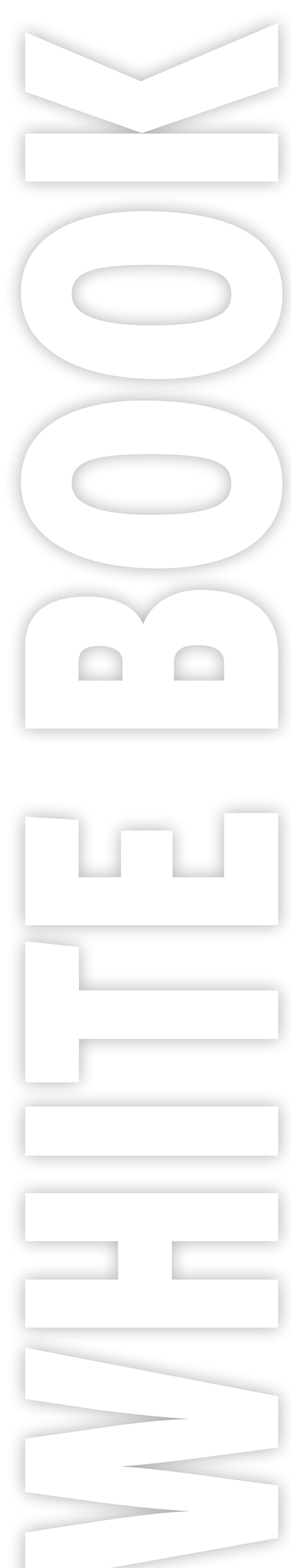
WHITE BOOK

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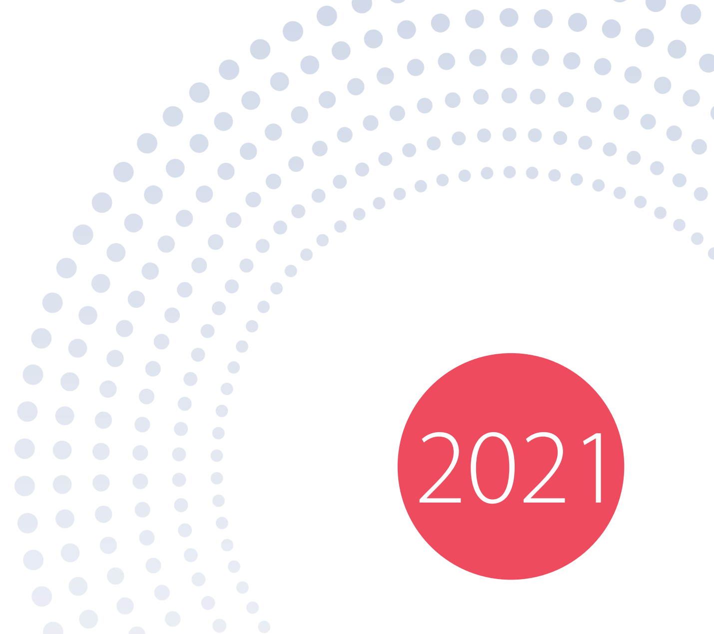
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© 2021 Foreign Investors Association (FIA) in the Republic of Moldova

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WHITE BOOK 2021

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

2021
Chisinau, Republic of Moldova

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EXECUTIVE SUMMARY

The White Book 2021 was elaborated by the experts of FIA member companies, and it is at its seventh 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 Sector

Certain international researches and studies reveal that the phenomenon of deep-rooted corruption destroys the Republic of Moldova as a rule of law and contributes to the decline of general human democratic values, especially dangerous on the background of the crisis generated by the COVID-19 pandemic.

Despite the fact that there is a legal and institutional framework, the Republic of Moldova continues to be affected by significant deficiencies at the level of corruption and governance. Poor law enforcement has a negative impact on foreign direct investments and private sector development.

It is obvious that the authorities are not in a position to independently, without the support of external development partners (primarily - the EU and the US), identify and exclude corrupt officials from the entire justice system.

For the complete rehabilitation of the justice system, in order to exclude corruption and ensure the basic right of the citizens of the Republic of Moldova to an objective investigation and a fair justice, the members of the Foreign Investors Association come with a series of proposals and measures in this regard.

Chapter II. Taxation

Foreign direct investments (FDI) stocks in the Republic of Moldova account for 40% of Moldova's GDP in 2019, according to the results of the Study on FDI impact on the economy of the Republic of Moldova.

Also, in order to maintain and stimulate investments' growth, the business environment needs predictable, transparent and clear rules; prior consultation of these regulations with all the interested parties, in strict accordance with the legislation on normative acts and those that regulate the entrepreneurial activity; ensuring a grace period for the entry into force and application of the new regulations, etc.

Chapter III. Labor relations

A successful business depends, for the most part - on the people who contribute day by day, through their skills and dedication.

For this reason, labor relations are one of the most sensitive, important and priority topics for each of the FIA members - foreign investors who implement in their companies the latest international practices and which align with the most modern trends, thus creating favorable working conditions for their employees.

Unfortunately, the sectoral legislation contains a multitude of outdated provisions, which creates many challenges and impediments for the development of an efficient entrepreneurial activity. In the 2021 edition of the White Book we reiterate the idea that in order to create a competitive economy, it is naturally required to modernize the labor relations, by systemically and appropriately adapting the legal framework, especially the Labor Code, this fact directly contributing to the development of a prosperous economy and the creation of favorable conditions for attracting new investments in the Republic of Moldova.

Chapter IV. Competition

A healthy competition is a defining element of market's efficiency and directly contributes to the economic balance and well-being of the society.

For this reason, the members of the Foreign Investors Association, diligent companies with high corporate values in business management, support transparent and fair competition, and competitive practices.

In order to fulfill the desideratum listed above, we are aware of the fact that first of all, it is necessary to ensure the independence of the Competition Council, through concrete regulations, set out below.

Chapter V. Waste Management

At the moment, humanity is facing multiple ecological problems that endanger our own existence, but also that of the Nature in general. Large-scale environmental pollution, global warming, floods and fires with devastating impact are just some of the examples that show us that implementing environmental policies and taking measures to save the environment are imperative.

One of the most important causes of the negative consequences set out above is the mismanagement of waste.

In this context, the Foreign Investors Association advocates for adjusting the legal framework and improving the institutional capacity to implement the international commitments in the field of integrated waste management.

Chapter VI. Digitalization of the Economy

Being one of the catalysts of the economy, Digitalization at all levels has become an imperative process in the pandemic context, necessary to ensure the proper functioning of all branches, including ensuring competitiveness and facilitating B2G, B2B and B2C relations.

Thus, the need to promote national economic education of the population (with the involvement of the Government) in order to use the remote financial instruments, the implementation of remote education systems, the digitalization of all processes of state authorities on the dimension of interaction with individuals / legal entities, to ensure accessibility to the services provided by them, etc.) was felt.

Chapter VII. Healthcare and Pharmaceuticals

The healthcare sector and the activity of the institutions in this sphere were deeply affected by the epidemiological crisis generated by the spread of the new type of Covid-19 virus.

The healthcare sector's challenges highlighted the "narrow spots" regarding the lack of medical staff, the need to reform the sector, especially the hospital one, the importance of primary healthcare, the objectives of modernization and digitalization of health services.

At the same time, the transparency of decision-making and implementation mechanisms, including in crisis conditions, must be prioritized. The principles for allocating financial resources under the Mandatory Health Insurance System based on strategic priorities are to be transposed into policy documents at national level, ensuring equal opportunities for all healthcare providers and facilitating patients' access to safe, qualitative and efficient services.

Chapter VIII. Land Issues

The Republic of Moldova has always positioned itself as an agrarian state, as agriculture is one of the defining sectors of the economy.

At the same time, this sector does not register maximum productivity quotas, as it should, given the specific nature of the country, due to high costs and due to a series of impediments caused by obsolete legislation, which functionally limits and restricts access to investments in this area. 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, which will solve a series of proposals and measures set out in this chapter, in particular, will increase the degree of protection of existing investments, will lead to attracting new investments in agriculture on fair and equal terms, for all.

Chapter IX. Telecom Industry

Telecommunications operators have a particular importance for the economy of the Republic of Moldova, their contribution representing 5.94 billion MDL or about 2.87% of GDP in 2020. At the same time, they are among the largest taxpayers and employers in Moldova. Operators are constantly investing in the development and upgrading of their infrastructure, promoting innovation and ensuring technological progress. They also support numerous social projects and initiatives in the field of digital education.

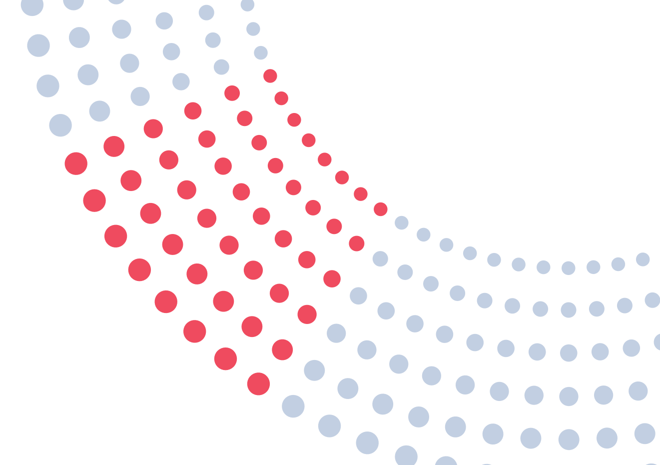
Unfortunately, the investment capacity of the telecommunications operators, especially those in the mobile sector, is heavily affected by unfair excessive taxation, which impedes the upgrading and development of the telecommunications networks based on the latest technologies and offering of more affordable tariffs to end users, as well as by many administrative barriers in the development of modern communications infrastructure.

Chapter X. Financial System

The financial system has a very important role in ensuring the functioning and efficiency of the economy of the Republic of Moldova.

Over the last decade, this sector has gone through a period full of turbulence, which has directly impacted the country's economy, but also the well-being of the population, which has led to numerous changes in financial sector legislation.

However, in order to establish a functional and beneficial balance for all providers and beneficiaries of the financial sector, FIA experts have identified a number of challenges and impediments in the work of financial institutions, and developed a set of proposals for adjusting the regulatory framework.



JUSTICE SECTOR

According to the Ranking of the **Corruption Perceptions Index (CPI)** for 2020, presented by ***Transparency International***, the Republic of Moldova registered a score of 34 points, ranking 115th out of 180 states. At the same time, the research reveals that the phenomenon of deep-rooted corruption destroys the Republic of Moldova as a rule of law and contributes to the decline of general human democratic values, especially dangerous against the background of the crisis generated by the COVID-19 pandemic. At the same time, in the International Monetary Fund (IMF) Report for 2020 on the Republic of Moldova presented on 26 July, 2021, the following conclusions are formulated: despite the fact that there is a legal and institutional framework, the Republic of Moldova continues to be affected by significant deficiencies at the level of corruption and governance. Poor law enforcement has a negative impact on foreign direct investments and private sector development.

It is obvious that the authorities are not in a position to independently, without the support of external development partners (primarily - the EU and the US), identify and exclude corrupt officials from the entire justice system.

For the complete rehabilitation of the justice system, in order to exclude corruption and ensure the basic right of the citizens of the Republic of Moldova to an objective investigation and a fair justice, the members of the Foreign Investors Association come with a series of proposals and measures in this regard.

Creating a Special Temporary Monitoring Mission of the development partners

It is proposed to create a support mechanism for the Republic of Moldova to address the shortcomings in the areas of judicial reform and the fight against corruption, for example, following the MCV (Mechanism for Cooperation and Verification) model established by the European Commission for Romania.

In connection with this, for the Republic of Moldova, it is proposed to create, with the support of development partners, a ***Monitoring Mission*** (for a period of up to 10 years). The members of the Monitoring Mission must have access to the materials of all criminal, administrative and civil cases managed by criminal prosecution bodies and courts, except those that constitute state secret, in order to verify the objectivity and legality of decisions issued at any stage of the justice process: from the initiation of criminal cases, to the adoption of irrevocable decisions of the courts, without substituting these bodies and affecting their independence.

In this regard, obviously, both the availability of development partners to support this project and the availability of the Parliament to introduce the appropriate amendments in the legislation of the Republic of Moldova are necessary.

Ensuring a transparent process of verification and selection of judges, prosecutors and employees of law enforcement bodies

- The process of selecting candidates for the position of **judge, prosecutor and employees of the law enforcement bodies *(Ministry of Internal Affairs, SIS, Customs Service)*** must also be carried out with the **mandatory participation of the Development Partners' Monitoring Mission**, taking into account both the compliance of wealth declared with the real one of the respective persons, of the close relatives and of the trusted persons, as well as the professional training, the integrity and experience of the candidates.

  It is proposed to request development partners to assist in the development and implementation of mechanisms for the selection of judges, prosecutors and employees of law enforcement bodies, in order to ensure the release of corrupt and / or incompetent persons from the justice system.

Creating the normative framework to allow the attraction of competent foreign experts / specialists, in order to provide support to the officers of the prosecutor's office bodies, internal affairs bodies and the Supreme Court of Justice in realizing its competences observing the principles of the rule of law.

- Currently, the legislation prohibits foreign nationals from working in the courts, the prosecutor's office and law enforcement bodies (Ministry of Internal Affairs, SIS, Customs Service).

Introduction of anti-corruption mechanisms to ensure the integrity of judges, prosecutors and employees of law enforcement bodies (Ministry of Internal Affairs, SIS, Customs Service) and the control of their activity.

- Improving legislation for the implementation of effective income reporting mechanisms, excluding the conflicts of interest, taking into account the kinship and traditional spiritual ties (wedding godparents, godchildren, godparents, grandchildren, cousins, etc.), including by checking the property / goods / wealth of relatives, godchildren and persons offering free donations or benefits to judges, prosecutors and employees of law enforcement bodies.

  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, which cannot be justified, must become an indisputable ground for their dismissal and the possible confiscation of the property / goods / wealth.

  Involvement of the **Monitoring Mission of the development partners** in the control over the implementation of these mechanisms, obliging the control bodies to unconditionally submit to the employees of the Mission all the necessary personal information, related to the workers of the justice system.

Implementation of the periodic external assessment of judges and prosecutors, with the support of the Monitoring Mission

- **The assessment and the reassessment of judges and prosecutors should** be conducted ***periodically, not less than once every 2 years***, with the participation of the Development Partners' Monitoring Mission.

Ensuring the training of judges

- Given that recently, the Republic of Moldova has transposed many provisions of Community law, it is necessary to train judges in the respective specialized fields, including competition law, intellectual property law, personal data protection, consumer protection, etc.

"De-criminalization" of economic crimes

- Revision of the block of economic crimes of the Criminal Code, in order to **de-criminalize some facts related to the risk of entrepreneurial activity**, except for crimes committed in the banking sector, money laundering, documents counterfeit, etc.

  We also consider it necessary to revise the Criminal Code, in the sense of reclassifying the economic crimes from "severe" into "less severe" by increasing the monetary ceilings provided in the Code of Criminal Procedure and relating them to the realities of the economy.

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

- The interdiction to use the arrest as a coercive measure for "less severe" economic crimes. In present, this measure is abusively used, to put pressure on businessmen and to obtain fictious evidence.

Reforming the status of the investigating judge

- In the present, an investigating 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, where it may be cancelled. In this case, the same prosecutor can initiate the criminal procedure towards the investigating judge, referring to illegal decision making.

Excluding the “judicial mediation” procedure

- This procedure is a formal one, which delays the trial process by 45 days.

