WHITE BOOK

FOREIGN INVESTORS ASSOCIATION REPUBLIC OF MOLDOVA

2023

WHITE BOOK
2023

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

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

2023
Chisinau, Republic of Moldova

CONTENTS

- Issues - Suggestions

EXECUTIVE SUMMARY

The White Book 2023 was elaborated by the experts of FIA member companies, and it is at its eighth 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, attracting and maintaining investments in the Republic of Moldova economy.

Chapter I. Justice Sector

The European integration perspective was offered to the Republic of Moldova in June 2022, when the status of a candidate country to join the EU was granted. Thus, the European Commission has issued a statement with 9 preconditions relating to several domains and by which structural reforms are required. All those domains, but especially the Justice Reform represent a subject of priority interest for the European Union, in the context in which it is understood that the rule of law is the cornerstone, which allows to systemically advance in other sectors.

Reforming the justice system of the Republic of Moldova is a complex and continuous process that needs commitment, resources and constant monitoring. The implementation of the proposals from the White Book could significantly contribute to strengthening the rule of law and to ensure independent, transparent and efficient justice in the Republic of Moldova, and the inter-institutional collaboration and external monitoring may play a key role in this direction.

Chapter II. Fiscal Legislation

On the background of the crises from last years: COVID-19 pandemic, energy crisis, the war in Ukraine, with all the harmful consequences of the above events, the Republic of Moldova was and is subjected to an extreme resilience test. Thus, the current regional and national contexts reflect the need to continue identifying optimal solutions to bring the fiscal system in accordance with the existing conditions, focusing on the main impediments identified in the initiation and performance of enterprise activity, and issuing from the will to increase the resilience of natural and legal persons using fiscal tools. Thus, the experts of FIA member-companies have identified a series of specific proposals to improve the fiscal legislation and administration.

Chapter III. Labor Force Market

Business welcomes the authorities' openness to modernizing labour relations through the adoption of recent amendments, which will improve the labour market situation.

At the same time, due to globalization and increased migration, in particular population exodus, the labour market in the Republic of Moldova continues to be vulnerable, and further increased attention of the authorities and the implementation of stimulatory measures are required.

Chapter IV. Competition

The member-companies of the Foreign Investors Association continuously advocate for transparent and clear rules in the performance of economic activity, being promoters of equitable competition conditions, free and strong competition acts as a real impulsion factor for increasing innovation, incentivizing, at the same time, the markets to offer more benefits to the consumer, business and society, as a whole.

We continue to believe that the creation and maintaining of a healthy competitive environment and the ensuring of independence of the Competition Council are major tasks, which may be implemented only with the joint efforts of the business and State authorities.

Chapter V. Transition to Green Economy

During the last years, the concept of green economy and the transition to it got a major importance in public discussions, both at a national, and at an international level. The development policy at the level of the European Union promotes the transformation towards an ecological economy, which generates economic growth and contributes to decreasing poverty by sustainably managing the natural capital.

The status of candidate country of the Republic of Moldova reiterates the importance of the topic related to the development of initiatives to incentivize investments, green economy, and economic growth as a whole. Under the Association Agreement with the European Union, the Republic of Moldova engages to promotion of the ecological economy.

Chapter VI. Digital Transformation

FIA expert community, together with the colleagues from other business associations, is an active contributor to the development and periodical update of the Roadmap of the Economic Council Secretariat to the Prime minister. The lack of a national vision and of an efficient mechanism of policy implementation in the sphere of digital transformation affects the innovation in the national economy and the digitization of the interaction with authorities. We appreciate the recent approval (6 September 2023) by the Government of the Digital Transformation Strategy for 2023 – 2030, which sets the vision of the Ministry of Economic Development and Digitization for the digital development of the country until 2030 and reconfirms the determination of the authorities to build a modern society, focused on the private sector, citizens, and aligned with the European integration agenda.

Chapter VII. Healthcare and Pharmaceuticals

Currently, although many efforts are made for digitization, simplification and de-bureaucratization, we conclude that no significant progresses were registered in this regard. These desiderata are in accordance with the recommendation on the European Recovery and Resilience Facility, as the European Commission proposes the approval, at the level of each State, of specific reforms to give priority to digitization and bureaucracy decrease. Thus, it is imperative to prioritize the proposals creating a synergy effect by embedding specific measures to decrease bureaucracy, both for the environment of activity of the medical and pharmaceutical staff, and for the citizens that require healthcare 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.

Land-related legislation continuously needs additional attention from the public authorities. Its current provisions functionally limit and restrict the foreign investors to make medium- and long-term investments in this sector. In addition, in the conditions of global warming, climate and environmental changes, farmers face difficulties in the process of irrigation of the agricultural lands.

Chapter IX. Financial System

Financial stability is a necessary condition for the national economy's good functioning, in case of perturbations, these may lead to systemic crises, to the incapacity of financial institutions to perform accurately their operations or, even worse, to the collapse of financial markets. Thus, the financial system has a very important role in ensuring the functioning and efficiency of the economy of the Republic of Moldova.

JUSTICE SYSTEM

The European integration perspective was offered to the Republic of Moldova in June 2022, when the status of a candidate country to join the EU was granted. Thus, the European Commission has issued a statement with 9 measures / preconditions relating to several domains and by which structural reforms are required. All those domains, but especially the Justice Reform represent a subject of priority interest for the European Union, in the context in which it is understood that the rule of law is the cornerstone, which allows to systemically advance in other sectors.

