WHITE BOOK

FOREIGN INVESTORS ASSOCIATION

2019

WHITE BOOK

2019

The proposals of foreign investors
for improvement of the investment climate
in the Republic of Moldova

2019
Chisinau, Republic of Moldova

FIA Office
19 Timis street, of. 301
Chisinau, MD-2009
Republic of Moldova
Telephone: +373 22 24 43 17; +373 22 24 03 72
Internet: www.fia.md
E-mail: project.manager@fia.md; office@fia.md

White Book 2019

TABLE OF CONTENTS

Text *NB. Blue frame with white text - suggestions 2017*

Text *NB. Gray frame with blue text - suggestions 2019*

- Issues

- Suggestions

ABOUT FIA

The Foreign Investors Association (FIA) is a non-profit association from the Republic of Moldova, founded in September 2003 by eight foreign investors, with the support of OECD, within the framework of a project that aimed to stimulate the reforms and the improvement of the business environment in the Southeastern European countries. It is the first non-political and non-profit Association, that includes companies with foreign capital, activating in the Republic of Moldova.

The Association has among its members the largest companies with foreign capital in the country, that came from markets with different practices, culture and experience, but that offer a wide variety of goods and services, covering all the fields of the country's economy - industry, agriculture, infrastructure, telecommunications, healthcare and pharmaceuticals, distribution, consulting, etc. The Association has investors from: Austria, Germany, France, Italy, Romania, Ukraine, United Kingdom, Japan, Turkey, Sweden, Kazakhstan and the United States of America.

According to the Board of Directors decision of 19 April 2017, it was decided to optimize FIA activity by focusing on Individual Approach - each member should be individually considered.

The objectives of the Association are:

- representing and promoting member's views both, defend the common interests, and to attract new investments;
- cooperating with public authorities of the Republic of Moldova to overcome the difficulties and the barriers that may exist in relations with the foreign investors;
- protecting the interests of the international business community in the Republic of Moldova;
- providing information to its members, but not only, about the investment climate in the country;
- sharing with the potential investors FIA members' experience, etc.

The main mission of the Association is to facilitate the dialogue between the relevant decision makers and foreign investors, in order to create a sound investment environment.

FIA is:

- the first and the only business Association, representing Foreign Direct Investments;
- members with an impeccable reputation and a strong presence on the Moldovan market;
- a firm commitment in promoting reforms for a healthy investment environment, attracting foreign investments in the Republic of Moldova economy and an open dialogue with public authorities;
- a unique alliance of the biggest and the most prestigious strategic investors of the country, out of the politics and competition.

FIA represents the interests of its members in various structures, such as: Economic Council to the Prime Minister of the Republic of Moldova, Economic Council to the President of the Republic of Moldova, Advisory Council under the Ministry of Finance, Coordination Committee on E-procurement, Consultative Committee within Customs Service, National Confederation of Employers of the Republic of Moldova, Parliamentary Commissions, Regulatory Impact Assessment Working Group ("Guillotine"), Dispute settlement councils within state control bodies, etc.

Executive Summary

The White Book 2019, was elaborated by the experts of FIA member companies, and it is at the sixth edition. The first edition of the White Book was published in 2005, representing a real platform for dialogue between the business environment and Moldovan authorities and reflecting the priorities of FIA activity.

The White Book is the Association's business card, that represents a recommendation document and describes a concrete action plan for improving the investment climate in the country and attracting investments in the Republic of Moldova economy.

Chapter I. Justice System - presents experts' proposals and recommendations for justice system rehabilitation. We are firmly convinced, that without the development partners support and monitoring, the courts and the prosecution bodies are not capable to clean themselves independently.

In this respect, FIA members propose to create a Special Temporary Monitoring Mission (for a period of up to 10 years), with the support of the development partners.

The Monitoring Mission members should have unlimited and unrestricted access to all the materials and acts of law enforcement bodies, as well as the competence to verify the objectivity of the decisions taken at all the levels of the justice process: from the initiation of criminal cases up to the adoption of the courts irrevocable decisions.

Chapter II. Tax Legislation – in recent years, the business environment went through a large number of tax and customs legislation amendments, being thus challenged to adjust its business strategies, but also being exposed to uncertainty, concerning the long term planning of its activity. Moreover, it is a well known fact that the stability of the tax and customs policies represents a determining factor in attracting investments in the economy. Also, the situations when tax legislation amendments come into force immediately after publication or retroactively should be excluded.

Chapter III. Labor Relations – labor relations and the outdated provisions of the Labor Code continue to be a priority for foreign investors. The Legislation of the Republic of Moldova, regulating labor relations, continues to represent one of the areas in which changes are taking place very slow and difficult. We continue to believe that flexible labor relations represent an important factor for the creation of a competitive economy, and attraction of the investments in the economy of the Republic of Moldova. Also, in the context of labor shortage, we believe that the relevant authorities should elaborate and approve policies and strategies meant to keep the labor force in the Republic of Moldova, but, also, to facilitate the import of labor force from abroad.

Chapter IV. Competition - the Foreign Investors Association members have continuously promoted the establishment of transparent and clear rules for carrying out economic activity, supporting fair competition conditions. We continue to believe that creating and maintaining a healthy competitive environment represents an important task, which can be implemented only through the joint efforts of the business environment and state authorities.

Chapter V. Waste Management – one of the major environmental issues of the Republic of Moldova is the issue of waste. Only an insignificant percentage of waste is recycled or processed. Waste management represents a very complex issue, and requires a system-based approach. In this respect, foreign investors consider that it is crucial to draft and adopt a National Action Plan, which would include the actions of the state at the national, regional and local levels, and which would represent the basis of future activities related to integrated waste management. This plan has to stipulate the model that the Republic of Moldova will choose for the short, medium and long term, the proposed outcomes, the necessary investments, as well as how the extended responsability of the producers will be integrated in the created system.

Chapter VI. Digitalization of the Economy - the digitalization is one of the most visible phenomenon of the current decade, and its evolution is extremely fast. We expect for the current accelerated digitalization of the economy phenomenon to have positive effects on competition, and the facilitation of B2B and B2G relations.

Chapter VII. Healthcare and Pharmaceuticals – the healthcare sector in the Republic of Moldova continues to be mainly based on healthcare public institutions. This situation is explained by the large share of the public sector in the total number of healthcare institutions in our country. Also, we can state the insignificant presence of local medicines on the pharmaceutical market of the Republic of Moldova. This is due to the insufficient support provided by public authorities to local medicines producers, but also to the low information level of the population.

Chapter VIII. Land Issues – the current regulations of the land legislation limit and restrict the decisions foreign investors take to make long and medium term investments in this sector. Also, in the context of global warming, climate and environmental changes, farmers are facing difficulties related to the irrigation of agricultural land. Thus, we consider relevant the finalization and approval of the new Land Code, as it will solve a number of proposals and measures presented in this chapter.

Chapter IX. Telecom Industry - telecommunications service providers have a special importance for of the Republic of Moldova economy, their contribution representing around 3.4% of the GDP in 2018. At the same time, they are among the largest taxpayers and employers in Moldova, investing continuously in the development and the modernization of their infrastructure, promoting innovations and ensuring technical progress. Unfortunately, the investment capacity of the telecommunications service providers is impacted by the unfair over taxation, which hinders the development of networks, and the implementation of new information technologies.

JUSTICE SYSTEM

Foreign Investors Association members are firmly convinced that without the development partners (EU and USA) support and monitoring, the courts and prosecution bodies, created under widespread corruption and captured state conditions, are not capable to clean themselves independently of dishonest and corrupt officials, that can only teporarily stop their distructive activities, in order to demonstate their loyalty to the new authorities.

For a complete rehabilitation of the justice system, in order to eliminate corruption and ensure the fundamental right of the Republic of Moldova citizens to objective investigations and a fair justice, FIA experts suggest a number of proposals and measures in this regard.

Creating a Special Temporary Monitoring Mission of the development partners

It is recommended to create, with the support of the development partners, a ***Special Temporary Monitoring Mission*** (for a period of up to 10 years). The Monitoring Mission members should have unlimited and unrestricted access to all the materials and acts of law enforcement bodies, as well as the competence to verify the objectivity of the decisions taken at all the levels of the justice process: from the initiation of criminal cases up to the adoption of the courts irrevocable decisions.

Obviously, in this respect, the availability of both the development partners to support this project, and the Parliament to amend the legislation of the Republic of Moldova, is necessary.

Ensuring a transparent selection process of judges

The candidates selection for the functions of **judges, prosecutors and employees of the law enforcement bodies (Ministry of Internal Affairs, Security and Intelligence Service of the Republic of Moldova (SIS), and the Customs Service)** has to be conducted by competent committees with the **mandatory participation of the Development Partners' Monitoring Mission,** considering the candidates' professional background, integrity, capacity and efficiency.

Amending the legislation and developing programs, which could attract foreign qualified specialists to activate within the prosecution bodies, the Ministry of Internal Affairs and the Supreme Court of Justice

Currently, the legislation forbids foreign citizens to work within courts of law, prosecution bodies and for law enforcement bodies (the Ministry of Internal Affairs, SIS and the Customs Service).

Introducing anti-corruption mechanisms during the selection of judges, prosecutors and employees of law enforcement bodies (Ministry of Internal Affairs, SIS, Customs Service), and controlling their activities

The legislative consolidation regarding the compulsory requirement for judges, prosecutors, and employees of law enforcement bodies to annually submit income statements, integrity / goodwill declarations (lack of conflicts of interest in the decision-making process), and statements on family relations, including traditional spiritual relationships (godparents, godchildren, etc.).

Ensuring a continuous monitoring of the lifestyle, income and expenses of judges, prosecutors, and employees of law enforcement bodies. The refusal of these persons to demonstrate the lawfulness of the sources of origin of their properties / goods / wealth should become ground for dismissal.

The implementation of the above-mentioned measures would become the responsibility of the **Development Partners' Monitoring Mission** and would oblige the law enforcement and control bodies to submit all necessary information to the Mission's employees.

Implementing the the annual assessment and reassessment of judges and prosecutors

The assessment and the reassessment of judges and prosecutors should be conducted ***annually*** by the Assessment Commission, comprised of foreign experts, notorious law professors / legal experts and members of civil society.

In present, the Assessment Commission includes 5 judges and 2 members of civil society. For an objective and full assessment of the candidates, the Assessment Commission members must be selected not by the same judges or Superior Council of Magistracy, but as a result of a transparent selection process, organized by the Assessment Commission, that will comprise representatives of the Development Partners' Monitoring Mission, Ministry of Justice, Parliament and civil society. For this purpose, it is necessary to make the relevant amendments to the current legislation.

"De-criminalization" of economic crimes

We consider imperative the de-criminalization of economic crimes, except the crimes from banking sector, money laundering, economic fraud, money and documents counterfeit.

It is necessary to ensure the reclassification of such economic crimes from "severe" into "less severe", to review the monetary ceilings in CPP, and ensure they reflect the economy reality.

Ensuring the specialization of judges

Unfortunately, in present, there are no qualified / competent judges in different areas such as trade, competition, intellectual property right, personal data protection, etc.

Introducing during the transition period of the interdiction to use the arrest for economic and property crimes

The interdiction to use the arrest as a preventive measure for economic and property crimes, the damage from which does not exceed 250.000 EURO. In present, this measure is abusively used, to put pressure on businessmen and to obtain fictious evidence.

Reforming the investigative judge statute

In present, an investigative judge is forced to accept all the steps taken by the prosecutor because his / her position is vulnerable. If the prosecutor's request is rejected, the judge's decision can be disputed at the Court of Appeal, that can cancel the judge's decision. In this case, the same prosecutor can initiate the criminal procedure on investigative judge towards the illegal decision making.

Reducing the examination terms of cases in the courts of law

Establishing a deadline for the examination of cases in the courts of law, especially if the preventive measure is the arrest.

Excluding the "judicial mediation" procedure

This procedure is a formal one, which delays the trial process by 45 days. The courts of law practice demonstrates the inefficency of this instrument, as in most cases the parties fail to sign a reconciliation transaction during the mediation procedure (which is the aim of this procedural instrument). Moreover, signing a reconciliation transaction by the parties involved in the litigation, can also be performed outside of / without any judicial mediation procedure, which outlines the inefficency of this instrument. Also, the current legal framework allows the parties of a litigation to sign a reconciliation transaction outside of a trial process (the reconciliation transaction which avoids a trial process), providing thus to the parties the mechanisms of extrajudicial litigations settlement.

Customizing the cases and court decisions published on the courts' of law portal with the participation of legal entities

In present, these materials contain errors related to the names of the participants to the court processes and in court decisions.

Continuous update of the courts of law web pages

- Continuous update of the courts of law web pages, by adding additional search filters for the files which are to be revised and the court hearings. Additionally, making it compulsory for the relevant courts of law employees to update the information published on the website by giving correct and unique information. Providing different names to the same institutions should be prohibited (for example: ANRCETI / National Agency for the Regulation of Electronic Communications or Informational Technologies / National Agency for the Regulation of Electronic and Informational Technologies), names of individuals and legal entities involved in the trial processes; the meetings' results, the schedule of the upcoming meetings, etc. should be provided as soon as possible to ensure the most efficient involvement in this process. Also, we consider necessary to ensure the functionality of the electronic files informational system to have direct online access to the content of the files.

