure for real estate fund administration in order to allow the representatives

of public authorities and of the civil society to undertake quick interventions in case of un-authorized constructions, infringement of technical requirements included in the permits, non-fulfilment of construction deadlines, and in other cases;

– In the context of increasing transparency in public procurements, it is appropriate to apply the provisions of procurement laws in state and municipal enterprises, and these should carry out procurements via m-Tender electronic system;

– It necessary to insure transparency of the information on investigations and eventual recovery of stolen funds;

– Since there is no column/chapter designed for Open Government on the webpage of the State Chancellery/e-Government Agency, it would be appropriate to create such column and store on it information about the adopted action plans and self-evaluation reports on their implementation, reports prepared under the Independent it is necessary to re-establish the network of persons responsible for e-government, insure training and exchange of experience in this area;

– To generate demand for open data, it is appropriate to continuously raise awareness of the population, NGOs, and mass media about the opportunities for using open data and electronic services, particularly on TV, radio, and social media.

Abstract

The purpose of this document is to analyze the drafting and implementation of the OGP Action Plan (OGAP) for 2016-2018, identify key challenges in fulfilling the commitments and formulate proposals for improving the situation in the given area.

This document has been developed on basis of information available in public space, and namely: the Self-Assessment Report on the OGAP Implementation in 2017, prepared by the State Chancellery[2], Independent Reporting Mechanism (IRM): Moldova Progress Report for 2014, and 2017)[3], NGO's Monitoring Reports on the Implementation of Public Policies (public procurements, transparency in the decision making process, access to information, etc.), as well as based on the analysis of information available on the web pages of central public authorities and governmental information portals. The opinions of some experts in the area, OG Steering Committee members, as well as the statements and appeals of the civil society with regard to non-observance by public authorities of the legislation on access to information, requirements for transparency in the decision making process, etc., have been taken into consideration. The OGAP reference period analyzed: year 2017.

1. Main Commitments of the Open Government Action Plan 2016-2018

Following the accession of the Republic of Moldova to the *Partnership for Open Government*, the government authorities developed three OGAP and initiated their implementation, as well as established a mechanism/platform for dialogue between the authorities and civil society.

- *The first OGAP* (2012-2013) included 3 objectives: strengthening public integrity and increasing transparency in the governance process; insuring efficient management of public resources; and improving the quality of public services. The Plan contained 10 commitments (with 49 sub-actions). The State Chancellery and the Central Public Administration (CPA) authorities were designated as responsible institutions for the respective Plan. Pursuant to Government Resolution by which the OGAP was approved[4], the State Chancellery and CPA authorities were put in charge of the Plan implementation. E-Transformation units were established within the CPA and persons responsible for the implementation designated, as well as regular reporting on the OGAP implementation introduced. For the purpose of monitoring the Plan implementation, the Government recommended the National Participatory Council (NPC)[5] to establish a thematic working group – Open Government.

- *The second OGAP* was a component part of the Action Plan for the Implementation of the Strategic Program for Technological Modernization of Government for 2014 (E-Transformation)[6]. The OGP Component referred to the objective *Strengthening Public Integrity and Improving Transparency in the Decision Making Process,* and included 4 commitments (with 13 sub-actions). The monitoring and coordination of of implementation of actions included in the Plan were put in charge of the State Chancellery.

- *The third OGAP* (2016-2018)[7] focuses on 3 objectives: Insuring Efficient Management of Public Funds by Increasing the Transparency of Public Expenditures; Strengthening Public Integrity by Insuring a Participatory Decision Making Process, and Increasing Transparency in the Governance Process; and

---

[2] Government of the Republic of Moldova, Self-assessment Report on the implementation of the Action Plan for an Open Government for 2017, https://www.opengovpartnership.org/sites/default/files/Moldova_Mid-Term-Self-Assessment_2016-2018_EN.pdf

[3] Moldova: Special Accountability Report Action Plan 2014,
https://www.opengovpartnership.org/sites/default/files/Moldova%20Special%20Accountability%20Report%20English.pdf,
Independent Reporting Mechanism (IRM): Moldova Progress Report 2016–2017 (Version for Public Comment)
http://ogp.civicomment.org/node/61/download

[4] Government Decision (GD) 195/2012 on the approval of the Action Plan for an Open Government for 2012-2013,
http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=342679

[5] The NPC was created on the initiative of the Government (GD 11/2010) as an advisory body to facilitate stakeholder participation in the process of development, implementation, monitoring, evaluation and updating of strategic planning documents. CNP includes 30 representatives of civil society. The working groups of the NPC are listed on http://www.cnp.md/

[6] GD 1096/2013 on the Approval of the Action Plan for 2014 for the Implementation of the Strategic Technology Modernization of Government (e-Transformation), http://lex.justice.md/md/351125/

[7] GD 1432/ 2016 on the Approval of the Action Plan for an Open Government for 2016-2018,
http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=368355

Improving the Quality of Public Services. The OGAP implementation is the responsibility of ministries, other central administrative authorities (CPAs), and autonomous public institutions. These authorities are to report on the level of the Plan implementation to the State Chancellery on a quarterly basis. In its turn, the State Chancellery shall insure the monitoring of activities and submit annual reports on the Plan implementation. The Plan includes 6 commitments (with 36 sub-actions):

- increasing transparency in public procurement;
- insuring budget transparency;
- insuring transparency of the public administration authorities and access to public information;
- insuring a participatory process for persons in the drafting and promotion of draft regulatory acts and policy documents;
- insuring transparency of data on the performance of public authorities, improving the efficiency of monitoring process, and increasing responsibility in the public sector;
- insuring quality public services through re-engineering of services and improvement of the service provision process.

