



Centre for the Analysis and Prevention of Corruption

# STUDY

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THE „Declaration of assets and income of state  
dignitaries, judges, prosecutors, public servants  
and persons holding managerial positions: challenges  
and solutions for Moldova”

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# Acronyms

<b>POB</b>	Public Opinion Barometer, developed by the Institute for Public Policy
<b>CCC</b>	Central Commission for Controlling Declarations of Income and Assets
<b>CCECC</b>	Centre for Combating Economic Crimes and Corruption
<b>DCC</b>	Departmental Commission/Commissions for Controlling Declarations of Income and Assets
<b>CE</b>	Council of Europe
<b>SCM</b>	Superior Council of Magistracy
<b>GRECO</b>	Group of States against Corruption of the Council of Europe
<b>GD</b>	Government Decision
<b>PD</b>	Parliament Decision
<b>WGI</b>	World Bank Worldwide Governance Indicators
<b>CPI</b>	Corruption Perceptions Index calculated by Transparency International
<b>Law no.1264/2002</b>	Law no.1264-XV as of 19.07.2002 on the Declaration and Control of Income and Assets of State Officials, Judges, Prosecutors, Public Servants and some Persons Holding Management Positions
<b>Law no.1576/2002</b>	Law no.1576-XV as of 20.12.2002 on the Approval of Regulations on the Organisation and Functioning of Central Commission for Controlling Declarations of Income and Assets and the Regulations on Organisation and Functioning of Departmental Commissions for Controlling Declarations of Income and Assets
<b>Law no.16/2008</b>	Law no. 16-XVI as of 15.02.2008 on the Conflict of Interest

**MoI**

Ministry of Interior

**UN**

United Nations

**RM-EU Action Plan**

Republic of Moldova – European Union Action Plan, approved through Government Decision No. 356 of 22.04.2005

**RM**

Republic of Moldova

**EU**

European Union

# Executive summary

## ***Origin of the problem***

The declaration and control of the officials' source of income and assets was an issue of concern since the beginning of the transition period and setting up of the Republic of Moldova as an independent state. Regulatory and administrative interventions in the mid '90s were ambiguous or formal, hardly applicable in practice, leading to the deterioration of situation, while the set legal impediments were insufficient to limit the unjustified enrichment and to ensure an administrative or public control in the area. Special laws passed in 2002 could neither ensure the checking of the lawfulness of the public officials' sources of income and assets the public officials, nor contribute to the development of a system of external control in this area. The society reaction was in accordance with the efforts made, from indifference to indignation, which ultimately led to the growth of public distrust in authorities and anti-corruption efforts undertaken by them.

## ***Law no.1264/2002***

The provisions of the Law on the declaration and control of income and assets of state officials, judges, prosecutors, public servants and some persons holding management positions can not be interpreted and applied consistently because of their shortcomings , while the amendments made in due course have caused even more troubles than increased effectiveness of the enacted regulations. There are obvious inconsistencies between the provisions of the Law no.1264/2002 and the declaration form attached therein, situation generating diversified practices of interpretation of income and assets to be declared, hindering the qualitative performance of the *preliminary and de facto control* of declarations, failing to ensure the needed transparency and making difficult the public (civic) control in the area.

## ***Declarations control and liability***

The Control Commissions play a key role in the proper operation of the mechanism of income and assets declaration. The imperfection of legislation and institutional deficiencies during the *preliminary control* of declarations (formal control) further

reflects on the *de facto* control, which is why the role of the law enforcement agency in charge is, practically, imperceptible. The *Central Control Commission* acts in a formal manner, lacks initiative in holding liable the persons failing to meet their legal duty of submitting declarations or submitting them with obvious flaws, therefore the Central Control Commission is rather simulating the control activity than really exercising it. The *Departmental Control Commissions* carry out a less formal and hidden activity, but they also are not able to operate entirely efficient because of certain regulatory and institutional shortcomings. The *judicial control* cannot prevent and educate because the liability for breaching the law is established in quite discreet and vague. Even if criminal and administrative sanctions could be applied for some insignificant offences, these sanctions are not applied due to the legislation drawbacks, lack of initiative on the behalf of the control commissions and passiveness of the law enforcement agency in charge of investigating such cases.

#### ***Ensuring transparency and authorities' receptivity***

The existing legal provisions do not ensure a sufficient level of transparency of declarations of income and assets, which significantly hinders the external control in the area. The reticence towards the calls of mass media and civil society organizations reduces the general probity of administration, stimulates mistrust in the sincerity of efforts and doesn't contribute to streamlining the activity of corruption prevention.

#### ***International assessment of situation***

According to independent international and national assessments, the implementation of special and secondary legislation did not have a visible impact on the level of corruption perceptions, while the mechanisms for control of declarations of income and assets are evaluated as insufficient and the authorities are recommended to continue their efforts to improve the situation. Unless and until the results of the anti-corruption efforts are highlighted clearly and in prospect, the fulfilment of commitments undertaken towards the most important international institutions will maintain their general assessment as insufficient.

#### ***Efficient alternative models***

In the new EU member states legal regulations are rigid, in terms of declaration of income and assets, their control, as well as the liability for offences, including liability for omissions. In order to meet the community requirements in the area, the Republic of Moldova will be forced to accept the introduction of more efficient and strict regulations. Romania and Latvia and partially the legislation of Hungary can serve as reference models.

### ***Lessons to learn***

As a result of researches made on the occasion of developing this study, the authors considered as necessary to formulate some “lessons to learn” to the authorities:

- lack of reaction, avoidance to approach and cooperate worsens the problem and reduces the probity of administration;
- regulations and their application need preliminary and continuous analysis, while regulatory and institutional interventions must be complex and complete;
- so far, real political and administrative will to settle the issues on the declarations of income and assets of officials hadn't been showed; nor it was enough will to prevent and fight corruption;
- the same mistakes as in the case of declarations of income and assets are made also in the regulation of the conflict of interest, that will lead to minor, imperceptible results.

### ***Final findings***

Nowadays, there are enough arguments to proceed to an essential review of the situation in the area of declaring and control of the income and assets of public servants, taking into account that several opportunities and possible ways to follow are available for the improvement of situation, which don't imply large administrative, financial and human resources. During this process the authorities will have the opportunity to benefit from international assistance, support of active national organizations and unbiased mass media monitoring. But what remains essential is the real will to change the situation in order to meet international standards, efficient practices and current social requirements.



# Introduction

Transparency is acknowledged as a defining principle of good governance, covering the activity of public authorities, but also of employed officials, who, in exchange for the status given by their office undertake certain additional obligations and even limitations of some rights. A key instrument in maintaining the integrity of public servants is that all persons holding official positions and exercising influence shall be bound to fill in forms about their income, assets and liabilities on a regular basis. Due to the fact that the corruption phenomenon is primarily related to the public sector and the activity of public servants, the governmental approaches and policies on the transparency of assets and income gained by these servants can be critically important for the population's perception of the integrity of officials in public service, simultaneously with the assessment of seriousness and effectiveness of fighting corruption. These assumptions are confirmed by the international experience in the area, the attention paid by mass media and society to this issue and the results of sociological researches.<sup>1</sup>

In the Republic of Moldova the issue of declaration and control of the sources of public servants' income and assets was given certain consideration, formal and insufficient however, allowing for the situation to worsen. Since the declaration of assets and income wasn't required at the moment of servant's appointment into the office and the lawfulness of the source of his/her assets till the moment of appointment doesn't need to be proved, these assets can be further declared as being already subject to "legalization", avoiding thus liability. Moreover, the possibly guilty officials are provided with enough time and opportunities to conduct various transactions with the owned properties, so that the fraudulent character of these properties' obtaining is very hard, if not impossible to prove. To an official, magistrate or public servant the accumulation of assets above the wage possibilities means lack of social sympathetic feelings and failure to understand the day-to-date reality, while the concern for material values determines a certain absence from the assigned du-

<sup>1</sup>For example, a survey conducted in 2004 by Transparency International – Moldova (TI-Moldova), Journalistic Investigations Center and the Association of Independent Press (API) shows that at the question "What kind of information would you be interested in to find out from public authorities?", over 95% of the interviewed people had answered that they would like to know about: *the state officials' assets, the public servants' assets declarations* (Survey "Monitoring of the access to information in the Republic of Moldova"). Another survey, carried out by the TI-Moldova, shows that over 50% of respondents understand the checking of declarations of public servants' income as "*a way to reduce corruption*" (Perceptions and experiences of the household representatives and businessmen regarding corruption in the Republic of Moldova, [www.transparency.md](http://www.transparency.md)).

ties<sup>2</sup>. In other words, instead of devoting themselves to the activities they gave an oath for, the official devotes himself/herself to the personal reality and his/her own material standing.

Despite the improvement of the legislation in the area and existence of some mechanisms for the checking of declarations, the formalism of approaches hasn't changed, so many deficiencies remaining that we could compare the existence of regulations with their complete inexistence. Taking an attitude by the nongovernmental organizations<sup>3</sup>, efforts made by mass media<sup>4</sup> and the awareness raising campaigns for public servants<sup>5</sup> didn't result in the authorities' mobilization and undertaking of moral responsibility by the public servants in question, as well as didn't lead to a campaign of checking and prosecution of profiteers in public service. However, these actions did have a social impact, raised the public awareness and, we assume, these actions drew the attention of international institutions monitoring the implementation of reforms in the Republic of Moldova. Thus, the GRECO Evaluation Report on Moldova concluded that "the existing system of asset declarations is ineffective" and recommended to set up an efficient system for monitoring public official declarations of assets.<sup>6</sup>

Under the pressure of internal and external factors, the Moldovan authorities were obliged to take steps in order to improve the legal and institutional frameworks, as well as the mechanisms concerning the declarations of income and assets of public servants, but, in spite of the fact that high-ranking officials took attitude<sup>7</sup>, these efforts didn't have any obvious impact. The isolated attempts of the Central Commission for Controlling Declarations of Income and Assets to make public some information regarding the high officials' assets perturbed the public opinion and provoked reactions of bewilderment and discontentment among simple citizens, who immediately realized that this information didn't comply with the reality.<sup>8</sup> In response to all the critics and observations the authorities claimed the imperfection of legislation and lack of mechanisms for efficient implementation, while the mobilization and demonstration of political will to impose appropriate solutions linger to appear.

<sup>2</sup> See also the „Anti-Crime Laws, commented and annotated” publication, Didactic and Pedagogical Publishing House, Bucuresti, 2003

<sup>3</sup> Imperfection of the legislation and mechanisms in the area are viewed as obstacles in the progress of indicators of corruption prevention and combating, which affects the implementation of Moldova's engagements towards EU (see in this respect the “Euromonitor” Reports, developed by ADEPT and Expert-Group, <http://www.e-democracy.md/rm-ue/>).

<sup>4</sup> Researches conducted by the Journalistic Investigations Center, [www.investigatii.md](http://www.investigatii.md).

<sup>5</sup> The campaign “Avere la vedere” (Display your income) started by API, [www.api.md](http://www.api.md).

<sup>6</sup> The Evaluation Report on Moldova, II evaluation round, adopted by GRECO at the 30<sup>th</sup> plenary meeting (Strasbourg, 9-13 October 2006), paragraph 64, page 20.

<sup>7</sup> For example, the President of the Republic of Moldova has repeatedly stated on the inefficiency of the current mechanism of submission and checking of the declarations of income and assets, but further actions weren't undertaken. At the same time, it is known that when the head of state wants real results to be obtained, he uses to order the “control” of the most important issues and to require their precise execution.

<sup>8</sup> The information made public varied as essence and contents, the most of real estate being estimated at low prices, which are stipulated in cadastre or being generally “inestimable”(non-estimated).

Under the circumstances described above, the idea and initiative to conduct a comprehensive research in the area fell in the charge of the nongovernmental sector, through the organizations that continue to exercise the role of "watchdog" of the society.

The *goals* of this paper set from the very beginning were:

- analysis of the institution of declaring the assets and income of state officials, of the existing regulatory acts and the practice of their application;
- investigation of the situation and similar regulations of other countries with a higher degree of democracy and rule of law values;
- identification of legal, institutional, material and other impediments in the way of ensuring the transparency of declarations and their checking;
- developing solutions and recommendations to improve the legislation and its application mechanisms .

The fulfilment of set tasks appears to be the significant contribution towards the attainment of some major and special *objectives*:

- reduce the corruption level within administration and judiciary, increase the society's confidence in these priority areas;
- ensure the permanent public control over the integrity of public administration and officials in part;
- ensure efficient measures to prevent and combat the illicit enrichment;
- increase transparency, ensure the free access to public information;
- create mechanisms for periodical analysis and reduction of corruption risk factors in the administration;
- anti-corruption education.

Methodological approaches used by authors were traditional though extended, departing from collecting general information in the area to the conduct of detailed investigations and questionnaire on the specific aspects of applying the legal regulations. Therefore, the methods used were:

- Analysis of legislation;
- Verification of the existence and application of institutional mechanisms;
- Analysis of international standards in the area and of other states' good practices;
- Research and analysis of mass media publications, sociologic surveys and other relevant researches;
- Analysis of the contents of available declarations;
- Questioning of institutions vested with gathering and control functions;
- Requesting information from authorities.

*The results of investigations and researches allow to ascertain the fact that there are enough arguments to proceed to an essential review of the situation in the area of declaring and control of the income and assets of public servants, while various op-*

*portunities and ways to follow are available for the betterment of situation, most of them with little administrative, financial and human resources. In this case, the key factor is the real will to change the situation, in order to meet international standards, efficient practices and last but not least the social requirements, defined and exteriorized long ago.*

## CHAPTER I

# Current situation in the Republic of Moldova

The first chapter of the study is dedicated to the legislative and normative regulations underlying the political will in approaching the mechanisms for preventing and fighting corruption (*section 1*). This chapter also analyzes: deficiencies in practical application of the declaration form (*section 2*); activity of bodies charged with functions of control and sanctioning (*section 3*); transparency and receptivity of authorities (*section 4*). *Section 5* includes summary analyses of the assessments made by international bodies and non-governmental organizations referring to the situation in the Republic of Moldova.

## SECTION 1. LEGISLATION VERSUS POLITICAL WILL

*In section 1, reviews the regulatory interventions (subsection 1.1), the key policy documents (subsection 1.2), as well as the main shortcomings of the Law no.1264/2002 (subsection 1.3).*

### 1.1. Retrospective and summary analysis of the regulations in the area

Although the declaration and control of income and assets are gaining more attention lately due to the involvement of mass media and civil society, this issue isn't absolutely new, even for the Republic of Moldova. A retrospective of the social-normative interventions and events related to this issue allows us to highlight the following.

The **Presidential Decree no. 104 of 30.04.92 on Measures to Fight Corruption within State Authorities and State Administration** stipulated the mandatory submission of declaration on the family material standing for people in position of authority within state authorities and state administration purchasing state assets in private ownership through privatization. Also, in case of appointment into a man-

agement position within state authorities and state administration, the submission of the declaration on income, movable goods and real estate, bank accounts and securities, as well as financial liabilities was established as mandatory, while the failure to submit this information or deliberate submission of incomplete, inaccurate or misleading information could serve as a ground to refuse the appointment into office. According to the Decree, the Ministry of Economy and Finance should establish within a month the manner of submission of declarations for persons holding managerial positions within state authorities and state administration, as well as the manner of transmitting to the State Fund the gifts received by state officials from organizations and citizens of other states in relation to the performance of their duties<sup>9</sup>.

On 23 November 1995 the **Law no.663-XIII on the Declaration of Income by Natural Persons** was adopted, according to which the natural persons conducting transactions exceeding 2,000 minimum wages (MDL 36 thousand - about USD 8 thousand) or building constructions the value of which exceed 3,000 minimum wages (MDL 54 thousand - about USD 12 thousand) shall be subject to the declaration of income<sup>10</sup>. The law obliges the subjects to indicate in the declaration filed to the tax authority: - the global income (monetary or in-kind); - the expenses incurred to obtain this income; - the amount of the tax withheld to the source that paid, documentary confirmed, as well as the net income. Also, the stipulation on the origin of means spent in the transaction or for building the construction was mandatory. The declaration form was to be established by the Ministry of Finance<sup>11</sup>, while the control of information contained was put in charge of the tax authority. The law didn't provide for clear legal liability for the violation of its provisions, but contained a rule according to which the means used in the transaction or spent for the building construction, unconfirmed documentary in the declaration of the origin of income, were to be taxed at a level of 20% of their total amount.

On 2 November 1995 the **Law on Public Service** (no.443 of 04.05.1995) entered into force, the article 12 of which stipulated that when appointed in public service and thereafter every year the official shall file, as prescribed by the laws in force, a declaration on assets, real estate and movables, bank deposits and securities, financial liabilities, including abroad. The declaration had to cover the assets of his/her family members as well. Refusal to submit the declaration or the submission of inaccurate data had to have as a result the denial of appointment into public office or removal from office. The declaration form wasn't attached to the law, while the submission process itself failed to start, the legal norm remaining unapplied, even though through the Parliament Decision No.780-XVI as of 14.03.96 the Government was obliged to ensure the precise execution of the provisions of the Law on Public

<sup>9</sup>Information on practical implementation of the provisions of the Decree no.104 as of 30.04.92 and their effectiveness couldn't be found out.

<sup>10</sup>The Law was annulled through the Law on Practical Implementation of the Titles I and II of the Tax Code (no.1164 as of 24.04.1997).

<sup>11</sup>Through the Decision of the Ministry of Finance no. 203 as of 20.05.1996 the Guidelines on the way to submit declarations, registration, record keeping and issue of the appropriate certificates in accordance with the Law on the Declaration of Income by Natural Persons was approved, which included also the form of these declarations.

Service referring to the assets declaration and through the Government Decision no. 199 of 02.04.96, the Human Resources Policy Division under the Government had to ensure the submission by all public servants throughout the republic, as prescribed by the Law on Public Service, of the declarations "on the income, movables and real estate, bank deposits and securities, financial liabilities, including abroad, the assets of family members".

On 22 August 1996 **the Law no.900-XIII on Fighting Corruption and Protectionism** entered into force and Article 10 of this law stipulates that when appointed into office and every year thereafter the person should submit a declaration on the income, movables and real estate, bank deposits and securities, and the financial liabilities, including from abroad. Refusal to submit the declaration or the submission of inaccurate data had to have as a result the denial of appointment into public office or removal from office. The same article provided for that declarations of income of the highest officials, as well as other decision-makers, whose appointment and election was regulated by Constitution, were to be published annually in the official issues of public authorities. Neither this law contained a declaration form, nor mechanisms of control over the information contained in it. The reasons for the failure to implement the law weren't officially stated, the Parliament didn't initiate the control of its implementation and the Government didn't show any initiative in this respect.

On 19 March 1997 the **Presidential Decree no.94-II on Some Measures for Budget Revenue Collection** was issued, which aimed at ensuring the precise execution of legislation on the budget revenue collection, at increasing the efficiency of activities of bodies charged with the revenue collection, at raising citizens' respect towards the conscious and benevolent fulfilment of duties to State and bringing to responsibility all the people systematically breaching the tax legislation<sup>12</sup>. According to the Decree, the Ministry of Finance (with the support of the Central Bureau for Technical Inventory of Patrimony of the Republic of Moldova, the Ministry of Home Affairs, the Ministry of National Security, the Ministry of Justice, local public administration) were supposed to: - carry out a complex control over the execution by natural persons of the Law on the Declaration of Income by Natural Persons; - check the accuracy of data on the income obtained or the real value of real estate subject to taxation and on the taxes paid, submitted by the natural persons; - ensure a strict control over the observance of the provisions of the Law on Fighting Corruption and Protectionism. The Prosecutor's Office was recommended, in compliance with the Law on the Prosecutor's Office and the Law on Fighting Corruption and Protectionism, to intensify the supervision over the precise and uniform execution of legislative acts and to collaborate with the State Tax Service and the offices of technical inventory in order to reveal and examine operatively and objectively the cases of violation of legislative acts. No ample campaign was made for the execution of this Decree, the measures undertaken being formal, insignificant and very soon abandoned.

.....  
<sup>12</sup> There is also no concluding information about the effectiveness of measures established in the Decree, the situation in the area remaining practically the same.

**The Fiscal Code**, put into effect in 1997, establishes the obligation of annual declaration by natural persons only of income, depending on the source of this income, its amount and other criteria specific to tax legislation. The Code doesn't contain a declaration form, this being approved by the tax authorities. The assets declaration, provided for in the Fiscal Code, cannot be qualified as a declaration of all interests (income, properties, stocks, incompatibilities), although it substituted regulations in this area (the Law on the Declaration of Income by Natural Persons).

**The Electoral Code**, as passed through the Law no.796-XV dated 25.01.2002 stipulates in Article 44 that the candidates, in order to be registered with the Central Electoral Commission and district electoral councils, shall submit a declaration stating their real estate, bank accounts, securities, inheritance and income over the two years preceding the election year, and the sources of that income, including income derived from investment funds and lease of property. Initially, the Electoral Code didn't contain specific provisions on the declaration form and only through the Law no.248-XVI dated 21.07.2006 the Central Electoral Commission (CEC) was vested with the authority to establish the declaration form of candidates' income and assets. For the 2009 parliamentary elections this form was approved through the CEC Decision no. 2029 dated 20 January 2009, but this document had several gaps:

- in case of people who didn't have the obligation to declare the income and assets annually, issues related to the record keeping and possession of information (not all the persons have such record keeping and they are not obliged to do it) emerge;
- the "other sources" column gives the opportunity to avoid the declaration of certain income, but also the declaration of this income without proving its real source, allowing interpretations (for example, referral to amounts received from relatives abroad, loans from natural persons);
- the obligation to indicate the goods of the declarant's children under the age of 18 and dependants isn't stipulated;
- the goods aren't indicated separately: candidate, spouse, child/dependant;
- an exhaustive list of movable goods that shall be declared isn't proposed and a minimal value of movable goods isn't indicated, while the name of the "other goods" column allows leaves ground for interpretations;
- details on real estate and movable goods that shall be declared weren't included (estimated value; the car's type and year of manufacturing);
- the indication of nominal value of securities and information on quotas (shares, movable values, social quotas) in the capital of economic units, of any type of organization isn't required;

In this context, we should also note that the checking procedures and the possible sanctions aren't clearly set by the Electoral Code and that these omissions can lead to excessive interpretations and vitiated practices.

On 19 July 2002 the Parliament has passed the **Law no.1264-XV as of 19.07.2002 on the Declaration and Control of Income and Assets of State Dignitaries, Judges, Prosecutors, Public Servants and Persons Holding Managerial Positions**.

Starting with 30 January 2003 the officials concerned shall submit declarations, but in this case as well, despite the fact that this is a new law, the implementation history proved lack of political will, of appropriate administrative and institutional capacities, that has directly affected the effectiveness of the law, that failed to provide the expected impact, of prevention and combating of corruption (*see in this respect the subsection 1.3*). The implementation of the law had several stages:

- only in late December 2002 did the Parliament pass the Law no.1576-XV Approving the Regulations on the Organization and Functioning of Central Commission for Controlling Declarations of Income and Assets and the Regulation on the Organization and Functioning of Departmental Commissions for Controlling Declarations of Income and Assets. According to this law, the 9 members of the Central Control Commission are appointed on a parity basis by the Parliament (without establishing the obligation to appoint a representative of the opposition), the President of the country and the Government. The Commission members activate on a volunteer basis, but they are members of Parliament, public officials, Government members, i.e. subjects for declaration submission, the same declarations they have subsequently the obligation to check (*see in this respect section 3.1, subsection 3.1.1*);
- at the beginning of 2003, a month after the date the declarations must have been submitted, the Parliament passed the Law no.85-XV as of 28.02.2003 through which amended retroactively the enforcement term of the Law no.1264/2002, providing for that the officials' first declarations would have to be submitted by 01.07.2003;
- through the Law no.136-XV dated 06.05.2004, the Law no.1264/2002 was modified and completed again, this time in order to establish that: - its goal is to fight and prevent the illicit enrichment of officials; - the compulsoriness to submit declarations of income and assets of officials' family members is excluded (remains only the compulsoriness to indicate the income and assets of spouse, children and dependants). Also, the amendments refer to the fact that only movable goods exceeding MDL 50,000 must be declared;
- the amending law also changed the Criminal Code (Article 330<sup>1</sup>) and the Code of Administrative Offences (Articles 174<sup>24</sup> and 174<sup>25</sup>), establishing the liability for breaching the rules in declaring the income and property (imposing a fine from MDL 3,600 to MDL 20,000) two years later than the framework law was adopted;
- in the framework laws, regulating the status of the subjects bound to file declarations of income and assets, the appropriate amendments and completions were introduced only on 6 May 2004, through the Law no.136-XV.

The **Law no.90/2008 on Preventing and Fighting Corruption** provides that the system of supervising the assets must ensure the declaration of income and property by "all natural and legal persons", as well as the "application of norms on the declaration, control of income and property of public servants"<sup>13</sup>.

.....  
<sup>13</sup> Article 11

Article 17 of this law stipulates as well that the violation of its provisions “*shall bring about civil, disciplinary, administrative liability, as appropriate, in accordance with the legislation in force, including for the ... violation by public servants of the legal provisions referring to the declaration of income and assets*”.

At the end of 2008 the **Law no.271-XVI on Checking Public Servants and Candidates to Public Offices** was passed and in its annex (questionnaire) there is a chapter dedicated to financial information to be submitted by the candidate to the public office/public servant covered by this law for checking: - the income obtained together with the spouse during the last year; - real estate exceeding MDL 50,000 and all type of real estate obtained together with the spouse; - financial liabilities (without indicating the spouse's too); - the share of securities in the capital of economic units registered in the Republic of Moldova and in other countries (the fact if the spouse's too isn't clearly stated); - direct or indirect participation in the administration or management of a company (entreprise, institution); - bank accounts abroad.

## **1.2. Declared will versus real political and administrative will**

The issue of declaring and control of the officials' assets and properties<sup>14</sup> had been reflected periodically in a range of strategic documents, public policy documents designed to outline the authorities' will in this area and to set priorities for certain periods of time.

- a) The **Government Decision no. 524/2002 Approving the Preliminary Strategy for Poverty Reduction** stipulated in point 31 within “Anti-corruption Strategy” that “the transparency of public servants' income, property and expenditures are important elements of the anti-corruption campaign”, and the first step of this attempt was “the development by the Government and approval by the Parliament of the Law on the Declaration of Income and Assets of Officials”<sup>15</sup>.
- b) The **State Program to Fight Crime and Corruption for 2003-2005**<sup>16</sup> established the need to develop amendments to Criminal Code and Code of Administrative Offences with a view to “make the public servants accountable for the refusal to declare income or for the false declaration of income”.
- c) The **Economic Growth and Poverty Reduction Strategy (2004-2006)**<sup>17</sup> established as the main goal of the National Strategy for Preventing and Fighting Corruption “the declaration of income by public servants and their efficient monitoring”.

<sup>14</sup>Because legislation uses several categories of declarants: state officials, public servants, people in leading position, judges and prosecutors, within this study these people will be simply called “officials”, but the terms of “servants”, “magistrates”, “subjects of declaration”, etc. will be also used.

<sup>15</sup>This law failed to establish appropriate transparency mechanisms, its provisions in this respect being confuse, paradoxical and even dubious (see also section 4.1).

<sup>16</sup>GD no. 1693/27.12.2002.

<sup>17</sup>Law no.398/2004.

- d) The **Action Plan for the implementation of the National Strategy for Preventing and Fighting Corruption**<sup>18</sup> contains a section on the development of a draft law “on the declaration of income, assets and the ways to obtain income by the natural persons of the Republic of Moldova”, this task having to be performed in the II quarter of 2005. The development of this draft law was also envisaged by the Government Decisions for the approval of the Government Activity Plan for the II quarter of 2005 (GD no.464/23.05.2005), and further the Activity Plan for the III quarter of 2006 (GD no.735/29.06.2006).
- e) Through the **Parliament Decision no.413/2006** the Action Plan for the implementation of the National Strategy for Preventing and Fighting Corruption was updated, establishing “annual publication on the official websites of the public institutions the results of controlling the declarations of income and assets of the persons holding public office who are specified in the Annexes 1-7 of the Law no.355-XVI as of 23.12.2005 on the Payroll System in the Budgetary Sector”<sup>19</sup>.
- f) The **Judiciary System Strengthening Strategy and the Action Plan for the implementation of this Strategy**<sup>20</sup> provided for the need to improve “the existing system of declaring the assets, interests and incompatibility situations, also applicable for judges, whom will be rigorously monitored” and the need to draft legislative proposals with a view to establish the compulsoriness to publish the judges’ assets declarations, “apply disciplinary sanctions, including the dismissal from office of judges that cannot account for the origin of the income or property”. These amendments must have been developed by the Ministry of Justice as early as 2007.

According to the Government Decision no.33/2007, the policy documents describe and analyze the existing issues, identify the goals related to the issue, define the tools for settling the issue and the expected impact on the state and society. However, to the detriment of this „beautiful” definition, the analysis of the aforementioned normative acts and strategic documents allows us to objectively conclude that the intentions regarding the assets declarations remained at the level of formal consecration, even if put on official paper. This conclusion can be backed up by other several eloquent examples, as follows.

Judicial practice and statistics in Moldova hasn’t registered any cases of confiscation of estate of those who were found guilty of corruption crimes, situation that led to objective critics and recommendations from the behalf of international organisations in the area<sup>21</sup>. On 1 February 2006 the Government submitted for advice to the Constitutional Court the **draft law for exclusion from article 46, para. (3) of the**

<sup>18</sup> PD no.421/2004.

<sup>19</sup> Accordingly, in 2006-2008, the declarations of all officials, except technical staff, must had been published on the web pages. The provision wasn’t accomplished and the respective provisions weren’t expressed within the Law no.1264/2002, this being amended only in 2008 and only with provisions referring to the publication on web pages of the high-ranking officials (not all officials) and judges.

<sup>20</sup> PD no.174/2007.

<sup>21</sup> For example, the GRECO Evaluation Reports on Moldova (2003,2006).

**Constitution of the Republic of Moldova of the sentence „The lawfulness of acquisition shall be presumed”.** The Government justified that draft law through the need

to implement in the national legal system the institution of civil confiscation and therefore place the burden of proof on the defendant, thus freeing the State (prosecutor) of the duty of proving the illicit and fraudulent character of defendants' assets, because these proofs are difficult to collect. Through the Decision no.1 dated 25.04.2006 the Constitutional Court provided a positive response with regard to the initiative to review the Constitution and the Government was allowed to promote these amendments in the Parliament. But, on 22 November 2006 a meeting was convened, during which the President of the Republic of Moldova „qualified the removal from Constitution of the sentence on the legal acquirement presumption as inopportune, given that the proposed amendment would contradict the citizen's right to private property and its protection, principle sanctioned in the Supreme Law of our state”<sup>22</sup>. After this qualification was laid down by the President, the draft Constitutional Law wasn't further examined by the Parliament and by virtue of the provisions of Article 142(2) of the Constitution, this legislative proposal was considered null. Accordingly, the confiscation of assets illegally acquired seems to be lost at the stage of theoretic approaches.

Through the **Government Decision no. 812/2006**, the Center for Combating Economic Crimes and Corruption, together with the Ministry of Finance, was obliged to undertake the necessary steps in order to review the legislation on the declaration and control of assets of persons in public offices with the view to include in it the compulsoriness of declaring also their expenditures. At the meeting on 22.11.2006 the President of the Republic of Moldova also spoke about the need „to review the legal framework on the assets declarations and to examine the possibility to introduce a new chapter in this procedure - that of assets declarations”. Similar opinions on the need to declare the expenditures were also stated by the Head of State during the meeting on 21.10.2008 of the National Commission for European Integration<sup>23</sup>.

On 10 April 2008, through the Law no.77-XVI, the Parliament added new provisions to Article 9 of the Law on the Declaration and Control of Income and Assets, establishing the obligation of the Central Control Commission to submit to the Superior Council of Magistracy within 10 days from the expiry of the submission term of assets declarations the copies of the judges' declarations in order to be placed on the SCM webpage. Through the Decision no.348/15 as of 02.10.2008 SCM approved the Guidelines on the way to fill in and submit the declarations of income and assets, as well as the way to place this information on the webpage. Courts' presidents should ensure the submission of these declarations “following the set procedure”, but on the SCM webpage (<http://www.csm.md/diverse/informatii/8.html>) can be found only the declarations of 14 judges (as of 15 March 2009).

<sup>22</sup> Press-release of the Presidency, 22.11.2006, <http://www.presedinte.md/press.php?p=1&s=4364&lang=rom>.

<sup>23</sup> See the minute of the work meeting held on 21.10.2008, [www.integrale.gov.md](http://www.integrale.gov.md).

Through the **Law no.124/2008** it was established that the high-ranking officials', leaders' of public central authorities, Mayors' and Rayon Council Presidents' declarations will be also published on the official webpages of respective authorities

within 30 days from the expiry of deadlines for the submission of declarations. Although the terms of office of several officials expired because of the Parliamentary elections and the term to update declarations expired on 30 January 2009, the declarations of these officials couldn't be found on the official webpages of Presidency, Parliament, Government, ministries and other public central authorities, etc. even on 15 March 2009.

The new **Code on Administrative Offences** (Law no.218/2008) that will enter into force on 31.05.2009 doesn't contain provisions on sanctioning the violation of the rules for the declaration of income and property, although Article 14 of the Law no.1264/2002 further provides that a person shall be subject to disciplinary or administrative liability if he/she: - didn't submit the declaration in due terms, unfoundedly; - avoids to submit the declaration; - indicated intentionally incorrect data in the declaration.