  The court's practice demonstrates the inefficiency 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, s***igning a reconciliation transaction*** by the parties involved in the litigation, can also be performed outside of / without any judicial mediation procedure, which outlines the inefficiency of this instrument. Also, the current normative 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.

Amendment of the legal framework, in order to prevent the abusive request of information related to the secrecy of correspondence or personal data

- At present, several public authorities (which are not law enforcement bodies) and persons empowered by law to request any information necessary for the performance of their duties (for example, lawyers, insolvency administrators, bailiffs, etc.) require electronic communications providers to provide information related to the secrecy of correspondence (for example, call details) or personal data (for example, geolocation), without any prior judicial review, threatening providers with liability, including misdemeanor, for refusing to disclose such information.

On the other hand, the measure of collecting information from electronic communications providers, provided by the Code of Criminal Procedure of the Republic of Moldova, is abusively applied by some representatives of law enforcement bodies, as well as by investigating judges, which can be demonstrated by the similar, almost identical, content of requests to collect information from providers regarding the identification of subscribers and the services provided to them, the volume of information requested and the lack of a personalized approach, resulting from the case (which allows obtaining very specific information about the activity and privacy of a large number of persons, including persons with important positions in the state and law enforcement bodies, which have nothing to do with the investigated criminal activities).

Thus, in order to observe fundamental human rights and freedoms, it is necessary to clearly regulate the issues related to public authorities and third parties who have the right to access such information, the conditions under which this right may be exercised and the safeguards against abusive or excessive requests.

Creating the appropriate legal framework for legally blocking access to web pages

Electronic communications providers receive requests from law enforcement bodies to block some Internet pages and IP addresses that have been used to steal money or defame people.

These efforts to protect the population from fraud are welcome, but it is worth noting that such requests are not based on an appropriate legal framework, do not solve the complained problems (other websites can be created for the same purpose) and set a dangerous precedent.

Any measure to block access to any content on the Internet conflicts with fundamental human rights and freedoms, such as freedom of expression, freedom of opinion and the freedom to receive or impart information and ideas without interference by public authorities, guaranteed by Art. 10 of the European Convention on Human Rights and Art. 32, 34 and 54 of the Constitution, and must therefore (1) be provided by law and (2) be necessary, in a democratic society, to achieve the purposes defined above.

In the opinion of the European Court of Human Rights, restrictions such as internet blocking orders ***"are not necessarily incompatible with the Convention, in principle. However, a legal framework is needed to ensure both the strict control over the extent of prohibitions and an effective judicial control to prevent any abuse of power [...]. In this regard, judicial review of such a measure, based on a weighing of the competing interests at stake and intended to strike a balance between them, is inconceivable without a framework laying down precise and specific rules on the application of preventive restrictions on freedom of expression [...]"*** (Ahmet Yıldırım v. Turkey, Application No. 3111/10, Judgment of 18.12.2012, § 67).

Article 7 para. (1) letter e1) of Law No. 20/2009, on which such requests are based, is a blanket rule, which does not provide at the request of whom (private persons or public authorities, namely) the providers are obliged to terminate access, at the commission of which crimes or violations of the law such a measure may be ordered, at what stage of the criminal or administrative process such a measure may be ordered, under what conditions and for what period may such a measure be ordered, by which legal act such a measure is ordered, if such a measure must be authorized in advance by a court, what is the procedure of appeal of such a measure, etc. The other legal norm, invoked by the law enforcement bodies, Art. 217 para. (1) CCP, is only a general provision, according to which a criminal prosecution body can notify the responsible person regarding the taking of measures for removing the causes and conditions that contributed to the commission of the crime.

Applying such measures on the basis of the existing legal framework sets a dangerous precedent. Even if Law No. 20/2009 aims to prevent and combat cybercrime, the article cited above allows blocking access to web pages, which are alleged to contribute to **any violation of applicable law, at the request of any law enforcement employee or civil servant with control functions, without any prior judicial control.** It also allows blocking IP addresses, which usually host other web pages to which there are no objections. Thus, the web pages of business competitors, inconvenient media or political opponents can be blocked.

A draft law that contained a provision similar to the one provided by Law No. 20/2009 was previously submitted to the expertise of the Venice Commission, which formulated several criticisms and recommendations regarding it. Unfortunately, these criticisms and recommendations were ignored by the authorities.

The exclusion of personal liability

of officers for crimes / contraventions committed related to the risk of entrepreneurial activity, for example those related to violations of special legislation in the field, or the conditions of the held authorization / license, or consumer rights. These acts are committed in the process of economic activity, which are part of the commercial risk. Therefore, the responsibility for such violations must be borne by the economic operator in the name and in the interests of whom such activity is carried out, not by the administrator. In our opinion, it is an abusive practice of the State to try to eliminate such violations by applying the personal liability of the administrator in addition to the liability of the economic agent.

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 in the field of entrepreneurial activity, which caused damages in large proportions

For example, some entities in the telecommunications industry have complained that they face a large number of frauds committed by economic agents, which require the purchase of large volumes of devices with payment in installments and / or at a promotional (subsidized) price on the pretext that these items are needed to launch or expand a business. After obtaining the devices, they stop any payments, and the devices are sold (usually through online announcements / advertising platforms), the money obtained being appropriated 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 deliberate criminal behaviour, when the buyer purchases the devices without planning to pay for them, but to resell them and retain the money. Unfortunately, the law enforcement bodies refuse to prosecute these offenders, qualifying such situations as civil relations.

In order to be held liable for such an offense, it will be necessary to demonstrate the premeditated nature of this act, i.e. the occurrence of the intention not to perform the contractual obligations in the field of entrepreneurial activity until the conclusion of the contract or the occurrence of the obligation.

State tax

For the judicial claims (including appeal, recourse, etc.), according to the Law No. 1216/1992 on State Tax, the plaintiff / party pays state tax. According to the established practice, the court does not process the claim as long as the plaintiff / appellant does not submit the original order for payment of the respective state tax. Consequently, the applicant's right of access to justice is limited.

Such a practice is non-existent in most states, and the normative framework and practice must be modified in such a way that proof of payment can be made by other means (copy corresponding to the original, excerpt from online banking, or any other form which reasonably confirms the payment). Ultimately, the party presenting a false document (non-existent, canceled) is liable according to the law.

Organizing remote court hearings

Currently, the Code of Civil Procedure does not provide for the possibility of organizing and undertaking remote (online) court hearings. This possibility is extremely important, in particular, during the pandemic. Also, court documents (judgments, titles) are collected only in original from the court (standing in line, etc.).

Thus, we propose (i) To implement as soon as possible the possibility of organizing and conducting court hearings in cases before the courts of the Republic of Moldova remotely (online).

(ii) Inclusion of the possibility (obligation) of courts (judges) to sign court documents (judgments, decisions, titles, etc.) in electronic form (qualified advanced electronic signature) and submission of these court documents by email (electronic mail).

Insolvency law

According to Art.20 para. (2) letter (d) of the Insolvency Law No. 149/2012: the creditor's introductory request shall be accompanied by ... a copy of the irrevocable court decision or a copy of the irrevocable arbitral award or a copy of the irrevocable court decision on the recognition of the foreign court decision or arbitral award, or the decision (judgment) of the body empowered by enforcement law at that time.

That requirement increases the chances of bad faith debtors to oppose the payment requirement of the good faith creditor.

The insolvency law needs to be amended in such a way that the creditor can submit an introductory application against the insolvent debtor without going through the steps to obtain the irrevocable judgment for the act of non-execution.

Initiating insolvency against bad faith debtors would educate these debtors, who, although they receive money, products, services, subsequently, they oppose payment on formal grounds (inability to pay).

TAX LEGISLATION

Foreign direct investments (FDI) stocks in the Republic of Moldova account for 40% of Moldova's GDP in 2019, according to the results of the Study on FDI impact on the economy of the Republic of Moldova.

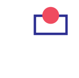
At the same time, the investments of FIA members amount to 13% of the GDP, in 2019.

Also, in order to maintain and stimulate investments' growth, the business environment needs predictable, transparent and clear rules; prior consultation of these regulations with all the interested parties, in strict accordance with the legislation on normative acts and those that regulate the entrepreneurial activity; ensuring a grace period for the entry into force and application of the new regulations, etc.

In this regard, in order to facilitate the operational activity of the companies, the experts of the FIA members have formulated a series of proposals for adjusting the legal framework, as follows:

PAYROLL TAXES

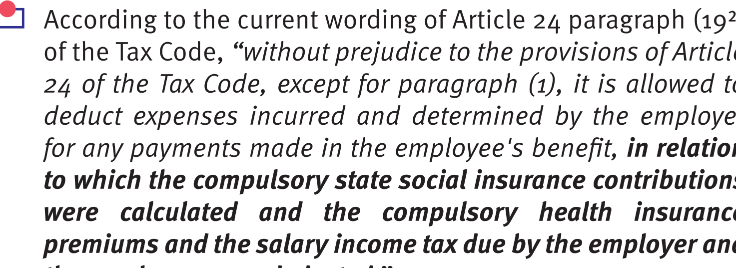
Taxation of benefits granted by the employer



The benefits provided by the employer are taxed by income tax, social contributions and health premiums. These contributions / premiums applied to the benefits 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 benefits provided by the employer to be taxed only with the income tax. Therefore, the types of rights and incomes to which mandatory social state contributions are not applicable, according to Annex 3 to Law no. 489/1999 on the public system of social insurance and the Law on the amount, manner and the terms of paying the state mandatory health premiums no. 1593/2002 should be supplemented with provisions in this regard.

Granting social benefits for foreign citizens who do not pay mandatory social insurance contributions in Moldova



According to the current wording of Article 24 paragraph (19^2) of the Tax Code, *"without prejudice to the provisions of Article 24 of the Tax Code, except for paragraph (1), it is allowed to deduct expenses incurred and determined by the employer for any payments made in the employee's benefit,* ***in relation to which the compulsory state social insurance contributions were calculated and the compulsory health insurance premiums and the salary income tax due by the employer and the employee were deducted".***

However, we would like to emphasize the fact that, in practice, there are situations when companies tax the benefits offered to their employees - foreign citizens only with (i) **the salary income tax and (ii) the compulsory health insurance premiums.** The non-application by the employers of the compulsory state social insurance contributions is substantiated by the special legislative provisions provided by Art. 20 paragraph (1) of Law no. 81 of 18 March, 2004 on investments in the entrepreneurial activity.

We propose that the wording of Article 24 paragraph (19^2) of the Tax Code be amended in order to grant the right to deduct expenses with benefits that have been taxed with the applicable salary taxes provided by law.

Deducting the expenses for employee's optional health insurance

Given that labor shortages represent a critical problem for any sector of the economy, employers are determined to create the best working conditions for their employees. Thus, in order to attract and retain their staff, employers offer a wide range of benefits, including optional health insurance.

Optional health insurance is an alternative that can provide a variety of medical services of high quality, without family doctor's prescription, in short time and in comfortable conditions

We recommend to amend Article 24) paragraph (20) of the Tax Code to allow the ***full*** deduction of annual expenses beared by the employer for the employee's optional health insurance.

Transportation of employees

Limiting employer's expenses for the transportation of employees, as from the tax deductions purposes, creates obstacles for the performance of the entrepreneurial activity. The amount of these expenses should be established by each entity.

We suggest to amend the provisions from points 33-36 of the Regulation on determining fiscal obligations related to income tax of legal entities and individuals who perform entrepreneurial activity approved by the Government Decision no. 693/2018, for the purpose of excluding the maximum limit of the average ceiling of 35 MDL (excluding VAT - on the day of publication of the White Book, 2021), per employee, for each day actually worked.

Meal vouchers

In our opinion, it is appropriate to increase the maximum nominal value of meal vouchers, in the context of benefits granted by the employer, as an incentive measure for employees.

We propose to increase the nominal value of meal vouchers up to 100 MDL, instead of 55, as it is currently provided by Law no. 166 of 21 September 2017 on meal vouchers.

Thus, Art. 4) para. (1) would be stated in the following wording: "The deductible nominal value for tax purposes of a meal voucher for a working day must be between 35 and 100 MDL. The value of meal vouchers does not include the individual compulsory state social insurance contribution."

INCOME TAX FOR ENTREPRENEURIAL ACTIVITY

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

The EU Association Agreement provides the compulsory harmonization of the Republic of Moldova's legislation with the EU legislation. The 2011/96/EU Directive foresees the exemption of the income tax at 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 these incomes.

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 some of the EU member states, (e.g. France), or that certain current conventions are outdated, (e.g. Germany), we recommend the implementation in the tax legislation of the Republic of Moldova of the 2011/96 / EU Directive or the signing of the Conventions avoiding double taxation with the rest of other states.

Extending the validity of the tax residency certificate

At present, in order to apply the provisions of a Convention on avoiding double taxation, it is compulsory for the non-resident 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 each calendar year.

We propose to amend the tax legislation by:

1. excluding the obligation for non-residents to submit a residency certificate by the income payment date, excluding from Art. 79^3 para. (2) of the Tax Code the wording: "by the date of income payment". Usually, the certificate is valid throughout the calendar year, regardless of the issuance date.
2. supplementing the last statement of Art. 79^3 para. (2) of the Tax Code with the wording "and other documents attesting the fiscal residence".

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

Both the Labor Code and the Regulation on employees' delegation of entities from the Republic of Moldova stipulate that an employee delegated for a business trip abroad is granted to be kept the position and the average salary during the business trip, including the time spent on the road.

We propose to calculate the monthly salary during the trips and not the average salary, because the calculation of the average salary includes premiums / bonuses received by the employee which can significantly increase the salary costs for the employee during the trip, although he performed his usual duties. Companies that have an employee reward system incur a higher volume of expenses in connection with this fact.

VALUE ADDED TAX AND EXCISE DUTY

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, para. (6) of the Tax Code) – which leads to additional costs for the agricultural entrepreneurs, especially in the years affected by drought, when the costs for certain harvested products can be higher than their market price.

We recommend the exclusion of the obligation to calculate the VAT from the deliveries under the cost of the delivered production for of the lease of the agricultural lands, by excluding para. (6) of art. 99) of the Fiscal 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 July 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 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 July 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 of goods and services addressed to collective systems were also exempted from VAT.***

We propose to amend Art. 103 of the Tax Code by adding a new paragraph (9[11]) as follows:

"(9[11]) 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 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 (services / execution of works) the right of VAT return. This restriction limits the opportunities of economic agents that perform equipment investments for other purpose to use significant amounts of money kept on theiraccounts, 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 / execution of works), but also for those used for commercial purposes (storage, logistics, packaging, etc.).

Use / non-use of electronic tax invoices

In case of purchasing on the territory of the country the material values, services from a supplier included in the list of taxpayers obliged to use electronic tax invoices (e-invoice), economic agents have the right to deduct the amount of VAT, only if they have an electronic tax invoice, issued by the supplier.

We consider that the penalty for not using electronic tax invoices must be borne by the issuer and definitely the buyer must not be left without the possibility of VAT deduction. Thus, we propose the exclusion of Art.102 paragraph (18) from the Tax Code.

OTHER TAXES AND FEES

Annual inventory

According to the provisions of the Law on Accounting and Financial Reporting, companies are required to perform the annual inventory.

At the same time, according to the provisions of point 3 of the Ministry of Finance Order no. 60 of 29 May 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 para. (2) of the Regulation on inventory, and to provide the performing of the inventory of assets at the ***discretion of the company's shareholders or management***, as well as to include the modern inventory methods.

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

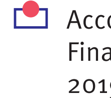
On 15 April 2016 Law no. 28/2016 on Access to Properties and Shared Use of Infrastructure Associated with Public Electronic Communications Networks entered into force.