Compared to OGAP 2014, the current Plan (2016-2018) is a complex one, including a bigger number of actions. It is a separate document, and not a component of the Government E-Transformation Program. A big part of the commitments included in this Plan are found in other public policy documents as well, including in the Strategy for Public Administration Reform for 2016-20120[8], Action Plan for the Modernization of Public Services[9], Public Procurement System Development Strategy for 2016-2020, and Action Plan for its implementation[10], etc. On the background of some obvious overlapping, and of the lack of correlation between certain documents/actions, the latter decrease the added value and innovatory character of the OGAP 2016-2018.

Concerning the matching of OGAP commitments with SMART requirements, the OGAP 2016-2017 Progress Report developed under the Independent Reporting Mechanism[11], reveals the following:

- *specificity:* the biggest part of commitments assumed are assessed as having a medium degree of specificity, with only 10% of them having a high degree of specificity;
- *relevance of Open Government principles*: practically all the commitments are in line with the „transparency and access to information" and technologies and innovation for transparency" principles. A small number of commitments are in line with the „civic participation" principle, none of them is in line with the „responsibility" principle;
- *possible impact*: over half of the commitments would have a minor impact, while the rest – a moderate impact;
- *possibility of timely implementation*: since the plan was approved at the end of 2016, its implementation commencing only in 2017, there are grounded risks that part of the commitments assumed could not be fulfilled within the set timeframes. This particularly refers to activities related to legal framework improvement.

It is difficult to assess this plan as an ambitious one, although some sub-actions could be be considered as such. Among the latter are the development and launching of a Score Card (which would allow monitoring and evaluation by the Government, citizens, and donors of the progress in carrying out reforms in different areas, of PA performance, and of the fulfilment level of assumed commitments)[12]; promotion E-legislation software

---

[8] GD 911/2016 for the Approval of the Public Administration Reform Strategy for 2016-2020, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366209
[9] GD 966/2016 for the Approval of the Action Plan for the Modernization of Public Service Reform for the years 2017-2021, http://lex.justice.md/md/366273/
[10] GD 1332/2016 on the Approval of the Public Procurement Development Strategy for 2016-2020 and the Action Plan on its Implementation, http://lex.justice.md/md/368482/
[11] Independent Reporting Mechanism (IRM): Moldova Progress Report 2016–2017 (Version for Public Comment) http://ogp.civicomment.org/node/61/download
[12] The Scorecard has been developed with the support of the World Bank and the Good Governance Fund of Great Britain. Its purpose is to monitor and evaluate governance reforms in selected areas and to communicate results to the general public in an accessible and transparent manner.

(should insure transparency in the process of drafting regulatory acts, containing all the versions of draft acts at different stages of drafting related materials (reviews/endorsements, expertises, etc.); launching and application of the M-Tender software (should insure transparency at all stages of public procurement).

However, it is important not only to include ambitious actions in a plan, but rather implement them. For instance, the Score Card tool was to be launched in the 1st quarter of 2018, but the process has not been finalized yet. Moreover, in the opinion of some experts[13], the Government would not wish to institutionalize and launch this tool in a broad format (for both the authorities, and the citizens and donors), but rather internally, without making it public.

In this context, we should remark that some ambitious activities provided for in the previous plans were not implemented either, particularly the on-line petitioning portal[14] which was to provide a possibility for sending petitions in electronic form and viewing their route, stage of examination process, officials responsible for examining the petitions, their settlement, etc. Another tool – Database of public expenditures (BOOST), which was to be updated annually[15], remained non-updated (the database is not posted on the www.data.gov.md portal[16], while the last information posted on the webpage of the Ministry of Finance dates back to 2015[17]). Thus, such important tools were either not developed or updated, remaining useless for eventual beneficiaries.

2. The Process of Drafting the Action Plan for an Open Government 2016-2018

The draft OGAP for 2016-2018 was developed by Government, in collaboration with the civil society, within January-March 2016. Before initiating the drafting process, the Government established a Working Group for Open Government.[18] According to the *Self-assessment Report on the Implementation of the Action Plan for Open Government for 2017*[19], the Working Group was managed by the E-Government Centre[20] and Open Government Institute[21], joining 20 representatives from CPAs and LPAs, civil society, independent experts, and diaspora representatives.

During the Plan drafting, several workshops were organized, including by sectors (healthcare, education, and youth), and a list of commitments was formulated in the following areas: open data, public procurement and open contracts, intelligent transport, e-Petitions, and open local government. The list of proposed commitments was consulted through social media, while the draft OGAC 2016-2018 was published on the government platform for draft regulatory acts particip.gov.md[22] for consultations.

