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Evaluation Report on Moldova

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I. INTRODUCTION

1. Moldova is the 37th GRECO member to be examined in the second evaluation round. A GRECO Evaluation Team (hereafter "GET") visited Chisinau from 3 to 7 April 2006. It comprised the following members: Mr Octavian LUPESCU, Prosecutor, Public Prosecutor's Department at the Supreme Court of Justice and Cassation (Romania), Ms Elsa García MALTRÁS, Prosecutor, Ministry of Justice (Spain) and Mr Jean-Pierre ZANOTO, Inspectorate-General of Judicial Services, Ministry of Justice (France), and was accompanied by a member of the Council of Europe Secretariat. Before the visit, the GET experts had received full replies to the evaluation questionnaire [Greco Eval II (2006) 1F] and extracts from the relevant legislation.

2. The GET met representatives of the following authorities: the Ministry of Justice, the Ministry of the Interior, the Ministry of Finance (Tax Inspectorate; Audit and Control Directorate); the Customs Department; the Ministry of Education; the Ministry of Health; the Ministry of Transport and Telecommunications; the Ministry of Defence; the Supreme Court of Justice; the Court of Appeal; the courts of first instance; the Court of Auditors; the Prosecutor General's Office; the Parliamentary Commissioners (Ombudsmen); the Supreme Security Council attached to the President of the Republic of Moldova; the Central Control Commission (responsible for checking asset declarations); the Public Administration Academy; the Regional Development Agency; the Staff Policy Directorate; the Centre for Combating Economic Crimes and Corruption (Department for Combating and Preventing Money Laundering - FIU, the Directorate for the Prosecution of Corruption Offences, the General Anticorruption Directorate, the Group monitoring the implementation of the National Anticorruption Strategy, etc.); the Mayor of the village of Budesti of the municipality of Chisinau; the Chamber of State Registration; and the Chamber of Licences. The GET also met representatives of the following private bodies: the Moldovan section of Transparency International, the Centre for the Analysis and Prevention of Corruption, "Studentus incoruptus", the Moldovan Employers' Confederation, and the media.

3. It is recalled that GRECO agreed, at its 10th plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, that the 2nd Evaluation Round would deal with the following themes:

   - **Theme I – Proceeds of corruption**: Guiding principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS no. 173)[1], by Articles 19 paragraphs 3, 13 and 23 of the Convention;
   - **Theme II – Public administration and corruption**: Guiding principles 9 (public administration) and 10 (public officials);
   - **Theme III – Legal persons and corruption**: Guiding principles: 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Convention ETS no. 173, by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. This report has been drawn up on the basis of the replies to the questionnaire and the information provided during the on-site visit. It does not cover the situation concerning the Transnistrian Region of Moldova. Its principal objective is to assess the effectiveness of the measures adopted by the Moldovan authorities in order to comply with the requirements deriving from the provisions

[1] Moldova ratified the Criminal Law Convention on Corruption (ETS no. 173) on 14 January 2004, making the following declaration in its instrument of ratification: "The provisions of the Convention will not be applicable on the territory effectively controlled by the institutions of the self-proclaimed Transnistrian Republic until the durable settlement of the conflict from this region".

indicated in paragraph 3. For each theme, it contains a description of the situation followed by a critical analysis. The conclusions include a list of the recommendations adopted by GRECO and addressed to Moldova in order to improve its level of compliance with the provisions under consideration.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation

5. Article 98 of the Criminal Code[2] lists confiscation (provided for in Article 106) among the security measures authorised by criminal law. It is most commonly ordered in addition to a criminal penalty. However, it may be ordered in the absence of any conviction (Article 106(4) of the Criminal Code)[3] and may also be applied in administrative cases[4]. Courts may issue confiscation orders even if no specific application has been made by the public prosecutor. According to the Moldovan authorities, the provisions of the Criminal Code must be interpreted in such a way that confiscation is mandatory in all cases of corruption. However, Article 106(5) provides that no confiscation order may be made in the case of offences committed through the press or media.

6. Article 106(1) of the Criminal Code defines confiscation as "the transfer, forced and free of charge, to the State of the ownership in the assets that have assisted in the commission of the offence and of the proceeds thereof". Article 106(2) provides that the following may be confiscated: i) the proceeds of the offence; ii) assets used for or intended for the commission of an offence when they belong to the convicted person; iii) assets passed on with the aim of inciting the commission of an offence or assets constituting remuneration for those who have committed the offence; iv) assets that clearly originate from an offence if they do not have to be handed back to their owner or are not earmarked to compensate the damage suffered by the victims; and v) assets held illegally. According to the Moldovan authorities, the confiscation of proceeds extends to derived proceeds (secondary or converted into other proceeds) even if the Criminal Code does not expressly provide for this.

7. Since the amendment of 13 June 2003, Article 106 of the Criminal Code has permitted courts to confiscate property equivalent to the proceeds of a crime when such proceeds can no longer be found in the convicted person's assets. Article 206 of the Code of Criminal Procedure provides that, in order to determine the value of assets to be sequestered with a view to their possible confiscation, reference must be made to the "average prices on the market of the respective locality". If need be, the courts can consult experts.

8. Article 106(3) of the Criminal Code authorises the confiscation of property that belongs to third parties and has been used for or resulted from the commission of offences, but only when these third parties are aware of the illegal nature of this property.

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[2] A Criminal Code and Code of Criminal Procedure came into force on 12 June 2003 and have been the subject of successive amendments. New amendments to the Code of Criminal Procedure are being prepared.

[3] The Moldovan authorities have stated that this is the case in the event of a person's death or incapacity or of an amnesty. There are, however, no explicit provisions in this regard.

[4] However, administrative confiscation orders may be issued as the main or subsidiary penalty in the case of administrative offences, but not in the case of nepotism, or when the activities concerned, do not constitute an offence, for example because they are not sufficiently serious or because they pose no threat to society. According to Article 28 of the Code of Administrative Offences, assets that constitute the instrumentalities or objects of an offence or their equivalent value may be confiscated.

9. Under Article 8(2) of the Code of Criminal Procedure, the prosecuting authority bears the burden of proof in corruption cases.

Interim measures

10. The Code of Criminal Procedure provides for a general system of seizing (Articles 55 to 57, 125 to 134, and 159 to 162) and sequestering (Articles 202 to 210) assets. Seizure orders are primarily concerned with securing items for the purposes of the investigation and assets held illegally. Article 126 sets out in general terms the prosecuting authorities' right to seize assets that are important for conducting the criminal case. Sequestration is used to redress any damage and ensure the payment of fines as well as to confiscate property intended for, used for or resulting from the commission of an offence. It applies to immovable and movable assets, bank accounts and bank deposits. It is only carried out on the authorisation of an investigating judge or by court order.

11. The Centre for Combating Economic Crimes and Corruption and one of its subordinate bodies, the Department for Combating and Preventing Money Laundering (SPCSB), which also acts as a financial intelligence unit, can obtain the administrative blocking of suspect financial transactions. To do so, the Department must make an application to the Public Prosecutor's Office through the Director of the Centre. The blocking of the transaction may not exceed 72 hours.[5]

12. There is no provision for special financial and asset investigations aimed at identifying, tracing and freezing proceeds when corruption offences have been detected. However, Article 254 of the Code of Criminal Procedure requires the prosecuting authority to take all necessary measures to carry out a complete and objective investigation. In practice, the economic and financial activities of legal persons are investigated when corruption is suspected.

13. Documents containing State, commercial or bank secrets and information on intercepted telephone calls may only be seized if authorised by an investigating judge at the request of the public prosecutor (Articles 41, 53 and 57 of the Code of Criminal Procedure). Article 214 of the Code of Criminal Procedure governs the transmission of data covered by the provisions pertaining to commercial confidentiality and any other information deemed by law to be confidential or secret. Sub-paragraph 3 provides that holders of such information are entitled to satisfy themselves that the information requested by the authorities conducting the criminal investigation relates to a specific criminal case. They may not refuse to pass on such data when asked to do so by those authorities and the courts, but are empowered to ask the person requesting the information to supply written reasons in advance confirming the need to provide it. To establish which bank accounts are held by an individual or legal person, judges and public prosecutors approach the National Bank of Moldova, which asks all the banks registered in Moldova (including those in Transnistria) to provide details of the bank accounts of the individual or legal person specified in the relevant application from the public prosecutor or the Centre for Combating Economic Crimes and Corruption. However, when the bank holding the accounts of the person concerned is already known, the investigating departments and the courts contact it directly to have them frozen.

[5] Under Article 7(h) of Act No. 1104 of 6 June 2002, the Centre for Combating Economic Crimes and Corruption and the tax authorities can freeze accounts held by banks or other financial institutions and prohibit any operation on these accounts. They can also seize the financial resources, material property, claims and other assets of people who engage in unlawful economic activities or fail to meet tax obligations. Article 203(1) of the Code of Criminal Procedure makes it possible to prohibit suspects from carrying out bank transactions and prevent holders of securities from selling them.

14. Article 303 of the Code of Criminal Procedure specifies the special investigative techniques that may be employed. Under Article 133, communications may only be intercepted in the case of "serious, extremely serious or exceptionally serious offences". This article accordingly does not apply to ordinary corruption, trading in influence and accounting offences.

15. There is no specific body specialising in the management of seized assets. However, the tax authorities are responsible for registering, assessing the value of and selling confiscated and seized property in accordance with the applicable legislation. The arrangements for managing assets are determined with the aid of the Government Regulation of 11 November 2001, Article 161(2) of the Code of Criminal Procedure and Article 4(9)(a) of Act 408-XV of 26 June 2001 on the implementation of Title V of the Tax Code.

Statistics

16. According to the Moldovan authorities, 97 persons were prosecuted in 2004 for acts of corruption and 63 were convicted (54 for passive or active corruption and 9 for accepting or offering bribes). In the first six months of 2005, 57 persons were convicted of corruption offences. No one was prosecuted or convicted of money laundering in 2004 or 2005. Sequestration orders were made with regard to movable and immovable property (objects, land, cars) amounting to 148 513 lei (€9 280) in 2003 in respect of four criminal cases, 2 868 250 lei (€180 000) in 2004 in respect of ten cases and 14 951 329 lei (€935 000) in 2005, also in respect of ten cases. In 2005 sequestration orders were made on movable property worth €250 000 in two cases of corruption and immovable property worth €100 000 in six cases of corruption. In 2004, confiscation was ordered against three persons convicted of corruption. In the first six months of 2005 a confiscation order to the value of 100 lei (€6) was also imposed on a person convicted of corruption.

