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OPINION ON CERTAIN PROVISIONS OF THE DRAFT LAW "ON THE STATUS, CONDUCT AND ETHICS OF THE MEMBERS OF PARLIAMENT"

MOLDOVA

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Based on an unofficial English translation of the Draft Law provided by the Parliament of the Republic of Moldova.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The importance of institutional and individual integrity of parliament and parliamentarians and of public accountability has been increasingly recognized as core aspects of political life and good governance. Parliamentary codes of conduct/ethics, which seek to guide the behaviour of parliamentarians, constitute an important instrument of parliamentary integrity systems and practices across the OSCE region. While it is not uncommon in the OSCE region to incorporate ethical principles in legally binding instruments, such as the rules of procedure or legislation regulating the status of MPs, their mission frequently goes beyond clear-cut rules prescribing or prohibiting particular acts. They intend to express common values and fundamental principles to maintain and enhance public trust both in the parliament itself and in representative democracy more generally. Codes of conduct/ethics do not in themselves guarantee ethical behaviour and should serve as an aspiration to an ethical and moral conduct rather than a commandment.

Substantial improvement of parliamentary integrity is not possible without the setting up of a robust framework of mechanisms and tools for implementation in practice. At the same time, ethical standards and values may need to be regularly reviewed and updated to address new challenges and evolution of society. Therefore, it is important that ethics related provisions are not too difficult to revise.

The Draft Law on the Status, Conduct and Ethics of the Members of Parliament of the Republic of Moldova combines legally binding obligations (e.g., in relation to the prevention of corruption, declaration of assets and conflict of interests, or further elaborating constitutional provisions on the mandate and status of MPs) with broadly framed provisions that enshrine values that should guide the behaviour of MPs and/or aim to deter conduct that is not illegal but could, nonetheless, be considered unethical. While the list of rights and obligations generally derives from the constitutional function of MPs and entails everything which requires a proper and efficient exercise of their duty, combining ethical rules with such obligations may lead to confusion as they place on an equal footing two sets of rules of a very different nature and having different root and legal basis.

Therefore, consideration could be given to separating the provisions offering aspirational principle-led ethical guidance for MPs, or consider having a separate code of conduct/ethics that could be annexed to the Law on the Status of MPs or the Rules of Procedure. Furthermore, the Draft Law would benefit from general revision primarily to strengthen the safeguards for deputies' exercise of their right to freedom of expression, provide higher standards to address sexual or other forms of harassment or violence against women parliamentarians, as well as to introduce effective appeals and monitoring mechanisms affording due process guarantees.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further strengthen the provisions regulating of

the conduct and ethics parliamentarians in accordance with international standards and good practices:

A. To consider more clearly separating the provisions embedding legally binding requirements and behavioural prescriptions for MPs to ensure orderly conduct of parliamentary proceedings from provisions offering aspirational principle-led ethical guidance for MPs, which may not lead to legal consequences or sanctions, addressing them in separate chapters, or consider having a separate code of conduct/ethics regulating behavioural/aspirational standards that could be annexed to the Law on the Status of MPs or to the Rules of Procedure; [para. 23]

B. To make it clearer what the "ethical standards and values" refer to, and further elaborate what is expected from MPs when performing their mandate, while clustering the ethical rules spread across the Draft Law under the same heading; [para. 36]

C. To eliminate or substantially revise content-based restrictions on deputies' right to freedom of expression in Articles 16, 23 and 29 of the Draft Law, especially during political and/or plenary debate, unless falling within the scope of prohibited expressions under international human rights law when there is a direct and immediate connection between the expression and the likelihood or occurrence of violence; [para 44]

D. To reconsider obligations of MPs as defined by Articles 27 and 28 related to communication with media and citizens, as well as supplement the Draft Law with more detailed provisions related to conduct of MPs toward their staff while also including an effective and independent complaint mechanism; [para 53]

E. Regarding the Commission on Parliamentary Ethics and Conduct:

    1. To further detail in the Draft Law the criteria for membership in the Commission on Parliamentary Ethics and Conduct, as well as the modalities and procedure for the selection and nomination of its members, ensuring a fair and transparent process, and that nomination requirements effectively contribute to a gender- and diversity-balanced composition of the Commission; [para 85]

    2. To consider elaborating more workable decision-making mechanisms, including defining quorum requirements and providing for anti-deadlock mechanisms in case of a tie; [para 87]

F. To supplement the Draft Law with a clear complaint and monitoring mechanism, while elaborating on the procedure for submitting complaints before the Commission, Standing Bureau and plenary, having due regard to procedural guarantees, including the right to appeal; [para 101]

G. To add provisions on advice, training and support by the Commission to MPs and parliamentary staffers on the issue of ethics and integrity,

including by providing introductory and regular courses and ensuring a possibility for confidential counselling in case of doubts about possible violations of ethical rules; [para 106]

H. To reconsider the issue of suspension of an MP from the sessions, including a withdrawal of the right to speak (Article 44 (c-f)), as well as exclusion from standing parliamentary delegations to the international organisations (Article 44 (i)) to avoid the risk of abuse by the majority to banish MPs from the chamber to distort the natural majority, as well as to punish the opposition. [para 113]

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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Annex: Draft Law on the Status, Conduct and Ethics of the Members of Parliament of the Republic of Moldova (as of December 2023)

I. INTRODUCTION

1. On 7 February 2023, the Deputy Speaker of the Parliament of the Republic of Moldova sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for an assistance in the effort to strengthen institutional and individual integrity of the Parliament and parliamentarians as well as public accountability, including by providing a legal review of the relevant legislative proposals when they become available, to assess their compliance with international human rights standards and OSCE human dimension commitments.
2. On 13 February 2023, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the legislative proposal governing the conduct and ethics of the Members of Parliament (MPs) of the Republic of Moldova once the finalized text is shared with ODIHR. On 7 December 2023, the draft Law of the Republic of Moldova on the Status, Conduct and Ethics of the Members of Parliament (hereinafter "Draft Law") was submitted to ODIHR. Given the scope of the initial request, i.e., the conduct and ethics of parliamentarians, the present Opinion primarily focuses on these aspects. A legal analysis reviewing other provisions relating to the status and mandate of MPs, parliamentary immunity, their rights and obligations and incompatibilities will follow, that will offer a more comprehensive assessment of the full text of the Draft Law. The absence of comments on certain provisions of the Draft Law should not be interpreted as an endorsement of these provisions.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only the Draft Law submitted for review with a particular focus on the provisions related to the conduct and ethics of Members of Parliament (hereinafter "MPs"). Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the status of MPs, parliamentary rules and standards, and public integrity in the Republic of Moldova.
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating

1 In particular, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, OSCE, 29 June 1990, section III, para. 26; *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, 19th OSCE Ministerial Council, Dublin, 6 - 7 December 2012, where OSCE participating States recognized "that both the development of and adherence to codes of conduct for public institutions are critical to reinforcing good governance, public-sector integrity and the rule of law, and to providing rigorous standards of ethics and conduct for public officials"; see also OSCE, *Decision No. 5/14 on the prevention of corruption*, 21st OSCE Ministerial Council, Basel, 4 - 5 December 2014; and *Decision No.4/16 on Strengthening Good Governance and Promoting Connectivity*, Hamburg 2016.

States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[2] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[3] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

7. This Opinion is based on an unofficial English translation of the Draft Law provided by the Parliament of the Republic of Moldova, which is annexed to this document. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

8. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in the Republic of Moldova in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

9. The importance of institutional and individual integrity of parliament and parliamentarians and of public accountability has been increasingly recognized as core aspects of political life and good governance. The international community of parliaments and parliamentary support organizations have successfully elaborated international standards or benchmarks for parliament as an institution. At the same time, less progress has been made towards developing clear rules on the conduct and ethics of individual MPs,[4] although standards and guidance have been developed at the international and regional levels regarding codes of conduct for public officials more generally.[5]

2 See the *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979, available at: https://www.ohchr.org/en/instruments mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women. The Republic of Moldova acceded to the Convention on 1 July 1994.

3 See the *OSCE Action Plan for the Promotion of Gender Equality,* adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

4 The Inter-Parliamentary Union (IPU) adopted the Universal Declaration on Democracy in 1997, which in addition to outlining the key elements of democracies, notes that democracy "*requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action*.". Since that time, many regional parliamentary associations, including the Commonwealth Parliamentary Association (CPA) and the Assemblée Parlementaire de la Francophonie (APF), have adopted benchmarks or criteria for democratic parliaments, which describe the key characteristics of a democratic parliament. More recently, the Declaration on Parliamentary Openness (endorsed by over 180 civil society parliamentary monitoring organizations from over 80 countries, as well as an increasing number of parliaments and parliamentary associations) has become an important reference point for parliaments that wish to become more open and transparent.

5 See e.g., the *International Code of Conduct for Public Officials* contained in the annex to General Assembly resolution 51/59 of 12 December 1996. See also GRECO, *Codes of conduct for public officials - GRECO findings & recommendations*, Strasbourg, 20 March 2019.

10. Relevant legally binding documents at the UN level include in particular the *United Nations (UN) Convention against Corruption* (hereinafter "UNCAC")[6] concerning corruption of public officials, including parliamentarians. Particularly, Article 8 of the UNCAC provides that States Parties "*shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system*" (para. 1) and "*shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions*" (para. 2). The UN Office on Drugs and Crime (hereinafter "UNODC") *Legislative Guide for the Implementation of UNCAC* further elaborates the measures needed to implement Article 8 of the Convention in terms of mandatory requirements and other optional measures that states may consider, including in relation to the development of codes of conduct.[7] The principles related to the accountability and integrity of public officials, such as those reflected in the UN General Assembly Resolution 51/59 "Action against Corruption", which outlines "*a model international code of conduct for public officials*", also serve as useful guidance at the international level.[8]

11. In addition, the *International Covenant on Civil and Political Rights* (hereinafter "ICCPR"),[9] particularly its Articles 17 and 19, has to be respected as important guarantees of parliamentarians' rights, especially their rights to respect for private and family life and freedom of expression.

12. Since the Republic of Moldova is a Member State of the Council of Europe (hereinafter "CoE"), the European Convention on Human Rights and Fundamental Freedoms (hereinafter "ECHR"),[10] the developed case law of the European Court of Human Rights (hereinafter "ECtHR") and other CoE instruments, such as the Criminal Law Convention against Corruption,[11] are also of relevance. The importance of the right to freedom of expression, as guaranteed by Article 10 of the ECHR, especially for members of parliament has been consistently emphasized by the ECtHR in its case-law.[12] At the same time, the Court also acknowledged the principle of parliamentary autonomy, which implies a parliament's ability to regulate its own internal affairs, including to ensure the orderly conduct of parliamentary proceedings and to enforce the relevant rules, although a balance must be achieved to ensure the fair and proper treatment of people from minorities and avoid abuse of a dominant position by the majority.[13] Politicians also have the right to respect for private and family life as guaranteed by Article 8 of the ECHR.[14] However, this should be balanced with the right of the public to be informed, considering in particular to what extent an infringement of their privacy could be justified in light of the contribution to a debate of general interest to society and taking into account their public function/power/profile as relevant criteria.[15]

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6 See *United Nations (UN) Convention Against Corruption*, adopted by the General Assembly of the United Nations on 31 October 2003. The Republic of Moldova ratified the UNCAC on 1 October 2007.

7 See UN Office on Drugs and Crime (UNODC), *Legislative Guide for the Implementation of the UN Convention against Corruption* (2nd revised edition, 2012), paras. 71-97..

8 UN, *General Assembly Resolution 51/59 on Action against Corruption*, New York, 12 December 1996.

9 See the *UN International Covenant on Civil and Political Rights,* adopted by the UN General Assembly by the Resolution 2200A (XXI) of 16 December 1996. The Republic of Moldova acceded to the Covenant on 22 January1993.