We appreciate the efforts of the authorities directed towards *adjusting the legislative framework to the constitutional amendments on the judicial system; performing the pre-vetting exercise of the members for the Supreme Judicial Council and Supreme Prosecutors Council; reforming the Supreme Court of Justice; starting the exercise of evaluation of candidates for the office of Supreme Court judge and approving the legislative framework on the "full vetting"; increasing the efficiency of mechanisms on disciplinary liability, as well as on the selection and evaluation of judges and prosecutors.*

In conclusion, reforming the justice system of the Republic of Moldova is a complex and continuous process that requires commitment, resources and constant monitoring. The implementation of the proposals from the White Book could significantly contribute to strengthening the rule of law and to ensure independent, transparent and efficient justice in the Republic of Moldova, and the interinstitutional collaboration and external monitoring may play a key role in this direction.

Strengthening the capacities of NIA (National Integrity Authority) to ensure a rigorous process of verification of the integrity of law enforcement bodies. Strengthening the possibilities of confiscation of unjustified assets revealed at the subjects of verifications performed by NIA.

The perfectioning of legislation is proposed to strengthen the capacity of the integrity inspectors of NIA, including by increasing the salaries of these officials, with a view to applying effective income declaration mechanisms, excluding conflicts of interests, taking into account the relativity connections and the traditional spiritual connections (godparents, godchildren, nephews/nieces, cousins, etc.), including by controlling the properties/assets/wealth of the relatives, godchildren and people offering donations or making contributions to the employees of law enforcement bodies, in order to ensure that the law enforcement system is free from corrupt and/or incompetent persons. It is also necessary to permanently ensure the monitoring of lifestyle of the employees of law enforcement bodies and of their incomes and expenses. The refusal of such persons to prove the legality of the origin of property/assets/wealth which may not be justified should become a reason for their dismissal from office and possible confiscation of the property/assets/wealth.

- With regards to the confiscation of unjustified assets revealed during the verifications performed by NIA, the introduction of certain amendments to the legislation is proposed, which would allow a faster performance of the judicial procedures by which the confiscation of unjustified assets would be done (by offering the competence to examine such category of causes to the specialized courts), accompanied by the establishing of additional guarantees at the level of the law, which would contribute to avoiding the possibility of „hiding" the assets from a potential confiscation (by their sale before the issue of a court order on confiscation).

Creation of the normative framework which would allow foreign experts / competent professionals to offer support to the collaborators of the prosecutor office bodies, internal affairs bodies and Supreme Court of Justice in the fulfilment of their competences with the observance of the rule of law principles

- Currently the legislation forbids foreign citizens wo work in the courts of law, prosecutor office and law enforcement bodies (Ministry of Internal Affairs, Intelligence Service, Customs Service).

Ensuring the continuous training of judges

- Taking into account that in the last period the Republic of Moldova has transposed many provisions of the communitarian legislation and continues to harmonize its legislation, the training of judges is necessary in the corresponding specialized domains, including in competition law, intellectual property law, personal data protection, consumer protection, etc. Strengthening the theoretical knowledge of judges is a basic element to ensure a high-quality act of justice which would decrease the burden on the judicial system due to the appeals to higher ranking courts of the decisions/orders of the lower ranking courts issued with the nonconforming interpretation of the legal provisions.

Review of the penalty system in the sphere of business

- The review of the economic crimes section of the Criminal Code for the purpose of **decriminalizing certain facts relating to the risk of enterpreneurship activity**, except for the crimes committed in the banking sphere, money laundering, forgery of documents, etc.
- We also consider necessary to revise the Criminal Code with regards to requalification of certain economic crimes from "serious" into "less serious" by increasing the monetary thresholds provided in the CPC and connecting them to the economy realities.
- For example, art. 246/1 of the Criminal Code stipulates criminal liability for any act of non-loyal competition, including:

a) creation, by any means, of confusion with the enterprise, with the products or industrial or commercial activity of a competitor;

b) spreading, during the trade process, false affirmations discrediting the enterprise, products or enterprise activity of a competitor;

c) misleading the consumer regarding the nature, way of production, characteristics, possibility of use or quantity of goods of the competitor;

d) using the trade name or trademark in a way which leads to confusion with those legally used by another economic entity;

e) comparing, for advertising purposes, the goods produced or sold by one economic entity with the goods of other economic entities with a fine from 3000 to 4000 conventional units or with imprisonment up to 1 year, with a fine applied to the legal person, from 3500 to 5000 conventional units, with the deprivation of the right to perform a certain activity for a period from 1 to 5 years.

- According to the Competition Law no. 183/2012, non-loyal competition is an infringement with the lowest social danger in relation to other competitional infringements and shall be punished with a fine of up to 0.5 % of the company turnover for the previous financial year. In comparison, the anti-competitional agreements and the abuse of dominant position or procedural infringements shall be punished with a fine of, accordingly, up to 10% and 1% of the company turnover for the previous financial year. As different from all other infringements, non-loyal competition may be penalized by the Competition Council only at the complaint of a damaged party, not ex officio. The abuse of dominant position or procedural infringements are not, generally, subjected to criminal penalties, and the anti-competitional agreements are subject to criminal penalty only if they represent a strong cartel banned by the legislation in the sphere of competition, the object of which is to fix the sales prices of products to third parties, limitation of production or sales, division or markets or clients, or participation with rigged bids in tenders or other forms of calls for offers, if by means of this profit in especially large proportions was obtained or damages in especially large proportions were caused to a third party (art. 246 CP).
- Thus, the elimination of this inconsistency and inequity is proposed, by abrogating, among others art. 246/1 of the Criminal Code.

Introduction, during the transition period, of the interdiction to apply the arrest for committing economic crimes

- The interdiction to apply the arrest as a measure of a constraint for *„less serious"* economic crimes. Currently, this measure is abusively used to exercise pressure on businessmen and to get fictive evidence.
- Of the 1,643 requests submitted by prosecutors in 2022, 1,502 (91.4%) were accepted by the investigative judges. This rate remains a high one, as the requests on arrest are examined superficially. This fact is rather caused by the pro-accusation attitude of some investigative judges, poor judicial practice or lack of independence of the investigative judges, than by the legislation. The high workload of judges is also affecting the possibility of qualitatively examining the materials and files relating to the requests on applying the arrest.