Within this context it should be noted that on 12 December 2008, the President of the Republic of Moldova issued the **Decree<sup>24</sup> for the annulment of his other Decree, no. 57-III as of 28 May 2001 on setting up the Coordination Council for Fighting Corruption. Accordingly, the Coordination Council for Fighting Corruption and Crime was dissolved, a council that was chaired by the Head of State during 2001-2008, however nothing is known with respect to its effectiveness and activity<sup>25</sup>. These functions were passed to a Council with the same name, set up under the Government, chaired by a Vice-Prime Minister<sup>26</sup>.**

### **1.3. Law no.1264/2002 and its shortcomings**

The Law no.1264/2002 aims at establishing the measures for preventing and fighting the unfounded enrichment of state officials, judges, prosecutors, public servants and some persons holding management positions. In order to meet this goal the law identifies the subjects, the object of declaring income and assets, the form, contents, the timing for declarations submission, authorities vested with functions of collection and control of declarations, transparency of declarations, as well as the liability incurred for breaching the law. Henceforth, the content of the mentioned provisions is briefly expressed and its shortcomings are analyzed.

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<sup>24</sup> Decree 1989/2008.

<sup>25</sup> The Council's activity wasn't made secret and if this Council would be convened periodically and would be examined any issues in the area of corruption fighting, this would have been made public through press-releases (how it happens, for example, in case of meetings and decisions of the Supreme Security Council, also chaired by the President of the Republic of Moldova).

<sup>26</sup> GD 1341/2008.

<i>i. Subjects of the declaration of income and assets (Article 3)</i>	
<b>Provisions:</b>	<b>Shortcomings:</b>
<p>According to the law, the subjects of the declaration are:</p> <p>a) the President of the Republic of Moldova, members of the Government, judges of the Constitutional Court and the Supreme Court of Justice, Appellate Courts, members of the Superior Council of Magistracy, judges, Prosecutor General, prosecutors and their deputies, members of the Court of Accounts, members of the Administration Board of the National Bank of Moldova, members of the Administration Board of the National Commission of Financial Market, Ombudsmen, the President of Central Electoral Commission and his/her permanent deputies, Head and deputy heads of the Government Office, heads of local public authorities;</p> <p>b) Vice-Ministers, heads of departments, centres and their deputies, heads of state services and their deputies, heads of customs points and their deputies, directors of state and independent agencies and their deputies, the director of the Licensing Chamber and his/her deputies, deputy mayors, deputy presidents of rayon;</p> <p>c) managers and their deputies in the public institution, state or municipal enterprise, commercial enterprise with major state capital, financial institution with total or major state capital, local counsellors;</p> <p>d) other public servants that haven't been specified above.</p>	<ul style="list-style-type: none"> <li>• <i>The express stipulation of certain categories of declarants is omitted.</i> Thus, such subjects as the Director of the Intelligence and Security Service are not stipulated in Article 3(a), though the declaration made by this subject is referred to in Article 13. Representatives of some autonomous public authorities, such as members of the Audiovisual Advisory Board<sup>27</sup>, aren't stipulated in the letter a) as well. The letter b) of Article 3 lists very roughly the subjects of declaration, mentioning, <i>inter alia</i>, heads of departments, centres and their deputies, heads of state services and their deputies, heads of state and independent agencies and their deputies. At the same time, the heads of the Department of Interethnic Relations and the National Bureau of Statistics are not covered by this provision, although Article 24 of the Law no.64/1990 on the Government mentions these departments as central specialized bodies of public administration;</li> <li>• <i>There are mentioned categories of subjects that already don't exist</i>, such as heads of territorial offices of the Government Office (letter a), the heads of departments and their deputies (letter b);</li> <li>• <i>The delimitation between the managers of state enterprises (letter c) and the directors of state and independent institutions isn't clear</i>, because there are state agencies with status of state enterprises (for example, State Agency for Protection of Intellectual Property).</li> </ul>
<i>ii. The object of declaration of income and assets (Article 4)</i>	
<b>Provisions:</b>	<b>Shortcomings:</b>
<p>The subjects stipulated by the law shall declare:</p> <p>a) income obtained during the last year of activity;</p>	<ul style="list-style-type: none"> <li>• <i>The restriction applied to the declaration of movables to those exceeding MDL 50,000 (Article 4(2)) is not justified</i>, because this amount often exceeds or is approximately equal to the annual salary obtained by an official;</li> </ul>

<sup>27</sup>Art.39 of the Audiovisual Code of the Republic of Moldova, 260/2006.

<p>b) movables (with nominal value exceeding MDL 50,000) and all-type of real estate accumulated as of the date of submission of declaration of income and assets;</p> <p>c) financial liabilities;</p> <p>d) share of securities in the capital of economic units.</p>	<ul style="list-style-type: none"> <li>The requirement to indicate only the share of securities in the capital of economic units is insufficient (Article 4(1)(d)). Thus, the officials must declare their participation only in the capital of economic units with the legal form of organization "joint stock company". We consider as exaggerated such a limitation, because, along with joint stock companies there are other types of commercial enterprises, provided for in the legislation and that are widespread, the capital of which is not divided in securities (stocks), but in equity participation and share participation<sup>28</sup>.</li> </ul>
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#### *iii. Declaration form and its content (Article 7 and the Annex to law)*

Provisions:	Shortcomings:
<p>The declaration shall be made in writing, on the own liability of the declarant, and shall contain information and data on declarant's own income and assets, common income and assets and those belonging to the declarant's spouse, children under the age of 18, and other dependants (Article 7(1) and the Annex). Declarations shall be completed by officials in accordance with the form in the Annex to the law. Declaration form consists of five sections where the data which are the object of declaration of income and assets shall be included. According to the law, declarations shall include also the information on the assignments of assets of any type (against money or for free), made during carrying out the mandate or performing their job responsibilities.</p>	<ul style="list-style-type: none"> <li>According to the law, the declaration shall contain information and data on declarant's own income and assets, common income and assets and those belonging to the declarant's spouse, children under the age of 18, and other dependants (Article 7(1) and the Annex). But the declaration form does not distinguish the income and assets obtained by an official from those obtained by his/her family, that doesn't allow the precise verification of assets accumulated separately by an official during the year;</li> <li>The law stipulates that declarations shall also contain the information on assignments of assets of any type (against money or for free), made throughout the mandate or while performing their job tasks (Article 7(2)), while the declaration form in the Annex to the law does not contain any section in this respect, contradiction allowing the interpretation that might be convenient for the officials, i.e. the possibility to omit these data from the declaration.</li> </ul>

#### *iv. Submission and update of declarations (Articles 8, 7, 4 and the Annex to the law)*

Provisions:	Shortcomings:
<p>Officials shall submit the declarations within 20 days as of the date of their appointment or election into office, or prior to validation, upon the case; Declarations shall be updated annually until the 30</p>	<ul style="list-style-type: none"> <li>The meaning of the term "update" used in Article 8 is ambiguous. Article 8 stipulates that <u>declarations shall be submitted</u> within 20 days as of the date of the officials' appointment or election into office, or prior</li> </ul>

<sup>28</sup> See the provisions regarding the commercial enterprises provided for in Section 2, Chapter II, Title II, First Book, Civil Code, 1107/2002.

<p>January of the next year for the entire period of performing the public function and a year after the end of performing this function. At the end of mandate or completion of activity, a new declaration shall be submitted.</p> <p>The law establishes as object of declaration the income acquired during the last activity year and all-type movables and real estate accumulated at the date of submission of declaration of income and assets.</p> <p>Declarations shall be completed by the officials in accordance with the form in the Annex to the law. The Annex to the law provides for that the official declares the income and assets acquired during the mentioned reporting period.</p>	<p>to validation, <u>with subsequent update every year</u> by 30 January of the next year, and at the end of mandate or termination of activity <u>a new declaration shall be filed</u>. One has the impression that there are only two declarations of each public servant: one declaration filed at the appointment into office, which is updated annually and another one, filed at the end of mandate. The term “update” can have several meanings. Thus, the update can be interpreted as the completion of the declaration from the next year with all the data from the prior declaration (such as the real estate owned in the previous year and the year for which the declaration is made), but also the declaration which is completed with only the appropriate modifications (for example, the amount of income). The same idea is supported in Article 4(1)(b), which provides for that the object of declaration shall be “movables and real estate of all type, accumulated at the date of submission of declaration of income and assets”. The term “update” can be also understand in a different way: the official can declare only the income, assets, securities in the capital of economic units which were acquired throughout the reporting year, without declaring those acquired earlier, moreover that the declaration form in the Annex to the law provides at the beginning that the official declares not only the income, but also the assets acquired during the reporting period stipulated by the declaration. In practice, the officials resort to both methods of interpretation of the term “update”, supported in the decision made by them in Article 4(1)(b) mentioned above or by the stipulations in the declaration form, in both cases being difficult to evaluate the accuracy of declarations.</p> <ul style="list-style-type: none"> <li>• <i>The provisions about the beginning “of the control procedure ex officio” also display interpretation and application shortcomings. According to Article 8(4) the failure to submit the declaration “from reasons imputable to the declarant, within 20 days from the end of activity, shall lead to the beginning of the ex officio control procedure”. Since the adoption of the Law no.1264/2002</i></li> </ul>
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	<p>two Governments (2005, 2008), two Parliaments (2005, 2009), two effectives of local public administration (2003, 2007) were dismissed or had their mandate expired, but not all the declarations of these subjects, filed eventually at the end of their mandate, were made public. Taking into account that the preliminary control cannot be made without declaration, consequently the <i>de facto</i> control must have been launched <i>ex officio</i>, but this didn't happen. The Commissions didn't inform the CCECC.</p>
<b>v. Authorities in charge of gathering declarations (Article 9)</b>	
Provisions:	Shortcomings:
<p>According to the law, there are three types of control commissions in charge of the collection of declarations and their preliminary control:</p> <ul style="list-style-type: none"> <li>• Central Control Commission (CCC), where the subjects stipulated in Article 3(a) shall file their declarations;</li> <li>• Departmental Control Commission under the Government Office (DCGO), where the subjects stipulated in Article 3(b) shall file their declarations;</li> <li>• Departmental Control Commissions (DCC), where the subjects stipulated in Article 3(b) and 3(c) shall file their declarations. The Departmental Commission shall be set up by the public authority that, in accordance with the Constitution or other laws, has issued the declarant's act of appointment into office, while the counsellors in local councils – to the Departmental Commission set up by the President of Rayon or the Mayor of the respective administrative-territorial unit.</li> </ul>	<ul style="list-style-type: none"> <li>• The authority in charge of collecting declarations of the categories of declarants that were omitted or of those with imprecise statute mentioned above isn't clearly determined, because these authorities are established in compliance with the classification of subjects of declaration made in Article 3. Thus, the situation of Intelligence and Security Service (ISS) Director who files his declarations with the CCC, although he isn't stipulated in Article 3(a) of the law, is unclear. Article 3(b) refers only to "state services" and if we count in the ISS Director in the category of heads of state services, than he/she, in accordance with the provisions of Article 9(2) shall file his declaration with the DCGO, even though his position doesn't belong to the Government. Also, it isn't very clear to what commission the heads of the Department of Interethnic Relations and the National Bureau of Statistics shall submit their declarations, to DCGO as central specialized bodies of public administration or to DCC, because are covered by the provisions of Article 3(c) and (d).</li> </ul>
<b>vi. Control of declarations (Article 10 and 11)</b>	
Provisions:	Shortcomings:
<p>CCC and DCC shall carry out the preliminary control of declarations, consisting in: checking the existence and accuracy of their contents, comparing the data expressed within them with the data from previous year (the first stage, that lasts 15 working days); and checking the accuracy</p>	<ul style="list-style-type: none"> <li>• The timing stipulated for carrying out the preliminary control by CCC and DCC are unreasonably short to ensure a real control;</li> <li>• The insufficiency of data that should be included in the declaration, in compliance with the form in the Annex to the law, in order</li> </ul>

<p>of submitted data by comparing it with the data presented by the competent public authorities (the second stage, that lasts 30 working days as of the date of ending the first stage with the possibility to extend this period by another 30 working days). When violations are detected, CCC or DCC shall file the respective materials to CCECC for examination, that carries out the <i>de facto control of declarations</i>, consisting in reconciling the information stipulated within declarations with the information owned by the competent public authorities (until the date of submission of the following declaration).</p>	<p>to allow an effective control of the data declared (for example: in the “movables” category it is required to indicate the type and make of the car, less the state registration number; the requirement to include total data on the income and assets of the official and his/her family, without delimiting the amount and assets owned by each family member of the official in part; the failure to include in the declaration form a section dedicated to information on the assignments of assets of any type, etc.);</p> <ul style="list-style-type: none"> <li>• <i>Lack of any real possibilities for CCC and DCC to check immediately the accuracy of submitted data</i>, and only through the agency of other authorities. (In this respect, ensuring the access of CCC and DCC to the data from the Real Estate Register, State Register of Enterprises, State Securities Register, State Transport Register, etc. would be useful);</li> <li>• <i>Failure to indicate the possibility to inform CCC and DCC by the persons aware of violations made by officials in declaring their income and assets, as well as the examination procedure of such information (external control)</i>.</li> </ul>
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#### vii. Transparency of declarations (Articles 6, 9, 13 and the Annex to the law)

Provisions:	Shortcomings:
<p>Declaration is a confidential document and cannot be made public, unless upon certain circumstances (Article 6(2)). Such a case is stipulated in Article 4(4), when CCC files to the Superior Council of Magistracy copies of the judges' declarations within 10 days from the expiry of the time limits for submission of declarations in order for these to be placed on the Internet webpage. Another case is provided for in Article 13(1), when the declarations of some managers of public authorities (the President of the Republic of Moldova, members of the Parliament, members of the Government, the President of the Constitutional Court, the President of the Supreme Court of Justice, Prosecutor General, the President of the Court of Accounts, the Governor of the National Bank of Moldova,</p>	<ul style="list-style-type: none"> <li>• There is a transparency of declarations only to the extent to which the exception of the confidentiality rule happens, provided for in Article 6(2). The law stipulates in Article 6 that “the declaration is a confidential document”, which can be made public only upon certain circumstances, mentioned in Article 13. Thus, Article 13(1) points out only a number of subjects, whose declarations are made public, while para. (2) provides that these declarations aren't confidential and, therefore, transparent, only the data from declarations referring to the total value of assets and the list of goods included in these assets, mentioning whether these goods are in private ownership or in use, including the goods from abroad;</li> </ul>

<p>the Director of the Intelligence and Security Service, mayors of towns, villages (communes) and presidents of rayon councils) are published annually in the republican or local mass media, as well as on the official webpages: of the Presidency, Parliament, Government, ministries, other central and local public authorities and institutions. According to Article 8, the declarations shall be published in republican or local mass media and posted on the official webpages within 30 days from the deadline for declaration submission. Mayors' declarations can be also made public through bill-posting. The declarations shall be published annually in republican or local mass media, as well as on the official webpages of relevant authorities within 30 days after the deadline for declaration submission, observing the confidentiality restrictions (Article 13(1)).</p> <p>Other categories of subjects can be made public, on their own initiative, the following data from declarations, which is not considered confidential information:</p> <ul style="list-style-type: none"> <li>a) total value of assets declared;</li> <li>b) the list of all goods owned by the declarant, mentioning whether these goods are in private ownership or in use, including the goods from abroad (Article 13(2)).</li> </ul> <p>In the declaration form attached to the law it is stipulated at the end that declarant signs under the following statement "The present declaration is a public document and I shall be liable, as lawfully required, for the inaccuracy and incompleteness of information and data contained in it."</p>	<ul style="list-style-type: none"> <li>• <i>The provisions of Article 6 are contradictory with the declaration form attached to the law. Thus, while Article 6 stipulates that declaration is a confidential document and only some information can be made public, the declaration form attached to the law establishes that the declarant signs under the statement "The present declaration is a public document and I shall be liable, as lawfully required, for the inaccuracy and incompleteness of information and data contained in it.";</i></li> <li>• <i>The data contained in declarations that can be made public are insufficient for a public control of officials' and servants' assets. The only data made available to taxpayers are totally useless for the implementation of a viable mechanism of control of the society on the origin of public servants' wealth. In this context we recall that the goal of the law, stipulated in Article 1(2) is the "setting up measures to prevent and combat the illegal enrichment of officials... ". When only the publication of data from declarations referring to the total value of assets and the list of goods included in these assets (Article 13(2)) is ensured, and the total value of assets is either non-evaluated or indicated in compliance with the documents proving the origin of assets (Article 4(3)) and not the real market value, we cannot discuss about a public control of these declarations or even more, the goal of the law is discredited;</i></li> <li>• <i>The mechanisms for ensuring transparency don't even meet the national anti-corruption standards. The Action Plan for the implementation of the National Strategy for Preventing and Fighting Corruption<sup>29</sup> stipulates in point 7.8. "Publication on the official website of public institutions of the control results of declarations of income and assets of people within public authorities specified in Annexes 1-7 to the Law no.355/2005 on the Payroll System in the Budgetary System",</i></li> </ul>
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<sup>29</sup> National Strategy for Preventing and Fighting Corruption and the Action Plan were adopted through PD 421/2004 and updated through the Parliament Decision no. 413/2006.

	following the waited result of “improving the probity of public institutions, streamlining the public control on the activity of state officials”. The results of such controls were never made public, nor were appropriate provisions introduced in the Law no.1264/2002.
<b>viii. Liability for breaching the law (Article 14 and Annex to the law)</b>	
<b>Provisions:</b>  The person that: a) didn't file the declaration in due terms unfoundedly; b) avoided to submit the declaration; c) indicated deliberately incorrect data in the declaration; d) violated the way of keeping and using the information contained in the declaration while performing his/her duties or controlling of the declarations, shall be held liable for disciplinary and administrative offences.  As mentioned above, according to the declaration form attached to the law, the declarant signs under the following statement “The present declaration is a public document and I shall be liable, as lawfully required, for the inaccuracy and incompleteness of information and data contained in it.”	<b>Shortcomings:</b>  <ul style="list-style-type: none"> <li>• There are contradictions between the provisions of the Law no.1264/2002 and the provisions of the Criminal Code. Thus, the Law stipulates the grounds for disciplinary and administrative offences (Article 14(a) to (d)), but the criminal liability was omitted. In reality, certain grounds for liability in accordance with the law (letter b and c)) are facts incriminated in the Article 330<sup>1</sup> of the Criminal Code: avoidance to submit the declaration or the deliberate indication within declaration of incorrect data during performing their job responsibilities;</li> <li>• There are contradictions between the provisions of the law and those of Annex. Thus, Article 14 of the law, undertaken by the criminal and regulatory provisions, doesn't provide for liability for the incompleteness of declaration, although according to the Annex to the law, the declarant signs that he/she shall be liable, as lawfully required, for the inaccuracy or incompleteness of data contained in it;</li> <li>• No type of liability is provided for the inclusion of incomplete data in the declaration, that allows to declarants to draft formal declarations, consisting only of partial data on income and assets acquired<sup>30</sup>.</li> </ul>

*As a conclusion to this section it ought to be mentioned that the effectiveness of the Law no.1264/2002 on the Declaration and Control of Income was and remains puerile, being an example of low productivity of the regulations passed in the absence of a true political will, put into practice.*

<sup>30</sup> The shortcomings identified in the Law no. 1264/2002 within this section were based in part on the results and materials of the Round Table organized by the Anti-Corruption Prosecutor's Office “Identification and follow-up of the proceeds from corruption deeds - realities, difficulties and perspectives”, 25-26 September 2007, Chisinau.

## SECTION 2.

### PRACTICAL APPLICATION OF THE DECLARATION FORM

*The sad reality related to the declaration of income and assets of public officials in the Republic of Moldova starts with the declaration form<sup>31</sup>, provided in the annex to the Law no.1264/2002. Subsection 1.3 revealed the "relative" harmony of the declaration form with the provisions of the law itself, manifesting a degree of "autonomy" and even "resistance" in relation to it. In practice, the differences between the legal provisions and the declaration form from its annex fosters different practices of filling in the declarations of income and assets by public officials, allowing a wide range of personal attitudes of the declarants towards the seriousness of the declaration form provided in the law: from introducing new columns to totally ignoring it and substituting it with alternative models, generated by declarants on an ad-hoc basis. Even if we admit that the declarants manipulate with good will the structure of the declaration, if compared to the model provided in the law, the existence of so many different practices of filling in the declarations makes it practically impossible to systematize, keep statistical records and control the declarations by the declarations control commissions and the Centre for Combating Economic Crimes and Corruption.*

*Given the obvious difficulties in filling in the declaration in line with the form attached to the law (See Annex 4 of the Study), in terms of the chances for their subsequent control, it was interesting to find out the opinion of the declarations control commissions regarding the declaration form, mentioned in the questionnaire, which they filled in at the request of the authors of this study<sup>32</sup>. Thus, 12% expressed the opinion that the form attached to the Law no.1264/2002 is "the most optimal", 52% - "optimal", covering the income and assets that can reflect the real financial/patrimonial situation of the declarants, 16% regarded it as being "less optimal" and 20% - as "superficial", which doesn't allow to know the real situation of the declarant<sup>33</sup>. We believe that the surprising answers given by the control commissions can be explained by the fact that it is convenient for the control commissions themselves to have the least possible chances to check the contents of the declarations, as it currently happens. The fact that these commissions work on a volunteer basis explains this lack of interest for their own control possibilities.*

*Due to the aforementioned reasons, in this section we intend to make a detailed review of the practical application of the declaration form, attached to Law no.1264/2002 and of the practical effectiveness of this form for the verification of the declared data. For this we will present every section of the legal declaration form<sup>34</sup> (sections 2.1 – 2.7), followed by:*

<sup>31</sup> The entire declaration form is presented in Annex 4 of this Study. You may see for comparison the declaration forms provided by the Romanian (Annex 5) and Hungarian (Annex 6) Law.

<sup>32</sup> See question 13 of the questionnaire included in Annex 1 of this study.

<sup>33</sup> See Section III from the answers to the questionnaire included in Annex 2 of this study.

<sup>34</sup> For this purpose we reviewed a sample of 29 declarations, 28 of which were taken from the site of the Association of Independent Press ([www.api.md](http://www.api.md)), placed under the "Avere la vedere" (Transparent property) campaign. One declaration was provided by the Journalistic Investigations Center ([www.investigatii.md](http://www.investigatii.md)), received as an annex to a reply they got to an inquiry for public information.

- *comments regarding the compliance of this section of the declaration form with the legal provisions;*
- *examples of positive and negative practices;*
- *estimation of the chances of the declarations control commissions to check this information;*
- *recommended solutions.*

## 2.1. Personal data of the declarant

<b>DECLARATION</b>
<p>The undersigned _____, holder of the position of _____ at _____, declare, on my own responsibility, that together with my spouse, minor children and dependants, I have earned the following income from _____ 200 ____ to _____ 200 ____ and obtained the following assets from _____ 200 ____ to _____ 200 ____ :</p>

*Comments regarding the compliance of the declaration form with the legal provisions*

Article 7(1) of the Law stipulates that “The declaration shall be made in writing, on the own responsibility of the declarant, and shall contain information and data on the declarant’s own income and assets, common income and assets and those belonging to spouse, minor children and dependants of the declarant.” The declaration doesn’t have any blank areas for the name of the spouse, children or dependants. Hence, it is not clear how many family members the declarant has and the kinship of all people concerned in the filed declaration. In general, the declaration doesn’t indicate, either at the beginning or throughout sections I-V, the possibility to differentiate between the own income and assets of the official from the common ones, belonging to the other spouse.

In the introduction it is stipulated that the declarant shall reveal both the revenues and the assets obtained during the year. Article 8(2) stipulates that “The Declaration shall be updated on an annual basis by 30 January of the following year”. Sub-section 1.3 showed the different possibilities of interpreting the term of “updating”. According to the formal logics, as well as to the practice of other states, the declarations contain data about the income earned during the year, but the declared assets include all assets owned at the moment of filing the declaration. Such an approach would comply with the provisions of Article 4(1)(b), which provides that the object of declaration shall be “all-type movables and real estate accumulated at the date of submission of declaration of income and assets”. Thus, the “updating” would mean that the assets that remain in the ownership of the declarant should be copied in the following declaration, introducing only the changes that occurred (assets that are not owned any more by the declarant or the newly acquired assets).

*Examples of how this section of the declaration is filled in*

Some declarants voluntarily add new lines to this section of the declaration to indicate the name of the spouse and other family members. However, it is impossible to differentiate, in other sections of the declaration, between the own income and assets of the declarant and the assets of other family members, between the personal and common assets. Regarding the declared assets, some officials declare only the goods and assets that were obtained during the reporting year, whereas others include all goods and assets they own at the declaration moment. There are some officials that use one approach in one year, and the other approach the next year. Some declare the assets obtained during the year, and annex an informative note about the goods owned at the moment when the declaration is made. The fact that officials don't know how to declare their income and assets together with their family members is obvious, given the deficient and controversial provision in the commented section.

*Estimation of the chances of the declarations control commissions to check this information*

The failure to request separately the data of the family members, whose income and assets are included in the declaration, the indication of the aggregate value of the income and assets of the official and his/her family members make it practically impossible for the control commissions to check preventively the declarations. Even during a *de facto* control it would be difficult to identify the violations made by the official when declaring the income and assets, especially when the names and number of people, whose income and assets are declared together with the official's, are not indicated. Moreover, with the current controversial wording of the law, the officials practically cannot be held responsible for not declaring the assets that were indicated in the previous declarations, as the law itself forces them to make these violations: indicating in an article that it is necessary to declare the assets owned at the moment when the declaration is submitted, and in another article - that the declaration shall be filled in according to the annexed form, a form stipulating that the declaration should contain only the assets obtained during the reporting period.

*Recommended solutions*

- to include some blank areas for the names and kinship of the persons, whose income and assets are declared together with the official's;
- to distinguish, throughout the declaration, the data declared by the official from the data declared for his/her family members;
- to bring the declaration in line with the provisions of Article 4(1)(b) by substituting the expression "and obtained the following assets from \_\_\_\_\_ 200 \_\_ to \_\_\_\_\_ 200 \_\_" with the expression "and the assets which I own currently".

## 2.2. Data on income

I. Income	
Income type	Income size
1. Income obtained at the main place of work	
2. Income obtained from didactic work	
3. Income obtained from scientific work	
4. Income obtained from creative work	
5. Income obtained from deposits with financial institutions, including abroad	
6. Income obtained from securities, real estate and participation in the capital of other economic units	
7. Income obtained from the activity of representative of the State in trade companies	
8. Income obtained from other legal sources (pensions, support funds, allowances, awards, etc.)	

*Comments regarding the compliance of the declaration form with the legal provisions*

Article 4 of the Law provides that the officials shall declare the income, obtained during the past year of activity, whereas Article 7 stipulates that “The declaration shall be made in writing, on the own responsibility of the declarant, and shall contain information and data on the declarant’s own income and assets, common income and assets and those belonging to spouse, minor children and dependants of the declarant.”

As mentioned above, the declaration form doesn’t distinguish the official’s income from the incomes of the family members, included in the declaration. Moreover, the declaration form indirectly suggests that the incomes shall be declared only by the official, as the types of income, indicated in Table 1, Section “I. Income” are adjusted to the legal limitations that prohibit public officials from getting involved in other types of activities, including trade activities. If we admit that not all members of the official’s family are also public officials, then the income types, included in the declaration, don’t meet the needs for the declaration of their income. We stress that the types of income, included in this section of the declaration do not contain all types of taxable income, provided for in the fiscal legislation, such as the income obtained by assigning assets, etc. However, the Law no.1264/2002 provides the clear obligation to declare all acts related to the assignment of any type of assets.

*Examples of how this section of the declaration is filled in*

Usually the officials declare only their own income, failing to indicate the income of other family members. However, some officials try to use option 8 “Income obtained from other legal sources (pensions, support funds, allowances, awards, etc.)”, indicating here the spouse’s salary or other information (for example, “wife’s salary in

Italy – MDL 90,000” or “savings from the previous years - USD 91,000”, etc.). In other cases, as mentioned in the introduction to this Section, the declarants manipulate the declaration form by adding some new types of income or partially excluding the provided types.

*Estimation of the chances of the declarations control commissions to check this information*

Subsection 2.1 describes the difficulties related to checking the accuracy of the official's income, if it is not distinguished from the income of his/her family members. In addition, we note that if this income were presented separately in the declaration, then the declarations control commissions, established in the same authority where the official works, would have at least a chance to check if the official indicated correctly his/her own income, as for his/her family members – if their names and kinship were indicated in the declaration – they could request this information from the bodies that have it. Thus, we estimate that the declarations control commissions have very little chances to check the accuracy of the declared income, especially during the preliminary control.

*Recommended solutions*

- to distinguish, both in this section and throughout the declaration, the official's income from the income of his/her family members by inserting one or several additional tables for the income of the spouse and other family members, maintained by the declarant.
- to review all types of income included in this section of the declaration as to reflect all types of taxable income, provided for in the fiscal legislation.
- especially for the official's family members, other categories of legal income should be included in the “Income type” column;

### **2.3. Data on real estate**

II. Real estate			
Type and name	Address of the real estate	Area (sq. m.)	Value (in MDL) according to the document that certifies the origin of the asset
1	2	3	4
Plots of land:			
Houses:			
Apartments:			
Villas:			
Garages:			
Other real estate:			

*Comments regarding the compliance of the declaration form with the legal provisions*

Article 7(2) stipulates that “The declaration shall include also the information on the assignments of assets both free of charge or for money, made during carrying out the mandate or performing their job responsibilities”. However, the declaration form does not request to indicate the transactions related to assignments of assets. Asked by the authors of the study to assess whether it would be a good idea to introduce in the declaration form the obligation to declare information about the acts related to assignments of any type of assets, 59% of the departmental commissions had positive reactions<sup>35</sup>.

Article 13(2)(b) stipulates that the list of goods owned by the declarant, mentioning whether these goods are in possession or in use, including goods from abroad, shall be published and is not confidential information. However, we notice that the declaration form does neither contain any column related to the type of assets, nor data about the direct owners of these assets (official or family members, whether the official has sole ownership or joint ownership together with his/her family members). In this case we have to note again the contradiction between the provisions of the law and the declaration form annexed to it, related to the compulsoriness of declaring only the assets obtained during the reporting period or all assets owned at the moment of submitting the declaration<sup>36</sup>.

*Examples of how this section of the declaration is filled in*

None of the officials' declarations, which were made public and reviewed for the purposes of this study, contained any mentions about the acts related to the assignment of real estate. In general, most of the reviewed declarations contain partial information about real estate. Most of the times, the declaration form is manipulated by excluding the columns for information about the assets type, stipulating only, e.g. “an apartment”, or “a privately owned house”. In other cases, the declarants fill in even additional information, such as the number of rooms or indicate the dwelling area, besides the total area. A constant problem is the failure to indicate the value of the real estate, even if the law doesn't request the market value, only the value from the documents justifying the origin of the real estate. On the other hand, indicating the value from those documents leads to an absurd situation, especially if the declaration is published. Thus, there were identified declarations, where the value of real estate (apartments and houses) amounted to MDL 3000 (equivalent of USD 270), in one case being indicated the value of MDL 836 (equivalent of 76 USD). Another drawback that was identified is that in some declarations no real estate was indicated, perhaps because they were not acquired during the year or their value didn't exceed MLD 50,000 (equivalent of 4545 USD).

<sup>35</sup> For details, see Section III from the answers to the questionnaire presented in Annex 2 of this study.

<sup>36</sup> For details, see chapter “Comments regarding the compliance of the declaration form with the legal provisions” in subsection 1.1.

*Estimation of the chances of the declarations control commissions to check this information*

As the real estate should be necessarily registered with the Cadastre Office, we believe it is possible to check if the declarant owns real estate. However, it is a difficult task for the declarations control commissions, as they don't have access to these registers. On the other hand, the lack of technical information about the registration number of the real estate doesn't allow performing an effective control. Even if we there were access to the information from the Cadastre Office about the assets owned by the declarant, the failure to indicate the names of family members makes it difficult to check what real estate they own.

*Recommended solutions*

- to distinguish, in this section, between the real estate declared by the official and those declared for other family members by inserting an additional column to indicate who owns the respective real estate;
- to add to this section the request to indicate the acts of assignment of real estate, their value, date when this transaction was performed and the legal basis underlying the assignment act, as well as the cadastre registration number of the real estate;
- to add to this section the request to indicate the type of real estate, date when it was acquired and the underlying legal basis, as well as the cadastre registration number of the real estate;
- to add or replace the request to "Value (in MDL) according to the document that certifies the origin of the asset" with the value estimated by the Cadastre Office for taxation purposes.

## 2.4. Data on movables

III. Movables			
Type and brand	Origin	Value (in MDL) according to the document that certifies the origin of the asset	Place of registration
1	2	3	4
Automobile:			
Trucks:			
Trailers:			
Motor vehicles:			
Agricultural machinery:			
Naval transport:			
Air transport:			
Other movables:			

*Comments regarding the compliance of the declaration form with the legal provisions*

Article 4(2) stipulates that movables, the nominal value of which exceeds MDL 50,000 (equivalent of USD 4545), shall be declared (we believe this threshold is not justified, as for some officials this amount equals approximately with their total annual income, or even exceeds it). The law doesn't have any special rules for the declaration of vehicles, and the declaration form doesn't request enough data to allow their identification for control purposes. 42% of the Departmental Commissions had a positive reaction when asked whether it would be the case to declare assets worth less than MDL 50,000, and 44% - when asked whether the state registration number of automobiles/vehicles should be introduced in the declaration<sup>37</sup>. As for the rest, the Law doesn't differentiate significantly between the real estate and movables; therefore the above comments on real estates, especially the ones related to: assignment of assets, type of assets, direct owners of assets, failure to include in the declaration the assets that were not acquired during the reporting period, - are valid also in case of filling in the declaration form in the part concerning the movables.

*Examples of how this section of the declaration is filled in*

Usually the officials declare in this section only the automobiles, without indicating all other data requested. This section of the declaration is frequently manipulated, by excluding some lines or columns. None of the reviewed declarations contained movables worth over MDL 50,000. Some declarants totally omit this section. Perhaps their actions are justified by the fact that they don't have any movables worth over MDL 50,000 or that these have not been acquired during the reporting year.