The forwarded proposals were adjusted by the Government as a result of internal proofing process of public authorities. According to Independent Reporting Mechanism (IRM): Moldova Progress Report 2016-2017[23], although different government institutions were responsible for implementing the Plan, only 3 out of 16 entities responsible for the Plan implementation were consulted, and the State Chancellery, E-Government Centre, and Ministry of Finance were the only institutions that had formulated commitments.

It is worth mentioning that the summary tables that would reflect the proposals provided by the stakeholders could not be found in the public space, therefore it is difficult to assess the extent to which the Government took a stand to respective proposals. The certain fact is that some suggestions, particularly regarding the e-Petitions,

---

[13] Interview with a representative of the Open Government Coordination Committee on behalf of civil society.

[14] Launch of the on-line portal www.petiţii.gov.md provided by Action 2.1 of the of the Action Plan for an Open Government for 2012-2013.

[15] Annual update of the BOOST foreseen in Action 8.3 of the Action Plan for an Open Government for 2012-2013,

[16] http://data.gov.md/ckan/ru/dataset/15421-baza-de-date-a-cheltuielilor-publice-boost,

[17] http://mf.gov.md/ro/content/analiza-cheltuielilor-2011-2015

[18] http://egov.md/ro/communication/news/apel-deschis-devino-parte-grupului-de-lucru-privind-guvernarea-deschisa

[19] Government of the Republic of Moldova, Self-assessment Report on the implementation of the Action Plan for an Open Government for 2017, https://www.opengovpartnership.org/sites/default/files/Moldova_Mid-Term-Self-Assessment_2016-2018_EN.pdf

[20] The E-Government Centre is an institution subordinated to the State Chancellery, created to improve governance through the use of information technologies, based on GG 392/2010 http://lex.justice.md/index.php?action=view&view=doc&lang= 1 & id = 334627. In 2018, after the consolidation of data centres and rationalization of state information system management, the entity was renamed in the "Electronic Governance Agency".

[21] The Open Government Institute is a non-profit organization established in 2002 to promote open governance, transparency and social responsibility, citizens' involvement and participatory democracy (http://opengov.si.md).

[22] http://particip.gov.md/proiectview.php?l=ro&idd=3309

[23] Independent Reporting Mechanism (IRM): Moldova Progress Report 2016–2017 (Version for Public Comment) http://ogp.civicomment.org/node/61/download

Open Local Government, and intelligent transport had not been included in the final version of the approved Plan. In this sense, we need to remember that the Government did not take into consideration a considerable part of proposals when drafting the OGAP 2014 as well, reasoning by the fact that some actions had been provided in other public policy documents and were in process of implementation, by insufficient staff, etc.[24] The drafting process lasted a very long time, almost half a year, and the Plan was approved with delay, at the end of 2016.

Thus, even if the Government informed the public about the drafting of OGAP 2016-2018, and organized discussions over the draft Plan, the public having the possibility to contribute to its drafting, there are concerns that the Government has filtered the proposals provided by the civil society, excluding the inconvenient commitments.

3. Establishing a Permanent Dialogue Mechanism

To observe the Open Government Partnership requirements, a permanent dialog mechanism/platform was established in 2018 to insure the dialogue between the authorities and the civil society. Thus, a Coordinating Committee for Open Government was created through State Chancellery order, with the goal to coordinate the OGAP drafting, and implementation monitoring process.

The Committee is comprised of eight (8) members, including four (4) representatives of public authorities/institutions, and four (4) civil society representatives. The Committee members on behalf of the civil society were selected through a competition initiated by posting an announcement on the State Chancellery's webpage.[25]

The Coordinating Committee has a number of duties, including:
- drafting proposals and recommendations on the implementation of Open Government principles;
- coordinating the development of OGAP, and organizing a transparent and participatory process;
- monitoring the OGAP implementation, and formulating recommendations for solving the identified problems.

The Committee is managed jointly by the Deputy General Secretary of Government and a civil society representative elected as co-chairperson, and holds meetings no less than once in a quarter (3 months). If needed, the Committee may involve specialists from CPA, civil society, and academia. The Secretariat is insured by a State Chancellery unit responsible for Open Government.