Strengthening the status of activity of the investigative judge

- Currently there are situations when the investigative judge is in a vulnerable position, which affects its decisional independence in the context of fulfilling the duties. Thus, in case of rejecting some requests filed by the prosecutor, the prosecutor has the opportunity to file an appeal against the decision of the investigative judge to the Court of Appel, which may cancel the judge's decision, and, in such case, the prosecutor could decide to start a criminal process on issuing illegal decisions.
- Although the role of investigative judges is to protect individual rights and freedoms in the criminal procedure, the analysis of their activity for the period of 2017-2021 suggests that they limit themselves to formalizing the legality of acts, without a real and efficient judicial supervision. The study shows a trend to authorize arrests and tapping excessively, without considering less invasive alternatives. A favorable predisposition of the judges towards the requests of the criminal prosecution authority is also noticed. The de facto analysis reveals the perpetuation of the practice on the excessive application of arrests and almost automatized authorization of the requests on special investigative measures submitted by prosecutors, especially communication tapping and recording.
- The high workload of judges affects the quality of examination of the files, and the practice of examining the requests in closed judicial sitting seems unjustified.
- A more transparent and public approach is needed, as well as to integrate the technology in procedures for efficiency. Moreover, the mechanisms for the selection of investigative judges should be more transparent, with clear criteria and legal guarantees to increase the attractiveness of the office.
- See more details at: https://rm.coe.int/studiu-activitatea-judecatorilor-de-instructie-in-rm/1680aa90b0

Amending the legal framework to prevent the abusive request of information relating to the secret of correspondence or personal data

- Currently, several public authorities (which are not law enforcement bodies) and persons empowered by the law to request any information necessary for the fulfilment of their duties (for example, attorneys, administrator of the insolvency process, bailiffs, etc.) requests from electronic communication providers information relating to the secret of correspondence (for example, detailed phone call list) or personal data (for example, geolocation), without any previous judicial control, threatening the providers with bringing them to liability, including contravention liability, for the refusal to provide such information.
- Thus, in order to respect the fundamental human rights and freedoms, it is necessary to clearly regulate the aspects relating to public authorities and third parties having the right of access to such information, the conditions in which such right may be exercised and the guarantees against abusive or excessive requests.
- In this regards, special importance is given to the full alignment of the internal normative framework with the European Union standards in this domain, by means of the corresponding transposition into the interval legislation of the provisions of *EU Regulations 2016/679 of 27 April 2016 on the protection of natural persons with regards to personal data protection and with regards to the free circulation of such data, and on the abrogation of Directive 95/46/CE* (**General Data protection Regulations (GDPR)**), which is currently the object of a draft law promoted by the Ministry of Justice.

Creation of an adequate legal framework for the legal blocking of the access to websites

- The electronic communication suppliers receive requests from law enforcement authorities to block some websites and IP addresses allegedly used to steal money or to libel certain persons.
- Such efforts to protect the population from fraud are welcome, but it is worth mentioning that such requests are not based on an adequate legal framework, they do not solve the claimed problems (other websites may be created for the same purpose) and create a dangerous precedent.
- Any measure of blocking the access to any content on the Internet comes into conflict with the fundamental human rights and freedoms, such as freedom of expression, freedom of opinion and freedom to receive or communicate information or ideas without the interference of the public authorities, guaranteed by art. 10 of the European Convention of Human Rights and art. 32, 34 and 54 of the Constitution, and, consequently, it should be (1) provided by the law and (2) necessary, in a democratic society, to attain the above defined goals.
- In the opinion of the European Court of Human Rights, the restrictions, such as the orders to block the Internet *„are not necessarily incompatible with the Convention, in principle. Nevertheless, a legal framework is necessary to ensure both a strict control on the expansion of such interdictions, and an efficient judicial control to prevent any abuse of power [...]. In this regard, the judicial control of such a measure, based on weighing the involved competitive interests and meant to bring balance between them, is unconceivable without a framework establishing exact and specific norms on the application of preventive restrictions on the freedom of expression [...]*" (Ahmet Yıldırım v. Turkey, Cerere Nr 3111/10, Decision from 18.12.2012, § 67).
- Article 7 para. (1) lett. e[1]) of Law no. 20/2009, on which such requests are based, is a coverlet norm which does not stipulate at whose request (private person or public authority, and which exactly) should the providers stop the access, for committing which offences or infringements of the legislation could such measure be ordered, at what stage of the criminal or administrative process could such measure be ordered, in which conditions and for which term could such measure be ordered, by which legal act could such measure be ordered, should such measure be preliminarily authorized by a court of law, what is the way of appeal for such measure, etc.

The other legal norm invoked by the law enforcement authorities, art. 217 para. (1) CPC, is just a general norm according to which a criminal prosecution authority could notify the responsible official on taking certain measures to eliminate the causes and conditions contributing to committing an offence.