*Estimation of the chances of the declarations control commissions to check this information*

As other information, except for vehicles, is not included in the declaration, it is difficult to comment on the chances to check its accuracy, especially if there aren't any external announcements about the acquirement or assignment of assets and these data are not indicated in the declaration. Regarding the possibility to check efficiently the declared data about automobiles and other vehicles owned, we note that this verification is difficult not only because the declarants fail to include all requested data in the declaration and to distinguish between their assets and the assets of their family members, but also because the declaration requests information only about the vehicle type and brand, and not about the make, release year, and state registration number.

.....  
<sup>37</sup> For details, see Section III with the answers to the questionnaire presented in Annex 2 of this Study.

### *Recommended solutions*

- to distinguish, in this section, between the movables declared by the official and those declared for other family members by inserting an additional column to indicate who owns the respective movable;
- to diminish by half the value of declarable movables (from MDL 50,000 to MDL 25,000);
- to add to this section the request to indicate the acts of assignment of movables, their value, date when this transaction was performed and the legal basis underlying the assignment act, as well the registration number; make and release year in case of vehicles;
- to add to this section the request to indicate the type of asset, date when it was acquired and the underlying legal basis, as well as the registration number of the vehicle.

## **2.5. Data on financial liabilities**

<b>IV. Financial liabilities</b>		
<b>Liabilities, owed to the declarant, of:</b>	<b>Name of the institution, company, organization or individual</b>	<b>Amount (in MDL)</b>
1. Financial institution		
2. Insurance company		
3. Individuals		
4. Other organizations, individuals		

### *Comments regarding the compliance of the declaration form with the legal provisions*

The Law doesn't have any special provisions about how to declare the financial liabilities, stipulating in Article 4(1)(c) only that the officials shall declare their financial liabilities. Again it is not clear if it is necessary to declare the financial liabilities contracted during the reporting year or those that became due during the reporting year. Even if we admit that there are different rules for the declaration of income and declaration of assets, the situation is still unclear, especially because the notion of "financial liability" is included neither in the category of income (if these are not due liabilities), nor in the category of assets, as defined in the Law.

### *Examples of how this section of the declaration is filled in*

In many cases the declarants manipulate the declaration form by excluding this section. Frequently the declarants don't indicate anything here. There are declarations where the name of the bank and the amount is indicated. In these cases it is not clear if the amount refers to the declarant's bank deposits or credits contracted from the bank. There were identified declarations indicating only the amount of the

financial liability, without specifying the financial institution. The declaring practice also reveals that the holder of the financial liability is not specified, and the financial liabilities of the declarant are not differentiated from the liabilities of the spouse/ dependant.

*Estimation of the chances of the declarations control commissions to check this information*

If there is no indication of the name of the person who assumed the liability, the type of the liability (deposit, loan, credit, etc.), the contracting and maturity date of the liability, name of the bank account or type of the account (in case of bank deposits) or another technical identification number of the financial liability, it is difficult for the control commissions to make a preliminary control and for the Centre for Combating Economic Crimes and Corruption to make a *de facto* control, especially if there isn't any external information about the violation of the rule for the declaration of financial liabilities.

*Recommended solutions*

- to distinguish, in this section, between the financial liabilities declared by the official and those declared for other family members by inserting an additional column to indicate who holds the respective financial liability;
- to add to this section of the declaration the request to indicate the type of financial liability (deposit, credit, loan, etc.), the contracting and maturity date, the bank account number or type of the bank account (in case of bank deposits) or another technical identification number of the financial liability.

## **2.6. Data on the share of securities in the capital of economic units**

V. Share of securities in the capital of economic units				
Enterprise name	Registered office address	Type of activity	Price of securities	Annual income

*Comments regarding the compliance of the declaration form with the legal provisions*

Article 4(1)(d) of the Law stipulates that the officials shall declare their share of securities in the capital of economic units. In this case it is again unclear if it is necessary to declare the share of securities in the capital of economic units that was acquired during the reporting year or those owned at the moment of declaration. There is also a lack of clarity related to the collective declaration by the official of his/her own shares of securities in the capital of economic units and of his/her spouse's and other dependants'.

Another problem is both the Law and the declaration form fail to specify other forms of participation in the capital of economic units, besides securities. Or, this provision of the law excludes the possibility to declare the participation in other forms of companies, besides the joint stock companies. Requested by the authors of the study to express their opinion regarding the introduction in the declaration form of other forms of participation (quota shares, equity participation, share participation) in the capital of economic units of any organization form, most of the Departmental Commissions (85%) had a positive reaction.<sup>38</sup>

*Examples of how this section of the declaration is filled in*

In many cases the declarants manipulate the declaration form by excluding this section. Frequently the declarants don't indicate anything here. There are declarations where this section is filled in, either fully or partially. None of the declarations indicated assignment of the share of securities in the capital of economic units.

*Estimation of the chances of the declarations control commissions to check this information*

In principle, the information requested in the declaration is enough to perform a real control, as the securities are recorded in special registers. However, we believe that the lack of information about the exact owner makes this control very difficult. It would be also useful to indicate the type of securities owned (stocks, bonds, etc.), as well the date when they were acquired.

*Recommended solutions*

- to distinguish, in this section, between the shares of securities in the capital of economic units declared by the official and those declared for other family members by inserting an additional column to indicate who owns the respective shares;
- to add to this section of the declaration the request to indicate the type of participation in the capital of economic units (stocks, bonds, etc.) and the date when they were acquired.
- to add to Law no.1264/2002 and this section of the declaration the request to indicate information about other forms of participation (quota shares, equity participation, share participation) in the capital of economic units of any organization form;
- to add to this section of the declaration the request to indicate the assignment of shares in the securities of the capital of economic units, their value, date when the assignment contract was concluded and the legal basis underlying the assignment act.

.....  
<sup>38</sup> For details, see Section III from the answers to the questionnaire presented in Annex 2 to this Study.

## 2.7. Responsibility assumption clause for the data included in the declaration

The present declaration is a public document and I shall be liable, according to the legislation, for the inaccuracy and incompleteness of information and data contained in it.

Date \_\_\_\_\_

Signature \_\_\_\_\_

**Note:** The owners of common goods submit only one declaration; the others only refer to it.

### *Comments regarding the compliance of the declaration form with the legal provisions*

The last clause of the declaration form, before the blank area for signature and date, is very curious - it stipulates that the "declaration is a public document", whereas Article 6(1)-(2) of the Law stipulate that the same declaration "is a personal" and "confidential" document.

The second part of this statement is also unusual, according to which the declarant shall assume the responsibility "according to the legislation, for the inaccuracy and incompleteness of information and data contained in it". At the same time, Article 14 of the Law stipulates that the declarants shall bear disciplinary or administrative liability for: a) the failure to submit the declaration in due terms unfoundedly; b) avoidance to submit the declaration; c) deliberate indication of incorrect data in the declaration. It seems that a provision about the indication of incomplete data in the declaration was forgotten to be inserted in this article and in the sanctioning legislation.

### *Recommended solutions*

- to introduce in Article 14 of the Law and in the sanctioning legislation the liability for the provision of incomplete data in the declaration.

*As a conclusion to this section we ascertain severe mismatches between the provisions of Law no.1264/2002 and the declaration form, attached to it, which generate diverse practices of interpreting declarable income and assets. Officials frequently overcome these gaps by changing the structure of the declaration, requested by the Law, adding new sections to it, but most of the times simplifying it in a manner that suits them best. Such inconsistent practices of filling in the declaration undermines the chances to make an efficient control of how they were filled in and even makes it impossible to systematize and keep appropriate records of the declared data.*

## SECTION 3.

### ADMINISTRATIVE CAPACITIES – INSTITUTIONAL FRAMEWORK FOR CONTROL OF INCOME AND PROPERTY – INTERNAL CONTROL

*Institutional framework of the mechanism of checking the declarations of income and property consists of:*

- *entities performing the preliminary control of declarations – Central Control Commission (CCC) and the Departmental Control Commissions for controlling the declarations of income and property (DCC);*
- *the authority vested with the function of exercising the de facto control of declarations of income and property – Centre for Combating Economic Crimes and Corruption (CCECC);*
- *institutions sanctioning the people guilty of violating the way of submission and completion of declarations – CCECC, organs of the Prosecutor's Office and the judiciary.*

*This section analyzes the commissions' effectiveness in terms of the opportunity of the regulations in force, but also in terms of enforcing these regulations, approaching as well the perceptions of commissions on the effectiveness of current verification mechanism (section 3.1.). The information provided by the institutions vested with duties of de facto control (section 3.2.) and judicial control are also presented and analyzed, based on the information received from CCECC, General Prosecutor's Office and Anti-corruption Prosecutor's Office<sup>39</sup> (section 3.3.).*

*The real picture of the situation was impossible to outline in lack of some data provided "directly from the source", and that is why the aforementioned authorities were requested to fill in a questionnaire and to provide certain statistical data<sup>40</sup>.*

#### 3.1. Commissions for Controlling Declarations of Income and Assets (preliminary control)

The control commissions have a crucial role in the functioning of the institution of income and assets declaration, because these entities are the first and decisive filter for all the declarations filed by officials, the preliminary control of declarations performed by these commissions being most of the times the final one<sup>41</sup>.

<sup>39</sup> A similar request was also addressed to the Supreme Court of Justice as early as 5 February 2009, but unfortunately so far, during the period of developing this study, we didn't receive any answer.

<sup>40</sup> The questionnaire form is provided in the Annex no. 1 to this study.

<sup>41</sup> The review of the questionnaires, filled in by DCC, proved that out of the total number of 14,796 declarations, filed during the period between 2003 and 2008 by the declarants, irregularities were identified only in 641 declarations (which accounts for 4.3%). According to the questionnaires, these declarations were submitted to CCECC for a de facto control. Surprisingly, CCECC informed us that during the period between 2003 and 2008 it didn't receive any request for de facto controls from the DCC.

Article 9 of the Law no.1264/2002 stipulates that the subjects of the declaration of income and assets mentioned in Article 3(a) shall file declarations with the Central Commission for Controlling Declarations of Income and Assets (hereinafter referred to as the *Central Control Commission, CCC*), while the subjects of the declaration of income and assets mentioned in Article 3(b) shall submit the declarations to the Departmental Commission for Controlling Declarations of Income and Assets of the Government Office, those mentioned at letter c) and d) – to the Departmental Commission set up by the public authority that according to the Constitution or other laws has issued the declarant's act of appointment into office, and counsellors in the local councils – to the Departmental Commission set up by the President of Rayon or the Mayor of the respective administrative-territorial unit (hereinafter referred to as the *Departmental Control Commission, DCC*).

Thus, the Law no.1264/2002 delimits the commissions vested with the functions of collection and control of declarations of income and property only against the categories of subjects of declaration. In principle, these commissions have similar status and enjoy practically the same rights and obligations. Next, we will analyze separately the functioning of the Central Control Commission (subsection 3.1.1.) and the functioning of the Departmental Commissions Control (subsection 3.1.2.), approaching aspects related to the setting up, membership, duties and activity of these commissions.

### **3.1.1 Central Control Commission (CCC)**

#### **• *Setting up of the CCC***

According to Article 11 of the Law no.1264/2002, the CCC shall consist of 9 members, appointed on a parity basis, by three representatives from the behalf of the Parliament, President of the Republic of Moldova and the Government, respectively, and it operates on the basis of the Regulations approved by the Parliament. The Regulations on the organization and functioning of CCC were approved through the Law no.1576/2002<sup>42</sup>, the Parliament representatives within CCC being appointed on the same day<sup>43</sup>. The Government and the President appointed their representatives within CCC a month later<sup>44</sup>. Thus, the CCC was set up by the end of January 2003, i.e. when the deadline set initially for the submission of first declarations was about to expire. A month later, after the actual setting up of the CCC, it became clear that its establishment wasn't made properly for the quick collection of about 1500 declarations until 31 January 2003 and amendments<sup>45</sup> stipulating the extension of the period for declarations submission until 31 July 2003 were adopted.

.....  
<sup>42</sup> As for the quality and „normative burden” of this Regulation, certain remarks must be made. If we analyze the Regulation along with the Law no.1264/2002 we'll be surprised to ascertain the fact that this Regulation is identical to the Law. From those 28 points of the Regulation, at least 14 (i.e. 50%) imitate the contents of the Law no.1264/2002, while another 14 points contain 2 similar provisions in different chapters (point 10 and point 22 of the Regulations).

<sup>43</sup> PD no.1575/2002, published in the Official Gazette no.178-181/1382 as of 27.12.2002.

<sup>44</sup> GD no.71/2003, published in the Official Gazette no.10/61 of 28.01.2003.

<sup>45</sup> Law no.85/2003.

- **CCC members**

The capacity of Commission members somehow bewilders. Especially, it is not clear why was it necessary to appoint such high-ranking officials, like ministers or deputies? Should their rank contribute to a more efficient activity of the Commission or confer it a special status? Taking into account that the activity of officials of such rank is quite intense, it is hard to believe that these officials proceed to the thorough examination of each separate declaration or that they would confront the declarations for each subject in part<sup>46</sup>. The Law no.1264/2002 doesn't expressly stipulate that the people appointed to the CCC must be ministers or deputies. If the goal was the real efficiency of CCC activity, other people could be also appointed within this Commission, including outside of the Government or outside of the Parliament, people non-affiliated politically. Such an approach would have ensured that the CCC had a larger trustworthiness and would have excluded the unavoidable conflicts of interest, when ministers or deputies, members of the CCC, would examine their own declarations or the declarations filed by their colleagues.

Functioning of the CCC has certain peculiarities as compared to the parallel regulations provided for the functioning of the DCC:

- The CCC President and his/her secretary are elected by the Commission members<sup>47</sup>;
- The mandate duration of the CCC members coincides with the mandate period of the bodies that appointed them;
- at the decision of CCC, the term for preliminary control of declarations can be extended by up to 30 working days<sup>48</sup>;

We can admit that in case of the CCC the aim was desired to ensure it with larger autonomy, granting it the privilege to elect its president and the secretary. In reality, the *ex officio* appointment of a president and secretary would be questionable, considering the level of Commission's "representativeness", as well as the fact that there is no unitary normative act on establishing its membership.

As for the mandate duration of the CCC members, it should be mentioned that no document of their appointment<sup>49</sup> does contain precise rules on the mandate duration. For example, it is not clear what will happen and who will check the declarations during the election years, when the mandate of the members appointed by the Parliament expires and they cannot be anymore CCC members.

<sup>46</sup> A simple mathematical calculation of the number of subjects obliged to file declarations to the Central Control Commission, in terms of letter a) of Article 3 of the Law no.1264/2002 proves that the commitment to perform an efficient control of the submitted declarations is practically impossible to be met, especially for a person permanently involved in other important activities, while the activities of checking the declarations is only additional and performed "on a volunteer basis".

<sup>47</sup> There is no unitary normative act on the CCC full membership, on who was elected president and who the secretary of this commission is. For the moment, such information was not made public in any official source of information.

<sup>48</sup> Point 20 of the CCC Regulations, introduced through the Law no.137/2004.

<sup>49</sup> PD no.1575/2002, President Decree no.1091/2003, GD no.71/2003.

- ***CCC duties***

The CCC duties are regulated by the Law no.1264/2002 and the Regulations<sup>50</sup> approved for its implementation and, pursuant to these documents, the CCC duties are as follows:

- a) to collect the declarations of income and assets;
- b) to check the accuracy of filling in the declarations, completeness and exactness of information and the data contained in declarations;
- c) to issue to the declarant a proof of receiving the declaration;
- d) to submit to the CCECC the appropriate materials, if during the control the elements of a violation, including crime, were detected;
- e) to involve specialists to perform the control.

We consider that two of these duties aren't quite comprehensive, namely the duty to collect declarations and the duty to issue the proof of declaration receiving. The regulation of these duties contains certain ambiguities: what is the place (authority's office) where declarations should be filed with? Who is person issuing the proof of receiving the declaration<sup>51</sup>? Who controls that the people appointed or elected/dismissed or removed into/from office file the declaration in due terms? What happens if the appointed people haven't submitted their declarations? Unfortunately, none of the laws gives an answer to these questions, which leads to an extremely confuse character of the mechanism of submission and checking of declarations.

- ***Activity of CCC***

According to Article 10 of the Law no.1264/2002, the Central Control Commission, as well as the Departmental Commissions shall be responsible of collecting the declarations and their preliminary control. The preliminary control of declarations is performed in two stages. The first stage – within 15 working days as of the date of declaration submission – the existence and the accuracy of its contents are checked, and the declared information and data is confronted with the information from the previous year. During the second stage – within 30 working days as of the date of completion of the first stage - the accuracy of presented information and data are checked, by confronting them with the information and data provided by the competent public authorities.

Taking into account the high rank of the representatives delegated to ensure the activity of the CCC, the way these persons perform a thorough verification of declarations seems to be as uncertain as the periodicity of convening the Commission's meetings<sup>52</sup>. In order to ensure the full control over all declarations during the second stage, the CCC would have to keep an active correspondence with other authorities, but in this case it is not clear who is responsible of the secretariat works of the Commission. We can hardly imagine that the CCC secretary and members, or even its

.....  
<sup>50</sup> Point 8 of the Regulations on the organization and functioning of the CCC.

<sup>51</sup> Pt.17 of the CCC Regulations ascribes this duty to the "person entitled with", without specifying the capacity and the precise status of this person.

<sup>52</sup> In pt.12 of the CCC Regulations is stipulated that the Commission "shall be convened in meetings upon the need".

president, personally draft inquiries of information from authorities with respect to all the declarants, then comparing them with the data included separately in each declaration filed for the respective year.

Although the good organization of the CCC activity was repeatedly called in question, the only amendment operated in its Regulations referred to the possibility of the CCC to extend *ex officio* the duration of control of declarations for a term up to 30 working days<sup>53</sup>.

In order to reflect in the present study a perception on the functioning and activity of the CCC as real as possible, its members were required to provide information by completing a questionnaire where to include certain data of primary statistical recording for the period 2003-2008, such as: annual number of commission's meetings; the number of persons obliged to submit declarations to the CCC, the number of persons who had really filed declarations and explanation of the discrepancies between these figures, if any; the annual number of declarations where irregularities were detected and the number of notifications to the CCECC in order for it to perform the *de facto* control. Also, the CCC members were invited to make in questionnaire an assessment on the effectiveness of the mechanism of declaration of income and assets in the Republic of Moldova<sup>54</sup>. Regrettably, in its response, the CCC avoided to complete the questionnaire, putting forward the reason that "the questions from the questionnaire imply an analysis and synthesis and require personal and subjective appreciations regarding the activity of the commission and the Law on the Access to Information establishes a special procedure for their development and offering. Thus, the writing of this study doesn't fall within the duties of the Commission<sup>55</sup>.

We think that the answer of the CCC speaks for itself about the good organization and functioning of the Commission, as it fails to provide any data on its annual meetings, the number of persons obliged to submit declarations, the number of declarations really submitted and the declarations where irregularities were detected when completed. This shows that the CCC doesn't have a record keeping system and lacks even primary ready statistics on its own activity of collection and preliminary control of declarations. Such data were appreciated in the answer provided by CCC as "implying analysis, synthesis and requiring personal and subjective appreciations", being synonymous to "the conduct of a study that doesn't fall within the duties of the Commission".

Absent the availability of the CCC to co-operate in order to clarify the aspects related to its immediate activity, an attempt was made to find out information available in the mass media sources, as suggested by the president of the CCC in his letter, but

.....  
<sup>53</sup> Law 137/06.05.2004.

<sup>54</sup> See for details Section II from the answers to the questionnaire presented in Annex no. 2 to this study.

<sup>55</sup> Letter no. 25 as of 6 March 2009. The authors of this letter tried to identify the provisions in the Law on the Access to Information that would justify the refusal of CCC to provide the respective information, but unsuccessfully. We mention that the required information cannot be considered as state secret information, nor restricted information. Therefore, the refusal of CCC to provide us this information isn't justified, the more especially as in the response a concrete article of the Law on the Access to Information hadn't been specified.

this information proved to be insufficient for the goals of this study. The only source identified, where the required information was partially detected was the first Compliance Report on the Republic of Moldova, adopted by GRECO in December 2005 during the first evaluation round<sup>56</sup> (see for details Annex no. 3 to this study). The report states the following:

“Every year, it [the Commission] receives nearly 1500 declarations, which are examined to ensure that they comply with the law. Moreover, the commission checks the information received and compares them with other relevant institution’s data. According to the commission, the most frequently occurring problems are that:

- only officials’ income is declared, and not that of their families;
- the value of property isn’t always recorded ;
- the address of buildings and/or land near to buildings is not indicated;
- the period to which declarations apply is not recorded.

In all such cases, the commission, which had not found any case of fraudulent declaration, requires those concerned to complete the declarations in accordance with the law, which has in fact happened. It has **met six times** in 2005. All the declarations are collated and stored in the commission archives.”

From the text above, we can notice that in order to evaluate the compliance of the Republic of Moldova with the recommendations after the first evaluation round, GRECO addressed the Government of the Republic of Moldova the same natural questions on the activity of the CCC, as the authors of the present study. GRECO succeeded in obtaining from the CCC conclusive answers and concrete information, while we can only regret the uncommunicativeness and lack of transparency of the CCC on its activity and the lack of openness towards the civil society.

*In examining the CCC functionality, it is ascertained that it exerts a merely formal role, limited to the simple collection of declarations, without checking them, as provided by the framework legislation. This “ghost” institution is more likely to simulate the control activity than to really exercise it, trying to hide the nonexistent control of declarations behind a thick curtain of non-transparency.*

### **3.1.2. Departmental Control Commissions (DCC)**

#### **• Setting up of DCC**

According to Article 9(2) of the Law no.1264/2002 and point 1 of the Regulations on the Organization and Functioning of Departmental Commissions for Controlling Declarations of Income and Assets, they shall be set up by the public authority that, in accordance with the Constitution, issued the declarant’s act of appointment into office. As in case of the CCC, the late setting up of the DCC was conditioned by the adoption of the Regulations of activity of the commissions, 5 months after the adoption of the Law no.1264/2002. A number of departmental commissions were estab-

<sup>56</sup>The Compliance Report on the Republic of Moldova, adopted by GRECO at the 26th plenary meeting (Strasbourg, 5-9 December 2005), para 30. For details, see the official website of GRECO <http://www.coe.int/greco>

lished and started their activity of collection of the first declarations at a later date than 2003, some of them starting their activity of collection of declarations only in 2007, which proves that the moment of entering into force and real application of both laws was vague even for the authorities called upon to apply them<sup>57</sup>.

Unlike the CCC, of which we surely know that it is one entity only, in case of the DCC the certainty isn't the same, their number being difficult to estimate, taking into account that the Law no.1264/2002 and the Annex 2 to the Law no.1576/2002 contain references to several categories of DCC, classified depending on the categories of subjects of declarations. Therefore, we can assert that one DCC within the Government Office surely exists for the categories of subjects listed in Article 3(b) of the Law no.1264/2002, but it isn't clear whether another DCC is created for the employees of the Government Office or whether these employees file their declarations to the same Commission<sup>58</sup>.

As concerns the rest of categories of the DCC, following the logic of the relevant legal provisions, these commissions should have been created at the level of each rayon and each municipality/town or town/commune. But there are also ambiguities regarding the setting up and functioning of the DCC within the Autonomous Territorial Unit of Gagauzia. As a matter of fact, the Law no.1264/2002 doesn't provide for certain distinct obligations to submit the declaration of the Bashkan of Gagauzia or the members of the People's Assembly of the autonomy.

- **DCC members**

Unlike the CCC, the DCC members are appointed by the managers of the public authorities, while at the local level – by the presidents of rayons or the mayors of the administrative-territorial units<sup>59</sup>. The mandate of the members of these DCC is of 3 years<sup>60</sup>, the president being appointed by the authority manager, while the secretary – by the DCC president.

The appointment of the president and the secretary of the DCC is a feature which distinguishes the DCC from the CCC. Another difference between them is that the legal provisions favour the CCC, which can extend the control period by 30 days, while the DCC don't have this privilege. As for the rest, the regulatory provisions of both categories of commissions are identical. Between the CCC and the DCC doesn't exist a subordination relationship, each of them performing its activity independently and discretionary, without being supervised/verified by other hierarchically higher authorities or bodies. At the same time, the same unavoidable conflicts of interest remain for DCC as well, when the DCC members have to examine their own declarations, as the Law doesn't provide for alternative solutions in this case.

<sup>57</sup> See Section I from the answers to the questionnaire in the Annex no. 2 to this Study.

<sup>58</sup> From the response given by the Government Office at the questionnaire addressed to the DCC this situation isn't clear, as well.

<sup>59</sup> Pt. 11 of the Annex no. 2 to the Law no.1576/2002.

<sup>60</sup> Pt. 3 of the Annex no. 2 to the Law no.1576/2002.

- **Duties of DCC**

The DCC duties are the same as the duties of the CCC described within the previous subsection, except for the subjects whose declarations are collected and verified by them.

- **DCC activity**

In our attempt to evaluate the DCC activity, the authors of this study have required 49 of DCC to fill in a questionnaire. 19 of DCC gave no answer, representatives of 2 DCC gave a response in which they avoided to fill in the questionnaire<sup>61</sup>, while 28 of DCC answered the questions of our questionnaire. If compared to the CCC, which refused to give any answers, the DCC representatives were more venturesome, answering most of the questions included in the questionnaire without invoking the alleged violation of the Law on the Access to Information. The DCC completed the questionnaire differently, certain questions, for reasons unknown to us, being left aside<sup>62</sup>.

Examining the completed questionnaires, we found out that on average, from the moment of setting up, the DCC membership have changed 4 times. The modification of the membership of the Departmental Control Commissions seems to be natural, taking into account that the mandate of members is of 3 years, the membership of a commission set up in 2003 must have been modified 3 times already<sup>63</sup>. The situations when the DCC membership was never modified or modified only once are seemed rather interesting to us<sup>64</sup>.

A practice stated in the responses to the questionnaires is the integration of the CCECC representative among other members of the departmental commissions<sup>65</sup>. We don't have any information as to why the CCECC representatives got involved in the activity of the DCC: are they involved as members or as specialists, in terms of the letter e), pt.10 of the Annex no. 2 to the Law no.1576/2002? In any case, we consider that the involvement of the CCECC staff within the DCC, considering the existing legal provisions, does not seem justified, because they can come to a conflict situation, whether certain declarations will have to be subject to the *de facto* control, performed exclusively by the CCECC.

The human resources of the DCC are considered as sufficient by all the DCC representatives, the financial and technical resources were evaluated as sufficient at a level of 75% and 91%, respectively. Here we must note that the activity of the commission members is performed "on volunteer basis" and separate financial allocations for the support of the DCC activity have never been provided.

Trying to find out which are the methods used in the control of declarations: the complete method, the selective method or eventually another method that could

<sup>61</sup> The answers of these DCC are reflected in the subsection "The CAPC Questionnaires" in section 4 of this Study.

<sup>62</sup> For example, the question on the sufficiency of financial resources allotted for the DCC activity was left without any appreciation most of the times.

<sup>63</sup> This conclusion can be valid, only if the authorities that set up the DCC don't interpret permissively the Law no.1576/2002, admitting the possibility to extend the mandate of the DCC members for an unlimited period of time.

<sup>64</sup> For details, see Section II from the answers to the questionnaire in Annex 2 to this Study.

<sup>65</sup> *Ibidem*.

be mentioned, we ascertained that there is no unitary practice of performing control of declarations. 60% of the DCC stated that they use the complete verification method, while 40% of DCC prefer to use the selective method, without specifying in the answer the sample of declarations checked selectively and the criteria for their selection. This situation, identified within the questionnaires, is interesting in the light of the fact that even though the Law no.1264/2002 and the Law no.1576/2002 do not offer the DCC the possibility to selectively check the declarations, the practice seems to be different. On the other hand, bearing in mind that the DCC members activate without being remunerated, it would be pointless to expect them to perform a thorough control as imposed by the law. As a matter of fact, the representative of one DCC avoided to state the control method used, invoking the fact that concrete regulations on the way of checking the declarations are lacking.

An issue that affects directly the effectiveness of the DCC activity is the lack of a database of declarations or information on the subjects of declaration. Thus, according to the answers to the questionnaire, only 23% of respondents stated that they have such a database for the record keeping of declarations, while 77% mentioned the absence of such a database<sup>66</sup>.

Asked to provide information on the notifications to verify certain declarations, received from public institutions or private persons, the DCC answered that such notifications were submitted only by the CCECC (from our enquire we have information about 10 notifications).

As for the number of notifications filed by the DCC to the CCECC during 2003-2008 on the declarations with irregularities, in order for the CCECC to perform the *de facto* control, the answers from questionnaires indicate a total number of 641 notifications about such declarations<sup>67</sup>.

At the same time, we required from the DCC to assess the effectiveness of the preliminary control and *de facto* control mechanisms. Compiling the DCC assessments outlined an odd situation: 3/4 of respondents that have never informed the CCECC appreciated the *de facto* control as efficient, although they couldn't have known this, as they didn't see the CCECC actions, while 1/3 of the DCC which stated to have informed the CCECC, appreciated the preliminary control as inefficient<sup>68</sup>.

*The evaluation of the DCC activity, both in terms of legal regulations and the answers given, prove that although the organization of these commissions is affected by some malfunctions, similar to the CCC, the activity itself of the departmental commissions is less hidden and formal, as is the case of the CCC. There would be more explanations, but the most obvious are that the DCC membership involves lower rank officials, but with a higher sense of accountability. And even the fact that these commissions are established through an act of hierarchically higher official has a role of mobilization and accountability.*

<sup>66</sup> The lack of databases was intuited by us when we required information from the DCC. In the absence of some appropriate databases, the completion of these questionnaires was supposed to be more difficult.

<sup>67</sup> These answers of the DCC will be considered additionally in subsection 3.2 in relation to the information submitted to the CCCEC at the request to provide information on the *de facto* controls performed by the CCCEC.

<sup>68</sup> See for details Section II, point 2 from the answers to the questionnaire in Annex 2 to this Study.

### 3.2. Centre for Combating Economic Crimes and Corruption (*de facto* control)

The Centre for Combating Economic Crimes and Corruption (CCECC) is vested with the function of *de facto* control of declarations<sup>69</sup> and comes in when during the preliminary control the control commissions find elements of a violation, including crimes. The *de facto* control consists of confronting the information and data stated in the declaration with the information and data in possession of competent public authorities. The *de facto* control is performed as provided by law and should be completed until the submission of a new declaration. If needed to verify the income and property outside the Republic of Moldova, the term for the *de facto* control can be extended by a year as of the date of submitting the respective materials to the CCECC. Should the declarant disagree with the CCECC decision, he/she has the right to appeal it in the competent law court.

From the aforementioned legal sources it is not clear whether during the *de facto* control the CCECC also verifies other issues. Besides, the text of the law doesn't stipulate whether the CCECC shall have a special division in charge of performing such controls. In order to obtain a thorough view of the CCECC activity in the field of *de facto* control of declarations, we requested this institution to provide statistical data and information, as showed in the table below.

No.	Required information/data	2003 2004 2005 2006 2007 2008 2009						
		2003	2004	2005	2006	2007	2008	2009
1.	Total number of notifications received by the CCECC to perform the <i>de facto</i> control of declarations, of which from:							
	• Central Control Commission							
	• Departmental Control Commissions							
	• other entities (notifications from Parliament deputies, president, citizens' petitions)							
2.	Number of <i>de facto</i> controls initiated by the CCECC ex officio							
3.	Total number of administrative offences cases investigated by the CCECC, of which:							
	• investigated as a result of the <i>de facto</i> control							
	• investigated as the result of activities carried out by the CCECC							
4.	Number of criminal cases investigated by the CCECC, of which:							
	• investigated as a result of the <i>de facto</i> control							
	• investigated as the result of activities carried out by the CCECC							
5.	Number of persons (subjects of declaration) involved in administrative cases investigated by the CCECC, of which:							
	• in administrative offences cases							
	• in criminal cases							

<sup>69</sup> Para. (6) art. 11 of the Law no.1264/2002

In its response as of 17 February 2008, the CCECC communicated the following:

“We hereby, referring to the request of statistical data and information on the declaration and control of state officials’ assets [...], inform you that **during the period between 2003 and 2009 the CCECC had never been notified by the departmental control commissions and therefore did not perform any *de facto* control of declarations.**

According to the legislation in force (Article 10 para. (4), (5), (6) and Article 11 para. (6) of the Law 1264/2002, the Centre can initiate the control of declarations only if requested by the aforementioned commissions, as it does not have legal duties to check and control the declarations *ex officio*”.

Contrary to the CCECC response, the **DCC in their answers to the questionnaire had mentioned that during 2003-2008 they had submitted 641 declarations to the CCECC for the performance of the *de facto* control.** Moreover, according to the data provided by one DCC, 32 declarations were submitted to the CCECC in 2008, at the CCECC own request.

The discrepancy between the CCECC response, through which we were informed that Centre hadn't required and received any declarations for the performance of *de facto* control, and the responses of the DCC, claiming to have submitted 641 declarations with irregularities to the CCECC to perform the *de facto* control, is obvious. Taking into account that not all the DCC were required to fill in the questionnaire and from the 49 requested DCC only 28 answered, the assumption that the number of notifications submitted to the CCECC could be larger, is reasonable. We recognize that the Law no.1264/2002 is deficient, but the widespread perceptions about its deficiencies affected so far only the capacities of control commissions, the members of which, activating on a voluntary bases and absent the assistance of remunerated professional staff, wouldn't be capable to perform a preliminary control that is enough rigorous to detect violations. During the whole period after the Law no.1264/2002 entered into force, the CCECC which doesn't have the duty to perform the control of declarations *ex officio*, had permanently stated, during various public events, that it was never requested by the declarations control commissions to perform the *de facto* control of any declarations.