10 The ECHR was, signed on 4 November 1950, and entered into force on 3 September 1953.

11 See *CoE, Criminal Law Convention on Corruption* (Strasbourg, 27 January 1999).

12 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 137, emphasizing "*the importance of freedom of expression for members of parliament, this being political speech par excellence*".

13 *Ibid.*, paras. 137-147 (ECtHR, *Karácsony and Others v. Hungary* [GC]).

14 See e.g., ECtHR, *Karhuvaara and Iltalehti v. Finland,* no. 53678/00, 16 February 2005, para. 42.

15 See e.g., ECtHR, *Von Hannover v. Germany*, no. 59320/00, 24 September 2004; and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, 16 February 2005.

13. At the OSCE level, human dimension commitments on democratic institutions recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions.[16] In the 1990 Paris Document, OSCE participating States affirmed that *"[d]emocracy, with its representative and pluralistic character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially*".[17] In the 1999 Istanbul Document, they followed up with the pledge to strengthen their efforts to "*promote good government practices and public integrity*" in a concerted effort to fight corruption.[18] This implies that, further to building democratic institutions and ensuring public accountability and integrity of parliaments, it is also important to ensure that public officials adhere to certain professional and ethical standards.[19] In this regard, the OSCE Parliamentary Assembly (OSCE PA) in its 2006 *Brussels Declaration*,[20] after recognizing that good governance, particularly in national representative bodies, is fundamental to the healthy functioning of democracy, encouraged all parliaments of OSCE participating States to:

- develop and publish rigorous standards of ethics and official conduct for parliamentarians and their staff;
- establish efficient mechanisms for public disclosure of financial information and potential conflicts of interests by parliamentarians and their staff; and
- establish an office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made.

14. Furthermore, the Resolution on a Code of Conduct for Members of the OSCE Parliamentary Assembly[21] notes a code of conduct as a significant step towards enhancing the institutional framework that supports transparency, accountability and integrity.

15. In addition, a number of other international and regional documents provide additional guidance, recommendations and examples of good practice in democratic governance, including basic principles to uphold the integrity of the parliament and foster public trust, while requiring MPs to act in such a way as to not bring the institution into disrepute.[22] Among others, the *ODIHR Background Study: Professional and Ethical Standards for Parliamentarians* (2012), ODIHR Study *Parliamentary Integrity: A Resource for Reformers (2022)* and *ODIHR Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (2023) provide detailed analyses and concrete examples of good practices on how to build and reform systems that set professional and ethical standards for MPs and regulate their conduct to ensure that those standards are met.[23] A number of other resource documents have been developed at the CoE level and constitute soft law instruments which are advisory in nature but may serve as useful reference documents

16 OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,* Copenhagen 5 June – 29 July 1990), para. 26.
17 See the *Charter of Paris for a New Europe*, Paris, 19 - 21 November 1990.
18 See the *1999 OSCE Istanbul Document*, 19 November 1999.
19 ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians,* Warsaw, 2012, p. 8.
20 OSCE Parliamentary Assembly, *Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions* , Brussels, 2006, paras. 32-33.
21 *Resolution on a Code of Conduct for Members of the OSCE Parliamentary Assembly,* adopted on its 29th annual session in Birmingham on 2-6 July 2022, para. 2.
22 See, for example, *Westminster Foundation for Democracy, Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians (2009)*, which was produced under the auspices of the Global Task Force on Parliamentary Ethics of the Global Organization of Parliamentarians Against Corruption (GOPAC).
23 See ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians* (Warsaw, 2012); ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022)*; and *ODIHR Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023).

from a comparative perspective,[24] particularly the CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023). The efforts of the CoE Group of States against Corruption (GRECO) towards developing stronger integrity guidelines for members of parliament should also be mentioned. In particular, with respect to the Republic of Moldova, the GRECO specifically recommended adopting a code of conduct for MPs and ensuring its accessibility to the public, as well as establishing a suitable mechanism within Parliament, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary.[25]

2. BACKGROUND AND GENERAL COMMENTS

16. The Draft Law contains provisions related to the status, privileges and mandate of MPs in general, their rights and obligations, parliamentary immunity, as well as rules regarding their conduct and ethics. If the Draft Law is adopted, upon entry into force, it will abrogate the Law No. 39 of 7 April 1994 on the Status of Members of Parliament, which currently regulates the start and end of the mandate, incompatibilities, parliamentary immunity and MPs' rights and obligations resulting from the mandate.[26] At the same time, Article 71 of the Draft Law specifies that when adopted, it will be "*applied in corroboration with the provisions of the Rules of Procedure of the Parliament adopted by Law no. 797/1996*" but have precedence in case of contradiction.

17. The Draft Law regulates some of the elements of conduct that a code should in principle regulate including behaviour in the chamber, conflicts of interest, including gifts, the use of public money in the form of expenses and allowances, complaint mechanism, including the responsible body etc.

18. The Draft Law combines legally binding obligations (e.g., in relation to the prevention of corruption, declaration of assets and conflict of interests, or further elaborating constitutional provisions on the mandate and status of MPs) with broadly framed provisions on the conduct and ethics of MPs. The latter enshrine values that should guide the behaviour of MPs and/or aim to deter conduct that is not necessarily illegal but could, nonetheless, be considered unethical. In particular, Chapter IV of the Draft Law addresses both conduct and ethics on the one hand, and rights and obligations of MPs on the other. While the list of rights and obligations generally derives from the constitutional function of MPs and entails everything which requires a proper and efficient exercise of their duty, combining ethical rules with such obligations may lead to confusion as they place on an equal footing two sets of rules of a very different nature and having different root and legal basis.

19. It is not uncommon in the OSCE region to incorporate ethical principles in legally binding instruments such as the rules of procedure or legislation regulating the status of

24 See, for instance, CoE Committee of Ministers, *Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption*,, especially Principle 15, which states: "*to encourage the adoption, by elected representatives, of codes of conduct";* ; Parliamentary Assembly of the CoE (PACE), Resolution 1214 *(2000) on the Role of Parliaments in Fighting Corruption*; CoE Congress of Local and Regional Authorities, *Resolution 316 (2010)1 Rights and duties of local and regional elected representatives: the risks of corruption*; and the CoE Committee of Ministers, *Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities* in the context of public decision making and explanatory memorandum.

25 GRECO, *Second Interim Compliance Report for the Republic of Moldova*, adopted by GRECO at its 93rd Plenary Meeting (Strasbourg, 20-24 March 2023), para. 11. In particular, GRECO recalled that the drafting of a Code of Ethics and Conduct of Parliamentarians, initiated in 2016, and the drafting of a Code of Parliamentary Rules and Procedures, initiated in 2018, was still pending.

26 See *Law No. 39 of 7 April 1994 on the Status of Members of Parliament*, as last amended in March 2023.

MPs, for instance as an annex or in a separate section on ethical standards.[27] This formalization is generally recommended to ensure more effective enforcement and accountability regime of the Code.[28] Collating all these rules and obligations in one place may also have the merit of providing more clarity for MPs as well as the public.[29]

20. At the same time, incorporating ethical provisions in primary legislation means that these rules may be more difficult to change. This is even more so since the Draft Law is an organic law. A code of conduct or ethics should generally be a living document that is periodically reviewed and can be updated as necessary to address new challenges.[30] Also, the purpose of ethical principles or norms is to provide general rules, recommendations or standards of good behaviour that guide the activities of MPs. Given their nature, they are often drafted in broad and aspirational terms that do not fulfil the requirement of legal certainty and foreseeability of legislation, meaning that a person should be able to foresee, to a reasonable degree, the consequences that their conduct could entail.

21. Ethical principles and norms should also be distinguished from the disciplinary rules which are aimed at ensuring the orderly functioning of Parliament. The European Court of Human Rights has acknowledged that disciplinary rules inevitably include an element of vagueness and are subject to interpretation in parliamentary practice although given their professional status, MPs should be able to foresee the consequences of their conduct.[31]

22. Further, both types of provisions – mandatory and aspirational – are at times combined under the same article of the Draft Law. This is the case for instance in Article 23(1) of the Draft Law, which lists 25 obligations of MPs, ranging from the submission of declarations of wealth and personal interests next to overbroad aspirational provisions, referring for instance to leading by personal example in the fulfilment of "ethical and moral norms" (sub-item e) or being polite (sub-item k), to cite a few. Such aspects should generally be addressed differently in terms of level of details and legal formulation, with ethical rules going beyond clear-cut rules prescribing or prohibiting particular acts. This is also important because the non-compliance with the respective provisions should also not trigger the same legal effects and/or sanctions.

23. In light of the foregoing, it would be advisable **to consider more clearly separating the provisions embedding foundational legally binding requirements as well as behavioural prescriptions for MPs to ensure orderly conduct of parliamentary proceedings, from provisions offering aspirational principle-led ethical guidance for MPs, or consider having a separate code of conduct/ethics that could be annexed to the Law on the Status of MPs or the Rules of Procedure of the Parliament (hereinafter "RoP").** Whatever decision is chosen, **it is recommended at least to address the rights and obligations of MPs and the ethical rules and conduct of MPs in separate chapters of the Draft Law. In practice, separating the ethical code would make it easier to implement it at the later stage.** Should the option of a separate Code be chosen, the latter could then combine in one place behavioural prescriptions and rules and values, which generally yields the most robust codes.[32] A recommended good practice also consists of requiring all MPs to explicitly commit themselves, by signature

27 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 39-41; ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 17.
28 *Ibid.* ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 17.
29 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 39.
30 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 11.
31 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 126.
32 ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 18.

or other means, to complying with such ethical rules/the code.[33] **Additional documents accompanying the code of conduct, such as guides, manuals, templates or handbooks that explain different aspects of the code in greater detail, can significantly contribute to an easier understanding of the code and its consistent enforcement**.[34]

24. Second, a number of issues addressed in the Draft Law duplicate or largely overlap with the provisions of the parliamentary RoP.[35] This is the case, for instance, with Chapter III of the Draft Law on Parliamentary Immunity which covers issues that are addressed under Chapter 5 of the RoP. Similarly, Article 29 of the Draft Law lists a number of "restrictions" in terms of conduct of MPs during the sitting, which largely overlap with Article 132 of the RoP although the latter frames such types of misconducts as clear bans or prohibitions. The types of sanctions provided in the Draft Law (Article 44 and seq.) largely duplicate those listed under Chapter 11 of the RoP though the Draft Law adds five new types of sanctions to the one already contemplated in the RoP.[36] Although there is a conflict resolution clause in the Draft Law (Article 71), such duplication and overlap between the Draft Law and the RoP nevertheless risks creating uncertainties for MPs as to the applicable standards of conduct and respective sanctions, and more generally impacts the coherence and consistency of the legal framework, which is at odds with the principle of legal certainty.[37] **The legal drafters should to the extent possible avoid duplication and overlaps between the Draft Law and the RoP or other legislation on the functioning of the parliament** and consider introducing relevant amendments to the RoP and/or cross-referencing relevant provisions**.**

25. Finally, the Draft Law could be further enhanced by more systematically including a gender, diversity and inclusion perspectives, ensuring that the rules of conduct and ethics of MPs effectively address discrimination on all grounds, harassment and violence against women and marginalized communities (see further comments in paras. 51 and 57-58 *infra*).

RECOMMENDATION A.

To consider more clearly separating the provisions embedding legally binding requirements and behavioural prescriptions for MPs to ensure orderly conduct of parliamentary proceedings from provisions offering aspirational principle-led ethical guidance for MPs, which may not lead to legal consequences or sanctions, addressing them in separate chapters, or consider having a separate code of conduct/ethics regulating behavioural/aspirational standards that could be annexed to the Law on the Status of MPs or to the Rules of Procedure.