Although starting 2012 three OGAPs have been developed and a mechanism for the implementation and coordination of this process has been created, with the civil society being a party to it, so far, there is no column/chapter designed for Open Government on the webpage of the State Chancellery/E-Government Agency, where the information about approved action plans and self-assessment reports on their implementation, reports developed under the Independent Reporting Mechanism, minutes of the Committee meetings, and others. Currently, only one report is posted on the State Chancellery's webpage, and namely the Self-Evaluation Report on the Implementation of the Open Government Action Plan for 2017 (28.04.2018)[26], as well as the announcement of the open competition for the membership of the Coordinating Committee for Open Government.[27] Just to remark that the Order on Establishing the Coordinating Committee for Open Government and the minutes of the first meeting of the latter are posted on the webpage of the NGO "Open Government Institute".[28]

---

[24] Moldova: Special Accountability Report Action Plan 2014,
https://www.opengovpartnership.org/sites/default/files/Moldova%20Special%20Accountability%20Report%20English.pdf
[25] https://cancelaria.gov.md/ro/content/devino-membru-al-comitetului-de-coordonare-pentru-o-guvernare-deschisa
[26] https://cancelaria.gov.md/sites/default/files/document/attachments/raport_autoev_guv_deschisa_2017.pdf
[27] https://cancelaria.gov.md/ro/content/devino-membru-al-comitetului-de-coordonare-pentru-o-guvernare-deschisa
[28] http://opengov.si.md/about-us/permanent-dialogue-mechanism-on-open-gov/minutes-of-the-meetings/

4. Conclusions on the Implementation of the Open Government Action Plan in 2017

According to the Self-Evaluation Report on OGAP for 2017 developed by Government[29], 24 out of the total 36 sub-actions were monitored in 2017. Of these, 15 actions (42%) were evaluated as carried out, and 21 sub-actions (58%) – in process of implementation. At the same time, the Progress Report on OGAP 2016-2017, developed under the Independent Reporting Mechanism[30] highlighted that the completion status of commitments is limited, with only circa one third (1/3) of the commitments being evaluated as carried out on time. Such a state of things can be explained by both the delayed approval of the OGAP 2016-2018 (only at the end of 2016) and commencement of its implementation at the beginning of 2017, and by the consequences of CPA reform – weakening the capacity of the State Chancellery in coordinating the implementation of different action plans, as a result of improving the structure and staff limit of the State Chancellery and of the ministries, as well as a result of the eventual loss of institutional memory.

Given the fact that a number of sub-actions and result indicators in the Plan are unclear, it is difficult to check their accomplishment. For example, the wording of sub-action „Migration of a bigger volume of public data from the private area of e-Procurement system to the public area" does not make it clear which data is to be made transparent. It is difficult to check the accomplishment of the progress indicator, respectively. Similarly to the above, the wording of another sub-action, and namely the „correlation of information in the planning and implementation stages with the information on the other stages of the procurement process" and the progress indicators are practically identical, it is unclear which information exactly will need to be correlated.

Basically, the OGAP Self-Assessment Report has a laudatory purport; it does not indicate any eventual problems/challenges faced during the implementation. Nevertheless, a brief analysis reveals the following problems:

- Although some actions for improving the databases/information portals are qualified as carried out, the authorities do not insure the updating of information and the use of these tools seems to be doubtful. The situation of Open Contracting Portal is relevant in this context, as referred to by the State Chancellery it its self-evaluation report, as follows „in the Open Contracting project, a big volume of public data from the private area of e-Procurement system was migrated to public area. … The Open Contracting Portal can be accessed at http://opencontracting.date.gov.md/?lang=md". The verification of information on this portal, carried out in September 2018 showed that the last data updating was done on 26.06.2017, with no explanations of the reason for the lack of subsequent updating of the latter (in connection with the eventual pilot launching of the M-Tender system) found. Such situations also used to emerge during the implementation of the previous OGAP: the BOOST database on public expenditure, the annual updating of which was expected back in 2012, remained non-updated in 2015. This reduces the usefulness of such tools, and, as a result, the funds, including those provided by development partners are insufficiently used, and even wasted, which fact would have a negative impact on the long-term implementation of the OGAP objectives.

- Although certain progress can be stated in insuring the transparency of public procurement, including as a result of enforcing the Law on Public Procurement, a number of state enterprises and joint stock companies with state shareholding do not fall within the scope of the law, and there are major risks of non-compliant and abusive use of public funds. Moreover, via one amendment to the Law on Public Procurement, the Agency for Public Services (public institution) was exempted for 10 months from the obligation to observe the above-mentioned Law in case of procurement of goods, services, and works for the creation of multi-functional centres in localities (it is planned to create 38 such centres). Investigative journalists wrote about multiple eventual irregularities, including about the fact that the buildings of these centres are rented/purchased at great expense from persons who are close to the ruling party, being further repaired with the APS resources, public money being thus spent inefficiently/wasted.[31]

- There are deficiencies in insuring transparency in the budget process, both at the level of executive authorities, and legislative authorities of central and local level. The development of budget documents, their

---

[29] https://cancelaria.gov.md/sites/default/files/document/attachments/raport_autoev_guv_deschisa_2017.pdf
[30] https://cancelaria.gov.md/sites/default/files/document/attachments/raport_autoev_guv_deschisa_2017.pdf
[31] https://unimedia.info/stiri/mold-street-cine-a-construit-si-cat-a-costat-primul-centru-multifunctional-al-agentiei-servicii-publice-144819.html, http://agora.md/stiri/42298/oficiul-registru-din-criuleni-ocupa-o-cladire-a-companiei-conduse-de-fiii-lui-filip-si-reparata-din-haznaua-statului

promotion in the executive and legislative bodies, discussions, debates, and approval have become classified procedures, while the decisions approved more oftentimes do not reflect the public interest, being rather to the detriment of the latter. Although techniques and tools are used to subsequently present the approved budget, like "budget for citizens", it happens frequently for the draft budgets not to be published for public debates, as required by the legislation.