Ensuring the judicial and parliamentary control of the requests content

- To ensure the judicial and parliamentary control of the requests content received from the control bodies for electronic services providers, related to the decryption of electronic conversations / messages. Prohibit unauthorized interceptions of telephone conversations / messages.

Exclusion of personal liability

- Exclusion of personal liability of persons holding responsible positions, for the committed crimes / contraventions, for example those related to relevant legislation infrigement, or owned authorization, consumer rights, etc. These are contraventions committed during the economic activity, and are a part of the commercial risk. Thus, the legal entity should be responsible for such offences, and not the administator personally. We believe that this is an abusive practice of the State to try to eliminate such offences by adding the administrator personal liability.

Art. 190 „Fraud" of the Criminal Code of the Republic of Moldova

- Supplementing art. 190 „Fraud" of the Criminal Code of the Republic of Moldova by adding the liability for premeditated (intentional) non-execution of contractual obligations, which caused damages in large proportions.

  Some entities, in particular those from the telecommunications sector, are facing a large number of frauds committed by economic agents, which require the purchase of significant volumes of devices, being paid in installments and / or at a promotional (subzidized) price, on the pretext that these items are needed to launch or expand a business. After the delivery of the devices, they stop any payments and the devices are sold (usually through online announcements / advertising platforms), and the revenue is retained by the offenders. In order to be able to continue the fraudulent purchases, offenders create new entities, using interposed persons as associates, administrators or power of attorney holders. Thus, in this case, we talk about an iterative criminal behaviour, when the buyer purchases the devices without planning to pay for them, but to resell them and retain the money.

TAX LEGISLATION

In recent years the business environment went through a large number of tax and customs legislation amendments, being thus challenged to adjust its business strategies, but also being exposed to uncertainty, concerning the long-term planning of its activity. Moreover, it is a well-known fact that the stability of the tax and customs policy represents a determining factor in attracting investments in the economy.

In this respect, we consider necessary to take all needed measures to ensure the stability and the predictability of the tax and customs policy, as well as to exclude the practice of frequently amending the Tax and Customs Codes.

Also, the situations when tax legislation amendments come into force immediately after publication or retroactively should be excluded.

In addition, investors insist to participate at public consultations, referring to normative acts that have impact upon business environment; according to the provisions of Law no. 100/2017 on normative acts and Law no. 239/2008 on transparency of the decision making process, being obligatory accompanied by the Regulatory Impact Assessment.

TAX POLICY

The correlation of the terms used in the tax legislation with the International Financial Reporting Standards (IFRS) and the new National Accounting Standards (NAS)

Since January 1, 2012 it is mandatory for the public interest entities to prepare financial statements according to IFRS, and since January 1, 2020 the application of the new NAS by all entities, excepting the public interest ones and those which did not adopt the IFRS, is mandatory.

For tax purposes, the financial statements methods based on the new NAS and IFRS provisions, which don't contravene to the tax legislation, can be implemented. The new IFRS and NAS include new terms, which are different from those used in the tax legislation and which can generate confusions and other interpretations of the tax legislation.

In particular, we refer to:

- income / expenses tax treatment of the agricultural produce at its fair value minus the estimated costs at the point-of-sale during harvesting, according to the IAS 41 Agriculture;
- the fiscal treatment of the wear of right of use and of the expenses linked to interests acknowledged by the tenant (excepting small under one-year contracts and low value assets) based on IFRS 16 Leases, which entered into force on January 1, 2019.

We propose the uniformity and correlation of the terms used in fiscal legislation with those foreseen by the new NAS and IFRS, especially by:

- deducting expenses and the taxation of the harvested agricultural produce according to IAS 41 Agriculture;
- deducting the wear of the right of use, according to the IFRS 16 Leases, as well as deducting the interest-related expenses (according to the same standard) within the limits foreseen by art. 25 of the Tax Code.

PAYROLL TAX

State social insurance contributions

The financial pressure on the Social Insurance Budget continues to grow. On a long term, the pressure can be reduced by creating private pension funds.

Also, the agricultural sector employers are not allowed to receive other types of income, (e.g. selling unused spare parts, sub-lease of agricultural fields, leasing agricultural equipment, etc.).

It is recommended to stimulate the creation of private pension funds by creating the appropriate legal framework and redirecting individual contribuions, at employees' discretion. To modify Law no. 329/1999 on non-state pension funds, by aligning it to the EU best practices, providing tax facilities for employers and employees, the contributions to which would be deductible.

It is recommended to establish the ceiling for contributions payment to state social insurance, within the limit of the amount of 5 average wages per month, projected annually, based on Government Decisions.

Also, it is recommended to improve the agricultural field legislation by revising the conditions of implementing social insurance payments facilities for employers, who have over 75% of their income coming from agricultural activities.

Mandatory health insurance premiums

Both the employer and the employee pay into the Mandatory Health Insurance Budget premiums of 4.5% each, calculated based on the gross salary. Simultaneously, the insurance premium calculated based on a fixed cover represents 4056 MDL (for 2019), and certain categories of insurance holders benefit from 50% or even 75% waivers, if they pay the premium within the first three months of the year. The health insurance is not individualized and does not include the paid volume of premiums compared to the potential services provided to the insurance holder.

We propose to establish a payment ceiling, by setting a maximum limit of mandatory health insurance premiums limit, equal to 5 average month wages, based on Government Decisions.

Also, we consider relevant to stimulate the creation of private health insurance funds, that will ensure a fair competition between public and private service suppliers.

Taxes applied to benefits provided by the employer

The benefits provided by the employer are taxed by income tax, social contributions and health premiums. These contributions / premiums applied to the facilities provided by the employer represent a burden for both employers and employees, and do not stimulate the employers to support the healthy interests of the employees, as well as social and cultural matters.

We recommend that the amenities provided by the employer to be taxed only through the income tax, and not through the social contributions and health insurance premiums, too.

Respectively, the types of rights and income to which mandatory social state contributions are not applicable (Annex 3 to Law no. 489/1999 on the public system of social insurance) and the Law on the amount, form and the terms of paying the state mandatory health premium no. 1593/2002 should be supplimented with the provisions in this sence.

Transportation of employees

Limiting the employer expences for the transportation of employees for tax purposes deductions creates obstacles for entrepreneurial activities. The amount of these expences should remain at the discretion of each entity.

We suggest to amend the point 33 of the Regulation on determining fiscal obligations related to income tax of legal entities and individuals who perform entrepreneurial activity approved by Government Decision no. 693/2018.

Also, it is recommended to exclude the employee transportation expenses ceiling and the full deduction, at income tax calculation.

INCOME TAX FOR ENTREPRENEURIAL ACTIVITY

Reviewing the deduction regulation concerning the income tax of the entrepreneurial activity

Current provisions on deductions of certain expenses from the income tax of the entrepreneurial activity are often unclear, being differently interpreted by taxpayers, as well as by authorities, leading thus to errors made by taxpayers and to an inconsistent application of the respective provisions by the tax authorities.

Therefore, we consider that the review of the deduction rules (art. 24 of the Tax Code, the Regulation on determining fiscal obligations related to income tax of legal entities and individuals who perform entrepreneurial activity, according to Annex 1 of GD 693/2018) for the purpose of calculating the income tax applied to certain expenses linked to the entrepreneurial activity should be on the agenda of the relevant authorities. Namely, we refer to the need of defining clear criteria, which would determine **the ordinary and necessary expenses** included in an entrepreneurial activity.

Deducting expenses for capital repairs of leased fixed assets

It is recommended to harmonize the provisions of point 8^1 of the Regulation on the evidence and calculation of fixed assets amortization for tax purposes (Government Decision no. 289/2007) and point 9 of Annex no. 5 of the above mentioned Regulation, as well as to stipulate that the expenses for capital repairs of the leased fixed assets to be fully deducted throughout the duration of the leasing contract.

Deducting the allowances for non recoverable receivables

The procedure of collecting the receivables through a court of law is burdensome, expensive and lengthy, and it represents the only possible way to acknowledge the deduction of non-recoverable receivables.

Similarly to the mechanism implemented for the non-banking credit organizations (for the leasing contracts), we propose removing the court of law procedure for the deduction of non-recoverable receivables (for which the payment period has expired), by taking a certain percentage from the average annual balance of receivables, if they don't relate to persons affiliated to the taxpayer.

Thus, we propose to amend the art. 31 par. (1) of the Tax Code with the following statement:

„The deduction of expired debts amounting to 5% of the annual average balance of debts is allowed if these debts are not related to persons affiliated to the tax payer".

The tax treatment of allowances cancellation created in previous periods

According to art. 31 par. (2) of the Tax Code, the expances with allowances are not allowed to be deducted for tax purposes. If the allowance shall not be used, according to point 88 of NAS "Own capital and debts", it shall be cancelled by settlement of current revenue.

Currently, no normative act states expressively the obligations of taxation / non-taxation of income from allowances cancellation.

We propose to amend the tax legislation by including under non-taxable revenues allowances, which previously, according to the Tax Code, were not allowed for deduction.

Thus, it is recommended to supplement art. 20 of the Tax Code with a new point, with the following formulation:

"The sum of the income from allowance cancellation which previously were not allowed for deduction under the Tax Code".

UE Tax exemption for dividends paid to companies registered in the EU member states

The EU Association Agreement foresees the compulsory harmonization of the Republic of Moldova legislation with the relevant EU legislation. 2011/96/EU Directive foresees the exemption of the income tax for the payment source upon the payment of dividends to mother - companies from the EU member states (and which hold a participation quota of at least 10% of the capital of the daughter company for a period of at least two years), avoiding thus double taxation of this income.

Taking into consideration the EU Association Agreement, as well as the fact that the Republic of Moldova did not sign the Conventions avoiding double taxation with the EU member states, (e.g. France), or that certain current conventions are outdated, (e.g. Germany), we recommend implementing the tax legislation of 2011/96/EU Directive.

We recommend tax exemption for the paid dividends to mother-companies (residents of the EU), aiming to align the legislation to the European Directives, as well as to incentivize investments in the EU and in the Republic of Moldova.

Thus, we propose adding under art. 20 of the Tax Code a new point to contain the following statement:

"Dividends paid to mother-companies from the EU member states (which hold a participation quota of at least 10% from the capital of the daughter company for a period of at least two years)".

Extending the validity of the tax residency certificate

In present, in order to apply the provisions of an agreement on avoiding double taxation, it is compulsory for the non-residents to submit to the income paying entity a tax residency certificate, issued by the tax authority of the residency state before the income payment date. This certificate is submitted per each calendar year.

We propose to amend the tax legislation by excluding the obligation for non-residents to submit a residency certificate by the income payment date, excluding from art. 793 par. (2) of the Tax Code the phrase: "by the date of income payment". Usually, the certificate is valid throughout the calendar year, regardless of the date it is issued on.

The amendment of the international business trips documentation

According to point 16 of the Regulation on employees delegation of entities from the Republic of Moldova (Government Decision no. 10/2012), in case of business trips abroad, the compensation for taxi trips expenses is provided only when the arrival or departure times do not match the schedule of public transportation.

We propose to exclude from point 16 of the Regulation of the provision regarding the compensation for taxi trips expenses when the arrival or departure times of the employee do not match the schedule of public transportation.

When traveling internationally, employees don't have any information about the public transportation schedule from the respective locality. We believe that limiting the compensation of taxi transportation expenses upon the delegation of employees abroad creates an additional burden for bookkeeping and tax statements without having a significant fiscal impact for the National Public Budget.

The amendment of the provisions related to salary maintaining during business trips

According to provisions of point 13 of the Regulation on employees delegation of entities from the Republic of Moldova (Government Decision no. 10/2012), an employee delegated for a business trip abroad will keep it's position and will be kept on the monthly salary during this time, including the time spent on the road, according to provisions of article 175 of the Republic of Moldova Labor Code.

This point was amended based on Government Decision no. 740/2017, however art. 175 of the Labor Code was not amended, thus there is an inconsistency between the Regulation and the Code.

At the same time, in Government Decision no. 426/2004 on the approval of the average salary calculation formula, point 2 foresees the payment of average salary during the business trip duration.

Under these conditions, we propose the following amendments:

1. art. 175 of the Labor Code, by excluding the word: "environment";

2. point 13 of the Regulation on temployees delegation by excluding the word: "monthly";

3. point 2 of the Regulation on the calculation of the average salary by excluding the applying of the average salary during the employees business trips.

Deducting the expences for optional health insurance premium of employees

The insurance of employees implies a right which can be or cannot be used. Purchasing the insurance policy does not oblige to use it. The employee will benefit from insured medical services only in case of illness and only for the services covered by the optional insurance.

The taxation of the employees will be performed when the insurance policy is issued, however, de facto, this benefit might not be used. In this case the employee supports the unfunded tax. Another unjustified tax is the one covered by employees who resign in the near future, (e.g. within a month), because the policy will be disabled on the resignation date and the benefit shall not be used. The tax which was already paid cannot be recalculated, because the employer doesn't know if the benefit was used or not and in what amount.

We recommend to amend the art. 24 par. (20) of the Tax Code to allow the full deduction of annual expenses supported by the employer for the employee optional health insurance premium payments.

Reviewing the fuel consumption norms

The fuel consumption norms modified by the Ministry of Economy and Infrastructure Order no. 34 of 06.02.19, which are extremely low and do not correspond to the real consumption. Fuel consumption over norm, due to the fact that the norms do not correspond to the reality, it will represent a non-deductible expense for the entity and will lead to the income tax increase from the entrepreneurial activity and the VAT refund related to these expenses.This situation will create an additional fiscal burden for the economic agents.