*Analyzing the data available on the *de facto* control of declarations, it is found that, on one hand the Departmental Control Commissions (DCC) speak about the submission of 641 declarations with irregularities to the CCECC for *de facto* control, while the CCECC claims that it was never requested by the declarations control commissions to perform such controls. If such notifications were really submitted to the CCECC, the incapacity of this entity to verify them is alarming. It is hard to believe that in all 641 cases indicated by the DCC it was the guilt of the Post Office or that all the DCC that had informed the CCECC on declarations with irregularities didn't understand correctly the question from the questionnaire. Being a specialized law enforcement agency, vested with the duty to perform *de facto* controls of declarations in order to detect the elements of crimes or of administrative offences and being provided with human and technical resources, it is unacceptable that the CCECC fails to perform its*

*legal duties to prevent and combat corruption, by contributing to the control of the public servants' declarations of income and assets. We consider that the bodies vested with functions of supervising the CCECC activity must react based on this information and perform a control in order to ensure the lawfulness of the CCECC activity, with further notification of the public opinion on the outcome of this control<sup>70</sup>.*

*Thus, after analyzing the CCECC role, we draw the conclusion that the de facto control doesn't currently exist. The competent authorities shall clarify whether the lack of this control is imputable or not to the CCECC. It is clear that the CCECC intervention depends directly on the discretion and will of control commissions to verify conscientiously the declarations and to submit the declarations with irregularities to the CCECC for the performance of the de facto control. Until serious deficiencies exist at the stage of preliminary control of declarations (formal control) they will inherently affect the de facto control, the CCECC role in this process being non-existing and imperceptible.*

### **3.3. Judicial control**

Article 1(2) of the Law no.1264/2002 stipulates that the law aims at "establishing measures for preventing and combating the unfounded enrichment of state dignitaries, judges, prosecutors, public servants and persons holding managerial positions." The achievement of this goal can be followed through also in terms of people sanctioned for violations of the provisions of the Law no.1264/2002 which, in Article 14, stipulates: "The person that:

- a) didn't submit the declaration in due terms unfoundedly;
- b) avoids to submit the declaration;
- c) indicates deliberately incorrect data in the declaration;
- d) violated the way of keeping and using the information contained in the declaration during performing his/her duties or performing their control, shall be held liable for disciplinary and administrative offences". The Law no.1264/2002 was completed with the regulations of the Code of Administrative Offences (CAO) and the Criminal Code.

Bellow we will examine the legislation and the practice of enforcing these two types of liability: administrative (*subsection 3.3.1*) and criminal (*subsection 3.3.1*).

#### ***3.3.1. Practice of instituting administrative proceedings***

**The Code of Administrative Offences<sup>71</sup> provides administrative liability** for the failure to submit the declaration of income and assets in due terms by the persons under obligation to submit it (Article 174/24) and for the violation of the way of

<sup>70</sup>This study doesn't aim at collating and verifying the affirmations made by the respondents to the questionnaire or by the CCECC representatives. It only states the matter of fact, noticed in the information provided by diverse authorities..

<sup>71</sup>Adopted on 29.03.1985.

keeping and using the information contained in the declaration during performing his/her duties or performing their control (art.174/25)<sup>72</sup>. The CCECC has the competence to examine these administrative offences, but from the information available to us, it hadn't been involved in any administrative action for the aforementioned offences<sup>73</sup>. The same was confirmed by the Anti-corruption Prosecutor's Office<sup>74</sup>. If administrative cases weren't opened because it was considered that this would be equivalent to performing the *de facto* control, as a result of notifications made by the CCC and the DCC, than we find such an interpretation of the Law no.1264/2002 as being too extensive. Notification of the CCECC by control commissions to carry out the *de facto* control in case of failure to submit declarations in due terms (Article 174/24) or in case of abusive actions of the commissions themselves (Article 174/25) seems rather unlikely.

Control commissions ask the CCECC for a *de facto* control only if they detect irregularities in the declarations contents (substance ground), but not in case of the failure to submit the declarations in due terms (formal ground) and certainly they will not inform the CCECC about the irregularities made by themselves. Besides, according to Article 210/1 of the Code of Administrative Offences, **the CCECC is the authority in charge to examine and apply administrative sanctions in such cases.**

In order to discover such offences, the CCECC has the right to react and verify *ex officio* the submission or the failure to submit the declarations. This intervention of the CCECC is also necessary for the reason that about 1262 persons did not submit declarations of income and assets throughout 2003-2008, of which the non-submission of declarations was reasoned only in 298 cases, according to the results of the DCC questioning<sup>75</sup>.

### **3.3.2. Practice of instituting criminal proceedings**

There are certain ambiguities with respect to the criminal liability set in the Criminal Code. As outlined above, the Law no.1264/2002 expressly provides two types of legal liability for the breach of its provisions: disciplinary and administrative, without specifying criminal liability. Nevertheless, the legislator insisted in moving on, in order to achieve the goal set in Article 1 of the Law no.1264/2002 and introduced after all criminal liability. Thus, according to Article **330<sup>1</sup>** of the Criminal Code, the following acts were incriminated:

- avoidance to submit the declaration of income and assets;
- deliberate indication within the declaration of incorrect data by the persons under obligation to submit it;

<sup>72</sup>The new Code of Administrative Offences adopted through the Law 218/2008 and that shall be enforced as of 31 May 2009 doesn't stipulate special regulations regarding the liability for breaching the regulations on declaration of income and assets.

<sup>73</sup>Letter no.17/372 of 17.02.2009

<sup>74</sup>Letter no.641/09-940 of 16.02.2009.

<sup>75</sup>See for details Section I, point 1 from the answers to the questionnaire, Annex no. 2 to this study

- disclosure or deliberate publication of information from the declarations of income and assets by persons who became aware of their contents while performing their duties or control.

To analyze the way criminal liability was enforced, the authors of the Study required from the authorities in charge of legal examination and sanctioning (i.e.: the General Prosecutor's Office, the Anti-corruption Prosecutor's Office, the Supreme Court of Justice) to provide information and statistical data regarding:

- the number of administrative cases examined in accordance with articles 174/24 and 174/25 of the Code of Administrative Offences;
- the number of criminal cases examined in accordance with article 330/1 of the Criminal Code;
- the number of sanctioned/convicted persons for the aforementioned categories of offences and crimes, etc., requiring at the same time the copies of the decision/judgement made in these cases.

Regrettably, till the end of writing this study, the Supreme Court of Justice did not present the required information and did not react to our inquiry in any ways.

In the reply of the General Prosecutor's Office, we were informed that the "Anti-Corruption Prosecutor's Office has completed the criminal prosecution and has sent to court for consideration of merits three criminal cases regarding the violations stipulated in Article 330/1 of the Criminal Code, of which only in one case a final judgment was delivered<sup>76</sup>", providing us also with a copy of the court judgement.

Taking into account the "thin" judicial practice, we considered as necessary to partly reproduce the judgement made in this case, presenting the circumstances of the case and the interpretation made by the court to the provisions of the Law no.1264/2002 and of the Criminal Code.

Case no.1-256 5 December 2006 Hincesti Court	<p><b>(copy)</b>  <b>JUDGEMENT</b>  <b>in the name of the law</b></p> <p>„Person X, inspector of the Trans-Border and Informational Crime Division of the Rayon Police Department Y., in breach of the provisions of Article 3(d) of the Law no.1264/2002 deliberately failed to indicate in the declaration of income and assets submitted for the year 2005, a plot of land in private ownership under the following circumstances:</p> <p>On 24.12.2006, inspector X., being under the obligation to submit a declaration, deliberately did not declare the plot of land of a total area of 0,0801 hectares that is in his private ownership. During the consideration of the case in court, the defendant pled not guilty and declared that in <b>February 2006</b><sup>77</sup> he was urged to go to the RPD Y., where <b>he was told to urgently fill in the declaration of income for the previous year</b>. He consulted his colleagues on how to fill in the declaration form and doubts arose with respect to the land that he partly purchased. <b>He took the advice of his col-</b></p>
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<sup>76</sup> Prosecutor's Office didn't give details on the other two cases.

<sup>77</sup> According to Law no.1264/2002, the deadline for the submission of declarations is 31 January.

leagues and reached the conclusion that the declaration is of income, and his income is the wage he indicated in declaration, while the plot of land he purchased with the wage already declared. Thus, he couldn't declare the same amount, or more correctly the same income twice. Thus, he failed to do this deliberately but did not avoid to declare the plot of land.

Despite of pleading not guilty, the incrimination is totally proved by the evidence presented and used in the criminal case:

Notary's testimony

Declarations of another participant to the tender for the procurement of the plot of land

Declarations of the Cadastre's representative<sup>78</sup>

Another witness declared that **approximately in March 2006** he was invited to the Human Resources Division of the RPD Y., where he and his colleagues were provided **assets declaration forms that they had urgently to fill in**. He gave the forms to his colleagues. **No one of the superior officials had explained them how to fill in the declaration**. After he and his colleagues have completed the assets declarations and signed them, **on the front page there was a table that he and his colleagues didn't fill in and he knows nobody who completed the first part of the declaration**<sup>79</sup>.

After hearing the trial participants and analyzing the evidence presented, the court finds that the legal qualification of the actions of person X was made correctly. based on Article 330/1 (1) of the Criminal Code: deliberate indication in the declaration of incorrect data by the persons obliged to submit it. Simultaneously, the incrimination of avoidance to submit the declaration of income shall be excluded, as it didn't find confirmation during the court hearing.

At the same time, the court finds it irrational to impose a criminal sanction, considering the nature and the reduced severity of the wrongdoing, as well as the personal traits of the perpetrator. Thus, according to the provisions of Article 55 of the CC of the RM, the person that committed for the first time a minor or a less grave crime can be exonerated of criminal liability and be held liable for administrative offence, if it is was ascertained that its correction can be made without criminal liability. [...]

Having regard to Article 391 (1), pt. 7 of the Criminal Procedure Code of the RM, the court, -

RULES:

Termination of criminal proceedings in the criminal case of accusing citizen X. based on Article 330/1 (1) of the Criminal Code of the RM and holding him administratively liable, sentencing him to a fine amounting to 10 c.u.<sup>80</sup> [equivalent of USD 18]

The analysis of the circumstances of this criminal case brings to light all the ambiguities related to the process of declaration of income and assets: stages of declaration, object of declaration, the way of declaration checking and the liability for the infringements committed during this process. As it can be noticed from the judgement contents, the deadline for submission of declarations isn't observed neither by the persons under obligation to file declarations, nor by the persons bound to collect them.

March or even February mean the already missed deadlines for the submission of declarations, stipulated in Article 8 of the Law no.1264/2002.

<sup>78</sup>These declarations are of no interest in the sense of the present study, as refer to the process of land purchase.

<sup>79</sup>The sentences with bold characters were made by the authors of this study, to invite the reader's attention to certain aspects.

<sup>80</sup>The judgement was worded by the judge of Hinesti Court Nina Rusu, on 5 December 2006, case no. 1-256.

It is highlighted once more that the declarants don't know and aren't trained on how to fill in the declarations, each of them interpreting in his/her own way the object and modality of declaration, that proves the ambiguous character of the declaration form attached to the Law no.1264/2002.

Taking into account the case circumstances, we suppose that this case was brought to court by the person with whom the defendant, inspector X., is at suit in the case of land procurement, because in the judgement it is not indicated that these irregularities from his declaration were detected by the DCC of the RPD Y, which notified the prosecution authorities to initiate the criminal proceedings. On the other hand, the court must have followed also the date of the declaration submission, because it is absolutely clear that the submission deadlines were missed and this offence should have been sanctioned in accordance with Article 174/24 of the CAO.

Returning to the categories of crimes which involve criminal liability we ascertain that these infringements, deriving from the Law no.1264/2002 aren't detailed enough and are worded in a manner which allows various interpretations. For instance: how the perpetrator's intention will be proved when indicating incorrect data in the declaration?; what should be the evidence proving this intention?; which are the criteria to assess if the data indicated in the declaration are inaccurate or only incomplete?<sup>81</sup>

The above conviction ruling of the court was qualified by the Moldovan authorities as a great success, the fact of commencement of a criminal prosecution being communicated to GRECO evaluators<sup>82</sup>, although the Moldovan authorities failed to further communicate the future of this criminal case, terminated with the application of an administrative sanction.

*The liability categories stipulated currently in the legislation will not contribute to meeting the goal of the Law no.1264/2002 of preventing and combating unfounded enrichment of state dignitaries, judges, prosecutors, public servants and persons holding managerial positions. The Moldovan authorities weren't brave enough to establish the criminal liability for the unfounded enrichment, limiting themselves to criminalizing the violation of the manner and timing of declaration filing and setting administrative sanction for the failure to submit the declaration and for the violation of the way of keeping and using the information contained in declarations. In contrast to our country, in many European countries<sup>83</sup> criminal liability is precisely provided for unfounded enrichment, the task of proving the lawfulness of wealth acquirement being due to defence<sup>84</sup>.*

<sup>81</sup>These issues can be also concluded from the explanations given by the witnesses in the aforementioned criminal case (declarants don't know how to fill in correctly the declarations, declaration form being very ambiguous).

<sup>82</sup>The Compliance Report on the Republic of Moldova, adopted by GRECO at the 40 Plenary Meeting (Strasbourg, 1-5 December 2008), para. 52.

<sup>83</sup>Consult the practice of France, Italy, Portugal.

<sup>84</sup>As we mentioned in subsection 1.3 of the present Study this idea was also conveyed in Moldova, being abandoned for the moment. Simultaneously, the experience of other states shows that such liability can be provided even if similar constitutional norms exist.

*Considering the activity of state authorities responsible of sanctioning and convicting the individuals breaching the rules of declaration of income and assets, it is noted that the existing sanctions aren't applied firmly by the criminal prosecution authorities and courts of law. We consider that these practical deficiencies are inherently related to the quality of legal provisions and institutional framework in the field of declaration of income and assets, these being ineffective and applied only formally.*

## SECTION 4.

### TRANSPARENCY AND RECEPΤIVITY – EXTERNAL CONTROL

*The previous section analyzed the efficiency of the internal control, performed by the control commissions, CCECC and the judiciary. Another leverage of controlling the declarations of income and assets is the external, public control, which can be exerted by the society over the officials, if their declarations are made public. This section reveals the legal issues, related to ensuring the transparency of declarations (subsection 4.1), as well as the resistance of authorities to the attempts of mass-media and civil society to promote transparency (subsection 4.2.).*

#### 4.1. Confidential transparency – legal paradox

This paper stresses the importance of the activity of the public service, including of the public information about the welfare of public officials. A transparent administration and justice, with a high level of probity, can considerably contribute to the maintenance and strengthening of the rule of law, based on social and human values, where human rights are the supreme value, protected by the law and its representatives.

The contents of the most important documents, adopted and implemented by the Moldovan authorities, would indicate that the need to enhance the transparency of public administration is acknowledged and permanent attention is given to this issue. To the plenty of documents that refer to the need of preventing and combating corruption, indicated in Section 1 of this Study, we can add several more, with concrete provisions on the need to ensure transparency and enhance the public control over the declarations of income and assets.

Thus, the National Strategy for Corruption Prevention and Combating<sup>85</sup> stipulates the following institutional causes of corruption: *lack of transparency in the activity of central and local public administration, in law enforcement bodies and low responsibility for the identification of corrupt individuals*. At the same time, the Action Plan for the implementation of this National Strategy stipulates (para 7.8) the need to publish annually on the public institutions' official website the results of the controls over the declarations of income and assets, submitted by officials from the public authorities, specified in Annexes 1-7 to the Law on the Payroll System in the Budgetary System, which would contribute to the *enhancement of the probity of public institutions and streamlining the public control on the activity of state officials*.

The Strategy of Central Public Administration Reform<sup>86</sup> stipulates alignment to such principles as *trust, access to information, transparency, responsibility*.

<sup>85</sup> PD 421/2004.

<sup>86</sup> PD1402/2005.

In early 2005, the 2005-2009 the Activity Program of the Government "Modernization of the Country – Welfare of People"<sup>87</sup>, in the "Anti-Corruption Policies" Chapter, stipulated that the anti-corruption measures in the central and local public administration are related to the *public control over the income and assets of public dignitaries and officials*. After almost two years of its implementation, in the 2006 Report on the Implementation of the 2005-2009 Activity Program of the Government, it is stated that the activity of the Government institutions in the process of preventing and combating corruption was oriented "*towards ensuring a control, on behalf of the society, over the income and assets of public dignitaries and officials*".

The 2008-2011 National Development Strategy<sup>88</sup>, regarded as a main document for purposes of planning and strategic activities for the current period, stipulates the following in the chapter regarding the prevention and combating of corruption: - *enhance the legal framework in the area of combating the corruption in accordance with the international standards and best practices*; - *ensure a transparent activity of public institutions and access to information by complying with ethical standards*; - *mobilize the civil society and the private sector in preventing corruption, establishing an environment of non-tolerance towards corruption*.

The 2008-2009 Activity Program of the Government "Progress and Integration"<sup>89</sup> also sets the combating of corruption among policy priorities, providing that measures will be taken to *raise the public awareness of the corruption phenomenon and strengthen the role of mass-media*. The 2008 Report on the implementation of the Government Activity Program stipulates that *there started the development of a draft law on the declaration and control of income and assets of state dignitaries, judges, prosecutors, public officials and other persons with managerial positions*.

In spite of the open provisions and intentions, the Law no.1264/2002 contains controversial and even paradoxical provisions regarding the transparency of and access to declarations:

- Article 6(2) stipulates that the declaration of income and assets is both a "personal" and "confidential" document that cannot be made public unless the "cases and conditions provided for in the law". Even if we don't take into account the fact that the national legislation doesn't regulate at all the "confidentiality" of such documents and what it means, we note here that if it is a *personal* act – then the author himself/herself should decide if it is confidential or not and be able to publish it at any time and in any form<sup>90</sup>;
- Article 9(4) sets the obligation of the CCC to submit to SCM copies of the judges' declaration to place them on the SCM website. Thus, the Law revokes the confidential character of the judges' declarations, but maintains this character for other officials (e.g. - prosecutors, criminal investigation officials),

<sup>87</sup> PD42/2005.

<sup>88</sup> Law 295/2007.

<sup>89</sup> PD 73/2008.

<sup>90</sup> The fact that some dignitaries agreed to publish their declarations prove that the law may be interpreted in this sense as well, not allowing for the confidentiality condition to hinder the manifestation of will.

though they are the first to contact the potential bribers, therefore they have even more drastic interdictions than of the judges and obligation to comply with the ethical norms;

- Article 12 of this Law sets even harsher norms, obliging the people who, while performing their work assignments, found out information about the declaration of income and assets, or those who control the data from the declaration to "keep the confidentiality of information". Here the information from the declaration is already regarded as "secret" and could have severe consequences if revealed.
- Though entitled "Transparency of Declarations", Article 13 contains provisions that may be interpreted as limitation of transparency. Thus, para (1) lists concrete positions, the holders of which should publish their declarations, in mass-media and on websites, assimilating them thus with judges and vice versa. However, para (2) stipulates that only the total value of the declared property and list of all assets owned by the declarant is not confidential information and shall be published, mentioning whether these goods are in the declarant's ownership or use. Para (3) stipulates that the declarations of other persons than those mentioned in para (1) may be made public, at their own initiative, following the provisions of para (2), limiting considerably the "non-confidential" content.
- In order for nobody to have any initiatives of "transparentisation", Article 14 of the Law stipulates that the person, who violated the way of keeping and using the information, contained in the declaration during performing his/her duties or exercising the control over them shall be held liable for disciplinary and administrative offences. The Administrative Offences Code (Article 174/24) proposes for these violations to be sanctioned with a fine amounting from fifty (MDL 1000) to one hundred (MDL 2000) conventional units, while the Criminal Code (Article 330/1) provides that the deliberate revealing or publishing of the information from the declarations of income and assets by persons who had access to them during the performance of their work assignments or control shall be sanctioned with a fine from 150 to 300 conventional units, with (or without) deprivation of the right to hold certain positions or perform a certain activity for a period from 1 to 5 years;
- Law no.1264/2002 ends with the attached declaration form, which, in its turn, ends with the following statement: "*The present declaration is a **public** document and I shall be liable, according to the legislation, for the inaccuracy and incompleteness of information and data contained in it.<sup>91</sup>*"

The aforementioned reveals a situation of differentiated treatment or even a **legal paradox**: - on one hand, the declarations of some categories of dignitaries, qualified by Article 6(2) as confidential, shall be published in line with Article 9(4), Article 13(1) and the Annex; - on the other hand, Articles 12, 13, and 14 limit and prohibit

<sup>91</sup>We notice here that they don't use the term of "official document", whose falsification brings about criminal liability, but the term of "public document; while any dictionary would define the word "public" as "accessible to wide circles, to everybody".

the publication, though admitting that any person may decide to publish the information in the declarations, but in a very abridged version<sup>92</sup>.

The very way how the declarations control commissions and bodies are involved in the implementation of Article 13(1) of the Law no.1264/2002 and other regulations in this area poses a number of questions, which haven't been answered appropriately yet:

- in different years, the CCC reports about the declarations of income and assets of the subjects, expressly determined in Article 13(1) contain different numbers of declarants: **in 2005 - 55; in 2006 - 109, in 2007 - 94**<sup>93</sup>. Every time this number is lower than the number of declarations that have to be published: our estimations indicate that this number should be 130 high ranking dignitaries (RM President, MPs (101), Government members (21), managers of central authorities (7));
- in its annual reports, the CCC doesn't indicate the reason for not presenting information on about 1/3 of declarants: the failure to submit the declarations; late submission, other reasons; it doesn't indicate either what measures were taken in relation to those who didn't submit the declarations;
- We cannot clearly identify what hinders the commissions from starting controlling the officials who didn't submit their declarations, as Article 8(4) of the Law no.1264/2002 stipulates that "the failure to submit the declaration for reasons imputable to the declarant, within 20 days from the end of activity, shall lead to the beginning of the *ex officio* control procedure" and what hinders the law enforcement bodies to start administrative proceedings in line with Article 174/24 of the Administrative Offences Code (for the failure to submit the declarations) or criminal proceedings, in line with Article 330/1 of the Criminal Code (for avoidance to submit the declaration).

The following findings can be made in relation to the existing situation:

- It may seem that the publication of the full version of the declarations and their monitoring by the empowered bodies or by the general public goes beyond the limits of the person's private life, especially because it also covers the close relatives of the declarant. However, the lack of transparency is even more harmful than the inconvenience produced to officials and, as long as the public service and justice are affected by corruption, it is inappropriate in terms of quality, probity, compliance with the ethical standards, as it damages the image of the society, state and individual rights, which is why, certain limitations are justified and useful;
- It is known that currently corruption can be diminished and "controlled" only if it is transformed into an activity with major risk and minimum profit. And for this risk to grow, the "internal" verifications are not enough, it is necessary to extent the area of those who can monitor and control. In such a way

<sup>92</sup> This leads to another absurd situation – the person who published the full version of his/her declaration may be accused of breaking the law, or even of "violating the rules of conduct in public service".

<sup>93</sup> The publication was not ensured prior to the conduct of this study.

the publication of declarations will turn from a source of public anxiety and frustration into a source of public serenity that will help avoid social conflicts;

- From an objective perspective we have to recognize that the situation of Moldova differs considerably from other countries, where the declaration of assets can result in taking hostages and request of reward, as cases of direct attacks against the property of public officials are not known and probably don't take place. The times of Robin Hood are over, and for these reasons, the publication of declarations, even if the concrete brand of the automobile or whereabouts of the real estate are indicated will not determine individuals with criminal inclinations to attempt depriving officials or judges of their assets, moreover that this would be quite a difficult enterprise in case of such assets;
- The main question that should worry most the officials should not be "*what not to make public?*", but rather "*how to make it better?*". And because publication in mass-media is costly and doesn't ensure a constant general access, the most appropriate mechanisms would be to publish the declarations on the official websites of the public institutions, where the declarants are employed, and for those institutions to issue periodically some bulletins with copies of all declarations.
- The criminal or administrative sanctioning for revealing information from the declarations of income and assets could be justified if this "disclosure" would cause prejudice or severe damages to the respective person or his/her relatives, but in these cases other articles of the Criminal Code would be applicable. It should be also noted that similar norms do not refer to common citizens and the law enforcement bodies will not apply, for instance Article 300/1 of the Criminal Code, if the information about their automobiles or real estate is made public by an employee of the vehicle registration service or cadastre office. Respectively, it seems that the special protection of the officials' caste is not justified enough.

*The conclusion regarding the transparency of declarations of income and assets would be that they should and must be made public in their full version (possibly with protection of some data about assets' location), especially given that some steps have been already made into this direction, the legal norms providing for compulsory publication of the declaration of judges and some categories of dignitaries. A simple solution would be to exclude all existing restrictions from the Law and state expressly that the declarations of income and assets represent information of public interest.*

#### **4.2. Declined responsibility: authorities' resistance to the efforts of mass media and civil society to promote transparency**

The way how the public authorities understand they have to ensure transparency and promote public control over the income and assets of public dignitaries and officials is eloquently revealed by the results of the campaigns, carried out with this

purpose by some mass-media institutions, as well as by the findings made on the occasion of writing this study.

- ***Campaign of the Journalistic Investigations Centre***

In late 2007 the Journalistic Investigation Centre, in collaboration with "Acces Info" Centre, tested the transparency of central and local public institutions in terms of the declarations of income of institutions' heads, requesting information about the income of dignitaries and other officials for the period between 2005 and 2007. Out of over 1300 requests, only 276 were answered, of which only 46 contained information about the income obtained by the respective heads<sup>94</sup>. The reasons of express refusals were diverse, from attempt to provide legal training on matters of legal provisions to answers that would cause hilarity, if not prove their incompetence. The following "reasons" were claimed most frequently: *confidentiality / secret / personal character of the information; referral to the CCC or the DCC, not having the declaration, as it was submitted to the competent authority, etc.* It was especially remarked the lack of any answer, at least formal, from the Parliament – the authority that adopted the legislation and which, according to the Constitutional provisions, shall interpret the laws and ensure unity of legislatives regulations throughout the country.

- ***"Avere la vedere" Campaign***

The Association of Independent Press (API), in collaboration with Anti-Corruption Alliance, launched in 2008 the "Avere la vedere" (Transparent Property) campaign, encouraging the public dignitaries and officials to publish the full version of their declaration of income and assets, in scanned format, on the API website. Unfortunately, this time the authorities manifested resistance again, with the absolute majority of the heads of public authorities ignoring the urge to participate in the project, aimed the augmenting the transparency of those people, who are maintained from the taxpayers' money.

Thus, in 2008 only 20 dignitaries submitted their declarations for publication: 14 members of Parliament, 2 ministers and one deputy minister, 2 mayors and one deputy mayor<sup>95</sup>. Though the gesture of those who accepted the proposal deserves positive appreciation, we cannot oversee the fact that some declarations were not complying with Law no.1264/2002, and others, even if formally complying with the law, contained only the so-called "updated" information for the previous year, without presenting the general picture of the property owned currently by the official and his/her close relatives. Several members of the Parliament preferred to avoid submitting the scanned copy of the declaration filled according to the form annexed to the Law no.1264/2002, but came with some "own" declaration forms, indicating only some generalized or partial information (e.g. – indicating only the income, not the assets). Some inaccuracies can be found in the text of the declarations, and

<sup>94</sup> Article "Squared Illegality – what are the Moldovan dignitaries hiding when refusing to make public their declaration of assets?", [www.investigatii.md](http://www.investigatii.md).

<sup>95</sup> See <http://api.md/cgi?page.cgi?id=4335>.

even confusions regarding the position of the declarant (a declaration indicated the position of the deputy in the “*Parliament’s Apparatus*”). One of the aspects revealed by the public opinion was that officials, directly involved in activities of combating the corruption (such as directors of the CCECC and of the Intelligence and Security Service, General Prosecutor, Minister of Interior, presidential advisor for special missions, president of the Parliamentary Commission for Security) didn’t submit their declarations for publication, though they should be the ones to promote transparency in this area.

The experience of “Avere la vedere” campaign for **year 2009** doesn’t denote an increase in awareness and transparency, on 15 March 2009 the declarations of only 8 dignitaries were published (4 members of Parliament, one minister and three mayors)<sup>96</sup>, these people having a positive reaction in 2008, as well. It is encouraging that these dignitaries submitted the declarations in line with the form attached to the Law no.1264/2002 while some dignitaries presented even additional information, about all their assets, owned together with their closed relatives. But this time they also used the gaps of the regulations, some dignitaries only updated the information, without presenting the entire picture of their property, others failed to indicate the value of their real estate (indicating that it is a “market” value). To overcome the situation related to different interpretation, API proposed to the Parliament to stipulate expressly in Article 13(1) of the Law no.1264/2002 that the scanned copies of the dignitaries’ declarations of income and assets shall be published on the institutions’ official websites, while para (2) and (3) of Article 13 could be excluded entirely.

- ***CAPC Questionnaires***

Based on the review of the mass-media publications it is possible to conclude that the mass-media and non-government organizations remain the subjects majorly concerned with transparency in the area of declaring and controlling the income, a discrepancy existing between the declarations, plans and intentions of public authorities and their concrete actions. To make sure that this situation is not due to a reduced insistency on behalf of mass-media, non-professionalism or inappropriate character of the previous requests, the authors of this Study developed complex questionnaires, with questions on covering a wider range of activities carried out by the bodies in charge of receiving and checking the declarations. Respectively, the NGO “Centre for the Analysis and Prevention of Corruption” sent:

- 51 requests to fill in the questionnaires on the activity of control commissions<sup>97</sup> and
- other 4 requests for information and statistical data on the practice of criminal investigation and judicial sanctioning<sup>98</sup>.

.....  
<sup>96</sup> See <http://www.api.md/news/6297/index.html>

<sup>97</sup> Of those 51 letters, 2 were addressed to members of the Central Control Committee, 49 – to the Department Declarations Control Committees (of which, 1 – to the Department Control Committee of the Government Office, 35 – to the Department Control Committees of Central Public Administrative Authorities, and 14 - to the Department Control Committees of the Local Public Administrative Authorities of rayon level).

<sup>98</sup> One letter to the CCECC, Anti-Corruption Prosecutor’s Office, General Prosecutor’s Office and SCJ.

Out of the 51 requests to fill in the questionnaires, we received 28 answers (questionnaires), filled in by the DCC, 20 requests were not answered at all<sup>99</sup>, and in other 3 cases the answer was a refusal to fill in the questionnaires, on the reasons listed below.

Thus, the Central Control Commission avoided filling in the questionnaire, invoking the following reason:

“The questions from this questionnaire imply an analysis, synthesis and require personal and subjective appreciations regarding the activity of the Commission, and the Law on Access to Information sets a special procedure for their development and offering. Thus, the writing of this study doesn’t fall within the duties of the Commission”<sup>100</sup>.

Our attempts to identify the specific provisions from the Law on Access to Information that would justify the refusal of the CCC to submit this information failed. The requested information can be regarded neither as state secret nor information with a limited character. Therefore, the refusal of the CCC to provide this information is not justified, moreover as the answer doesn’t refer to a concrete article from the Law on Access to Information. We notice that 28 DCC proved to be more daring and more open to collaboration, answering to most of the questions from the questionnaire, without claiming an alleged violation of the Law on Access to Information or impossibility to make some work of synthesis.

The Departmental Control Commission from the Ministry of Constructions and Territory Development<sup>101</sup> answered as follows to the request to fill in the questionnaire:

“Articles 9 and 11 of the Law no.1264 as of 19.07.2002 on the declaration and control of income and assets of state dignitaries, judges, prosecutors, public servants and persons holding managerial positions provide expressly the authorities empowered with functions of collecting and controlling the declarations.

Regarding the functioning of the structure and staff, as well as other information about the activity of the Ministry, these are provided in the Government Decision no.971 as of 11.08.2008 Approving the Regulations on the Organization and Functioning of the Structure and Staffing Limits of the Ministry of Constructions and Territory Development, published on 15.08.2008 in the Official Gazette no.154-156”.

In the answer received from the CCECC<sup>102</sup> we were informed “*within the limits of the Law on Access to Information*” that:

.....  
<sup>99</sup> 1 answer was not submitted by the Secretary of the Central Control Committee and 19 – by Department Control Committees, of which 7 answers didn’t come from the Department Control Committees from the Rayon Councils.

<sup>100</sup> Letter no 25 as of 6 March 2009.

<sup>101</sup> Letter no 489-01-07 as of 25.02.2009.

<sup>102</sup> Letter no. 15/585 as of 09.03.2009.

“A Departmental Commission for the Control of the Declarations of Income and Assets is operating in the Centre, set up through the Order of the Director of the Centre in 2005. The composition of the Commission was changed only once due to the change of staff. During the period between 2005 and 2008<sup>103</sup> all employees of the Centre submitted declarations, and the Commission checked those declarations and didn’t identify any violations.

In our opinion, the mechanisms for declaration and control, provided in the Laws no.1264/2002 and no.1576/2002 are not enough, that is why the Centre proposed amendments and addends to the Law no.1264/2002 (the proposals which CCECC intends to insert in the Law no.1264/2002, including the proposal to abrogate the Law no.1576/2002, are presented below”).

*The reaction of the institutions, empowered with the function of collecting and controlling the declarations proves that they are still quite resistant towards to external attempts to increase the transparency and contribute to the elucidation of the real situation in this area. Though there exist some problems related to the contradictory provisions of the legislation in this respect, however the experience of the CAPC shows that some commissions don’t avoid providing information, collaborating with mass-media and other representatives of the civil society. The attitude of the Central Control Commission, and law enforcement bodies (especially the CCECC) is more worrying, which continue to show resistance and find various excuses not to get involved in the efforts of improving the situation in this area, though this should be one of their main tasks and such an initiative would be very welcome.*

.....  
<sup>103</sup> It confirms once more that the enforcement date of the Law no.1264/2002 and the Law no.1576/2002 is unclear and each authority interpreted differently these provisions.