33 See e.g., GRECO, *Codes of conduct for public officials -GRECO findings & recommendations*, Greco (2019), p. 5.
34 ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 23.
35 See *Law of the Republic of Moldova No. 797 of 02 April 1996 for the adoption of Parliament's Rules of Procedure* (as last amended by LP52 of 16 March 2023).
36 i.e., Article 44 (d) withdrawal of the right to speak and denial of the right to speak for the whole duration of the sitting; (h) financial sanctions; (i) exclusion from standing parliamentary delegations to the international organisations; and (j) limitation of the right of access to confidential information.
37 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 15.

3. PURPOSE AND LANGUAGE OF THE DRAFT LAW

26. Chapter I on General Provisions only includes two articles defining the regulatory scope of the Draft Law (Article 1) and stating general principles that should guide the activities of an MP (Article 2). The purpose of the Draft Law is not clearly stated. According to the Article 1, the Draft Law aims to regulate "the status, conduct and ethics of the Member of Parliament". However, it is generally advisable, in addition, to highlight the purpose of the code or act that embeds such rules at the very beginning.[38]

27. The language used when drafting the guiding principles in Article 2 of the Draft Law includes "MPs must", "MPs are obliged", "MPs have duty", "MPs are requested to", "MPs are prohibited to". Such terminology would be suitable in relation to binding principles, legal obligations and duties of MPs that are listed later in the Draft Law (such as, to respect principles of non-discrimination, integrity). However, the Draft Law also uses similar terms with respect to the guiding principles of a desired conduct. At the same time, it is advised to reconsider using such terminology in provisions that may be interpreted to unduly limit an independence of MPs. For instance, Article 2 (c) requires neutrality with respect to "any political, economic, religious or other interest". It is to be noted, however, that MPs in general, and also those who are members of the political parties, would most likely be guided by their beliefs and political considerations of their respective political groups. Therefore, obliging them to remain neutral in their respective activities might be considered as limiting the pluralism of political opinions and views, as well as unnecessary restricting an exercise of their right to freedom of religion and belief.

28. The provisions related to ethics are contained in Chapter IV of the Draft Law ("Conduct, ethics, rights and obligations of the Member of Parliament"). Article 21 of the Draft Law mentions that the norms of parliamentary conduct and ethics shall reflect the essential values and the ethical standards of MPs throughout the exercise of their mandate. It further states that the norms of parliamentary conduct and discipline, provided for in the Draft Law, shall be mandatory for MPs (Article 21(4)).

29. Terms such as "norms", "discipline", or "mandatory" used in these provisions, do not always align with the aspirational nature of some of the ethical provisions, which should generally explain and promote ethical behaviour using soft and guiding language, rather than imperative one. It should be recognized, however, that some types of unethical conduct could also constitute a breach of the law (such as conflict of interests, bribery, abuse of official position to favour some groups over others, etc.). If incorporated in a law, the related legal provisions should clearly and unambiguously outline the prohibited behaviours which may lead to certain consequences or sanctions or cross-reference applicable legislation, along with a clear mechanism of how the parliamentary ethics body deals with such cases with the involvement of enforcement institutions.

30. Furthermore, provisions to ensure the orderly conduct of parliamentary proceedings and discipline, such as those addressing disruptive, offensive or violent behaviour of MPs in the parliament premises and outside, should be stated in precise and concrete rules having the force of law (as done for example, in Article 132 of the parliamentary RoP). At the same time, when it comes to some ethical or aspirational standards, the language of the

38 For example, the Code of Conduct for Members of Parliamentary Assembly of Council of Europe, in its opening article states that "*the purpose of this code is to provide a framework of reference for members of the Parliamentary Assembly of the Council of Europe in the discharge of their duties. It outlines general principles of behaviour which the Assembly expects of its members. By adhering to these standards members can maintain and strengthen the openness and accountability necessary for trust and confidence in the Parliamentary Assembly*". See Code of conduct for members of the Parliamentary Assembly, Compendium of provisions in force in January 2022.

relevant provisions of the Draft Law (Articles 2, 21 and 23 in particular) should not be overly imperative and rigid. The respective provisions should serve as an ethical foundation and help to develop a culture of integrity and ethics among parliamentarians, contributing to greater public trust. In this respect a more aspirational language, recognizing the value of admitting potential mistakes by parliamentarians, would be advisable, rather than a commandment.[39]

31. **Based on the above considerations, when not dealing with legally binding requirements or prohibited behaviours by MPs, it is recommended to frame some of the ethical rules, which may not lead to legal consequences or sanctions, as a framework for recommended and desirable behaviour by MPs.**

4. Basic Ethical Principles and Expected Behaviour of Members of Parliament

4.1. Basic Ethical Principles and Values

32. Article 21 (3) of the Draft Law provides that "*the norms of parliamentary conduct and ethics shall reflect the essential values and the ethical standards of MPs throughout the exercise of their mandate*." However, the Draft Law does not define what these "*essential values and ethical standards*". Article 2 of the Draft Law defines the principles governing the activity of an MP, including supremacy of the Constitution and the law, public interest, impartiality and independence, integrity, freedom of thought and expression, honesty and fairness, openness and transparency, equality and non-discrimination. While mentioning these principles is commendable, it is not entirely clear whether they represent or correspond to those "essential values and ethical standards", which otherwise are not elaborated anywhere further in the text. If they do refer to the guiding principles listed in Article 2 of the Draft Law, this should be clearly stated.

33. Furthermore, in Article 23, among other obligations of MPs, the Draft Law foresees that MPs "*respect ethics and conduct norms*" without referring to those norms or to where they are contained, while also mentioning certain behavourial guidance that generally features in codes of conduct (e.g., leading by example, decency, politeness, mutual respect). Article 24 requires MPs to "*respect the professional and moral values*" without enumerating and defining them. It must be underlined that other references to some ethical standards or guidance are spread across the Draft Law, e.g., "*professionalism, integrity and non-discrimination*" (Article 27 on MPs conduct in relation to citizens), references to harm to "*the honour, dignity and professional reputation of the MPs*" or the use of "*offensive, indecent and/or slanderous words and/or expressions and obscene gestures*" (Article 29 on MPs conduct during sittings, which go beyond the provisions of Chapter 11 of the RoP). Apart from that, Article 50 enumerates certain types of behaviours that may lead to the removal from the sitting,[40] although they are not fully consistent with the other provisions of the Draft Law.

34. A mere broad reference to so-called values and ethical standards *in a law* without defining such terms or referring to another document that would further elaborate the concepts

39 See *ODIHR Opinion on the Code of Ethics of Kyrgyz Republic* (2023), para. 22

40 For instance, Article 50, sub-item (c) refers to public insults, calumnies or threats at the *President of the Republic of Moldova* specifically; sub-item (h) mentions public calls to rebellion, violence or "other actions"; sub-item (i) refers to incitement to hatred, war, mass upheaval, group disobedience and promotion or justification of racial hatred, xenophobia, antisemitism, not mentioned earlier and the discriminatory grounds mentioned therein do not correspond to those indicated under Article 2 (h); sub-item (j) also mentions justification of "wars of aggression, war crimes and crimes against humanity".

creates uncertainty. In principle, a law should be foreseeable, meaning that it must be formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it.[41]

35. Even assuming that the principles listed in Article 2 of the Draft Law constitute the respective "ethical standards and values" which MPs are expected to adhere to, it would be advisable to more clearly indicate this in the Draft Law, for instance, by calling them "ethical principles", rather than "principles governing activities of the Members of Parliament. In any case, the principles listed in Article 2 are still couched in rather broad and general terms, which would deserve further elaboration in a separate code or in accompanying documents/manuals/guides. Clearly stating these values and standards has not only a symbolic but also a practical value. Well-defined parliamentary ethical standards also contribute to improving accountability by giving the public and the media clear benchmarks against which to assess parliamentary conduct, and ultimately should enhance public trust in individual MPs and in the parliament as an institution.[42] From a practical perspective, complaints about an MP's conduct should also indicate which values and principles have been violated (see Sub-Section 7.2 on complaints mechanism below). Defining a specific list of ethical values and principles will very much depend on the country context, but should reflect broad consensus. For that purpose, ethical values and principles guiding MPs conduct should emerge from an inclusive, fair, transparent and participatory process, with the involvement of parliamentarians from historically marginalized and/or underrepresented background but also broader community, with gender parity, ensuring inclusive, open and meaningful public discussion throughout the process.[43]

36. In light of the above, **it is recommended to clearly define in the Draft Law the set of "ethical standards and values" that MPs are expected to adhere to, or if they refer to the principles listed in Article 2 of the Draft Law, specify this more clearly, while further elaborating the said principles and clustering the ethical rules spread across the Draft Law under the same heading**.

RECOMMENDATION B.

To make it clearer what the "ethical standards and values" refer to, and further elaborate what is expected from MPs when performing their mandate, while clustering the ethical rules spread across the Draft Law under the same heading.

4.2. Expected Action and Behaviour of Members of Parliament

4.2.1. Conduct at the Plenary Sessions and Sessions of the Working Bodies and Freedom of Expression and Independence of Opinions of MPs

37. Article 29 of the Draft Law provides for an extensive list of restrictions regarding the conduct of MPs during plenary sessions and sessions of parliamentary working bodies. For example, it covers, among others, conducts disturbing the order and discipline in the plenary room during the session by taking the floor without permission, by speaking on

41 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 16. See also Venice Commission, *Rule of Law Checklist* (2016), para. 58.
42 See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022)*, pp. 14-15.
43 ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), pp. 13-14 and 24-25.

the phone; making defamatory declarations in respect of MPs, other dignitaries, civil servants or individuals; hurling insults, threats and defamations both from the Parliament's rostrum and the plenary room; harming the honour, dignity and professional reputation of the MPs; using offensive, indecent and/or slanderous words and/or expressions and obscene gestures; etc. In addition, an obligation of an MP not to use abusive, offensive, discriminatory or defamatory language, as well as not to compromise the good conduct of sittings of the Parliament and meetings of its working bodies is envisaged by Article 23 of the Draft Law (sub-items (i) and (j)). As underlined in para. 24 *supra*, these provisions largely duplicate and overlap with Article 132 of the RoP.[44] Article 16 also specifically addresses the "Independence of opinions" and freedom of expression of MPs specifying that "an MP "*cannot be prosecuted or held legally responsible for the votes or for the opinions expressed in the exercise of the mandate*" (Article 16(1)) and possible limitations, including in case of "*Public calls to rebellion, violence, separatism, which, according to the legislation, involve criminal liability, [that] do not fall under the scope of the legal guarantee of the freedom of expression of MPs for their opinions*" (Article 16(3)). In addition, Article 50 of the Draft Law, which elaborates on the types of behaviours that may lead to the removal from the sitting hall, also lists a number of actions, which are not fully congruent with the restrictions provided earlier in the Draft Law.[45]

38. A number of the above restrictions may lead to limitation of the freedom of expression of MPs. Given the fundamental importance of the freedom of parliamentary debate in a democratic society, it is worth highlighting that OSCE participating States have very limited latitude in restricting the content of parliamentary speech. As underlined above, the ECtHR Court has consistently emphasized the importance of freedom of expression for MPs noting that speech in Parliament enjoys an elevated level of protection.[46] Any limitation to the right to freedom of expression must be "prescribed by law", pursue one or more legitimate aims listed in international instruments (Article 19 of the ICCPR and Article 10 of the ECHR), be "necessary in a democratic society" and non-discriminatory.