We propose to review the fuel consumption norms approved through the of the Ministry of Economy and Infrustructure Order.

The accounting for discounts

The discounts for the purchased assets are usually applied after they are purchased. For example, for merchandise, which during a month's time were not sold, the distributors give a price discount to the buyer in order to reduce the acquisition cost and facilitate the sale of goods.

Based on the current provisions of NAS, companies have high value stocks, which do not reflect the market prices, simultaneously registering income from discounts. Sales are not made and the taxable income increases, and company performance (P&L) doesn't reflect the real situation.

We recommend to adapt NAS provisions to allow the inclusion in the assets cost (CAPEX) of the discounts received after their application.

For goods: proportional to the current stock at the date of the discount.

Nontaxable income sources

In present, the process of packaging return (returning package, resulted from the consumption of a product) is not regulated by the national legislation and due to this legislative gap, there are difficulties related to the implementation of the national program on ensuring the packaging recycling.

Thus, if a consumer wants to return the packaging, he / she has to return it at a point of sale. At its turn, the sales point, in order to accept the returning packaging, has to document this operation. Legally, this operation represents a selling-buying act of the packaging, wherein the consumer is the seller and the point of sale - the buyer. Thus, the income resulted from packaging selling, which falls under art. 18 of the Tax Code, representing a taxable income. At the same time, as the sales point signs a juridical act with an individual, it has to document this operation and to ensure the tax withholding at the payment source. This will imply the issuance of a number of purchase confirmative acts, as well as subsequent tax obligations for the sales point. These obligations imposed on the sales point make the entire packaging return operation unattractive for both, the consumer and the sales point

The implementation of this tax amendment wouldn't have a significant impact on the state budget, because currently the income from these operations is does not exist or is insignificant.

On the other hand, placing the income from the sale of packaging under the nontaxable income category would have a positive impact on several areas:

In this context we propose to amend art. 20 of the Tax Code as follows:

"Art. 20. Nontaxable income sources

Z^{15}: income of resident individuals (citizens of the Republic of Moldova and stateless persons) from selling returnable packaging".

a. Environment – this initiative would allow the reuse of packaging, reducing packaging waste;

b. Economy - this initiative would support the development of a long-forgotten sector of the national economy - collection points of glass, which would create jobs and lead to the launching of new businesses; Reducing the production costs for producers, because instead of purchasing new packaging they will be able to reuse several times the existing one, hence reducing their production costs, which will also lead to lower prices of products, giving national products an economic advantage on the market compared to the imported ones;

c. Society – this initiative would create for the socially vulnerable persons an opportunity to secure their livelihood through legal means by collecting and taking the packaging at the collection points.

Income tax payed by private healthcare providers

The private healthcare providers are facing certain challenges, including those related to state tax policies. These challenges represent the result of existent gaps in the legislation in-force, which are infringing the equality principle of the healthcare providers and the autonomy principle in the mandatory health insurance system. Also, the private healthcare providers have limited rights compared to the public ones, being created thus an anti-competition situation.

According to the legislation, compared to the private healthcare services providers, public providers are exempted from paying income tax from the activities performed within the mandatory health insurance system.

Forcing the private healtcare sevices providers to pay income tax is assigned to the incompatibility of tax legislation with the one of mandatory health insurance system, and not only from the perspective of the equality principle, but also of the autonomy principle.

It is recommended to reintroduce art. 51¹ called ***„Medical healthcare services providers”***, twith the following content ***„Healthcare services providers who offer healthcare services within the the mandatory health insurance system are exempted from income tax received from these activities”.***

In art. 283 par. (1) letter m) to exclude the word ***„public”***.

Thus, we believe that the proposals submitted by us shall contribute to reducing the current gap by harmonizing tax legislation with the legislation on mandatory health insurance.

VALUE ADDED TAX AND EXCISE DUTY

VAT of imported services

We recommend the option of paying VAT on imported services until the 25th of the month, following the month on which the payment for the imported services was performed, according to the reverse-change mechanism foreseen by the EU regulations, by excluding par. (2) of art. 109 of the Tax Code.

Excise duties paid by the producers of goods to which excises apply

Currently, producers of goods on which excises are applied, are obliged to transfer excise payments to the State Budget at the moment of product delivery.

We propose allowing producers of goods on which excises are applied to pay until the 25th of the month, following the month on which the payment is performed (similarly to VAT). Such practices are used in most countries, including Romania, Ukraine and Russia.

Respectively, we propose to amend the art. 123 of the Tax Code.

Calculating VAT for the goods delivered in exchange of the agricultural land lease

Currently, the tax regulations require the VAT to be calculated based on the market price of the goods delivered in exchange of the agricultural land lease.

At the same time, the market price cannot be lower than the cost of the products (art. 99, par. (6) of the Tax Code) - which leads to additional costs for the agricultural entrepreneurs, especially in drought years, when the costs for certain harvested products can be higher than their market price.

We recommend excluding the compulsory calculation of VAT based on the goods delivered in exchange of the agricultural land lease, par. (6) from art. 99 of the Tax Code.

VAT exemption without the right to deduct goods and services purchased and imported by collective systems

According to the provisions of art. 12 of the Law no. 209 of 29.07.2016 on waste, WEEE producers are obliged to take measures individually or collectively to recover and recycle out of use WEEE products.

Collective systems are created according to normative acts, these are noncommercial (nonprofit), nongovernmental and apolitical organizations, the goal of which is to taking over and honoring the responsibility for the management of electric and electronic equipment waste (WEEE), the members of which (the producers) have to comply with, according to Law no. 209 of 29.07.2016 and Government Decision no. 212/2018.

The activity of the system can include the procurement of goods and services necessary to manage WEEE. Waste, according to art. 103 of the Tax Code, is exempted from VAT. Thus, we propose that the deliveries addressed to collective systems to be also exempted from VAT.

We propose to amend art. 103 of the Tax Code by adding a new paragraph (91¹) as follows:

“(91¹) VAT will be exempted for the goods and services imported or purchased on the territory of the Republic of Moldova by collective systems created with the goal of taking over and honoring the obligations of the electric and electronic equipment waste producers or their authorized representatives, who act on behalf of the producers, regarding the management of electric and electronic equipment waste”.

The documentary confirmation of the right to VAT returns for goods exports

Currently, besides the sale and purchase agreement, the export customs declaration, etc., the invoice copies to confirm the right for VAT return for exporting products is also required.

We recommend excluding the invoice from the list of required documentation for VAT return for exported goods.

The VAT return mechanism

The tax legislation entitles the economic agents that perform capital investments for creation or / and purchase of fixed or intangible assets, to be used during the production process (providing of services / exectuion of works) the right of VAT return. This restriction limits the opportunities of economic agents that perform equipment investmnets for other purpose to use significant amounts of money kept on their accounts, which could be invested in the development of the enterpreneural activity.

We recommend to amend the provisions of the Tax Code (art. 93, point 18) and offer the VAT return right to all capital investments for equipment and machinery, and not only for those used for the production process (services provision / execution of works), but also for those used for commercial purposes (storage, logistics, packaging, etc.).

The penalty for not using e-invoices should be applied to the issuer

When purchasing goods and services on the territory of the country from a provider listed as a taxpayer obliged to use e-invoices, economic agents have the right to deduct the VAT only if they have an e-invoice issued by the provider.

We consider that the penalty for not using an e-invoice should be applied to the issuer and not to deprive the buyer of the VAT deduction. Thus, we propose excluding art. 102 par. (18) from the Tax Code.

OTHER TAXES AND FEES

Annual inventory

According to the provisions of Financial Reporting and Accounting Law, economic agents are required to perform an annual inventory.

At the same time, according to the provisions of point 3 of the Ministry of Finance Order no. 60 of 29.05.2012 on the approval of the Regulation on inventory, an entity performs an inventory at least once per reporting period.

We propose to amend point 3 par. (2) of the Regulation on inventory, and to foresee the performing the inventory of assets *at the discretion of the company's shareholders or management.*

Single account

All the bills can be generated through state tax service "Single Account", only according to the tax obligations and outstanding payments to the National Public Budget. Regarding the submission of the financial reporting before or by the deadline, the information regarding the outstanding payments related to taxes is updated only after the fiscal obligation due date. Thus, bills can be issued and paid only after the 25th of the month.

For the Single Account service to function, it is necessary to update the tax related debts (outstanding payments), when financial reports are accepted by the State Tax Service.

Tax exemption for real estate on land which is the object of an access contract

On 15.04.2016 Law no. 28/2016 on the access to properties and the shared use of of infrastructure related to public networks of electronic communications.

Art. 9 par. (3) and art. 41 expressly foresee that the provider of public services cannot be forced to pay taxes, fees, tariffs, and rent for leasing internal and external spaces for building or installing networks. Currently, the providers of networks and / or electronic communications public services calculate the tax based on real estate on spaces / land for which they have the access right.

In order to apply in practice the provisions of Law no. 28 / 2016, we propose to expressly stipulate in the tax legislation that taxes applied for real estate for spaces and land that are object of an access contract should be exempted for the taxpayer.

Thus, we recommend adding in art. 283 of the Tax Code a new paragraph as follows:

„The owners and leaseholders or the tenants of public authorities owned buildings and of institutions financed by public budgets at all administrative levels, pursuant an easement / right of way contract, concluded according to the current legislation, are exempted from paying real estate tax".

Submitting and publishing financial statements

According to art. 33 par. (3) of the Law on Accounting and Financial Reporting no. 287/2019 (in effect since 01.01.2019), an entity is obliged to submit to the National Bureau of Statistics the individual financial statements, the management report and the audit report, if applicable, within 120 days from the last day of the reporting period.

It is recommended to is to submit the financial statements and the management report within 120 days from the last day of the reporting period, and the **audit report** - within **180 days** from the last day of the reporting period by amending art. 33 par. (3) of the Law on Accounting and Financial Reporting no. 287/2019.

Local taxes

Currently used criteria to determine local taxes by local public authorities are not justified and are undue. Hence local councils determine at their discretion the local taxes quotas without providing any justification.

By amending the Annex to Title VII of the Tax Code on "Local taxes, terms of payment and tax reports", which have excluded the maximum quotas when applying the tax under art. 291, par. (1), letter e) „The tax for the commercial units and / or of social service provisions (excepting those located on the roads protection area outside of settlements)", demonstrating a significant increase of the tax burden for commercial units.

Currently, according to art. 292, par. (2) of the Tax Code: "The quota of local taxes is set by the local public authorities based on the characteristics of the taxable objects". According to the Annex to Title VII of the Tax Code, the taxable base of the taxable object, in case of commercial units tax, is calculated based on the space used by the commercial unit and / or service provision unit.

Also, according to art. 297, par. (6), letter a) of the Tax Code: "As an exception from the provisions of par. (5), the quotas of taxing will be set for the commercial units and / or service provision unit tax - based on the type of operations it conducts, the type of taxable objects, the location, the surface the commercial units and / or service provision units occupy, the category of the merchandise they sell and of the services it provides, operations schedule".

We suggest amending the Annex to Title VII of the Tax Code on "Local taxes, terms of payment and tax reports" in order to adopt maximum quotas for each commercial unit based on the classification of its activity and location. At the same time, we recommend to approve a single and compulsory methodology for all public local authorities to be used for the calculation of taxes for commercial and services providing units, which will protect both local public authorities and economic agents.

The following criterion is used to determine the local taxes for petrol stations: based on the location of the above-mentioned business units.

Thus, the petrol stations location categories are as follows:

- urban, located in the built-up area;

- rural, located in the built-up area of rural settlements;

- located outside of built-up areas of the two above mentioned ones.

Thus, it will allow the objective determination of local taxes, as the revenue depends on the location of the petrol stations.

At the same time, we propose an annual indexation of local taxes based on the inflation rate agreed upon by the relevant institutions, excluding other grounds for indexation.

LABOR RELATIONS

Labor relations and the outdated provisions of the Labor Code continue to be a priority for the foreign investors. The Legislation of the Republic of Moldova, regulating the labor relations, continues to represent one of the areas in which the changes are taking place very slow and difficult. Despite the recent amendments to the Labor Code of the Republic of Moldova (36 articles), there are still a number of challenges and obstacles in performing an efficient entrepreneurial activity.

We continue to believe that flexible labor relations represent an important factor for the development of a competitive economy, which could easily adapt to the market and economic conditions. Also, we consider relevant the development and the approval of a new Labor Code in which the labor relations are based on the clauses of an employment individual contract. This will contribute to the development of a prosperous economy and the creation of favourable conditions to attract new investments in the Republic of Moldova.

Military records of the service of the employees

The current provisions of Law no. 1245-XV of 18.07.2002 on the military training of citizens to protect Motherland and art.57 of the Labor Code it is mandatory for the employer to ensure daily records and inform monthly the Ministry of Defense about the employment status of each person, as well as to ensure that the records which are in place are according to the internal bylaws of the Ministry of Defense. Besides the fact that these norms are outdated, they also force employers to perform improper actions which require financial and human resources.

It is recommended to eliminate the current provisions of Law no.1245-XV of 18.07.2002 on the military training of citizens to protect the Motherland and art. 57 of the Labor Code which provides for the mandatory military records keeping of the employees.

Art. 60 Trial period

Currently, in order to verify the professional abilities of the employee, entering an individual employment contract, a trial period of maximum three months may be agreed upon.

In most cases, this period is not sufficient to verify the professional abilities of the employee.