Art. 9 para. (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 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, it is recommended to supplement Art. 277 para. (1) letter c) of the Tax Code: after the words “Republic of Moldova” to introduce the wording “except for those who have the right of access, in accordance with Law no. 28/2016 on Access to Properties and Shared Use of Infrastructure Associated with Public Electronic Communications Networks”.

Submitting and publishing financial statements

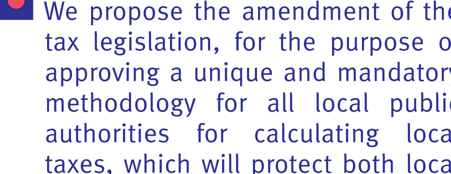

According to Art. 33 para. (3) of the Law on Accounting and Financial Reporting no. 287/2019 (in effect since 01 January 2019), an entity is obliged to submit to the National Bureau of Statistics the individual Financial Statements, the Management Report and the Audit Report, if applicable, within 120 days from the last day of the reporting period.

It is recommended to submit the consolidated financial statements within **180 days** from the last day of the reporting period, by amending Art. 33 para. (3) of the Law on Accounting and Financial Reporting no. 287/2019.

Local taxes

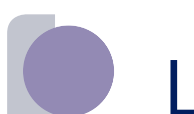
The current criteria for determining the local tax, through their recent capping, give an unfounded and excessive assessment to the local public administration. Thus, local councils determine the rates of local taxes at their discretion, without invoking any argument or justification for their establishment.

As a result of the recent amendments to the Tax Code, we attest a considerable increase, sometimes - unjustified, of the fiscal burden on companies.

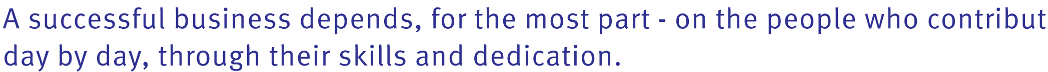

We propose the amendment of the tax legislation, for the purpose of approving a unique and mandatory methodology for all local public authorities for calculating local taxes, which will protect both local public authorities and companies.

This will make it possible to determine local taxes with maximum objectivity.

At the same time, we propose the indexation of local taxes annually, based on the inflation index established by the competent bodies, other grounds for increase being excluded.



LABOR RELATIONS


A successful business depends, for the most part - on the people who contribute day by day, through their skills and dedication.

For this reason, labor relations are one of the most sensitive, important and priority topics for each of the FIA members - foreign investors who implement in their companies the latest international practices and which align with the most modern trends, thus creating favorable working conditions for their employees.

Unfortunately, the sectoral legislation contains a multitude of outdated provisions, which creates many challenges and impediments for the development of an efficient entrepreneurial activity.

In the 2021 edition of the White Book we reiterate the idea that in order to create a competitive economy, it is naturally required to modernize the labor relations, by systemically and appropriately adapting the legal framework, especially the Labor Code, this fact directly contributing to the development of a prosperous economy and the creation of favorable conditions for attracting new investments in the Republic of Moldova.

Art. 34, 42^1 para. (6), 55^1 para. (5), Art. 97^1 para (4), Art. 197^1 para. (5) of 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 employer the opportunity to provide the necessary information to the employee in a timely, customized and complete manner.

The legal provision should offer the employer the possibility to choose the most efficient means of communication in relationship with its employees. In the context of the digitalization of processes, but also of the new realities generated by the pandemic crisis, we consider these provisions obsolete and propose their replacement in each of the articles mentioned with the phrase: “and bring relevant information to employees by any of the available means, which can prove the receipt of the information by the recipient.”

Article 55. Individual fixed-term employment contract

It is proposed to supplement with an additional paragraph providing for the option to sign individual fixed-term employment contracts, up to 2 years, for the development of ICT works, projects or programs.

Upon expiration of the initial term, the individual employment contract may be extended for the period of the project, program or work for which it was concluded.

The individual fixed-term employment contract would allow the formalization of employment relationships, which cannot be established for an indefinite period, taking into account the nature of the future work or the conditions under which it will be performed, or the interests of the employee, in a context explicitly provided for by law.

Provision similar to the one stipulated in Art. 83, letter h) of the Romanian Labor Code.

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.

The Labor Code does not provide the possibility to apply the trial period when an employee is transferred to another job.

Obviously, changing the job position or, especially, transferring the employee to a new position in a different profession or to different labor conditions (different, compared to the previous ones, more difficult, more harmful, more dangerous, etc.) requires 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 and job duties.

It is recommended to extend the trial period from three to six months.

It is suggested to amend Art. 60 and Art. 61 of the Labor Code, so that the trial period could be applicable not only once during the employment relationship, id est upon employment, but also later, in case of transfer of the employee to another position, profession, or to a job performed in hard or dangerous conditions.

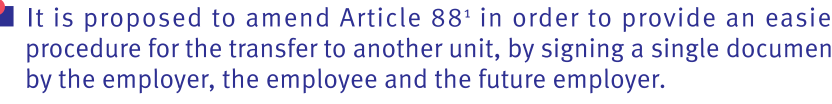
Art. 62 Prohibition of the trial period

Current provisions prohibit the trial period for persons employed based on a contest. The organization and implementation of the contest does not 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.

It is proposed to exclude letter c) from Art. 62, regarding the application of the trial period for the persons employed based on a contest.

Article 88^1. The dismissal procedure in the context of a transfer to another unit

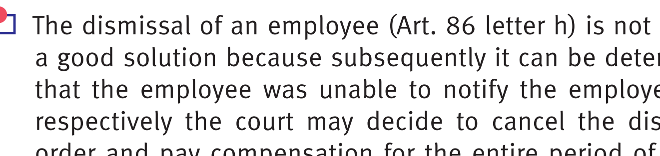
At the moment, Art. 88^1 provides a series of bureaucratic acts and formalities that must be performed in order to carry out the dismissal procedure in connection with the transfer of the employee to another unit.



It is proposed to amend Article 88^1 in order to provide an easier procedure for the transfer to another unit, by signing a single document by the employer, the employee and the future employer.

The proposal to amend Art. 88^1 of the Labor Code will create an easier and safer process of transferring the employee to another unit with the employee's consent, the current procedure being a difficult one that requires mandatory paperwork from all parties involved and the performance of certain unnecessary formalities.

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 the court may decide to cancel the dismissal order and pay compensation for the entire period of forced absence from work.

Additionally, there are cases when the employee is detained / arrested, and the prosecutor's office does not submit a request to suspend the individual employment contract of the employee (this is a right and not an obligation).

In such situations, it is appropriate for the Labor Code to provide a legal basis for the suspension of the individual employment contract until the situation is clarified.

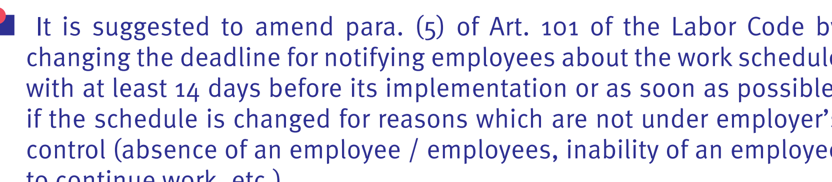
If a contract is not terminated or suspended, then the employment of other individuals to substitute the absentee - employee becomes impossible, fact which creates obstacles for the normal functioning of the enterprise.

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 do not depend on the will of either parties)** by adding a new paragraph as follows:

"- In cases of employee's absenteeism, if the employer does not have any information about the reason of his / her absence".

Art. 101. para. (5) Work in shifts

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



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

The need for this change became imperative in the context of the Covid-19 pandemic crisis, which has fundamentally changed perceptions about the performance of work, and its - predictability that, in certain periods, reaches minimum levels, due to the increased number of illnesses, and yet, employers have to perform their activities as usual, but the limits imposed by the law create big impediments and challenges.

Art. 104 Overtime work

(5) Upon employer's request, the employees may perform overtime work within the limit of 120 hours in a calendar year. In exceptional cases, this limit, with the agreement of the employees' representatives, can be extended up to 240 hours.

It is proposed to review and set a higher amount for overtime allowed during a calendar year.

The extension of the overtime hours would allow the reporting as well as the full payment of the hours provided by the employees, in the context of the observance of the legal provisions.

For example, in Romania, this amount is set to 8 hours per week (~ 416 hours per year).

It is proposed to exclude para. (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 the employees. For the most situations listed under para. (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

(7) Requesting employees to perform overtime work is based on a justified order (prescription, decision, resolution) of the employer, whereas the employees are informed, under signature

the employee (also through electronic means) is sufficient to start the overtime work.

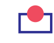
It is proposed to amend Art. 104 with para. (8):

(8) It is allowed to provide in the collective labor contract or in the individual employment contract the possibility to compensate the overtime with free hours, with the written agreement of the parties. In this case, the free hours will be granted within 30 days from the performance of the overtime work.

Compensation for overtime with free hours can be performed in the following ways: 1) overtime, then compensation with free hours or 2) granting free hours, and then performing overtime. In order to ensure that the second situation does not contradict that provision, we consider it necessary to make the following statement:

"In this case, the free hours will be granted within 30 days from the performance of overtime or the performance of overtime will be performed within 30 days from the granting of free hours, in advance."

Art. 113 Duration of the annual leave

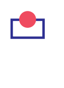

(1) All employees are granted an annual paid leave, with a minimum duration of 28 calendar days, except for non-working holidays.

We propose to replace the phrase "28 calendar days" with "20 working days".

Granting leave on working days is a practice used in many countries, e.g. Romania, Italy, Germany, Greece, Turkey, etc.

The proposal facilitates the negotiations on the holiday period as well as its calculation. The calculation of the annual leave on working days would allow employees to benefit from more days of leave, at the same time benefiting from a higher amount of the leave allowance, e.g. a leave allowance which is not less than the basic salary for working days.

Article 115. The manner of granting the annual leave


We propose to supplement Art. 115 with a provision prohibiting the unlimited transfer of unused leave days for the following years.

The unlimited transfer of unused leave days creates essential pressure on organizations.

The alignment with European practices, including Romania, provides for the obligation to take the remaining leave within 18 months, starting with the year following the year in which the right to annual leave was born, only if the employee for justified reasons was unable to take, in whole or in part, the leave. If the employer has fulfilled all the obligations, and the employee is the one who did not want to take the leave, he would lose the days not taken after the end of the next year in which he had to take them.

Article 116. Scheduling of annual leave

(2) When scheduling the annual leave, the desire of the employees is taken into account, as well as the need to ensure the proper functioning of the unit.

(5) The scheduling of annual leave is mandatory for both the employer and the employee. The employee must be notified, in writing, about the starting date of the leave at least 2 weeks before.

It is proposed to revise the provisions on leave schedule by supplementing with:

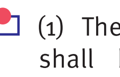
(2.1) Scheduled annual leave may be modified at the request of the employee (by submitting an application) with the consent of the head of the department / compartment to which the employee belongs, taking into account the operation of the unit and its needs.

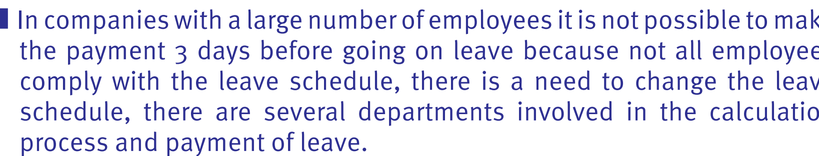
(5.1) The scheduling of annual leave is made by agreement between the employee and the employer. Employees are informed about the schedule of planned annual leaves by posting it in a public space (such as an information table), where all employees have access.

The practice shows that the scheduling of annual leaves cannot always be strictly observed, and it may be necessary to change them depending on the requests or needs of employees, as well as depending on the needs of the organization. The echeloned scheduling, throughout the year, would allow to take better account of the specific activity volumes and the individual needs of the employees, ensuring the continuity of the organization's activity.

The publication of leave schedules (graphically) would facilitate access to information for all persons / parties involved in the process. Given that the schedule is not part of personal data, its publication does not violate the law.

Art. 117 Leave allowance


(1) The leave allowance shall be paid by the employer at least 3 calendar days before the start of employee's leave.


In companies with a large number of employees it is not possible to make the payment 3 days before going on leave because not all employees comply with the leave schedule, there is a need to change the leave schedule, there are several departments involved in the calculation process and payment of leave.

We consider it opportune to amend Art. 117 of the Labor Code, in the sense of modifying the deadline for the payment of the leave allowance, which shall be no later than the date of payment of the salary, established in the individual employment contract.

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 stipulating the employee's obligation to inform the employer in advance about the date of return from social leave.

Providing reasonable terms (at least one month until the return from social leave) about the date of return from the childcare leave will create a predictability for both the employer and the employees who work in those positions and whose individual employment contract is to cease.

Art. 143. The deadlines for making the payments in case of termination of the individual employment contract

(1) If the amount of all the payments the employee is entitled for is not disputed, they shall be made:

a) in case of termination of the individual employment contract with an employee who continues to work until the day of dismissal - on the dismissal day;

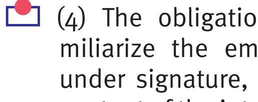
b) in case of termination of the individual employment contract with an employee who does not work until the day of dismissal (medical leave, unjustified absence from work, deprivation of liberty, etc.) - at the latest on the day immediately following the day on which the dismissed employee asked to be paid.

In companies with a large number of employees it is not possible to make the payment on the last day because of work in shifts, a salary system based on certain indicators, there are several departments involved in the process of calculating and paying the salary and there is also a large seasonal fluctuation.

We consider it opportune to amend Art. 143 of the Labor Code, by modifying the deadline for payment, which shall be no later than the date of payment of the salary, established in the individual employment contract.

The payment of the amount of money due to the employee made at the latest with the payment of the last salary, would allow the more efficient organization of the cash flows in the organization.

Article 199. The content of the unit's Internal Regulation



(4) The obligation to familiarize the employees, under signature, with the content of the internal regulation of the unit must be fulfilled by the employer within 5 working days from the date of approval of the regulation.

It is proposed to extend the deadline for notifying the provisions of the internal regulations of the unit up to 10 working days.

Organizations with many employees need to extend the deadline for signing the order, taking into account the fact that the current provisions require the communication of changes in a very short time.

At the same time, we consider it opportune to inform the employee by any means (signature / proof of reception by e-mail / other means of communication used in the company and which can prove the notification).

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.

Para. (2) provides 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.

In order to allow the efficient functioning of dual education in the Republic of Moldova, it is necessary to ensure a legal and normative framework which is clear, predictable and adjusted to the realities of the Republic of Moldova.

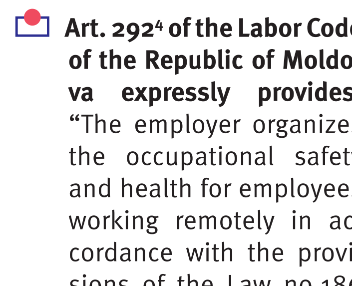
In Germany, France, Switzerland, Austria and Liechtenstein, apprenticeship in the dual system is regulated by the specific legislative act, taking place on the basis of an apprenticeship contract, where the apprentices are treated as company's employees.

In this regard, we recommend the amendment of the Labor Code and thus to exclude the provisions that stipulate 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.

We propose to establish a clause by which the employer is entitled to request, from the student-apprentice, the compensation of expenses incurred by the company after his/her training in the dual education system, if he/she, after graduation, will refuse employment or resign earlier than 6 months from the date of employment.

At the same time, we consider it fair that if the student is hired after studies directly at the company with which he had signed an apprenticeship contract, he/she should be exempt from certain taxes for a period of 2-3 years and benefit from the facilitated possibility to perform military service by alternative.