International co-operation

17. International mutual legal assistance, which includes seizure, sequestration and special confiscation measures, is provided for by Articles 531 to 559 of the Code of Criminal Procedure and is subject to the relevant international treaties.[6] The central authorities responsible for sending out and receiving applications for the purpose of combating corruption are a) the General Prosecutor's Office for applications for mutual assistance drawn up during the criminal prosecution phase, including extradition requests, and b) the Ministry of Justice for applications for mutual assistance drawn up during the trial and execution of judgment phases, including extradition requests. According to data from the General Prosecutor's Office, 388 requests were made in 2005, including four letters rogatory which have been transmitted to the competent authorities of Russia, Romania and Latvia to facilitate provisional measures in cases of money laundering and offences committed by persons exercising public authority. 500 requests for legal assistance were received in the same year, only two of which related to cases of money laundering. The Department for the Combating and Prevention of Money Laundering (SPCSB),

[6] In particular, the European Convention on Mutual Assistance in Criminal Matters (ETS no. 30) and its Additional Protocol (ETS no. 99), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS no. 141), the Criminal Law Convention on Corruption (ETS no. 173) and the Civil Law Convention on Corruption (ETS no.174). A draft organic law on international co-operation in criminal matters was being drawn up at the time of the GET's visit. It was approved by the Parliament on first reading on 11 June 2006.

co-operates directly with certain foreign counterparts but is not yet a member of the Egmont Group.[7]

Money laundering

18. Moldovan law makes it a criminal offence to launder the proceeds of any underlying criminal offence, including offences involving corruption, trading in influence, self-laundering and accounting offences, even if they have been committed outside the country. Nevertheless, according to case-law, Article 243 of the Criminal Code requires a prior conviction for a predicate offence and does not provide for evidence of an underlying offence to be deduced from objective factual circumstances. The institutions obliged to submit suspicious transaction reports are set out in Act 633 of 15 November 2001 on preventing and combating money laundering and the funding of terrorism.[8] Suspicious transactions reports are transmitted to the Department for Combating and Preventing Money Laundering (SPCSB), which is the Moldovan FIU. One money laundering investigation was carried out by the Centre for Combating Economic Crimes and Corruption in 2003 and three in 2004. In 2005, two prosecutions were in progress for cases of money laundering associated with corruption.

b. Analysis

19. During its visit, the GET noted that many changes were in progress, aimed particularly at strengthening the independence of the judicial system and the professionalism of judges and public prosecutors. Criminal legislation has been and continues to be the subject of numerous successive amendments. These changes must now be taken on board by those concerned and put into practice since, as the legal professionals whom the GET met acknowledged, this proliferation of legislation has made the law very complex and, indeed, uncertain. They argued that inter-ministerial co-ordination was inadequate and that not enough had been done to codify the legislation or ensure that it was of an acceptable standard. The recent amendment to Article 106 of the Criminal Code shows, however, that the legislators have become more aware of the importance not only of securing convictions but also of detecting, seizing and confiscating the proceeds of criminal offences, including the confiscation of their equivalent value.

20. However, certain legislative adjustments are necessary. Article 106 of the Criminal Code does not explicitly state that confiscation is mandatory, but representatives of judges and public prosecutors confirmed that this did in fact apply to the proceeds of corruption mentioned in Article 106(2) of the Criminal Code.[9] Article 13 of Act 900 of 27 June 1996 on Combating Corruption and Nepotism provides that "unlawfully acquired assets or the price paid for unlawfully supplied services must be seized and transferred to the State by judicial decision". Despite the entry into force of the Code of Criminal Procedure, the wording of Act 900 has remained unchanged[10].

[7] In 2005, the Centre for Combating Economic Crimes and Corruption signed memoranda of co-operation with the FIUs in the following five countries: Romania, South Korea, Lithuania, Estonia and Lebanon. Negotiations are under way with six other countries. Moldova is also co-operating within regional mechanisms, such as the Bucharest based SECI Centre, through police and customs liaison officers, the regional financial action task force (FATF) set up on the initiative of Russia, and the Eurasia Group.

[8] These institutions are mainly organisations that carry out financial operations, such as banks, investment funds, exchange offices and insurance companies, as well as "bodies that provide legal, notarial, accounting, financial and banking assistance", etc.

[9] This accordingly does not apply to the confiscation of assets of equivalent value (Art. 106(1)), the confiscation of assets held by third parties (106(3)), confiscation *in rem* (106(4)) and confiscation in cases of offences committed via the media or the press (106(5)).

[10] Nevertheless, the CCEEC has prepared a new draft law on the prevention and the fight against corruption and nepotism, which has been transmitted to the government in September 2006.

Harmonisation of the provisions of that Act and the Code of Criminal Procedure would clarify the situation for practitioners. Moreover, some court proceedings result from administrative rather than criminal offences, for example in connection with nepotism. The GET was unable to establish on the basis of the information available whether the proceeds of such violations were also confiscated.

21. Practitioners themselves pointed out during the GET's visit that the provisions on interim measures were not entirely satisfactory and were sometimes contradictory. For example, under Article 202 of the Code of Criminal Procedure a sequestration order may be made to ensure that any damage is redressed and the fine payable is recovered, while under Article 205 the sequestration may be ordered to 1) ensure that the damage is redressed in the case of a complaint made by the victim as a party claiming compensation and 2) secure the actual confiscation when this is provided for in the case of specific offences.

22. In view of the preceding paragraphs, **the GET recommends to revise and harmonise existing legislation on confiscation and interim measures so that the instrumentalities of corruption and other related offences as well as the proceeds and their equivalent value can be confiscated.**

23. In order to conduct investigations in corruption cases, the Moldovan authorities have set up a multi-disciplinary, specialised body: the Centre for Combating Economic Crimes and Corruption (CCEEC). In addition, with the creation of the Anticorruption Office there is now also a greater degree of specialisation within the Public Prosecutor's Office. The CCEEC has nearly 500 staff, including former public prosecutors, police officers and tax inspectors. In practice, though, many of the 510 corruption cases registered in 2005 were dealt with by the Ministry of the Interior, which has criminal prosecution units in each district, although they only have limited resources.

24. The Moldovan authorities can claim to have obtained some encouraging results with regard to corruption offences, with 97 indictments and 54 convictions in 2004 and 33 convictions in 2005. However, despite these results, the GET concludes that decisions to confiscate assets in corruption cases are still rare and only concern small amounts. Several reasons have been put forward for this.

25. Firstly, as the CCEEC representatives explained, the same *modus operandi* are generally applied in all corruption cases: when a case is reported sufficiently early, the victim is employed as an agent and arrangements are made to catch the offender in the act. The offender who has requested the bribe is apprehended and the proceeds of the offence are returned to the victim. There are accordingly no proceeds or assets to be confiscated. These cases suggest that, while corruption remains widespread in various areas of activity of the State and the economy, the law enforcement authorities have taken steps to combat this phenomenon and the population are co-operating with them to thwart the bribers. In this connection, the GET wishes to point out that, apart from the very specific situations mentioned in the *modus operandi* described above, it is rare for victims to be clearly identified in corruption cases, since both the briber and the person bribed have an interest in keeping their transactions secret. The existing system should in fact enable the proceeds of criminal offences to be identified, seized and confiscated even in the absence of a complainant or an identified victim and even if an offender has not been caught in the act.[11]

[11] The GET has also pointed out that this approach raises questions about indictments on corruption charges, guilty pleas and the starting-point of limitation periods that will be specifically examined in the context of the 3rd GRECO evaluation round.

26. The cases mentioned also suggest that most corruption prosecutions that have resulted in a conviction concern ordinary public officials and relatively small amounts. The GET believes that minor cases should not be neglected because they trivialise the phenomenon and render it virtually normal. However, it agrees with the opinion expressed that the fight against corruption would gain credibility if more interest were shown in instances of high-level corruption, including politically or economically sensitive or complex cases[12]. A more proactive approach should be adopted to the detection of offences by significantly speeding up the processing of case files and reducing trial times (since certain proceedings are said to await judgment for several years).

27. Finally, in order to determine the value of assets to be sequestered, Article 206 of the Code of Criminal Procedure refers to the "average prices on the market of the respective locality". This is not sufficient in itself to assess the value of a suspect's assets and the courts may consult experts. In this context, the CCEEC possesses considerable multidisciplinary expertise in this area, which cannot necessarily be said of the ordinary members of the prosecution service, who handle 85% of corruption cases. No specific and systematic in-depth financial and asset investigations are conducted in the case of corruption inquiries.[13] According to senior judicial representatives, who are worried in certain cases about the absence of such inquiries and the lack of detected proceeds and seizures, this is due to the insufficient resources available, especially to the Public Prosecutor's Office and the prosecution officials of the Ministry of Interior. Such inquiries are not considered to have any priority but they are in fact necessary to place a value on the proceeds of a crime or the extent of unlawful enrichment, over and above any instrumentalities and proceeds identified when the offender is caught *in flagrante delicto*.[14] Such information is necessary for courts to order confiscation – as they are required to do.

28. In the light of the preceding paragraphs, **the GET recommends to strengthen the resources of investigators and prosecutors in the fight against corruption, to increase the efficiency and speed of financial investigations, including in respect of politically or economically sensitive cases, and to make more systematic use of asset investigations.**

29. Various representatives pointed out that no matter how compelling the original evidence during investigations and trials, the level of proof required to substantiate the unlawful origin of an asset is very high and there can be no reversal of the burden of proof, even in cases of money laundering or in connection with a person's conviction for corruption, if the link between the offence and the criminal proceeds has not been established beyond any doubt. The GET's interlocutors referred to many cases in which public officials clearly led a lifestyle beyond their means and yet, despite credible allegations of corruption, it had not been possible during the trial to prove a connection between their wrongdoings and the criminal origin of their assets. A reversal of the burden of proof would encounter constitutional obstacles since, according to Article 46 of the Constitution, property is presumed to be lawful. However, a draft law aimed at amending the Constitution in respect of the conclusive presumption of the lawfulness of assets was in preparation at the time of the GET's visit. This would make it possible at a later stage to establish provisions for the civil confiscation of assets. *The GET observes that the draft law on*

[12] Since 2000, there are said to have been virtually no convictions of politicians or judges for corruption. Yet according to the Moldovan authorities, these professions are not unaffected by the problem of corruption. See also in this connection the recommendations and reports on Moldova of the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe with regard to the prosecution of elected members of the opposition.

[13] In this context, the current system of asset declarations does not seem to be much help either since it only concerns a limited number of persons and a limited amount of information.

[14] For example, corruption offences may employ complex financial arrangements, even of a cross-border nature, or they may be successive or continuous.

amending the Constitution should be adopted as soon as possible so that it will at least be possible to confiscate criminal assets under civil law and subject to civil rules of evidence and procedure[15].