It is considered, extending the trial period from three to six months, to be a justifiable amendment.

The Labor Code doesn't foresee the use of the trial period when an employee is transferred to another job.

Obvious, changing the function or, especially, transferring the employee to a new position in a different profession or in different labor conditions (different, compared to the previous ones, harder, more harmful, more dangerous, etc.) requires the applying of a trial period for the respective employee.

Once new responsibilities are taken over within the same company, employees do not have the trial period, which excludes the possibility for both employer and employee to verify the compatibility of the person with the new role job attributions.

It is suggested to complement art. 60 of the Labor Code with a new letter, which would allow the employer, as an exception, to apply the trial period in case of employee transfer to a new position, profession or to a job performed in hard or dangerous conditions.

Art. 62 Banning the trial period

Current provisions ban the use of a trial period for persons employed through a vacancy competition. The organization and implementation of the competition doesn't allow the identification of all abilities and competencies of the candidate, thus a trial period is necessary to fully and correctly assess the capabilities of the employee.

Art. 62 letter c). To cancel the restrictions on using the trial period for persons employed through a vacancy competition.

Art. 74 Transfer to another job

The Labor Code does not forsee the opportunity to temporarily transfer an employee on another position within the same company (based on the written agreement of both parties). This leads to problems related to filling temporarily vacant positions in a company. The only solution being the employment of new persons on the base of fixed-term or plurality of offices contracts, replacing a temporarily absent employee, which represents a disadvantage for the employer and for the employee. The transfer of the employee to another position within the same company is very important especially for the companies, where training of new employees takes time and implies specific knowledge and training (introductory courses, knowledge of informational systems and activity, security procedures, etc.) and a longer adaptation period. The temporary transfer of the employee is important also in case of temporary substitution of certain employees, heads and deputies of subdivisions, etc.

To include in the Labor Code a new article allowing the transfer of an employee for a determined period of time, with his consent, especially in cases of employees business trips, secondment of employees for short and medium - term assignments, plurality of offices of the temporarily absent employee, long-term sick leaves , etc.

Art. 88¹ The dismissal procedure in the context of a transfer to another unit

Currently, it is required to amend the dismissal procedure in the context of a transfer of an employee to another unit by signing a single tripartite agreement by the employee, the employer and the future employer, in stead of signing a number of mandatory documents: the request of the future employer, the employer addressing to the employee, and the written agreement of the employee.

The proposed amendment of the Art. 88¹ of the Labor Code creates a simpler and secure process of employee transfer to a different unit, with employee consent. The current procedure is a difficult one and requires the compulsory drafting of several documents by all parties and a formal procedure, which is not necessary.

Art. 98 The distribution of working hours throughout the week
Art. 68 The amendment of the individual employment contract

(1) The individual employment contract can be amended only by signing an additional agreement by the involved parties, which is annexed to the contract and becomes and integral part of it.

We propose to implement several amendments to articles 98 and 68 of the Labor Code, which will allow the modification for a short period of time of the work schedule, with the written consent of the employee, and without drafting an additional agreement to the individual employment contract.

These amendments are important especially for the companies that work with foreign partners, who come to solve problems linked to situations when the prompt adjustment of the work schedule of employees should be performed at the request of contractors or for the execution of some contracts, where temporary flexibility of the work schedule is needed.

These amendments will lead to the decrease of the overtime work within the respective unit and the overworking of employees, but also will increase the competitiveness of Moldovan companies on the external markets.

Art. 101. par. (5) Shift work

The respective regulation provides for the obligation of the employer to notify employees about the shift work schedule with at least one month before introducing it. At the same time, art. 101 does not foresee the situation when the shift work schedule should be changed for reasons which are not under employer's control, as it often occurs in practice.

It is suggested to amend par. (5) of art. 101 of the Labor Code by modifying the deadline for notifying employees about the work schedule with at least 14 days before it's implementation or as soon as possible, if the schedule is changed for reasons which are not under employer's control (leave of absence of an employee / of one of the employees, inability of an employee to continue working, etc.).

Art. 104 Overtime work

The legislation of the Republic of Moldova doesn't provide for paid free time rewards for overtime work.

To amend art. 104 of the Labor Code by introducing the possibility of rewarding for overtime work through free paid hours within 30 days after the overtime work was performed. Thus, the employee will benefit from free hours equal to the number of overtime work hours, whilst continuing to receive a salary for the work performed over the usual work schedule.

(7) Attracting employees to do overtime work can be based on a justified order (provision, decision, resolution) of the employer, which employees get acquainted with by signing it.

It is suggested to exclude par. (7) of art. 104 of the Labor Code and the amendment of this article in order to ensure the adaptation to the real conditions of the work process.

The respective provision can be applied only in predictable situations, when the employer has sufficient time to issue an order and to notify about it the employees. For the most situations listed under par. (3) of art. 104, issuing an order and notifying the employees about it in due time is practically impossible. We believe that the written agreement of the employee (also through electronic means) is sufficient to start the overtime work.

Art. 124 Maternity leave and partially paid child care leave
Art. 126 Unpaid additional childcare leave for toddlers aged between 3 and 4 years

It is suggested to supplement the respective articles with provisions which would foresee the employee to inform in advance the employer about the date of return from social leave.

Setting out reasonable terms for informing by the employee about the date of return from the childcare leave will create a certain predictability for both the employer and for the employees replacing the employee on leave during this time, and whose individual employment contract will be soon terminated.

Conflict of interests
The lack of a non-compete clause

To introduce a non-compete clause, stated in the EU legislation: "Parties can negotiate and include in the contract a non-compete clause under which the employee agrees not to enter into or start, for his/her own interest or of a tertiary part, an activity competing with the employer for a monthly non-compete allowance which the employer commits to pay throughout the validity of the non-compete clause". In the same context, the non-compete clause can be negotiated by the parties during the negotiation on terminating the individual employment contract, and not necessarily in the Contract itself. The obligation of paying the monthly non-compete allowance has to be correlated with the obligation of the employee to pay penalties (damages - interests), should this clause be infriged.

The lack of a conflict of interests' clause

To introduce a new clause on conflict of interests. "The employer can add in the individual employment contract or in the bylaws a clause on conflict of interests, under which the employee has to declare the conflict of interests". Art. 9 par. (2) letter j). The employee has to declare the potential conflict of interests, according to the procedures established by the employer. Art. 74 par. (1) excepting the conflict of interests cases. "the conflict of interests - the conflict between the exercise of duties and personal interests".

Art. 34, 42^1 par. (6), 55^1 par. (5), art. 97^1 par. (4), art. 197^1 par. (5) from the Labor Code

Making it compulsory for all enterprises to have an information board accessible to everyone at the head office of the unit is an outdated approach, which is also inefficient. It is evident, that nowadays sharing information through electronic means represents a more prompt and efficient solution, and it gives the opportunity to the employer to provide the necessary information to the employee in a timely, customized and complete manner. The legal provisions should give the employer the possibility to choose the most efficient communication means with its employees.

Art. 216 Apprenticeship contract and continuous professional training contract

According to apprenticeship contract and continuous professional training contract the employer has the right to conclude an apprenticeship contract with a person searching for a job and who has no professional qualification. Par. (2) foresees that the apprenticeship contract, signed in written form, represents a civil law contract and it is regulated by the Civil Code and other normative documents.

Labor legislation has an important role in modernizing the legal framework because the specific feature of the student-apprentice activity includes, besides the training aspect, the actual work. Thus, the student-apprentice participates, according to the specifics of each profession, in the production activity as well. Also, for an apprenticeship contract in the dual educational system to be regulated by the civil law, the parties (the employer and the student-apprentice) should have equal legal statuses, which is not the case in the dual education context, as the student-apprentice has to observe the discipline rules, the time and days of work and of rest, as stated in the internal regulation of the company.

For the dual education system to function efficiently in the Republic of Moldova it is necessary to create a legal and normative framework which is clear, foreseeable and adapted to the reality of the Republic of Moldova.

In Germany, France, Switzerland, Austria and Lichtenstein the dual system apprenticeship is regulated by a specific law, and it is performed based on an apprenticeship contract, apprentices being considered employees of the respective company.

In this sense, we recommend the amendment of the Labor Code provisions and thus to exclude the norm which stipulates the apprenticeship contract is a civil law contract, being more appropriate the drafting and adopting of a special law, which would regulate the apprenticeship relations in the dual educational system, taking over the best practices of the states which successfully implement this model.

Temporary agency work

We believe that introduction of a new chapter in the Labor Code of the Republic of Moldova: agency for temporary work is advisable.

Art. X:

(1) Work through agency for temporary work represents the work performed by a temporary worker, who has entered a temporary employment contract with an agency for temporary work, and who is available to a user company for temporary work under its supervision and leadership;

(2) The temporary worker is the person, who has signed a temporary employment contract with an agency for temporary work, in order to be available to a user company for temporary work under its supervision and leadership;

(3) The agency for temporary work is a legal entity, authorized by the Ministry of Health, Labor and Social Protection, which concludes temporary work contracts with temporary employees for a user company, to perform work for a fixed period of time, according to the contract and under the supervision and the leadership of the company. The conditions of the agency for temporary work, as well as the authorization procedure are set by Government Decision;

(4) The user is the natural person or legal entity for which the temporary employee, made available by the agency for temporary work, under its supervision and leadership, works;

(5) Temporary work refers to the period of time in which the temporary employee is available to perform temporary work for the user, under the supervision and leadership of the user [company], and to perform specific, temporary tasks.

Art. Y:

(1) The temporary work mission is agreed for a period of time, which cannot exceed 24 months;

(2) The duration of the temporary work mission can be extended for successive periods of time, as long as added to the initial duration of the mission, and it doesn't exceed a period of 36 months;

(3) The conditions concerning the extension of a temporary work mission duration are provided in the employment contract or can be the object of an additional agreement.

Training at the National Public Health Agency

According to Law no. 10/2009 on the state supervision of public health, persons to be employed in positions involving the activity with food products should be mandatory trained at the National Public Health Agency at the Course on Hygienic Training.

The organization of such training courses is performed based on the provisions of the Agency's Decision no. 2/2014 on the hygienic training of employees and depends on the agenda and the annual plan of the institution, which requires additional time for the employer. Some potential employees are obliged to wait between 2 weeks and up to several months, after which the selected persons do not return to employment.

Under these conditions, in order to make the process more efficient we propose that employers from this sector to be accredited according to the curricula approved by the National Public Health Agency, and to be certified. This can be implemented by amending Law no. 10/2009 on the state supervision of public health.

Subsequently, employers will have the possibility to train and certify their employees, which would allow a prompt employment process and will solve the lack of labor force.

Preventive health exams

According to art. 49 of the Law on state supervision of public health, it is compulsory for all employees to undergo health exams before starting a job in cases foreseen by the legislation. Considering the provisions of the Government Decision no. 1025 of 07.09.2017, the majority of employees will have to undergo health exams when employed.

Taking into consideration the fact that individuals cannot be employed without undergoing this health exam, they are forced to cover the costs of the exam themselves.

Usually the highest employee turnover is among workers who don't have the necessary means to pay for this exam when employed.

We propose supplementing art. 193 of the Labor Code of the Republic of Moldova by adding par. (1) as follows:

"The health exam upon employment will be conducted free of charge and will be covered by the Mandatory Health Insurance Fund".

At the same time, we believe that it is necessary to specify in the Government Decision no. 1387 of 10.12.2007 on the approval of the single program of the compulsory health insurance of the fact that the ***medical exam upon employment is conducted free of charge, based on the health insurance policy.***

Training and certification of the staff

According to art. 11 of the Law no. 116/2012 on the industrial security of dangerous industrial objects, the employer has to ensure periodcal training of the staff at specialized training centers by fields of activity / specializations, coordinated with the relevant authority from the field of industrial security and approved by the Ministry of Education, Culture and Research, with an issuance of a certificate of attendance.

Presently, in the Republic of Moldova there are several such training centers, however they are not equiped correspondingly. Therefore, these centers don't have the ability to train the staff at the level expected by the companies.

We recommend to the authorities to establish a minimum of requirements for these training centers:

- The laboratory to be sufficiently specialized to organize practical courses;
- Educational materials to be up to date with the modern technologies;
- The training of teachers from this sector to be conducted with the use of the most modern practices and technologies.

Execution of occasional non-qualified work performed by day laborers

In any company, regardless of the activity type, sometimes there is a need for some occasional short-term works to be done.

The legislator has regulated these labor relations under Law no. 22/2018 on the execution of occasional non-qualified work performed by day laborers, which are applied, however, only for agriculture.

We consider it relevant and recommend broadening the list of areas (similarly to the Romanian legislation) in which day labor is applicable by extending the number of activities foreseen by Law no. 22/2018 on the execution of occasional non-qualified work performed by day laborers.

For example, according to the Romanian legislation, such activities can be occasionally performed in the following sectors:

a) agriculture;
b) hunting and fishing;
c) forestry, only logging;
d) fish farming and aquaculture;
e) horticulture and wine-growing;
f) beekeeping;
g) animal husbandry;
h) performances, cinema and audiovisual productions, advertising, cultural activities;
i) goods handling;
j) maintenance and cleaning activities.

We recommend supplementing par. (2) Art. 1 from Law no. 22 of 23.02.2018 on the execution of occasional non-qualified works performed by day laborers with other fields of work, where day labor is accepted.