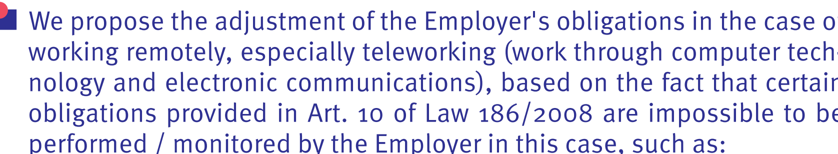
Occupational safety and health for employees working remotely, especially teleworking



Art. 292⁴ of the Labor Code of the Republic of Moldova expressly provides: "The employer organizes the occupational safety and health for employees working remotely in accordance with the provisions of the Law no.186 / 2008 on Occupational Health and Safety, as well as other normative acts in the field of occupational safety and health."

We propose the adjustment of the Employer's obligations in the case of working remotely, especially teleworking (work through computer technology and electronic communications), based on the fact that certain obligations provided in Art. 10 of Law 186/2008 are impossible to be performed / monitored by the Employer in this case, such as:

Article 10. General obligations



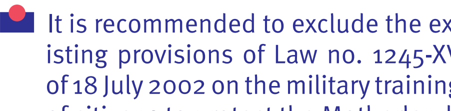
(3) The employer is obliged to apply the measures provided for in paragraphs (1) and (2) based on the following general principles of prevention:

a) avoiding professional risks;
b) assessment of occupational risks that cannot be avoided;
c) combating professional risks at source;
d) adapting the workplace to the needs of the person, including persons with disabilities, in particular reasonable adaptation of the workplace, choice of work equipment, production and working methods, in order to alleviate monotonous work and regulated work and reducing their effects on health;
k) creating and maintaining hygienic conditions for life and work;
l) propagation of active rest among employees.
(4) Without prejudice to the other provisions of this law, taking into account the nature of the activities in the unit, the employer is obliged:
a) to assess the professional risks ...
b) to ensure, subsequent to the evaluation provided in letter a) and depending on the needs, the application by the employer of the prevention measures ...

Article 12. First aid, firefighting and evacuation of workers in case of serious and immediate danger
(1) In case of a serious and immediate danger, the employer is obliged:
a) to take the necessary measures for the granting of first aid ...

Military records of the service of the employees

The current provisions of Law no. 1245-XV of 18 July 2002 on the military training of citizens to protect the Motherland oblige the employer to ensure daily records and inform monthly the Ministry of Defense about the employment and dismissal 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 legal provisions are outdated, they also force employers to perform improper actions which require financial and human resources.



It is recommended to exclude the existing provisions of Law no. 1245-XV of 18 July 2002 on the military training of citizens to protect the Motherland.

In case of incorporation of students in dual education, it is recommended to amend the GD No. 690/2019 so that the students from the Vocational Schools have access to the military department.

We propose the exclusion of records and the reporting by economic agents of the military situation of employees.

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 periodical 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, by issuing a certificate of attendance.

Currently, in the Republic of Moldova there are several such training centers, however they are not equipped 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:

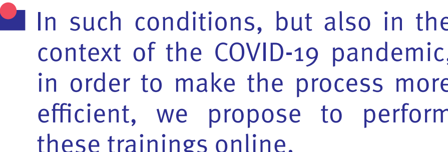
- The laboratory to be sufficiently specialized to organize practical courses;
- Educational materials to be up to date with the modern technologies;
- The training of teachers from this sector to be conducted with the use of the most modern practices and technologies.

Regarding the practical training carried out by the trained staff, we propose to perform it, either at the specialized training centers, or, with the agreement of the parties, at the enterprises, which have delegated employees for training.

Training at the National Public Health Agency

According to the 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.

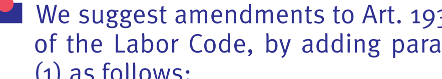
The organization of such training courses is performed based on the provisions of the Agency's Decision no. 2/2014 on the hygienic training of employees and depends on the agenda and the annual plan of the institution, which requires additional time for the employer.


In such conditions, but also in the context of the COVID-19 pandemic, in order to make the process more efficient, we propose to perform these trainings online.

This fact can be implemented by amending Law no. 10/2009 on the state supervision of public health.

Training at the National Public Health Agency

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 September 2017, the majority of employees have to undergo health examinations when employed. Taking into consideration the fact that individuals cannot be employed without medical results, 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 suggest amendments to Art. 193 of the Labor Code, by adding para. (1) as follows:

"The health examination 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 December 2007 on the approval of the single program of the compulsory health insurance of the fact that: ***„the medical examination upon employment is conducted free of charge, based on the health insurance policy."***

Non-compete clause

To introduce in the Labor Code a new article on the non-compete clause, taken over from Community legislation. In this case, we come to propose the takeover of the regulations from the Romanian Labor Code:

(1) At the conclusion of the individual employment contract or during its execution, the parties may negotiate and include in the contract a non-compete clause by which the employee is obliged not to perform, in his/her own interest or in the interest of a third party, an activity which is in competition with that provided to his/her employer, in exchange for a monthly non-compete allowance which the employer commits to pay throughout the validity of the non-compete clause.

(2) The non-compete clause takes effect only if the individual employment contract specifically provides for the activities that are prohibited to the employee on the date of termination of the contract, the amount of the monthly non-compete allowance, the period for which the non-compete clause takes effect, third parties which are prohibited from performing the activity, as well as the geographical area where the employee can be in real competition with the employer.

(3) The monthly non-compete allowance due to the employee is not of a salary nature, is negotiated and is at least 50% of the average gross salary income of the employee from the last 6 months prior to the termination of the individual employment contract or, if the duration of the individual employment contract was less than 6 months, from the average gross monthly salary due to him/her during the contract.

(4) The non-compete allowance represents an expense incurred by the employer, is deductible in the calculation of the taxable profit and is taxed to the beneficiary natural person, according to the law.

It is also proposed that the obligation to pay the monthly or single non-compete allowance should also be correlated with the employee's obligation to pay the penalty (damages - interests), in case of violation of this clause.

Conflict of interests

To introduce in the Labor Code a new article that will regulate conflicts of interests: "The employer may establish in the individual employment contract or in the internal procedures a clause regarding the conflict of interests by which the employee will be obliged to declare the conflict of interests.

The employee must avoid the situation in which he has or may have a direct or indirect interest that conflicts or could conflict with the interests of the employer. The employee must inform the employer of this situation.

The employee in conflict of interests must refrain from negotiating and making decisions on behalf of the employer regarding the legal act or operation to which the conflict relates.

The employee must refrain from harnessing, for his/her own benefit or that of his/her affiliates, on the opportunities to make investments or to carry out activities, which he/she knew during the exercise of the function if the investment or the activity was proposed to the employer or the employer had in it an economic interest or other interest according to the purpose pursued, unless the employer refused the opportunity without the influence of the employee.

Article 9.para. (2) letter j) of the Labor Code: The employee is obliged to declare potential conflict of interests, according to the procedures established by the employer.

Article 74. para. (1) of the Labor Code.....except for cases of conflict of interests. "Conflict of interests - the conflict between the exercise of the duties of the position held and personal interests".

Providing the new concept "Temporary agency work"

We propose the introduction of a new chapter in the Labor Code of the Republic of Moldova: **"Temporary agency work"**

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..

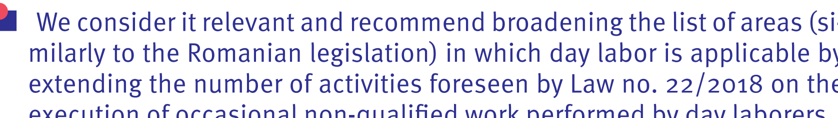
(5) Temporary work refers to the period of time in which the temporary employee is available to perform temporary work for the user, under the supervision and leadership of the user [company], and to perform specific, temporary tasks.

The introduction of this chapter is imperative for the modernization of labor relations and bringing them in line with international practices.

In 2008, the European Parliament adopted Directive 2008/104 / EC on temporary agency work, and the Member States of the European Union were to review the Directive by December 2011.

Thus, Romania in 2011 amended the Labor Code and adopted the Government Decision no. 1256 of 21 December 2011 on the operating conditions and the procedure for authorizing an agency for temporary work to transpose the Directive.

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 executed.

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 para. (2) of Art. 1 from Law no. 22 of 23 February 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.

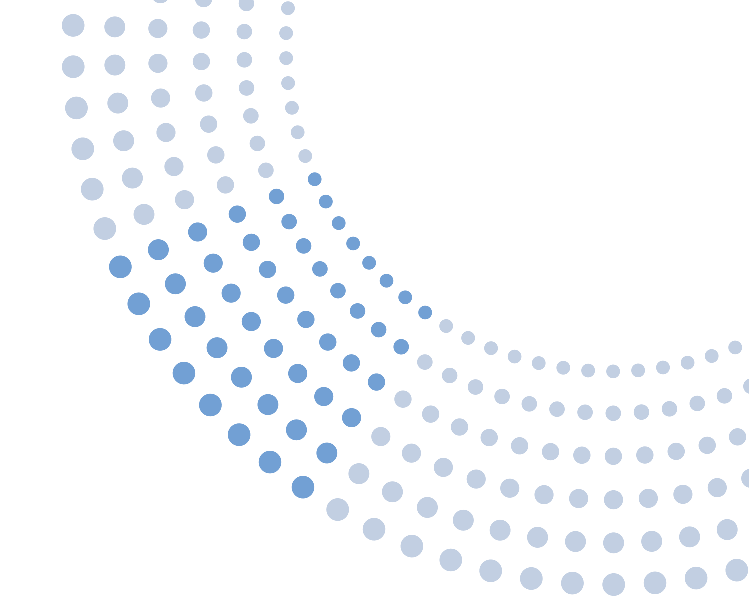
Thus, we recommend including in the Labor Code a new article as follows:

"Art. *** Induction process at workplace

(1) 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.

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

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



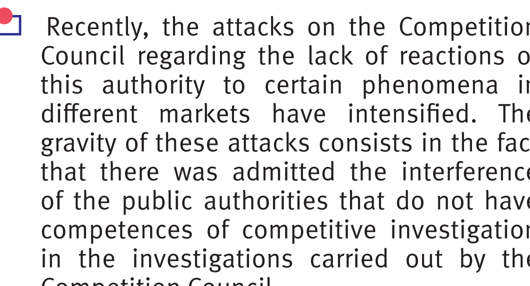
COMPETITION

A healthy competition is a defining element of market's efficiency and directly contributes to the economic balance and well-being of the society.

For this reason, the members of the Foreign Investors Association, diligent companies with high corporate values in business management, support transparent and fair competition, and competitive practices.

In developing countries, the adoption and application of competition principles and laws carry too much political burden. In order to fulfill the desideratum listed above, we are aware of the fact that first of all, it is necessary to ensure the independence of the Competition Council, through concrete regulations, set out below.

Independence of the Competition Council



Recently, the attacks on the Competition Council regarding the lack of reactions of this authority to certain phenomena in different markets have intensified. The gravity of these attacks consists in the fact that there was admitted the interference of the public authorities that do not have competences of competitive investigation in the investigations carried out by the Competition Council.

The independence of the Competition Council is established at legislative level by the Competition Law no. 183/2012. Art. 33 para. (1) of the Competition Law expressly provides that this authority is an independent one in the exercise of its attributions, and para. (2) of the same article emphasizes that the organization and activity of the Competition Council is based on the principles of independence.

Ensuring the independence of the Competition Council is also a commitment

It is recommended to the Parliament of the Republic of Moldova to include in the Competition Law rules that:

- would strengthen the status of the Competition Council as an independent authority;
- would expressly declare inadmissible the interference of other persons, including public authorities, in the ongoing competitive investigations at the Competition Council;
- would expressly stipulate the legal status of the information obtained by the Competition Council during competition investigations, including the investigation report.

In particular, it is recommended to amend Art. 59 by supplementing with a new paragraph:

"(8) The Competition Council shall not have the right to submit the Investigation Report to persons and / or for purposes other than those specified in this Article. The Competition Council is not entitled to present the non-confidential version of the Investigation Report except in the cases and on the grounds provided by law."

made by the Republic of Moldova based on the Moldova-EU Association Agreement.

The independence of a competition authority is a guarantee for the Council, for the undertakings involved in competitive investigations, and for society in general. The Competition Council must have the capacity to exercise its legal powers objectively, without being subject to outside influences. At the same time, companies must have the guarantee that competitive investigations will only aim to protect competition in the market, and not to exert external pressure. The society must have the guarantee that the market mechanism will act correctly and that the competitive environment will not be disturbed by competitive investigations, in fact worsening market conditions for consumers, businesses or the national economy in general.

It should be noted that anti-competitive infringements are the most serious infringements that can be committed by businesses in economic activity. In addition to the heavy penalties imposed by law, the charge of committing such infringements damages the professional reputation of the involved companies. That is why the state must guarantee the prevention of premature leakage of information related to ongoing investigations, as well as the presentation of investigation reports to persons, including public authorities in cases not provided by law.

It is recommended that the Competition Council draw up a regulation on the procedure for conducting competition investigations by the Council, detailing all the procedural implications provided for by the Competition Law, including:

(i) a clear delineation of the powers of competitive investigation between the investigation team and the Plenum of the Competition Council,

(ii) the interaction between the investigation team, the parties involved, and the public authorities during a competitive investigation;

(iii) rules of procedure related to the formalization of investigative acts (letters requesting information, investigation report);

(iv) rules of procedure relating to the implementation of the questions of the investigation team addressed to the parties involved if they are not clear;

(v) rules relating to the legal status of the investigation report;

(vi) cases in which the investigation report may be amended, supplemented and when an amended investigation report does not need to be resubmitted to the parties involved for observations;

(vii) cases where the parties are not given access to the evidence in the file which was obtained by the investigation team after the submission of the report to the parties for observations and / or after hearings.

Informal trading

According to recent data from the National Bureau of Statistics, the share of the informal economy in the Republic of Moldova for 2019 was 25% of GDP. Traditionally, the undeclared segment has the largest share of agriculture - 6% of GDP, followed by constructions - 4.6% of GDP, followed by trade - 3.9% of GDP.

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

In this respect, 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 control 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 and control 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 (by developing the appropriate infrastructure);
- establishing by the authorities of 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 control 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 exclusively on account or bank card, by making appropriate changes to the regulatory framework.

Law on Patents in Entrepreneurial Activity

The Foreign Investors Association has constantly promoted the establishment of transparent and clear rules in the conduct of economic activity, being a follower of fair competition conditions.

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 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.

In such conditions we firmly reiterate our position regarding the need to amend the Law No. 93/1998 on Patents in Entrepreneurial Activity such 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 to facilitate the transfer from patents-based to ***"independent activity"*** for individuals making their living from independent trade activities.

Commercial Sector / State interference in entrepreneurial 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.

In accordance with the basic principles of competition, state intervention in the entrepreneurial activity, carried out by the issued decisions or by acts adopted by central or local public administration authorities, which directly or indirectly influences competition, may be allowed in exceptional situations, when such measures are related to the application of other laws or to defend a major public interest.

In accordance with the regulatory principles established by the Law on Normative Acts no. 100 of 22 December 2017, when drafting the normative act, the constitutionality, consecutiveness, predictability, and transparency of the normative act must be ensured.

It is recommended to perform:

- analysis of the initiative in order to comply with the international treaties to which the Republic of Moldova is a party, the unanimously recognized principles and rules of international law, as well as EU legislation;

- evaluation and analysis of the regulatory impact, in accordance with Art. 13 of Law no. 235/2006 on the basic principles for regulating entrepreneurial activity;

- obtaining the opinion of the Competition Council for any state initiative that may directly or indirectly influence competition.