- The application of such measures based on the existing legal framework creates a dangerous precedent. Although the object of Law no. 20/2009 is the prevention and fighting cybercrime, the above cited article allows blocking the access to websites allegedly contributing to committing any infringement of the legislation in force, at the request of any employee of the law enforcement authority or civil servant with control duties, without **any preliminary judicial control. It also allows blocking IP addresses which, as a rule, host other website towards which there are no objections.** Thus, websites of business competitors, inconvenient media or political opponents may be blocked.
- A draft law containing a norm similar to the one provided by Law no. 20/2009 has been previously subjected to the expert analysis by the Venice Commission, which formulated several critics and recommendations on the content of such norm. Unfortunately, the critics and recommendations were ignored by the authorities.
- In 2023, Ministry of Internal Affairs initiated certain amendments to the legal framework, which solve a part of the existing problems, such as establishing the authorities with competence to order stopping the access to websites, replacing the obligation of stopping the access to the IP addresses on which the contested websites are located and which may host many other websites with legal content, with the obligation to stop the access to the website as such, exclusion of the obligation to stop the access to the websites contributing to "the infringement of the provisions of the legislation in force", which is not an offence and should not serve as grounds to stop the access on the basis of Law no. 20/2009 or Criminal Procedure Code, as well as stopping the access to the websites meant and used for the purpose of committing offences, not only contributing to their committing.
- Still, there are unsolved problems, such as maintaining the obligation to stop the access to the website, which "contains/spreads instructions on the way of committing offences", which is contrary to the objections formulated by the Venice Commission, the possibility of ordering such measures outside the criminal process, the regulation of the stopping procedure by a Government Decision and not by the Criminal Procedure Code (art. 2 para. (4) CPC stipulates that the legal norms of a procedural nature from other national laws may be applied only upon the condition of their inclusion in the code). The stopping procedure should specify:
  - **the offences or categories of offences** for which stopping the access is allowed,
  - the procedural document authorizing such measure and its content (including **the illegal online content or the illegal activity performed through the website**, the legal framing of such activity, grounding the need to apply such measure, as well as the **URL of the website, the access to which should be stopped**). These elements should allow the concerned persons to understand the reasons for which the access to the website is stopped to be able to take remediation measures or to exercise their right to defense by submitting an appeal against such measure, and the service providers – to determine the specific website to which the access should be stopped, taking into account that, according to art. 14 para. (3) of the Law no. 284/2004, the service providers are not obliged to supervise the information sent or stored when they provided the services, neither are they obliged to actively look for facts or circumstances from which it results that the activities are illegal.
  - the need for the authorization of such measure by the prosecutor or by the court. The central subdivisions specialized in preventing and fighting cybercrimes of the Ministry of Internal Affairs and Intelligence Service may not be qualified as an independent and impartial administrative authority,
  - ordering measures of stopping the access with the observance of the proportionality principle, taking into account the individual circumstances of the criminal case, including **if stopping the access to the website is the less restrictive measure to attain the legal goal**, for example if **the elimination of the illegal online content at the source by its provider or by the provider of hosting services for the online content is possible**,

- sending a copy from the corresponding procedural act **to the provider of illegal online content (if its identification is possible), during a term established by law, to allow the exercise of the right to defense of the provider of allegedly illegal content,**
- establishing **the appeal procedure of the acts authorizing and ordering such measures** (may be similar with the one stipulated in the CPC for the authorization of the procedural measures of constraint). The administrative procedure provided by the updated draft is not an adequate procedure of appeal for the documents issued for the purpose of preventing and fighting criminality,
- establishing **the procedure of revocation and termination of the acts authorizing and ordering such measures** (may be similar with the one stipulated for the authorization of preventive procedural measures), including the reasons for revocation and termination, authority competent to order this, at whose proposal and by which procedural act should this be ordered. For example, the measure shall be revoked by the ordering authority if the reasons for its application disappeared and the measure is not anymore justified, with the notification of the corresponding online content provider.

Exclusion of the personal liability of the responsible officials for the committed offences / contraventions relating to the risk of enterprise activity

Exclusion of the personal liability of the responsible officials for the committed offences / contraventions relating to the risk of enterprise activity, for example those relating to the infringement of the special legislation in this domain or of the conditions of the held permit/license, or consumer rights. These are facts committed in the process of economic activities, which are part of the commercial risk. Thus, the liability for such infringements should be held by the economic entity on behalf of and in the interest of which the activity is performed, not personally by the administrator. In our opinion, trying to eliminate such infringement by applying the personal liability of the administrator in addition to the liability of the economic entity is an abusive practice of the State.

Completing art. 190 „Fraud" of the Criminal Code of the Republic of Moldova with the liability for the fraud accompanied by the premeditated (intended) non-fulfilment of contractual obligations in the sphere of enterprise activity, which caused damages in especially large proportions

For example, some companies in the telecommunication industry claimed that they face a large number of frauds committed by economic entities requesting the purchase of important volumes of devices with payment by installments and/or at a promotional (subsidized) price under the pretext they would need them to start or expand their business. After getting the devices, they stop any payments, and the devices are sold (as a rule through online advertising platforms) and the money obtained are appropriated by the offenders. To be able to continue the fraudulent purchases, the offenders register new companies, using interposed persons as shareholders, administrators or representatives by power of attorney. Therefore, in this case we speak about a repeated intentional criminal behavior, when the buyer buys the devices without the intention of paying for them, but for the purpose of selling them and appropriating the obtained income. Unfortunately, the law enforcement authorities refuse to criminally prosecute such offenders qualifying such situations as civil relations.

For bringing to liability for such offence it will be necessary to prove the premediated nature of this fact, namely the onset of the intention not to fulfill the contractual liability during the enterprise activity before the moment of concluding the contract or onset of the obligation.

State fee

For the legal claims submitted to courts (including appeals, cassation appeals, etc.), the plaintiff/the party pays the state fee. According to the instituted practice, the court does not accept the claim as long as the plaintiff/appellant does not submit **the original** payment order for the corresponding state fee. Consequently, the right of the plaintiff to have access to justice is limited.

Such practice is inexistent in most states, and the normative framework and practice should be amended in such way, so the proof of payment may be made by other means, as well (copy corresponding to the original, excerpt from online banking, or any other form confirming reasonably the payment). At worst, the party submitting a false (inexistent, cancelled) document shall be liable according to the legislation.