## SECTION 5.

### ASSESSMENT OF THE SITUATION IN THE REPUBLIC OF MOLDOVA MADE BY THE INTERNATIONAL AND NON-GOVERNMENTAL ORGANIZATIONS

*Assets declarations of officials and public servants were the object of various international researches and assessments, both as a distinct area of expertise and as an essential component of any efficient national system of prevention and combating of corruption in the public area. In the following sections we will offer a synthesis of conclusions drawn as a result of such assessments made by intergovernmental international bodies and the evaluations of non-governmental organizations. The Worldwide Governance Indicators computed by the World Bank, the findings of the Group of States against Corruption of the Council of Europe (GRECO) and the comments of the European Commission on the implementation by the Republic of Moldova of the RM-EU Action Plan with respect to the issue of fighting corruption and implementation of the mechanism of declaration of income and assets of officials are presented within section 5.1. Section 5.2. makes a review of the assessments made by the international non-governmental organizations – Freedom House and Transparency International – as well as a review of national non-governmental organizations (Journalistic Investigations Centre, Association of Independent Press, Transparency International Moldova, IMAS, Institute for Public Policies).*

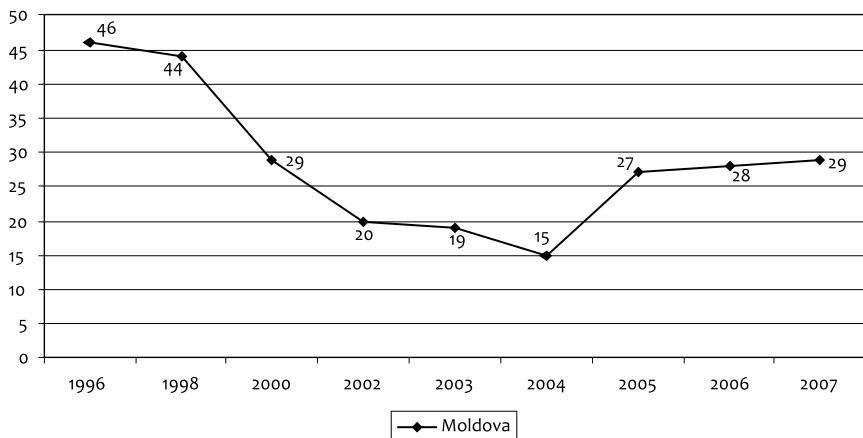
#### 5.1. Assessments made by intergovernmental organizations

- ***World Bank - Worldwide Governance Indicators (WGI)***<sup>104</sup>

The evolution of the „Control of Corruption” indicator for the Republic of Moldova, computed by the Worldwide Governance Indicators (WGI) project for 1996-2007 is represented in the chart below. It should be mentioned that the WGI indicators are measured in percentile levels. According to the methodology of WGI, the percentile level recorded by the Republic of Moldova indicates the percentage (share) of countries worldwide that records a lower score at this indicator. Therefore, the high values of the indicators are equivalent to record of higher scores.

.....  
<sup>104</sup> The Worldwide Governance Indicators (WGI) project tries to measure the governance in 212 countries through aggregating the opinions and reports from diverse sources. In the opinion of the WGI authors, governance consists of traditions and institutions by which authority in a country is exercised. WGI measures the efficiency of six general dimensions of governance: 1) Voice and Accountability; 2) Political Stability and Absence of Violence; 3) Government Effectiveness; 4) Regulatory Quality; 5) Rule of Law; 6) Control of Corruption. Definition used by the authors of research to assess the indicator 6 „Control of Corruption” is: the extent to which the public power is exercised for private gain, including both petty and grand forms of corruption, as well as „capture” of the state by elites and private interests<sup>1</sup>. Implicitly, one of the effective methods the state can use to control this phenomenon is the mechanism of declaring the officials’ assets.

*Chart 1. Percentile levels of the Indicator “Control of Corruption” for the Republic of Moldova (the World Bank, “Worldwide Governance Indicators” Project)*



Analyzing the values of the percentile levels recorded by the Republic of Moldova in the „Control of Corruption” indicator, one can notice a sudden deterioration of the situation during 1998-2000, which continued to deteriorate until 2004: if in 1996 in 46% of the 212 countries of the world this indicator was lower, then in 2004 only in 15% of these countries this indicator was more alarming. The year 2005 was marked by an improvement of the situation, a year when the percentile level of this indicator rises from 15% to 27%, continuing to rise gradually until 2007, when this indicator records the level of 29%.

From Chart 1 above it seems that the adoption of the Law no.1264/2002 didn't contribute to the improvement of the „Control of Corruption” indicator during 2003-2004, while the positive trends emerging in 2005 seem to be caused more likely by the anti-corruption event of the 2005: implementation of the National Strategy for Preventing and Fighting Corruption and the Action Plan for its implementation, passed by the Parliament by the end of 2004<sup>105</sup>. Also, after 2005, the Republic of Moldova launches the negotiation, development and effective implementation of some serious anti-corruption measures within the “Threshold Country Programme” aimed at ensuring the eligibility of the Republic of Moldova for financial assistance within the “Millennium Challenges Corporation” programs<sup>106</sup>.

<sup>105</sup> The Strategy and the Action Plan were adopted through PD no.421/2004, with further amendments and completions. We mention that since the adoption, the implementation of the Strategy and Action Plan was permanently supported by assistance programs of the Council of Europe: PACO (Programme against corruption and organised crime in South-eastern Europe) and MOLICO (Project against corruption, money laundering and terrorism financing in the Republic of Moldova) programmes.

<sup>106</sup> Government Decision no.1219/2005 on the actions for ensuring the eligibility of the Republic of Moldova for financial assistance within the “Millennium Challenges Corporation” programs (Millennium Challenge Account - MCA).

- ***The Council of Europe's Group of States against Corruption (GRECO) – evaluation of the declaration of assets of officials within the Evaluation and Compliance Reports on the Republic of Moldova***

The aim of the Group of States against Corruption (GRECO) is to improve the capacity of its members to fight corruption by following up, through a dynamic evaluation and peer pressure, compliance with their undertakings in this field<sup>107</sup>. So far, Moldova was evaluated by GRECO during two evaluation rounds: the first one in 2003 and the second in 2006, the Evaluation Reports being adopted on 17 October 2003 and 13 October 2006, respectively. Both reports contained clear recommendations to Moldova on the efficient implementation of the mechanism of declaring the income and assets of public servants. Moldova submitted its Situation Reports on both Evaluation Reports, and GRECO adopted Compliance Reports on the Republic of Moldova, where it expressed its opinion on the implementation by the state of the recommendations formulated during evaluations<sup>108</sup>.

In the Evaluation Report on Moldova during the First Evaluation Round (October 2003) GRECO noted the relatively recent adoption of the Law no.1264/2002 and expressed concerns on the uncertain perspectives of publishing the data of the declarations of income and assets, as well as on the mechanisms of functioning of control commissions, the rules of procedure of which weren't finalised at the date of the evaluators' visit<sup>109</sup>. In its report, GRECO formulated 14 recommendations to the Republic of Moldova, including a **recommendation that the Law no.1264/2002 be implemented without delay and that the declarations be checked properly (recommendation VI)**. In August 2005 the Moldovan authorities submitted the Situation Report on the measures taken to implement the recommendations. As concerns the implementation of the recommendation VI by the Government of the Republic of Moldova, the Compliance Report on the Republic of Moldova of 2005<sup>110</sup>, GRECO has taken note from the Report of the Moldovan Government, *inter alia*, the following:

- “All public officials referred to in the Law no.1264-XV of 19 July 2002 submitted their declarations of income and assets and those of their families to the Central Control Commission by 31 January 2003. Since then, these officials have presented their declarations to the commission each year.”

*Comment: We mention that in this respect the Moldovan Government admitted a “light” inaccuracy in its Situation Report, as it was well known that the deadlines for submission of the first declarations in accordance with this law was retroactively mod-*

<sup>107</sup> Art.1 of the Statute of the Group of States against Corruption (GRECO), 05.05.98.

<sup>108</sup> GRECO adopted the following Compliance Reports on the Republic of Moldova: concerning the first evaluation round – in December 2005 and an additional report in February 2008, while as concerns the second evaluation round – in December 2008.

<sup>109</sup> For details, see para. 15 of the Evaluation Report on Moldova within the first evaluation round, adopted by GRECO at the 15<sup>th</sup> Plenary Meeting (Strasbourg, 13-17 October 2003).

<sup>110</sup> The Compliance Report on the Republic of Moldova, adopted by GRECO at the 26<sup>th</sup> Plenary Meeting (Strasbourg, 5-9 December 2005), para. 30, page 8.

*ified by the Parliament, after a month the declarations were to be submitted<sup>111</sup>, a new term being indicated.*

- "According to the Central Control Commission, the most frequently occurring problems are that:
  - only officials' income is declared, and not that of their families;
  - the value of property isn't always recorded ;
  - the address of buildings and/or land near the buildings is not indicated;
  - the period to which declarations apply is not recorded, other violations.

In all such cases, the Commission, which had not found any case of fraudulent declaration, requires those concerned to complete the declarations in accordance with the law, which has in fact happened."

*Comment: Regarding the referral of the violations made by the subjects of declaration at the request of CCC, we mention that the Law no.1264/2002 doesn't provide for the mechanism of returning the declarations in order to be rectified by the declarants, but instead the submission of deficient declarations to the CCECC for the performance of de facto control<sup>112</sup>. Thus, the information submitted by the Government to GRECO, according to which the CCC never notified the CCECC to perform the de facto control, although had detected systematic violations, seems paradoxical to us. Moreover, it is not clear why the Government stated to GRECO that the request of the CCC to complete the declarations was sufficient for the elimination of violations, as from the data of declarations made public can be stated that the violations still occur (such as the failure to indicate the value of property).*

The decision adopted by GRECO on the implementation of the recommendation VI was that it was satisfactorily implemented (for more details see the findings of the first evaluation round of GRECO regarding the mechanism of declaration of income and assets of public servants according to the Law no.1264-XV of 19.07.2002, see Annex no.3 to this study).

*In the Evaluation Report on Moldova of the Second Evaluation Round (October 2006), GRECO appreciated the mechanism of declaration of public servants' assets as follows: "The existing system of assets declarations is ineffective. The Central Control Commission and Departmental Commissions do not have the resources to identify possible false declarations or discrepancies between public official's actual and declared assets. The present arrangements have not led to the uncovering of any case of fraud or potential conflict of interest. [...] The authorities were also aware of the need to establish proper arrangements for checking declarations of assets and interest<sup>113</sup>. [...] The authorities should also seek to increase supervision, strengthen disciplinary procedures and tighten up the conditions relating to conflicts of in-*

.....  
<sup>111</sup> Law no.85/2003.

<sup>112</sup> Art.10, para.(4) of the Law no.1264/2002.

<sup>113</sup> Para.64 of the Evaluation Report on Moldova, adopted by GRECO at the 30<sup>th</sup> Plenary Meeting (Strasbourg, 9-13 October 2006).

terest and asset declarations.”<sup>114</sup> In view of the facts stated in the Report, GRECO formulates a new **recommendation on the setting up of an efficient system for monitoring public officials' declarations of assets and interest** (recommendation IX).<sup>115</sup>

During July-October 2008 the Moldovan authorities submitted the Situation Report on the measures taken to implement the recommendations formulated during the Second Evaluation Round of the GRECO member states. As concerns the implementation of the recommendation IX, the Moldovan Government informed GRECO about the effectiveness of the mechanism of control of declarations, as provided in the Law no.1264/2002: performance of the preliminary control by the Declarations Control Commissions and the *de facto* control – by the CCECC, based on the notification from these commissions. The proof of effectiveness of this control was a criminal case opened in 2007 and two other criminal cases – in 2008. The Moldovan authorities also mentioned the strengthening of the declarations transparency through the introduction of legal amendments that made possible the publication within 30 days as of the deadline for declarations submission in newspapers and webpages of appropriate authorities (Superior Council of Magistracy, Presidency, Parliament, Government, ministers, other central and local public authorities).

The decision taken by GRECO on the fulfilment of the recommendation IX by the Republic of Moldova, as concerns an efficient system for monitoring of declarations of assets and interest of public officials, was reasoned as follows:

„53. [...] As regards the stepping up of monitoring of declarations of assets, the publication of those declarations since spring 2008 may indeed allow a degree of monitoring by the public, but GRECO doubts, in the context of acknowledged widespread corruption, that this alone would be sufficient to improve the efficiency of the system. In conclusion, substantial progress has been made on recommendation IX, but GRECO cannot conclude that this is sufficient where the question of monitoring arrangements is concerned.

54. GRECO concludes that recommendation IX has been partly implemented.”<sup>115</sup>

Therefore, GRECO isn't convinced of the efficiency of monitoring arrangements of declarations of public officials' income and assets implemented in the Republic of Moldova (for more details see the findings of the First Evaluation Round of GRECO on the mechanism of declaration of income and assets of public servants according to the Law no.1264-XV of 19.07.2002, see Annex no.3 to this study).

Yet, the arrears in the implementation of GRECO recommendations challenge the implementation of plans and strategic partnerships, such as the reaching the anti-corruption goals included in the RM-EU Action Plan<sup>116</sup>.

.....  
<sup>114</sup> Para.88, *ibidem*.

<sup>115</sup> The Compliance Report on the Republic of Moldova, II round of evaluation, adopted by GRECO at the 40 Plenary Meeting (Strasbourg, 1-5 December 2008).

<sup>116</sup> GD no.356/2005 for the Approval of the RM-EU Action Plan.

- ***European Commission – evaluation of the implementation of the anti-corruption section of the Republic of Moldova - European Union Action Plan***

The evaluation of the implementation of the chapter 2.1.(3) “Ensuring the efficiency of the fight against corruption” of the RM-EU Action Plan can be found in the official documents of the European Commission.<sup>117</sup> According to these documents, the European Commission established four criteria for the achievement of anti-corruption objectives of the RM-EU Action Plan.

Hereinafter the requirements and recommendations of the European Committee are presented, which need to be implemented in order for the anti-corruption objective of the EU-RM Actions Plan to be considered as fulfilled<sup>118</sup> (on the left) and the achievements of the Republic of Moldova, in terms of the officials' declarations of income and assets (on the right).

• <b>implementation of the National Strategy for Preventing and Fighting Corruption and the Action Plan for its implementation</b>	Action Plan for the implementation of the National Strategy for Preventing and Fighting Corruption <sup>119</sup> stipulates in art.7.8. “Publication on the official website of public institutions of the control results of declarations of income and assets of persons within the public authorities specified in Annexes 1-7 to the Law no.355/2005 on the Payroll System in the Budgetary System”, following the expected result of “increasing the probity of public institutions, improvement of the public control on the activity of state officials”. The results of such controls were never made public, nor were appropriate provisions introduced in the Law no.1264/2002.
• <b>fulfilment of the Council of Europe's Group of States against Corruption (GRECO) recommendations</b>	GRECO declared in the Compliance Report on the Republic of Moldova with the recommendations of the second evaluation round that its recommendation regarding the assets declarations has been only partly implemented, concerns on the transparency and efficiency of the mechanism of control of declarations still remaining.
• <b>operation of the Centre for Combating Corruption and Economic Crime efficiently and independently from political influence in line with its original purpose of fighting corruption.</b>	According to the information provided by its representatives, the CCECC never performed the <i>de facto</i> control of declarations, because the Declarations Control Commissions had never informed it about this. On the other hand, the responses to the questionnaires filled in by the Declarations Control Commissions for purposes of this study suggest that these commissions had notified the CCECC on over 600 cases. Until the situation is clarified, the total lack of the <i>de facto</i> control, which shall be performed by the CCECC in pursuance of the Law no.1264/2002 remains a fact.

<sup>117</sup> Commission Working Document accompanying the Communication from the Commission to the Council and the European Parliament “Implementation of the European Neighborhood Policy in 2007”, Commission of the European Communities, Brussels, 3 April 2008.

<sup>118</sup> *Ibidem*

<sup>119</sup> PD no.421/2004, updated through PD no.413/2006.

<ul style="list-style-type: none"> <li>• <b>further intensification of the cooperation with the civil society<sup>120</sup>.</b></li> </ul>	<p>The Government traditionally lists the trainings conducted by national and/or international non-governmental organizations, but the authorities feedback to the requests of civil society is less evaluated. A relevant example in this respect is the inquiry of the authors of the present study, addressed to the public authorities to fill in some questionnaires aimed at evaluating the efficiency of the institution of declaring public officials' income and assets in the Republic of Moldova. The authorities and institutions that provided evasive answers, refused to fill in the questionnaire or totally ignored these requests encompass the Central Commission for Controlling Declarations of Income and Assets, the Centre for Combating Corruption and Economic Crimes, the Supreme Court of Justice, some ministries, i.e. the key representatives, in charge of implementing the Law no.1264/2002. The reticence of the public authorities to cooperate with mass media and non-governmental organizations by providing the data from the declarations doesn't allow making optimistic affirmations on the authorities' availability to cooperate closer with the civil society.</p>
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*We ascertain that the World Bank appreciates the efficiency of the control established by the state over corruption phenomenon during 2002-2004 – the period immediately after the enforcement of the Law no.1264/2002 – as the lowest control, existing only 20%<sup>121</sup>-15%<sup>122</sup> of countries worldwide the situation of which was worse in this respect.*

*The Group of States against Corruption appreciated at the end of 2008 that the mechanism of control of declarations of income and assets is insufficient and disposed the enlargement of the monitoring of the Republic of Moldova until July 2010 in respect to setting up of an efficient system for monitoring public officials' declarations of assets and interest.*

*The European Commission stated in its report in 2008 that the EU will consider the anti-corruption component of the EU-RM Action Plan as implemented successfully only if the National Anti-Corruption Strategy and GRECO recommendations are implemented, CCECC operates efficiently and independently and the cooperation with the civil society is intensified. Analyzing only the compliance with the Republic of Moldova undertakings in the area of declaring public officials' income and assets, we conclude that there are arrears at all the requirements.*

.....  
<sup>120</sup> Commission's Working Document accompanying the Communication from the Commission to the Council and the European Parliament "Implementation of the European Neighborhood Policy in 2007", Commission of the European Communities, Brussels, 3 April 2008, Page 4.

<sup>121</sup> In 2002

<sup>122</sup> In 2004

## 5.2. Assessments made by non-governmental organizations

Assessments made by international (*subsection 5.2.1.*) and national (*subsection 5.2.1.*) non-governmental organizations are presented below.

### 5.2.1. Assessments made by international non-governmental organizations

- **Freedom House – Nations in Transit**

“Nations in Transit” are a series of reports developed annually by Freedom House. The study is based on a comprehensive set of methodologies or a framework that evaluates major areas of political development<sup>123</sup>, including the estimation of an anti-corruption rating of states. In appreciating the rating for the corruption indicator, one of the criteria provided for in the methodology for its computation is the existence of the appropriate legislation on the public officials’ declaration of assets and conflicts of interest. The evaluation is made on a scale of 1 to 7, where 1 represents the highest and 7 the lowest level of democratic progress. For the Republic of Moldova the evolution of this rating during 1999-2008 was as follows:

Anti-corruption rating of the Republic of Moldova	1999	2001	2002	2003	2004	2005	2006	2007	2008
The Freedom House Classification “Nations in Transit”	6,00	6,00	6,25	6,25	6,25	6,25	6,00	6,00	6,00

We mention that from the two ratings computed in the “Nations in Transit” Classification for the Republic of Moldova, the anti-corruption rating is the lowest, directly contributing to the estimation of a low general score of democratic development for our country throughout the entire reference period of the study (score 5 of 7 obtained in 2008). If we analyze the anti-corruption rating in terms of enforcement of the Law no.1264/2002, we'll notice that the rating wasn't positively influenced by this law, because during the period 2002-2005 this rating has the lowest scores, while after the year 2005 the improvement of the anti-corruption rating is rather due to other steps undertaken by the Government (mentioned in analyzing the World Bank WGI). In any case, according to the “Nations in Transit” Classification made by the Freedom House, at the corruption chapter, in 2008 the Republic of Moldova is at the same level as it was in 1999-2001.

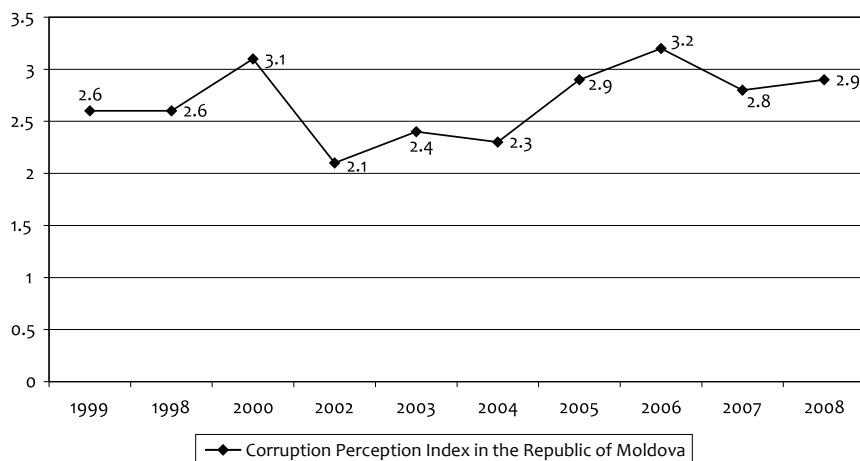
- **Transparency International – Corruption Perceptions Index (CPI)**

Corruption Perceptions Index (CPI) measured by the *Transparency International* (TI) appreciates on a scale from 1 to 10 the population's perceptions of the corruption level in their country, 0 being the index of a country totally corrupted, while 10

<sup>123</sup> The study is an efficient way of measuring the progress or the lack of progress in 29 countries in transit from the Central Europe and the Eurasian region of the former Soviet Union, in areas considered important for reform and democratic transition, in general. The study methodology means the calculation of the so-called democratic progress, which is based on a scale of 1 to 7. This score is the average of subcategory ratings that the Freedom House researchers give to each country after evaluating the electoral process, civil society, independent media, governance, corruption and legal framework. For more details, see <http://www.freedomhouse.org>.

– index of a country free from corruption. The chart below presents the CPI evolution for Moldova calculated by TI during 1999-2008<sup>124</sup>. It should be noted that throughout the reference period the minimum value of this index was 2.1, while the maximal value was 3.2. As in the case of the estimation given by the World Bank WGI for the “Control of Corruption” indicator and the “Nations in Transit” Classification of Freedom House, the 2002-2005 period is a period when the CPI calculated by TI worsens too, that being precisely the period after the Law no.1264/2002 was enacted, but which seems not to be contributed to the betterment of situation in the years to follow immediately after its adoption.

*Chart 2. Evolution of the Corruption Perception Index in the Republic of Moldova*



Analyzing in general the CPI evolution of Moldova in comparison with other states, we notice that if in the case of other states this index rises gradually and/or remains steady during large periods of time, in case of the Republic of Moldova the evolution of this index can be characterized as rather hysterical than systemic. From the above chart one can notice a certain optimism of the population in the election years, alternating with the pessimism of the post-election periods. Thus, in the years of parliamentary elections 2001 and 2005 and in the year of local general elections of 2003 the CPI rises sharply, while between these years the index decreases to the same or even worse levels<sup>125</sup>.

Comparing the first CPI calculated by TI for the Republic of Moldova in 1999 with the last CPI from 2008, we come to the conclusion that the situation remains practically unchanged for 10 years, the average being around 2.75. If we draw a parallel with the school performance assessment system, we could say that this is the mark given by the society to the state to the anticorruption chapter.

<sup>124</sup> The data were taken from: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi).

<sup>125</sup> In the years when elections are held, the trend of CPI improvement can be explained through the population's expectations and hopes for a better future, processing and media coverage of notorious cases in respect to officials, especially during the electoral campaigns.

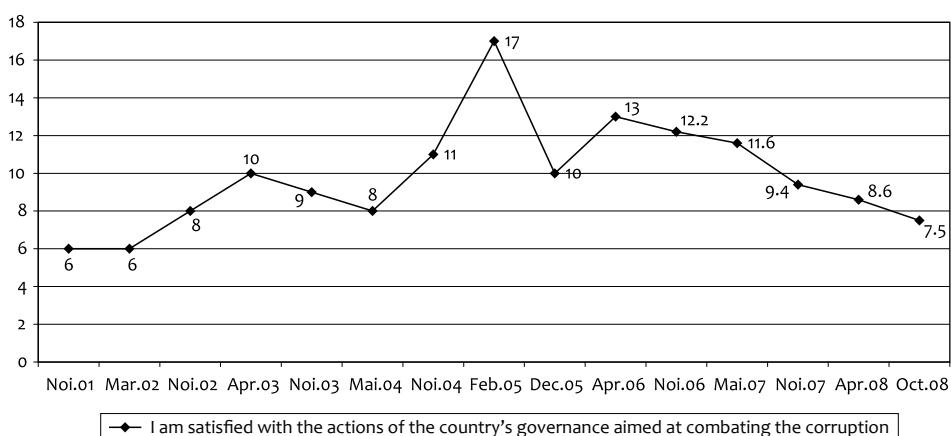
### 5.2.2. Assessments made by national non-governmental organizations

- **Institute for Public Policies – Public Opinion Barometer (POB)**

The Public Opinion Barometer (POB) is a public opinion research program conducted twice a year by the Institute for Public Policies, since 1998. The topics of the survey cover subjects of major interest to the population<sup>126</sup>, including the corruption perception and the anti-corruption efforts undertaken by state.

Thus, the population indicates a rate of satisfaction with values between 6% and 17% during 2001-2008, when asked if they are contented with the efforts of combating corruption undertaken by the state (see the chart below). The level of 17% reached in February 2005 corresponds to the period of electoral campaign for parliamentary elections of 6 March 2005. Also, a steady trend of aggravation of the population discontent towards the state's efforts to combat corruption in the last two years is noticed. Therefore, the trends in the evolution of the public opinion noticed in case of the international study conducted by TI seem to maintain also in case of the POB. It ought to be emphasized that in this survey as well the period of 2002-2004, following immediately after the adoption of the Law no.1264/2002, doesn't look like a period when population experienced the positive effects of the new regulations, by manifesting an increased rate of satisfaction towards anti-corruption measures taken by the state.

*Chart 3. Rate of population's satisfaction towards the efforts of combating corruption undertaken by the state's leadership*



If in 2006 only 6% of the population was contented with the Government's actions to combat corruption, than at the end of 2008 the part of population sharing the same view was of 7,5%.

<sup>126</sup> "Public Opinion Barometer, March-April 2008", page 3, <http://www.ipp.md/files/Barometru/2008>.

- ***TI Moldova, in collaboration with the Journalistic Investigations Centre and the Association of Independent Press – “Monitoring the Access to Information in the Republic of Moldova” Study (2004)***

Within the study, in order to identify the kinds of information interesting to the society, the question „What kind of information would you be interested in to find out from public authorities?”, which contained several answer options, was included in the questionnaire. To this question most of the answers obtained (97%) referred to: state officials' wealth, assets declarations of servants<sup>127</sup>.

- ***IMAS commissioned by the Council of Europe's PACO<sup>128</sup> and MOLICO<sup>129</sup> programs – Survey “Perception and attitude towards corruption in the Republic of Moldova” (2005 and 2007)***

In the opinion of the interviewed population, the main factors of corruption spread in the Republic of Moldova are the following: low remuneration of the public area employees (50-52%) and the quick enrichment of those at power and lack of a rigorous administrative control (38-42%).

- ***TI Moldova – Survey „Perceptions and experiences of the household representatives and businessmen regarding corruption in the Republic of Moldova” (2008)***

According to this survey, about one third of the interviewers (26-28%) think that one of the ways to reduce corruption in the Republic of Moldova is to check the declarations of income of the public servants<sup>130</sup>.

*Assessments of non-governmental Organizations, both national and international, confirm the evaluations made by intergovernmental bodies and namely that the most serious situation in the corruption area was during 2002-2005, period following the enforcement of the Law no.1264/2002, which proves that the law didn't have a significant impact on the fight against corruption.*

*The same conclusion can be drawn from the surveys and researches conducted by the non-governmental organizations in the Republic of Moldova, according to which: - in 2004, the absolute majority of asked population wished to have access to the information on the wealth of state officials and servants' assets declarations; - in 2005 and 2007 almost half of respondents to surveys thought that the spread of corruption can be explained through the quick enrichment of the people at power and lack of a rigorous administrative control; - in 2008 one third of respondents are convinced that one of the ways to reduce corruption is to check the assets declarations of public servants. Thus, we note that the population of the Republic of Moldova is*

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<sup>127</sup> See for details <http://www.investigatii.md>.

<sup>128</sup> The Cooperation Program between the European Commission, Council of Europe and Switzerland: Support to the Anti-Corruption Strategy (PACO-Moldova).

<sup>129</sup> The Joint Project of the European Commission and Council of Europe against corruption, money laundry and terrorist financing in the Republic of Moldova (MOLDICO), co-funded by the European Commission, Swedish Agency for Cooperation and International Development and Council of Europe

<sup>130</sup> See for details <http://www.transparency.md>.

*aware of the quick enrichment of the public servants poorly remunerated and the lack of a rigorous administrative control of these unfounded enrichments, the population considers that the implementation of an efficient mechanism of declaring income and assets of public servants is a way to reduce corruption and wants to have public access to the officials' declarations. But it seems that the state of the Republic of Moldova has a low level of understanding of these issues, failing to ensure the legitimate aspirations of its citizens.*

## CHAPTER II.

# International standards – comparative experience

Since international experience is a very important source of inspiration in developing and enforcing the regulations in most of the fields, this chapter analyzed the relevant international standards (*section 6*), model countries selected for comparison (*section 7*) and a comparison of the situation in Moldova with the situation in the alternative models (*section 8*).

## SECTION 6. RELEVANT INTERNATIONAL STANDARDS

*Corruption is a severe threat to the social stability and security in every state. This phenomenon undermines ethical values, democratic institutions, justice and probity of the rule of law, affects the sustainable development of countries and of the international community as a whole. Concerns about the extent and negative consequences of the corruption phenomenon had mobilized international community that proceeded to the development of special documents, with general provisions, meant to increase the governments' involvement and international cooperation in the area. A number of these documents include special regulations and recommendations, designed to prevent and combat the illicit enrichment, to improve the transparency of activity of officials in the public area (public servants) and their accountability, to allow the control of the ways these officials acquire properties (assets).*

*In what follows, a summary selection of provisions of certain international documents adopted by the Republic of Moldova or which it endorsed due to its membership of the respective international organization, and that are of special interest to the topic approached in this study, is presented.*

United Nations (UN)	
<b>United Nations Convention against Corruption<sup>131</sup></b>	<p><b>Article 7. Public sector</b></p> <p><b>4.</b> Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflict of interest.</p> <p><b>Article 8. Codes of conduct for public officials</b></p> <p><b>1.</b> In order to fight corruption, each State Party shall promote, <i>inter alia</i>, integrity, honesty and responsibility among its public officials, in accordance with its fundamental principles of its legal system.</p> <p><b>2.</b> In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards for the correct, honourable and proper performance of public functions.</p> <p><b>3.</b> For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly Resolution 51/59 of 12 December 1996.</p> <p><b>4.</b> Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.</p> <p><b>5.</b> Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, <i>inter alia</i>, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.</p> <p><b>6.</b> Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.</p> <p><b>Article 13. Participation of society</b></p> <p><b>1.</b> Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:</p>

<sup>131</sup> Adopted at New York on 31 October 2003, ratified through the Law 158/2007.

	<p>a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;</p> <p>b) Ensuring that the public has effective access to information;</p> <p>c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;</p> <p>d) Respecting, promoting and protecting of the freedom to seek, receive, publish and disseminate information concerning corruption. This freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:</p> <p>(i) For respect of the rights or reputations of others;</p> <p>(ii) For the protection of national security or <i>ordre public</i> or of public health or morals.</p> <p>2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.</p>
<b>Council of Europe</b>	
<b>Criminal Law Convention on Corruption<sup>132</sup></b>	<p><b>Article 23. Measures to facilitate the gathering of evidence and the confiscation of proceeds</b></p> <p>1. Each Party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with Article 2 to 14 of this Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with paragraph 3 of Article 19 of this Convention.</p> <p>2. Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in paragraph 1 of this article.</p> <p>3. Bank secrecy shall not be an obstacle to measures provided for in paragraphs 1 and 2 of this article.</p>

<sup>132</sup> Adopted at Strasbourg on 27 January 1999, ratified through the Law no.428/2003.

<b>Model Code of Conduct for Public Officials<sup>133</sup></b>	<p><b>Article 14. Declaration of interests</b></p> <p>The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests<sup>134</sup>.</p> <p><b>Article 18. Gifts</b></p> <ol style="list-style-type: none"> <li>1. The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts.</li> <li>2. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.<sup>135</sup></li> </ol> <p><b>Article 24. Integrity checking</b></p> <ol style="list-style-type: none"> <li>1. The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of candidate are carried out as lawfully required.</li> <li>2. If the result of any such checks makes him or her uncertain as how to proceed, he or she should seek appropriate advice.<sup>136</sup></li> </ol>
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<sup>133</sup> Approved through Recommendation Rec (2000) 10, adopted by the Council of Europe's Committee of Ministers on 11 May 2000, developed by the Multidisciplinary Group on Corruption (MGC).

<sup>134</sup> Certain public officials may be lawfully required periodically to declare their personal or private interests. This obligation has a preventive character. It is generally imposed upon officials holding high level posts. However, the main criterion should be the nature of the functions performed and the responsibilities relating thereto. This may lead States to impose such obligations upon certain officials even if they hold posts of a modest hierarchical level. Periodic declarations of interest are essential for the effectiveness of this measure. Keeping this in mind, the code provides that the declaration will be made not only upon appointment, but also at regular intervals thereafter, determined by national legislation. Any change in the situation affecting the public official's interests will imply the obligation for him or her to submit a new declaration. Since this obligation represents an interference on private life, it needs to be always justified. It is the duty of public administration to ensure the confidentiality of such declarations, which in turn is guaranteed by Article 17 (according to the Explanatory Memorandum on the art.14 of the Model Code).