Parallel imports

There is currently a conflict between primary and secondary legal rules regarding the admissibility of parallel imports.

Art. 13 para. (1) of the Law No. 38/2008 on the Protection of Trademarks prohibits the owner of a registered trademark to request the prohibition of the use by other persons of this trademark on products and / or services that have been placed on the market of the Republic of Moldova by himself or with his consent. In other words, Art. 13 para. (1) allows the owner of a registered trademark to prohibit other persons from using this trademark on products / services, if the products were not placed in the Republic of Moldova by the owner, or were placed without his consent.

At the same time, Art. 63 of the Regulation on the assessment of vertical anti-competitive agreements no. 13/2013 stipulates that the policy of restricting parallel imports by which the seller restricts the distributor's right to active or passive sales in different countries is considered prohibited. It is only allowed to restrict active sales in a certain territory allocated exclusively to a distributor. This conflict creates a state of uncertainty for both trademark owners and importers of goods and services as to the legality of the ban on parallel imports. Thus, even if the ban on parallel imports is allowed under certain conditions set by the Law on the Protection of Trademarks, trademark owners and distributors risk being accused of anti-competitive behavior by concluding vertical anti-competitive agreements prohibiting parallel imports under the Competition Law.

It is recommended to the competent authorities to introduce the necessary amendments in the normative acts, by amending Art. 13 para. (1) of the Law on the Protection of Trademarks and / or Art. 63 of the Regulation on the assessment of vertical agreements, so that the conflict of rules on the admissibility of parallel imports is removed.

Law 54/2021 and the Decision of the NAER Board of Directors no. 254 of 14 June 2021

which creates a totally unfavorable framework for operations in the field of wholesale and retail sale of petroleum products.

According to Art.1 of Law no. 54/2021, the marketing prices of the main petroleum products and LPG are established by the economic agents based on the methodology of calculation and application of prices for petroleum products, drafted and approved by NAER in accordance with the legislation in force and taking into account the General Norms for the calculation and application of prices for the main petroleum products, stipulated in Annex no. 2 to the nominated law.

According to Art.5 of Law no. 54/2021, the maximum retail sale prices of the main petroleum products will be calculated at 1 liter, separately for each type of petroleum product and each consignment of imported petroleum products, according to the formula included in the law.

By the NAER Board of Directors Decision no. 254 of 14 June 2021, the values of margins for wholesale and retail sale of main petroleum products and liquefied petroleum gas were approved for the second half of 2021. The values of the established margins do not even cover the expenses of the oil companies, not to mention any profit.

Also, NAER for the first time in the Republic of Moldova capped the prices for the wholesale of petroleum products.

We request the abrogation of Law no. 54/2021 and NAER Decision no. 254/2021 and the return, at least, to the normative framework, which existed until 1 July 2021 in this field, and the alignment to the practices of the European Union, so that the prices are set by oil companies in accordance with the principles of the market economy and in compliance with competition and market economy legislation.

According to Decision no. 17/2013 of the Competition Council (p.136):

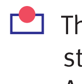
the implementation of an economic concentration operation means, as the case may be, the agreement conclusion, the public offer announcement or the control package takeover.

In practice, being asked to present its position in writing several times, the Competition Council mentioned that a contract (agreement) signed between the parties to an economic concentration, even being under a suspensive condition (Art.352 Civil Code), can be seen as the implementation of economic concentration. However, in practice, the suspension clause would not be recognized.

We request the amendment of p.136 of the Decision no. 17/2013 of the Competition Council, by including the phrase, that the inclusion of the suspension clause (e.g. regarding the transfer of shares, closing of the transaction, etc.) in an agreement (contract) between the parties to an economic concentration can not be seen as the implementation of economic concentration.

Such a provision would be in line with the relevant practices in the EU, Romania, etc.

Implementation of the "self-service" concept at the Fueling Stations



The possibility of self-service when refueling customers in gas stations is currently non-existent in the Republic of Moldova. According to p.51 of the Regulation to GD 1117/2002, in the most permissive case, the customer can refuel independently, but under the supervision of the operator, which means that the operator of the gas station must be present on site. Consequently, the indication by the oil company that the customer must fill up on his own (without an operator) can lead to consumer complaints and sanctions (including regulatory) for non-compliance with licensing conditions / legislation on retail sale of petroleum products.

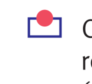
Such a limitation is not found in the EU and other states in the region (e.g. Ukraine).

The customer must be able to refuel independently and without the supervision of the operator (e.g. according to the instructions displayed on the pump), and the oil company must have a legal remedy under which to show the customer that, according to the rules of the station, the supply is made by the customer himself (without the participation of the operator).

We request the corresponding amendment or exclusion of p.51 from the Regulation to GD 1117/2002.

We also request inclusion of a rule (for example in the Regulation to GD 1117/2002), according to which the oil company is entitled to decide on its own the mechanism under which customers refuel at its fuel station (including, without the operator participation / supervision).

Implementing the concept of unmanned fuel distribution station



Currently, the legislation of the Republic of Moldova does not regulate the concept of ***unmanned*** fuel distribution station (without staff and with payment by card). Moreover, according to the existing legal rules, such a type of fuel distribution station would be impossible to achieve.

The practice of ***unmanned*** stations is widespread in the EU (see Austria, Germany, etc.).

It is recommended to amend Art. 26 of Law no. 461/2001 on the market of petroleum products and the Regulation to GD1117 / 2002 by elaborating and including in the legislation such a concept according to the best practices of the EU.

WASTE MANAGEMENT

At the moment, humanity is facing multiple ecological problems that endanger our own existence, but also that of the Nature in general. Large-scale environmental pollution, global warming, floods and fires with devastating impact are just some of the examples that show us that implementing environmental policies and taking measures to save the environment are imperative.

One of the most important causes of the negative consequences set out above is the mismanagement of waste.

In this context, the Foreign Investors Association advocates for adjusting the legal framework and improving the institutional capacity to implement the international commitments in the field of integrated waste management.

We consider it imperative to properly apply the new concept of Extended Producer Responsibility (EPR) provided by the national legislation, which is widely implemented in several developed countries around the world and imposes on producers the obligation to bear the costs for the correct collection, treatment, recovery or disposal of waste generated by products placed on the market.

For these reasons, we consider that there is an urgent need to identify and implement economic and fiscal instruments to ensure the implementation of EPR at national level.

Further, FIA experts drew up a series of proposals to escalate the challenges set out above.

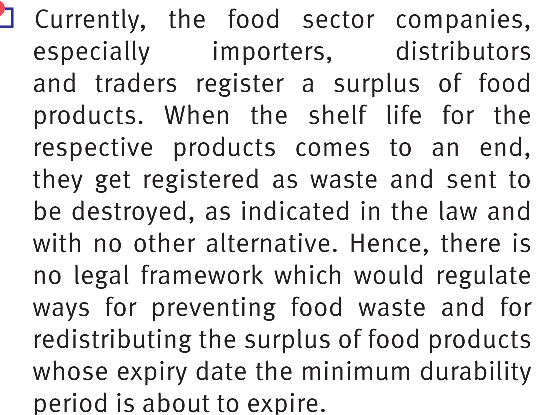
Regulation on electrical and electronic equipment (WEEE) waste

Although according to point 111 of GD 212/2018, economic agents marketing EEE must request the registration number from the List of manufacturers, this obligation cannot be fulfilled because large suppliers with exclusive representation of some brands on the territory of the Republic of Moldova are not registered in the List of manufacturers, and distributors cannot give up the respective suppliers due to the lack of alternative.

In such circumstances, we recommend that the competent authorities take the following measures:

- establishing and publishing the unit reference value for items covered by the WEEE Regulation.
- establishing tax incentives for producers implementing the WEEE Regulation, in order to direct financial resources towards ensuring EPR, as well as to encourage producers to create collective schemes.
- Supplementing Art. 154 of the Administrative Code, with a paragraph which expressly provides for the sanctioning of the producer for not registering in the List of manufacturers within the deadlines established by the regulation / lack of registration number (similar to Art. 741 paragraph 2 of the AC, in case of personal data processing in the absence of authorization).
- Elaborating the normative framework to regulate the obligations of natural persons regarding the recycling of WEEE, including their sanctioning, in case of non-compliance with the respective obligations (for example non-delivery of WEEE at the collection points communicated by the seller).

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 whose expiry date the minimum durability period is about to expire.

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 within their enterprise mechanisms for preventing food waste and for sending the surplus of food products to beneficiaries.
4. Development of an electronic platform that will facilitate monitoring and logistics related to food waste reduction.

Draft Regulation on Packaging and Packaging Waste

According to the Government Decision no.561 / 2020 for the approval of the Regulation on packaging and packaging waste (GD no. 561/2020, this regulation enters into force on 21.08.2021. At the moment, there is a lack of a collective operational system that would ensure the harnessing of several types of paper / plastic / wood / metal packaging. Currently, 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.

In accordance with Law no. 1540/1998, economic agents importing and / or packaging producers pay the payment for environmental pollution. We reiterate that, with the entry into force of GD no. 561/2020, all the financial and tax burden will fall only on the economic agent, it being in a position to pay double, both for the EPR system and the payment for environmental pollution.

Creating the right conditions for the establishment of collective systems that will harness multiple types of packaging (paper, plastic, wood, metal, etc.).

Clarification of the registration of collective and individual waste management systems and obtaining the operating license.

Development of an electronic list with the possibility of permanent completion containing all types of packaging, their characteristics and weight.

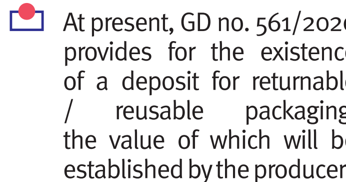
Subsidies through grants and co-financing of collective waste management systems to boost their activity.

Exemption from taxes for environmental pollution of economic agents that are part of a collective waste management system or implement an individual system.

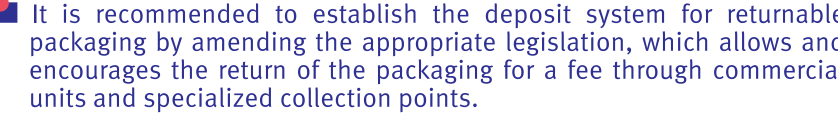
Clear definition of waste ownership.

In the case of state subsidization of the activity of economic agents collecting / harnessing packaging waste, it is necessary to introduce a rule governing the corresponding deductions from the cost applied by these operators to producers for management.

Packaging deposit system



At present, GD no. 561/2020 provides for the existence of a deposit for returnable / reusable packaging, the value of which will be established by the producers



It is recommended to establish the deposit system for returnable packaging by amending the appropriate legislation, which allows and encourages the return of the packaging for a fee through commercial units and specialized collection points.

It is necessary to draw up a list which can be always amended, including all types of packaging subject to deposit and the size of the deposit.

and the Government. At the same time, no normative act refers to the creation and management of packaging return systems.

In the current legal formula, traders are not encouraged in any way to be part of the collection / return systems.

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 do not present a risk of counterfeiting.

We recommend the elaboration of the fiscal mechanism of this deposit system, taking into account that its application will have an impact on the self-cost of the final product. It must relate to the amount of the deposit which may be applied to the marketed products, in a fixed amount or as a percentage; cases when reimbursement of the deposit amount are mandatory.

We consider it important to identify the possibility of attributing the costs of implementing the deposit system to deductible expenses related to entrepreneurial activity, which will encourage traders to be included in the system.

It is absolutely necessary that the authorization to collect / harness the bottle be obtained only by simple notification, which will encourage the creation of autonomous collection points.

As the issuance of the tax receipt or tax invoice also involves the transfer of ownership of the traded property, it is necessary to prepare additional documents that need to be issued when applying the deposit system, setting the deadline within which the natural or legal person may request the reimbursement of the deposit amount and the fate of the funds in case the deposit amount has not been reimbursed as a result of non-addressing by the natural or legal persons.

It is also necessary to define very clearly to whom the deposit system is addressed, in case of its application by producers: to natural persons or to natural and legal persons who purchase products in reusable packaging from producers within the meaning of GD no. 561/2020 and how the deposit amount will be reimbursed, in case of application of the deposit system to the collection of reusable packaging waste within the collective systems that act on behalf of the associated members.

According to Art.20^{1} (4) Law No. 231/2010 on internal trade:

It is forbidden to use / sell plates, glasses, other accessories of tableware and chopsticks, disposable, made of plastic, with the exception of biodegradable ones, starting with January 1, 2021.

This rule leaves many interpretations on the products that fall under this ban. Secondary framework in connection with this rule does not exist yet.

Implementing a secondary normative framework or, alternatively, amending that rule by including explicitly and clearly (without "etc", "other") the list of plastic elements the use and marketing of which is prohibited.

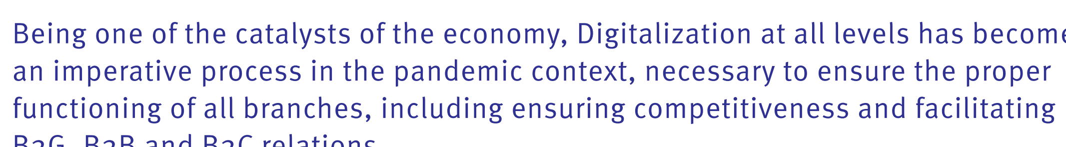
Classification and clear definition of plastic types (disposable, reusable, etc.) from which the products are made for the clear determination of product categories that fall under Law 231/2010.

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 provided 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 wastes.

DIGITALIZATION OF THE ECONOMY



Being one of the catalysts of the economy, Digitalization at all levels has become an imperative process in the pandemic context, necessary to ensure the proper functioning of all branches, including ensuring competitiveness and facilitating B2G, B2B and B2C relations.

Thus, the need to promote national economic education of the population (with the involvement of the Government) in order to use the remote financial instruments, the implementation of remote education systems, the digitalization of all processes of state authorities on the dimension of interaction with individuals / legal entities, to ensure accessibility to the services provided by them, etc.) was felt.

In this regard, we come up with a set of proposals and recommendations, as follows:

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

According to the Republic of Moldova legislation the electronically signed e-document is assimilated, according to its 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. Keeping visits to the authorities mandatory at certain stages consumes time, creates impediments and costs, and in some cases even major risks to business, when investors are abroad, and due to bureaucratic procedures significant sanctions can be applied or even the activity can be stopped.

Moreover, in the pandemic context, the visits to the authorities are an imminent danger to health, and sometimes it is an impossible process, due to the circulation restrictions imposed by the authorities.

It is recommended to intensify the processes of implementation and application of remote interaction with public authorities, the wide application of the provisions of Law 91/2014 on electronic signature and electronic document, the insertion in the current legislation of the “digital by default” principle.

Immediate actions to achieve the implementation of digital solutions would be:

(a) requesting (public pressure) from all authorities to identify possible situations of interaction with citizens and legal entities;

(b) identifying less sensitive interactions that may occur without advanced authentication (by signature);

(c) developing and publishing the remote interaction mechanism for two categories of situations: through electronically signed e-document and through electronic communication without the use of e-signature;

(d) establishing measures to enforce compliance with the e-document (which, according to the current provisions, have priority, and by approving additional provisions, when needed). Actions for this stage have been included in the Roadmap on the digitization of the economy and e-commerce. The first package of legislative amendments in the field of digitalization has been developed and presented, which should be promoted as soon as possible. At the same time, the next package of legislative amendments for digitalization is being drafted for which additional measures can be identified and promoted. These joint efforts of the business community are supported by development partners and are promoted within the Economic Council to the Prime Minister..