30. The GET has doubts concerning the implementation of the provisions on the transmission to the prosecuting authorities and courts of information covered by rules of professional, commercial and banking secrecy, since the holders of such information are entitled to verify that the details requested by the criminal investigation authorities relate to a specific criminal case. While they may not refuse to pass on such details when the prosecuting authorities and courts request them, they are entitled to ask in advance for written justification from the person requesting the information. Regarding banking secrecy, if judges and prosecutors already know in which banks suspect accounts are to be found they can contact these banks directly, but to identify all the bank accounts held by an individual or legal person they must approach the National Bank of Moldova. Some of the GET's interlocutors expressed reservations about the quality of the information obtained by the National Bank in this way, especially with regard to bank accounts in Transnistria, and about the time taken to reply. This could restrict or delay judicial bodies' access to information covered by the aforementioned secrecy rules, and lead to the disappearance of criminal assets or proceeds between the start of an inquiry and the end of proceedings. *The GET observes that an inquiry should be conducted, on the basis of actual cases and in consultation with practitioners, into whether the competent authorities have rapid and satisfactory access to information enabling them to identify any criminal proceeds and the assets of suspects in corruption cases.*

31. The Code of Criminal Procedure only authorises the use of special investigative techniques in corruption cases with aggravating circumstances. They are accordingly not available in ordinary corruption cases that are punishable by a maximum of five years' imprisonment, in cases involving trading in influence or accounting offences or for identifying the proceeds of such offences. During the visit, representatives of the CCEEC and the Public Prosecutor's Office nevertheless stated that in practice such special investigative techniques were employed in corruption investigations, based on a 1993 Law on Operational Investigations, but that the data obtained were not admissible in court. The GET believes that such a state of affairs can only be prejudicial to the quality of the proceedings and the trial. **The GET recommends to bring the legislation on special investigative techniques in line with the provisions of the Criminal Law Convention on Corruption (ETS no. 173).**

32. There is no specific body specialised in the management of seized or frozen assets. Although the tax authorities seem to perform much of the work of assessing the value of assets in judicial proceedings, the GET considers that a specialised body tasked with all aspects of the seizure and management of assets and securities, such as related expenses and the conservation and use of perishable goods, could simplify the judges' task and make it easier to apply confiscation in practice. If need be, the public authorities, such as the Ministry of the Interior, the CCEEC or the Public Prosecutor's Office, should be able to use or dispose of seized or frozen assets and participate in the sharing of confiscated assets, which is not the case at the moment. *The GET observes that it should be envisaged to establish a special body entrusted with managing seized or frozen assets and that the rules on the use and distribution of such assets should be changed.*

33. In practice, owing to a lack of resources and insufficient awareness of the problem, and for all the reasons already mentioned in connection with investigations, the law enforcement authorities do

[15] According to the Moldovan authorities, on 25 April 2006, the Constitutional Court has given a favourable opinion on the draft amendment to article 46 of the Constitution.

not often resort to the seizure or sequestration of assets. This also means that the authorities do not have to systematically assess and manage the assets concerned. Suspects generally remain in possession of the proceeds of offences throughout the investigation phase. There is consequently a serious risk of these persons hiding not only the criminal proceeds but also all their other assets so that they will not be available when they are convicted, as a result of which those concerned will no longer be able to pay an equivalent sum. More generally, although certain practitioners seem to have had training in detecting, investigating and punishing corruption offences this training is normally reserved for the staff of specialised departments and does not specifically and systematically deal with the identification, seizure and confiscation of the proceeds of corruption. The need for specialised training and its extension to all practitioners (investigators, public prosecutors and judges) was recognised by the GET's interlocutors. An institution for the initial and further training of judges and public prosecutors was being set up at the time of the GET's visit.[16] The courses could be accompanied by guidelines to provide practitioners with practical examples to help them carry out their duties. For example, although, according to the Moldovan authorities, it is compulsory to confiscate the proceeds of criminal activities, no confiscation of proceeds of corruption and related offences actually takes place, nor is there any genuine recognition of the economic and other damage caused by such crimes. **The GET therefore recommends to introduce guidelines and training courses to foster more systematic use of interim measures and of the confiscation of the instrumentalities and proceeds of corruption, including assets of equivalent value.**

34. The problem of the links between corruption and organised crime such as trafficking in human beings, organs, arms and drugs was underlined in GRECO's First Round Evaluation Report and has been pointed out in other reports by international institutions. The talks with representatives of the Public Prosecutor's Office, the Ministry of the Interior and the CCEEC identified certain links that have come to light between organised crime, corruption and money laundering, but the CCEEC, for example, claimed that such links were relatively unimportant and only related to two cases with no connection to these forms of trafficking. The activities of the specialised department of the Ministry of the Interior and the Centre for Human Trafficking had apparently produced some good results, but they suffered from a lack of resources and international co-operation, for example with certain countries from the region, especially regarding the protection of witnesses and victims of human trafficking. Finally, in spite of the establishment of joint *ad hoc* teams to deal with some of the cases concerned, the allocation of responsibilities between the Ministry of the Interior, the CCEEC and the Public Prosecutor's Office did not always seem clear to the GET, which accordingly had the impression that the links between organised crime, corruption and money laundering were not being given enough consideration.

35. As regards the system for combating money laundering, the Moldovan FIU is actually part of the CCEEC, which can benefit in this way from first-rate information to investigate, in accordance with its area of responsibility, economic crime and corruption. Despite this, there are very few cases of laundering. The CCEEC carried out just one investigation in 2003 and three in 2004. There must first be a prior conviction for a predicate offence. Suspicious transaction reports do not enable it to identify predicate corruption or trading in influence offences. Individuals and legal persons required to make such reports, have not received any guidelines for or training on identifying and reporting corruption offences, so the contribution of the anti-money laundering arrangements to the fight against corruption is very modest.

[16] On 8 June 2006, Parliament adopted Act 152 on the National Institute of Justice, which is charged with training judges and public prosecutors.

36. In the light of the preceding paragraphs, the **GET recommends to make every effort to ensure that the links between organised crime and money laundering are taken into account in all aspects of the fight against corruption, especially by making it easier to identify the existence of such links and by strengthening the contribution of the anti-money laundering arrangements to the fight against corruption and by ensuring that institutions and professions required to declare their suspicions receive instructions and training to assist the detection and reporting of acts of corruption.**

37. With regard to international co-operation on criminal matters, Moldova has ratified the Criminal Law Convention on Corruption. However, the information available shows there is no judicial co-operation on criminal matters relating to interim measures or the confiscation of assets in corruption or related cases. The GET accordingly reiterates a previous recommendation (cf. para. 33) regarding the training of practitioners to ensure they are better equipped to meet the international requirements of the fight against corruption. At the administrative level, the GET hopes that Moldova will take the measures necessary to broaden the scope of co-operation available, for example by also participating in the work of the Egmont Group.

III. THEME II - PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Administrative organisation

38. Moldova is a unitary state. Under Act 764 of 27 December 2001 on the administrative and geographical organisation of the Republic, the public sector includes national public authorities and local authorities, comprising 34 districts[17] (*raions*), 5 municipalities, 60 towns (29 localities forming part of towns) and 917 communes (including 1575 villages forming part of these communes). There are 982 local authorities in all. For example, Chisinau and its environs comprise 1 municipality, 6 towns, 8 communes and 3 villages. The institutions subordinate to these administrative entities include national and local public bodies and establishments as well as public enterprises and private enterprises with public participation. Some of these local authorities are self-governing and administer their finances and assets autonomously, pursuant to Act 123 of 18 March 2003.

39. Chapter VIII of the Constitution lays down the general principles governing the organisation and activities of administrative bodies. Article 4 of the Public Service Act, No. 443 of 4 May 1995, also sets out certain fundamental principles governing the operation of public authorities, such as professionalism, competence, transparency and the democratic functioning of institutions.[18] While the principle of integrity is not specifically mentioned in these texts, this concern is nevertheless echoed in the provisions of the Public Service Act, especially with regard to restrictions on the exercise of public functions following a conviction and to asset declarations.

Oversight

40. A variety of checks are conducted on the activities of administrative authorities, such as parliamentary, judicial, administrative and financial scrutiny, and public oversight. They are

[17] The Transnistrian region of Moldova is, however, controlled by the institutions of the self-proclaimed Transnistrian Republic.

[18] The Strategy for the Reform of Central Government Administration sets out the complex legal framework of administrative action.

carried out in various ways, depending on whether the parts of the public sector to which they apply are at central, regional or local level, or concern public or public/private establishments and enterprises. Legal protection for persons who have suffered harm as a result of the decisions of public authorities, especially the right to submit an "initial application" within 30 days (appeal to a superior authority) and the right to file a "request for a review" with the administrative division of a court, is provided for in the Administrative Proceedings Act, No. 793 of 10 February 2000[19], Article 355 of the Labour Code and the Petitions Act, No. 190 of 19 July 1994.[20] Courts with several judges, the courts of appeal and the Supreme Court of Justice include judges who specialise in administrative matters. Judges are required to refer matters to the criminal prosecution authorities when they identify the constituent elements of an offence. Owing to lack of information, the GET cannot say whether such cases have actually occurred.

41. According to the Moldovan authorities, several ministries have security departments responsible for internal supervision (auditing and management). When these do not exist, the human resources departments exercise this function. In addition, there is a deputy minister in each ministry responsible for measures to combat corruption and nepotism.[21] Acts Nos. 123 of 18 March 2003 and 25 of 16 February 2006 make the Ministry of Local Public Administration responsible for the administrative supervision of local authorities, in particular procurement contracts, public service concessions, the grant of permits and licences and the letting of state properties. Financial supervision of the accuracy and execution of budgets is carried out by the financial directorates of local councils and the local government chambers of the Court of Auditors. Information on possible violations of the financial rules is forwarded to the CCEEC. Seventy-eight files on suspected corruption were opened in 2005 in respect of local government representatives, including 29 mayors and 24 local councillors. Moldova has taken a number of initiatives to strengthen the supervision of local authorities.[22] The role of the Court of Auditors and the ombudsmen was specifically examined in the First Round Evaluation Report (paragraphs 60 to 64). Since then, the Court of Auditors Act has been amended, in July and December 2005, with the main aim of extending the Court's supervision to activities of local authorities and public or subsidised enterprises. The Court and the ombudsmen can therefore help to uncover and report corruption offences. The Court of Auditors reported 27 cases in 2005.