39. The Court also acknowledged that disciplinary rules which are aimed at ensuring the orderly functioning of a parliament inevitably include an element of vagueness and are subject to interpretation in parliamentary practice.[47] In its caselaw, the ECtHR further distinguishes between, on the one hand, the substance of a parliamentary speech – underlining that States have very limited latitude in regulating such content, and, on the other hand, the time, place and manner in which such speech is conveyed.[48] The Court also stated that "*the rules concerning the internal operation of Parliament should not serve as a basis for the majority to abuse its dominant position vis-à-vis the opposition*",

44 Article 132 of the RoP prohibits: *"(a) uttering insults, threats or slanders both from the rostrum of Parliament and from the meeting room; (b) dialogue between the speaker at the rostrum and the persons in the room; (c) mobile phone calls in the sitting room of Parliament during plenary sittings; (d) disturbing debates or creating agitation in the meeting room; (d 1) access to the Parliament premises and to the rooms where plenary sittings of the Parliament and its working bodies are held with portable sound amplification equipment and/or any other objects that could be used to disturb order and/or interrupt the proceedings of Parliament's sittings; (d 2) blocking the tribunes, blocking access to the meeting room, blocking or limiting access to microphones, or creating conditions for the impossibility of continuing the plenary sittings of Parliament; (e) any action likely to impede the normal conduct of Parliament's work."*

45 For instance, Article 50, sub-item (c) refers to public insults, calumnies or threats at the *President of the Republic of Moldova* specifically; sub-item (h) mentions public calls to rebellion, violence or "other actions"; sub-item (i) refers to incitement to hatred, war, mass upheaval, group disobedience and promotion or justification of racial hatred, xenophobia, antisemitism, not mentioned earlier and the discriminatory grounds mentioned therein do not correspond to those indicated under Article 2 (h); sub-item (j) also mentions justification of "wars of aggression, war crimes and crimes against humanity".

46 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, paras. 138 and 142.

47 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 126.

48 *Ibid.* para. 140.

noting that "*a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids abuse of a dominant position*".[49]

40. In this respect, it should be underlined that international human rights law recognizes a limited number of types or content of expression which States must prohibit or render punishable (by law),[50] providing that the legal provisions are strictly interpreted in accordance with international freedom of expression standards, especially when dealing with "incitement" to acts of violence.[51] Such prohibitions should apply to MPs. It is noted in this respect that Article 50 of the Draft Law, which elaborates on the types of behaviours that may lead to the removal from the sitting hall, lists some types of expression that could fully or partially fall under the prohibition provided by international human rights instruments (e.g., propaganda of war, public calls to violence, incitement to hatred) although it must be reiterated that such provisions especially when dealing with "incitement" should be strictly interpreted in accordance with international freedom of expression standards.[52] Outside of these very limited and narrowly defined exceptions, states should as a default refrain from prohibiting or regulating the content or substance of expression.

41. **Some of the above-mentioned provisions of the Draft Law include content-based restrictions going beyond those provided by international freedom of expression standards and which should therefore be reconsidered** (e.g., defamatory declarations, insults, threats, harm to the honour, dignity and professional reputation of MPs; offensive, indecent and/or slanderous words and/or expressions; as well as vaguely defined provision of disturbing the order of the sitting in "another manner"). A qualified privilege permits an MP to make a statement that, even being offensive or derogatory in nature, is protected by the right to freedom of expression. The protection under Article 10 of the ECHR also extends to sharing of information that is strongly suspected to be untruthful.[53]

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49 See e.g., ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, para. 147.

50 These include: "*direct and public incitement to commit genocide*", which should be punishable as per Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide to which the Republic of Moldova acceded on 26 January 1993; the "*propaganda for war*" and the "*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*", which should be prohibited as per Article 20 (1) and (2) of the ICCPR; "*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as […] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*", which should be an offence punishable by law according to Article 4 (a) of the ICERD; "*public provocation to commit acts of terrorism*", when committed unlawfully and intentionally which should be criminalized (see UN Security Council *Resolution 1624 (2005)*. International recommendations also call upon States to enact laws and measures, as appropriate, "*to clearly prohibit and criminalize online violence against women, in particular the non-consensual distribution of intimate images, online harassment and stalking*", including *"[t]he threat to disseminate non-consensual images or content*", which must be made illegal; see UN Special Rapporteur on violence against women, its causes and consequences, *Report on online violence against women and girls from a human rights perspective* (18 June 2018), A/HRC/38/47, paras. 100-101. *General Policy Recommendation No. 7* of the European Commission against Racism and Intolerance (ECRI) recommends to make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate. See also Council of Europe Committee of Ministers, *Recommendation CM/Rec(2022)16 on combating hate speech*, adopted by the Committee of Ministers on 20 May 2022, para. 11. On 18 October 2022, the Sixth Committee (Legal) in the U.N. General Assembly, approved a resolution on "Crimes against humanity" without a vote to open a space for a substantive exchange of views on all aspects of the draft articles on the Prevention and Punishment of Crimes against Humanity, which Article 3 explicitly prohibits justifications of crimes against humanity.

51 Regarding the prohibition of incitement to discrimination, hostility or violence (Article 20 of the ICCPR and Article 4 of the ICERD), it is also subject to the strict conditions of Article 19 of the ICCPR, see UN Human Rights Committee (CCPR), *General Comment no. 34 on Article 19: Freedoms of opinion and expression*, 12 September 2011, para. 11 and CERD, *General recommendation No. 35* (2013), paras. 19-20. Such forms of expression would only be prohibited and punishable by law when: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; taking into account a number of factors to determine whether the expression is serious enough to warrant restrictive legal measures including the context, speaker (including the individual's or organization's standing), intent, content or form, extent of the speech, and likelihood of harm occurring (including imminence); see CERD, *General recommendation No. 35* (2013), paras. 13-16; see also the *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, in the Report of the United Nations High Commissioner for Human Rights on the prohibition of incitement to national, racial or religious hatred, United Nations General Assembly, 11 January 2013, Appendix, para. 29; and International Mandate-holders on Freedom of Expression, *Joint Declaration on Freedom of Expression and Countering Violent Extremism* (2016), para. 2(d).

52 See footnote 53 above.

53 See e.g., ECtHR, *Salov v. Ukraine*, no. 65518/01v, 6 December 2005, para. 113.

With respect to the encroachment on the honour, dignity and professional reputation of MPs or insults, it must be reiterated that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual, with the former inevitably and knowingly having accepted to be subject to close scrutiny by both journalists and the public at large, and hence expected to display a greater degree of tolerance.[54]

42. Regarding public calls to "separatism" in Article 16(3), ODIHR hereby refers to its *Comments on the Criminalization of "Separatism" and Related Criminal Offences* (2023), in which it warned against considering "separatism" to fall within the scope of criminal law due to the inherently vague nature of the term, broad range of conduct that may be captured by it and the potential impact on human rights and fundamental freedoms.[55] It is important to recall that **the expression of opinions or political views regarding the need for autonomy or even secession of part of the territory is protected by the right to freedom of expression unless the means (or actions) advocating secession or autonomy or directed against territorial integrity are violent, undemocratic or illegal from the international law point of view.**

43. Including specific provisions to prevent and protect women MPs against violence in politics also deserves specific mention as this phenomenon constitutes a real barrier to women's political participation. It is important that the Draft Law **includes specific provisions to prohibit expression leading to or resulting in physical, sexual, psychological, or economic harm or suffering directed against a woman MP, because she is a woman and is aimed specifically at undermining her rightful representation, voice, and agency in politics**[56] (see also Sub-Sections 4.2.3. on equality and non-discrimination and 7.2. on complaints mechanism).

44. Even though some regulation may be considered necessary to prevent forms of expression such as direct or indirect calls for violence or other expressions prohibited under international human rights law, **it is recommended to eliminate or substantially revise the above-mentioned content-based restrictions given the above considerations and the fact that the respective limitations could be misused by the majority and/or to a different extent, stifle the freedom of parliamentary debate**.[57] In any case, to ensure clarity of the legislation, it would be advisable to list at the outset the prohibited behaviours and forms of expression (in accordance with international human rights standards) in Article 16, 23 or 29, before specifying under the Section on Sanctions the consequences in case of non-compliance, while avoiding inconsistencies between the respective provisions.[58]

45. The drafters should also assess whether in the country context, non-liability protection granted to MPs' statements in the chamber (or "parliamentary privilege") has been misused to avoid being prosecuted for "dissemination of ideas based on racial superiority", "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", sexual harassment, violence against women or other crimes.[59] If this is the case, **clear, balanced, transparent and enforceable procedures for waiving parliamentary immunity** — as prescribed in 2006 by the

54 See e.g., ECtHR, *Lingens v. Austria*, no. 9815/82, 8 July 1986, para. 42.
55 See ODIHR, *Comments on the Criminalization of "Separatism" and Related Criminal Offences* (2023), Executive Summary and para. 50.
56 See ODIHR, *Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit* (2022), Tool 1, p. 11.
57 See also *ODIHR Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia*, paras. 50-53.
58 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 15, which underlines the importance of the clarity and intelligibility of legislation as a key principle, underlying that "*no inconsistencies or conflicts should exist within a law*".
59 See e.g., Parliamentary Assembly of the Council of Europe, *Resolution 2274 "Promoting parliaments free of sexism and sexual harassment"*, 2019, Article 8.2. See also See ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022)*, pp. 26-27.

OSCE Parliamentary Assembly Resolution on Limiting Immunity for Parliamentarians in Order to Strengthen Good Governance, Public Integrity and the Rule of Law in the OSCE Region — should be introduced to ensure a functioning parliamentary integrity system.[60] The Draft Law should be supplemented in this respect (see also Sub-Section 6 *infra*).

46. **The removal of above-mentioned content-based restrictions from the Draft Law, which may lead to sanctioning of MPs, should not prevent having separate ethical guidance in the form of aspirational provisions promoting "politeness", "courtesy", "dignity" and "respect" to the chairperson, fellow MPs and the public**.

47. Article 31 of the Draft Law allows a parliamentarian to be absent from the session only for a "well-founded reason". While it is commendable that the list of the reasons justifying the absence is enumerated in the Draft Law (Article 31(2)), it would be advisable to specify the type of justification to be submitted and provide a simple monitoring mechanism. Furthermore, in addition to "non-participation in sign of protest against an item on the Agenda of the day, announced in the sitting", one more reason to be added to the list should be non-participation in sign of protest of a general nature or a boycott.

48. Moreover, some of the reasons listed seem to be quite vague: for example, it is not entirely clear what should be considered as a "personal interest leave" and what are the conditions for taking such leave with a reference to an appropriate piece of legislation providing the grounds for such type of absence.

RECOMMENDATION C.

To eliminate or substantially revise content-based restrictions to deputies' right to freedom of expression in Articles 16, 23 and 29 of the Draft Law, especially during political and/or plenary debate, unless falling within the scope of prohibited expressions under international human rights law when there is a direct and immediate connection between the expression and the likelihood or occurrence of violence.

4.2.2. Relations with Parliamentary Staff and External Actors

49. Article 26 of the Draft Law elaborates on the conduct of MPs in relation to parliamentary staff, stating that an MP "*shall respect the tasks, the rights and the duties of the staff of the Parliament's Secretariat*" and "*has no right to involve public servants of the Parliament's Secretariat in actions that are not part of their official tasks*".

50. To be effective and credible, any parliamentary ethics regime must also extend to parliamentary officials and staffers.[61] This is particularly important as officials and

60 See OSCE Parliamentary Assembly, *Resolution on Limiting Immunity for Parliamentarians in Order to Strengthen Good Governance, Public Integrity and the Rule of Law in the OSCE Region* (2006).