- The content of CPA web pages leaves much to be desired: civil society representatives repeatedly criticized the quality of the latter, highlighting that they are not sufficiently updated, do not contain a range of mandatory information, such as information about: anticorruption activities; planned and executed budgets; plans and results of public procurements; results of inspections carried out at respective authorities.[32] A recent analysis carried out by TI-Moldova[33] shows that all the ministries posted their annual procurement plans, notices of intent (some entities published singular notices of intent), and the majority posted their reports on procurement results (except for - MoEI, MoARDE, MoJ[34]) on the webpage. However, the situation is worse as concerns the transparency of budgets: only half of the ministries published their draft budgets for 2018 (data is missing on the web pages of MoESC, MoIA, MoHLSP, MoFAEI, MoARDE) and 1/3 of them published data on budget execution (data is missing on the web pages of the MoESC, MoIA[35], MoHLSP, MoFAEI[36], MoD, and MoARDE). The situation concerning the publication of Sectoral Expenditure Strategies and of reports on their implementation on the web pages also leaves much to be desired: such information was not found on the web pages of the MoIA, MoHLSP, MoD, and MoARDE.

- There is no unique approach to webpage interfaces; the searching of information is difficult. Moreover, there is no law that would establish requirements for the web pages of autonomous central public authorities, such as the National Bank of Moldova, Court of Accounts, National Regulatory Agency in the Energy Sector, National Commission for Financial Markets, Competition Council, etc.

On the background of the implementation of part of the commitments provided for in the OGAP for 2016-2018, *one can see a dramatic worsening of the situation regarding access to information.* While monitoring the public policy documents, NGOs report/send signals on multiple cases when the state authorities violate the right of access to public information[37]. According to journalist, every second request for information is neglected by civil servants; moist oftentimes the authorities refuse to provide information about public finance management, public procurements, donors of political parties, and involvement of dignitaries in corruption schemes. The most frequent arguments invoked by the authorities when refusing to provide information of public interest are protection of personal data, state secret, and trade secret.[38] Mass media and civil society representatives have forwarded a number of declarations/appeals by which they tried to draw the attention of authorities and development partners on the restriction of access to information.[39]

---

[32] Institute for Urban Development and Transparency International - Moldova: Monitoring the Implementation of the Public Administration Reform and Resource Distribution, 2018, http://www.transparency.md/wp-content/uploads/2018/07/STUDIU-FINAL-2018_07_17.pdf; AGER, Report on Monitoring Public Procurement, nr.2, 2018, http://ager.md/sites/default/files/RAPORT%20monitorizare%20%28AGER%29%202.pdf

[33] In October 2018, the websites of ministries (Ministry of Economy and Infrastructure (MoEI) http://www.mei.gov.md, Ministry of Finance (MoF) http://mf.gov.md, Ministry of Justice (MoJ) http://www.justice.gov.md/, Ministry of Education, Culture and Research (MoECC), http://mecc.gov.md, Ministry of Internal Affairs (MoIA) http://www.mai.gov.md , Ministry of Health, Labor and Social Protection (MoSMPS) http://www.msmps.gov.md/, Ministry of Agriculture, Regional Development and Environment (MADRM) http://www.madrm.gov.md) in the presence and updating data on public procurement, budgets, sectoral spending strategies.

[34] On the MoJ web page, the latest data on completed procurement contracts dates to 2013.

[35] The latest data on MoIA budget execution is for 2016.

[36] The latest data on MoFAEI budget execution are for.

[37] IDU and TI-Moldova: Monitoring the Implementation of the Public Administration Reform and Resource Distribution http://www.transparency.md/wp-content/uploads/2018/07/STUDIU-FINAL-2018_07_17.pdf, AGER, Report on Monitoring Public Procurement, nr.4, 2017, http://ager.md/sites/default/files/Raportul%20de%20Monitorizare%20Nr%204.pdf, Transparency International-Moldova: Monitoring the transparency of state companies and joint-stock companies with state capital http://www.transparency.md/2017/05/05/monitoring-the-transparency-of-state-companies-and-joint-stock-companies-with-state-capital/, Center for Policies and Reforms: "How the State Restricts the Access to Information of Public Interest to the Press" https://cpr.md/2018/06/29/cum-statul-ingradeste-presei-accesul-la-informatia-de-interes-public/

[38] Center for Journalistic Investigations: What Information Does the Authorities Keep in Secret, http://www.investigatii.md/ro/investigatii/integritate/ce-informatii-tin-in-secret-autoritatile

[39] https://crjm.org/societatea-civila-ingrijorata-de-ingradirea-accesului-la-datele-cu-caracter-personal/, http://www.bizlaw.md/2017/02/13/datele-cu-caracter-personal-intre-protectia-demnitarilor-si-limitarea-accesului-la-informatie/,