Anticorruption policy

42. In 2004, Moldova adopted a National Strategy for the Prevention and Elimination of Corruption and an Action Plan.[23] The Strategy is led by the Council for the Co-ordination of the Fight against Crime and chaired by the Head of State. A monitoring group made up of deputy ministers and deputy directors of administrative authorities was set up in February 2005 to monitor implementation of the Strategy and the Action Plan. The secretariat of this group is provided by

[19] The main aim of this Act is to combat abuses and misuses of their powers by public authorities and to protect citizens' rights. Appeals to a superior authority are provided for in Article 14 of the Act and appeals to a court in Article 16.

[20] This Act lays down the arrangements for examining complaints made by any individual to State organs with the aim of ensuring the protection of legitimate rights and interests.

[21] Following an examination of the measures to implement the National Anticorruption Strategy, the government decided on 11 July 2006 to strengthen internal supervision of the activities of public officials. On 6 September 2006 the Strategy for internal control and audit was adopted.

[22] Regional session of the Octopus Programme on preventing corruption and strengthening public ethics in local government, 13-15 October 2005, and meeting of' Council of Europe experts on 30 January 2006 on the administrative supervision of local authorities' activities.

[23] This strategy comprises three main focal points: 1) the concept, causes and consequences of corruption in Moldova; 2) measures for preventing and eliminating corruption, especially improvements to the legislative framework and its actual application, prevention of corruption in public institutions and political life, and closer co-operation between public institutions and civil society; and 3) the machinery for implementing the Strategy.

the CCEEC. These bodies assess the effectiveness of anticorruption measures by regularly analysing the information provided by people with specific responsibility for preventing corruption and nepotism (deputy ministers or deputy directors).[24] The new Action Plan for 2006, which contains sections on the prevention of corruption and greater transparency in the public sector, was adopted on 29 December 2005.

43. On 30 December 2005, the Government adopted an ambitious Central Government Administrative Reform Strategy, which describes the structure and operation of government, identifies gaps in the system, sets out the main principles of the reform and identifies priority actions. The numerous components include the adoption of a suitable legal framework, streamlining operations, the provision of quality services, the creation of a body (ministry) in charge of the administration and the civil service, and the separation of political and administrative functions, to reduce the possibility of arbitrary decisions. The aims of the reform also include the fight against corruption and European integration.[25] During the GET's visit, the authorities indicated that they were aware that the two objectives of fighting corruption and administrative reform should be pursued simultaneously. Several draft laws were being drawn up at the time of the visit.[26] An analysis unit answerable to the Government supervises implementation of the reform.

Transparency in public administration

44. Act 982 of 11 May 2000 on Access to Information governs the principles and conditions relating to, and the ways and means of implementing, the constitutional right of access to information. According to Article 10 of the Act, everyone has the right to request from public authorities any information at their disposal, subject to any exceptions or exclusions provided for by law (sections 7 and 8 and specific laws and regulations). In principle, it is not necessary to provide evidence of a legitimate interest. According to Article 16, information requested must be forwarded as soon as it is available but no later than 15 working days from the date of the request. Communication of the information may be subject to payment of a fee. Article 24 of the Act does not specify the penalties that individuals (officials or public servants) and administrative bodies face if they fail to comply with the Act, but according to Article 199/7 of the Code of Administrative Offences, non-compliance with the law is subject to an administrative fine of between 10 and 150 conventional units, i.e. 200 to 3 000 lei (€12.50 to € 200).

45. Under Article 8 of Act 123 of 18 March 2003 on Local Public Administration, local inhabitants may be consulted on local problems by means of binding referendums. It is also possible to organise consultative referendums, public hearings and debates. According to the Moldovan authorities, no such referendums have yet taken place, but several local authorities now have their own websites providing local information. The Central Government Administrative Reform Strategy provides for increasing transparency, citizen participation in the workings of central government and the establishment of one-stop services for citizens. At the time of the GET's visit, certain non-governmental organisations were drafting a law on greater transparency in decision-making in

[24] The last assessment led to the adoption of a government decision dated 11 July 2006.

[25] Projected measures include the sensible use of public finances; staff recruitment by competitive examination; separating the framing and promotion of policies from the supervision and provision of services; preventing conflicts of interest; the establishment of an appropriate system of remunerating public officials by introducing a so-called "anti-corruptive" threshold; and the establishment of a proper assessment system.

[26] In particular, a draft law on central government administration, a draft law on the civil service; a code of conduct for civil servants, an amendment to the Government Act of 31 May 1990 and regulations on the operation of specialised central government bodies, and the Act of 18 July 2003 on legal instruments of the Government and other central and local authorities.

government departments and agencies. In addition, business representatives whom the GET met said that they were working with central government to make their relations more transparent and reduce the risks of corruption.[27]

Employment in public administration

46. There are no precise data on the total number of persons employed in public administration and on the breakdown between civil servants and other staff.[28] The President of the Republic, elected politicians, judges of the Constitutional Court, members of the Supreme Court of Justice and of the Judicial Service Commission, public servants working in the health sector (such as doctors), education (such as teachers) and research (such as researchers) and the technical staff of administrative authorities are not considered to be civil servants. It is only recently that administrative authorities have had a statutory duty to issue proper contracts of employment to all their staff. There are several types of contracts, both temporary and permanent. According to the Central Government Administrative Reform Strategy, civil servants do not enjoy a full guarantee of stable employment. Public officials are subject to many different rules governing their rights and duties, such as Act 443 of 4 May 1995 on the Public Service; Parliamentary Decision 1227 of 18 July 2002 on the "approval of the staff policy within the Public Service"; Act 123 of 18 March 2003 on Local Public Administration; Act 1264 of 19 July 2002 on declaring and monitoring the income and assets of State dignitaries, judges, prosecutors, civil servants and certain persons holding managerial positions; the Code of Administrative Offences; and the Labour Code. The new administrative reform strategy refers to this disjointed and complex legal framework and sets out important objectives for employment conditions in central government, such as the establishment of a professional, motivated, accountable, sufficiently well-paid (with an anti-corruption threshold) and stable workforce, opportunities for professional development and recruitment and promotion based on merit.

47. The recruitment and selection of public officials are governed by rules laid down in various statutes and regulations, especially the Labour Code, the Public Service Act 1995, Parliamentary Decision 1227 of 18 July 2002 and Government Decision 192 of 1 March 2004 approving the regulations on filling vacant civil service posts by competitive examination. The latter stipulates that the selection of applicants for vacant civil service posts must be by competition organised by the authority in which the posts are located. The vacant posts are advertised in the media and on the relevant authorities' websites. In certain cases (for example the police or the CCEEC), applicants have to present an extract from their police record. Article 11 of the Public Service Act provides that a person may not occupy a public service post if previous convictions for deliberate offences are still entered in his/her police record. Article 11 of Act 900 of 1996 provides that anyone who has committed an act of corruption must be suspended from the civil service for a period of five years. They must also be suspended if they have been found guilty of nepotism (for an unlimited period).

48. Article 22 of the Public Service Act and Government Decision 522 of 20 May 2005 on the regulations Governing the Assessment of Civil Servants provide for a system of performance

[27] Act 424 of 16 December 2004, subsequently called the "Guillotine Act", set out to revise and optimise legislation on business activity. A commission and working group were set up to review all the official decisions governing commercial and business activities. They included representatives of central government, civil society and the business community. In 2005, the working group examined more than 1 200 legal instruments. In 2006, it examined 21 draft laws, 32 draft government decisions and 97 departmental regulations. Ordinary citizens can examine draft texts and make proposals on the Ministry of the Economy website . On 16 March 2006, the Government repealed several legal instruments.

[28] The GET was informed after its visit that the Ministry of Finance was preparing a breakdown on the basis of budgetary appropriations allocated to the civil service.

appraisal. The work of civil servants is assessed by a commission to which the administrative authority supplies information on how well those concerned are carrying out their duties and any penalties that may have been imposed on them. According to the administrative reform strategy, staff assessments, which are usually carried out every three years, must be improved and made more systematic to take account of individuals' actual skills and performance.

49. The initial and further training of civil servants is provided for by Article 21 of the Public Service Act and governed by the aforementioned Parliamentary Decision 1227 of 2002 and Government Decision 845 of 2004 on the Vocational Training of Civil Servants. Civil servants must complete 40 hours of further training a year and attend in-service training courses of at least two weeks' duration every four years. The training is provided by a Public Administration Academy attached to the President's Office. The teaching staff is made up of representatives of universities, ministries and their departments, various business schools, NGOs, etc. Every year, the Managerial Staff Policy Directorate, the Government's Local Public Administration Directorate and the Public Administration Academy draw up a further vocational training plan for civil servants that takes account of the Government's strategic aims and proposals from local administrative authorities. The 2005 and 2006 plans make no specific provision for sessions on the risks of corruption, conflicts of interests and so on, but several bodies have carried out training programmes and seminars on the ethical standards of their profession.[29] According to the Moldovan authorities, civil servants are taught ethical standards at the recruitment stage.

50. There is no general rule regarding the preventive rotation of public officials but the GET was told that there were specific or practical rules providing for the individual rotation of certain staff, especially in the case of the tax authorities. Thus, in 2004 more than 270 tax inspectors were transferred from one subdivision to another.

Conflicts of interests, incompatibilities, secondary activities and migration to the private sector

51. Article 11(3) of the Public Service Act imposes certain restrictions on the activities of civil servants, to prevent conflicts of interests and incompatibilities of functions. For example, civil servants may not hold two posts at the same time or combine with their public office another activity, whether contractual or by agreement, with a company, organisation, institution or collective whose activities are supervised by, or subordinate to, their own authority, unless the activity is scientific or educational or concerns the State's involvement or representation in commercial firms. According to the Moldovan authorities, civil servants may not represent third parties in the public authority where they are employed. They may not perform entrepreneurial activities or use their position to assist the entrepreneurial activities of individuals or legal persons in exchange for rewards, services or other privileges. They may not perform their functions in a department in which they would be subordinate to the authority of a relative. Public officials contravening these provisions are informed by the public authority that they must give up the additional or incidental activity. Officials who have not given up his/her other activity within one month of a warning will be automatically relieved of their duties (following disciplinary proceedings). However, the authorities that the GET met said they had not recorded any such cases. Failure to declare the acquisition of an interest in a business results in one of the administrative penalties provided for by Article 174/23 of the Code of Administrative Offences.

[29] Such as the centre for the continuing training of judicial staff for bailiffs, the customs service, the Chisinau tax inspectorate, the national centres for emergency and preventive medicine, the Chamber of Licences, the Labour Inspectorate, the National Bank, the national agency for the regulation of telecommunications, the national agency for the regulation of energy and the National Securities Commission. However, it should be pointed out that insider trading is not a criminal offence in Moldova.