61 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 14. The OSCE Parliamentary Assembly, in its Brussels Declaration from 2006, refers to staff together with MPs, when encouraging parliaments to: develop and publish rigorous standards of ethics and official conduct; establish efficient mechanisms for public disclosure of financial information and potential conflicts of interests; and establish an office of public standards to which complaints about violations of standards by parliamentarians

staffers play important, behind-the-scenes roles in advising politicians and guiding their deliberations. Staff's behaviour and actions are often reflecting on the conduct and perception of MPs and, thus, of parliament as a whole. In a growing number of OSCE participating States, parliamentary officials have been subjected to tightened rules and/or additional measures.[62] If not already provided in relevant legislation or separate code of ethics, **it is recommended to provide, although this may go beyond the personal scope of the Draft Law, that the staff of the parliament, when carrying out their duties, should also adhere to the same parliamentary ethics as parliamentarians.**

51. In addition, the Draft Law does not include safeguards for protecting staff from behaviour that constitutes violence, especially violence against women, including harassment on the basis of sex or other characteristics, sexual harassment, bullying or other forms of misconduct. Non-discriminatory and professional behaviour between parliamentarians, parliamentary officials, and their own staff should generally be an essential aspect of codes of conduct/ethics. This includes considering how ethical rules can promote professional and non-discriminatory behaviour, *"free of all forms of direct or indirect violence, harassment or discrimination against women or against anyone in parliament"*.[63] In case of MP's involvement in harassment or other forms of violence, an effective complaint mechanism shall be accessible to all parliamentary employees, guarantee safety, confidentiality and expediency of the complaint process along with a well-defined and independent investigation process and provide for effective sanctions proportional to the gravity of the case.[64] **It is recommended to supplement the Draft Law with more detailed provisions related to conduct of MPs toward their staff, stating, in particular, that MPs should treat their staff with respect and dignity, while prohibiting discrimination, any form of violence, harassment, including sexual harassment, and other forms of ill-treatment, while also including an effective complaint mechanism.Furthermore, consideration could be given to defining the liability of MPs to inform the staff on the rules, norms, principles and standards related to carrying out their duties, similar to those relevant for MPs.**

52. It should be recalled that the parliamentary resources, parliamentary staff as well as the property belonging to the Parliament, should be used for parliamentary purposes only. MPs might be accused of abuse of office or misuse of public funds if they use their powers or parliamentary resources in ways that serve private interests at the expense of the public interest, for instance to give unfair advantages to their family members or friends.[65] In this respect, the employment of family members of MPs as assistants, secretaries or researchers in parliament might raise concerns that MPs are using public money to boost family income, triggering classical conflict of interest, abuse of office and nepotism. Some countries explicitly forbid this practice.[66] It is recommended **to supplement the Draft Law to elaborate and develop standards on employment of family members**

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and their staff may be made; see OSCE, Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted at the 15th Annual Session, Brussels, 7 July 2006, pp. 32–33.

62 Codes of conduct/ethics geared to the specific role of parliamentary officials, especially in their dealings with the private sector, have for instance been adopted in Finland, Ireland, Malta, and Portugal; the Code of Conduct of the Parliament of Scotland can serve as a good practice stating that *"Consistent with their duties as employers, members must take all reasonable steps to ensure that their staff are fully aware of, understand and abide by the policies, rules, requirements and behavioural standards that apply to the conduct of staff when carrying out their duties" (Section 7);* see *The Parliamentary Ethics,* the European Parliament's Office for Promotion of Parliamentary Democracy, available at: <https://www.parlament.cat/document/intrade/59368>, p. 20.

63 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 63.

64 For example, *the Code of Conduct for Members of the Scottish Parliament* states that "*Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated*", p. 49.

65 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 21.

66 After several scandals involving family members being staff of MPs, France and the United Kingdom have banned employing family members as staff of MPs.

in the parliament, unless already covered by other legislation of Moldova, in which case a cross-reference to the applicable legislation should be made.

53. Besides conduct in the chamber and parliamentary committees, as well as with respect to parliamentary staff, the Draft Law briefly covers conduct of MPs when exercising their mandate abroad (Article 25), in relations with citizens (Article 27) and with media representatives (Article 28). In particular, Article 27 (1) states that MPs "must meet and communicate with the citizens and take attitude with a view to solving the tackled problems", while Article 28 obliges MPs to ensure an active, correct and timely informing of media representatives about matters of public interest. However, both obligations might be considered unduly limiting. Although it may be in the interest of an MP to engage with media in efficient manner, imposing the respective obligation might lead to an unjustified consequences for an individual MP, especially given the vagueness of the formulations such "active, correct and timely". This would also apply to the obligation to communicate with the citizens by taking an attitude "with a view to solving the tackled problems". At the same time, with respect to relations with the media, it should always be remembered that media is only one of the channels of communication between officials and the public. At the same time, treating media with respect and dignity, but also answering their questions in non-discriminatory manner is something to pay attention to when exercising the functions of an MP.

54. Moreover, the work and activities of MPs usually assume interaction with wider groups, such as visitors of the Parliament, including civil society organizations (hereinafter "CSOs"), representatives of lobbying groups, civil society representatives, including individuals – not necessarily "citizens" – and groups affected by certain legislative proposals being discussed in the parliament, which are not mentioned in the Draft Law. **It is, thus, recommended to add more detailed provisions regarding relations of MPs with wider groups, including visitors of the Parliament, CSOs etc. The obligations on communication with media and citizens should be reconsidered**

RECOMMENDATION D.

To reconsider obligations of MPs as defined by Articles 27 and 28 related to communication with media and citizens, as well as supplement the Draft Law with more detailed provisions related to conduct of MPs toward their staff while also including an effective and independent complaint mechanism.

4.2.3. Equality and Non-discrimination

55. The Draft Law lists equality and non-discrimination as one of the principles governing the activities of MPs, requiring them to "*avoid discrimination on race, nationality, ethnicity, language, religion, gender, opinion, political affiliation, wealth or social origin*" (Article 2 (h)). While this list is in principle commendable, **it does not refer to some of the protected grounds that are included in international and regional**

treaties,[67] EU legally binding instruments[68] and evolving caselaw of the European Court of Human Rights.[69] It is recommended to expand the list by also expressly referring to other protected grounds such as colour, gender identity, sexual orientation, belief, disability, health status, age, association with a national minority, migrant or refugee status and other characteristics.

56. Among other duties, the Draft Law obliges MPs to have proper behaviour and not to "*use or display abusive, offensive, discriminatory or defamatory language*" (Article 23 (1) (i)). It is also mentioned that at the plenary session and during the meetings of the working bodies of the Parliament, the relations and collaboration among MPs "*shall be governed by mutual respect and be based on principles of equality and collegiality irrespective of their political affiliation*" (Article 23(2)). Similarly, during the meetings with citizens, MPs are expected to show "*professionalism, integrity and non-discrimination*" (Article 29(1)). Finally, spreading and inciting "*hatred, war, mass upheaval, group disobedience*", promoting or justifying "*racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance or discrimination on the grounds of sex, race, nationality, religion, disability or sexual orientation*" are envisaged as one of the grounds for removing an MP from the plenary room in accordance with Article 50 of the Draft Law.

57. One aspect the Draft Law would benefit from is elaborating on specific standards for MPs conduct with respect to harassment on the basis of sex, sexual harassment, abuse and violence, especially against women, not only towards parliamentary staff but also other MPs and the public in general.[70] For instance, Article 40 (5) of the Draft Law states that anonymous complaints about the breach of the norms of parliamentary ethics and conduct shall not be examined. However, in cases of sexual harassment it is important to ensure confidentiality and necessary protection for those plaintiffs fearing retribution/retaliation. **Thus, exclusion of anonymity for submitting complaints should be balanced by effective mechanisms of confidentiality for sexual harassment related complaints**.

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67 Especially Articles 2 and 6 of the ICCPR referring to "*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*"; Article 14 of the ECHR and Protocol 12 to the ECHR mentioning "*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*"; Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Moldova on 21 September 2010; Article 4(3) of the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ratified by the Republic of Moldova on 31 January 2022, which refers to "*sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status*". The UN Committee on Economic, Social and Cultural Rights has explicitly recognized gender identity as among the prohibited grounds of discrimination (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, par 2), UN Doc E/C.12/GC/20, 2009, para. 32).

68 Article 21 of the EU Charter of Fundamental Rights, which refers to "*sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation*"; Employment Equality Directive (2000/78/EC), limited to the field of employment and occupation, covering the grounds of religion *or belief*, disability, age and sexual orientation.

69 The ECtHR has clarified that the prohibition of discrimination extends to "*sexual orientation*" and "gender identity"; see ECtHR in *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, 24 January 2017, para. 61, "*Article 14 prohibits differences based on an identifiable, objective or personal characteristic, or "status" by which individuals or groups are distinguishable from one another*" (discrimination grounds), underlying that the list of discrimination grounds is "an illustrative and not exhaustive" (thus open) list and noting that the words "other status" have generally been given a wide meaning and their *"interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent";* ECtHR, *A.M. and Others v. Russia*, no. 47220/19, 6 July 2021, para. 73, which states that "*the prohibition of discrimination under Article 14 of the Convention duly covers questions related to gender identity*". The ECtHR also held that *"[t]he reference to the traditional distribution of gender roles in society cannot justify the exclusion of men […] from the entitlement to parental leave" and that "gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*" (*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, para. 143).

70 For further support, see ODIHR, "Addressing Violence against Women in Parliaments - Tool 2" for guidance to parliaments on preventing violence against women in parliaments, 2022. Also see "Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region", 2021.

58. **The Draft Law should clearly state that there is no tolerance to harassment, sexual harassment, abuse, and gender-based violence, and to explicitly mark sexist and other exclusionary language as intolerable.**[71] **It should clearly identify the behaviours and acts that are prohibited towards both other MPs and parliamentary staff as well as the penalties and consequences for such breaches, which should be proportionate to the gravity of the misconduct. A safe and effective complaint mechanism that is independent from MPs and parliamentary staff, and involving experts on violence against women, should also be in place, ensuring safety, confidentiality and expediency of the complaint process along with a well-defined and independent investigation process with effective and deterring sanctions when misconduct is detected**.[72] The Draft Law could also be further enhanced by specifically requiring the use of gender-sensitive language in the parliament, including in drafting legal regulations, rules of procedure, official communication, internal acts and materials.[73]

4.2.4. Right to Respect to Private and Family Life

59. The Draft Law in elaborating on principle of openness and transparency provides that "*activities carried out by the MP in the exercise of the mandate are public and may be subject to citizens' scrutiny*". The right to freedom of expression and access to information, as guaranteed by Article 19 of the ICCPR, includes the freedom "to seek, receive and impart information and ideas of all kinds". In this respect, MPs activities within the parliament, like attendance, speaking and overall behaviour of MPs at plenary sessions and sessions of parliamentary bodies should indeed be open to scrutiny.