Induction at workplace

Currently in the labor legislation there is no expressly stated the procedure which would regulate the induction process on the job, without closing and signing a contract. In practice, there are cases when some employees, even during the first days of employment stop coming to work, and the employer is forced on the second day of employment to prepare the documents needed to end the labor relations.

We consider that it is relevant to introduce a legal procedure which would regulate the situation when a potential employee gets acquainted with the place of work and the work conditions, talks to the other employees, etc.

Thus, we recommend including in the Labor Code a new article as follows:

”Art. *** Induction process at workplace

The future employer, based on an internal order and on the written request of the future employee can establish a period of up to three business days, for the future employee to have time to get to acquainted with the place of work, the work conditions and his / her responsibilities.

The induction foreseen under par. (1) will be compulsory and will be supervised by a representative of the future employer.

Both parties have the right to refuse the signing of the individual employment contract after the period foreseen under par. (1) ends”.

The absence of an employee without providing any information or / and confirmation to the employer about his / her place of being and / or cause of absence

The dismissal of an employee (art. 86 letter h) is not always a good solution because subsequently it can be determined that the employee was unable to notify the employer, and respectively a court of law can decide to cancel the dismissal order and request the payment of the outstanding salaries.

Additionally, there are cases when the employee is detained / arrested, and the prosecutor’s office does not submit a request to suspend the employee from his / her position (this is a right and not an obligation).

In such situations, it is convenient for the employer to have a legal ground to suspend the individual employment contract until the situation will be clarified.

If a contract is not terminated or suspended then the employment of other individuals to substitute the absentee - employee becomes impossible, fact which creates obstacles for the normal functioning of the enterprise.

We recommend supplementing the grounds for suspending the individual employment contract ***(art. 76 of the Labor Code - Suspending the individual employment contract under circumstances which don’t depend on the will of either parties)*** by adding a new paragraph as follows:

”- In cases of employee absenteeism, if the employer doesn’t hold any information about the reason of his / her absence”.

COMPETITION

The members of the Foreign Investors Association have continuously promoted transparent and clear rules for carrying out economic activities and always supported fair competition conditions.

Free and strong competition is a real incentive for developing innovation and fostering markets to provide more benefits to consumers, business community and society in general.

We continue to believe that effective competition is not an aim in itself, but a precondition for a free and dynamic domestic market and a tool to advocate for general economic wellbeing. Creating and maintaining healthy competition represents an important task, which can be implemented only through the joint efforts of the business community and state authorities.

Informal trading

The International Monetary Fund presented its research results on informal economy for 158 countries between 1991 – 2015. Moldova's score – 43.43% of country's GDP is rather high and basically is at the same level as that of African countries, exceeding the level of all Eastern European countries. Just for comparison, the level of informal economy in developed countries varies between 7 – 15% of GDP (USA, Holland, Japan, Switzerland, Singapore). Russia registered a score of 38.4%.

According to the data provided by the National Bureau of Statistics, the share of informal economy in Moldova accounted for 23% of country's GDP in 2017. Traditionally, agriculture accounts for the biggest share of informal economy with 60%, followed by hotels and restaurants with 42% and trade with 30%.

We believe that informal economy affects negatively the economy of the Republic of Moldova and distorts fair competition.

In this respect, the FIA members' experts come up with the following proposals:

Long-term measures:

- regulating the activity of agricultural markets (the market - a place where only local agricultural products are sold);
- monitoring the activity of regional commercial units by relevant oversight authorities;
- implementing systematic measures to limit and eliminate import of counterfeit and smuggled products;
- incentivizing economic agents to reduce the use of cash and to increase the use of bank transfers;
- organizing and conducting information and awareness raising campaigns for general public on making payments using bank cards.

Short-term measures:

- digitalizing cash registers by carrying out online transactions and hence eliminating the possibility for data manipulation (by developing the appropriate infrastructure);
- providing state support and input for installing POS terminals in each commercial unit (cash collected from issuance of cards based on the Law 1540 of 25.02.1998 on the payments made for air pollution to be redirected for facilitating the installation of POS terminals) (by developing the appropriate infrastructure);
- establishing interbank fees for "domestic" transactions (the card issued in the Republic of Moldova - POS from Moldova);
- reviewing the ceiling of simplified trade taxation in order to raise it;
- raising awareness and incentivizing general public and oversight authorities to report any tax law violation (by offering a bonus or financial incentives);
- forbidding the use of any type of differentiated pricing, depending on the payment method (cash, transfer or use of bank card);
- making it compulsory for employers to pay wages via bank transfers only.

Law on Patents in Entrepreneurial Activity

We fully endorse patents-based entrepreneurial activities except for points 1.1 and 1.2 in the Annex to the Law No. 93/1998 on Patents in Entrepreneurial Activity, and namely: in retail, and food and local perishables trade, provided that the sanitary-epidemiological conditions for such products' storage, preservation and sale are observed. As patents holders are not obliged to do accounting and financial reporting, the current licencing system incurs cases of tax evasions and unreported sales, hence violating fair competition principles, affecting

In such conditions we firmly reiterate our position regarding the need to amend the Law No. 93/1998 on Patents in Entrepreneurial Activity so as to remove the issuance of patents for points 1.1 and 1.2 in the Annex to the respective law (retail and food and local perishables trade, provided that the sanitary-epidemiological conditions for such products' storage, preservation and sale are observed). It is also important for relevant authorities to launch an information campaign about the new concept to reach out the appropriate target groups and

negatively the economic growth of the country, impacting population health, and fostering informal trade, smuggling, and tax evasion. We are against speculative and uncontrolled trade.

to facilitate the transfer from patents-based to "independent activity" for individuals making their living from independent trade activities.

Commercial sector / State's involvement in producers' and traders' contractual relations and price formation on the market

Recently the State undertook a number of legislative initiatives to regulate the trading activity.

According to the Constitution of the Republic of Moldova, the market, free economic initiative, and fair competition represent the key factors of the economy.

It is recommended to evaluate and analyse the regulatory impact, according to art. 13 of Law no. 235/2006 on Key Regulatory Principles of the Entrepreneurial Activity, as well as the provisions of the Government Decision No. 1230/2006 on the approval of the Regulatory Impact Analysis and Regulatory Activity Efficiency Monitoring Methodology. We also consider it necessary for all stakeholders (traders and producers) to take part in these discussions, involving as well foreign experts.

Insurance sector

The insurance sector is underdeveloped due to unfair competition elements present in the sector:

- failure to observe the tariffs for the internal mandatory insurance- RCA and the external insurance - Green Card, which are regulated by the oversight authority (the National Commission for Financial Markets) in respect of tariffs' structure and value, which are binding to be followed;

- the activity of companies with stability indicators under or at the legal limit. This aspect is particularly important from a competition perspective because the responsibility for the recovery of the damages by the Green Card insurance policy holders of all such issuers is based on solidarity, according to the international rules. Considering the financial incapacity of some insurers and the obligation of other insurers to act according to the solidarity principle towards their external partners in the Green Card context, this could represent a limitation on the Green Card insurance market for the insurers who observe their obligations on the market, and should Moldova be excluded - they could be impeded to access the same market.

In this respect, it was identified that some insurers face difficulties to comply with the legal requirements on solvency and liquidity, some complying only with the bare minimum which leads to a weaker financial stability of the market in general, and reduced trust of external partners, in particular.

A competition related challenge will be the pricing policy liberalization for mandatory internal and external insurance products, which will start on July 1, 2020. Though some measures were taken to enhance the market capacity and to strengthen

It is recommended for the relevant authorities to undertake the following measures:

- to ensure the observance of regulations on the liberalization of prices for mandatory insurance products and to prevent financial destabilization of insurers who are subject to solidarity-based liability under the Green Card insurance system. The appropriate normative framework should be foreseen to ensure the transposition of the following principles:

- unconditional observance of the legal requirements by all the players on the market by making it impossible to use illegal pricing policies, especially for regulated commercial products according to art. 7 par. (4) from the Insurance Law No. 407 of 21.12.2006 and the Decision of the National Commission for Financial Markets No. 57/13 of 28.12.2008 on mandatory insurance premiums for vehicle liability insurance;

- capacity building for authorities which have to monitor and ensure the observance of principles related to solvency, liquidity and assets quality covering the claims' reserves, as provided in art. 30, 31 and 51 of the Insurance Law No. 407 of 21.12.2006;

- promoting and ensuring transparent disclosure of information on indicators related to financial stability of insurance market participants, according to the legislation currently in force; including observance of the principle of access to information about the financial situation of the insurance company for insurance products' consumers, as provided in points 5 and 6 of the Regulation on disclosure of information on service provision by professional participants of the non-banking financial market (approved by the National Commission for Financial Markets Decision no. 8/6 of 26.02.2010);

participants' professionalism (some legal acts were adopted by the oversight authority, regarding the quality of insurance companies' management, the audit of insurance companies, etc.), the Republic of Moldova did not yet regain the trust of external oversight entities, among which the Council of Bureaus within the Green Card system, which has kept a special supervision statute for Moldova for 20 years.

Also, there are still concerns regarding the enforcement of regulations on the transparency in shareholders' structure, the observance of prudential rules and the quality of assets to secure reserves for claims.

- ensure the enforcement of legal requirements on insurers' observance of prudential rules, transparency in shareholders' structure and corporate governance of the insurance companies as provided in art. 30 and 31 of Insurance Law No. 407 of 21.12.2006, and points 5 and 6 of the Regulation on disclosure of information on service provision by professional participants of the non-banking financial market (approved by the National Commission for Financial Markets Decision No. 8/6 of 26.02.2010),

- harmonisation of national legal framework with international standards, and creation of appropriate conditions for issuing electronic insurance products by supplementing the Republic of Moldova Civil Code, e.g. art. 1830 of the Code.

Agro-industrial sector - export of composed and processed products

Currently, the exports of composed products are very limited. A composed product (***pastry and confectionery products, ice cream, cream, etc.***) is a food product used for human consumption, which contains processed products of animal origin, and vegetal origin; and it includes those products for the production of which the processing of the main product is included in the production of the final product. They are observing EU requirements for all the stages of the value chain of dairy products.

The major objective of the food business entities is to register Republic of Moldova as a country exporting dairy products to the EU, according to the Regulation (EU) no. 605/2010 of the Commission of 2 July 2010 on establishing the animal health and public health conditions, and of veterinary certification for introducing into the EU raw milk, and dairy products for human consumption.

The European Union would allow the registration of the country based on a single producer. Currently the EU requires the observance of requirements applicable at each stage of the value chain of the dairy products.

Under such conditions, we propose the following measures:

- review the legal framework which regulates the observance of the requirements equal to the EU requirements for the products intended for the EU market;

- the relevant authority (National Agency for Food Safety) shall supervise the self-control mechanisms of the private industry, and will have specific programs, especially for the veterinary medicine waste. Informing and training of the inspectors regarding the relevant EU legislation;

- ensuring that the final products, intended for the EU market, observe the hygiene criteria regarding some specific bacteria;

- the application of the HACCP principles during the production processes by some of the processing companies exporting into the EU. These include the observance of the product traceability;

- ensure that raw milk, used for the production of products meant for the EU market, observe the quality criteria.

A first step towards achieving this objective is for the National Agency for Food Safety to fill out the ***Assessment Questionnaire for dairy products*** and submit it through the Mission of the Republic of Moldova to Bruxelles and DG SANTE.

Waste is one of the major environmental issues of the Republic of Moldova. Only an insignificant percentage of waste is recycled or processed. Waste management represents a very complex issue and requires a system-based approach.

WASTE MANAGEMENT

In this respect, foreign investors consider it crucial to draft and adopt a National Action Plan, which would include actions to be undertaken by the State at the national, regional and local levels, and would serve as basis for future integrated waste management activities. This plan should stipulate the pattern chosen by the Republic of Moldova for short, medium and long term, the proposed outcomes, the necessary investments, as well as the way in which producers' extended responsibility would be mainstreamed in the system to be created.

So as the Environment Agency is created, it would be appropriate to set up a single call and consultancy centre to assist the business community to adequately implement normative acts, but also to organize specific trainings depending on activity sectors.

Co-incineration / co-processing of waste

Once the key amendments applied to the Law on waste No. 209 of 29 July 2016 were approved in December 2016, the waste co-incineration method was excluded. Annually, different medical waste is generated at the national level, including expired pharmaceutical products, tires, used oils, etc., which are burnt in open air without being regulated whatsoever and damaging the environment. In the European Union, co-incineration is considered to be an energy-recovering action of waste harnessing, hence being a priority for the energy sector as well: to use waste as alternative energy resources.

It is requested for the current legislation to be amended in order to allow the implementation of the waste co-incineration / co-processing system, as an optimal solution and an environmentally friendly method.

Thus, it is proposed to amend the Law on waste No. 209 of 29 July 2016 (Monitorul Oficial of the Republic of Moldova, 2016, no. 459–471, art. 916), and namely to review art. 17, art. 25 par. (14) and Annex no. 2 of the respective Law.

The proposed amendments are conditioned by the need of introducing a new system for waste management which would observe the hierarchy of waste products, as part of a complex package of new regulations on environment protection. The improvement of the current waste management system envisages transposing the Waste Framework Directive, which provides the normative framework on waste management in order to protect public health and environment, taking into consideration the provisions of about 9 EU documents.

Accepting co-incineration with online control of emissions, represents a safe alternative in treating and harnessing waste, used in most of countries, including the ECE, which fits international environmental legislation.