An extremely alarming situation is registered in insuring transparency in the decision making process: an important part of the draft regulatory acts with major impact on public interest were not subject to public consultations and debates, being adopted in an alert regime by the governors. In particular, the following draft laws are worth highlighting:

- Law on Voluntary Declaration and Fiscal Stimulation ("liberalization of capital"), adopted in 2018 in the second attempt, after the first one in 2016 was blocked upon insistence of NGOs and development partners, including international financial institutions. The Law pose an imminent threat to transform the Republic of Moldova into a regional laundry for money of dubious origin;

- „Law on Citizenship against Investments", adopted at the end of 2016, which provides for a system similar to *Golden Visa.* The main concern is that this initiative emerged simultaneously with the one on capital liberalization in conditions when some investigations were being carried out over the laundering of over 22 billion USD and over the fraud in the banking system.[40] Moreover, the list of beneficiaries of such visas will not be made public, which fact feeds the fears that the citizenship could be provided to some persons possessing funds of dubious origin, resulting from money laundering and tax evasion;

- „Law on Small Tax Reform", adopted in 2018, which will relocate the tax burden from persons with high income to those with small income.

Civil society representatives came up with a number of declarations and appeals, in which they condemn the violation by those in Government of the requirements for transparency in the decision making and approval of laws prejudicing the public interest, creating opportunities for the legalization of fraudulently obtained assets, including through money laundering, and tax evasion.[41]

Even though a number of important anticorruption laws were adopted in 2016-2017, their application is delayed. The operation of the National Integrity Authority has not been insured, the implementation of the policy on verification of property and personal interest being compromised; the Agency for Recovery of Criminal Assets is non-operational for the time being. On the background of the theft in the banking system of the Republic of Moldova of approximately one (1) billion US dollars (circa 13% of the GDP) and of laundering over 22 billion US dollars via the judiciary system, the attempts of governors to legalize assets of fraudulent origin and release themselves from criminal liability for offenses committed in the banking system, insurance system, and capital market. The state authorities did not take any real actions to call the persons involved in the theft of the billion USD in the banking system and officials who allowed the fraud to liability; they carried out court proceedings of resonance behind closed doors; they persecuted civic activists, whistleblowers, attorneys, and judges.

The information of major public interest concerning the recovery of funds stolen in the banking system is frequently provided by responsible institutions in incomplete form and manipulative manner. This refers to the so-called "meter" for recovering the socked away assets, posted on the webpage of the Ministry of Finance[42]. Based on available public information, TI-Moldova has carried out an analysis which shows that the authorities actually misinform the society; that the recovery of funds stolen in the banking system does not take place, while the institution empowered with recovery functions (ARBI) does not even have the necessary tools for that, which fact has been confirmed by the NAC itself.[43] And the Strategy for Recovering the Stolen Assets presented by state institutions seems to be mainly a manipulation rather than a credible roadmap which would insure the recovery of funds to offset the domestic debt of the state.[44]

---

http://www.zdg.md/stiri/stiri-justitie/limitarea-accesului-la-dosare-o-solutie-preliminara-ce-argumente-are-ministerul-justitiei-si-centrul-pentru-protectia-datelor-cu-caracter-personal, http://agora.md/stiri/28128/reprezentantii-mass-media-si-societatea-civila-solicita-asigurarea-accesului-la-informatiile-de-interes-public

[40] http://www.transparency.md/wp-content/uploads/2018/04/Observator_8F.pdf

[41] https://www.transparency.md/2016/12/12/the-adoption-of-the-law-on-the-liberalization-of-capital-and-financial-incentive-undermines-anti-corruption-efforts-and-discourages-honest-taxpayers-and-state-servants/, https://watchdog.md/2018/10/04/appeal-of-the-moldovan-platform-of-the-eap-csf-to-the-ninth-eastern-partnership-meeting-of-foreign-ministers/, https://www.expert-grup.org/en/biblioteca/item/1641-reforma-fiscala-o-incercare-de-camuflare-a-amnistiei-capitalului-dubios?&category=184, http://www.transparency.md/2018/07/26/appeal-on-legislative-initiatives-to-the-detriment-of-the-public-interest/, http://www.transparency.md/2018/09/04/public-policy-observer-nr-12/, https://crjm.org/en-tax-reform-an-attempt-to-disguise-the-amnesty-of-dubious-capital,

[42] http://mf.gov.md/ro

[43] http://www.transparency.md/2018/01/31/observatorul-de-politici-publice-nr-3/

[44] http://www.transparency.md/2018/06/27/observatorul-de-politici-publice-nr-10/

The above-state practices speak about corruption at the highest level, including political corruption, which has led to capturing of the state.[45] In such conditions, the implementation of veritable reforms, including in the area of open governance, encounters serious obstacles.

Recommendations

The OGAP implementation is inconceivable without a veritable implementation of the legislation on access to information, transparency in the decision making process, as well as without increasing the responsibility of decision makers who fail to insure the observance of the legislation. The achievement of these desiderata could contribute to increasing the public participation in the decision making processes, including in those concerning Open Governance.

