

Open governance in the Republic of Moldova: what issues remain on the agenda?

Executive Summary

On May 20, 2021, Transparency International - Moldova presented the report *Open Governance in the Republic of Moldova: issues remaining on the agenda*. The study was made within the project "Strengthening the state of democracy and rule of law: the contribution of civil society", supported by the Embassy of the Kingdom of the Netherlands. The purpose of the paper is to analyze how the Action Plan for Open Governance for 2019-2020 was developed and implemented, identify potential problems and come up with recommendations, including for the next action plan.

The document was prepared based on the information available in the public space: self-assessment and monitoring reports on the implementation of the Action Plan for Open Governance (PAGD) for 2019-2020 prepared by the State Chancellery (SC) ¹, the report on the elaboration of PAGD 2019-2020 within the Independent Reporting Mechanism of the Open Governance Partnership (OGP) ², action plans of some OGP member countries. Also, the studies of the NGOs relevant to the field, the statements and appeals of the media and the NGOs regarding the non-compliance by the authorities with the legislation on access to information, decision-making transparency, etc. were taken into account.

The Republic of Moldova joined the OGP in 2012, so far four action plans have been developed and implemented. According to the SC reports, the level of implementation of the plans was quite modest, among the causes of non-implementation being invoked: insufficient financial means, in this case, for the creation of information systems and modernization of public services, limited staff capacity, insufficient involvement of relevant institutions in the implementation of these action plans.

In the process of drafting the PAGD 2019-2020, there are a number of positive moments, in particular the attraction of civil society in this process, the consideration of an important part of the proposals made and the publication of the summary of recommendations. The transparency of the activity of the OGP Steering Committee, composed of representatives of public authorities and civil society is also appreciated. However, as before, within the process of the elaboration of PAGD 2019-2020, *some actions were taken over from other public policy documents*: Public Administration Reform Strategy for 2016-2020, Action Plan on Public Service Modernization Reform for 2017- 2021 etc., which reduced the innovative character and added value of the plan. Moreover, *the non-correlation in time of the deadlines for similar actions in different policy documents has generated confusion in the implementation and reporting of actions* by the responsible entities.

It should also be noted that *a number of actions included in the plan were not specific to the area of open governance* (eg, ensuring the implementation and monitoring of recommendations in the Chamber of Auditors' audit reports) *or repeating the tasks / functions of the authorities* (eg publication by the MoF of the results of the financial monitoring, modernization of the ASP call center). *Some result indicators are unclear, being difficult to verify their achievement*.

¹ https://cancelaria.gov.md/sites/default/files/raport_autoevaluare_hg_1172_pa_2019-2020.pdf,
https://cancelaria.gov.md/sites/default/files/raport_privind_implementarea_hg_1172_anul_2019.pdf,
https://cancelaria.gov.md/sites/default/files/raport_monitorizare_hg_1172_anul_2020.pdf

² https://www.opengovpartnership.org/wp-content/uploads/2020/07/Moldova_Design_Report_2019-2020_RO.pdf

The self-assessment report on the implementation of the PAGD for 2019-2020 reveals that most progress has been made in *ensuring access to information and promoting the use of open data*. For example, the level of implementation of the sub-action related to the publication on the official pages of the CPAA of data on budget planning and execution, public procurement was considered substantial, among the arguments being the regular publication of mandatory information on the web pages of the authorities and the existence internal regulations on the publication and updating of data on web pages. However, the situation in this regard is not satisfactory, the results of the monitoring by TI-Moldova of the public policy *Ensuring access to information through web pages* in 12 CPAs attest that only ½ of the monitored entities had such a regulation; some of the mandatory data are missing or insufficient (reports on the results of public procurement; execution of budgets; results of audits and controls; programs and projects benefiting from the authority; reports on the implementation of the National Strategy for Integrity and Anti-corruption (SNIA)).

In another sub-action, with more substantial progress - ensuring the publication of the results of public consultations on the decision-making process in the online environment, the SC mentioned the placement by the CPA of the results of public consultations on their web pages. The SC also reported that it oversees the way in which the authorities ensure decision-making transparency. However, the results of public policy monitoring *Decision-making transparency in 12 CPAs*³ show that there are problems in this regard as well. Although all monitored entities have managed to create sections dedicated to decision-making on web pages, they need to be further developed. Few entities have annual draft decision programs, one problem is the unavailability of public consultation results (including minutes of public consultative meetings, summary of recommendations), all entities are blamed for non-compliance with deadlines for publishing reports on decision-making transparency.