According to the Moldovan authorities, the illegal acquisition of such an interest could also be covered by Article 327 of the Criminal Code, on abuse of functions.

52. Article 7 of Act 900 on Combating Corruption and Nepotism makes it unlawful for civil servants to become involved in the activities of other public or private bodies by exploiting their position and authority, participate in a vote or the taking of a decision on matters relating to their own or their relatives' personal interests, give preference or support to certain individuals or legal persons without any legal basis, represent third parties within the public authority where they work or supervise the work or to which they are subordinate, or use any information obtained in the performance of their duties in their own personal interest if such information may not be disclosed. Article 174/18 of the Code of Administrative Offences makes it an offence for senior officials not to take action against public officials found guilty of acts of corruption or nepotism. There is no specific body responsible for checking on situations of incompatibility or incidental activities. This may also be the responsibility of human resources or internal security departments.

53. There are no general rules on the migration of public officials to the private sector that relate to all public officials. However, Article 11(5) of the Public Service Act provides that former civil servants may not represent the interests of individuals or legal persons in matters that are connected with their previous duties and are considered State secrets or otherwise legally confidential.[30]

54. The Moldovan authorities have set up an asset declaration system directed at certain public officials under the Public Service Act, the Corruption and Nepotism Act and Act 1264 of 19 July 2002 on the declaration and monitoring of the income and assets of state dignitaries, judges, prosecutors, public servants and certain persons holding managerial positions. The Central Monitoring Committee, which is responsible for enforcing these provisions, began its work on 30 January 2003 and receives 1 500 declarations a year from the persons referred to in the aforementioned law of 2002. There are also sectoral committees in ministries and other departments for other categories of civil servants (see GRECO's First Round Compliance Report). The committee has never imposed or recommended any sanctions and has not found any breaches of the law. Apart from asset declarations, there is no obligation to make any declarations of interest (concealing, for instance, information about the official him/herself, his/her family, relatives or friends, which could give rise to possible conflicts of interest).

Code of conduct and code of ethics

55. Public officials are subject to a range of ethical rules, most of which originate from the aforementioned laws on the public service and civil service and the codes of conduct of certain categories of public officials (for example, judges in 2000, the police in 2003, public prosecutors in 2004 and tax officials and customs officers in 2005). However, the GRECO's First Round Evaluation and Compliance Reports point out that a code of conduct has yet to be adopted and distributed to all public officials. The Moldovan authorities have said that the national anti-corruption strategy provides for a civil service code of ethics and certain specific codes for each category of civil servant. On 15 November 2005, the Ministry of Justice presented draft legislation to the Government on a civil service code of conduct.[31] Officials' hierarchical superiors are responsible for supervising the application of all rules of conduct, including codes of ethics. According to the Moldovan authorities, under the Labour Code a breach of these rules is subject

[30] After the GET's visit, the Moldovan authorities said a new draft law on conflicts of interest would be drawn up and would include provisions on the migration of civil servants to the private sector in abuse of their position.
[31] Moldova still had no code of conduct for all public servants at the time of the GET's visit.

to disciplinary sanctions, such as those provided for in Article 206 of the Labour Code: a warning, a simple reprimand, a serious reprimand and dismissal. Article 30 of the Public Service Act and Article 200 of the Code of Criminal Procedure also provide for officials' suspension without pay. There is no central register of violations of ethical and disciplinary rules and sanctions imposed. The human resources or internal security departments of each administrative entity are nevertheless said to hold such information.

Gifts

56. There are specific rules prohibiting civil servants from soliciting or accepting gifts, in particular Article 8 of the Corruption and Nepotism Act.[32] Moreover, Article 11(3)(e) and (f) of the Public Service Act prohibits civil servants from leaving the country as part of a delegation abroad at the expense of individuals or legal persons, and receiving gifts and services in connection with the exercise of their duties unless they consist of token items presented in accordance with commonly accepted rules of courtesy and hospitality. Depending on the circumstances, accepting or soliciting gifts may be subject to criminal, administrative or disciplinary sanctions. For example, breaches of Article 256 of the Criminal Code, which makes it unlawful for persons to receive unjustified payments for the provision of medical services, transport, services in the public catering sector, etc, are liable to a fine of between 200 and 400 conventional units (€250 and €500). Article 330 of the Criminal Code provides that public officials or servants who are employed at a public institution, enterprise or organisation and have received unlawful rewards or certain financial advantages for acts or services forming part of their duties shall be fined between 200 and 400 conventional units or receive a maximum of three years' imprisonment, in both cases with or without being deprived of the right to carry out a function or do the same work for a period of five years. Moreover, Article 30 of the Public Service Act and the Labour Code provide for disciplinary sanctions in the case of a breach of the rules of conduct. Finally, Article 174/18 of the Code of Administrative Offences provides for specific sanctions, in particular fines of up to 50 conventional units (€62.50), for a breach of Act 900. No statistical data are available on this subject.

Reporting corruption

57. The existing arrangements for reporting corruption and other criminal or administrative offences or breaches of disciplinary or ethical rules have been described in the First Round Evaluation and Compliance Reports. The authorities proceed in an indirect manner: civil servants are obliged to report their suspicions to their superior, who is in principle obliged to refer them to the authorities responsible or face disciplinary proceedings or administrative sanctions. The deputy minister in charge of the fight against corruption in each ministry is responsible for the centralisation of information. Furthermore, every person, including an official, can file an anonymous report by using the hotlines which have been established in most departments. It is not clear what penalties an official would face for making a direct report, disobeying an illegal measure or failing to report an offence. There are no particular arrangements to offer protection against reprisals to officials

[32] The Act prohibits civil servants from: i) receiving any reward for carrying out their duties in the form of money, services, etc from an individual or legal person or an NGO or social or political association; ii) receiving by virtue of their social situation, gifts and services (with the exception of token items in accordance with recognised rules of courtesy and hospitality and token souvenirs presented when carrying out protocol activities and other official acts, if their value does not exceed the minimum wage). Gifts that are worth more than the minimum wage (€25) and are made without officials' knowledge or received from individuals or legal persons from other countries for carrying out official duties are forwarded to a special state fund as provided for by law; iii) accepting offers of trips, remuneration and inducements at the expense of individuals or legal persons from Moldova or abroad, except for trips at the invitation of parents or relatives or in cases provided for by international agreements. Under section 2 of the Act, similar prohibitions apply to members of officials' families.

who make such reports to their superior or another authority in good faith. However, the Moldovan authorities have indicated that officials who have taken part in uncovering cases of corruption can, if appropriate, benefit from Act 1458 of 28 April 1998 on the protection of victims, witnesses and other collaborators of justice. During the criminal investigation and court proceedings, they may be interviewed in accordance with a special procedure under Article 110 of the Code of Criminal Procedure that provides for anonymity.

Disciplinary procedures

58. As a rule, disciplinary proceedings are separate from criminal proceedings, but the limitation periods are short in the case of the former - no disciplinary sanction may be imposed more than six months after the relevant breach of the rules. Disciplinary proceedings are governed by the Labour Code, Article 207 of which grants the body that recruits staff authority to impose sanctions. Article 208(2) authorises employers to carry out in-house enquiries. Investigations of and disciplinary inquiries into official misconduct are usually conducted by human resources departments and/or the administrative authority's internal security department. An *ad hoc* committee may be established to look into certain cases of misconduct. This committee will then propose penalties to the executive authority, but the final decision is taken by the official's superior. If official misconduct includes the essential elements of a criminal offence, the superior must inform the prosecuting authorities and the official will be suspended from duty. There is no central register of information on violations of disciplinary rules and sanctions imposed. Nevertheless, all public officials have an administrative file that will be included in the documentation pertaining to the disciplinary proceedings.

b. Analysis

59. Moldova has carried out a large number of reforms in the last fifteen years and many laws have been adopted in all areas of activity. The Moldovan authorities have made considerable efforts to reform public administration to make it more efficient and transparent and closer to citizens. The GET agrees with the analysis of the Central Government Administrative Reform Strategy of 29 December 2005, which identifies the current problems that the authorities have to contend with (such as the absence of satisfactory decision-making processes, lack of inter-ministerial co-ordination, a fragmented legal framework and a civil service that is not yet fully professional, career-based, politically impartial and accountable) and the measures that need to be taken. These measures, if fully implemented, should make a considerable contribution to preventing and combating corruption within the public sector. This particularly applies to the recommended measures to: i) foster civil society participation in the administrative authorities' decision-making processes; ii) increase the transparency of the administrative authorities' procedures; iii) separate political from administrative functions; and iv) strengthen the objectivity of recruitment and staff assessment procedures and provide staff with genuine career prospects, training and decent salaries in order to limit the risks of corruption. The GET considers that implementation of the aforementioned measures should be one of the very first priorities of the anticorruption strategy and action plans. It therefore supports such measures as the drafting of a new Civil Service Act which would codify the numerous existing sectoral laws and takes account of all the concerns regarding the prevention of corruption, covering such areas as recruitment procedures[33], training, staff assessment and staff discipline.

[33] Corruption is said to be rife in the education field and some students reportedly obtain their degrees by paying bribes. The NGO "Studentus incoruptus" was set up in opposition to such practices. The administrative reform strategy indicates that, according to an examination of 58 central government bodies, 1772 persons were recruited in 2004, 275 of them (16%) by

60. However the GET notes that the administrative reform strategy does not cover the entire public sector and is limited to central government. It also focuses on civil servants, whereas the rules on corruption and its prevention should apply to all public officials.[34] Finally, there should be closer co-ordination between administrative reform and the anticorruption strategy and between the bodies responsible for implementing them. The GET welcomes the fact that the 2006 Anti-corruption Action Plan provides for risk analyses for certain central government administrative authorities. Such analyses would also prove useful in other sectors of government, including local government and certain public establishments and enterprises. **The GET therefore recommends to implement the administrative reform strategy as fully as possible; to establish a clearer link between administrative reform and the fight against corruption by placing more emphasis on the risks of corruption within the administration; to extend the measures recommended by this reform, which have a particular bearing on the fight against corruption, at the local and regional levels; and, finally, to ensure that implementation of these measures is properly monitored.**

61. The GET was unable to secure much information about citizens' use of legal remedies or the extent to which the courts exercised administrative and financial oversight. In certain ministries, security or human resources departments are responsible for internal monitoring within their own authority. The GET considers that the results achieved by these departments with regard to uncovering and reporting cases of corruption and related abuses are not satisfactory and could be improved, especially by improving the assessment of corruption risk factors within government as a whole and by providing training and, where appropriate, guidelines in these areas.[35] The government administrative reform strategy states that the fact that the authorities responsible for drawing up policies are at the same time charged with their implementation and supervision is a potential source of conflicts of interests. The Moldovan authorities were unable to point to any cases where the activities of administrative or financial courts or existing internal supervisory bodies have led to the identification and reporting of cases of corruption or related abuses, such as nepotism or abuse of office. **The GET recommends to continue strengthening the contribution of bodies responsible for administrative supervision in the fight against corruption so that tangible results can be obtained, especially by continuing the work on assessing the risk of corruption in public administration and organising new training courses on identifying and reporting corruption offences and related abuses.**

62. Reference has already been made to the need to reduce corruption and increase transparency in the decision-making process. The GET was informed that an NGO was producing draft legislation to this effect.[36] According to some of the GET's interlocutors, public officials' attitudes must change so that the authorities' work becomes more transparent and, consequently, more efficient

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competitive examination. The strategy emphasises the need to make the selection procedures more objective and reduce the politicisation of the civil service, which at the same time should reduce the opportunities for nepotism.