It is important to insure the alignment of commitments which will be included in the OGAP to SMART criteria, specifying proposed objectives which are relevant to Open Government principles, measurable in terms of quantity and quality, accessible in terms of available capacity and resources, and time-bound. It is also necessary to insure transparency in the OGAP drafting process, particularly in the drafting of summary tables which include the proposals coming from stakeholders and reasons for non-accepting such proposals.

As part of the OGAP commitments might be found in other public policy documents as well, including in those concerning public administration reform and modernization of public services, it would be necessary to correlate/synchronize these commitments, including in terms of time. At the same time, roadmaps/"plans for the plan" should be developed in public institutions responsible for the OGAP implementation, so as to more easily identify actions, resources, and persons responsible for the timely fulfilment of assumed commitments.

To improve communication between authorities in the context of OGAP implementation and strengthen the capacities of public authorities in e-government, it is necessary to re-establish the network of persons responsible for e-government, insure training and exchange of experience in this area.

Given the fact that at part of the previous OGAP commitments were not fulfilled, it is necessary to take an „inventory" of the latter and include the relevant ones in the future OGAP. This refers in particular to the development and promotion of e-Petitioning information system that should provide the possibility for sending electronic petitions, viewing the examination process, officials responsible for examining the petitions, their settlement, etc. This system should also allow generating different types of centralized reports in the CPA/LPA profile (types of petitions received/examined, categories of petitioners, timeframe for examining petitions, cases of referring petitions to criminal investigation bodies, settling method, sanctions applied, etc.). In this context, a set of performance indicators should be developed for assessing the performance of the petitioning system, and periodical surveys should be carried out among the petitioners regarding the quality and efficiency of the petitioning system.

As there are reserves regarding the quality of web pages of the public authorities (PA), it is necessary to update the data, particularly data on budget planning and execution, sectoral expenditure strategies, and reports on public procurements carried out. It is also useful to unify the interface of web pages in order to facilitate the navigation of users. In the same context, it is necessary to develop a law on web pages of public authorities on the internet, which would include mandatory requirements for the web pages of all public authorities (PA), including those of autonomous authorities, NBM, ANRE; NCPF, Parliament, President's Office, etc.

As one of the Open Government objectives relates to preventing corruption, it is necessary to develop an Autonomous Information System for e-declarations of property and personal interests with modules which would allow automatically searching for data and generating different reports for external users (NGOs and mass media). It is also important to develop and launch an electronic recording system for construction permits, the procedure for their execution, as well as the procedure for real estate fund administration in order to allow the representatives of public authorities and of the civil society to undertake quick interventions in case of un-authorized constructions, infringement of technical requirements included in the permits, non-fulfilment of construction deadlines, and in other cases.

---

[45] http://www.transparency.md/2017/06/16/state-capture-the-case-of-the-republic-of-moldova/

In the context of increasing transparency in public procurements, it is appropriate to apply the provisions of procurement laws in state and municipal enterprises, and these should carry out procurements via m-Tender electronic system.

Given the gravity and burden of the "theft of one billion" in the banking system, we consider it necessary to insure transparency of the information on investigations and eventual recovery of stolen funds, (number of investigations, current status of case files, enforcement of final judgements, and value of assets to be recovered based on court judgements).

Since there is no column/chapter designed for Open Government on the webpage of the State Chancellery/e-Government Agency, it would be appropriate to create such column and store on it information about the adopted action plans and self-evaluation reports on their implementation, reports prepared under the Independent Reporting Mechanism, alternative reports of the civil society, membership of the Coordinating Committee, and minutes of its meetings, etc.

To generate demand for *open data*, it is appropriate to continuously raise awareness of the population, NGOs, and mass media about the opportunities for using open data and electronic services, particularly on TV, radio, and social media.

References

Government of the Republic of Moldova, Self-assessment Report on the implementation of the Action Plan for an Open Government for 2017, https://www.opengovpartnership.org/sites/default/files/Moldova_Mid-Term-Self-Assessment_2016-2018_EN.pdf

Moldova: Special Accountability Report Action Plan 2014, https://www.opengovpartnership.org/sites/default/files/Moldova%20Special%20Accountability%20Report%20English.pdf

Independent Reporting Mechanism (IRM): Moldova Progress Report 2016–2017 (Version for Public Comment), http://ogp.civicomment.org/node/61/download

Law 131/2015 on public procurement, http://lex.justice.md/md/360122/

Government Decision (GD) 195/2012 on the approval of the Action Plan for an Open Government for 2012-2013, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=342679

GD 11/2010 on the Creation of the National Council for Participation, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=333477)

GD 1096/2013 on the Approval of the Action Plan for 2014 for the Implementation of the Strategic Technology Modernization of Government (e-Transformation), http://lex.justice.md/md/351125/

GD 1432/ 2016 on the Approval of the Action Plan for an Open Government for 2016-2018, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=368355

GD 911/2016 for the Approval of the Public Administration Reform Strategy for 2016-2020, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366209

GD 966/2016 for the Approval of the Action Plan for the Modernization of Public Service Reform for the years 2017-2021, http://lex.justice.md/md/366273/