<sup>135</sup> This article makes clear that the public official should not seek or accept any gift or benefit for himself or anyone else that could influence, or appear to influence, the carrying out his or her duties. The public official should never accept either gifts that constitute a real or apparent reward for actions or omissions in the exercise of his or her functions. It is essential to preserve the citizens' trust in the impartiality of public administration. Such trust would be undermined if the citizen observes or is under the impression that the public official, whose salary should be paid in principle out of the public budget, receives compensation from private individuals in exchange for the performance of his or her duties. During discussions, the GMC considered the possibility of introducing a general obligation of declaring all gifts, even those of low value. Once the gifts are declared, the hierarchical superior or other competent authority would decide which gifts the public official was authorised to accept. The GMC preferred however, not to include such a general system in a model code, it being understood that each country is free to adopt more restrictive provisions than those contained in the code. (According to the Explanatory Memorandum on the art.18 of the Model Code).

<sup>136</sup> Experience shows the importance of carrying out integrity checks or acting on them in order to avoid long-term integrity problems in the public service. This article therefore requires the public official responsible for recruitment, promotion or posting to make sure that appropriate integrity checks are carried out as lawfully required. Again, he or she is enjoined to seek appropriate advice if the results of the checks made it unclear how to proceed (According to the Explanatory Memorandum on the art.24 of the Model Code).

<b>Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption<sup>137</sup></b>	<p>Principle 4 – to ensure (undertake) the appropriate measures for seizure and confiscation of the proceeds of corruption.</p> <p>Principle 9 – to ensure that the organization, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring a higher degree of transparency consistent with the effectiveness of their activity.</p> <p>Principle 10 – to ensure that the rules on the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; to promote further development of proper arrangements, such as codes of conduct, that would establish the behaviour expected from public officials.</p>
<b>European Code of Conduct for the political integrity of local and regional elected representatives<sup>138</sup></b>	<p><b>Article 17. Declaration of interests</b></p> <p>Elected representatives shall diligently comply with any measure under the regulations in force requiring their direct or indirect personal interests, their other mandates, functions or occupations, or changes in their assets to be made public or monitored. Failing regulations on the subject, they shall provide this information simply on request.</p>

*Thus, we can notice that international regulations, although requiring measures to ensure transparency or recommending the declaration and control of official's income, do not establish any strict and uniform standards and practices. State authorities have therefore large discretion and can proceed as find proper. Nevertheless, each time a state is evaluated in the area of combating/control of corruption, external evaluators pay great attention to the aspect of transparency and effectiveness of mechanisms of declaration by officials of their income and assets, as well the opportunities of control of this area by the wide public, the society. Accordingly, if Moldovan authorities intend to comply properly with the trends and standards accepted worldwide or within the community, they shall not put off the improvement of the legislation in this field and for this there are favourable both internal and external prerequisites, materialized in methodological, financial and technical assistance.*

<sup>137</sup> Adopted by the Committee of Ministers of the Council of Europe on 6 November 1997, unofficial translation.

<sup>138</sup> Recommendation 60 (1999)1, Congress of Local and Regional Powers of Europe (CLRPE).

## SECTION 7. ALTERNATIVE MODELS

*The mechanism of submission and checking of declarations of income and assets is viewed by most of states as an effective instrument to prevent corruption in the public sector. From this perspective, the comparative analysis of other states' experience in the area of assets declaration is a good opportunity to change our State's optic on the internal legal regulations and institutional capacities, for the purpose of taking over the best legislative approaches and practices of other states.*

*Within this section the legislative instruments and experience of the European Union member states on the declaration of assets within public sector are presented. These states were roughly classified in three categories: consecrated democracies (France); states at a higher stage of acceptance and application of European standards (Hungary, Poland, Latvia); states that recently became EU member states (Romania).*

*Experience of each state will be examined in the table below, based on the following six criteria:*

**Criterion 1. Categories of subjects of declaration**

**Criterion 2. Authorities in charge of gathering declarations**

**Criterion 3. Control arrangements**

**Criterion 4. Liability for violations**

**Criterion 5. Transparency of declarations**

**Criterion 6. Existence and detail of the declaration form**

<i>i. France</i>	
<b>Criterion 1.</b> Categories of subjects of declaration	According to the Law no.88-227 of 1988 on the Financial Transparency of Political Life, the following categories of subjects are stipulated <sup>139</sup> : members of Government, members of European Parliament, presidents of regional councils, mayors of communes with a population over 30,000 inhabitants, regional counsellors, deputies of the mayors of localities with a population over 100,000 inhabitants, presidents, general managers of state enterprises.
<b>Criterion 2.</b> Authorities in charge of gathering declarations	The Law no.88-227 contains references to the Commission for Financial Transparency of Political Life, which doesn't have permanent status and is vested with the functions of collecting and checking the assets declarations.
<b>Criterion 3.</b> Control arrangements	The law provides that the subjects of declaration shall, within 2 month upon appointment into office, submit an asset declaration to the Commission for Financial Transparency of Political Life and a new declaration within 2 months before the mandate expiry. The way of performing

<sup>139</sup> Law no.88-227 of 11 March 1988 on the Financial Transparency of Political Life, <http://www.legifrance.gouv.fr>.

	<p>the control is established in the Decree no.96-763 of 1 September 1996<sup>140</sup>, according to which, the Commission is convened in ordinary and extraordinary meetings. The Commission uses the comparative method of verifying the declarations submitted upon the mandate validation/appointment into office of subjects of declaration and appreciates how the declarants' assets evolved throughout the period of holding the respective positions.</p> <p>When the Commission ascertains an evolution of assets which can not be justified, the declarant can be invited to one of its meeting to provide explanations both in writing and verbally. During an adversarial procedure, the Commission can decide the submission of all materials, accompanied by the declarant's explanations to the prosecution authorities for additional control.</p>
<b>Criterion 4. Liability for violations</b>	Failure to submit the declarations lead to the declarants' deprivation for a year of the right to be elected or even in their dismissal from the office.
<b>Criterion 5. Transparency of declarations</b>	The law doesn't have clear provisions on the publication of declarations. On the contrary, it provides that these declarations are confidential.
<b>Criterion 6. Existence and the detail of declaration form</b>	The Decree no.96-763 of 1 September 1996 regulates the content of declarations. The Decree stipulates that the declarations shall be completed in a free form, on the declarant's own responsibility and shall include: personal data of the declarant, information on income, value and source of owned goods, including those abroad; supporting documents: assets declarations submitted to tax bodies, notary acts, bank documents.
<b>ii. Hungary</b>	
<b>Criterion 1. Categories of subjects of declaration</b>	Article 7(1) of the Law of Hungary on the Legal Status of Public Servants <sup>141</sup> establishes the obligation of all public servants to declare their assets. The obligation to submit an assets declaration is extended also to other categories of persons: managers of state enterprises, members of Administration Boards managing state assets of high importance, persons responsible of state contributions allocation, etc.
<b>Criterion 2. Authorities in charge of gathering declarations</b>	The collection of declarations is made by the administration of the authority where the declarant is employed, which verifies the declaration filed by the declarant.
<b>Criterion 3. Control arrangements</b>	The employer has the obligation to periodically check and compare the official's assets declaration with the declarations of property submitted earlier. If the growth of property is not justified, taking into account the official's income, the head of the administrative authority may request the control procedure initiation by the Public Service Supervisory Office. The Office within the Minister of Interior investigates the irregularities by checking bank accounts, commercial transactions, having access to the Tax Administration database.

<sup>140</sup> Decree no.96-763 of 1 September 1996 on the Commission for Financial Transparency of Political Life, <http://www.legifrance.gouv.fr>.

<sup>141</sup> Act XXXIII/1992 on the Legal Status of Public Servants, <http://unpan1.un.org/intradoc/groups/public/documents/>

<b>Criterion 4. Liability for violations</b>	If the public servant fails to submit the assets declaration or it was established that it contains incomplete data, the public service employment shall terminate <i>ex officio</i> . Information or regulations providing for criminal sanctions were not identified.
<b>Criterion 5. Transparency of declarations</b>	The law doesn't stipulate for the publication of declarations.
<b>Criterion 6. Existence and the detail of declaration form</b>	<p>The declaration form attached to the Law on the Legal Status of Public Servants is detailed and involves the completion of 4 sections: real estate, movables, debts towards financial institutions and private individuals; declaration of economic interests<sup>142</sup>.</p> <p>Personal data of the declarant and all the persons that he or she might provide data on (name, surname, his/her mother's name, personal code and social assurance code – separately for each person) are included in the declaration. All income and assets are declared within separate tables for each person referred to in the declaration.</p>
<b>iii. Poland</b>	
<b>Criterion 1. Categories of subjects of declaration</b>	The Law of Poland on the Limitation of Commercial Activities of Public Servants <sup>143</sup> provides the obligation to submit assets declarations for the: President of the country, Parliament members, Prime Minister, Government members, judges, Ombudsman. Also, the declaration of assets is mandatory for other categories: public servants, local elected officials, etc. this obligation being included in laws regulating the status of these categories of servants.
<b>Criterion 2. Authorities in charge of gathering declarations</b>	Declarations are filed at the administration of institution where the declarant works upon appointment and thereafter every year until 31 March, reflecting the declarant's financial and asset situation for the previous year.
<b>Criterion 3. Control arrangements</b>	There is no specialized central authority for control and checking of declarations <sup>144</sup> . Checking of declaration is performed by the tax authorities.
<b>Criterion 4. Liability for violations</b>	<p>The violation of the rules of declaration of assets is a disciplinary offence, entailing disciplinary sanctions and is a legal ground to terminate the employment contract without notice.</p> <p>At the same time, indication of inaccurate data in the assets declaration is subject to criminal liability, the maximal punishment being of 3 years of imprisonment.</p>
<b>Criterion 5. Transparency of declarations</b>	The publication of declarations is mandatory only for local elected officials and members of Parliament. In case of other declarants, the publication of their assets declarations is possible only with their consent.

<sup>142</sup> The full version of the Hungarian declaration form can be seen in Annex 6 to this study.

<sup>143</sup> USTAWA z dnia 21 sierpnia 1997 r. o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne, <http://www.sponpc.trader.pl/DocumentFiles/UOGN-9514.doc>.

<sup>144</sup> Declarations of Income and Assets; Polish Instruments Assessment, <http://unpan1.un.org/intradoc/groups/public/documents/NISPACee/UNPANO27519.pdf>.

<b>Criterion 6. Existence and the detail of declaration form</b>	It was difficult to follow through the existence of a detailed declaration form, because the basic law was available only in Polish. The assets declarations shall contain also the data on the spouse's assets.
<b>iv. Latvia</b>	
<b>Criterion 1. Categories of subjects of declaration</b>	The Law on the Prevention of Conflict of Interest in Activities of Public Officials <sup>145</sup> stipulates the following categories of persons that shall submit declarations: the President, the members of Parliament, the Prime Minister, Deputy Prime Ministers, their counsellors, public servants, judges, prosecutors, etc.
<b>Criterion 2. Authorities in charge of gathering declarations</b>	The assets declarations shall be filed to the Prevention and Combating of Corruption Bureau (PCCB) of Latvia. The PCCB employees shall file their declarations to the Prime Minister's Office. The Secret Information Service employees shall file their declarations to the Constitution Protection Bureau.
<b>Criterion 3. Control arrangements</b>	The PCCB shall check if the declaration was filed in accordance with special procedures, if the declaration contains information for the declaration reporting period and if it was duly and fully completed. For the purposes of carrying out the verification duties, the PCCB can request information from other institutions and has access to the databases of other authorities.
<b>Criterion 4. Liability for violations</b>	Persons shall be subject to disciplinary and civil liability for violation of the declarations rules. The financial assets and benefits acquired that the official cannot justify shall accrue to the State, being presumed that the public official has caused such harm to the State administrative order as is to be evaluated in financial terms and is proportional to the value of augmentation of income, financial benefits and property that are obtained in a prohibited way. If a public official does not compensate voluntarily the losses caused to the State, the State authority or the public official authorised by law has a duty to perform the necessary actions in order to claim compensation for the losses caused in accordance with the procedures determined by law. The recovery of losses from the public official shall take place regardless of whether the public official is subject to administrative or criminal liability for violating the provisions of this Law.
<b>Criterion 5. Transparency of declarations</b>	All declarations are public. The part of declaration that is publicly inaccessible is all the information referring to movables and real estate (place of residence). Only the generic name of goods and their values are published.

<sup>145</sup> Law On Prevention of Conflict of Interest in Activities of Public Officials, 25 April 2002, <http://www1.worldbank.org/publicsector/civilservice/assetsIndex.htm>.

<b>Criterion 6. Existence and the detail of declaration form</b>	<p>The law provides for expressly the categories of goods and income that shall be indicated in the declaration, the declaration form being approved by the Government. In the declaration a public official shall specify his or her given name, surname, personal identification number and place of residence, as well as the given name, surname, personal identification number, place of residence and relationship of his or her spouse, parents, brothers, sisters and children; information on the immovable property in his or her ownership, possession, usage (also on the properties rented from other persons), also on such immovable property as in his or her possession in connection with guardianship or trusteeship; information on the fact that the public official is an individual merchant, on commercial companies the shareholder, stockholder or partner of which he or she is, as well as on the capital shares, stock and securities owned by the public official; information on means of transport to be registered and owned by the public official, as well as on such means of transport which are under his or her possession, usage or which have been acquired by him or her on the bases of a leasing contract; information on cash or non-cash savings if their amount exceeds twenty minimum monthly wages; information on all kinds of income obtained during the reporting period; information on transactions performed by him or her if their amount exceeds twenty minimum monthly wages, by specifying the amount of such transactions and the parties to the transactions; information on his or her debts the amount of which exceeds twenty minimum monthly wages, by specifying the amount of such debt and the debtor or creditor respectively; information on loans given (amount thereof) if the total amount of such loans exceeds twenty minimum monthly wages; and other information which he or she wishes to specify in the declaration.</p>
<b>v. Romania</b>	
<b>Criterion 1. Categories of subjects of declaration</b>	<p>Article 39 of the Law of Romania on the Setting up, Organization and Functioning of the National Integrity Agency (NIA)<sup>146</sup> stipulates the following categories of persons bound to declare their assets and interests:</p> <ul style="list-style-type: none"> <li>• all high-ranking officials and officials holding elective posts;</li> <li>• all public servants;</li> <li>• judges, prosecutors, assistant magistrates, positions assimilated to judges and prosecutors, as well as judicial assistants;</li> <li>• specialized auxiliary personnel from courts and prosecutors' offices;</li> </ul> <p>The obligation to declare assets and interests is extended also on:</p> <ul style="list-style-type: none"> <li>• members of the National Audiovisual Council,</li> <li>• people holding management and control positions within units of state educational system, as well as state units of public health system;</li> </ul>

<sup>146</sup> The Law no. 144/2007, published in the Official Gazette of Romania, Part I, no.359 as of 25.05.2007, [http://www.dreptonline.ro/legislatie/lege\\_agentie\\_nationala%2ointegritate.php](http://www.dreptonline.ro/legislatie/lege_agentie_nationala%2ointegritate.php).

	<ul style="list-style-type: none"> <li>members of the boards, of the leading councils or of the supervision commissions, as well as the persons holding leading positions within state owned companies of national or local interest, national companies or, as the case may be, commercial companies to which the state or a local public government agency is a significant or majority shareholder;</li> <li>the Governor, the prim-vice-governor, vice-governors, members of the administration board, managers of the National Bank of Romania;</li> <li>staff of public institutions involved in the privatization process; presidents, deputy presidents, secretaries and treasurers of trade unions.</li> </ul>
<b>Criterion 2.</b> <i>Authorities in charge of gathering declarations</i>	<p>According to Article 9 of the aforementioned Law of Romania, within the entities where there are persons with the obligation to submit declaration of assets and interests, one or more persons are designated in order to ensure the implementation of the legal provisions on the declarations of assets and interests and who have the following duties:</p> <ul style="list-style-type: none"> <li>receive, register the declarations of assets and interests and issue immediately a proof of receipt to the declarant;</li> <li>provide to the staff, upon request, declarations of assets and interests forms;</li> <li>counsel for the filling in of the declaration templates and for their submission in due terms;</li> <li>keep record of the declarations of assets and interests in special public registers, named “Register of Declarations of Assets” and “Register of Declarations of Interests”, which form is established through Government Decision, upon the Agency’s proposal;</li> <li>ensure the publication and posting of the declarations of assets and interests on the institution’s website, when appropriate, or on the information board, within maximum 30 days from receipt. Declarations of assets and interests shall be maintained on the webpage at least 5 years since the date of their publication, being afterwards stored as lawfully required;</li> <li>send to Agency, within maximum 10 days from receipt, certified copies of the declarations of assets and interests, which shall be posted by the Agency on its own website within 30 days from their receipt;</li> <li>place on the institution’s website, where appropriate, or on their own information board, the name and position of persons who did not submit declarations of assets and interests within 15 days after the expiry of legal submission deadline, data that shall be communicated to the Agency;</li> <li>provide consultancy on the contents and application of legal measures on the declaration and checking of assets, conflict of interests and incompatibilities and draft in this respect opinion notes, upon the request of the persons under the obligation to submit declarations.</li> </ul>

<b>Criterion 3.</b> Control arrangements	<p>The National Integrity Agency (NIA) is the public administrative authority vested with the duties of checking the declaration of assets and interests. NIA inspectors ensure the preliminary verification of the declarations <i>ex officio</i> or upon the request of any interested individual or legal entity. If, after comparing the data from declarations and analyzing the additional documents received, the integrity inspector ascertains an obvious difference between the assets acquired by the official in the exercise of his/her duties and the income acquired in the same period, the inspector shall act as follows:</p> <ul style="list-style-type: none"> <li>checks if the obvious difference is justified. Where the integrity inspector ascertains that the difference is not justified, he/she shall notify the competent authority in order to establish the part of property acquired or the particular asset acquired illicitly and request the confiscation thereof;</li> <li>notifies the tax bodies, in case the breach of tax legislation is found;</li> <li>suspends the verification and notifies the prosecution authorities, under circumstances when certain evidence and sound indications on committing criminal acts are detected.</li> </ul>
<b>Criterion 4.</b> Liability for violations	<p>The Romanian Law provides for the following situations when the disciplinary, administrative or criminal sanctions can be applied:</p> <ul style="list-style-type: none"> <li>The NIA document acknowledging the illicit nature of assets or a part thereof, or acknowledging the conflict of interests or the status of incompatibility, shall be published on the Agency website and communicated within 10 days to the bodies that impose disciplinary sanctions or the revocation, removal or dismissal from office.</li> <li>The action of persons who intentionally submit false assets declarations shall be considered as the crime of forged declaration and shall be punished in accordance with the Criminal Code (<i>imprisonment from 3 months to 2 years or fine</i>).</li> <li>The act of a person, who in his request addressed to the Agency intentionally misrepresents facts, produce or arrange false evidence on the illicit or unjustified character of a person's wealth shall be considered as the crime of defamatory denunciation and is punishable according to the Criminal Code (<i>imprisonment from 1 to 5 years</i>).</li> <li>The failure to submit the declaration of assets in due terms as lawfully required shall constitute an administrative offence and shall be sanctioned by a fine amounting from RON 100 to 500 and shall entails the <i>ex officio</i> initiation of the control procedure.</li> <li>The failure to observe the obligations provided for in the law by the persons appointed in accordance with the provisions of Article 9<sup>147</sup> shall constitute an administrative offence and shall be sanctioned by a fine amounting from RON 100 to 500. The same sanction shall be applied in case of the manager of public entity if he/she fulfil the obligations provided for in the law hereof.</li> </ul>

<sup>147</sup> Persons ensuring the collection of declarations of assets and interests within public entities.

	<ul style="list-style-type: none"> <li>The failure to apply the disciplinary sanction and to acknowledge the cessation of public office, where appropriate, when the finding act is final, shall constitute an administrative offence and shall be sanctioned by a fine amounting from RON 100 to 500. The duty to establish and apply the fine sanction shall be made by the persons thus empowered within the Agency.</li> </ul>
<b>Criterion 5.</b> <i>Transparency of declarations</i>	Declarations shall be published on the institutions' websites where the declarants are employed, as well as on the NIA webpage. Declarations shall be maintained on the webpage for 5 years.
<b>Criterion 6. Existence and the detail of declaration form</b>	<p>The declaration form is contained in Annex 1 of the Law of Romania no.115 as of 16 October 1996 on the Declaration and Control of Assets of Officials, Magistrates, Some Persons Holding Management and Control Positions and Public Servants<sup>24</sup>. This form is detailed and refers to both the declarant's wealth and that of his/her family members<sup>25</sup>. According to this declaration form, the persons shall declare:</p> <ul style="list-style-type: none"> <li>real estate (lands, buildings, dwelling houses, holiday houses, commercial/production areas);</li> <li>movables (cars, tractors, agricultural equipment, etc., such goods as precious metals, art and cult objects);</li> <li>goods with value exceeding EUR 1,000 each and goods assigned in the past 12 months;</li> <li>financial assets (bank accounts and deposits, placements, direct investments and loans given);</li> <li>other assets producing net income; debts; gifts, services or benefits received free of charge;</li> <li>financial income of the declarant and of his family obtained during the past fiscal year.</li> </ul>

<sup>24</sup> The Law no.115 as of 16 October 1996 on the Declaration and Control of Assets of Officials, Magistrates, Some Persons Holding Management and Control Positions and Public Servants, <http://www.integritate.eu>. The full version of the declaration form can be seen in Annex 5 to this study.

<sup>25</sup> Family means spouse and the children maintained by them.

*As can be noticed from above, a common approach of the mechanism of declaration of income at the level of the EU states does not exist, this varying from state to state. Thus, in France, which is traditionally considered one of the most "ancient democracies", the mechanism of declaration of assets in the public sector is not very strict (there are not so many subjects of declaration, the declaration form is unrestricted and criminal sanctions aren't stipulated, etc.) and the mechanism does not imply rules of maximal transparency (declarations have a confidential character). In case of Romania, which is a new European Union member state, the regulations are much more rigid: there is a large circle of subjects of declarations, including the members of the declarant's family; a special institution is set up, vested with functions of collection and checking of declarations of assets and interests; the declaration form is very strict; there are severe sanctions established for the breach of the declaration rules, including criminal sanctions, etc.*

*Consequently, taking into account the European integration aspirations, we consider as appropriate the review of the existing mechanism in the area of declaration of assets through adoption of the best practices from the community space. Especially, the experience of Romania must be paid attention, which was severely criticized by the European Union during the pre-integration period, for arrears in the field of preventing and combating corruption, and was encouraged to develop and apply effective instruments, currently the Law on NIA being considered one of the best laws at the European level.*

## SECTION 8.

### COMPARATIVE ANALYSIS BETWEEN THE SITUATION OF THE REPUBLIC OF MOLDOVA AND THE SITUATION OF ALTERNATIVE MODELS

*The previous section had presented the international standards relevant for the Republic of Moldova and offered five alternative models of European states: France, Hungary, Poland, Latvia and Romania. This section contains a comparative analysis of the situation in our country and the situation in the countries selected as references aiming at adopting the most appropriate solutions to be followed by Moldova. For this purpose, we will outline the international assessments of the Republic of Moldova<sup>150</sup> and of the reference models selected for comparison (subsection 8.1.) and will confront the situation in the Republic of Moldova with the situation in the reference states, against the six criteria used in section 7 (subsection 8.2.).<sup>151</sup>*

#### **8.1. Comparison between international assessments of the Republic of Moldova and the assessments of alternative models**

In order to determine the states that fit best as models for the Republic of Moldova, it is important to understand which of them have resemblance with the realities and possibilities of the Republic of Moldova and which of them have improved during the last 10 years the situation in the area of effective anti-corruption instruments and, respectively, declaration of income and assets. For this, we will confront the international assessments made by the following international organizations: Transparency International, Freedom House, World Bank and the Council of Europe's Group of States against Corruption (GRECO).

- ***Transparency International – Corruption Perceptions Index (CPI)***

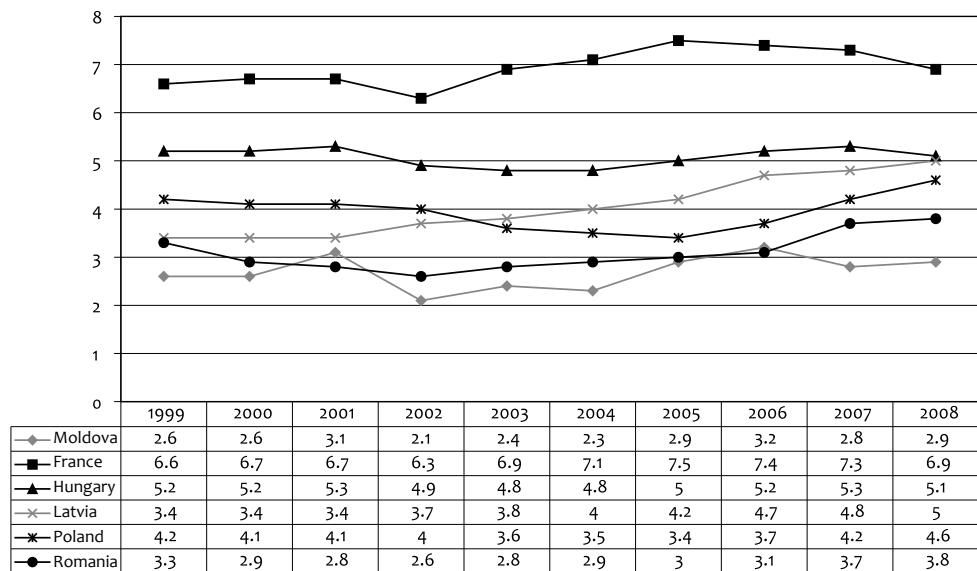
Corruption Perceptions Index (CPI) appreciates on a scale of 1 to 10 the population perceptions of the corruption level in their country, 0 being the index of a country totally corrupted, while 10 – index of a country free of corruption.

From the Chart 4, one can notice that the population perceptions from Romania, Latvia, Poland and Hungary are closer to the perceptions of Moldovan population with respect to the corruption level. Nevertheless, we remark that two of these states had greater similarities with our state regarding the evolution of the corruption perceptions index: Latvia, till 2001 and Romania, till 2005-2006.

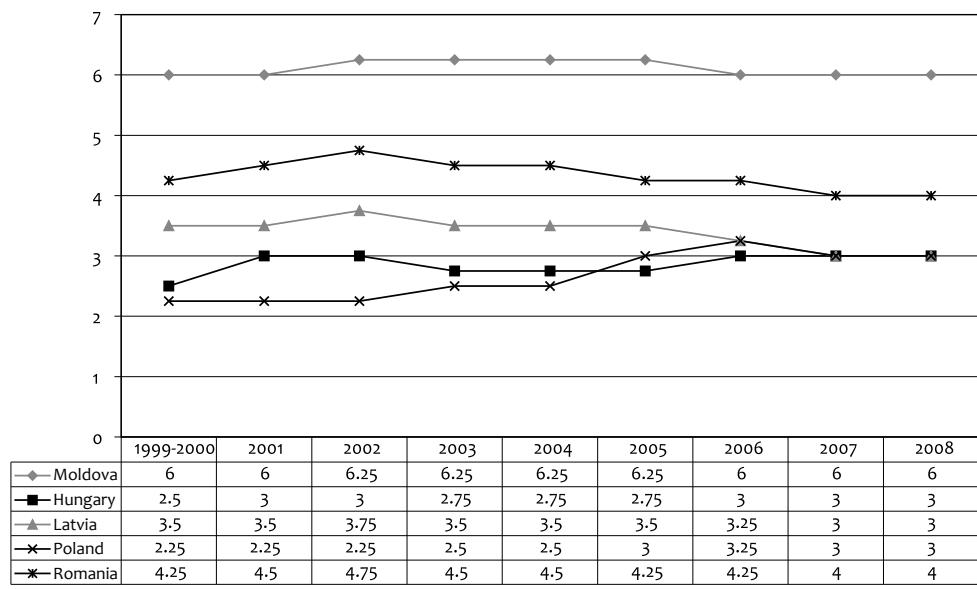
<sup>150</sup> International assessments made separately for the Republic of Moldova by intergovernmental and nongovernmental organizations were presented in Chapter I, section 5.

<sup>151</sup> Criterion 1. Categories of subjects of declaration; Criterion 2. Authorities in charge of gathering declarations; Criterion 3. Control arrangements; Criterion 4. Liability for violations. Criterion 5. Transparency of declarations; Criterion 6. Existence and the detail of declaration form.

*Chart 4. Evolution of the CPI calculated by Transparency International for the Republic of Moldova and the compared model states*



*Chart 5. Evolution of the anticorruption rating calculated in the "Nations in Transit" Ranking by Freedom House for the Republic of Moldova and the compared model states*



- **Freedom House - Nations in Transit**

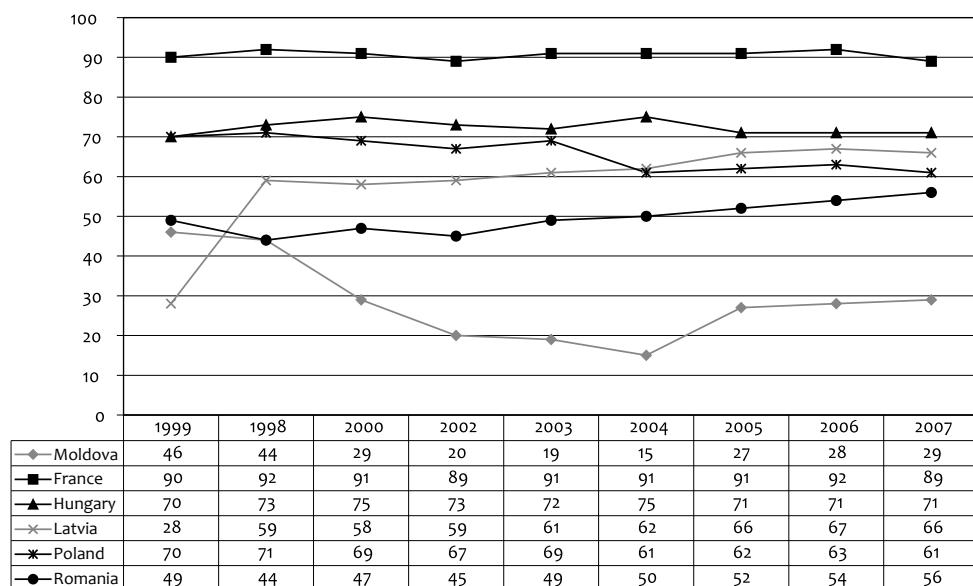
The Nations in Transit Classification is made by Freedom House by computing various ratings of progress of states, including the anti-corruption rating, which, in accordance with the assessment methodology, considers also the situation on the declaration of assets and conflicts of interest of the public officials of these states. The evaluation is made on a scale of 1 to 7, with 1 representing the highest and 7 the lowest level of democratic progress.

Taking into consideration that France isn't a nation in transit, the anti-corruption rating of this state isn't included in the classification. Among other states selected for comparison with the Republic of Moldova, we can notice that the most resembling situation for our country is that of Romania. We ascertain that, according to this evaluation, Romania has always had a better situation in this respect than the Republic of Moldova.

- **World Bank - Worldwide Governance Indicators (WGI)**

WGI are a set of indicators calculated by the World Bank for all the countries of the world, one of these indicators being the "Control of Corruption" indicator. All WGI are measured in percentile ranks: the percentage level of a certain country indicates the share of countries worldwide that record a lower score in case of this indicator. Therefore, the high values of the indicators are equivalent to recording of higher scores.

*Chart 6. Evolution of the percentile ranks of the "Control of Corruption" indicator, calculated by the World Bank "World Governance Indicators" Project, for the Republic of Moldova and the compared model states*



As distinguished from the aforementioned indicators of the Transparency International and Freedom House, for which data is available since 1999, the WGI are computed since 1996. Thus, from the chart above, one can notice that in 1996 the “Control of Corruption” indicator of Latvia was appreciated by the World Bank much lower than that of the Republic of Moldova, while Romania had similar scores.

But in 1998 the situation improves suddenly in Latvia and since then it registers a steady growth, currently leaving behind Romania and Poland and approximating Hungary. In Romania the situation begins to gradually change after 2000, while in Moldova the situation worsens if compared to 1996, recording the lowest value in 2004, when only 15% of the countries worldwide had a worse situation than our country. Therefore, the experience of Romania and Latvia is of particular interest for the Republic of Moldova, because they had the most resembling development premises to our country's premises, but which, in contrast with Moldova, had obtained substantial progress in terms of fight against corruption.

- ***GRECO evaluations of the states selected for comparison with the RM***

With a view to make a comprehensive picture of international assessments on the anti-corruption effectiveness of the Republic of Moldova and the states selected as reference models, we present in the table below the statements made by the GRECO evaluators during the Second Evaluation Round, where the efficiency of the mechanism of control of declaration of public officials' income and assets was also considered.

State evaluated by GRECO	GRECO findings during the Second Evaluation Round regarding the existing situation in the declaration of public officials' assets and their recommendation to redress the situation	GRECO findings on the fulfilment by the states of its recommendation made during the Second Evaluation Round regarding the existing situation in the declaration of public officials' assets
France	Situation appreciated by GRECO as positive and recommendations for its improvement hadn't been formulated <sup>152</sup> .	No findings, as GRECO didn't monitor the implementation of recommendations in this area <sup>153</sup> .
Hungary	Situation appreciated by GRECO as positive and recommendations for its improvement hadn't been formulated <sup>154</sup> .	No findings, as GRECO didn't monitor the implementation of recommendations in this area <sup>155</sup> .
Poland	Situation appreciated by GRECO as positive and recommendations for its improvement hadn't been formulated <sup>156</sup> .	No findings, as GRECO didn't monitor the implementation of recommendations in this area <sup>157</sup> .

<sup>152</sup> The Evaluation Report on France, adopted by GRECO at the 21st Plenary Meeting (Strasbourg, 29 November - 2 December 2004).