60. The question is where to draw the line and what kind of outside activities might impact MPs performance and integrity, knowing that they are under constant scrutiny of public and the media. At the same time, even a public figure like an MP, should legitimately expect that his or her private life, and those of family members, will be protected.[74] It is not generally appropriate to regulate the private behaviour and personal lives of MPs.[75] However, sometimes, the private life and actions of MPs can affect the integrity of the parliament and/or may bring the institution into disrepute. Hence, it is important **to define clearer criteria with references to the respective legal framework and/or conditions under which the regulation of certain aspects of the private life of MPs would be justifiable in the public interest**, to protect the parliament as an institution.[76]

61. The Draft Law requires MPs to "*have a decent/official dress-code*" (Article 23(g)), without further elaborating on this aspect. Regulating the dress code of MPs can be controversial since, on the one hand, it may be considered an encroachment on the individual freedom of MPs while, on the other hand, some argue that a basic level of

71 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 65.
72 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 63. See also ODIHR, "Addressing Violence against Women in Parliaments - Tool 2" for guidance to parliaments on preventing violence against women in parliaments, 2022, pp. 22-26.
73 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 34.
74 See e.g., ECtHR, *Von Hannover v. Germany* (no. 2) [GC], paras. 50-53 and 95-99.
75 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 25.
76 In several OSCE participating States parliaments have adopted Codes of conduct with provisions prohibiting discrimination, violence and sexual harassment. In Albania, for example, it states that "*The Deputy is prohibited from any behaviour of a sexual nature that affects the dignity of anyone and that is considered unwanted, unacceptable, inappropriate or offensive to the other person, as well as creates a disturbing, unstable, hostile and intimidating work environment. For the purpose of this article, the conduct of the deputy includes and is not limited to physical actions, words, gestures or any kind of virtual communication*." See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 25. For example, the Lithuanian Code of Conduct for State Politicians in this respect have provision that states: "*The conduct or personal features of a state politician that are related to certain circumstances of their private life and that are likely to have influence over public interests shall not be considered private life*". See *"Law on the Approval, Entry into Force and Implementation of the Code of Conduct for State Politicians"*, Republic of Lithuania, Vilnius, 2006. See also: Committee on Standards publishes report on the conduct of Christopher Pincher - Committees - UK Parliament

decorum also needs to be maintained.[77] In any case, when regulating the dress code of MPs, and requiring that it be decent, cultural, gender, religious and other sensitive aspects should also be considered. In addition, while a parliament may have different rules for appropriate attire to be worn by men and women, the regulations should not be more stringent with respect to either group.[78] When formulating a dress code policy, potential issues of discrimination should also be taken into consideration, especially given possible religious, ethnic and/or gender sensitivities.[79] **Article 23 should be reformulated to ensure that whichever attire is chosen, the regulation should not be more stringent for attire worn by men or by women and should not diminish or denigrate anyone's dignity**.

5. PREVENTION OF CORRUPTION

5.1. Conflict of Interest and Receiving Gifts

62. The Draft Law provides that MPs should put public interest above own private interest, as one of the key principles that govern the activity of MPs (Article 2 (b) of the Draft Law).

63. In Article 23 (c), the Draft Law addresses potential conflict of interest, stating that an MP shall "*avoid any conflict of interest, and in case of a conflict of interest, is obliged to notify the Commission on Parliamentary Ethics and Conduct*". According to Article 13 of the Draft Law, a conflict of interest is defined as a situation in which the MP has a personal interest that influences or could influence the impartial and objective exercise of their obligations and responsibilities according to the law. In order to avoid conflicts of interest due to family ties, close personal relationships or other circumstances that may cause doubts regarding the impartiality of the exercise of the mandate, the MP is obliged to declare the personal interests and refrain from undertaking any actions in this respect (Article 13(2)).

64. At the same time, the Draft Law does not provide more details and examples of what should be considered as a conflict of interest, neither does it refer to other legislative acts which may regulate the matter. The risk is that by addressing such issues as conflicts of interest, corruption prevention, receipt of gifts etc. in a succinct manner, this may create potential overlaps and diverging interpretations of binding legal norms provided in other legislation. When referring to other legislation, the Draft Law should not contain provisions that are ambiguous or contradictory to other laws, that references to other laws are clear, summarized with the highest possible accuracy, acknowledging higher legal power of applicable legally binding norms, while being included in one clause of the Draft Law instead of being scattered over the text.[80]

65. The Draft Law further establishes that "*personal interests of MPs, other than those provided for in Art. 2 of Law no.133/2016 on the declaration of wealth and personal interests, are notified to the Commission on Parliamentary Ethics and Conduct, which*

77 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 52.
78 For example, in the United Kingdom, the dress code in the House of Commons has been relaxed significantly over the years – up until 1998, any parliamentarian wishing to make a point of order was still required to wear a top hat. In 2017, the Speaker of the United Kingdom House of Commons deemed that men no longer needed to wear jackets and ties in the Commons. However, parliamentarians are expected not to use their clothing to display slogans or make points. See also *ODIHR Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia*, paras. 44 and 45.
79 See ODIHR Opinion on the Code of Ethics of Kyrgyz Republic (2023), para. 44.
80 See also *ODIHR Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia*, paras. 33-35.

will make the appropriate entries in the Register of Interests according to Attachment no. 1. The Register of Interests shall be kept by the Commission on Parliamentary Ethics and Conduct, permanently updated and published on the official web page of the Parliament "in compliance with the provisions of Law no.133/2011 on the protection of personal data in relation to persons the MP has personal interests with. If necessary, the Commission on Parliamentary Ethics and Conduct notifies the National Integrity Authority in accordance with the provisions of Law no.133/2016 on the declaration of wealth and personal interests" (Article 13 (3-5)).

66. Furthermore, according to Article 9 (2) (d) of the Draft Law, "*establishing, through the final action of ascertainment, of the - direct or through a third person - conclusion of a legal act, participating in the decision-making without solving the actual conflict of interests in accordance with the provisions of the legislation on the conflict of interests*", should be considered as one of the grounds for MP's ineligibility.

67. It should be noticed, however, that keeping the Register of Interest and informing the National Integrity Authority (hereinafter "NIA") about potential conflict of interest and wealth, can be seen as a very demanding task, especially for a newly established parliamentary ethics body. In this respect, it is not clear why details related to conflict of interest could not be reported directly to the NIA, to make the process more transparent and efficient.

68. Regulation of gifts is generally a standard component of any integrity framework, and is an effective tool to prevent conflict of interest and corruption, although rules regulating the acceptance of gifts vary considerably among OSCE participating States.[81] Article 30 of the Draft Law also regulates gifts from third parties. Parliamentarians may not ask for or accept gifts, services, favours, invitations or any other advantage for themselves or their family, if the offer is connected directly or indirectly to the fulfilment of official duties. It is to be noted, however, that such indirect link may be difficult to prove**. It is advisable to provide guidance on what it means for a gift to be provided in direct or indirect connection with the performance of public function, while also defining the types of gifts/benefits which should not be regarded as gifts for the purpose of regulation.**[82] Normally, **MPs should not be allowed to receive significant gifts – to be defined - from third parties (outside direct family) under any conditions, even if the link to their work as MPs cannot be established**.

69. Notably, the above prohibition does not specifically address the receipt of gifts during official foreign visits of MPs. As required by the UNCAC, there should be specific legislation explicitly addressing the issue of active bribery of foreign public officials and officials of public international organizations. Foreign bribery is an act involving a foreign national providing or offering a benefit to another person from a different country, or causing a benefit to be provided or offered to another person from a different country, where the benefit is not legitimately due. At the same time, "protocol" gifts - i.e., gifts provided by representatives of foreign countries or institutions in the context of an official visit or event, are often reciprocal and are generally not to be regarded as gifts for the purpose of regulation.[83] This issue is relevant given the high degree of economic development and integration among the OSCE participating States Article 30 (2) makes a reference to various types of gifts of symbolic value and also by-laws that establish procedure for gift declaration. However, the Draft Law would benefit from certain

81 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 61. See also CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Sub-Section 2.4.4.
82 See CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Sub-Section 2.4.4.
83 See CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), p. 26.

clarifications with regard to the limits of the value of the gifts. As mentioned in Article 30 (2), the aforementioned ban shall not apply to gifts received on the occasion of protocol events and the value of which "*does not overcome the limits established by the Government*". **For the sake of legal certainty, it would be advisable to indicate such limits in the Draft Law or provide a clear reference to the respective legal act defining such limits**. This would allow to make a clearer difference between the small gifts of insignificant value offered as a matter of courtesy and gifts received with an aim to trade influence.

70. Finally, it is worth noting that a low level of MPs' salaries may increase the risk that MPs will regard their other entitlements – allowances and expenses − as opportunities to extract additional income, while also rending more difficult to attract qualified people.[84] This should also be considered as when reflecting on measures to prevent corruption.

5.2. Lobbying and Post-employment

71. Openness and transparency are defined by the Draft Law as one of the principles (Article 2) according to which the activities carried out by an MP in the exercise of the mandate should be public and may be subject to citizens' scrutiny. Furthermore, ensuring transparency and public control of their activity is one of the obligations of MPs in accordance with Article 23 of the Draft Law. However, the Draft Law does not provide guidance on how this transparency and public control can be achieved, and what should MPs do in that regard. Thus, **it would be advisable to develop in detail what is the role of MPs in achieving transparency and public control, as well the role of other state bodies in this respect.**

72. The Draft Law does not elaborate important aspects pertaining to the prevention of corruption, such as relations of MPs with lobbyists and what falls within the scope of "lobbying activities". In May 2023, in its Second Interim Compliance Report for the Republic of Moldova, GRECO recommended introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process.[85] If/when adopted, such rules should be referred to in the Draft Law, and MPs should be informed about these rules prior to their start of mandate. It is also **important that the respective provisions or separate guidelines clarify what can be considered "interaction" with lobbyists (while at the same time bearing in mind the need not to hamper citizens' access to MPs), and provide clear rules on reporting interactions with lobbyists**.[86]

73. Likewise, the provisions of the Draft Law would benefit from defining/referring to the rules related to employment and post-employment, after the end of mandate of an MP. In this respect, an appropriate so-called "cooling" period or "revolving door", which is becoming an established practice to prevent corruption and conflict of interest could be considered.[87] As noted by ODIHR, *"[a] particularly controversial area concerns the careers of parliamentarians once they leave office, in their post-public employment. [...] plans for their future career can influence how they act while in parliament. [They] might abuse their power to favour a certain company, with a view to ingratiating themselves*

84 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p. 66.
85 See GRECO Second Interim Compliance Report, May 2023, para. 16.
86 See e.g., GRECO's Fourth Evaluation Round Reports.
87 For example, former commissioners of the EU are banned from lobbying two years after expiration of their mandate, while Norway bans former MPs to get employed in private sector for six months after mandate expiration. Some countries decide to cover this aspect in shape of advice and recommendation, as is the case in Ireland or Slovakia. See also ODIHR Opinion on the Code of Ethics of Kyrgyz Republic, paras. 56-57.

and gaining future employment. Alternatively, once working in the private sector, they might influence former colleagues to favour their new employer".[88]

6. MANDATE OF MEMBERS OF PARLIAMENT, IMMUNITY AND GUARANTEES

74. Article 68(2) of the Constitution of the Republic of Moldova prohibits any imperative mandate of Members of Parliament. This is in line with recommendations made by ODIHR and the Venice Commission, which have underlined that "*According to a generally accepted democratic principle, the parliamentary mandate belongs to an individual MP, because he/she receives it from voters via universal suffrage*".[89] At the same time, several countries have attempted to limit the practice of leaving one's original faction in parliament to join another, commonly known as "floor crossing". In general, absolute bans on "floor crossing" are considered contrary to the right of freedom of association.[90] Other modalities for reducing floor crossing include the formalization of the practice of "party switching" which may for instance be allowed twice in an electoral period, provisions stating that an MP leaving a political party should then serve until the end of the mandate as an independent, or formal agreements between several parties not to collaborate with representatives who cross the floor.[91] In any case, any floor crossing by an MP in exchange for a remuneration could be considered contrary to the principles listed in Article 2 of the Draft Law on integrity as well as conflict of interest, although this could be expressly spelled out to ensure clarity in this respect.