[34] The GET found that NGOs were particularly active in the fight against corruption. They are a valuable ally in preparing and monitoring the implementation of anti-corruption policies.

[35] The Moldovan authorities did, however, state after the visit that, at a seminar in June 2005 on risk factors and the prosecuting authorities, an analysis had been made of the vulnerability of certain departments to corruption. On the basis of this analysis, recommendations and institutional measures have been drawn up in order to reduce the corruption risk factors (for example, within the Public Prosecutor's Office). The internal security departments are responsible for their implementation. The CCEEC has organised training courses for the staff of these departments. As a result, two prosecutions for abuse of powers were brought in 2005 thanks to the work of the internal security department of the Ministry of Information Development.

[36] On 10 July 2006, the Ministry of Justice forwarded to the Government a draft law on transparency in the administrative authorities' decision-making process. The text was put on the internet for public consultation.

and accountable.[37] The Access to Information Act (2000) was not being implemented satisfactorily. Following analyses carried out by NGOs, most administrative authorities did not respond to requests by individuals for access to information or only did so after a delay of as much as a year.

63. Moreover, the GET believes that the legislation and case law are not sufficiently precise with regard to whether certain types of sensitive information may or may not be communicated, especially information concerning state and commercial secrecy or respect for privacy, and public officials who have to implement the rules have not had suitable training on these matters. Finally, there is no appropriate mechanism for monitoring and guaranteeing individuals' access to information and for providing a completely independent opinion on whether documents can be communicated, thereby establishing case law or guidelines on how to proceed. **The GET recommends to continue to supplement the current legislation on administrative transparency and to ensure its actual implementation, including closer monitoring of the implementation of the rules pertaining to freedom of information and by giving public officials appropriate training in these areas.**

64. There are many rules on conflicts of interests and incompatibilities but they are scattered over several statutes and regulations, do not concern all public officials and do not offer any overview of the situation.[38] The legal situation regarding those who perform several or ancillary activities and how these are supervised is unclear. There is no comprehensive system for declarations of interest and the existing system of asset declarations is ineffective. The central control commission responsible for checking these declarations and the existing sectoral commissions do not have the resources to identify possible false declarations or discrepancies between public officials' actual and declared assets. The present arrangements have not led to the uncovering of any case of fraud or potential conflict of interest. The GET is nevertheless pleased to hear that the Moldovan authorities have drawn up draft legislation on conflicts of interest. This draft includes provisions on situations where public officials move to the private sector. The authorities were also aware of the need to establish proper arrangements for checking declarations of assets and interest. **The GET recommends 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.**

65. As mentioned above, civil servants are obliged to report to their superior any suspicions of corruption they may have. There are no suitable provisions on how to proceed when the superior himself or herself is the subject of such suspicions or has given an illegal order, or any appropriate sanctions in the event of a failure to report them. No case is known in which an official's or a superior's failure to report has led to sanctions. The GET agrees with some of its interlocutors that clear provisions should be introduced to ensure that public officials report their suspicions concerning breaches of the rules directly to the law enforcement authorities and that people who report suspicions of corruption in good faith (whistleblowers) are protected against reprisals. It also appears that the authorities do not always take proper criminal, administrative or disciplinary action on existing reports, which raises the question of how these reports are processed and the effectiveness of the procedures (especially as regards disciplinary

[37] On 19 June 2006, the Government issued a decision calling on the administrative authorities to disseminate information on their activities on the internet, as well as the results of checks carried out.

[38] For example, it is not clear to what extent local officials can manage rental companies while at the same time avoiding any risk of a conflict of interests. These firms are set up by members of staff of municipal state bodies or their subdivisions, for the purpose of engaging in entrepreneurial activities. These companies have legal personality and are liable for any obligations they incur.

investigations and co-ordination between disciplinary administrative, financial and criminal proceedings). **The GET recommends to introduce clear rules that encourage all public officials to report cases of corruption and an appropriate system for protecting whistleblowers, and to review the manner in which reports are processed by the authorities, to ensure that the appropriate procedures are set rapidly in motion.**

66. As it lacks sufficient information, the GET is unable to determine the extent and effectiveness of disciplinary procedures/measures against public officials who are subject to the Labour Code. The GET thinks that the administrative reform should make it possible to determine whether the public service disciplinary procedures are appropriate and how much they contribute to the conduct of effective investigations and the imposition of dissuasive sanctions in cases of corruption or other abuses, such as accepting gifts and failing to report offences or conflicts of interest.

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons

67. Article 55 of the Civil Code provides the following definition of a legal person: "A legal person represents an organisation with its own assets and is liable for its obligations to the extent of its assets. It can acquire and exercise pecuniary rights and personal, non-pecuniary rights in its own name, enter into obligations and be either plaintiff or defendant in a court of law". The Civil Code refers to the following types of legal persons: commercial firms, co-operatives, State or municipal enterprises and non-commercial organisations. According to the Moldovan authorities, there are also the so-called civil law property companies. Act 845 of 3 January 1992 on Company Activities provides for one-person businesses, general partnerships, limited partnerships, public limited companies, private limited companies, producers' co-operatives, entrepreneur co-operatives, rental companies and, finally, State and municipal enterprises. Articles 180 to 183 of the Civil Code provide for three forms of non-profit-making legal persons: associations (for example, collective associations, religious associations, political parties and trade unions), foundations and institutions. According to the State Registration Chamber of the Ministry of Information Development, 127 821 legal persons were registered in the State Register at 1 May 2006, of which 62 517 were one-person businesses, 51 667 private limited companies, 5 107 public limited companies, 4 323 co-operatives, 1 179 public enterprises, 424 municipal enterprises and 257 non-profit-making organisations.

Constitution and registration

68. According to Article 60 of the Civil Code, the legal capacity of a legal person is obtained from the moment the name is entered in the State register and ceases on the day it is deleted from it. A profit-making legal person may engage in any activity not prohibited by law, even if this is not provided for in its statute, whereas a non-profit-making legal person may only engage in activities provided for by law and by its statute. Legal persons subject to public law may be treated as legal persons subject to private law insofar as they carry out a civil or commercial activity. The conditions governing the constitution of legal persons vary according to their form and are laid down in the rules governing each of these categories. In particular, commercial firms are set up under articles of association authenticated by a notary.

69. Under section 10 of Act 1265 of 5 October 2000 on State Registrations, legal persons subject to private law must be registered with the local offices of the State Registration Chamber. The Act does not apply to the registration of agricultural companies or individuals who engage in activities on the basis of a licence or letters patent, or to political parties, political social movements, foundations, trade unions, employers' associations, religions and religious organisations (Article 3 of Act 1265).[39] The State Registration Chamber comprises ten individual registration centres located close to the local offices that serve entrepreneurs, including those in Transnistria. With the computerisation of the registration process and improvements in the legislation, the registration procedure for legal persons should not normally exceed ten days. During this period, checks are made on the person's identity, payment of the capital by the partners or shareholders and any debts owed by the founders to the State. In addition, the name of the legal entity and the statistical codes are approved and the company foundation documents are authenticated. According to Article 24 of Act 1265, the State Registration Chamber is responsible for maintaining the State register. The data to be entered into it are specified in Article 25 of Act 1265. There are no data in the register on companies found guilty of criminal offences.[40]

Professional disqualifications

70. Under Article 65 of the Criminal Code, convicted persons may be deprived of eligibility for positions or activities of the same nature as the one held or exercised when the offence was committed. Such a ban may be imposed by the courts for a period of one to five years, and is among the accessory penalties specified in Articles 324 (passive corruption), 327 and 328 (abuse of authority or of office), 329 (negligence), 330 (receipt of an unjustified reward by a civil servant), 332 (forgery of public documents), 333 (bribes) and 335 (abuse of office by the manager of a company subject to private law or an NGO). It may be applied as an additional sanction even when it is not provided for as a penalty for breach of the Criminal Code if, given the nature of the offence, the court finds it unacceptable for the offender to enjoy the right to hold posts identical to those that have been used to commit the offence. In addition, under Article 126 of the Civil Code, on the application of one or more members of a general partnership, courts are empowered to deprive persons of the right to manage and represent their company if it has been established that they have seriously breached their obligations as executives or that it is impossible for them to carry out their duties. Nevertheless, neither the public prosecutor's office nor the registration chamber carry out systematic checks on the professional disqualifications to which company executives might be subject. Nor was it clearly established at the time of the GET's visit whether non-compliance with a ban on holding a managerial position was subject to criminal penalties.[41]

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[39] The State Registration Chamber is not the only public institution charged with registering legal persons. Political parties and foundations, for example, must be registered with the Ministry of Justice. Discussions are said to be under way to substitute a single register for the present system.

[40] The GET was informed after the visit that some checks were made on the police records of the founders of certain companies. The registration chamber has introduced into the "Enterprise" computer system the concept of a "legal filter", which prevents companies from being registered in cases where a court decision prohibits the founder from engaging in certain activities and holding certain offices. In addition, Act 451 of 30 July 2001 obliges businesspeople to possess a special permit for certain activities (especially those that could infringe citizens' rights, harm their interests or health, damage the environment or prejudice State security). For example, Order 12-g of the Chamber of Licences, published in the Official Journal of 5 May 2006 (after the GET's visit), prohibits persons with a criminal record from engaging in 16 types of activity (such as the organisation of games of chance).