On 31.07.2023, a new Law on the state fee was approved, no. 213/2023, coming into force on 01.01.2024, which has several inequitable provisions:

1. Collection of a stamp duty amounting to MDL 200 for starting a civil or administrative judicial process, as well as for each contestation against the decision of the reporting officer on the contravention case, both in the first instance and in the appeal courts. The amount paid as a stamp duty is not returned or compensated on the account of the party losing the process. Thus, the state has a financial benefit from the illegal unfavorable administrative acts issued by public authorities.
2. Collection of excessive amounts of state fee to start a property related judicial process in comparison with the fees collected in the EU countries, especially taking into account the huge differences in the level of economic development and purchasing ability of the population. All the natural and legal persons of private law pay significant general taxes and duties to finance the functions of the state, including those relating to justice making. The imposition of prohibitive amounts of the state fee makes these persons not appeal anymore to the state for making justice, instead on ensuring equitable justice for them. The practice has proven that the generous remuneration of the justice system has not contributed to overcoming the problems from the justice making system (low qualification, corruption, lack of independence).

Organization of judicial sessions remotely

Currently the Civil Procedure Code does not provide for the possibility of organizing and holding the judicial sessions remotely (online). The judicial acts (orders, decisions) are also received only in original from the court (generating different kinds of inconveniences: staying in the queue, etc.).

Thus, we propose (i) Implementing, as soon as possible, the opportunity of organizing and holding the judicial sessions in front of the courts of the Republic of Moldova remotely (online).

(ii) Including the possibility (obligation) of the courts (judges) to sign the judicial acts (orders, decisions, resolutions, etc.) in electronic form (advanced qualified electronic signature) and the return of such judicial acts by e-mail.

No regulations are introduced regarding the online sessions on civil cases (they have been recently introduced for criminal cases). Despite these, some judges tried to organize such sessions as a test, online, with the consent of the parties. As regards sending the electronically signed decisions, some judges are practicing this, and decisions are being sent by e-mail. Nevertheless, the practice is not too expanded, and it is more often found in the courts of Chisinau. We consider it necessary to introduce some express regulations to make more uniform the practice of holding the sessions online on the entire territory of the Republic of Moldova.

Ensuring the adequate protection of the private property of economic entities against misappropriation by embezzlement

Article 191 para. (1) of the Criminal Code decriminalizes the embezzlement of someone's property, which does not cause considerable damage. Embezzlement of someone's property means the appropriation, disposal or illegal use of the goods of other person or persons by someone to whom these goods were entrusted based on a title deed and for a certain purpose, or the refusal to return them.

According to art. 126 para. (2) of the Criminal Code, the considerable nature of a caused damage shall be established taking into account the value, quantity and significance of the goods for the victim, its material condition and income, the existence of dependants,

other circumstances having an essential influence on the material condition of the victim, and in case of prejudice to the rights and interests protected by the law – the degree of damage to fundamental human rights and freedoms.

- According to a draft law for the amendment of the Criminal Code, initiated by the authorities, a threshold is proposed, in the amount of **10 average forecasted monthly salaries per economy, established by a Government Decision in force at the moment of committing the action,** which the damage shall be deemed to be considerable.
- In 2023, 10 average salaries amount to MDL 117,000. Thus, the employees having material liability, which misappropriate the goods of the employer in an amount lower than MDL 117,000, which is a huge amount, will not be subjected to criminal liability anymore.
- It is to note that other offences against property, such as theft, fraud or pickpocketing, do not contain the condition on causing considerable damages for bringing the offender to criminal liability.
- To **ensure the adequate protection of the private property of economic entities against misappropriation by embezzlement, we propose** excluding from art. 191 para. (1) of the Criminal Code the syntagm „considerable damage" and the introduction of the corresponding condition as an aggravating circumstance in art. 191 para. (2) CP.

Organization of the court sessions in a special regime

- Organization of the court sessions in a special regime (several days/weeks in a row, before the final examination of the case), without long interruptions, on resonating cases and cases of a national interest. This would lead to the elimination of the risk of delay of the judicial processes, which sometimes / most of the times do not have a result, as the limitation period is exceeded.

Improvement of the practical implementation of the process of recovery of the assets originating from criminal activity in the Republic of Moldova

- The Criminal Assets Recovery Agency (CARA) should increase its operational capacity, transparency and improve the mechanisms of managing the sequestrated and confiscated assets.
- The national stakeholders responsible for assets recovery should develop a strategic institutional dialogue to guarantee the efficiency of the process.
- In the context of this desideratum, the internal normative framework should be additionally developed in the sense of stipulating the possibility of criminal asset confiscation even when the criminal process does not end with a conviction ordering the confiscation of criminal assets or in the situation when the criminal prosecution has been stopped, classified or the liberation from criminal prosecution has been ordered, and the goods of such persons have been seized for the purpose of ensuring an eventual special confiscation and/or extended confiscation. These aspects should be approached in a draft normative document promoted currently by the Ministry of Justice (draft on civil confiscation).

Transposition of EU Directives in the legislation of the Republic of Moldova

- Transposition of EU Directives in the legislation of the Republic of Moldova. Most draft laws provide the immediate mechanical transposition of the provisions stipulated by the Directives, without a complex analysis of the problem and impact, without taking into account the real situation in the economy, the real capacities of the public authorities of the Republic of Moldova to duly implement them. We are aware of the need to implement the EU Directives, as well as other norms of the Acquis Communautaire, nevertheless this process should be accompanied by a deep analysis of the involved domains, it should be transparent and, certainly, a sufficient period should be given to prepare/adapt to such norms.

FISCAL LEGISLATION

On the background of the crisis from last years: COVID-19 pandemic, energy crisis, the war in Ukraine, with all the harmful consequences of the above events, the Republic of Moldova was and is subjected to an extreme resilience test. Thus, the current regional and national contexts reflect the need to continue identifying optimal solutions to bring the fiscal system in accordance with the existing conditions, focusing on the main impediments identified in the initiation and performance of enterprise activity, and issuing from the will to increase the resilience of natural and legal persons using fiscal tools.