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.

Promotional actions are recommended to obtain cross-border recognition of digital signatures of trusted suppliers, primarily those certified in the EU single market (operating under the IDAS regulation). The Republic of Moldova has sufficient domestic technical capacity and a developed digital public key infrastructure, but the lack of openness and competition in this market reduces the value of services to the business community, making it difficult to access remote services for entrepreneurs abroad, investors and business partners. In order to achieve this objective, technical, certification and normative actions are required and significant interventions are needed. At the same time, it would be necessary to clarify the roles and procedures for the authorities / institutions with the right to identify the persons, in order to receive the requests and send the devices with the certificates of the Moldovan electronic keys. Among such institutions could be the embassies and consulates of the Republic of Moldova present abroad or the identification of other functional mechanisms.

Implementation of solutions for registration, deregistration and amendment of registration documents of enterprises and other entities with the status of legal entities

Due to certain legislative provisions, it is currently not possible to receive electronic documents from applicants for business registration and other legal entities.

It is recommended to properly adjust the regulatory framework and internal procedures in the competent authorities, primarily at the Public Services Agency, in order to exclude impediments to the receipt and issuance of e-documents in the field of registration, deregistration and change of status of companies and other legal entities.

Facilitate the release and widespread use of the electronic signature

The current procedure for obtaining the e-signature is a difficult one, which requires a lot of time, but also the presence of all decision makers in a company, and the term of its validity - is considered too short. Simplifying access to this service, automating the process of renewing the digital signature, extending the validity period, the usefulness and the widest possible application of these services - are the new objectives in this regard.

Thus, we recommend simplifying the procedure for issuing and extending the validity of e-signature for a period of 3-5 years, with the notification of the beneficiary about the expiration of the term and offering more possibilities to extend the validity term remotely. The possibility of applying for the digital signature within the authorities with the function of identifying the person, issuing identity documents, within the consulates of the Republic of Moldova abroad, other entities that can meet these conditions - would facilitate access.

At the same time, it is necessary to put pressure on authorities and economic agents in order to obtain the widest possible use of digital signatures, which will boost the processes of modernization, saving time and resources.

Facilitating access to cashless payment instruments and developing national e-commerce

It is proposed to reduce the VAT related to card payments for economic agents carrying out their commercial activity outside Chisinau municipality, as well as for economic agents, which accept payments through cards in the virtual environment (e-commerce). The value of the decrease could be equal to or less than the value of the card acceptance commission 1.5-3.0%). Similar actions have been also taken in other countries.

Exclusion of impediments to business development from personal data protection legislation

Law no. 133/2011 on Personal Data Protection, at the moment, provides for the mandatory notification of personal data operators to the National Center for Personal Data Protection. This practice has been excluded from EU legislation. Practically all legal persons under public or private law fall under the scope. The procedures are difficult and can take months.

Additionally, Law 133/2011 provides for the obligation to obtain the person's consent for data processing only in two ways - in paper format with signature or in electronic format signed with qualified advanced electronic signature. This provision makes it practically impossible to carry out several types of economic activities and creates major costs and impediments for other activities.

It is recommended as an immediate objective, the intervention for exclusion from Law no. 133/2011 on Personal Data Protection of the provisions requiring the mandatory notification of personal data operators to the National Center for Personal Data Protection and the extension of the ways for obtaining the consent of persons, as provided by EU legislation.

In the medium term, it is necessary to adjust the entire legal framework in this area with EU legislation on personal data protection, to provide clarity and predictability for the business environment in terms of personal data protection. It is necessary to eliminate the duplication / differences of legal requirements in the Republic of Moldova compared to the Community ones, in order to save resources and eliminate risks.

Implementing the non-cash payment of government services, including in the physical environment, by using POS terminals.

At the moment, it is not possible to pay with card for public services in the physical environment. It is proposed to install POS terminals within these institutions, in order to reduce the bank commission related to their service, jointly with the involvement of payment systems (Visa / Mastercard) the Government could negotiate special conditions.

HEALTHCARE AND PHARMACEUTICALS

The healthcare sector and the activity of the institutions in this sphere were deeply affected by the epidemiological crisis generated by the spread of the new type of Covid-19 virus.

The healthcare sector's challenges highlighted the "narrow spots" regarding the lack of medical staff, the need to reform the sector, especially the hospital one, the importance of primary healthcare, the objectives of modernization and digitalization of health services.

At the same time, the transparency of decision-making and implementation mechanisms, including in crisis conditions, must be prioritized. The principles for allocating financial resources under the Mandatory Health Insurance System (MHIS) based on strategic priorities are to be transposed into policy documents at national level, ensuring equal opportunities for all healthcare providers and facilitating patients' access to safe, qualitative and efficient services.

Digitalization in the healthcare sector

The transformation of healthcare through digitalization brings benefits to health systems, to the economy and to citizens. Digital technologies such as mobile communication, artificial intelligence or management, governance and data analysis (including Big Data) offer new opportunities to transform the way health services are received and provided. Health data and their advanced analysis can help better manage information, optimize it in terms of limited human and material resources, avoid waste, reduce pressure on the health system.

The outbreak of the pandemic generated by the spread of Covid-19 made imperative the need to integrate information and communication technologies in countries around the world and the Republic of Moldova is not an exception.

The national public health system needs the implementation of the concept of **E-health** and the provision of new generation medical services for final beneficiaries.

It is proposed to assess the needs and implementation models of the Electronic Health Record (EHR) in the Republic of Moldova, as one of the main factors for advancing the digitalization process in the healthcare sector.

In this order of ideas, it is welcome to include in the **Government Action Plan for 2020-2023, Chapter VI Social protection and health care, paragraph 6.4, the point actions for the "Development of the integrated e-health information system"**.

The word "integrated" is the starting point for the development of such a comprehensive system.

At point 3 of the Regulation on the keeping of the medical register approved by GD no. 586 of 24 July, 2017, it is found that the medical register is a state information resource that contains the following information systems: SIA AMP, SIA AMS, SIERUSS, SIA SS, SIA TRANSPLANT AIS TRANSPLANT and the Portal of medical leave certificates.

Likewise, according to points 22 and 23 of the same regulation, the medical register is interconnected with services such as (MPass), (MLog), (MSign), (MConnect) and with the State Register of Population, as well as with the Information System (IS) for reporting and evidence of medical services Case-Mix DRG and automated IS "Mandatory health insurance", "Verification of the status of insured within the Compulsory Medical Assistance Insurance" IS, "Register of persons registered in health institutions providing primary health care within the Mandatory Health Insurance System" IS, " Payment for medical services " IS, " Compensated medicines" IS owned by the National Health Insurance Company (NHIC), and IS " State Nomenclature of Drugs "(IS SND), owned by the Agency for Drugs and Medical Devices, integrated IS of the National Social Insurance House (IS "Social Protection").

However, it is found that practically all of these health information systems are either partially interconnected or not interconnected, which severely affects the information integrity and the ability to ensure data interoperability.

In this sense, one of the variants would be the inclusion in the system of an IS (such as: The electronic patient file widely used in the countries of the region), which will represent a centralized information system with a set of cooperative / interactive databases, which will have special mechanisms for integration with other information systems. Each sectoral automated information system (AMP, AMS, Transfusion Service, Emergency Service, E-prescription other systems) will deliver and have access to data related to the given sector.

The Electronic Health Record (EHR) is one of the main pillars for the promotion of E-health in the Republic of Moldova. EHR is the medical file, which contains data from the birth of the person with all the following records: vaccination, prophylaxis, dispensary, diagnoses, visits and addresses, important interventions / procedures performed, prescriptions, medical leave, etc. EHR data is automatically uploaded from (public or private) health information systems on an interoperable basis.

Without this digital element - EHR, the data collected manually has a limited use, it is not accessible to other institutions / medical staff, limiting the necessary access to patient information, including in critical situations.

EHR based on the use of information and communication technologies (ICT) can support the advancement of telemedicine and redesign the way statistical data is collected, as well as to increase transparency and the efficient use of resources in the health system. The level of development of electronic communications and access to the Internet in the Republic of Moldova creates the necessary preconditions for a rapid progress in this field.

Creating a transparent mechanism for contracting health services

The health services within the Mandatory Health Insurance System (MHIS) are contracted annually by the National Health Insurance Company (NHIC) based on a joint order with the Ministry of Health (MoH). At the same time, there is a need to promote a visionary strategy from the relevant national authorities regarding the active procurement of health services, which will be based on the needs of the population, compli

It is proposed to develop and approve a Government Decision on the criteria for contracting health care providers within MHIS, which would ensure patient access to health services provided by the selected health institutions through

ance with national strategies and active stimulation of providers' behavior to increase the efficiency of medical act.

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Development of national strategies (priorities) in the procurement of services based on the health needs of the population and the development of payment mechanisms, which would actively stimulate providers to increase the efficiency, quality, safety, accessibility of services.

The current process of contracting health services takes place with the omission of the provisions of some important legislative acts such as Law No. 235-XVI of 20 July 2006 regarding the basic principles of regulating the entrepreneurial activity (Art. 8 and 9); Art. 5, 6 and 7 of Law No. 239 of 13 November 2008 on transparency in the decision-making process, which provide for the obligations of public authorities to ensure the transparency of the process of elaboration and approval of new regulations; Art. 21 and 32 of Law No. 100 of 22 December 2017 regarding the normative acts.

In order to remedy this situation and according to the provisions of the Law on Health Protection No. 411/1995, Law No. 1585/1998 on

Mandatory Health Insurance and the Government Decision no. 1387/2007 on the approval of the Single Program of the compulsory health insurance, the Government Decision on the criteria for contracting health care providers within MHIS is to be approved. These criteria must represent the totality of the norms regulating the selection process of the health service providers for concluding the contracts for granting the medical care (the provision of health services) within the MHIS.

The basic objectives for the elaboration and approval of such a normative act are:

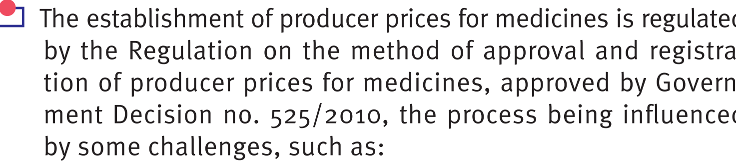
1) ensuring patients' access to safe, qualitative and efficient health services;

2) ensuring the transparency of the use of financial means from the MHI Fund;

3) selecting health care service providers based on pre-established criteria and principles of transparency, equality, accessibility.

transparent and fair mechanism, which guarantees the efficiency and effectiveness of the use of financial means from the MHI Fund.

Manufacturer prices for medicines



The establishment of producer prices for medicines is regulated by the Regulation on the method of approval and registration of producer prices for medicines, approved by Government Decision no. 525/2010, the process being influenced by some challenges, such as:

- the application of mechanisms for calculating the producer price for medicines, not provided for by the mandatory rule of law,

In this sense, we consider imperative the elaboration of a new Government Decision, by which the following are to be approved:

1. Regulation on prices for imported medicinal products and domestic products,
2. List of reference countries and rules / principles for identifying reference countries,

- the use of a list of reference countries underlying the calculation of prices in limited numbers and in the absence of the application of objective and appropriate principles and criteria for compiling such a list,
- the lack of separate regulation on how to set producer prices for domestic medicines (the law stipulates that this is mandatory),
- the flawed structure of the National Catalog of producer prices for medicines (irrelevant information and at the same time the lack of mandatory information according to the law), and others.

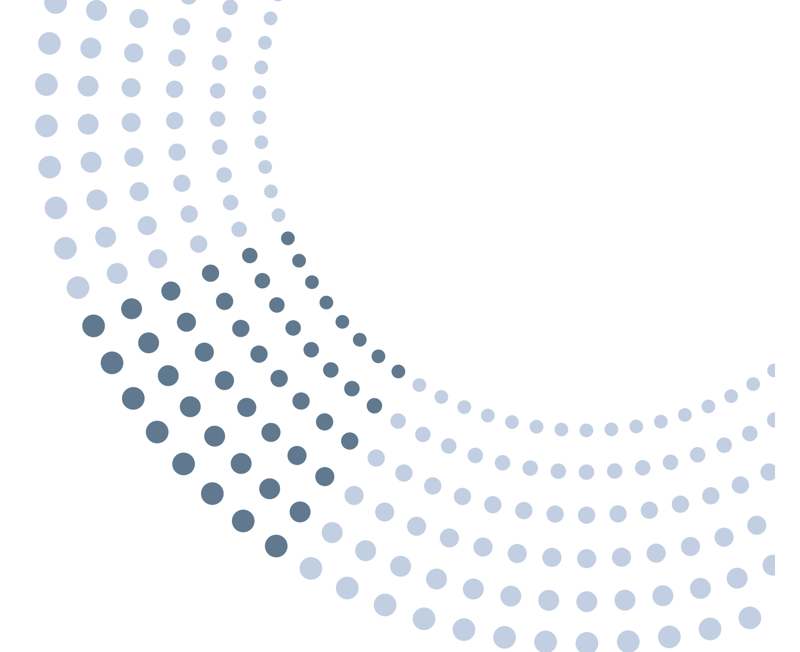
This fact affects not only the activity of many economic agents involved in the import and production of medicines, but also has a negative impact on the life and health of citizens, including in the fight against the Covid-19 pandemic.

3. Regulation on the structure, maintenance, completion and amendment of the National Catalog of Prices for Medicines.

Preparation and production of medicines

Domestic drug manufacturers encounter difficulties in the activity process, and namely we refer to the import / export activity, according to the Lists of medicinal raw materials, materials, articles, primary and secondary packaging, used in the preparation and production of medicines, approved by GD no. 1165/2016.

In order to improve the existing situation, we recommend simplifying the process of completing the List of medicinal raw materials, or establishing the obligation to systematically amend and supplement (at least annually) the Government Decision no. 1165/2016 for the approval of the lists of medicinal raw materials, materials, articles, primary and secondary packaging, used in the preparation and production of medicines.



LAND ISSUES

The Republic of Moldova has always positioned itself as an agrarian state, as agriculture is one of the defining sectors of the economy.

At the same time, this sector does not register maximum productivity quotas, as it should, given the specific nature of the country, due to high costs and due to a series of impediments caused by obsolete legislation, which functionally limits and restricts access to investments in this area. 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, which will solve a series of proposals and measures set out in this chapter, in particular, will increase the degree of protection of existing investments, will lead to attracting new investments in agriculture on fair and equal terms, for all.

Land Code No. 828-XII of 25 December 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, which will provide the obligation of landowners, who own no more than 10 percent of the consolidated field, to adhere to the consolidation project and to work the fields similar in terms of land quality and surface, located in the territorial-administrative area of the same locality.

At the same time, it is necessary to add a new provision 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.

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

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 25 July 1997 on Normative Price and Sale-Purchase Procedure of Land) in order to repeal the provisions which limit the right to sell and purchase agricultural fields for legal entities with full or partial foreign share capital.

Another 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 para. (2f); Art.1 of the European Directive 88/361/EEC; 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. As an argument, it is necessary to make an inventory of all agricultural lands purchased by different enterprises or local individuals and which are fallow, for comparison with agricultural lands managed (leased) by entities with mixed or foreign capital and which have a European technological level ensuring with jobs the population and substantially contributing to the formation of local and state budgets.