<sup>153</sup> The Compliance Report on France, II round of evaluation, adopted by GRECO at the 32nd Plenary Meeting (Strasbourg, 19-23 March 2007).

<sup>154</sup> The Evaluation Report on Hungary, II round of evaluation, adopted by GRECO at the 27th Plenary Meeting (Strasbourg, 6-10 March 2006).

<sup>155</sup> The Compliance Report on Hungary, II round of evaluation, adopted by GRECO at the 37th Plenary Meeting (Strasbourg, 31 March - 4 April 2008).

<sup>156</sup> The Evaluation Report on Poland, II round of evaluation, adopted by GRECO at the 18th Plenary Meeting (Strasbourg, 10-14 May 2004).

<sup>157</sup> The Compliance Report on Poland, II round of evaluation, adopted by GRECO at the 29th Plenary Meeting (Strasbourg, 19-23 June 2006).

<b>Latvia</b>	Situation appreciated by GRECO as positive and recommendations for its improvement hadn't been formulated. GRECO remarks in particular the substantial progress obtained as a result of adopting and implementing a good law in the area of prevention of conflict of interest, which also covers the declarations of public officials' assets <sup>158</sup> .	No findings, as GRECO didn't monitor the implementation of recommendations in this area <sup>159</sup> .
<b>Romania</b>	GRECO formulates in 2005 Recommendation IX) implementation of an effective system of control of declarations of assets and interests <sup>160</sup> .	On the recommendation IX, GRECO mentions: "GRECO takes note of the creation of the National Integrity Agency, which appears to be an ambitious approach to deal with the control of assets and economic interests of public officials. The NIA seems to have all the ingredients needed and GRECO very much hopes that the NIA will be in a position to fulfil its function in a determined and credible manner. That said, in order to fully assess the effectiveness of the NIA in practice, it will be necessary to wait for the Agency to produce its first concrete results" <sup>161</sup> .  GRECO extends the monitoring of the implementation of this recommendation by 30 June 2009.
<b>Moldova</b>	GRECO formulates in 2005 the Recommendation IX), <b>to adopt suitable legislation on conflicts of interest, including situations where public officials move to the private sector, and to set up an efficient system for monitoring public officials' declarations of assets and interest</b> <sup>162</sup> .	With regard to recommendation IX, GRECO mentions the following: "As regards the stepping up of monitoring of declarations of assets, the publications of those declarations since spring 2008 may indeed allow a degree of monitoring by the public, but GRECO doubts, in the context of acknowledged widespread corruption, that this alone would be sufficient to improve the efficiency of the system. In conclusion, substantial

<sup>158</sup> The Evaluation Report on Latvia, II round of evaluation, adopted by GRECO at the 19th Plenary Meeting (Strasbourg, 28 June -2 July 2004).

<sup>159</sup> The Compliance Report on Latvia, II round of evaluation, adopted by GRECO at the 30th Plenary Meeting (Strasbourg, 9-13 October 2006).

<sup>160</sup> The GRECO Evaluation Report on Romania, II round of evaluation, adopted by GRECO at the 25th Plenary Meeting (Strasbourg, 10-14 October 2005).

<sup>161</sup> The Compliance Report on Romania, II round of evaluation, adopted by GRECO at the 35th Plenary Meeting (Strasbourg, 3-7 December 2007).

<sup>162</sup> The Evaluation Report on Moldova, adopted by GRECO at the 30th Plenary Meeting (Strasbourg, 9-13 October 2006).

		<p>progress has been made on recommendation IX, but GRECO cannot conclude that this is sufficient where the question of monitoring arrangements is concerned.”</p> <p>GRECO extends the monitoring period for the implementation of this recommendation by 30 June 2010<sup>163</sup>.</p>
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*The main finding of this subsection is that the situation of the Republic of Moldova, in terms of:*

- *perceptions of corruption by population*<sup>163</sup>,
- *anti-corruption rating of the Nations in Transit*<sup>164</sup>,
- *control that state authorities exercise over the corruption phenomenon of the country*<sup>165</sup>,

*resembles to the situation in Romania and Latvia, being relatively comparable with the situation of Hungary and Poland and incomparable with that of France.*

*Thereby, we think that the practice of the first four states is of interest for future thorough study for the Republic of Moldova, taking into account their progress noticed within international assessments.*

## **8.2. Comparison between the regulations of the Republic of Moldova with the regulations of alternative models**

Within section 7 regulations of France, Hungary, Poland, Latvia and Romania were presented in terms of: Criterion 1) Categories of subjects of declaration; Criterion 2) Authorities in charge of gathering declarations; Criterion 3) Control arrangements; Criterion 4) Liability for violations. Criterion 5) Transparency of declarations; Criterion 6) Existence and the detail of declaration form. Within this subsection we will compare the regulations of these states and those of the Republic of Moldova against these criteria. Having in regard that the regulations of these states were stated in detail in section 7 and the regulations of the Republic of Moldova in section 1 (subsection 1.3) and 2, the text of these regulations will be summarized.

<sup>163</sup> Corruption Perceptions Index calculated by Transparency International.

<sup>164</sup> “Nations in Transit” Classification by Freedom House.

<sup>165</sup> “Control of Corruption” indicator, calculated by the World Bank.

Criterion 1. Categories of subjects of declaration					
France	Hungary	Poland	Latvia	Romania	Moldova
Elected officials, Government members, general managers of state enterprises.	Public servants, managers of state enterprises, members of Administration Boards that manage state assets of high importance, persons responsible for state contributions allocation, etc.	Elected officials, Government members, magistrates, public servants, Ombudsman, etc.	Elected officials, Government members, their counsellors, public servants, magistrates, persons holding management positions in the National Bank, members of the National Audiovisual Council, managers of public educational and health institutions, members of administration/ leading/ supervisory boards, managers of state owned companies, managers and treasurers of trade unions.	Elected officials, Government members, public servants, magistrates, persons holding management positions in the National Bank and the National Commission of Financial Market, parliamentary lawyers, directors of state and independent state agencies and their deputies, managers and their deputies of the public institution, state or municipality enterprises, of the company where state is the major shareholder.	Elected officials, Government members, public servants, magistrates, members of the Court of Accounts, persons holding members of the Administration Board of the National Bank and the National Commission of Financial Market, parliamentary lawyers, directors of state and independent state agencies and their deputies, managers and their deputies of the public institution, state or municipality enterprises, of the company where state is the major shareholder.

Criterion 2. Authorities in charge of gathering declarations					
France	Hungary	Poland	Latvia	Romania	Moldova
The Commission for Financial Transparency of Political Life (Commission) collects and checks the declarations.	The administrative authority with employer rights and The Public Service Supervisory Office under Minister of the Interior.	The administrative authority with employer rights (where the declarant works).	The Prevention and Combating of Corruption Bureau (PCCB) collects the declarations. The PCCB employees file their declarations to the Prime Minister's Office.	People appointed within authorities are responsible of gathering declarations.	Central Commission for Controlling the Declarations of Income and Assets (CCC). Departmental Commissions for Controlling the Declarations of Income and Assets (DCC).

Criterion 3. Control arrangements					
France	Hungary	Poland	Latvia	Romania	Moldova
The Commission checks the declarations by comparing them with the previous declarations. The Commission can invite declarants to provide explanations. It decides on the submission of materials to prosecution authorities for additional checks.	The administration of institution compares the declarations with the declarations filed in previous years. The unjustified growth of the wealth is reported to the Bureau of the Minister of Interior.	The tax authorities perform the control of declarations.	The PCCB verifies the declarations, has access to the databases of other authorities and can request information from other institutions.	The National Integrity Agency (NIA) is the public administrative authority vested with the duties of checking the declaration of assets and interests. NIA inspectors perform the preliminary verification of the declarations <i>ex officio</i> or upon the request of any interested individual or legal entity. If irregularities are detected, the bodies responsible for confiscation of the unjustified assets, tax bodies or prosecution authorities are notified.	The CCC and the DCC perform the preliminary control of declarations. When detecting irregularities, including infringements, the declarations are submitted to the Centre for Combating Corruption and Economic Crime to perform the <i>de facto</i> control.

Criterion 4. Liability for violations					
	France	Hungary	Poland	Latvia	Romania
Failure to submit declarations results in declarant's deprivation for a year of the right to be elected or even to his dismissal from office.	Failure to submit the declaration or indication of incomplete data entails the termination of the declarant's employment contract.	Violation of the declaration rules lead to disciplinary liability and may serve as ground for termination of the declarant's employment contract.	Violation of the declaration rules lead to disciplinary and civil liability. Unjustified income and assets shall be transferred to the state. The recovery of losses shall take place regardless of whether the public official is brought to administrative or criminal liability.	Violation of the declaration rules lead to disciplinary and criminal liability for violating the declaration rules.	<p>Public officials shall be subject to disciplinary, administrative and criminal liability for violating the declaration rules.</p> <p><u>Disciplinary liability</u> - cases are not specified.</p> <p><u>Administrative liability</u> - failure to submit the declaration; violation of the way of keeping and using the information contained in the declarations by the persons performing their control.</p> <p>Although the Law no.1264/2002 doesn't provide for criminal liability, the Criminal Code provides <u>criminal liability</u> for - avoidance to submit the declaration or the deliberate indication within it of incorrect data; revealing or deliberate publication of information contained in declarations by the persons performing their control.</p>

Criterion 5. Transparency of declarations					
France	Hungary	Poland	Latvia	Romania	Moldova
Declarations are confidential.	The law doesn't provide for the publication of declarations.	Publication of the deputies' and local elected officials' declarations is fully required. Other declarations are published only upon the consent of declarants.	All declarations are public. Only the generic name and value of real estate and movables are made public and less the information on the place of residence.	Declarations are published on the institutions' websites where declarants work, as well as on the NIA webpage. Declarations are maintained on the webpage for 5 years.	The declarations of state officials are published annually in local and republican mass media. Other declarations are published only with the consent of declarants.
Criterion 6. Existence and the detail of the declaration form					
France	Hungary	Poland	Latvia	Romania	Moldova
There is no declaration form. Declarations are unrestricted and the supporting documents confirming the data are attached to them.	There is a detailed declaration form, where the data of declarant and of the persons declaring with him/her are included separately. All the data included in the declaration is recorded in separate tables for each person concerned in the declaration <sup>67</sup> .	The existence of a declaration form couldn't be checked. The assets declarations shall contain also the data on the spouse's assets.	There is a very detailed declaration form, approved by the Government. The declaration form contains separate data on the declarant and the persons declaring together with him. Declaration is common for the assets and personal interests of the declarant.	There is a very detailed declaration form, attached to the framework Law <sup>68</sup> . The declaration form requires indication of separate data about the declarant and the persons declaring together with him/her. The declaration is common for the assets and personal interests of the declarant.	There is a declaration form, attached to the framework law <sup>69</sup> , in conflict with its provisions. The declaration form is very general, involves completion by the declarants and other persons declaring with him/her, but doesn't provide special sections for indication of separate data of other persons.

<sup>67</sup> The Hungarian declaration form can be seen in Annex 6 to this study.

<sup>68</sup> The Romanian declaration form can be seen in Annex 2 to this study.

<sup>69</sup> The Moldovan declaration form can be seen in Annex 4 to this study.

The following conclusions can be drawn from the comparative analysis of the regulations of the Republic of Moldova with those of the compared models (France, Hungary, Latvia and Romania):

- *On the subjects of declaration:* the number of subjects of declaration in the Republic of Moldova, if compared to the practice of other five countries, is quite large. Yet, certain categories of subjects from the public sector seem to be exempted of the obligation to submit declarations of income and assets. Taking into account the resemblance between the Moldovan and Romanian realities and social perception of corruption among certain subjects, we consider as useful to adopt the practice of including among the subjects of declaration the following categories: members of the National Audiovisual Council; managers of the public educational and health institutions; managers and treasurers of trade unions;
- *On the authorities in charge of gathering collections:* the practice of alternative models has several approaches. The collection of declarations by the administration of the administrative authority where the declarant is employed seems common. This practice exists in Hungary and Poland, states less resembling to the Republic of Moldova. For these purposes, Romania and Latvia are worthwhile comparing to. Thus, in Romania, like in the RM, the declarations are collected by persons appointed within the public authority and who incur liability for improper activity of gathering declarations. In this regard, the practice of Latvia is relevant and remarkable, where declarations are collected by the National Anti-corruption Agency, whose employees file their own declarations to another Government authority, in order to avoid the conflict of interest in their checking. We think it is possible for the Republic of Moldova to adopt this solution, by appointing the CCECC as the authority in charge of collecting the declarations, but provided that the CCECC employees file their own declarations to another governmental entity (Anti-Corruption Prosecutor's Office, for instance).
- *On the control arrangements:* the situation on the control of declarations is different in each of the alternative models. Thus, Poland does not have specialized bodies for control of declarations; in Hungary the control is performed by the administration of authority that collects the declarations and which notifies a specialized subdivision of the MoI if irregularities are detected; in Latvia the declarations are checked by the National Anti-Corruption Agency that collects the declarations, having access to the databases of other authorities; in Romania the control is performed by the National Integrity Agency, which gathers the declarations from the people appointed to collect them, and has the duty to examine the notification of other persons or to notify, as the case may be, the declarants' authorities for them to be sanctioned, the tax authorities or the criminal prosecution authorities. We find useful the adoption by the RM of either Romanian or Latvian models.
- *On the liability for violations:* In France, the failure to submit the declaration entails the dismissal from the political elective office. In Hungary and Poland

the failure to submit the declarations or inappropriate declaration entails the termination of the declarant's employment contract, without prior notice. In Latvia, persons who breach the rules of the declaration of assets and personal interests incur disciplinary and civil liability, including confiscation of the equivalent of unjustified assets and benefits, which does not depend on the fact of holding the person administratively or criminally liable. In Romania, there exists disciplinary, administrative and criminal liability, both for declarants and other persons (persons who collect declarations and don't fulfil properly their duties, managers of declarants' authorities for the failure to impose disciplinary sanctions on declarants upon the request of NIA, people defaming the declarants). We consider relevant for the RM the experience of Latvia on the application of confiscation of the equivalent of unjustified income and benefits, which is unaffected by the fact of holding the person administratively or criminally liable, but we take note of the fact that the adoption of this model involves bringing together of the declaration of assets and personal interests according to the conflict of interest regulations. Alike, the experience of Romania also deserves the attention of the Republic of Moldova, in terms of adopting administrative liability for responsible persons within the CCC and the DCC, but this implies setting up of an integrity agency to supervise their activity.

- *On the transparency of declarations:* France and Hungary don't provide for the publication of declarations, while Poland provides only for the publication of certain declarations. But these states had a better degree of corruption perceptions of the population, the mechanism of external control being less relevant in conditions when mass media performs freely and effectively its role of society "watchdog" and "fourth power", keeping an eye on the officials' integrity. States where the corruption perceptions resemble to those of the RM (even if much better) are Romania and Latvia. In these states the public control of declarations plays an important role, through their integral publication (in Latvia only the information on the place of residence of goods isn't published, but instead their value is published). In Romania the published declarations are kept on the webpages for 5 years, which allows the comparison of data included in the declarations with the data from previous declarations by any person willing to know this. In the Republic of Moldova, where the corruption perceptions is much worse than in Latvia and Romania, the selective publication of only insignificant data for a limited number of subjects should have been abandoned so far and the examples of Latvia and Romania must had followed.
- *On the existence and detail of declaration form:* In France, there is no declaration form, but supporting documents are attached to the unrestricted declaration. The Polish declaration form couldn't be analyzed, but it is known that it must also include the spouses' assets. Hungary, Latvia and Romania have very detailed declaration forms, that allow to follow up separately the assets declared by officials and other persons concerned in the declaration. In the RM the declaration form is contradictory to the Law no.1264/2002

and don't require from declarants data that, as lawfully required, must have been reflected in it. The declaration form of the RM has a very general character<sup>170</sup>, which doesn't allow to distinguish the declarants' assets from those of persons declaring together with them, that leads to the failure to declare the assets of these persons. We consider as imperative the review of at least the declaration form attached to the Law no.1264/2002 and the text of the Law, in order to ensure the proper declaration and real possibilities to perform the control. Inspiration-worthy forms for the RM can be the declaration form of Hungary<sup>171</sup> and Romania<sup>172</sup> and in case of bringing together the declarations of assets and those of interests pursuant the Law on the Conflict of Interest – adoption of the Latvian declaration form.

*Having in mind the need to revise the existing legal framework on the declaration of income and assets of public officials – Law no.1264/2002 and Law no.1576/2002, regardless of whether the solution will be the fundamental review of the existing regulations or their rescission and promotion of a new law, we consider as relevant the legislative experience of the following countries:*

- *Romania on the enlargement of the number of declarants;*
- *Romania and Latvia on the authorities vested with functions to collect declarations;*
- *Romania and Latvia on the control arrangements;*
- *Romania and Latvia on the liability for violations;*
- *Romania and Latvia on the transparency of declarations;*
- *Hungary, Romania and Latvia on the declaration form.*

*We note the fact that adoption of the Romanian model would be less difficult to adjust for RM, because maintaining the CCC and the DCC would be possible, with reducing their role to simply collecting the declarations. In this case it will be necessary to set up a national agency (of integrity) to supervise their activity. If adopting the Latvian model, the CCC and the DCC will be also limited to the collection of declarations and their submission to the CCECC, but in this case bringing together the declarations of assets and those of interests, provided for in the conflict of interest legislation, would be opportune.*

<sup>170</sup> *Ibidem.*

<sup>171</sup> The Hungarian declaration form can be seen in Annex 6 to this study.

<sup>172</sup> The Romanian declaration form can be seen in Annex 5 to this study.

## CHAPTER III.

# **Lessons to learn. Conclusions and recommendations**

This chapter synthesizes the contents of the entire study, reflecting the general mistakes made, the solutions to overcome and to avoid mistakes (*section 9*), conclusions on the main issues approached and proposals of solutions that, in the authors' point of view, could significantly contribute to the improvement of the mechanism of declaration and control of officials' income, ensuring its applicability as an effective measure to prevent and fight corruption (*section 10*).

## **SECTION 9. LESSONS TO LEARN**

*Studying the legislation and practice of applying the institution of assets declaration allowed us to develop certain lessons to learn for the authorities of the Republic of Moldova: exacerbation of the situation is due to the lack of proper reaction (subsection 9.1.), ad-hoc approaches don't produce results (subsection 9.2.), political and administrative will has to be proved (subsection 9.3.) and avoiding to make the same mistakes or the "rake rule" (subsection 9.4.).*

### **9.1. Exacerbation due to the lack of proper reaction**

In spite of the fact that international institutions, mass media and civil society organizations have repeatedly spoken about the lack of transparency and malfunctions of the mechanism of submission and checking of declarations, the decision-makers preferred to remain in the same position (or even in kind of an "ostrich position"), maintaining the formal approach, by interpreting the existing regulations in a convenient manner or by complaining on their imperfection.

The ineffective measures, the avoidance to take an attitude and to hold aware debates on this issue had encouraged the subjects of declaration to believe in their immunity and impunity, which led to the exacerbation of the situation and

maintenance of the citizens' distrust in the anti-corruption efforts. And if the persons, whom the laws are developed for, don't believe in those laws – any effort and declaration is useless and the power lacks the needed degree of credibility.

The first lesson to learn would be: *lack of reaction to recurrent signals, avoidance to approach and collaborate with mass media and civil society organizations exacerbates the problem and lowers the administration probity.*

## **9.2. Ad-hoc approaches don't produce results**

Although the need to approach and regulate the area of submission and checking of the declarations of officials' income and assets was gradually acknowledged, the legal and regulatory, institutional and procedural measures undertaken in this area by the Moldovan authorities failed to significantly contribute to the prevention and combating of corruption. One of the main causes of this situation being the ad-hoc (at times even chaotic) approach, through the adoption of some occasional regulations, without preliminary analysis, without establishing and strengthening the entire logic circuit: goal – regulation – institutions and procedures – (internal and external) checking – sanctions. Even if this issue is included in strategic and planning documents, the implementation continued to be carried out fragmentarily, in lack of an impact analysis and appropriate amendments.

The second lesson to learn is the following: *legal regulation and its application are activities that need preliminary and continuous analysis, while the normative and institutional interventions must be complex and thorough in order to cover all the issues concerned.*

## **9.3. Political and administrative will has to be proved**

The theory of management, business or any other human activity clearly states that: in order to have success in anything, the real is necessary, which produces tenacity and leads to achievement of the goal and results. We can attest that the Moldovan authorities had declared the will to prevent and combat corruption, agreeing to the main applicable methods: transparency; equal treatment; collaboration with civil society; serious and intolerant sanctioning, etc.

The public administration of our country underwent serious reforms and the high-ranking managers say that it became an efficient one, capable to deal with the most important and difficult tasks. But, from the inquiries conducted during the development of this study, it became clear that in certain areas the efforts are proved less and the persons who must exercise their political and administrative influence towards ensuring effectiveness avoid doing so or prefer to declare that they are involved in this, but remain at the level of verbal statements.

The third lesson is: *so far, real political and administrative will to settle the issues on the declarations of incomes and assets of officials hasn't been showed; nor it was enough will to prevent and fight corruption.*

#### **9.4. Same mistakes are committed (or “the rake rule”)**

The multiple deficiencies of the regulations in the area lead to the inefficiency of the institutional mechanism of submission and checking of declarations of income and assets, fail to ensure the achievement of set goals and reduce the contribution for prevention of corruption in administration and justice. The issue of control of officials' income and assets is inherently related to the issue of preventing the conflict of interest, legislation and practice of many states bringing together the two types of declarations and ensuring their joint regulation. The Republic of Moldova has chosen to follow a different path, adopting a separate regulation – Law no.16-XVI as of 15.02.2008 on the Conflict of Interest. The analysis of regulations of this law allows us to highlight deficiencies similar to the regulations on the declaration of income and assets, with respect to most of the problematic aspects:

- Subjects of the declaration of income and assets (Article 3);
- Object of declaration (Article 13, Article 19-24);
- Declaration form (Article 16);
- Submission and update of declarations (Article 14);
- Authorities in charge of gathering declarations (Article 15);
- Control of declarations (Articles 6, 17, 25);
- Transparency of declarations (Article 6, 18);
- Liability for the violation of law (Article 9(4)10)).

If we were to make an analogy of those stated in Section 1 (subsection 1.3), in Section 3 and Section 4 of this study with the provisions of the Law on the Conflict of Interest, we can assuredly suppose that this regulation would be inefficient and difficult to implement as those on the assets declarations. Even the way of passing of the law favours this conclusion, as it was passed without taking into account the proposals worded by civil society, as well as the delay of its enforcement: the Law was adopted in February 2008 and published at the end of May 2008; the Government having the duty within 6 months to adopt/propose draft regulations to bring the legislation in compliance with its provisions, but it failed to undertake the appropriate measures even after 9 months; so far (a year after the adoption of Law) the rules of procedure of setting up and functioning of the Main Ethic Commission, a specialized body meant to promote the implementation of policy on conflict of interest carrying out of the tasks established by the legislation, were not approved, etc.

*A new lesson to learn: with respect to the conflict of interest, as in case of assets declarations, it was failed to proceed to a complex approach, the same mistakes were committed and the ineffectiveness of the new law is foreseeable.*

## SECTION 10. CONCLUSIONS AND RECOMMENDATIONS

*Conclusions and recommendations listed in this section refer to the general deficiencies of the Law no.1264/2002 (subsection 10.1.), declarations and their content (subsection 10.2.), institutional framework of control (subsection 10.3.), transparency and receptivity (subsection 10.4.), international standards and independent evaluations (subsection 10.5.) and the solutions suggested by the practice of other states selected as alternative models for the RM (subsection 10.6.).*

### 10.1. General shortcomings of the Law no.1264/2002

The provisions included in the Law cannot be interpreted and applied uniformly; the amendments made in time generated new deficiencies and didn't contribute to the increase in efficiency of adopted regulations.

It is recommended:

- *to significantly improve the Law or adopt a new law, by involving in its development, debate and promotion the mass media and associative sector representatives, experts of specialized international organizations (intergovernmental and nongovernmental).*

### 10.2. Declarations and their content

The grave inconsistencies between the provisions of the Law no.1264/2002 and the declaration form thereof generates diversified practices of interpretation of income and goods to be declared, hindering the qualitative performance of the *preliminary and de facto control*.

The provisions of the declaration concerning the *income* allow to avoid including information about the declarant's family members, and the control commissions have no means to check this information.

The provision on *real estate* doesn't oblige to indicate any technical information about the registration number with the Cadastre Office or to indicate the concrete owner (holder) of the real estate. The control commissions cannot determine the identity of the real owner and do not have access to the database of the Cadastre Office.

As a rule, regarding the *movables*, the officials include in the declarations only information about vehicles, assuming thus that the declarant doesn't own any other goods that exceed the maximum value, set in the law. As other goods of such a price (MDL 50 thousand) are not so visible, there are very limited possibilities to control them. The failure to indicate the make, release year and state registration number

of the automobile makes it difficult for control commissions to check even the accuracy of the information on the vehicles.

The information about the declarable *financial liabilities* may be presented in summary, without indicating the type of liability, contracting and maturity date, financial institution, which makes it practically impossible to make a preliminary control and also hinders the *de facto* control, performed by the CCECC.

To check the information about the *ownership of a share of securities* the declaration requests sufficient data, but it is also not easy to see who the concrete holder of the securities is. The fact that it is not compulsory to indicate the type of securities owned and acquisition date also causes troubles.

As to the manner in which the personal data about the declarant to be included in the declaration form,

it is recommended:

- *to include some blank areas for the names and kinship of the persons, whose income and assets are declared together with the official's;*
- *to distinguish, throughout the declaration, the data declared by the official from the data declared for his/her family members;*
- *to bring the declaration in line with the provisions of Article 4(1)(b) by substituting the expression "and obtained the following assets from \_\_\_\_\_ 200 \_\_ to \_\_\_\_\_ 200 \_\_" with the expression "and the assets which I own currently".*

As to the manner in which the data about income to be included in the declaration form,

it is recommended:

- *to distinguish, in this section, between the income declared by the official and that declared for other family members;*
- *to review all types of income included as to reflect all types of taxable income, provided for in the fiscal legislation;*
- *include other categories of legal income in the "Income type" column;*

As to the manner in which the data about real estate to be included in the declaration form,

it is recommended:

- *to distinguish, in this section, between the real estate declared by the official and those declared for other family members;*
- *to request to indicate the acts of assignment of real estate, their value, date when this transaction was performed and the legal basis underlying the assignment act, as well as the cadastre registration number of the real estate;*
- *to request to indicate the type of real estate, date when it was acquired and the underlying legal basis, as well as the cadastre registration number of the real estate;*

- *to add or replace the requirement to indicate the "Value (in MDL) according to the document that certifies the origin of the asset" with the value estimated by the Cadastre Office for taxation purposes.*

As to the manner in which the data about movables to be included in the declaration form,

it is recommended:

- *to distinguish between the movables declared by the official and those declared for other family members by inserting an additional column to indicate who owns the respective movable;*
- *to diminish by half the value of declarable movables (from MDL 50,000 to MDL 25,000);*
- *to request to indicate the acts of assignment of movables, their value, date when this transaction was performed and the legal basis underlying the assignment act, as well the registration number; make and release year in case of vehicles;*
- *to request to indicate the type of asset, date when it was acquired and the underlying legal basis, as well as the registration number of the vehicle.*

As to the manner in which the data about financial liabilities to be included in the declaration form,

it is recommended:

- *to distinguish between the financial liabilities declared by the official and those declared for other family members by inserting an additional column to indicate who owns the respective financial liability;*
- *to request to indicate the financial liability (deposit, credit, loan, etc.), the contracting and maturity date, bank account number (in case of bank deposits) or other technical identification number of the financial liability.*

As to the manner in which data about the possession of participation in the capital of economic units, to be included in the declaration form

it is recommended:

- *to distinguish between the shares of securities in the capital of economic units declared by the official and those declared for other family members by inserting an additional column to indicate who owns the respective shares;*
- *to request to indicate the type of securities in the capital of economic units (stocks, bonds, etc.) and the date when they were acquired.*
- *to add to the Law no.1264/2002 and the declaration form attached to it the requirement to indicate information about other forms of participation (quota shares, equity participation, share participation) in the capital of economic units of any organization form;*
- *to request to indicate the assignment of shares in the securities of the capital of economic units, their value, date when this assignment contract was concluded and the legal basis underlying the assignment act.*

As to the clause of responsibility assumption for the data included in the declaration,

it is recommended:

- *to introduce in Article 14 of the Law and in the sanctioning legislation the liability for the provision of incomplete data in the declaration.*

### **10.3. Institutional framework of control**

A general conclusion on the activity of the Commissions for Controlling Declarations of Income and Assets is that these commissions accepted a " pact of non-aggression and silence" with the subjects of declaration: as long as the commissions' members aren't bothered with internal and external controls, they don't disturb others as well. Due to legal and institutional deficiencies during the preliminary control of declarations (formal control), the *de facto* control is also affected and the role of the law enforcement in charge of this is, practically, imperceptible.

The *Central Control Commission* has a formal role, limited to the simple collection of declarations, without checking them or displaying initiative to sanction the subjects who fail to fulfil their legal obligation to submit declarations. This institution is rather simulating the control activity than really exercises it, but deficiencies exist not only because of the Commission's members attitudes towards the fulfilment of their obligations, but also because of the imperfection of the regulations in the area. The evaluation of the activity of the *Departmental Control Commissions* shows that, although the organization of these commissions is affected by certain malfunctions, their activity is less hidden and formal.

It is recommended:

- *Information gathered on the activity of law enforcement agency that must perform the *de facto* control of declarations raises serious concerns, because it denies the fact of receiving notifications, while control commissions state numerous such notifications. We consider as unacceptable that the CCECC fails to perform its legal duties to prevent and combat corruption, by contributing to the control of declarations of public servants' income and assets.*
- *The bodies vested with functions of supervising the CCECC activity must react based on this information and perform a control in order to ensure the lawfulness of the CCECC activity, informing subsequently the public opinion.*

*The judicial control* cannot prevent and educate when provisions regarding liability for violating the law are dispersed, unclear and limited only to criminal sanction for violating the manner and timing of declaration and administrative sanction for the failure to submit the declaration, as well as for the violation of the way of keeping and using the information contained in declarations.

It is recommended:

- *to introduce the institution of criminal liability for illicit enrichment, the task of proving the legality of wealth acquirement being due to the defence.*

#### **10.4. Transparency and receptivity**

The existing legal provisions admit tortuous interpretations and fail to ensure the necessary level of transparency of declarations of incomes and assets, which significantly impedes the external control in the area. The resistance towards the calls of mass media and civil society organizations, besides reducing the general probity of administration, involves no benefits for authorities, but on contrary, strengthens the distrust and feed the suspicions that “there is something to hide”.

It is recommended:

- *removing all the existing restrictions from the Law no.1264/2002, providing that the declarations of income and assets of officials and magistrates are character of information of public interest and the obligation to publish these declarations on the websites and in special issues of the authorities where declarants work.*
- *conceptual change of attitude and mechanisms of collaboration of authorities with mass media and associative sector, so that the external (civic) control become a real priority for authorities, not only a priority written in strategic and planning documents.*

#### **10.5. International standards and independent assessments (international and national)**

International regulations require measures to ensure transparency, recommend declaration and control of officials' income as an effective anti-corruption measure, but don't impose strict standards and practices. The large discretion left to authorities was interpreted viciously in the Republic of Moldova, where authorities preferred to implement regulations less efficient and this didn't bring us closer to the trends and standards accepted in the European community.

Enforcement of the Law no.1264/2002 had no visible impact on the decrease of the corruption perceptions and the efforts to prevent this phenomenon. Specialized evaluations state that the control mechanisms of declarations of income and assets aren't sufficient and authorities shall make continuous efforts for the betterment of the situation. As long as the results of the anti-corruption efforts aren't highlighted clearly and in prospect, the fulfilment of commitments undertaken before the most important international institutions will remain assessed as insufficient and, in the long run, will endanger the process of European integration of our country.

The population of the Republic of Moldova considers the implementation of an effective mechanism of declaring public servants' income and assets as a way to reduce corruption and wants to have access to this information . At the same time,

the authorities display a low receptivity and fail to have an adequate reaction to the legitimate wishes of the society members.

It is recommended:

- *To treat very seriously the recommendations of international institutions, including that of the non-governmental organizations, and to concentrate the efforts on the arrears outlined in these evaluations, with subsequent and objective information on the undertaken measures and their real impact.*

## 10.6. Alternative models

Various EU states have different approaches with respect to the mechanism of assets declaration: in „consecrated democracies” the mechanism isn't very strict and doesn't imply rules of maximal transparency. But in the new member states, regulations are much more rigid, both in terms of declaration, of the control performed and the liability set for violations. Therefore, if we want to meet the community requirements in the area, we must also accept the introduction of some regulations that are more strict and efficient. The situation in the Republic of Moldova is *mostly comparable* with the situation of Romania and Latvia, is *relatively comparable* with the situation of Poland and Hungary and *incomparable* with the situation of France.

Bearing in mind the need to revise the existing legal framework on the declaration of income and assets of public officials – the Law no.1264/2002 and the Law no.1576/2002, regardless of whether the solution will be the fundamental review of the existing regulations or their abrogation and promotion of a new law, we consider as relevant the legislative experience of the following countries:

It is recommended to adopt regulations and experience of:

- *Romania on the enlargement of the number of declarants;*
- *Romania and Latvia on the authorities vested with functions to collect declarations;*
- *Romania and Latvia on the control arrangements;*
- *Romania and Latvia on the liability for violations;*
- *Romania and Latvia on the transparency of declarations;*
- *Hungary, Romania<sup>173</sup> and Latvia on the declaration form.*

.....  
<sup>173</sup> The Hungarian and Romanian declaration forms can be seen in Annex 6 and Annex 5, accordingly, to this study.