At the same time, as a basic component of country's development strategy, the European integration process is of a major importance for the Republic of Moldova, under the economic and social aspects, and it is necessary to progressively adjust the national legislation to the Acquis Communautaire. The effects of the fiscal and customs policy generate a huge, massive and decisive impact on the economic, investment and social domains. Thus, the experts of FIA member-companies have identified a series of specific proposals to improve the fiscal legislation and administration.

TAXES FROM SALARY

Taxation of the facilities granted by the employer

The facilities granted by the employer are taxed both with the income tax and with social and medical insurance contributions. These insurance contributions to the facilities granted by the employer are a burden for the employers and employees, they do not incentivize the employers to support the healthy interests of the employees, social and cultural issues.

- We recommend the taxation of the facilities granted by the employer only with the income tax.
- Accordingly, the types of rights and incomes from which no mandatory state social insurance contributions are calculated, according to Annex 3 to Law no. 489/1999 on the public social insurance system and Law on the amount, way and terms of payment of the mandatory medical insurance contributions no. 1593/2002, shall be completed with provisions in this regard.
- According to Law 1593/2002, art.3, it is used the notion and enumerated the rights and incomes from which no medical insurance contributions are calculated "other rewards – any other amount that the salary, paid by the employer to the benefit of its employee, as well as other rights and incomes paid to natural persons, except for the rights and incomes provided in art. 20, 89, 90, 901 of the Fiscal Code, to which no mandatory medical insurance contributions shall be calculated."
- Thus, for these to be included in the category of those from which no mandatory medical contribution is calculated, they have to be listed in the Fiscal Code.

Transportation and meals of the employees

The limitation of the amount of expenses incurred by the employer for the transportation and meals of the employees to be deducted for taxation purposes creates impediments in the performance of enterprise activity. The amount of such expenses should be decided by each separate entity.

We propose the amendment of the provisions contained in the Regulations on the determination of fiscal obligations relating to the income tax of legal persons and natural persons practicing enterprise activity, approved by Government Decision no. 693/2018, for the purpose of excluding the maximal limit of the average threshold, per employee, for each effectively worked day.

We also propose the deduction of the taxi expenses incurred by the company to ensure the transportation for job purposes, such as: travel to a business meeting, business trip if there is no direct transport, in case of ensuring an optimal and efficient business process.

Stock option plan

Because of the need to align the current fiscal provisions with the current economic reality and to the existing international practice, many multinational companies with the headquarters in the Republic of Moldova avoid implementing employee loyalty plans of the ''stock option plan'' type because of the lack of a favorable legal framework regulating the fiscal regime of this type of loyalty plan.

In the current form of the fiscal legislation, in the Republic of Moldova, the entities choose the participation of the employees in loyalty programs initiated by the non-resident mother company instead of the initiation of such programs by the resident enterprises.

We consider essential to add to the Fiscal Code the procedure of taxation of the *stock option plan* offered to the employees by the employer.

Law no. 166 of 21.09.2017 on meal tickets

We consider appropriate to increase the maximum nominal value of meal tickets, in the context of facilities granted by the employer, as an incentive for the employees.

We propose the increase of the maximum nominal value of meal tickets up to MDL 100, instead of 75, as currently provided by Law no. 166 of 21.09.2017 on meal tickets.

Thus, art. 4) para. (1) should be stated in the following redaction: “The nominal value, deductible for taxation purposes, of one meal ticket for one working day shall be comprised between MDL 35 and MDL 100.”

We propose the amendment of art. 7 (2) of Law no. 166/2017 on meal tickets, namely: „The nominal deductible value of the meal tickets granted by the employer to the employees, according to this law, represents an income from which no mandatory medical insurance contributions, no mandatory state social insurance contributions and no income tax shall be calculated. Should the nominal value of the tickets be higher than the threshold provided in art. 4 para. (1), mandatory medical insurance contributions, mandatory state social insurance contributions and income tax shall be calculated for the amount exceeding such threshold.”

INCOME TAX FROM ENTREPRENEURSHIP ACTIVITY

Exemption from taxation of the dividends paid by companies – residents of EU member countries

The Association Agreement with EU provides for the obligation of approximating the legislation of the Republic of Moldova to the EU normative documents. Directive 2011/96/EU stipulates the exemption from income tax at the source of payment of the dividends paid by mother-companies from EU member countries (holding a share of at least 10 % in the capital of the daughter entity for a period of at least 2 years), eliminating thus the double taxation of such incomes.

Taking into consideration the Association Agreement with EU, as well as the fact that the Republic of Moldova has not signed Conventions on avoiding double taxation with some EU member countries or some existing Conventions are obsolete (for ex., with Germany), we recommend implementing Directive 2011/96/EU in the fiscal legislation of the Republic of Moldova or signing Conventions on avoiding double taxation with the rest of the countries.

Amending the documentation related to business trips

In accordance with p. 16 of the Regulations on the secondment of the employees from the entities of the Republic of Moldova (GD no.10/2012), in case of business trips abroad, the taxi expenses shall be compensated only if the arrival or departure hour of the delegate does not correspond to the time schedule of the public transport.

We propose excluding from p. 16 of the Regulations the provision on the compensation of taxi expenses if the arrival or departure hour of the delegate does not correspond to the time schedule of the public transport.

When travelling abroad, people do not have information on the time schedule of the public transport in a certain city/town.

We consider that the limitation of compensation of the transport expenses for taxi when delegating the employees abroad creates an additional burden in the accounting and tax records, without leading to a significant impact for the National Public Budget.

We also consider necessary increasing and aligning the threshold of per diems, taking into account the current context of the global economy and the inflation rate.

Amending the provisions related to maintaining the salary during the business trip period

Both the Labor Code and the Regulations on the secondment of the employees from the entities of the Republic of Moldova provide that the employee delegated for job purposes shall maintain the job and the *average* salary for the period of the business trip, including for the travelling time.