Regulation on waste electrical and electronic equipment (WEEE)

No unitary value of reference for calculating financial guarantees was yet established for the operation of the WEEE Regulation.

- no collective system (the main modality used in EU for operating in this sector) was yet created in the business sectors governed by the WEEE Regulation.

- the necessary infrastructure is lacking for the implementation of approved regulations (both for WEEE and packaging). At the same time, the Republic of Moldova has no WEEE treatment plants.

In these conditions, it is rather complicated to ensure a smooth operation of the new waste management system, and this fact generates high costs for recycling as it also includes the transportation costs.

Under these conditions, we recommend that the relevant authorities take the following measures:

- expressing the official position of the Ministry of Agriculture, Regional Development and Environment and of the Environment Agency on the functionality of the SIAMD system, which is necessary for operators' registration;
- drafting a state policy which would create favorable conditions to attract investors able to develop the infrastructure needed for WEEE processing and harnessing;
- establishing and publishing the unitary reference value for items falling under the WEEE Regulation;
- reassessing and readjusting the WEEE Regulation, as its implementation in practice turned out to be quite difficult, with a lot of unclear aspects and differences as compared to the approved text, as well as the need for authorities to create the appropriate infrastructure for producers to implement their duties;
- enforcing tax incentives for producers implementing the WEEE Regulation with the goal of redirecting financial resources towards EPR (extended producer responsibility), as well as encouraging producers to create collective systems.

Reducing food waste

Currently, the food sector companies, especially importers, distributors and traders register a surplus of food products. When the shelf life for the respective products comes to an end, they get registered as waste and sent to be destroyed, as indicated in the law and with no other alternative. Hence, there is no legal framework which would regulate ways for preventing food waste and for redistributing the surplus of food products the expiring shelf life.

It is necessary to draft and approve the normative framework on food waste, which could regulate:

1. The role of all food sector participants in preventing food waste;

2. The mechanisms for sending food products to beneficiaries free of charge or for a small fee;

3. Tax incentives provided to food sector companies, which implement mechanisms for preventing food waste and for sending the surplus of food products to beneficiaries.

Draft Regulation on Packaging and Packaging Waste

Currently, there is no collective system which could ensure the harnessing of different types of paper / plastic / wood / metal packaging. At the moment, there are authorized economic agents which process only a single type of packaging: paper or polyethylene and plastic, metal or wood.

This will lead to a situation when packaging holders will be forced to join different collective systems based on the type of packaging, which will require additional financial and time resources.

Creating favorable conditions for offsetting up collective systems to harness multiple types of packaging (paper / plastic / wood / metal / etc.).

Implementation of the Extended Producer Responsibility principle

It is recommended to set up a storage system for returnable packaging by amending the relevant legislation, which would allow to return packaging to commercial units and specialized collection points for a certain fee. At the same time, it is recommended to extend and encourage by law the use of returnable packaging for all types of non-alcoholic beverages, as well as those with low alcohol content, which run a small counterfeit risk.

Wastewater treatment

Current legislation doesn't regulate clearly and logically the calculation of fees for treating wastewater produced by enterprises.

It is recommended to draft a transparent methodology on how to calculate the tariffs for wastewater. Thus, the high unjustified costs for companies will be reduced, ensuring a fair competition and reducing pollution, whilst at the same time securing the sustainability of water supply and sewage public services.

Doubling of reports

According to Annex no. 7 of Decision 212/2018 on approving the WEEE Regulation, the waste reporting is conducted according to the code foreseen in Annex 1 of the Decision 212/2018 (Customs Code), while according to Decision no. 501/2018 approving the Guidelines for recording and submitting data and information on waste and waste management – the waste reporting is performed according to the code set forth in the Government Decision no. 99/20018 (Waste Code).

Considering these conditions, we recommend to exclude one of the two reporting types or to apply a single code for waste.

Digitalization is one of the most visible phenomena of the current decade and its evolution is extremely fast. It is described by adoption of digital technologies and respectively wide-scale use of technologies for online storage and processing, searching and finding information among users. Digitalization is a deep phenomenon with powerful implications and effects in all sectors.

DIGITALIZATION OF THE ECONOMY

Setup of new business models based on enhanced connectivity, simplification of communication barriers and cancellation of distances, amplifies the development factors, modifies the way in which value added is created and leads to greater productivity and efficiency.

We expect for the current phenomenon of economy accelerated digitalization to have positive effects on competition and facilitate B2B and B2G relations.

Developing a mechanism to implement and use remote interaction with public authorities

According to the Republic of Moldova legislation the electronically signed e-documents have been assimilated since 2015 in all their effects with the analogue hardcopy documents signed with holographic signature. However, on many occasions when interacting with the state authorities and other organizations, economic units are forced to be physically present and to submit hardcopy signed documents.

Requesting physical presence in a public office creates obstacles, adds costs, and sometimes implies major risks for the business when investors travel abroad, as due to bureaucratic procedures they risk significant sanctions or suspension of business activity.

It is recommended to develop a mechanism to implement and apply remote interaction with public authorities. The mechanism can be approved through a normative act, e.g. Government Decision and / or established based on guidelines.

The actions to be taken for implementing this solution could be: (a) requesting all authorities to identify the potential situations when they would interact with citizens and legal entities; (b) identifying less sensitive interactions which can take place without advanced authentication (signature); (c) developing and publishing the remote interaction mechanism for two types of situations: through an electronically signed e-document and through electronic communication without using e-signature; (d) establishing measures to ensure observance of legislation on e-documents (which, according to the current provisions, have priority, and by approving additional provisions, when needed).

Admitting digital signatures of trusted providers

Some investors don't plan to spend too much time in Moldova, or they want to try out some remote activities, as well as to access remotely some public services. However, this is possible only if they obtain a confirmation of their identity by physically visiting the relevant authorities in the Republic of Moldova. Thus, obstacles could appear for the current investors, and the investment potential might not be fully capitalized. In order to capitalize it more, Estonia implemented an e-residency solution, allowing Estonian embassies to grant foreigners, following certain authentication procedures, Estonian electronic signatures, which investors can use to start and conduct business activities in Estonia without even visiting the country.

It is recommended to admit digital signatures of trusted providers from the EU (which are compliant with the EIDAS Directive), thus they will be able to start and conduct business in Moldova, access public and other types of services, and participate in other activities remotely. The Republic of Moldova has the technical capacities to implement this solution, and only a few insignificant amendments would be required at the normative level.

Creating a single registration and deregistration online platform for all legal entities

Currently there is no platform, which would allow online servicing of legal entities and would provide completely electronic documentation support.

It is recommended to create a single online registration and deregistration platform for all legal entities (commercial companies, non-profit organizations, institutions, juridical professions' offices, etc.) and to review the legislation in this respect. The platform should provide online services for business registration purposes, request of certificates, and applications for organizational changes based only on e-documents. The creation of such a platform will represent a real prerequisite for the implementation of the "e-residency" concept, because it would allow to launch and manage remotely a business venture.

Creating entrepreneur's e-Cabinet

In order to support the existing societal digitalization tendency, especially in case of B2B and of B2G relations, several reforms were conducted to facilitate and simplify these connections. At the same time, investors wish for a faster implementation of the next stages in order to continue the initial reforms. This would allow reducing the number of visits entrepreneurs make to public offices, which would lead to saving human, time, and financial resources.

It is recommended to create entrepreneur's e-Cabinet (potentially on the public services' portal servicii.gov.md), which would aggregate information and services meant for entrepreneurs (registering a business, obtaining authorizations and licenses, reporting, e-invoice, other tax and customs related services, etc.), and it would include pro-active services (notifications regarding the need to submit reports, an invoice left unsigned, outstanding payments to the state, expiring permits, etc.). Some of the provided services could be:

- requesting and issuing online the certificate acknowledging lack or existence of outstanding payments to the state budget;
- submitting via the AIS "e-Request" the VAT refund request;
- submitting electronically statistical reports to the National Bureau of Statistics (currently not all reports can be submitted electronically, e.g. EI7, EI8, PRETIND);
- visualising electronically invoices issued (declared) by other entities and addressed to the taxpayer;
- optimizing the AIS "e-Invoice" by creating the option of generating multiple invoices. Currently, each invoice has to be entered manually in the AIS "e-Invoice". We recommend for the system to have a function which would create several series and numbers for the respective legal entity, hence allowing issuing a larger number of invoices. These e-invoices should be uploaded in the AIS "e-Invoice" similarly to the general electronic registry of invoices. At the same time, the AIS "e-Invoice" should notify the taxpayer via email about the availability of a newly issued invoice on his / her name.

Creating a Register for Sales' Electronic Monitoring

Currently there is no registry which would allow electronic supervision of sales and submission of all transactions online. This would allow ensuring transparency of these processes and combating tax evasion.

It is recommended to create a Register for Sales' Electronic Monitoring, which would allow implementing an efficient and transparent electronic mechanism to manage, monitor, and control sales in real time.

Such a register would allow the following:

- streamlining and modernising the process of recordkeeping, management and monitoring of sales;
- ensuring online control of sales by implementing an integrity verification mechanism of data and securing such data transfer from ECC to the State Tax Service server;
- providing a possibility to issue receipts in electronic form;
- ensuring compliance with information security standards and regulations.

Electronic signature

The current procedure for obtaining e-signature is difficult and requires a lot of time, but also presence of all decision makers of the company: besides its period of validity is considered to be short.

Thus, we recommend to simplify the procedure of issuing and prolonging the validity of the e-signature, as well as extending the period of its validity up to five years and notifying the beneficiary about the expiry date.

Graphometric signature

Currently the use of the e-signature is limited by the number of users of this type of signature and the availability of infrastructure for its verification.

Therefore, we consider that it is appropriate to regulate the graphometric signature.

The implementation of this type of signature implies expanding the range of provided services by using the electronic flow of documents and increasing the mobility of points of sale / service provision.

Creating the "self-service" system at gas stations

Petrol companies, just as all the other companies, are faced with serious shortages of employees, but also with an excessive turnover of employees at gas stations located in areas far from Chisinau.

The implementation of the self-service systems, which would allow customers to fill up their cars without assistance at the fuel dispensers, could be a solution to overcome this obstacle. Since often there are no assistants available at the gas stations, companies cannot secure the continuity of their business.

The "self-service" option is a common practice of filling up the vehicles in many European countries, as well as in the USA.

It is recommended to amend point 51 from the Regulation on retail sale of oil products, approved via Government Decision No. 1117/2002, which stipulates: ***"The fill up of cars and other means of transportation with gas products at fuel dispensers and oils shall be performed by the gas station operator or independently by the driver, under the supervision of the operator"***, by excluding the wording "under the supervision of the operator".

This amendment will directly contribute to the digitalization of economy, ensuring tax security, implementation of new technologies, and continuity in companies' activity.

The healthcare sector in the Republic of Moldova is mainly composed of public medical - sanitary institutions. This situation is explained by the large share of the public sector in the total number of healthcare institutions in the country. The regulatory incentives and access to financing from the Mandatory Health Insurance Fund (MHI Fund) have induced a major gap and an obstacle for insured patients to access healthcare services provided by private medical-sanitary institutions, notwithstanding the principles set forth in the Law No. 1585/1998 on Mandatory Health Insurance.

According to the legislation in force, private healthcare providers are not meant to supplement or to provide additional health services which are not covered by the public healthcare providers, but are working based on the principle of equality with the public institutions.

HEALTHCARE AND PHARMACEUTICALS

Under these conditions, it is needed to ensure efficient and transparent use of public financial resources from the MHI Fund, based on population needs for healthcare services and appropriately to the capacities of the entire healthcare system, and to adopt contracting criteria, which could be consulted with both private and public healthcare institutions and based on quality indicators and efficiency of provided services.

Demonopolizing oncological sector

The participation of private healthcare institutions in providing healthcare services to patients suffering of oncological diseases was demonopolized based on the amendments made to the Law on Health Protection No. 411 of 28.03.1995, art 411, which provides that prophylactic, diagnosis, treatment, and supervision healthcare services in the oncological sector shall be provided by specialists trained in oncology and hematology in public and private medical-sanitary institutions, according to the normative acts approved by the Government.

At the same time, the amendment of the Government Decision No. 428/2012 on public - private partnership for radiotherapy services provision has led to the establishment of a framework according to which only one radiotherapy provider can be selected for oncological patients by initiating a public-private partnership for a period of 45 years.

This amendment was implemented without carrying out any efficient public consultations, contrary to the provisions of Law No. 100/2017 on Normative Acts and will lead imminently to a monopoly for such services' provision, hence limiting patients' and healthcare provides' access to exercise their rights foreseen by the current legislation.

It is strongly recommended to amend the Government Decision No. 428/2012 on Public -Private Partnerships for providing radiotherapy services, in order to allow more providers to offer radiotherapy services to oncological patients.

Developing and adopting the National e-Health Strategy

The draft e-Health Strategy was developed in 2013 in order to promote information and communications technology (ICT) in healthcare sector, including the adoption of an e-Health Strategy which would tackle the regulation of telemedicine services, integrated information systems for all healthcare providers, and electronic patients registry (EPR).

The draft provides that e-Health is a smart investment in the healthcare sector, by using ICT, which leads to changes and improvements in clinical practice at both the operational level, as well as at the managerial one, in order ensure direct and indirect benefits for the healthcare sector, patients, and business community.