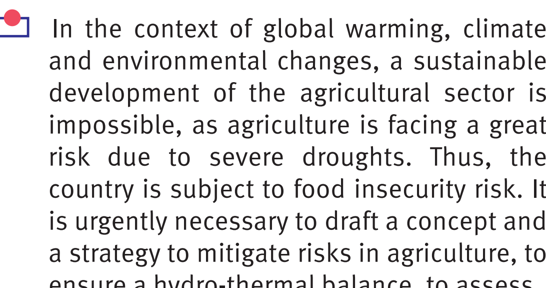
Irrigation of agricultural land

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 propose the revision by the local public administration councils of the lease agreements for aquatic objects (lakes, reservoirs, ponds, etc.), which have as basic object fish farming, in order to initiate new tenders, in the sense of prioritizing the use of these water basins by farmers for the irrigation of agricultural crops.

Also, it is recommended to supplement Art.110 of the Administrative Code No. 218 of 24 October 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".



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

Thus we recommend to draft and approve a Strategy to develop water management and hydro-amelioration in the Republic of Moldova for 2021-2030 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 hydrological potential of the state, and to develop this potential.

and other structures, for the restoration and commissioning of the large 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.

In this respect, it is recommended that mutual funds be set up and accredited by the competent authority (by agricultural industry, separately, or by product chain) for extreme climate events and environmental incidents in accordance with national and community legislation, which would allow affiliated farmers to adhere to it and take out insurance, whereby affiliated farmers - with economic losses caused by extreme climate events, benefit from compensatory payments.

Mutual funds are based on the establishment of financial reserves, consisting of participants' contributions, which can be used to compensate members in the event of significant loss of incomes, according to predefined rules. The basic idea, common to the insurance principle, is to distribute the risk in a community of members, with additional effect; through long - term commitments, mutual funds providing risk - sharing that are also effective over time. The creation of mutual funds can be encouraged through various types of public support, including:

i. contribution to start-up capital;

ii. annual contributions from the state to the fund;

iii. compensation of payments made to farmers;

iv. tax incentives for fund deposits.

Also in this section, it is proposed to create insurance Funds on return of bank loans.

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 sell-purchase contracts of 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 or not the registration of the lease contract in the Town Hall Registry, the subject-matter of which is the agricultural field to be sold, (in the case of the lease of agricultural field up to five year), similarly to the Excerpt from the Real Estate Registry.

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

Simplifying the procedure of changing the agricultural status of land plots into construction status

In order to change the destination category from agricultural field to land plot meant for constructions, the landowner has to pay into the administrative territorial unit 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 manner of transfer, change of destination, and exchange of land plots, 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 the amounts equal to the losses caused by excluding the land plot from the agricultural circuit, 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 unfounded and unfair.

It is recommended to amend Law no. 1308/1997 on Land Normative Price and Procedure of Land Sale and Purchase, 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. nr. 1170/2016, în sensul revizuirii metodologiei de stabilire a tarifelor pentru compensarea pierderilor la schimbarea destinației terenurilor.

Simplifying the access to cadastral services regardless of location

According to the provisions of the Law on Real Estate Cadaster No. 1543/1998, the 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 competences of the Public Services Agency in order to simplify the access to cadastral services, having 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 urban land 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 urban land and unincorporated area and sets forth general rules. Based on the respective rules, constructions may be started only in the urban land of the locality.

To build something in the unincorporated area, it is necessary first to change the status of the respective land plot into urban land. 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 "urban lands / 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 urban land of the locality would be excluded.

It is suggested to exclude the terms of urban land and unincorporated area. Constructions shall be executed 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 INDUSTRY

Telecommunications operators have a particular importance for the economy of the Republic of Moldova, their contribution representing 5.94 billion MDL or about 2.87% of GDP in 2020. At the same time, they are among the largest taxpayers and employers in Moldova. Operators are constantly investing in the development and upgrading of their infrastructure, promoting innovation and ensuring technological progress. Only in 2020, their investments amounted to about 1 billion MDL. They also support numerous 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, the investment capacity of the telecommunications operators, especially those in the mobile sector, is heavily affected by unfair excessive taxation, which impedes the upgrading and development of the telecommunications networks based on the latest technologies and offering of more affordable tariffs to end users, as well as by many administrative barriers in the development of modern communications infrastructure.

There will soon be a need for further investments to develop 5G and VHBB networks to ensure the necessary connectivity for the future. The implementation of the proposed measures would allow Moldova to keep up pace with the rest of Europe in terms of technological development.

"2.5%" luxury tax

According to Art. 4 of Law No. 827 of 18 February 2000 on the Republican Fund for Population Support, one of and most important source of financing for the Fund is represented by the monthly transfers made by providers of mobile telephony services, equal to 2.5 percent of their gross revenues from the sales of such services. This tax was introduced in 2000, being considered a "luxury tax".

Starting with 2022, this tax is to be reduced to 1.5%.

This extra tax on mobile communications operators is discriminatory and unfair, as it limits (rather than encourages) investment in the development of electronic communications networks based on most advanced technologies, considered a key factor in the development of the economy in general and achievement of social progress. In addition, this tax distorts competition in the electronic communications market.

It is proposed to amend Law on the Republican Fund for Population Support and local funds for social support of the population No. 827 of 18 February 2000, by deleting Art. 4. para. (1) letter c), and namely the obligation of mobile telephony services providers to make such monthly transfers.

Portability fee

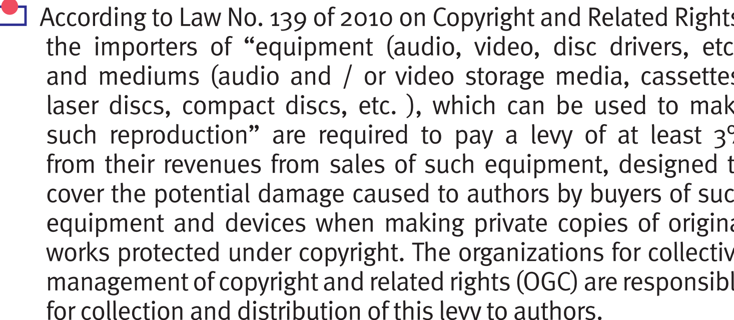
According to the technical and commercial conditions for implementing and carrying out number portability approved by ANRCETI in 2013, all telephone service providers in Moldova are obliged to pay a fee for the creation of the centralized database for carrying out number portability (BDC) in the amount of 920,000 €, as well as an additional fee of 0.0308 € / month per telephone number assigned by license to the provider. The respective fee is paid to a private company "NP Base" SRL, founded by the winner of the tender for developing and managing a centralized database for carrying out number portability. Operators hold a total of about eight million numbers, for which they pay about 250 thousand euro monthly or three million euro annually.

Operators consider the amount of this tax to be unjustified both economically and legally.

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

The contract with the company "NP Base" SRL expires on 30 June 2023, and ANRCETI is obliged to organize, in due time, a new tender for the selection of the administrator who will administer BDC after the expiration of the current agreement. As BDC (including the license to use BDC) is to become the property of ANRCETI upon the expiration of the current agreement, the financial offers in the new tender should relate exclusively to the costs related to the operation, administration and maintenance of BDC, which will no longer include the fee for the right to use the BDC (license) paid to the winner of the previous tender. Given that the current fee is almost entirely made up of this fee, to which a rate of return of 15% is added, the costs of operating, administering and maintaining BDC after the expiry of the current agreement will have to be kept to a minimum. Otherwise, ANRCETI should organize consultations with the operators to identify alternative solutions to ensure the continuity of the portability.

Private copying levies



According to Law No. 139 of 2010 on Copyright and Related Rights, the importers of "equipment (audio, video, disc drivers, etc.) and mediums (audio and / or video storage media, cassettes, laser discs, compact discs, etc.), which can be used to make such reproduction" are required to pay a levy of at least 3% from their revenues from sales of such equipment, designed to cover the potential damage caused to authors by buyers of such equipment and devices when making private copies of original works protected under copyright. The organizations for collective management of copyright and related rights (OGC) are responsible for collection and distribution of 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 lack of caps on the amount of such levy, which leads to excessive demands from OGC for levy payment.

2) The minimum levy rate 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 decisive for setting the levy amount.

3) AGEPI's inspection reports show that the majority of amounts collected by OGC are kept by OGC in different forms, and not distributed to the authors.

In order to solve the mentioned problems, it is proposed to promote the amendments to Law No. 139 of 2010, prepared by the Economic Council of the Prime Minister, which proposed fair caps and a guaranteed and non - discriminatory mechanism for collecting these payments from all manufacturers and importers of devices that fall under this law. After the approval of the law by the Parliament, the Government is to approve the list of devices for which the levy is paid. Also, these amendments aim at establishing by law a fair cap for the copyright fee payable by TV channels distributors.

At the same time, the law should establish caps for the commissions that can be charged by the OGC for the distribution of these revenues to the authors.

According to estimates, the amount of payments that would be thus collected would amount to about 20 million MDL (1 million EURO) annually.

Enforcement of 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, social and economic inclusion of the population, access to education and to public services, including governmental services, the EU has adopted Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deployment of high-speed electronic communications networks.

Consultations are currently underway to amend this Directive to further facilitate the development of communication infrastructures in order to achieve development objectives.

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

Unfortunately, a large number of public authorities and managers of public properties do not wish to comply with this law, refusing access to property to install new infrastructure or requesting the dismantling of existing communications infrastructure or setting prohibitive financial conditions (excessive rent or access fees).

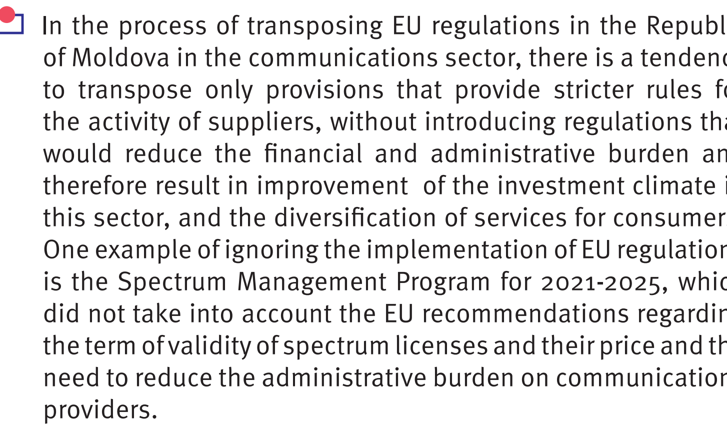
It is proposed that the Government and the ministries ensure the enforcement of Law No. 28/2016 by their subordinate institutions and enterprises (including by applying sanctions to public officers who refuse to comply with the law).

Reforming the personal data protection legislation

In 2018, the Parliament adopted in the first reading the draft new Law on Personal Data Protection and the Law on National Center for Personal Data Protection, developed by the National Center for Personal 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 EU legal framework (GDPR). A particular concern is raised by the inclusion of some excessive authorization requirements, lack of sufficient procedural guarantees against abuses by CNPDCP, as well as the unjustly high sanctions foreseen by these laws (in comparison to the size of sanctions set by the GDPR, which had to take into account the US giants from the so called GAFA group, which operate at international level and have turnover of hundreds of billions of dollars). As acknowledged by the EU experts working in the Twinning project for CNPDCP, only about 70% of these draft laws comply with GDPR.

The business community sent to the Parliament an updated list of objections and proposals to the draft laws approved in the first reading. A similar list was provided by EU experts. The business community counts on the objective examination of all these proposals by Parliament's experts and the finalization of these laws taking into account these proposals.

Fair transposition of EU legislation into national law



In the process of transposing EU regulations in the Republic of Moldova in the communications sector, there is a tendency to transpose only provisions that provide stricter rules for the activity of suppliers, without introducing regulations that would reduce the financial and administrative burden and therefore result in improvement of the investment climate in this sector, and the diversification of services for consumers. One example of ignoring the implementation of EU regulations is the Spectrum Management Program for 2021-2025, which did not take into account the EU recommendations regarding the term of validity of spectrum licenses and their price and the need to reduce the administrative burden on communications providers.

It is proposed to amend the Law on Electronic Communications and the Spectrum Management Program for 2021-2025, by introducing regulations that would provide the following:

a. Merging the functions of ANRCETI with SNMFR in order to reduce the administrative costs made up of the regulatory fee in the field of communications and the costs for the use of the frequency spectrum;

b. Extending the term of validity of licenses for the use of radio spectrum from 15 years to 25 years;

c. Reducing licensing and radio frequency spectrum usage fees by establishing transparent calculation formulas, according to EU recommendations, containing factors based on objective criteria and not on the criterion of insufficiency of funding from the state budget.

ANRCETI (transfer of the Agency from the control of the Government to the control of the Parliament, following the examples of European states)

The recent study of the International Telecommunication Union (ITU) finds the need to strengthen the independence of ANRCETI, in order to ensure good governance and promote rational regulation through collaboration with the public authorities and the private sector. Also, this study notes the need to strengthen the responsibility of ANRCETI. The participation of the state-owned operator in the electronic communications markets increases the probability and the perception of favoritism provided to such operator by the regulatory authority.

The relevant study makes a number of proposals in this regard, such as:

- Appointment of the members of the Board of Directors of ANRCETI by the Parliament, and not by the Government;
- Involvement of another public authority from another branch of state power in verifying and approving decisions on the organizational structure, budget and reports of ANRCETI, in order to resolve conflicts of interest, alleged lack of responsibility and ensure stability, predictability and transparency of regulation.

Simplification of authorization procedures for the construction of networks

Currently, the construction of electronic communications networks is subject to the standard requirements and procedures for authorizing civil works, provided by Law No. 163/2010, which makes it very difficult and delays significantly the development of the communications infrastructure and the creation of a competitive environment on the electronic communications market, especially on the market of provision of fixed Internet and TV services dominated by the state owned operator.

It is proposed to amend Law No. 163/2010 by:

- establishing a simplified procedure for authorizing the construction of electronic communications networks, depending on the type of works / networks (for example, construction of support structures for network deployment or installation

Beyond the inefficient implementation of the Law No. 28/2016 provisions on the granting of access to properties and setting of a one-time access tariff in accordance with the requirements of the law, the operators also face a non-uniform interpretation of Law No. 163/2010, for example, the refusal of local authorities to issue permits on the grounds that:

- the request should be submitted not by the operator who builds the infrastructure, but by the owner / manager of the property in which the infrastructure is built;
- the operator must present the notarized agreement from each co-owner of the residential block / multi-storey building for the installation of the network in the respective block / building;
- the town/village has not approved its urbanistic plan; and / or
- it is necessary to consult and agree with the inhabitants of the locality for the extension of the Internet and TV network of the operator in the respective locality.

These barriers deprive local residents, businesses and organizations of several benefits, such as increased competition between operators, diversification of service offers, lower prices, increased Internet speed, increased service quality, the creation of a modern communications infrastructure, increased productivity and local investment.
Other issues include:

- Lack of a register of networks, which would allow the protection of the already built infrastructure;
- Carrying out construction or rehabilitation works of urban infrastructure, without taking into account the need to build underground electronic communications networks or to relocate them by other methods;
- Sanitary rules for the construction of mobile telephony stations, which are several times stricter than the strictest rules applied in the European Union regarding electromagnetic emission norms, the existence of multiple unjustified restrictions on where and how to install stations, including conditioning the issuance of the sanitary permit for the construction of the base station on obtaining the consent of the population of the village/town;
- Authorization and construction of new multi-storey blocks, without taking into account the previously built mobile communication base stations;
- Application of standard requirements and procedures for the authorization of civil works for the construction of small cells.

It should be noted that, in accordance with Art. 37 of Law No. 28/2016, the Government, within 6 months from the entry into force of this law, had to provide for the simplification of the procedure for authorizing the construction (installation) of elements of public electronic communications networks and associated infrastructure.

Addressing this issue would facilitate the achievement of the goals set out in several Government programs, including the National Broadband Network Development Program and the Strategic Agenda for an inclusive, sustainable and digital economy.