We propose calculating the *monthly salary* for the period of business trips, not the average salary, as the calculation of the average salary includes the premiums/bonuses received by the employee, which can significantly increase the salary costs for the employee during the business trips, although he was fulfilling his common job duties. The companies having an award system for their employees incur a higher amount of expenses in connection with this provision.

Article 20 of the Fiscal Code. Non-taxable sources of income

In the context of demographic evolutions, incentivizing private long-term savings becomes one of the main options to support the social insurance system. In the conditions when the labor force deficit is a sharp problem for any sector of the economy, the employers are determined to create the best working conditions for their employees. Thus, to attract and maintain the staff, the employers offer a wide range of benefits, among which life insurance may also be introduced. Life insurance is an alternative that may offer important benefits reflected in the increase of the degree of protection of the population and will contribute to guaranteeing some financial resources necessary at a certain moment in a family to maintain its life standard in case of an unforeseen event (death, accident, invalidating disease), which has for most families the effect of a drastic lowering of the living standard and dependence on the social aids offered by the state.

Moreover, the insurance premiums collected by the insurers practicing life insurance are invested to cover the technical and mathematical insurance reserves, supporting thus the economic activity.

We propose stating art. 20 lit. (d^6) in the following redaction:

”(d^6) payments incurred by the employer according to art. 24 para. (19), (19^1), (20) and (20^1)”.

Article 24 of the Fiscal Code. Deduction of expenses related to entrepreneurship activity

With a view to aligning the deductibility provisions for natural persons and for natural persons/employees, we propose allowing for deduction the annual expenses incurred by the employer for the life insurance premiums of the employee.

Life insurance may contribute to decreasing the social imbalances by complementing the public social assistance programs. At the same time, a continuous support policy from the state, with an estimation of a minimum impact on the public budget may bring important benefits reflected in the increase of the degree of protection of the population. It is relevant that the deficit of protection of the population amplified in the last years, which would justify an intervention from the public authorities to encourage the private protection behavior.

The advantages of the state support to life insurance development reside in the:
- decrease of the level of dependence of the population on the public social assistance system;
- increase of the level of protection of the population.

Life insurance development would contribute to decreasing social imbalances and to increasing the welfare of the population, incentivizing families to purchase the additional protection they need.

Life insurance develop, besides ensuring the financial protection of the families against risks, a responsible behavior for the sustainability of family incomes.

On the other hand, to decrease the deficit of protection of the population it is also necessary to:

- Encourage the change of mentality among the population as regards to protection against risks, by being aware of the individual responsibility;
- Joint and supported efforts at the level of the industry and authorities to educate the population and to promote the benefits of life insurance;
- Introduce tax facilities to encourage the popularization of life insurance policies and their benefits.

At the same time, the insurance companies offer long-term financing sources for the government and private sector. In OECD countries, insurance companies are the largest institutional investors (source: Insurance Europe). Nevertheless, in comparison with the other countries from the region, the Republic of Moldova has the lowest rate of penetration of the life insurance in GDP. The unfavorable comparison with the countries of the region shows that Moldova is losing, year by year, the social and economic potential of the life insurance market, and the economy is losing important resources for investments. In such conditions, all stakeholders feel the need for an incentive that would set the life insurance market on a long-term ascending pathway.

Life insurance is one of the tools used by a large number of countries in the implementation of their social policy. Most OECD members, as well as a large part of the member-states of the European Union incentivize by fiscal means the development of life insurance markets. This is specified in tax decreases or in the deductibility of insurance premiums. The degree of density of the insurance – volume of insurance premiums distributed per capita – has substantially increased in those countries due to the fiscal deductibility of the insurance premiums.

Examples of tax facilities in the sphere of life insurance and the positive effect on the development of the market:

BULGARIA: deductibility for insurance premiums, within 10 % of the personal annual income.

We propose completing article 24 of the Fiscal Code with paragraph (20^1) in the following redaction:

"(20^1) The annual deduction of the life insurance premiums paid by the employer for the employee based on the life insurance contract shall be allowed."

CZECH REPUBLIC: starting with 2001 has granted deductibility for the life insurance premiums if the policy is concluded for at least 5 years before reaching 60 years, within the limit of approximately EUR 400/year. If the policy is withdrawn before the maturity, all tax benefits should be returned.

ESTONIA: total deductibility for the premiums paid for life insurance policies concluded for at least 10 years.

LITHUANIA: deductibility for the premiums paid for life insurance policies concluded for at least 10 years. The deducted amount may be within the limit of 4 minimum salaries per economy.

LATVIA: deductibility for the premiums paid for life insurance policies concluded for at least 5 years.

Article 24 paragraph (20^1) of the Fiscal Code

Currently the protocol expenses are not recognized for taxation purposes, but they directly contribute to the increase of the benefits of maintaining company relations and, finally, to the development of the national economy. Consequently, these shall essentially contribute to supporting the business environment in the Republic of Moldova.

We propose the amendment of article 24 of the Fiscal Code with paragraph (201) in the following wording: „The deduction of protocol expenses shall be allowed within the limit of 2% of the taxable income. Protocol expenses shall also include the expenses registered with VAT relating to gifts/souvenirs offered by the taxpayer."

Article 24 paragraph (12) of the Fiscal Code
(12) The deduction of payments for above-norm eliminations of polluting substances in the environment and for using natural resources above the limit is not allowed

In the current conditions, if an economic entity has a wastewater treatment plant installed and will render wastewater treatment services to third parties – it will invoice the "wastewater treatment" services (exclusion of pollutants from water) in accordance with the pollutant substances load level. Thus, the invoicing for "wastewater overloaded with pollutants exceeding MAC" will include VAT. Accordingly, the operator, in its turn, will dispose in the water outlets the wastewater that might contain pollutants it did not manage to depurate for various reasons, including in normal conditions of activity, but which have been included in the taxable income. There is a non-concordance in such conditions, as for the operator this is its basic activity and it will invoice "taxable income" but when disposing in water outlets it incurs costs through various payments due to exceeding the normative values, which are actually "ordinary expenses" but not deductible.