The proposals are the following:

- to develop and adopt an e-Health Strategy in consultation with public and private healthcare providers, experts, development partners, and civil society organizations;

- to improve governance and management of healthcare sector funds and to ensure better allocation of financial resources by drafting and collecting data for performance and quality indicators of healthcare providers;

- to systematize and envisage online access to data on indicators at the national level and based on a single information system.

Value added tax for non-medical services

The provision of non-medical services by private medical-sanitary institutions under the mandatory health insurance system is regulated by the Government Decision No. 1022/2018 on non-medical services provided by private medical-sanitary institutions to patients insured under the mandatory health insurance system. Non-medical services are not part of the Single Program and are provided beyond the mandatory health insurance system.

At the same time, healthcare services are exempted from VAT according to art.103 par. (1) point. 10) of the Tax Code. Non-medical services are directly associated with the medical act, but are not exempted from VAT. The full payment of VAT is applied to the end-user - the patient.

Under these conditions, it is requested to exempt the non-medical services from VAT payment or to decrease it by 10%.

This provision will aim at fostering and supporting private healthcare sector in Moldova, facilitating investments, as well as ensuring correlation between connected areas, and facilitating insured patients' access to services with higher levels of comfort.

Non-medical services cannot be provided separately from healthcare services, and access to higher levels of comfort for insured patients is conditioned by a 20% increase of the final price of the non-medical services, directly associated to the medical act, which prevents the implementation of the Government Decision No. 1022/2018 on non-medical services and the provision of these services to insured patients.

Personal health insurance account

The categories of health insurance premiums' payers, as determined by the Law no. 1593 of 26.12.2002 are differentiated. Thus, employees, included in Annex no.1 of the Law, pay a premium calculated based on a percentage contribution to the salary and other rewards, while citizens, included in Annex no. 2 pay a lump sum. De facto, employees' payments are higher than those made by the unemployed people. However, healthcare services are provided to all at the same level and of the same volume. In this context, a personal account would allow providing certain services or accumulating the paid tax sums for special needs.

It is recommended to create insurant's personal account in the national health insurance system, which would include the possibility to monitor the management of personal funds, accumulated from paid taxes.

National Preventive Healthcare System

Currently, the expenses covering the benefits provided to employees, including the healthcare benefits, are not deductible; which implies an additional tax of 12%. By amending the status of such expenses from non-deductible to deductible, employers could be fostered to provide such benefits, hence encouraging employees to lead a healthier lifestyle, which in the long run could reduce the expenses for treating diseases associated to unhealthy lifestyle.

It is recommended to improve the preventive medicine system, by launching large scale national information campaigns to raise population awareness about health risks, supporting and promoting a healthy lifestyle. Also, it is proposed to provide tax relief to employers who promote healthy lifestyle (offering sports club subscriptions, purchasing sports equipment, etc.).

Producers prices for medicines, in particular for those included in OTC list

Without disregarding the importance of comparing retail prices for medicines on the domestic market with those from other countries in the region or other states, the information obtained from the comparative analysis cannot represent a reason for an administrative price ceiling, but rather a basis to identify major discrepancies between such prices and removing them.

In this respect, we propose to liberalize the prices for medicines included in the OTC list by amending the Government Decision No. 525/2010 to approve the Regulation on how to approve and register producer prices for medicines.

Supporting local medicines producers

Currently, there is a very small number of medicines produced on the domestic pharmaceutical market in the Republic of Moldova. This is due to the weak support provided by public authorities to local medicines producers, but also due to poor information of population.

In this respect, it would be appropriate to undertake some measures to foster local medicines producers, by applying different time-limited incentives, conditioned by having well-developed plans on over-time capitalization of local drug manufacturers, which would foresee technological and economic development, as well as that of manufacturing culture and work productivity.

Thus, we recommend the following measures:

- providing customs duties' and VAT tax exemption for import of medicines producing equipment (imported from the EU);
- establishing and calculating tax incentives based on volume of investments incurred by economic agents in the respective area;
- subsidizing the pharmaceutical sector;
- encouraging research among companies active in this sector;
- implementing policies for diversifying the markets for locally produced medicines;
- applying support measures for local medicine producers, which would facilitate export on the EU markets.

Further, it is desirable to allow advertising to the general public (information campaigns) of compensated (reimbursed) medicines covered by the mandatory health insurance funds (both Rx and OTC medicines), by amending point 16 par. (4) of the Government Decision No. 994/2018 on approving the Regulation on ethical promotion of medicines.

Preparing and producing medicines

Local medicines producers are facing difficulties in their work, and namely in relation to import / export activity, according to the list of medical raw materials (active substances and excipients) used to prepare and produce medicines.

In order to improve the current situation, we recommend to simplify the process of filling in the form / the list of medical raw materials by amending the Government Decision No. 1165/2016 on approving the lists of medical raw materials items, materials, primary and secondary packaging used for preparing and producing medicines or to exclude the respective list.

Land legislation is another area which requires special attention from authorities. The current regulations in this field functionally limit and restrict foreign investors from making long and medium term investments in this sector. Also, in the context of global warming, climate and environmental changes, farmers are facing difficulties related to irrigation of agricultural land.

We consider it appropriate to finalize and approve the new Land Code, which will tackle a number of proposals and measures provided in this chapter, and especially will increase the level of protection for current investments, will attract new investments in agriculture under fair and equal conditions for local and foreign investors.

LAND ISSUES

Land Code No. 828-XII of December 25, 1991

Land Code No. 828-XII of 25 December 1991 – Chapter X on land consolidation: due to excessive land fragmentation and small areas of agricultural land (a consequence of the "Land" Program), agricultural productivity decreased dramatically, processing technologies and crop rotation are not observed, the soil is degrading, and it is impossible to invest in modern and economically viable technologies.

The current regulation on the consolidation of agricultural land proved to be inefficient.

Under these conditions, we consider it necessary to review the current regulation on land consolidation included in Chapter X of the Land Code, as well as to add some imperative norms to it, stipulating the obligation of the landowners holding more than 10 percent of the consolidated field to join the consolidation project and to work the fields similar in terms of land quality and surface, located in the administrative area of the same locality.

At the same time, it is necessary to add a new rule in art. 79 of the Land Code, which would provide for the compulsory compensation for investors who have processed the fields of a neglectful owner (the owner of fallow land/s) to ensure the integrity of their own plantations.

It is important to develop and promote a new Land Code (the draft of the code is currently at the relevant ministry), which would regulate this and other issues related to rational and efficient use of land, as well as the post-privatization conditions, including land documentation of agricultural fields, with mandatory monitoring of crop rotation, and setting minimum requirements for land processing depending on crops included in the crop rotation scheme.

Irrigation of agricultural land

The Water Law 272/2011 sets forth that irrigation is a major priority for water basins' holders (except for meeting population needs for drinking water and domestic needs). However, this is impossible to achieve due to the lack of a single owner of the water basins and no centralized management of the respective basins.

Also, there are conflicts between farmers, who require irrigation of crops, and fish farmers, as the water reserves are not sufficient due to incorrect use of the water basins, especially lakes and reservoirs, because of their silting.

We believe it is necessary to develop new regulations, which would provide for transfer of all water basins and water catchment areas from local authorities to water management authorities, which would be able to ensure the achievement of national priorities.

Regarding the privately owned water basins: the issued authorization for water use should provide for mandatory prioritized access of agricultural fields' owners to use water for irrigation.

Also, it is recommended to supplement art.110 of the Administrative Code No. 218 of 24.10.2008, with a new paragraph as follows: (3) Failure to ensure other water users' access to locate and/or use the water intake under the conditions foreseen by internal regulations on how to use the reservoir/lake is sanctioned with a fine starting from 40 up to 60 conventional units applied to individuals, and a fine from 300 up to 500 conventional units applied to legal entities, with or without deprivation of the right to carry out certain activities for a period of from 3 months up to one year"..

For the same purpose of facilitating access to irrigation of agricultural fields, it is recommended to foresee the permission to use groundwater for irrigation of crops. This can be achieved by developing a Regulation on use of groundwater for irrigation of crops according to the provisions of art.45(2) from the Law, and namely: "In the areas with insufficient sources of surface water, but sufficient reserves of groundwater, including sources appropriate for drinking, it is allowed using them for other purposes than supply of drinking water and domestic water, according to some regulations approved by the Government."

Water management and hydro-amelioration in the Republic of Moldova

In the context of global warming, climate and environmental changes, a sustainable development of the agricultural sector is impossible, as agriculture is facing a great risk due to severe droughts. Thus, the country is subject to food insecurity risk. It is urgently necessary to draft a concept and a strategy to mitigate risks in agriculture, to ensure a hydro-thermal balance, to assess the hydrological potential of the state, and to develop this potential.

Thus we recommend to draft and approve a strategy to develop water management and hydro-amelioration in the Republic of Moldova 2020-2030 by assessing the hydrological potential, ground and surface water reserves, identifying development measures and rational use of water storage bodies, and targeting the financial means from the National Agriculture and Rural Development Fund (AIPA); the Consolidated IFAD Programme Implementation Unit; and Increase of Food Production Project 2KR. It would be also appropriate to start negotiations for a new COMPACT Program Project for rehabilitation and implementation of large-scale irrigation systems on the Prut and Nistru Rivers.

Insuring production risks in agriculture

Currently, the access to natural disaster risks' insurance in agriculture is difficult, as insurance companies provide unattractive conditions for insuring such risks.

It is recommended to amend the Law No. 243/2004 on Insuring Production Risks through Subsidies, so as to encourage farmers to get disaster risk insurance, but also to make this attractive for insurance companies. Also, it is considered necessary for the state to participate more actively in insuring the production risk in agriculture.

Law No. 1308-XIII of July 25, 1997 on Land Normative Price and Procedure of Land Sale and Purchase

Art. 6. Sale and purchase of privately-owned agricultural fields. (2) The State, citizens of the Republic of Moldova, and legal entities having no foreign investments in their share capital are entitled to sell and purchase agricultural fields.

Foreign investors recommend and consider it rational to amend the legislation (art. 6 of Law No. 1308-XIII of July 25, 1997 on Land Normative Price and Procedure of Land Sale and Purchase) in order to repeal the provisions which limit the right to sell and purchase agricultural fields for legal entities with share capital containing foreign investments.

Another supporting argument is that the restriction imposed on companies with foreign investments regarding the purchase of agricultural fields is contrary to Annex 1B to GATT, art. XVI par. (2f); Art.1 of the European Directive 88/361/EEC CEE; and p.2.4.2 (31) of the EU-Moldova Action Plan.

In order to avoid passive land speculations, a mechanism should be developed to oblige investors to use land only for agri-food production, excluding thus any possibility to modify the purpose of land use.

Exercising the right of pre-emption

Currently, there are cases when land is sold without observing the tenant's right of pre-emption.

If the registration takes place at the cadaster authority - the encumbrance is noted, if the land is registered at the town hall - the encumbrance is not noted.

It is recommended to amend the legislation in order to supplement the mandatory documents which are submitted to the notary by the seller for concluding and legalizing the contracts for purchasing-selling agricultural fields, with a document called Certificate, issued by the Town Hall within the area of which the respective field is located. The certificate confirms if the registration of the lease contract, the subject-matter of which is the agricultural field to be sold, took place or not in the Town Hall registry (in the case of the lease of agricultural field up to five year) similarly to the extract from the Real Estate Registry.

The above-mentioned amendments aim to guarantee the observance of the tenant's right of pre-emption (art. 1295 par. (4) Republic of Moldova Civil Code), if the lessor / owner intends to sell the agricultural field which was leased for five years or less to another individual / legal entity and not to the tenant.

Simplifying the change of agricultural status into construction status for land plots

In order to change the destination category from agricultural field to land plot meant for constructions, the landowner has to pay into the ATU budget an amount calculated according to various parameters provided in the Law No. 1308/1997 on Land Normative Price and Procedure of Land Sale and Purchase.

According to point 31 of the Regulation on land transfer, change of destination, and exchange of land fields approved by the Government Decision No. 1170/2016, the Government, the Council of the administrative - territorial unit of first and second levels, the National Assembly of Gagauzia adopt the decision on changing the destination of agricultural and forest land, and from other categories of land from the agricultural circuit, to be used for other purposes than agriculture within a month since the individuals or the legal entities have transferred to the respective budgets amounts equal to the losses caused by excluding the land plot from the agricultural circuit,

It is recommended to amend Law no. 1308/1997 on the normative price and the sale type, and the type of land sale-purchase agreement, and of the Regulation on land transfer, change of destination and change of land approved by Government Decision no. 1170/2016 in order to review the methodology of establishing the rates for loss compensation following the change of land destination.

according to the rates indicated under item III in the Annex to the Law No. 1308/1997 on Land Normative Price and Procedure of Land Sale and Purchase.

Depending on the land quality level, the respective amount could be equal to the land normative purchase price. To change the destination of the land plot from agricultural into construction status, it is necessary to pay the full value of the land plot, which often equals to a second purchase.

When the land is privately owned the procedure of establishing such an amount is unfair and unfounded.

Simplifying access to cadastral services regardless of location

According to the provisions of the Law on Real Estate Cadaster No. 1543/1998, contracts related to immovable assets and parts thereof should be registered at the territorial offices of the Public Services Agency, which are located in every district of the Republic of Moldova. Travelling to the districts for registration implies financial, time, and human resources, especially since the physical presence at the cadastral authority is required at least twice to perform a registration. For example, to register the mortgage of a company's assets, which owns real estate on the entire territory of the Republic of Moldova, implies travelling at least twice to all the districts where the respective company has property.