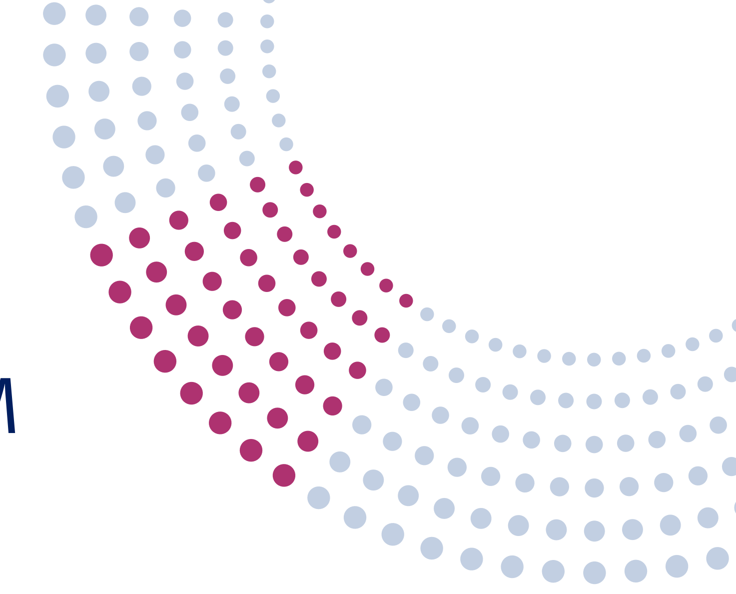
of networks on existing support structures, macrocells or microcells, etc.);

- eliminating inadequate or excessive requirements (such as notarized agreement from all co-owners of the multi-apartment buildings (the building manager's agreement must be sufficient), submission of the application and issuance of permits only to the property owner, approval of the urbanistic plan as a prior condition for issuing permits for infrastructure construction, obtaining the consent of the population for the extension of the network in the village/town, etc.);

It is also proposed to create a register of urban networks and approve sanitary rules on the construction of mobile telephony stations in accordance with international law and practice (The International Commission on Non-Ionizing Radiation Protection (ICNIRP),

Guidelines For Limiting Exposure To Electromagnetic Fields (100 kHz to 300 GHz), March 2020).

Without these amendments, it will be impossible to implement services based on 5G technology in the Republic of Moldova. It should be noted that the tenders for issuing licenses for the use of radio frequencies for the construction of 5G networks are expected in the third quarter of 2022, the proposals mentioned above being found among the objectives set by the Spectrum Management Program for 2021-2015.



FINANCIAL SYSTEM

The financial system has a very important role in ensuring the functioning and efficiency of the economy of the Republic of Moldova.

Over the last decade, this sector has gone through a period full of turbulence, which has directly impacted the country's economy, but also the well-being of the population, which has led to numerous changes in financial sector legislation.

However, in order to establish a functional and beneficial balance for all providers and beneficiaries of the financial sector, FIA experts have identified a number of challenges and impediments in the work of financial institutions, and developed a set of proposals for adjusting the regulatory framework, as follows:

Increasing efficiency in cooperating with bailiffs

In the process of forced execution of enforcement documents, the bailiff is entitled to request and receive free of charge on paper and online from the central and local public authorities, institutions (including financial ones), from other organizations holding state registers and relevant information for the enforcement procedure, any information that would allow the identification of the debtor, his patrimony and their location. The presentation of this information by commercial banks results in additional administrative costs, as well as the irrational consumption of employees' working time, given that only 1/3 of bailiffs' requests are related to a bank's customers. Annually, approximately 50,000 requests receive responses indicating that the bank does not hold the requested information.

Currently, an electronic communication solution in the process of exchanging information between bailiffs and banks is being tested and is based on the SIA CCDE system implemented by the State Tax Service.

By analogy, with the transition to the communication with the State Tax Service only through SIA CCDE, the activity of bank workers has become much more efficient in this regard.

It is proposed to amend the Executory Code to oblige all bailiffs to use only the electronic communication solution in the process of exchanging information with banks:

- Amendment of Art. 22 letter c) by deleting the text “(including financial)” in order to avoid the possible situation in which the bailiff claims that he does not have access to the information system;

- Amendment of Art. 22 letter r) by adding the text "online" after the words "to request"

- Amendment of Art. 22 letter s) by adding the text "online" after the words "to receive";
- Amendment of Art. 22 letter ș) by adding the text "online" after the word "inform"
- Amendment of Art. 22 letter t) by adding the text "online" after the words "financial institutions".

Amendment of the Executory Code

Article 11 letter n¹) of the Executory Code of the Republic of Moldova stipulates that the leasing contract has the value of an enforceable document only if the lessor is a non-banking lending organization or a leasing company.

The current regulation is restrictive, non-competitive and contradicts the legal nature of financial leasing, unjustifiably limiting the rights of banks in the process of forced recovery. Thus, the bank, as a lessor, is obliged to request the legal repossession of the leasing objects only through the court, which directly affects the risk cost and the quality of the leasing portfolio.

Thus, it is necessary to amend Art. 11 letter n¹) of the Executory Code of the Republic of Moldova, in the sense of including banks in the list of lessors that may benefit from this provision.

The importance of such a change derives especially in the context of a more rigorous legal framework in which banks operate, the leasing activity being part of the entire banking financing activity regulated by the NBM rules.

The Subsidy Regulation, approved by the Government Decision no. 455/2017

According to Art. 36 of the Regulation, support measures may be granted for the equipment purchased in leasing, only after all the lease installments have been paid, and the equipment is not older than 3 years from the date of purchase.

At the same time, it is considered eligible for subsidy only the agricultural equipment purchased on lease through non-bank lending organizations. This provision was already used as a basis for refusal to pay subsidies to customers of banks financed by financial leasing.

It is requested the amendment of Art. 36 of the Subsidy Regulation, approved by the Government Decision no. 455/2017, in the sense of including the banks in the list of lessors who can benefit from the provisions of Art. 36, for the same reasons mentioned regarding Art. 11 letter n¹) of the Executory Code.

At the same time, the current provision disadvantages both the banks, by limiting access to this segment of customers, and the clients of banks which, indirectly, are required to choose another type of lender, which may offer different conditions.

We also propose to regulate the granting to the client the right to apply for a subsidy, even in the first year from the moment of the lease purchase of the agricultural equipment. Otherwise the Lessee is imposed to apply for financing for a relatively short term or to close the leasing contract in advance in the first 2-3 years.

Improving the conditions for carrying out the agricultural business, in order to allow banks to finance it by minimizing the related risks

It is proposed to carry out a detailed analysis of the Moldovan land market in order to identify problems that significantly reduce the liquidity of agricultural land (small isolated areas, deceased owners without descendants or inherited property rights, etc.) and to define an appropriate legal framework designed to provide concrete actions to streamline the process of selling agricultural land. This would increase their collateral value and result in the possibility of financing in a controlled risk framework for the bank.

It is also proposed to implement a concept of "commodity exchange" at country level, which would make transparent the process of marketing vegetable crops and would allow primary producers to obtain the finished production at a commercial price and not be monopolized. This can take the form of a dedicated, B2B platform, where online information can be placed on the availability of stock to be sold and the purchase price of the trainer, the offers of logistics companies, as well as the bank, as an actor in the production and process of implementation, which would finance a concrete B2B relationship between a manufacturer and a trainer. It would be perfect to be integrated with the system of documentation of online payments and transactions / transparent formalization of the contractual basis, etc.

White Book 2021

Identification of customers in cash transactions performed with banks.

Point 15 letter h) and Annex no. 1 (Elements of the Cash Collection Order) of the NBM Decision no. 78/2018 on the approval of the Regulation on cash transactions in banks of Republic of Moldova provides that the withdrawal of cash by customers is made only on the basis of an identity act.

According to Art. 2 para. (1) of Law no. 273/1994 on identity documents in the national passport system, the passport of the citizen of the Republic of Moldova is issued to travel abroad, so it cannot be used internally.

It is requested to amend the Regulation on cash transactions in banks in the Republic of Moldova, by extending the categories of identity documents that can be presented by customers for identification. In this regard, we consider appropriate that, taking into account the practice in other countries, it is possible to identify local customers also on the basis of ***a foreign passport or of the driving license,*** given that the latter also contains the identification data (IDNP code of the person, photo, etc.).

Law on state registration of legal entities and individual entrepreneurs no. 220 from 19.10.2007

Article 12 para. (3) letter c) indent 4, stipulates that for the registration of the branches of the local legal entities, it is necessary to indicate the name and surname of the person exercising branch management functions.

Amendment of Art. 12 para. (3) letter c) indent 4 of the Law, so that the indication of the branch administrator in the Regulation of the branch of the legal entity is only an ***option***, but not an obligation.

Legislation on the organization and conduct of gambling, amended in December 2020

By amending Law no. 291/2016, Law no. 114/2012, the Criminal Code of the Republic of Moldova with new provisions on gambling, in particular, financial institutions and other payment service providers are prohibited from providing / granting payment services, including electronic payment under Law no. 114/2012, in favor of persons not authorized to organize and carry out on the territory of the Republic of Moldova gambling activities, that constitute a state monopoly.

Thus, the payment service providers would have to block, refuse the transactions of the customers who make payments through the URLs of their profile websites of unauthorized gambling **on the territory of the Republic of Moldova,** listed by the Public Services Agency.

Another challenge generated by **Law no. 257/2020** is the introduction of Art. 97, letter g) of Law no. 114/2012, which qualify as a breach by payment service providers "the provision of payment services in favor of persons who carry out, on the territory of the Republic of Moldova, activities without proper authorization, issued by the competent bodies, or prohibited by applicable law."

It should be noted that a payment provider or electronic money issuer does not actually have the capacity to make such checks on each transaction and to keep records through requests to the authorities in respect of each transaction (requests that are not satisfied instantly, but examined within the deadlines established in the legislation - from 14 to 30 days).

The adoption of these legislative amendments, without public consultations and without a reliable implementation mechanism, imposes improper obligations on payment service providers, bringing a high degree of unpredictability in their business. The way in which banking institutions should enforce and implement the new rules is unclear.

It is proposed to review these amendments and / or implement in the near future alternative mechanisms to discourage such activities without proper authorization.

At the same time, we request the exemption of the liability of the payment service providers from any commitments regarding the respective provisions, during the period when there is no clarity on the nominated subject, by modifying the regulatory card.

It is proposed to repeal the amendments made to Art. 97 of Law no. 114/2012 taking into account the inability of payment service providers to comply with such a provision.

At the same time, the formulation of the amendments brought to Art. 97 is very vague and may lead to different interpretations and, at the same time, impose new inappropriate obligations in the activity of payment providers, which in turn contradicts the concept of EU Directive 2015/2366 (PSD2) which provides for the provision of services in a clear and harmonized regulatory framework.

Elaboration and regulation of the concept of "material or financial agricultural receipt"

Amendment of the Civil Code or adoption of a special law for the implementation of the concept of **"agricultural receipt"**, as a benchmark may be the model implemented in Ukraine, as well as the need to establish a notary authentication mechanism of the agricultural receipt and investing the concept with the enforceable formula.

According to the Ukrainian law, the agricultural receipt is a document that establishes the unconditional obligation of the debtor, guaranteed by a pledge of the future fruit, to deliver agricultural products or to pay money under the conditions specified therein.

A premise for the implementation of this concept, refers to the reduction of the risk of exposure to price and exchange rate fluctuations, as the agricultural receipt allows the fixing of prices or the specification of its recalculation formulas.

The agricultural receipt establishes the debtor's unconditional obligation to supply agricultural products or to pay cash under certain conditions specified by the parties.

Persons who have the right to own agricultural land or have the right to use land for the production of agricultural products may apply for an agricultural receipt.

In the case of the agricultural receipt, the guarantee for the execution of the loan obligations becomes the future fruit of the debtor. In case of non-execution of the contractual obligations, the receipt becomes an extra-judicial procedure for sanctioning the debtor, by obtaining the property right over the future fruit of the debtor by the creditor, these claims being pursued as a priority over the others.

The value of the pledge must not be less than the value of the obligation guaranteed by the agricultural receipt. At the time of issue, the future crop of agricultural products may only be used as pledge for other agricultural receipts.

In case of loss of the fruit, which is the object of the pledge, the debtor is obliged, in agreement with the creditor, to substitute the pledge with another equivalent form thereof. This fact is recorded in the agricultural receipt, against the signature of the debtor and the creditor.

Remote client identification

Given the modest degree of use of the advanced electronic signature at national level, it is necessary to identify an alternative method of remote person identification in order to stimulate the digitalization of customer interaction with banks / non-bank payment service providers,

Thus, it is found about the lack of a regulatory framework through which to establish mechanisms for identifying people remotely by video means, by implementing ***digital onboarding*** solutions (eKYC).

The introduction of a new way of remote identification using video media will accelerate the digitalization process and will influence the increase in the use of online financial services. To this end, the following measures are to be taken:

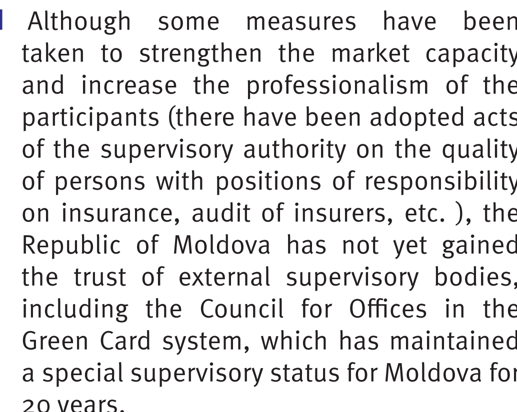
- Identify the national authority responsible for authorizing eKYC solutions.

- Establish a regulatory framework on the use of video media to identify the person remotely.

- Establishment of technical standards on the procedure for identifying the person remotely by video means.

As a reference can be analyzed the practice of Romania, and namely the Draft Emergency Ordinance on the remote identification of the person using video means.

Insurance sector



Although some measures have been taken to strengthen the market capacity and increase the professionalism of the participants (there have been adopted acts of the supervisory authority on the quality of persons with positions of responsibility on insurance, audit of insurers, etc.), the Republic of Moldova has not yet gained the trust of external supervisory bodies, including the Council for Offices in the Green Card system, which has maintained a special supervisory status for Moldova for 20 years.

Concerns also remain regarding the implementation of regulations on the transparency of shareholding structure, compliance with prudential rules and the quality of assets covering the claims' reserves.

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

- capacity building for authorities that need to monitor and ensure compliance with the solvency, liquidity and assets quality covering the claims' reserves in accordance with legal rules, including ensuring that the audit of insurance companies for financial purposes and for the purpose of assessing compliance with regulations in the field of money laundering prevention (AML) is done by internationally recognized audit firms.
- 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).
- ensuring the implementation 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).
- harmonization 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.

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, automotive, agriculture and wine-making, telecommunications and IT, healthcare and pharmaceuticals, distribution, consulting, insurance and banking services, etc.

The main objectives of the Association are:

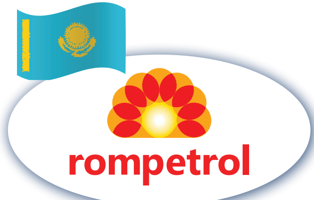
- Representing and promoting member's views, both for defending their common interests, and to attract new investments;
- Cooperating with public authorities of the Republic of Moldova to overcome the difficulties and the barriers that may exist in the relations with the foreign investors;
- Protecting 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 only companies with 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 to the Ministry of Finance, Consultative Committee to the Customs Service, Consultative Committee to the State Tax 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.



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