75. The Draft Law covers in details the procedures and requirements related to the start and end of the mandate of an MP (Chapter II), as well as the circumstances and procedures for lifting immunity (Chapter III). At the same time, the Draft Law also addresses the privileges and rights of MPs during the exercise of their mandate, and afterwards in Chapter V. **As a general consideration, from a structural point of view, it may be more logical to group all the aspects related to mandate, entitlements, privileges, and rights of MPs under one chapter.**

76. Article 9 of the Draft Law lists the reasons for lifting the mandate of an MP, which include MP's ineligibility in case of "recognition of the incapacity for work". Terms such as "incapacity" used in legislation could potentially be used to exclude or disqualify persons with disabilities,[92] contrary to Articles 12 and 29 of the 2006 UN Convention on Rights of Persons with Disabilities that states that persons with disabilities "enjoy legal capacity on an equal basis with others in all aspects of life" and protect the right to political participation, respectively.[93]

77. **To avoid ambiguities and misinterpretation of this provision, it is recommended to clarify the above ground for ineligibility leading to the termination of mandate in**

88 See ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 72.
89 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 131.
90 See e.g., ODIHR-Venice Commission, *Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic*, CDL-AD(2011)025-e.
91 See e.g., Venice Commission, *Report on the Imperative Mandate and Similar Practices,* adopted by the Council for Democratic Elections at its 28th meeting (CDL-AD(2009)027 Venice, 14 March 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009), CDL-AD(2009)027.
92 See e.g., ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), p. 36.
93 UN Committee on the Rights of Persons with Disabilities, General Comment 1 on Article 12 of Convention on the Rights of Persons with Disabilities (2014), para. 49, which stipulates that "*States parties have an obligation to protect and promote the right of persons with disabilities to access the support of their choice in voting by secret ballot, and to participate in all elections and referendums without discrimination. The Committee further recommends that States parties guarantee the right of persons with disabilities to stand for election, to hold office effectively and to perform all public functions at all levels of government, with reasonable accommodation and support, where desired, in the exercise of their legal capacity.*"

order not to lead to the exclusion of persons with disabilities from participation in political life.

78. The Draft Law further lists the titles and functions that are incompatible with the mandate of an MP. Within 30 days from the validation of the mandate, "*the MP must declare in writing to the Commission on Parliamentary Ethics and Conduct about any activity that they will continue to carry out in the future*" (Article 11(1)). Furthermore, any incompatibility occurred in the activity of "*the MP during the exercise of the mandate shall be brought to the attention of the Commission on Parliamentary Ethics and Conduct, in writing, immediately, but not later than 3 days from the occurrence thereof*" (Article 11 (3)).

79. MPs are thus required to report on potential incompatibilities, and are given time to decide which function they would keep, in case of having two or more functions incompatible with their parliamentary mandate. **Besides the duty of each MP to report on potential incompatibilities, it is recommended to expand and allow anyone who becomes aware of the incompatibility of certain MP to be able to report this to the relevant body.**

80. It is also questionable whether tasking the newly established parliamentary ethics body to deal with incompatibility issues is a proper approach, since such functions would appear to exceed the purpose for which such a body should be formed (see Sub-Section 7.1. on Status, Structure and Functions of the Commission on Parliamentary Ethics and Conduct *infra*). Based on the existing structure of standing committees of the Parliament of the Republic of Moldova, and notwithstanding that certain parliamentary committees might be formed or annulled with the adoption of this Draft Law, **the Committee on Legal Affairs, Appointments and Immunities would seem the most appropriate body to control and react to potential incompatibilities, considering the existing tasks and powers of this Committee**.

7. MONITORING, ENFORCEMENT AND SANCTIONING

7.1. Status, Structure and Functions of the Commission on Parliamentary Ethics and Conduct

81. Article 34 of the Draft Law foresees the establishment of the Commission on Parliamentary Ethics and Conduct (hereinafter "Commission") with the task of "*examin[ing] cases concerning the breach of parliamentary ethics and conduct norms*". At the same time, other provisions suggest that its role goes much beyond ethics and conduct of MPs. Article 36 of the Draft Law further elaborates the tasks of the Commission, including monitoring the respect of the norms of conduct and ethics, without specifying what these norms are (see Sub-Section 4.1. on Basic Ethical Principles and Values *supra*); monitoring cases of incompatibility of MPs; keeping the Register of Interests in the manner defined by the Standing Bureau (see Sub-section 5.1 on Conflict of Interest *supra*); evaluating the cases in which there are suspicions of breach of the Draft Law and advising the President of the Parliament with respect to possible measures to be undertaken.

82. First of all, it would be beneficial to clarify the relationship between the Commission and the NIA, which is in charge of controlling the wealth and personal interests of public officials and exercising control of compliance with the legal regime of conflicts of

interest, incompatibilities, restrictions and limitations.[94] The Draft Law could further elaborate the respective scope of competencies of these two bodies to avoid a possible overlapping in their respective areas of responsibility. Notwithstanding the scope of this Opinion, the capacities of the NIA could be enhanced, especially in light of GRECO's conclusion in its Second Interim Compliance Report "*that the National Integrity Authority (NIA) remains understaffed and that it has operated in the absence of an institutional strategy since its inception.*"[95]

83. Article 35 of the Draft Law details the membership of the Commission, envisaging eleven members, with four members on the proposal of the factions of the parliamentary majority and four members - on the proposal of the factions of the opposition. In addition, three members with consultative vote come from CSOs. The fact that four members are from the opposition parties and four - from the parliamentary majority, with the three last members from CSOs having only a consultative vote may prove to be unworkable. In this way, the members of the Commission could potentially tie at 4:4. At the same time, giving opposition similar number of votes may boost the confidence to the system and thus may be consider a positive move. However, if the majority and opposition vote on the basis of a political division and a consensus is not reached, this can stall the work of the Commission/ethics body by blocking its decision-making process and rendering it meaningless. This could be avoided by having the three members from CSOs granted voting rights, in such case possibly considering higher quorum.

84. It is also important **to clarify the status of the CSOs and whether they will be paid for their work, as well as introduce provisions regarding the nomination of members to ensure gender, and potentially ethnic balance in the composition of the Commission**.[96]

85. Furthermore, while having civil society representatives as external actors in the Commission is commendable, it is essential to ensure that they are appointed to the Commission in a transparent and fair manner.[97] A lack of clarity regarding the skills necessary, selection criteria and the procedure to appoint representatives of CSOs might open the floor to misuse and partisan action. Another aspect that would benefit from further elaboration in the Draft Law is about the modalities of exercise of their consultative voting rights and whether, in any other aspect of the work of the Commission, they have same rights and duties as other Commission's members. Importantly, to make the opinion of members with consultative voting right more influential and meaningful, they should part of the Commission's reporting process. **It is, thus, advisable to clarify in the Draft Law the selection and appointment procedure for CSO representatives ensuring that it is transparent and fair, while specifying the duration of their mandate, their role and position within the Commission to make their opinions more visible and meaningful**.

86. Article 34 (3) of the Draft Law states that the Chair and the members of the Commission shall be approved by Parliament's decision, on the proposal of the Standing Bureau. However, more clarity and transparency about how the Standing Bureau will elaborate its proposal could be envisioned. For instance, the proposed members could be designated following a call for factions to delegate their representatives to the Commission. Also, to make the work of the Commission more collegial, the election of the Chair could fall within the responsibility of the members of the Commission. Even if the Draft Law states

94 See <Overview | National Integrity Authority (ani.md)>.
95 See GRECO Second Interim Compliance Report, May 2023, paragraph 24.
96 ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 82.
97 ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 82.

that the Commission shall function on the basis of the provisions of this Draft Law and "*the Parliament's decision on the Commission on Parliamentary Ethics and Conduct*", it is important to still delineate in the Draft Law key aspects related to the composition and functioning of the Commission.

87. **In light of the foregoing, it is recommended to further detail in the Draft Law the criteria for membership in the Commission, as well as the modalities and procedure for the selection and nomination of its members, ensuring a fair and transparent process, and ensuring that nomination requirements will aim for a gender- and diversity-balanced composition of the Commission. Furthermore, to prevent blocking the work of the Commission, more precise and workable decision-making mechanisms should be in place, including defining quorum requirements and providing for anti-deadlock mechanisms in case of a tie.**

88. The Draft Law also tasks the Commission to examine cases related to favouritism and corruption (Article 36 (e)), although such cases are way more serious and could carry important consequences, including, if proven, the initiation of criminal proceedings and decision on criminal liability, which would go beyond the material scope of the Commission's work. The Draft Law does not envisage the procedure for handing over this type of cases to the competent investigative or other public authority, nor does it refer to the relevant legislation in force in that respect.

89. The Commission is also tasked to check the legality of the cases submitted, hear the witnesses, as well as to check compliance with sanctions of the sanctioned MPs (Article 36 (f, i, m)). The Commission also prepares and submits a Report on parliamentary ethics and conduct for examination of the Parliament, while the latter shall adopt a decision stating whether the parliamentary norms of ethics and conduct have been breached and apply the sanctions provided for by the Draft Law.

90. The Draft Law further elaborates on the tasks, rights, and obligations of the Commission's Chair, some of which overlap, which may at times lead to confusion. For example, the Chair is at the same time "tasked" (Article 37 (b)), but also has a right (Article 38 (a)) to initiate inquiry, which has different implications since the latter implies that the prerogative can be used as per discretion.

91. Another task of the Chair is to submit to the Commission "*information on the non-respect for the norms of parliamentary conduct, courtesy and discipline*" (Article 37 (e)). It is not clear how the Chair will get the information before submitting it to the Commission. Also, the term "courtesy" is not used nor elaborated anywhere in the Draft Law.

92. The Chair is also tasked to submit to the Commission proposals and recommendations on the re-establishment of rights in relation to which sanctions have been applied (Article 37 (f)), although it is not clear whether the Chair could initiate the relevant cases *ex officio*.

93. There is, at times, also a confusion with respect to which duties fall within the competence of the Commission and which are within the exclusive competence of the Chair. For example, according to Article 39 of the Draft Law, the Chair is obliged to "*publish the results of the examination of cases concerning the breach of the MP's norms of ethics and conduct*", while examination as such lies within the competence of the Commission as a body, and it is not clear why the Secretariat of the Commission cannot take care of publishing the results of such examination instead. **It would be, thus, advisable to clarify the respective tasks, rights and obligations of the Commission and its Chair to avoid misinterpretation which potentially might lead to blocking the**

Commission's work due to misunderstanding of its duties by its members and the Parliament as a whole.

94. Among other prerogatives of the Chair of the Commission is the right to "*ask for and receive from the public authorities, from officeholders of all levels the information, documents and materials necessary for the performance of their tasks, including official information with limited accessibility and information qualified as state secret under the conditions of the law*". However, the exercise of this right in practice may be problematic if the persons and authorities on the other side have no obligation to respond to such requests of the Chair in accordance with the respective legislation in force and cannot be sanctioned in case of non-compliance.

95. Finally, Article 39 obliges the Chair to "*not disclose the state secret and other information and data protected by the law*". At the same time, the Draft Law does not envisage a proper protection system for such information. Access to state secrets is likely elaborated in other pieces of legislation of the Republic of Moldova, with criteria and procedures for security clearances for persons to be granted access to certain level of information which should be taken into consideration and referred to in the Draft Law.

RECOMMENDATION E.

1. To further detail in the Draft Law the criteria for membership in the Commission on Parliamentary Ethics and Conduct, as well as the modalities and procedure for the selection and nomination of its members, ensuring a fair and transparent process, and that nomination requirements effectively contribute to a gender- and diversity-balanced composition of the Commission.

2. To consider elaborating more workable decision-making mechanisms, including defining quorum requirements and providing for anti-deadlock mechanisms in case of a tie.

7.2. Monitoring and Complaint Mechanism

96. Insufficient or poorly designed enforcement mechanisms and a lack of due process may render the ethical framework ineffective. This may also potentially contribute to the abuse of the complaints process by individuals or groups, either inside or outside of the parliament, seeking to intimidate opposition members or to prevent them from expressing their views freely in debate. Therefore, it is important that the draft contains safeguards to ensure that the rules on conduct are not applied in a way that might restrict parliamentarians' right to debate and express their views freely.

97. One good practice in this respect is to clearly separate the substantive provisions delaing with the principles and rules from aspects related to the procedure, enforcement and sanctions for violation. It is therefore welcome that separate sections of the Draft Law deal with the Commission, the procedure and the sanctions, respectively.