As the placement by the Authority of LPAs (ALPA) of about 425 thousand administrative acts in the State Register of Local Acts (RSAL) is welcome (sub-action *Monitoring the placement by the ALPA of administrative acts in the RSAL*), it is worth noting the problem of abusive secrecy by LPA representatives of public information in the normative acts published in the RSAL (eg, the names of the promoted / awarded civil servants / public agents, the value of their remuneration, including bonuses, allowances, etc.).

The sub-action on increasing the transparency of the activity of economic entities with state capital by publishing the results of financial monitoring is also considered to be carried out. Given the authorities' intention to increase the transparency of state-owned enterprises, it is understandable that the publication of such reports alone is insufficient to overcome the existing problems in this regard. The results of the monitoring by TI-Moldova of about 40 state-run enterprises, attest that some of them ignore the legal requirements on access to information, usually secreting the value of remuneration of directors and members of management bodies (Board of Directors, Commission of auditors), information on conflicts of interest, procurement, results of controls and audits. Although the legislation establishes requirements for placing information about the activity of enterprises on their web pages, only in rare cases the web pages contain consistent information (statute, internal regulations, annual report, audit report, procurement).

Against the background of implementing part of the commitments / actions undertaken in PAGD 2019-2020, major problems persist in the basic areas / pillars of open governance: ensuring access to public information, involving citizens in decision-making, promoting the prevention and fight against corruption.

Thus, public authorities continue to restrict access to public information. One of the causes is the imperfect and outdated legal framework, the representatives of the media and NGOs proposing, on a number of occasions, the

³ Ibidem.

revision of the Law on access to information⁴. Also, NGOs reported on multiple cases when public entities ignored the provisions of this law, refusing to provide public information under the pretext of personal data protection, state secrecy and trade⁵.

The situation in terms of decision-making transparency is alarming, some of the draft normative acts with major impact on the public interest have not been consulted and debated with the public, they have not passed the anti-corruption expertise of CNA, being adopted under alert by the rulers. Of particular note are: the Budget Law for 2021, the modification of the activity framework of ANI; repeal of the "Billion Law"; amendment of the Law on the public pension system, etc. Representatives of civil society condemned the deterioration of the quality of the governing act, drawing attention to the fact that the laws in question compromise the fight against corruption, undermine the public budget, endanger relations with development partners and risk destabilizing the country's macro-financial situation⁶.

The situation in the fight against corruption has not improved. Although the country emerged from the shackles of a captured state, the new rulers took over some criminal schemes, and the Parliament brutally violated the rigors of decision-making transparency, adopting laws contrary to the public interest, with the intention of impeding ANI activity, taking control of SIS and trying to restore the duty-free shops. Only about half of the actions of the Action Plan for the implementation of the National Strategy for Integrity and Anticorruption have been fully implemented, but what is not completed does not bring results. State authorities have not taken any real steps to prosecute those involved in stealing the billion from the banking system and officials who have admitted fraud.

The situation in the fight against corruption has not improved. Although the country emerged from the shackles of a captured state, the new rulers took over some criminal schemes, and the Parliament brutally violated the rigors of decision-making transparency, adopting laws contrary to the public interest, with the intention of impeding ANI activity, taking control of SIS and trying to restore facilities for the duty-free shops. Only about half of the actions of the Action Plan for the implementation of the National Strategy for Integrity and Anticorruption have been fully implemented, but what is not completed does not bring results. State authorities have not taken any real steps to prosecute those involved in stealing the billion from the banking system and officials who have admitted fraud.