It is recommended to amend the duties of the Public Services Agency in order to simplify the access to cadastral services and have the possibility of requesting the service at the one-stop-shop of the Public Services Agency, regardless of location, for an additional fee, and receiving the requested document at the same regional office where the request was made.

The legislation on the status and the possibilities of building on unincorporated areas vs built-up areas

According to Chapter 6 of the Land Code, the perimeter of the locality is the border of the built-up area which separates the territory of the locality from the unincorporated area and is established in the locality's general urban development plan, approved as provided in the legislation.

The Law on Principles of Urban and Territorial Planning No. 835/1996 defines the terms of ***built-up area and unincorporated area*** and sets forth general rules. Based on the respective rules, constructions may be started only in built-up areas. To build something in the unincorporated area, it is necessary first to change the status of the respective land plot into built-up area. The respective procedure is cumbersome, and implies human, financial, and time resources.

The draft Urbanism and Constructions Code, approved by the Parliament in the first reading on 03.03.2017, the terms ***"built-up / unincorporated areas"*** are not included. Territory organization will be conducted through general urban development plans or zonal urban development plans, if the first ones are not available. Hence, the need to approve a separate decision on introducing the land plot into the build-up area of the locality would be excluded.

It is suggested to exclude the terms of ***built-up area and unincorporated area.*** Constructions shall be conducted based on urbanism and planning documentations of the territory, and if such are missing - based on an urban development plan drafted for that specific piece of land and coordinated with the state supervision authorities (the National Public Health Agency, Environment Protection Inspectorate, Service of attested firefighters and rescuers).

Moreover, we call upon authorities to bring back the promotion of the draft Urbanism and Constructions Code on the agenda.

Telecom operators have a particular importance for the economy of the Republic of Moldova, with a contribution of around 3.4% to the GDP in 2018. At the same time, they are among the largest taxpayers and employers in Moldova. Telecom operators continuously invest in the development and modernization of their infrastructure, promoting innovations and ensuring technical progress. In 2018 alone their investments accounted for about 1,2 billion MDL. They also support various social projects and initiatives in the field of digital education. The quality of mobile services in Moldova is one of the best in Europe.

Unfortunately, operators' investment capacity, especially in case of mobile sector operators, is considerably impacted by the unfair over-taxation, which hinders the modernization and development of telecom networks based on the state-of-the-art technologies and introduction of more accessible tariffs for the end consumers.

Over the last years, the mobile communication sector was targeted by various initiatives launched by authorities with a potential significant negative impact on sector' and entire economy's development.

Further investments will follow to develop 5G and VHBB networks to ensure the necessary connectivity in future. The implementation of the proposed measures would allow Moldova to keep up with the rest of Europe in terms of technological development.

TELECOM INDUSTRY

"2.5%" luxury tax

According to art. 4 of the Law No. 827 of 18.02.2000 on the Republican Fund for Population Support, one of the sources of raising financial means for the Fund would be the monthly transfers made by legal entities, providing mobile telephony services, in the amount of 2.5% of the gross income from the sale of these services. This tax was introduced in 2000, being considered a "tax on luxury goods". This overtax applied to mobile communications providers is discriminatory and unfair, limiting (instead of incentivizing) investments in development of electronic communications networks, which are based on the most advanced technologies, considered to be a key factor for economy growth and social progress.

It is advisable to amend the Law on the Republican Fund for Population Support and local funds for social support of the population No. 827 of 18.02.2000, in order to exclude art. 4. par. (1) letter b), and namely the obligation of monthly transfers to be made by legal entities providing mobile telephony services amounting to 2.5% of the revenues obtained from the sales of such services.

Portability fee

According to the technical and commercial conditions for implementing and carrying out numbers' portability approved by ANRCETI in 2013, it is compulsory for all telephony services providers from Moldova to pay a 0.0308 € / monthly fee per telephone number allocated to the provider based on the license. The respective fee is paid to a private company "NP Base" Ltd., founded by the winner of the tender for developing and managing a centralized database for carrying out numbers' portability. Operators hold a total of about eight million numbers, for which they pay nearly three million euro annually.

As a result of the strong depreciation of the national currency during the 2014-2019 period, the equivalent in MDL of the annual payments made to "NP Base" Company increased by over 40%, while the annual revenues of the operators decreased by 352 million MDL (-6%).

These exaggerated payments lead to a considerable increase of retail prices for end users.

In order to reduce the value of the relevant payments, the following actions are suggested:

- reducing the fee to cover the operational expenses of the "NP Base" company down to a more reasonable level;

- introducing the possibility of allocating, through licensing, and returning of under 10.000 mobile phone numbers blocks;

- excluding from the scope of this fee the numbers allocated for the broadband mobile data services (internet), which are not subject to portability;

- applying a non-discriminatory fee for all the geographical telephone numbers held by the historical operator Moldtelecom, without any exception.

Private copying levies

According to the Law No. 139 of 2010 on Copyright and Related Rights, the importers of "any equipment (sound recording equipment, video recorders, drivers for recordable and re-recordable disks, etc.) and mediums (blank tapes and cassettes, laser disks, compact disks, etc.), that may be used for reproduction of audiovisual works and phonograms" shall pay a levy of at least 3% from the sales revenue of such equipment, meant to cover the potential damage caused to authors by buyers of such equipment and devices to make private copies of original works protected under copyright. The organizations responsible for joint management of copyright and related rights (OGC) collect and distribute this levy to authors.

This regulation creates a number of problems:

1. Lack of a comprehensive list of equipment for which such a levy is paid and missing levy ceiling, which leads to excessive requirements from OGC for levy payment.

To solve the identified problems, it is suggested to modify the Law No. 139 of 2010, with amendments to be previously approved by the Government. The respective amendments would reduce the levy rate from minimum 3% to maximum 0.3% for the multi-purpose devices, 0.5% for single-purpose devices, and 1% for storage media. After the approval of the law by the Parliament, the Government will approve the list of devices to which the levy applies. It is estimated, that the list will be quite large. Additionally, AGEPI will ensure the collection of this levy (which would allow 100% levy collection under equal condition for all importers).

2. The minimum levy value is clearly too high as compared to rates registered in EU and does not take into account the potential damage caused by the equipment, which has to be determined when the value of the levy is set.

3. AGEPI's oversight reports show that the majority of amounts collected by OGC are kept by OGC and not distributed to authors.

Also, the copyright fees payed by TV programs broadcasters will be limited to 2% of the gross revenue.

At the same time, the law will stipulate the ceilings for the levies OGC can request for the distribution of these revenues to authors.

According to AGEPI estimations, the collected amount could reach annually approximately 20 million MDL (1 million EURO).

OTT service providers (Viber, Skype etc.)

Currently, the biggest threat encountered by Republic of Moldova providers is the continuous decrease of revenues, determined by the substitution of traditional telecom services with OTT (over-the-top) services, provided by international technological giants (Facebook/WhatsApp, Google, Viber/Racuten, Telegram, etc.) through built-in or downloaded apps on the phone, tablet or computer. Such services' providers are not subject to national telecommunication regulations and do not pay any taxes in the Republic of Moldova for the revenues obtained from provision of services to Moldovan end users.

According to the practice of various European states (ex. France and Netherlands) and the OECD convention, the proposal is to adopt regulations to force the providers of OTT services to declare in the Republic of Moldova the revenues incurred from services provided to Moldovan users, and pay taxes as a share of their turnover (gross revenue).

The protocol decision signed with Transnistria on telecommunications of 25.11.2017

Based on the above-mentioned decision, the Government negotiates with Orange and Moldcell for them to give up the licenses for bandwidth use of 800 MHz in the area pertaining to the Transnistrian territory, in order to reallocate them to a Transnistrian provider (IDC).

The three licenses were issued in 2014 for the entire territory of the Republic of Moldova for a period of 15 years and the cost was 10 million Euro per license. Based on these licenses, the providers have developed 4G networks on the right bank of the River Nistru, which cover the biggest part of the Transnistrian territory and population, servicing over 100.000 clients in this territory and adjacent areas.

The 800MHz bandwidth is a strategic asset, because it allows the provision of broadband data services on extended territories at high speed and low cost. Taking into account the rapid increase of the demand for such services from end users, the lack of opportunities to provide such services using the respective bandwidth would lead to loss of all or most of clients from the area and the inability of attracting new ones.

Based on the same decision, ANRCETI intends to require the operators from the right bank of the River Nistru to provide roaming services for the Transnistrian operator at tariffs that don't cover the costs of this service (only the incremental cost of the roaming service, but not the joint costs for the roaming service and their own services). This would allow IDC to provide services on the entire territory of the Republic of Moldova, competing with operators from the right bank of the River Nistru under privileged conditions, in particular:

Orange and Moldcell do not support the initiative regarding the cession of the bandwidth of 800 MHz in the area pertaining to Transnistria in favor of IDC.

If, however, such a transaction is pushed for, this can happen only through an agreement between the Government, Orange and Moldcell signed based on commercial principles, against a reasonable compensation for the investments which were already made, as well as for the income that the use of these frequencies could bring.

At the same time, before signing such an agreement it is necessary to agree on some warranties of fair competition between the providers from the right bank of the Nistru river and the Transnistrian provider, including the provision of roaming services, of the interconnection services, of preventing frauds linked to the unauthorized termination of international traffic in the networks of the providers from the right bank of the Nistru river, ensuring that on the territory of Transnistria other bandwidths owned by the right bank of the Nistru river providers will be able to operate undisturbed.

1. IDC would be the only provider offering nationwide services, as the operators from the right bank of the River Nistru don't have access to Transnistria.

2. IDC will be able to attract clients through more advantageous tariffs as it will incur fewer costs since it will not be subject to the same legal and tax regime as the operators from the right bank of the River Nistru, and will benefit from retail prices for roaming services, which do not cover all the connected costs of electronic communications services.

Moreover, such a transaction could consolidate the monopoly of the IDC operator in Transnistria, leading to future isolation of Transnistrian population from the rest of Moldovan territory, by cutting their economic ties with the right bank operators, and would cause reduced revenues for the national public budget, taking into account the fact that the IDC operator is exempted from the obligation to pay taxes in the Republic of Moldova.

Enforcing the Law on Access to Properties (Law 28/2016) for installation and operation of communications networks

Acknowledging the role of electronic communications in ensuring technological progress, economic development, ensuring social and economic inclusion of the population, access to education and to public services, including governmental ones, the EU has adopted the 2014/61/EU Directive of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

Similarly, the Republic of Moldova has adopted in 2016 a new Law on Access to Properties and Shared Use of Infrastructure, which implies obligations for real estate and land owners and holders to give providers access to install and operate the respective networks on these properties for a fee which would cover the direct damages caused by the respective works, without charging rent for the use of property. Based on this law, the Government has also approved the methodology for calculating tariffs for access to properties.

Unfortunately, the enforcement of this law was sabotaged by a large number of public authorities and managers of public properties.

On the other hand, the executive did not fulfil its obligation provided under the law to simplify the procedures for authorizing the installation (building) of electronic communications networks.

The proposal is for:

- the Government and the ministries to ensure the enforcement of the Law no. 28/2016 by all institutions and enterprises subordinated to them (including by applying sanctions to management staff refusing to enforce the law).

- the Government to perform its obligation foreseen by the law by simplifying the authorization procedures for installation (building) of electronic communications networks.

- based on the law enforcement experience, the Ministry of Economy and Infrastructure should draft proposals to improve the Law no. 28/2016 so as to eliminate any doubts about the interpretation of its provisions and establish more efficient mechanisms for ensuring its enforcement.

Reforming the legislation in the field of personal data protection

In 2018, the Parliament adopted in the first reading the bills of the new Law on Personal Data Protection and the Law on National Center for Personal Data Protection, developed by the National Center for Data Protection (CNPDCP), and submitted by a group of MPs. The goal of these laws is to transpose the EU General Data Protection Regulation (GDPR). The draft approved in the first reading still contains many transposition errors, inconsistencies, and deviations from the European framework (GDPR). A particular concern is raised by the establishment of some excessive authorization requirements, lack of sufficient procedural guarantees against

abuses of CNPDCP, as well as the unjustly high sanctions foreseen by these laws (as related to the size of sanctions set by the GDPR, considering the American giants from the so called GAFA group, which operates at the international level and has a turnover of billions of dollars). As the EU experts working in the Twinning project for CNPDCP stated, these draft laws comply with the GDPR only for a share of 70%.

The business community submitted to the Parliament an updated list with objections and proposals regarding the draft laws approved in the first reading. The EU experts have submitted a similar list. The business community hopes for an objective assessment to be undertaken by Parliament experts for all these proposals and for the laws to be finalized, taking into account these proposals.

NOTES

NOTES

DRÄXLMAIER

medpark SPITAL INTERNAȚIONAL

EFES MOLDOVA

SHOPPING mall DOVA

EY Building a better working world

METRO

EUROFARMACO www.eurofarmaco.md

orange™

GRAWE CARAT Asigurări SA

PURCARI ·CHATEAU·

LTC LA TRIVENETA CAVI conducting here!

rompetrol

GROUPE LACTALIS

SEBN MD

LE BRIDGE Corporation Limited NATIONAL DISTRIBUTION NETWORK

SÜDZUCKER MOLDOVA

Moldcell

TIREX

Timis 19 str, of. 301, Chisinau MD-2009
Republic of Moldova
Telephone: +373 22 24 43 17; +373 22 24 03 72
Internet: www.fia.md
E-mail: office@fia.md