[41] The Moldovan authorities informed the GET after the visit that such a sanction was provided for in Articles 182-183 of the Execution of Judgments Code, approved by Act 443 of 24 December 2004

Liability of legal persons

71. Article 21 of the Criminal Code provides for the criminal liability of private law legal persons in respect of numerous offences committed on their behalf.[42] According to the same article, the criminal liability of a legal person does not rule out that of an individual. Article 521 of the Code of Criminal Procedure introduces special rules applicable to criminal proceedings against legal persons to allow charges initially brought against legal persons to be extended to their legal representatives for the same or related offences. However, this liability regime does not apply to failure of a company's managers and controllers to exercise supervision or oversight or to institutional changes, such as the establishment of a new company, aimed at avoiding the imposition of penalties. Nor has the criminal liability of legal persons yet been extended to corruption offences, including trading in influence[43], and legal persons are not administratively liable for criminal offences committed on their behalf within the meaning of the Criminal Law Convention on Corruption[44].

Penalties and other measures applicable to legal persons

72. As already stated, legal persons can only be held criminally liable for certain offences. In these cases, the following penalties may be imposed on legal persons subject to private law: a) fines; b) withdrawal of the right to carry on a specific activity; and c) liquidation. Fines are imposed as the principal penalty. The amount for legal persons is between 500 and 10 000 conventional units (€625 to €12 500) depending on the nature and seriousness of the offence and the harm caused, and taking account of the legal person's economic and financial situation. Withdrawal of the right to carry on certain activities[45] and liquidation of the legal entity may be ordered as main or additional penalties. No legal person has been convicted of money laundering, but according to the Moldovan authorities four cases are being investigated.

Accounting requirements

73. Act 426 of 4 April 1995 on Accounting Procedures (the Accounting Act) establishes standard methodological principles of accounting and financial reporting and arrangements for organising and keeping accounts and drawing up and presenting financial reports. Article 5 requires legal persons engaged in entrepreneurial activities, non-profit-making organisations, public institutions, lawyers and notaries to organise and maintain their accounts in accordance with the law and relevant legal instruments. These professionals must also preserve accounting documents for a period specified by law. For example, company financial reports and annual balance sheets have to be kept for ten years, as must special reports of public limited companies and investment funds. The originals and appendices pertaining to financial operations serving as the basis for accounting records must be kept for five years.

74. Article 56 of the Accounting Act provides for the disciplinary, administrative or criminal liability of persons who fail to keep books or falsify financial reports. Article 257 of the Tax Code provides for fines of €10 for each document in which the accounting and tax registration rules have been infringed. Examples of such infringements include incomplete or inappropriate drawing up of

[42] In particular, relating to copyright, public health, drug dealing, illegal trading, tax evasion and money laundering.
[43] The GET was informed after the visit that the CCEEC had drawn up draft legislation on this subject.
[44] The GET was informed, after the visit, that a draft for a new Code of administrative offences had been prepared.
[45] This includes bans on certain transactions, issuing shares and other securities, receiving subsidies, privileges and other benefits from the State and carrying out other activities. This penalty may be limited to a specific territory, a period of the year or a duration of five years or more.

basic documents, failure to record tangible assets or services provided and supplied, and failure to submit tax reports or the submission of tax reports containing false information. Under Article 162/1 of the Code of Administrative Offences on "violations of the rules on organising and keeping accounts and the preparation and submission of financial reports", non-compliance with the rules on the inclusion of economic and financial operations in accounts and accounting records, contraventions of the rules on drawing up the documents on these operations, and knowingly inserting certain erroneous information into financial report documents are all breaches of the Code and subject to a fine of €37. Article 244 of the Criminal Code makes it an offence punishable by a fine of 500 conventional units (€625) or two years' imprisonment for companies to include erroneous data on revenues or expenses into accounting, tax and financial documents or to fail to declare taxable items for the purposes of tax evasion.

75. Under Article 26 of the Accounting Act, accounting documents that have been misappropriated or destroyed must be restored within two months of this having being discovered. Article 257(5) of the Tax Code provides that failure to keep tax and/or accounting documents and total or partial failure to record accounting operations that make it impossible to carry out tax inspections are liable to a fine of up to €1 500. Under Article 162/1 of the Code of Administrative Offences, a breach of the rules on preserving accounting documents and failure to respond to an order to restore them, by damaging, losing or destroying them before the expiry of the period for preserving them laid down in the rules on the organisation of the State archives, or failing to restore them within two months, are subject to a fine of €37.

Tax deductibility

76. The tax laws do not explicitly prohibit tax deductions for facilitation payments, expenditure linked to bribes or other expenditure associated with corruption offences. However, article 24.10 of the Tax Code provides that the deduction of expenses is prohibited if the tax subject is not in a position to substantiate that these expenses have been incurred in conformity with existing regulations established by the government.

Tax authorities

77. Under Article 131(1) of the Tax Code, the bodies exercising tax administration functions are the tax inspectorates, the CCEEC (especially for offences provided for in Articles 191, 195, 236-261 and 324-336 of the Criminal Code), the customs service and local council offices responsible for collecting local taxes. According to Article 131(5)(b) of the Tax Code, the tax authorities are obliged to supply the prosecuting authorities, at their request, with any information they hold on breaches of the law by taxpayers. In connection with criminal proceedings, Article 126 of the Code of Criminal Procedure authorises the prosecuting authority to seize items and documents of importance to criminal cases, including those covered by the tax secrecy rules. The role of the tax authorities was examined in the First Round Evaluation and Compliance Report.

Role of accountants and company auditors

78. Article 14 of the Audit Act, No. 729 of 15 February 1996, sets out the obligations of auditors, who notably must inform their clients that they cannot continue their work (other than to put an end to any violations identified), abandon the audit if this is in the interests of the economic entity and maintain the confidentiality of the information they possess. Paragraphs 32 and 34 of National Audit Standard 250 on the requirements of legislative and normative instruments when auditing financial reports – approved and implemented by Finance Minister's Order No. 62 of 12 June

2000 – state that auditors must immediately inform the board of directors and management of economic agents, or satisfy themselves that they have been duly informed, of any failure to comply with legal requirements. Auditors who have reason to believe that management is involved in breaches of the rules and have no higher authority to warn about this, who have grounds for believing that referral of the matter to that authority will not be considered or who do not know whom to inform about such offences must seek legal advice.

79. The GET was unable to meet either independent auditors or their representatives, but it did learn that the profession of independent auditor was not yet properly regulated. There were no guidelines or training courses for auditors and accountants (and other advisory professions) on detecting and reporting acts of corruption and money laundering.

b. Analysis

80. In cases of active corruption, trading in influence and bribery governed by Articles 325, 326 and 334 of the Criminal Code, there is no provision for courts to deprive persons found guilty of criminal offences of the right to exercise certain functions or carry out certain activities. According to the Moldovan authorities' written replies to the questionnaire, the additional punishment, provided for in Article 65 of the Criminal Code, of withdrawal of the right to hold the office of company executive for between one and five years could be imposed even in cases for which there is no provision in the Criminal Code "if, in view of the nature of the offence committed by the accused, the court finds it unacceptable that the offender should be able to enjoy the right to hold posts identical to those he or she has used to commit the offence". The GET is unclear about the merits of this reasoning, which apparently has no basis in any legal instrument and is not supported by any judicial decision. The principle of legality of sentences would seem to militate against the imposition of a sanction, even as an additional penalty, when there is no provision for it in an accessible legal instrument before the commission of the offence.

81. Compulsory registration with the State Registration Chamber of commercial firms, non-trading companies and associations makes it possible to identity their executives and founders. The names of the partners are also known in the case of partnerships (especially general partnerships). Executive management changes that occur after registration of legal persons are also recorded. All this information is accessible to third parties (for a fee) and the prosecuting authorities (directly and free of charge), and the computerisation of the system allows it to be obtained very quickly. The State Registration Chamber carries out checks to ensure, on the basis of decisions transmitted to it by the courts, that executives are not banned from holding managerial positions. However, according to information received by the GET the number of professional disqualifications communicated to it is not very high, which suggests that this additional penalty is not very often imposed by the courts or that judicial decisions are not transmitted to the State Registration Chamber on a regular basis. The current regulations only provide for this check to be carried out when legal persons are registered and it is not carried out subsequently, so persons could continue to manage companies in spite of having been disqualified from doing so after the constitution of the company. It therefore appears that although the present system provides a satisfactory means of identifying the executives and founders of all legal persons, it is inadequate for the purposes of monitoring persons deprived of their right to manage a company.

82. In view of the preceding paragraphs, the **GET recommends i) to establish a proper system for imposing professional disqualification in the case of convictions for criminal offences such as corruption, trading in influence and money laundering; ii) to call upon prosecutors**

to request bans on persons exercising managerial functions whenever this appears necessary; iii) to ask the courts to ensure that their decisions are transmitted to the State Registration Chamber as soon as they have become final, and; iv) to authorise the State Registration Chamber to monitor professional disqualifications throughout a legal person's existence.

83. Since 2003, Article 21 of the Criminal Code has provided for the criminal liability of private law legal persons in respect of certain specified offences when the latter have been committed by executives on their behalf. This is clearly an important legislative step forward, but the GET believes there are still a number of gaps. First of all, there is no provision for legal persons' liability in cases where the lack of internal supervision provides the opportunity to commit an offence. Secondly, the criminal liability of legal persons is incurred for a limited number of offences that do not include trading in influence and the various corruption offences. According to the Moldovan authorities, draft legislation has been drawn up to bring national legislation into line with the Criminal Law Convention on Corruption. The GET has not had this draft forwarded to it and has been unable to obtain any details.[46] Thirdly, although the Criminal Code provides for the criminal liability of legal persons with respect to money laundering, judges and prosecutors have expressed doubts about the application of this system of liability in view of certain incompatibilities in the relevant legislation. Fourthly, a fine of between 10 000 and 200 000 lei (€625 and €12 500) does not appear to be appropriate within the meaning of Article 18 of the Criminal Law Convention on Corruption. It does not effectively penalise companies (Moldovan or foreign) that resort to corrupt practices to obtain contracts or benefits. Finally, there is no register in which the criminal convictions of legal persons can be listed, and the lack of such a system makes it difficult, if not impossible, in practice to apply the rules pertaining to repeat offences or to monitor the professional disqualifications affecting a legal person (for example, exclusion from tendering for public procurement contracts). In the opinion of all the people whom the GET met, as the law currently stands, public prosecutors rarely seek to establish the criminal liability of legal persons and the courts are even less likely to support them. On the date of the GET's visit, the Supreme Court had been asked to hear just one case of this type concerning a university accused of opening two establishments in contravention of the existing regulations. This can be explained by the fact that criminal liability for legal persons has only recently been introduced into Moldovan legislation (2003) and by a lack of training of judges and prosecutors with regard to this new legal concept. The Centre for Training of Judges and Public Prosecutors has only organised two sessions in all on the subject of the criminal liability of legal persons, both in 2005. Two others are planned in 2006. **The GET recommends to provide for the liability of legal persons for active corruption offences and trading in influence, in accordance with the Criminal Law Convention on Corruption; to clarify the application of the criminal liability of legal persons in money laundering offences; to plan more training sessions on criminal liability of legal persons for judges and prosecutors in order to ensure its practical implementation; to provide for effective, proportionate and dissuasive sanctions; and to consider as soon as possible the establishment of a criminal record registry for legal persons.**