# Annexes

## ANNEX 1

### QUESTIONNAIRE on how the mechanism of declaring the income and assets operates in the Republic of Moldova

#### *Section I. Submission and checking of declarations*

1. Please, indicate, according to the table below, for each year in part, the number of people under obligation to submit declarations to the Departmental Commission for Controlling the declarations of income and assets (the number of positions covered by the Law no. 1576-XV as of 20.12.2002) and the real number of people that had submitted these declarations.

Year	Number of positions, whose holders had to submit declarations (according to the Government structure, the number of positions approved, etc.)	The number of people really holding the positions, that are under obligation to submit declarations	The real number of people that had submitted declarations	Explain/comment the possible discrepancy between the figures
2003				
2004				
2005				
2006				
2007				
2008				
2009				

2. When detected irregularities in the declarations filed, please indicate for each year in part the number of these declarations and the number of declarations submitted for the performance of the de facto control to the Centre for Combating Economic Crime and Corruption.

Year	The number of declarations where irregularities were detected	The number of declarations submitted for the de facto control to CCCEC	Give examples of such violations
2003			
2004			
2005			
2006			
2007			
2008			
2009			

## ***Section II. Functioning of the Departmental Control Commission***

3. Please, indicate, according to the table below, the number of meetings of the Departmental Control Commission, convened each year:

Year	Number of meetings	Comments
2003		
2004		
2005		
2006		
2007		
2008		
2009		

4. Please, specify how many times since 2003, the membership of the Departmental Control Commission was changed:

Comments: \_\_\_\_\_

5. The Departmental Commission for Controlling the declarations of income and assets has enough resources:

<u>Human resources</u>	<u>Financial resources</u>	<u>Technical resources</u>
<input type="checkbox"/> Enough	<input type="checkbox"/> Enough	<input type="checkbox"/> Enough
<input type="checkbox"/> Insufficient	<input type="checkbox"/> Insufficient	<input type="checkbox"/> Insufficient

Comments: \_\_\_\_\_

6. What are the methods of verification of the declarations of income and assets:

- the thorough method (checking all the declarations submitted)
- the selective method (checking a certain sample of declarations or checking declarations depending on the subjects of declaration).

Indicate the approximate sample \_\_\_\_\_

another method / Please, indicate, if any \_\_\_\_\_

7. Does the Departmental Commission for Controlling the declarations of income and assets have any database for keeping records of declarations?

Yes

No

Comments: \_\_\_\_\_

**8. Is there any special place for storing the declarations of income and assets:**

Yes

No

Comments: \_\_\_\_\_

**9. Is there a certain period of time for storing the declarations of income and assets:**

Yes/ indicate exactly the period of time \_\_\_\_\_

No

**10. If yes, this period of time is set:**

from the experience of the Departmental Commission for Controlling the declarations of income and assets

through an internal normative act (indicate exactly what act) \_\_\_\_\_

Note. If such an act exists, please attach it to this questionnaire.

**11. The Departmental Control Commission was notified to check the declarations of income and assets by:**

The author of notification	The number of notifications/year	The number of approved notifications	The number of denied notifications	The authors of notifications had been informed on the results of examination (YES / NO)
Prosecution authorities				
Law enforcement authorities				
CCECC				
Media institutions / NGOs				
Legal entities				
Individuals				

***Section III. Quality and efficiency of legal norms on the declaration of income and assets***

**12. In your opinion, are the mechanisms provided for in the Law no. 1264-XV as of 19.07.2002 and the Law no. 1576-XV as of 20.12.2002 efficient:**

<u>The declaration mechanism</u>	<u>The preliminary control mechanism</u>	<u>The <i>de facto</i> control mechanism</u>	<u>Mechanism for holding liable</u>
<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No

**13. In your opinion, the declaration form is:**

- the best possible and includes all the income and assets that shall be declared
- good and includes the income and assets that can reflect the real declarants' financial/material standing
- not as good and doesn't include the income and assets that can reflect the real declarants' financial/material standing
- superficial and does not allow to find out the real declarants' financial/material standing

**14. In your opinion, should the movables not exceeding MDL 50,000 be declared?**

- Yes
- No

**15. In your opinion, should the declaration form contain information on the assignment of assets of any type?**

- Yes
- No

**16. In your opinion, should the declaration form contain information on the state registration number of car/vehicle?**

- Yes
- No

**17. In your opinion, should the declaration form contain only information on movables (stocks and bonds) or on any participation forms (quota shares, equity participation, share participation) in the capital of economic units of any type of organization?**

- Yes
- No

## **ANSWERS OF DEPARTMENTAL CONTROL COMMISSIONS Ito the Questionnaire on how the mechanism of declaration of income and assets operates**

## **Section I. Submission and checking of declarations**

No. of the question from the questionnaire:	Number of people that must submit declarations to the Commission and the real number of people that had submitted these declarations (2003-2008)	Discrepancy between the officials holding office and the declarations submitted										
		Public servants holding office					Declarations submitted					Total 2003-2008
Control Commissions within authorities:	2003	2004	2005	2006	2007	2008	2003	2004	2005	2006	2007	2008
14 The Ministry of Information Development	62	62	58	60			62	62	60	65		2
15 The Ministry of Defense	403	408	347				330	360	345			-73
16 The Ministry of Agriculture	80	78	77	75	79		80	78	77	75	79	-48
17 The Ministry of Health	232	242	298	298	285	258	220	225	270	250	222	-17
18 The Ministry of Reintegration	16	16	12	13	13	12	16	16	12	13	12	-48
19 Office of the Court of Accounts	147	133	130	121	124	118	142	132	130	114	103	-5
20 The Parliament Office		189	190	185	188		184	185	185	188		-1
21 The Ministry of Ecology	90	29	25	18	28	90	29	25	10	18	28	-7
22 The Ministry of Finance	132	114	146	141	144	214	116	95	126	129	198	-16
23 Government Office	162	181	160	123	120	124	160	178	153	121	119	-2
24 "Moldova-Vin" Agency	27	24	26	21	21	15	29	45	40	25	25	-5
25 Agency for Land Relations and Cadastre				44	42	42						10
26 The Ministry of Culture				32	32	34						-15
27 The Ministry of External Affairs	144	286	335	307	297		135	281	328	294	293	-2
28 The Licensing Chamber	34	43	39	40	45	32	39	37	32	31	33	-7
<b>TOTAL</b>												-40
												-38
												-12
												-4
												-13
												-9
												-5
												-7
												2
												5
												7

No. of the question from the questionnaire:		2.							
		Declarations with irregularities submitted for the de facto control to CCECC							
		Declarations with irregularities submitted to CCECC for the performance of control						Declarations checked by CCECC	
Control Commissions within authorities:		2003	2004	2005	2006	2007	2008	Total 2003-2008	
1	Drochia Rayon Council						63	63	0
2	Telenesti Rayon Council					206		206	0
3	Calarasi Rayon Council							0	0
4	Leova Rayon Council							0	0
5	Ungheni Rayon Council					38	38	76	0
6	Cahul Rayon Council					62		62	0
7	Anenii Noi Rayon Council							0	0
8	Agency for Material Reserves							0	0
9	Transports Agency					54	29	83	0
10	Sports Agency						13	13	0
11	Bureau of Statistics							0	0
12	The Ministry of LPA							0	0
13	The Ministry of Justice							0	0
14	The Ministry of Information Development								0
15	The Ministry of Defense							0	0
16	The Ministry of Agriculture					75		75	0
17	The Ministry of Health							0	0
18	The Ministry of Reintegration							0	0
19	Office of the Court of Accounts	3	1				4		0
20	The Parliament Office							0	0
21	The Ministry of Ecology							0	0
22	The Ministry of Finance							0	0
23	Government Office							0	0
24	“Moldova-Vin” Agency						27	27	0
25	Agency for Land Relations and Cadastre							0	0
26	The Ministry of Culture							0	0
27	The Ministry of External Affairs							0	0
28	The Licensing Chamber						32	32	0
<b>TOTAL</b>		<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>435</b>	<b>202</b>	<b>641</b>	<b>0</b>

## *Section II. Functioning of the Departmental Commission of Control*

No. of the question of the questionnaire:	3.	4.	5.	6.	7.	11.
Comisiile de control din cadrul autorităților:	Annual number of meetings of the Departmental Control Commission	The number of changes in the Commission's membership	The Commission members think that they have enough	The method of declarations checking, used by the Commission	Commission has a database of declarations	Notification of the Commission to perform the checking of certain declarations by...
1	Drochia Rayon Council	1	1	1	5	1
2	Telenesti Rayon Council	1	2	1	1	2
3	Calarasii Rayon Council	2	2	2	2	3
4	Leova Rayon Council			1	1	
5	Ungeni Rayon Council			0		
6	Cahul Rayon Council	2	1	1	1	3
7	Anenii Noi Rayon Council	2	2	2	2	3
8	Agency for Material Reserves	1	1	1	1	2
9	Transports Agency	3	1	1	1	1
10	Sports Agency			1	1	1
11	Bureau of Statistics	1	1	1	1	2
12	The Ministry of LPA			2	2	1
13	The Ministry of Justice	2	2	2	2	4

No. of the question of the questionnaire:	3.	4.	5.	6.	7.	11.
Annual number of meetings of the Departmental Control Commission	The number of changes in the Commission's membership	The Commission members think that they have enough	The method of declarations checking, used by the Commission	Commission has a database of declarations	Notification of the Commission to perform the checking of certain declarations by...	
Comisiile de control din cadrul autorităților:	2003	2004	2005	2006	2007	2008
	2003-2008	2003-2008	2003-2008	2003-2008	2003-2008	2003-2008
14 The Ministry of Information Development		1	2	4	9	3
15 The Ministry of Defense		2	2	2	6	1
16 The Ministry of Agriculture	4	6	5	7	6	28
17 The Ministry of Health	1	1	1	1	1	6
18 The Ministry of Reintegration				0		5
19 Office of the Court of Accounts	3	2	1	1	2	5
20 The Parliament Office		2	2	2	3	9
21 The Ministry of Ecology			1	1		1
22 The Ministry of Finance	3	3	2	4	2	16
23 Government Office	3	1	2	3	2	13
24 "Moldova-Vin" Agency	2	2	2	2	2	6
25 Agency for Land Relations and Cadastre	1	1	1	1	3	3



**Section III. Quality and efficiency of legal norms on the declaration of income and assets**

No. of the question from the questionnaire:	Evaluation by the Control Commission of the efficiency of the following mechanisms provided for in the law:	Appreciation by the Control Commission of the declaration form:	Attitude of the Control Commission towards the need to introduce in the declaration form..					
			12.	13.	14.	15.	16.	17.
Control Commissions within authorities:								
1	Drochia Rayon Council							
2	Telenesti Rayon Council							
3	Calarası Rayon Council							
4	Leova Rayon Council							
5	Ungheni Rayon Council							
6	Cahul Rayon Council							
7	Anenii Noi Rayon Council							
8	Agency for Material Reserves							
9	Transports Agency							
10	Sports Agency							
11	Bureau of Statistics							
12	The Ministry of LPA							





## A N N E X 3

### **EXCERPTS FROM GRECO REPORTS on the institution of declaration of income and assets of Moldovan public servants**

#### **Documents of the first assessment cycle**

##### ***The Evaluation Report on Moldova, adopted by GRECO at the 15th Plenary Meeting (Strasbourg, 9-13 October 2003).***

“15. On the other hand, after long discussions on 19 July 2002 the Law no 1264-XV on the declaration and control of income and assets of state officials, judges, prosecutors, public servants and some persons holding management positions was passed (see Annex V). This law provides for the establishment of Central and Departmental Control Commissions and publishing some data. However, at the moment of the visit it was not clear how these data would be published. The Ministry of Justice is assigned to develop the regulations of these commissions. At the time of our visit it was not decided yet how these commissions would operate.

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Note: According to the information provided by the Moldovan authorities after our visit and on the basis of Article 13 of the Law no 1264-XV, entered into force on 1 January 2003, the Central and Departmental Commissions were set up and some data will be published in the mass-media.”

„104. On the basis of the aforementioned, GRECO makes the following recommendations to Moldova: [...]”

vi. recommends to take rapid actions as to implement the Law no 1264-XV as of 19 July 2002 on the declaration and control of income and assets of state officials, judges, prosecutors, public servants and some persons holding management positions and to ensure and effective control over the declarations.”

##### ***The Compliance Report on the Republic of Moldova, adopted by GRECO at the 26<sup>th</sup> Plenary Meeting (Strasbourg, 5-9 December 2005)***

„30. The Moldovan authorities have declared that all public agents, stipulated in Law no 1264-XV as of 19 July 2002, had submitted the declarations on their and their families’ income and assets to the Central Control Commission (which started its activity on 30 January 2003) by 31 January 2003. Since then, these officials have presented their declarations to the commission each year.” Every year the Commission receives about 1500 declarations which are considered in order to verify if they were completed in compliance with legal provisions. Besides, the Commission checks and collates this data with those possessed by the competent public authorities. According to the Commission the most frequently occurring problems are that:

- only officials' income is declared, and not that of their families;
- the value of property isn't always recorded ;
- the address of buildings and/or land near the buildings is not indicated;
- the period to which declarations apply is not recorded, other violations.

In all such cases, the Commission, which had not found any case of fraudulent declaration, requires those concerned to complete the declarations in accordance with the law, which has in fact happened." In 2005 the Commission held six meetings. All the declarations are collated and stored in the commission archives.

**31. GRECO took notice of the information submitted by the Moldovan authorities and concludes that the recommendation will be implemented in a satisfactory manner."**

## Documents of the second assessment cycle

### *The Evaluation Report on Moldova, adopted by GRECO at the 30<sup>th</sup> Plenary Meeting (Strasbourg, 9-13 October 2006).*

„27. Finally, to determine the value of the goods under seizure, reference is made to Article 206 of the Criminal Procedure Code on the “average market price from the respective locality”. This element doesn't seem sufficient on its own to evaluate the property of a suspect. The courts of law may resort to experts. In this respect the CCECC has in principle an important and multi-disciplinary expertise. However, this is not the case for criminal investigation officers from the Ministry of Home Affairs, who investigate 85% of the corruption cases. During the criminal investigation of the corruption cases no specific systematic and thorough financial and property-related investigations are made. In this context the current system of income declaration doesn't seem very helpful, as it refers to a limited number of people and information.”

„54. For some categories of public agents the Moldovan authorities enforced a property declaration system on the basis of the Law on Public Service and Law on Prevention and Combating of Corruption and Protectionism, Law no 1264 as of 19 July 2002 on the declaration and control of income and assets of state dignitaries, judges, prosecutors, public officials and other people with management positions. The Central Control Commission, empowered with the obligation to control these declarations, started its activity on 30 January 2003. It receives 1500 declarations a year from the people stipulated in Law of 2002. The ministries and departments have departmental commissions for other four categories of officials (see the Compliance Report for the first evaluation cycle). The commission has never imposed or recommended any sanctions and has never found any violation of the law. Besides the declaration of assets, there aren't any obligations to declare the interests (for instance, in relation to the official, his/her family, close relatives or friends, which pose a conflict of interests for him/her)“.

„64. [...] The existing system of assets declarations is ineffective. The Central Control Commission and Departmental Commissions do not have the resources to iden-

tify possible false declarations or discrepancies between public official's actual and declared assets. The present arrangements have not led to the uncovering of any case of fraud or potential conflict of interest. However, EEG welcomes the fact that the Moldovan authorities developed a draft law on conflicts of interests. This draft would include provisions related to the migration of public agents to the private sector. The authorities were also aware of the need to establish proper arrangements for checking declarations of assets and interest."

88. [...] It is also necessary to strengthen the control, disciplinary procedures, the regime related to conflicts of interests and the declaration of assets.

"91. On the basis of the aforementioned, GRECO makes the following recommendations to Moldova: [...]

**ix. to adopt suitable legislation on conflicts of interest, including situations where public officials move to the private sector, and to set up an efficient system for monitoring public officials' declarations of assets and interest. (para 64) [...]"**

***The Compliance Report on the Republic of Moldova, adopted by GRECO at the 40<sup>th</sup> Plenary Meeting (Strasbourg, 1-5 December 2008)***

„49. GRECO recommended to adopt suitable legislation on conflicts of interest, including situations where public officials move to the private sector, and to set up an efficient system for monitoring public officials' declarations of assets and interest.”

„52. Regarding the implementation of an efficient control over the declaration of assets (which shall be submitted in line with Law no 1264 as of 19 July 2002 on the declaration and control of income and assets, applicable to some categories of public agents) the Moldovan authorities stress that the Central and Departmental Control Commissions perform the preliminary control of the declarations, and in case of suspicious regarding the accuracy of the provided data, the commissions inform the CCECC, which is competent to perform a *de facto* control of the assets. The Moldovan authorities regard this mechanism as efficient: The Central Control Commission initiated a criminal investigation in 2007 and other 2 in 2008 (data as of November 2008). It was however decided in April and May 2008 to strengthen the transparency of this mechanism and this type the declarations will have to be published in newspapers and on the websites of the respective authorities within 30 days since the deadline for the declaration submission (Supreme Council of Magistracy, President's Office, Parliament, Government, Ministries and other central and local public institutions).”

“53 [...] b) as regards the stepping up of monitoring of declarations of assets, the publication of those declarations since spring 2008 may indeed allow a degree of monitoring by the public, but GRECO doubts, in the context of acknowledged widespread corruption, that this alone would be sufficient to improve the efficiency of the system. In conclusion, substantial progress has been made on recommendation ix, but GRECO cannot conclude that this is sufficient where the question of monitoring arrangements is concerned.”

54. *GRECO concludes that recommendation ix has been partly implemented.*”

## ANNEX 4

### **DECLARATION FORM ATTACHED TO LAW 1264/2002 on the Declaration and Control of Income and Assets of State Officials, Judges, Prosecutors, Public Servants and Some Persons Holding Management Positions**

#### **DECLARATION**

The undersigned \_\_\_\_\_, holder of the position of \_\_\_\_\_ at \_\_\_\_\_, declare, on my own liability, that together with my spouse, minor children and dependants, I have earned the following income from \_\_\_\_\_ 200 \_\_ to \_\_\_\_\_ 200 \_\_ and obtained the following assets from \_\_\_\_\_ 200 \_\_ to \_\_\_\_\_ 200 \_\_

<b>I. Income</b>	
<b>Income type</b>	<b>Income size</b>
1. Income obtained at the main place of work	
2. Income obtained from didactic work	
3. Income obtained from scientific work	
4. Income obtained from creative work	
5. Income obtained from deposits with financial institutions, including abroad	
6. Income obtained from securities, real estate and participation in the capital of other economic units	
6. Income obtained from securities, real estate and participation in the capital of other economic units	
8. Income obtained from other legal sources (pensions, support funds, allowances, awards, etc.)	

<b>II. Real estate</b>			
<b>Type and name</b>	<b>Address of the real estate</b>	<b>Area (sq. m.)</b>	<b>Value (in MDL) according to the document that certifies the origin of the asset</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Plots of land:			
1.			
2.			
Houses:			
1.			
2.			
Apartments:			
1.			
2.			

II. Real estate			
Type and name	Address of the real estate	Area (sq. m.)	Value (in MDL) according to the document that certifies the origin of the asset
1	2	3	4
Villas:			
1.			
2.			
Garages:			
1.			
2.			
Other real estate:			
1.			
2.			

III. Movables			
Type and brand	Origin	Value (in MDL) according to the document that certifies the origin of the asset	Place of registration
1	2	3	4
Automobiles:			
1.			
2.			
Trucks:			
1.			
2.			
Trailers:			
1.			
2.			
Motor vehicles:			
1.			
2.			
Agricultural machinery:			
1.			
2.			
Naval transport:			
1.			
2.			
Air transport:			
1.			
2.			
Other movables:			
1.			
2.			

IV. Financial liabilities		
Liabilities, owed to the declarant, of	Name of the institution, company, organization or individual	Amount (in MDL)
1. Financial institution		
2. Insurance company		
3. Individuals		
4. Other organizations, individuals		

V. Share of participation in the capital of economic units				
Enterprise name	Registered office address	Type of activity	Price of securities	Annual income

The present declaration is a public document and I shall be liable, according to the legislation, for the inaccuracy and incompleteness of information and data contained in it.

Date\_\_\_\_\_

Signature\_\_\_\_\_

**Note:** The owners of common goods submit only one declaration; the others only refer to it.

## A N N E X 5

### **DECLARATION FORM, ATTACHED TO THE ROMANIA LAW no. 144/2007, published in the Romanian Official Gazette, Part I, no.359 as of 25.05.2007**

#### **DECLARATION OF ASSETS**

The undersigned \_\_\_\_\_ holder of the position of \_\_\_\_\_ at \_\_\_\_\_, declare, on my own liability, that together with my family I have the following assets and liabilities

##### **I. REAL ESTATE**

###### **1. Lands**

*Note: the lands owned abroad shall be also declared*

Address	Category*	Year of acquisition	Area	Share	Taxable value	Way of acquisition	Owner

*\*The following categories shall be indicated: (1) agricultural; (2) forestry; (3) within the build-up area; (4) water areas; (5) other types of areas outside the build-up area, if belonging to the civil circuit.*

###### **2. Buildings**

*Note: the buildings owned abroad shall be also declared.*

Address	Category*	Year of acquisition	Area	Share	Taxable value	Way of acquisition	Owner

*\*The following categories shall be indicated: (1) apartment; (2) house; (3) holiday house; (4) commercial / production facilities.*

##### **II. MOVABLES**

###### **1. Automobiles/cars, tractors, agricultural machines, boats, yachts, and other vehicles that shall be registered in accordance with the law**

Nature	Make	Pieces	Release year	Way of acquisition

**2. Goods in form of precious stones, jewelry, art and cult objects, collections of art objects and coins, objects that are part of the national or universal heritage or other objects of this type, whose value exceeds EUR 5,000.**

*Note: all goods owned shall be declared, regardless of whether they are on the territory of Romania or not at the moment of declaration.*

Summary description	Year of acquisition	Estimated value

**III. MOVABLES, WHOSE VALUE EXCEEDS EUR 1,000 EACH, AND MOVABLES ASSIGNED DURING THE PAST 12 MONTHS**

Nature of the assigned good	Date of assignment	The person, which the good was assigned to	Type of assignment	Value

**IV. FINANCIAL ASSETS**

**1. Bank accounts and deposits, investment funds, equivalent forms of savings and investments, if their cumulative value exceeds EUR 5,000.**

*Note: those from foreign banks or financial institutions shall be declared as well.*

The managing institution and its address	Type*	Currency	Opened in the year	Balance / updated value

*\*The following categories shall be indicated: (1) Current account or an equivalent (including credit card); (2) Bank savings account or an equivalent; (3) Investment funds or an equivalent, including pensions funds or other accumulation systems.*

**2. Placements, direct investments and loans extended, if their cumulative market value exceeds EUR 5,000.**

*Note: the investments and participations made abroad shall be declared as well*

Title issuer / company where the person is a stockholder or associate/loan beneficiary	Type*	Number of titles/participation share	Total updated value

*\* The following categories shall be indicated: (1) Owned securities (T-bills, certificates, bonds); (2) Stocks or share participations in commercial companies; (3) Loans extended on the personal behalf.*

**3. Other assets generating net income, whose cumulative value exceeds the equivalent of EUR 5,000 a year:**

*Note: the assets owned abroad shall be also declared.*

.....  
.....  
.....  
.....

**V. LIABILITIES**

**Debts (including outstanding taxes), mortgages, guarantees issued for the benefit of a third party, goods procured in leasing and other such goods, if their cumulative value exceeds EUR 5,000.**

*Note: the liabilities accumulated abroad shall be also declared.*

Creditor	Contracted in the year	Due on	Value

**VI. Presents, services or advantages received free of charge or subsidized, if compared with the market value, from some people, organizations, companies, autonomous Government Business Enterprises, national companies or public Romanian or foreign institutions, including scholarships, credits, guarantees, exceptions from expenditures or other assets of such type, whose individual value exceeds EUR 300\*\***

Who obtained the income	Source of income: Name, address	Provided service / income-generating object	Annual income received
1.1. Owner			
...			
1.2. Spouse			
...			
1.3. Children			
...			

*\* Except the presents and common treatment from relatives of the I and II level of kinship*

**VII. The income of the declarant and the members of his/her family, obtained during the past fiscal year (in line with Article 41 of the Law no 571/2003 - Tax Code, with further amendments and addenda)**

*Note: the income from abroad shall be also declared*

Who obtained the income	Source of income: Name, address	Provided service / income-generating object	Annual income received
<b>1. Salaries earned</b>			
1.1. Holder			
...			
1.2. Spouse			
...			
1.3. Children			
...			
<b>2. Income from independent activities</b>			
1.1. Holder			
...			
1.2. Spouse			
...			
<b>3. Income from ceding the right to use the goods</b>			
1.1. Holder			
...			
1.2. Spouse			
...			
<b>4. Income from investments</b>			
1.1. Holder			
...			
1.2. Spouse			
...			
<b>5. Income from pensions</b>			
1.1. Holder			
...			
1.2. Spouse			
...			

<b>6. Income from agricultural activities</b>			
1.1. Holder			
...			
1.2. Spouse			
...			
<b>7. Income from awards and hazard games</b>			
1.1. Holder			
...			
1.2. Spouse			
...			
1.3. Children			
...			
<b>8. Income from other sources</b>			
1.1. Holder			
...			
1.2. Spouse			
...			
1.3. Children			
...			

This declaration is a public act and, according to the criminal law, the declarants shall be accountable for the inaccuracy or incompleteness of the provided data.

**Date:**

**Signature**

<sup>1</sup>Family means spouse and the children maintained by them..

<sup>2</sup>In case of the own assets, the name of owner (holder, spouse, child) shall be indicated in the “owner” column, whereas in case of assets co-owned, the share and name of the co-owners shall be indicated.

## ANNEX 6

### **DECLARATION FORM ATTACHED TO THE HUNGARY LAW no.XXXIII/1992 on the Legal Status of Public Servants ("Appendix 6 to the Law")**

#### **DECLARATION OF PROPERTY**

##### **Personal Section**

###### **Personal data of the person submitting the declaration\***

###### ***The public servant's***

name:.....  
date of birth: ..... place of birth:.....  
mother's name:.....  
address of permanent residence:.....  
name and address of employer:.....  
technical identification number:.....

###### ***Spouse or common-law partner living in the same household with the public servant:***

name:.....  
date of birth: ..... place of birth:.....  
mother's name:.....  
address of permanent residence: .....  
technical identification number:.....

*\*Data corresponding to the employment of the person making the declaration have to be submitted, but the personal information pertaining to the public servant shall be submitted in all cases.*

###### ***The public servant's***

name:.....  
date of birth: ..... place of birth:.....  
mother's name:.....  
address of permanent residence:.....  
name and address of employer:.....  
technical identification number:.....

###### ***Child living in the same household with the public servant:***

name:.....  
date of birth: ..... place of birth:.....  
mother's name:.....  
address of permanent residence: .....  
technical identification number:  
/technical identification number/

## PROPERTY SECTION

### Part One

**Annual income of the person making the declaration:** ..... (year) ..... HUF  
..... (year) ..... HUF  
..... (year) ..... HUF  
..... (year) ..... HUF  
..... (year) ..... HUF

### Part Two

#### Property declaration

##### **A) Immovable property**

###### **1. House property and housing-plot property (or permanent and/or long-lasting usage, right**

###### **of usufruct):**

a) address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

b) address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

c) address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

###### **2. Holiday house property and holiday housing-plot property (or permanent and/or longlasting**

###### **usage, right of usufruct):**

a) address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

b) address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

c) address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

###### **3. Other building- (or part of a building) property, not used as a home (or permanent usage,**

###### **right of usufruct):**

a) name (building in a closed garden, workshop, shop, studio, consultation-room, garage, etc.) .....

address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

*b)* name (building in a closed garden, workshop, shop, studio, consultation-room, garage, etc.) .....  
address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

*c)* name (building in a closed garden, workshop, shop, studio, consultation-room, garage, etc.) .....  
address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

*d)* name (building in a closed garden, workshop, shop, studio, consultation-room, garage, etc.) .....  
address: ..... city / village ..... street ..... no  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

\* Immovable properties mentioned under item A/3. are only to be declared if they are separately registered immovable properties or if the building is established to a house, not belonging to a holiday house, on public area or on a rented area of land.

***4. Agricultural land property (or permanent usage, right of usufruct):***

*a)* name .....  
address: ..... city / village ..... topographical lot number  
land use: .....  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

*b)* name .....  
address: ..... city / village ..... topographical lot number  
land use: .....  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

*c)* name .....  
address: ..... city / village ..... topographical lot number  
land use: .....  
ground space: ..... m<sup>2</sup>, proprietary rate: .....  
date and virtue of procurement: .....

d) name.....  
address: ..... city / village ..... topographical lot number  
land use:.....  
ground space: ..... m<sup>2</sup>, proprietary rate:.....  
date and virtue of procurement:.....

**b) Movables of high value**

**1. Vehicles:**

a) automobile: ..... type ..... licence number  
date and virtue of procurement: .....

..... type ..... licence number  
date and virtue of procurement: .....

..... type ..... licence number  
date and virtue of procurement: .....

b) lorry, bus: ..... type ..... licence number  
date and virtue of procurement: .....

..... type ..... licence number  
date and virtue of procurement: .....

..... type ..... licence number  
date and virtue of procurement: .....

**2. Protected work of art, protected collection:**

**a) individual works of art:**

..... creator ..... title ..... registration number  
date and virtue of procurement: .....

..... creator ..... title ..... registration number  
date and virtue of procurement: .....

..... creator ..... title ..... registration number  
date and virtue of procurement: .....

**b) collection**

..... name ..... pieces ..... registration number  
date and virtue of procurement: .....

..... name ..... pieces ..... registration number  
date and virtue of procurement: .....

..... name ..... pieces ..... registration number  
date and virtue of procurement: .....

**3. Other movables that, separately or collectively (as a collection), exceed in value ten times the effective salary base of public servants:**

a) ..... name ..... identification data  
date and virtue of procurement: .....

b) ..... name ..... identification data

date and virtue of procurement: .....  
c) ..... name ..... identification data  
date and virtue of procurement: .....  
d) ..... name ..... identification data  
date and virtue of procurement: .....  
e) ..... name ..... identification data  
date and virtue of procurement: .....

**4. Savings in securities (stocks, bonds, shares, treasury bills, property bills, etc.):**

.....	name .....	number .....	value .....
.....	name .....	number .....	value .....
.....	name .....	number .....	value .....
.....	name .....	number .....	value .....
.....	name .....	number .....	value .....

**5. Savings in savings-deposits**

.....	financial institute .....	savings-account number .....	amount .....
.....	financial institute .....	savings-account number .....	amount .....
.....	financial institute .....	savings-account number .....	amount .....
.....	financial institute .....	savings-account number .....	amount .....
.....	financial institute .....	savings-account number .....	amount .....

**6. Cash exceeding ten times the amount of the effective salary base of public servants**

..... HUF

**7. Balance of account or other, contract-based claim for money that, accumulatively, exceeds ten times the effective salary base of public servants:**

.....	financial institute .....	bank-account number .....	amount .....
.....	financial institute .....	bank-account number .....	amount .....
.....	financial institute .....	bank-account number .....	amount .....
.....	financial institute .....	bank-account number .....	amount .....
.....	financial institute .....	bank-account number .....	amount .....

/technical identification number/

Virtue of balance of account  
Name and address of obligor  
Amount of claims  
date of issue  
due-date of the contract (claim)

**8. Other property items of significant value (to be declared), if their overall value exceeds ten times the effective salary base of public servants:**

..... name ..... identification data

..... name.....identification data  
..... name.....identification data  
..... name .....identification data  
..... name.....identification data

### **Part Three**

**Please indicate in this section if you have any debts towards financial institutions or private Individuals**

**1. Toward financial institutions:**

Name of loan  
Amount of debts date of issue due-date of the debt

**2. Toward private individuals – if the creditor has expressed his/her written consent to disclosing the information determined at this point – :**

Name of loan  
Amount of debts date of issue due-date of the debt

### **Part Four**

**Other announcements  
Declaration of economic interests**

1. *Position* (managing functionary of the company, member of the supervisory board, auditor of the company) or *interest* in a *company* (unlimited partnership, limited joint stock company, union, shared company, limited partnership company, joint stock company):

I.

1. business registration number: .....
2. name and form of company:.....
3. main location: .....
4. form of interest (owner, shareholder, general or external member in case of a limited joint stock company, etc.):.....
5. original rate of proprietary interest: ..... %
6. current rate of proprietary interest: ..... %
7. rate from profit: ..... %
8. position held in the company: .....

II.

1. business registration number: .....
2. name and form of company:.....
3. main location: .....
4. form of interest (owner, shareholder, general or external member in case of a limited joint stock company, etc.):.....

5. original rate of proprietary interest: .....%  
6. current rate of proprietary interest: .....%  
7. rate from profit: .....%  
8. position held in the company: .....

III.

1. business registration number: .....  
2. name and form of company: .....

3. main location: .....

4. form of interest (owner, shareholder, general or external member in case of a limited joint stock company, etc.): .....

5. original rate of proprietary interest: .....%  
6. current rate of proprietary interest: .....%  
7. rate from profit: .....%  
8. position held in the company: .....

IV.

1. business registration number: .....  
2. name and form of company: .....

3. main location: .....

4. form of interest (owner, shareholder, general or external member in case of a limited joint stock company, etc.): .....

5. original rate of proprietary interest: .....%  
6. current rate of proprietary interest: .....%  
7. rate from profit: .....%  
8. position held in the company: .....

V.

1. business registration number: .....  
2. name and form of company: .....

3. main location: .....

4. form of interest (owner, shareholder, general or external member in case of a limited joint stock company, etc.): .....

5. original rate of proprietary interest: .....%  
6. current rate of proprietary interest: .....%  
7. rate from profit: .....%  
8. position held in the company: .....

Date: ..... year ..... month ..... day .....

signature