Recommendations:

- Inclusion in the PAGD of actions specific to the proposed objectives, relevant to the principles of open, measurable and achievable Government. Both activities and progress indicators need to be made explicit;
- Avoiding the direct taking over in PAGD of the actions from related public policy documents, as well as of the activities that repeat / double the attributions of the public authorities;
- Restoring the network of people responsible for e-Government, training and sharing their experience;

⁴ <http://api.md/news/view/ro-un-proiect-de-lege-pentru-imbunatatirea-accesului-la-informatiile-de-interes-public-a-fost-prezentat-si-consultat-online-2221?v=1617515367>, http://api.md/upload/video_sf/Descifrare_propuneri_consultari-online_29.05.2020_mp.pdf, <https://cpr.md/2019/11/26/de-ce-si-cum-trebuie-modificata-legea-accesului-la-informatii/?fbclid=IwARIDpiCAfDiXIKrVVuL85Mze2wtHTLbZBH1e6VJZc6wHtAFc0ku09qYM>

⁵ http://www.transparency.md/wp-content/uploads/2021/01/Transparency_International_Moldova_Raport_monitorizare_transparenta_IS_SA_2020.pdf, <https://cpr.md/2021/04/28/cum-autoritatile-utilizeaza-starea-de-urgenta-pentru-a-ingradi-accesul-la-informatie-si-dreptul-la-petitionare/>, <https://cpr.md/2020/07/29/parlamentul-refuza-sa-apere-dreptul-la-informatie-2/>

⁶ <https://www.eap-csf.md/declaratia-publica-a-platemei-nationale-privind-degradarea-procesului-legislativ-si-actului-de-guvernare-in-republica-moldova/>, <https://www.eap-csf.md/declaratie-publica-pe-marginea-derapajelor-de-la-procesul-democratic-din-3-decembrie-2020-comise-de-catre-noua-majoritate-parlamentara-psrm-partidul-sor-si-grupul-pentru-moldova/>

- Revising the legal framework related to access to information, in particular, the Law on access to information and the Government Decision on the content of the official pages of public authorities in Internet;
- Ensuring the access of NGOs and the media to the digitized database of declarations of assets and personal interests (SIA e-Declarations), with options for automatic data sorting and processing.
- Inventory of previously unimplemented actions, with the possible inclusion of the current ones in the future PAGD, eg: ensuring access to data on the performance of public authorities (in this case, anti-corruption authorities), elaboration and promotion of SIA e-Petitions.
- Ensuring that the CPA complies with the requirements regarding the content of the web pages, in particular the elaborating/updating the internal regulations regarding the placement of the information on the web pages; inserting mandatory information on web pages; ensuring the visibility of the sections intended for the submission of petitions and the reception of citizens in the audience.
- Developing of compartments dedicated to the decisional transparency with the information prescribed by law, on the web pages of the authorities, in this case the publication of the drafts of normative acts and the results of public consultations (minutes of public meetings, synthesis of recommendations);
- Elaborating and timely publishing the reports on the transparency of the decision-making process;
- Preventing the secrecy of public information in normative acts issued by LPAs, including by training local elected officials and LPA employees on issues related to access to information and decision-making transparency, supervising by the territorial offices of the State Chancellery of eventual deviations;
- Ensuring compliance by state-run enterprises with information disclosure requirements: developing of enterprises' web pages, including a visible section Disclosure of information; transparency of the activity of the Boards of Directors; the placement by the founders, on their web pages, of the obligatory information regarding the activity of the managed enterprises;
- Increasing the transparency of information on expenses incurred and purchases made by medical institutions;
- Ensuring access to data from the State Register of Resources and Information Systems;
- Extending the access of the population, especially vulnerable groups, to on-line legal assistance: assessment of the needs for legal advice to the population; increasing the offer of legal assistance for the population, including the expansion of the network of paralegals, developing partnerships with NGOs that provide legal assistance;
- Development of the e-learning Platform for pupils and students, conducting surveys on the expectations of beneficiaries, enrolling lessons of well-known teachers and ensuring access to them for beneficiaries;
- Modernization of public services, including facilitating the access of people with disabilities to such services; introduction of an online educational course for young people on the subject of electronic services; continuous literacy of the population, especially in the territory;
- The inclusion in the PAGD of new commitments, relevant to the field, for example, the extension of the open Government at local level.

This document was developed in the project "Strengthening the state of democracy and rule of law: the contribution of civil society" implemented by Transparency International - Moldova and financially supported by the Embassy of the Kingdom of the Netherlands. The opinions expressed belong to the authors and do not necessarily reflect the position of the funders.