84. On the basis of oral and written information provided by the Moldovan authorities, it appears that breaches of the accounting rules are punished under the Tax Code and the Code of Administrative Offences. They may also constitute a criminal offence when they are committed in order to evade taxes (Article 244 of the Criminal Code), so the use of false invoices and erroneous charges to accounts to conceal corruption or trading in influence may be prosecuted. However, the situation does not appear satisfactory, even though, according to the

[46] The draft legislation was approved by the Government on 2 August 2006 and transmitted to the Parliament.

representatives of the Ministry of Finance, the number of false invoices is apparently declining. The sanctions provided for by the legislation appear derisory when set against what might be involved in such corrupt practices. Under Article 257 of the Tax Code, the fine incurred by a person who has knowingly kept incomplete or incorrect accounts or rendered invoices bearing inexact details is a maximum of 180 lei (€10) for each false document, while Article 162/1 of the Code of Administrative Offences only punishes non-compliance with the accounting rules or the destruction of account books with a fine of €37. Moreover, Article 244 of the Criminal Code can only be applied if the aim of the corrupt action is to facilitate tax evasion. These penalties are not proportionate to the types of corruption concerned and do not appear to be dissuasive within the meaning of Article 19 of the Criminal Law Convention on Corruption. The GET's observations are shared by some of its interlocutors (such as the CCEEC), who consider that the level of fines is inappropriate for certain forms of corruption. The GET also saw a need during its visit to raise awareness and improve the training of judges and prosecutors with regard to the prosecution and adjudication of accounting offences. **The GET recommends to establish as a criminal offence misrepresentation of accounting data associated with acts of corruption, in accordance with Article 14 of the Criminal Law Convention on Corruption (ETS no. 173), to provide for effective, proportionate and dissuasive sanctions and to improve the training of judges and prosecutors in this area.**

85. Although Moldovan legislation does not expressly prohibit companies from deducting expenses associated with various forms of corruption, the Moldovan authorities consider it is sufficiently explicit to act as an obstacle to such a practice. According to the Tax Code, only ordinary and necessary expenditures paid in settlement of an invoice and connected with a company's activities may be deducted. However, the tax authorities allow for some flexibility, which may not exceed 0.1% of a company's taxable revenue (Government Decision of 4 May 1998). Article 24 of the Code rules out the deductibility of payments made in the interests of the manager or a member of his or her family. Article 24.10 of the Tax Code provides that the deduction of expenses is prohibited if the tax subject is not in a position to substantiate that these expenses have been incurred in conformity with existing regulations established by the government. For the GET, the current provisions do not constitute a sufficient safeguard against deducting sums that a company might pay to bribe a public official or an economic agent in the private sector. Payments made to this end, to enable a company to obtain a contract or acquire a right, may in fact meet the conditions laid down by the current regulations. Incidentally, the tax authorities have not issued a single circular clearly reminding economic agents and their officials that sums paid by a company in these circumstances are not tax deductible. **The GET recommends to issue guidelines for the tax administration in order to make sure that expenses related to corruption offences are not tax-deductible in practice.**

86. Article 147 of the Tax Code requires the tax authorities to assist the prosecuting authorities in determining taxpayers' tax liability. In addition, Article 131 of the Code obliges the tax authorities to report acts that might constitute criminal offences to the prosecuting authorities. They are reported directly to the Public Prosecutor's Office or the CCEEC. During its visit, the GET was unable to determine whether the mechanism established by the tax authorities helps to combat corruption effectively, but it did note that a significant number of accounting offences have been reported over the last three years (578 in 2005, 671 in 2004 and 878 in 2003).

87. Under current legislation, accountants and auditors are not required to reveal to the prosecuting authorities offences that might emerge in the course of their duties at commercial firms. Under Article 14 of the Audits Act of 15 February 1996, auditors who detect a breach of the current regulations should inform the "superior authority" of the economic agent who has committed it or,

if the breach originates from a superior authority or the auditors think their action will go unheeded, they should seek legal advice (in respect of which there is no indication of who will bear the cost). As it did not meet any auditors, the GET was unable to establish whether they thought that this was an effective way of detecting and reporting corruption and accounting offences. However, it doubts whether, when informed by their auditors of such suspicions, the managers of a commercial enterprise would advise the prosecuting authorities of the existence of corruption, which might then lead to charges being brought against them. In these circumstances, **the GET recommends to examine, in consultation with the auditors' and accountants' professional organisations, the measures that should be taken to improve the situation regarding the reporting of suspicions of corruption to the authorities (for example instructions and training on how to detect and report acts of corruption).**

V. CONCLUSIONS

88. Moldova has carried out a large number of reforms in the last fifteen years and many laws have been adopted in all areas of activity. The Moldovan authorities have taken considerable strides towards administrative reform to make administrative bodies more efficient and transparent and bring them closer to the citizen. Much remains to be done, beginning with the full and rapid implementation of the Central Government Administrative Reform Strategy, the National Anticorruption Strategy and the Anticorruption Action Plan. In particular, they should encourage civil society participation in the administrative authorities' decision-making processes, make their procedures more transparent, separate political from administrative functions, distinguish the work of drawing up policies and administrative documents from that of implementing and monitoring them and, finally, make the procedures for recruiting and assessing public officials more objective and provide the latter with genuine career prospects, training and decent salaries in order to limit the risks of corruption. They should also seek to increase supervision, strengthen disciplinary procedures and tighten up the conditions relating to conflicts of interest and asset declarations.

89. Numerous reforms of the Government's criminal law policy are under way, including reforms of the Criminal Code and the Code of Criminal Procedure, and steps are being taken to increase the independence of the judicial system and the professionalism of judges and prosecutors. These reforms must also take account of the economic and other harm caused by corruption, by actually confiscating the proceeds of corruption, and of the links between corruption, organised crime and money laundering.

90. Finally, other necessary reforms concern the arrangements governing the liability of legal persons, professional disqualifications, the non-deductibility of bribes and the role of auditors and accountants in the detection and reporting of corruption offences. At the same time, improvements must be made to the system of accounting requirements and its corresponding sanctions so that they become effectively dissuasive.

91. In view of the above, GRECO addresses the following recommendations to Moldova :

i. **to revise and harmonise existing legislation on confiscation and interim measures so that the instrumentalities of corruption and other related offences as well as the proceeds and their equivalent value can be confiscated** (paragraph 22);

ii. **to strengthen the resources of investigators and prosecutors in the fight against corruption, to increase the efficiency and speed of financial investigations, including**

in respect of politically or economically sensitive cases, and to make more systematic use of asset investigations (paragraph 28);

iii. **to bring the legislation on special investigative techniques in line with the provisions of the Criminal Law Convention on Corruption (ETS no. 173)** (paragraph 31);

iv. **to introduce guidelines and training courses to foster more systematic use of interim measures and of the confiscation of the instrumentalities and proceeds of corruption, including assets of equivalent value** (paragraph 33);

v. **to make every effort to ensure that the links between organised crime and money laundering are taken into account in all aspects of the fight against corruption, especially by making it easier to identify the existence of such links and by strengthening the contribution of the anti-money laundering arrangements to the fight against corruption and by ensuring that institutions and professions required to declare their suspicions receive instructions and training to assist the detection and reporting of acts of corruption** (paragraph 36);

vi. **to implement the administrative reform strategy as fully as possible; to establish a clearer link between administrative reform and the fight against corruption by placing more emphasis on the risks of corruption within the administration; to extend the measures recommended by this reform, which have a particular bearing on the fight against corruption, at the local and regional levels; and, finally, to ensure that implementation of these measures is properly monitored** (paragraph 60);

vii. **to continue strengthening the contribution of bodies responsible for administrative supervision in the fight against corruption so that tangible results can be obtained, especially by continuing the work on assessing the risk of corruption in public administration and organising new training courses on identifying and reporting corruption offences and related abuses** (paragraph 61);

viii. **to continue to supplement the current legislation on administrative transparency and to ensure its actual implementation, including closer monitoring of the implementation of the rules pertaining to freedom of information and by giving public officials appropriate training in these areas** (paragraph 63);

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** (paragraph 64);

x. **to introduce clear rules that encourage all public officials to report cases of corruption and an appropriate system for protecting whistleblowers, and to review the manner in which reports are processed by the authorities, to ensure that the appropriate procedures are set rapidly in motion** (paragraph 65);

xi. **to establish a proper system for imposing professional disqualification in the case of convictions for criminal offences such as corruption, trading in influence and money laundering; ii) to call upon prosecutors to request bans on persons exercising managerial functions whenever this appears necessary; iii) to ask the**

courts to ensure that their decisions are transmitted to the State Registration Chamber as soon as they have become final, and; iv) to authorise the State Registration Chamber to monitor professional disqualifications throughout a legal person's existence (paragraph 82);

xii. **to provide for the liability of legal persons for active corruption offences and trading in influence, in accordance with the Criminal Law Convention on Corruption; to clarify the application of the criminal liability of legal persons in money laundering offences; to plan more training sessions on criminal liability of legal persons for judges and prosecutors in order to ensure its practical implementation; to provide for effective, proportionate and dissuasive sanctions; and to consider as soon as possible the establishment of a criminal record registry for legal persons** (paragraph 83);

xiii. **to establish as a criminal offence misrepresentation of accounting data associated with acts of corruption, in accordance with Article 14 of the Criminal Law Convention on Corruption (ETS no. 173), to provide for effective, proportionate and dissuasive sanctions and to improve the training of judges and prosecutors in this area** (paragraph 84);

xiv. **to issue guidelines for the tax administration in order to make sure that expenses related to corruption offences are not tax-deductible in practice** (paragraph 85);

xv. **to examine, in consultation with the auditors' and accountants' professional organisations, the measures that should be taken to improve the situation regarding the reporting of suspicions of corruption to the authorities (for example instructions and training on how to detect and report acts of corruption)** (paragraph 87).

92. GRECO also invites the Moldovan authorities to take account of the *observations* in the analytical part of this report (paragraphs 29, 30 and 32).

93. Finally, in accordance with Rule 30.2 of the Rules of Procedure, GRECO invites the Moldovan authorities to present a report on the implementation of the above recommendations by 31 May 2008.