98. In particular, it is commendable that the Draft Law (Articles 40-41) defines a procedure for notifying suspicions of breach of norms of parliamentary ethics and conduct, as well as envisages oversight functions of the Commission (see Sub-Section 7.1. on the Status,

Structure and Functions of the Commission on Parliamentary Ethics and Conduct *supra*), It essentially consists of , among other, "*receiving and examining, within the established terms, the notifications regarding the breach of MPs' norms of ethics and conduct, cases of favouritism, cases leading to the occurrence of corruption acts"* (Article 36 (2) (e)), "*informing the MP in relation to whom the notification has been filed, as well about the opening of an inquiry against them*" (Article 36 (2) (f)) and "*approving and submitting the report on the MP's ethics and conduct*" (Article 36 (2) (k)). At the same time, **a possibility of introducing a more detailed procedure of complaint review and establishing a clear timeline for each of its stages should be considered**. For example, Article 41 (5) of the Draft Law states that the Commission "*examines the materials of the file regarding the breach of parliamentary norms of ethics and conduct and decides on the case*". It does not foresee, however, any examining tools to be used in the process, such as witness hearings, although this is partly mentioned in the other parts of the Draft Law (in particular, among the tasks of the Commission as per Article 36 (2) (i)).

99. Article 43 of the Draft Law covers the examination of the report by the Standing Bureau of the Parliament. While it foresees to give the floor during this process to the MP who is subject to the complaint, consideration should be given to enhancing procedural safeguards, affording the parliamentarian in question due process guarantees, including the right to appeal. In particular, **it is paramount that before finalizing the response to the complaint, the Commission should share their findings with the MPs so that they have an opportunity to comment on the accuracy of the evidence and the provisional findings based on that evidence**. Currently the draft only envisages a possibility of presenting the Commission's report to the concerned MP "to take note thereof" (Article 41 (8)).

100. Moreover, it would be beneficial to also give the floor to the Commission's members, to elaborate on their positions, especially if the vote was not unanimous. Another aspect which seems to be missing in the Draft Law is the possibility to hear the complainant. Furthermore, the opinion of the members of the Commission with a consultative voting right should also be heard at this stage, otherwise their role in the Commission might become obsolete or they may be marginalized. In addition, the results of the Commission's work, including the voting of its members should be available to the public.

101. **The Draft Law should be supplemented with a clear complaint and monitoring mechanism, while also elaborating the respective procedure for submitting the complaint, and procedure in front of the Commission, Standing Bureau, and the plenary.**

102. **It is recommended, in particular, to elaborate in more details the procedure of examining complaints by the Commission, while foreseeing to hear the positions of all sides of the process, including the MP in question, complainant and the Commission's members, including those with a consultative voting rights**.

103. While preparing the Commission's report on each case is logic, the Draft Law does not task the Commission to regularly evaluate and regularly report to the Parliament, media and wide public, providing sufficient information as to the level of implementation of integrity standards and their impact to MPs and the parliament itself. **These reports are useful and should serve to discuss identified challenges and ways to improve the integrity framework and it is thus advisable to consider them in the Draft Law**.

104. Importantly, ethical and integrity principles and standards should be under permanent interpretation, application and debate. The ethical framework should be considered a living document, requiring constant re-evaluation. This will not be possible, however, in the absence of a reporting and monitoring mechanism, through which citizens, the media, officials and the general public can maintain debate about acceptable behaviour, raise their concerns and report wrongdoing.

105. However, the key role of an ethical body should be, first and foremost, to **promote and raise awareness on ethical norms and expected behaviour and serve as an advisory body to MPs, which is not envisaged in the Draft Law.** This is essential to prevent unethical conduct, develop a culture of integrity and ethics among parliamentarians, ultimately contributing to greater public trust.

106. **It is also advisable to add specific provisions on advice, training and support to MPs and parliamentary staffers on the issue of ethics and integrity**. For example, MPs should have the right get themselves familiar with the ethical standards at the start of their term as a part of the induction course on principles and values that are expected from them. Moreover, MPs often need detailed and coherent guidance on reformed parliamentary rules and standards and should receive a periodic (at least annual) training on sensitive ethical issues and to update their knowledge. It is also advisable **to consider adding specific provisions on confidential counselling, as well as on mentoring and experience-sharing activities for both new and experienced MPs in case they have doubts about possible violations of the ethical rules**. This would also be in line with relevant GRECO recommendation, stating that the parliament should "*promote the code and raise awareness among its members on the standards expected of them*".[98]

107. Some parliaments also decide to have permanent body who would serve MPs in confidential counselling, when needed. There are different models used in practice by parliaments, offering internal or external counselling so that MPs perceive that they can consult in confidence and get professional and proper advice.[99]

108. **In this respect, the drafters could consider adding specific provisions on confidential counselling in the Draft Law, to allow MPs to consult in confidence when they have doubts about possible violations of ethical rules. Furthermore, to contribute to the proper implementation of the Draft Law, it is highly recommended to task the Commission with preparing complementary manual/instruction for implementation of the ethical framework, that should contain more details and useful examples.**

> **RECOMMENDATION F.**
>
> To supplement the Draft Law with a clear complaint and monitoring mechanism, while elaborating on the procedure for submitting complaints before the Commission, Standing Bureau and plenary, having due regard to procedural guarantees, including the right to appeal.

98 See *GRECO Second Interim Compliance Report*, May 2023, para. 11.

99 For example, in the Netherlands, with Integrity Adviser, or in Canada, where Conflict of Interests and Ethics Commissioner is tasked to provide ongoing confidential advice to MPs on ethical aspects of their conduct, or duties related to compliance with certain regulations, see 2022 ODIHR Parliamentary Integrity: Resource for Reformers, Chapter 3.5.

RECOMMENDATION G.

To add provisions on advice, training and support by the Commission to MPs and parliamentary staffers on the issue of ethics and integrity, including by providing introductory and regular courses and ensuring a possibility for confidential counselling in case of doubts about possible violations of ethical rules.

7.3. Sanctions

109. Dissuasive and proportionate sanctions for misconduct, as well as tools for their effective enforcement are crucial. In most OSCE participating States, systems of parliamentary discipline include a wide range of sanctions, *"from the relatively soft 'naming and shaming', through fines and temporary suspensions from office (with loss of pay), up to the ultimate political sanction of loss of a parliamentary seat. For conduct that breaks the law, there are, legally enforced penalties"*.[100]

110. Commendably, the Draft Law provides for a range of proportional and graduated sanctions for violating its provisions: from soft ones (such as warning, call to order) to a series of financial fines, withdrawal of the right to speak, removal from plenary for a certain period, and from parliamentary delegations. However, consideration could be given to introducing to this list such sanction as request for apology. Of note, the Draft Law contains indirect references to apology, and consequences of those. For example, in Article 48 (2), related to sanction to call to order, it states that "*in case the acts or words are withdrawn or regretted, or the given explanations are considered by the chair of the sitting to be satisfactory, the sanction shall not be applied*." Another explicit case where sanction is not applied if apologized, is contained in Article 52 (2), related to prohibition to participate in plenary sittings. It foresees that sanction can be removed at any moment, "*following a written or public address of the sanctioned Member, in which they communicate their regretting the committed acts and engage in respecting the rules established by this law and the order during the sitting*." While these are good incentives for MPs behaviour, they come post-festum and are not covering all cases and potential instances of misbehaviour. Therefore, **it is recommended to introduce as a sanction explicit request to the sanctioned MP to apologize for their action, language or other behaviour that is contrary to the ethical principles and norms of the draft.**

111. Notably, Article 44 provides that sanctions foreseen in this Draft Law are applied for "*the breach by the MP of the provisions of this law during the sittings of the Parliament and its working bodies of which they are members, as well as during official trips on the territory of the Republic of Moldova and abroad*". While these correspond to the most common situations where MPs will be scrutinized by the media and the public, it does not cover all other appearances where MPs may violate norms of ethics and conduct, and harm the reputation of the parliament itself. The reality is that certain violations of conduct can happen at any time and that ethical behaviour of MPs is much wider than simple conduct and discipline in the plenary.

112. Provided that some of the breaches of norms and conduct might not trigger reaction from the authorized person (chair of sitting), and in case that these breaches are subject of complaint submitted to the Commission, the Draft Law does not contain detailed procedures on how the Commission should evaluate this complaint, and what are the measures and steps to follow in every instance. The Draft Law also fails to provide clear

100 See ODIHR's *ODIHR Background Study: Professional and Ethical Standards for Parliamentarians* (2012), p. 69. See also ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022)*, p.17

reference as to what sanctions are foreseen for corruptive behaviour, such as not declaring the interest in the register.

113. The controversial issue of suspension of MPs from the sessions, including a withdrawal of the right to speak (Article 44 (c-f)), as well as exclusion from standing parliamentary delegations to the international organisations (Article 44 (i)) **should be reconsidered so to avoid the risk that suspension could be abused by the majority to banish MPs from the chamber to distort the natural majority, as well as for punishing the opposition** (see also Sub-section 4.2.1. on the Conduct at the plenary sessions and sessions of the working bodies *supra*). Moreover, it is not clear what happens if the President of the Parliament decides not to proceed with the Commission's proposal to apply financial sanctions as per Article 45(7) of the Draft Law.

114. Article 54 of the Draft Law regulates the application of sanction related to the conduct of MPs during official trips abroad. While the Draft Law elaborates what kind of behaviour will be considered as violation, the procedure in this case is not detailed, particularly as to who is eligible to notify about this violation, and how the examination of this type of complaint would be organized. Overall, the Draft Law, although having a very detailed and exhaustive list of sanctions, does not elaborate in details on respective procedures before the Commission, or Standing Bureau (see Sub-section 7.2. on Monitoring and Complaint Mechanism *supra*). Additionally, the right to appeal the decision to sanction (or not to sanction) the MP, is not foreseen by the Draft Law.

RECOMMENDATION H.

To reconsider the issue of suspension of an MP from the sessions, including a withdrawal of the right to speak (Article 44 (c-f)), as well as exclusion from standing parliamentary delegations to the international organisations (Article 44 (i)) to avoid the risk of abuse by the majority to banish MPs from the chamber to distort the natural majority, as well as to punish the opposition.

8. PROCESS OF DEVELOPING AN ETHICAL FRAMEWORK

115. The planning and preparation for the drafting of a set of ethical rules or Code of conduct/ethics for MPs, and the drafting process itself are fundamental to ensure broad consensus about its content, greater acceptance and ultimately compliance with its rules. At the initial stage, the process of developing such an ethical framework requires a comprehensive assessment of the particular context, compatibility with formal and informal rules and (international and national) norms in the existing legislative framework, as well as challenges and risks affecting the work of the parliament and MPs. Further, catalyzing an inclusive, open and meaningful public discussion on integrity standards and expectations of MPs' conduct enables the parliament to develop a common understanding on appropriate conduct, thereby boosting a sense of ownership, as well as addressing the low levels of public confidence.[101]

101 See e.g., ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022)*, p. 44. See also CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), Sub-Section 1.6.

116. Consultations[102] should not only be conducted with the wider public but also with all relevant internal stakeholders, such as with representatives of all parliamentary political parties and fractions in the process of developing a code of conduct, aiming for a cross-party consensus, and ensuring balanced participation of women and men and other groups. This is crucial in building legitimacy, developing a sense of shared ownership among MPs and contributing to their effective, responsible and consistent use of the developed Code. Practice suggests that ensuring the clearly delineated responsibility of one body for driving the development process, established in a fair, inclusive and transparent process, is another vital precondition for an effective and enforceable code of conduct.[103]

[END OF TEXT]

102 UNODC, *Legislative Guide for the Implementation of the UN Convention against Corruption* (2nd revised edition, 2012), para. 91, which states that *"[s]ome good practices include the development of rules through a process of consultation rather than a top-to-bottom approach, the attachment of ethical rules to employment contracts and the regular provision of awareness-raising initiatives".*

103 See e.g., ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (*2022), pp. 44-45.