GD 1332/2016 on the Approval of the Public Procurement Development Strategy for 2016-2020 and the Action Plan on its Implementation, http://lex.justice.md/md/368482/

TI-Moldova, ADEPT, CRJM, IDIS Viitorul – State Capture: the Case of the Republic of Moldova, http://www.transparency.md/2017/06/16/state-capture-the-case-of-the-republic-of-moldova/

Institute for Urban Development and Transparency International - Moldova: Monitoring the Implementation of the Public Administration Reform and Resource Distribution, https://www.transparency.md/2018/07/18/press-release-monitoring-the-implementation-of-the-public-administration-reform-and-resource-distribution/

Transparency International-Moldova: Monitoring the Transparency of State Companies and Joint-Stock Companies with State Capital http://www.transparency.md/2017/05/05/monitoring-the-transparency-of-state-companies-and-joint-stock-companies-with-state-capital/

IDIS Viitorul, Report on Monitoring Public Procurement: Identified Gaps and Policy Recommendations, 2016, http://www.viitorul.org/files/5323294_md_raport_achizit.pdf

AGER, Report on Monitoring Public Procurement, nr.4, 2017, http://ager.md/sites/default/files/Raportul%20de%20Monitorizare%20Nr%204.pdf,

AGER, Report on Monitoring Public Procurement, nr.2, 2018, http://ager.md/sites/default/files/RAPORT%20monitorizare%20%28AGER%29%202.pdf

Transparency International – Moldova, Public Policy Observer No.3, 2018, http://www.transparency.md/wp-content/uploads/2018/01/Observator_3.pdf

Transparency International – Moldova, Public Policy Observer No. 8, 2018, http://www.transparency.md/wp-content/uploads/2018/04/Observator_8F.pdf

Transparency International – Moldova, Public Policy Observer No.10, 2018, http://www.transparency.md/wp-content/uploads/2018/06/Observator-Nr.10-ENG.pdf

Transparency International – Moldova, Public Policy Observer No.12, 2018, http://www.transparency.md/2018/09/04/public-policy-observer-nr-12/

Centre for Policies and Reforms: "How the State Restricts the Access to Information of Public Interest to the Press", https://cpr.md/2018/06/29/cum-statul-ingradeste-presei-accesul-la-informatia-de-interes-public/

Appeal of the Moldovan Platform of the EaP: The Adoption of The Law on the Liberalization of Capital and Financial Incentive Undermines Anti-Corruption Efforts and Discourages Honest Taxpayers and State Servants, https://www.transparency.md/2016/12/12/the-adoption-of-the-law-on-the-liberalization-of-capital-and-financial-incentive-undermines-anti-corruption-efforts-and-discourages-honest-taxpayers-and-state-servants

Appeal of the Moldovan Platform of the EaP: CSF to the Ninth Eastern Partnership Meeting of Foreign Ministers, http://www.transparency.md/2018/10/04/appeal-of-the-moldovan-platform-of-the-eap-csf-to-the-ninth-eastern-partnership-meeting-of-foreign-ministers/

Tax reform - an Attempt to Disguise the Amnesty of Dubious Capital? https://www.expert-grup.org/en/biblioteca/item/1641-reforma-fiscala-o-incercare-de-camuflare-a-amnistiei-capitalului-dubios?&category=184

APPEAL on Legislative Initiatives to the Detriment of the Public Interest, http://www.transparency.md/2018/07/26/appeal-on-legislative-initiatives-to-the-detriment-of-the-public-interest/

Civil Society Alarmed by the Restriction of Access to Personal Data, https://crjm.org/societatea-civila-ingrijorata-de-ingradirea-accesului-la-datele-cu-caracter-personal/

Media and Civil Society Representatives are Calling for Access to Public Information, http://agora.md/stiri/28128/reprezentantii-mass-media-si-societatea-civila-solicita-asigurarea-accesului-la-informatiile-de-interes-public

Centre for Journalistic Investigations: What Information Does the Authorities Keep in Secret, http://www.investigatii.md/ro/investigatii/integritate/ce-informatii-tin-in-secret-autoritatile

Mold-street: Who Built and How Much Did the First Multifunctional Centre of the Public Services Agency, https://unimedia.info/stiri/mold-street-cine-a-construit-si-cat-a-costat-primul-centru-multifunctional-al-agentiei-servicii-publice-144819.html,

Criuleni Registry Office Occupies a Building of the Company Headed by Philip's Sons and Repaired from Public Money, http://agora.md/stiri/42298/oficiul-registru-din-criuleni-ocupa-o-cladire-a-companiei-conduse-de-fiii-lui-filip-si-reparata-din-haznaua-statului

Ziarul de Gardă, Restricting Access to Dossiers, a "Preliminary Solution"? What Are the Arguments of the Ministry of Justice and the Centre for Personal Data Protection, http://www.zdg.md/stiri/stiri-justitie/limitarea-accesului-la-dosare-o-solutie-preliminara-ce-argumente-are-ministerul-justitiei-si-centrul-pentru-protectia-datelor-cu-caracter-personal