For example, in case of wastewater in Moldova, the norms are exaggeratedly low in comparison with other EU countries.

It is necessary to mention that the economic entities eliminate in the environment (air, waters, soil) various substances, and for exceeding the norms they *either pay fees or install smoke filters, wastewater treatment plants,* etc. Thus, they have anyway to incur "remediation/restoration" costs, consequently these *amounts could also be seen under the "deductibility" aspect,* as they are related to "pollutants".

Another aspect relates to "using the natural resources above the limit", accordingly, if an economic entity owns an artesian well and uses the water according to the conditions and within the limit from the permit issued by the Environment Agency, and pays the **water fee** for the entire volume, including for the exceeded one – thus, from the current text of para. (12) it results that also the water fees for the exceeded volume imposed by the Fiscal Code are not deductible, which is contrary to the same Fiscal Code.

We propose the amendment of the Fiscal Code in order to allow the deduction of payments for above-norm eliminations of polluting substances in the environment and for using natural resources above the limit.

Article 31 of the Fiscal Code. Limitation of other deductions

(3) Banks are allowed to deduct the discounts for losses on assets and conditional commitments calculated according to IFRS.

For the uniform application and creation of equivalent conditions of the rules on deducting the discounts for losses to assets and conditional commitments calculated according to IFRS in the financial sector, we propose adjusting art. 31, para. (3).

At the same time, we consider of utmost importance to draw the attention to the fact that the deduction of provisions for losses to assets and conditional commitments is not regulated by the provisions of art. 50 para. (3) of the Fiscal Code, as it was wrongly concluded in the previous years. Art. 50 para. (3) of the Fiscal Code regulates the deduction of insurance indemnities and insurance compensations, as well as other payments made by the insurer/reinsurer in favor of the insured/third party or insurance beneficiary and/or reinsured person, in accordance with the concluded insurance and/or reinsurance contract, and deduction of insurer's expenses relating to the formation of technical reserves and mathematical reserves, as established by the Government.

We propose stating paragraph (3) of article 31 in a new wording, establishing thus equivalent conditions both for banks, and for insurers in the contexts of deductibility of the provisions for losses on assets and conditional commitments.

Thus, article 31 paragraph (3) shall have the following content:"(3) Banks and insurers (reinsurers) shall be allowed to deduct the provisions, discounts for losses on assets and conditional commitments calculated according to IFRS."

Article 32 of the Fiscal Code. Reporting the registered fiscal losses

There are many examples of states in the international practice which do not have limitation on reporting fiscal losses: Germany, United Kingdom, France, Italy, etc.

Additionally, it will be a positive measure for the creation of a more favorable investment framework and attraction of foreign investments. The pandemic crisis, the war in Ukraine and the rise of inflation have substantially slowed down the investment recovery speed in the Republic of Moldova.

In Romania, the sequencing of loss is done for the last 7 years, and it has one of the fastest economic grows in Europe in the last years.

The possibility to re-add to work the incurred loss to obtain profit will be a measure to support the affected business environment.

The unlimited valorization of fiscal losses is a right of the economic entity. These losses are incurred for entrepreneurial purpose, their correctness is verified by the authorities during tax controls. The limitation of the use of losses created an additional burden on the companies, which, anyway, have as a main goal the profitable valorization of the created investments.

Amending art. 32 of the Fiscal Code, by eliminating the limit of 5 years for reporting the registered fiscal losses.

Article 44, para. (9) of the Fiscal Code

During the first application of a new IFRS or during its update, adjustments may be made to the financial statements that generate subsequently the reflection of income and expenses as a result of transition.

We propose stating para. (9) art. 44 of the Fiscal Code in the following wording: „*The incomes and expenses resulting from the transition from the National Accounting Standards to IFRS, during the implementation of a new standard or during the update of a new standard shall not be recognized for taxation purposes.*"

Fiscal Code. Special rules regarding the determination of transfer prices

Currently there is no regulation or clear provision on the content and way of drawing up the file of the transfer price, which creates concerns and uncertainties and will, eventually, lead to abuses by the competent authorities. We propose the development by the Ministry of Finance of the corresponding Regulations as soon as possible, to have enough time to analyze and implement the corresponding provisions.

We consider also necessary to expand by at least one year the term for coming into force of the clauses, in order to ensure an organic transition.

At the same time, we propose ***that no penalties are applied at least for the first 2 years from the application of the provisions***, as during this time the business environment will voluntarily fulfill those requirements and this will also be a period to "understand" the new norms, to adjust and improve them where necessary.

VALUE ADDED TAX AND EXCISE DUTIES

Value Added Tax

Currently 8% VAT is applied to certain tariff codes, and it is technically difficult to identify and follow the tariff codes for each separate item.

In the practice of other countries, there are many examples when VAT is applied to large categories of food products. For example:

- Romania – VAT decreased to 9% for the sale of food products and beverages for animal and human consumption, including of ingredients used for the preparation of food;

- Austria – VAT decreased to 10% for food products, books, pharmaceutical products, passenger transportation, newspapers, cultural and entertainment events, hotels;

- Belgium – VAT decreased to 6% for food products, books, water, pharmaceutical products, medical services, newspapers, cultural and entertainment events, hotels;

- Cyprus – VAT decreased to 5% for food products, books, pharmaceutical products, medical services, passenger transportation, newspapers, cultural, entertainment and sports events;

- Czech Republic – VAT decreased to 15% for food products, medical and pharmaceutical services, passenger transportation, cultural and entertainment events, hotels; and VAT decreased to 10% for medicines, books and food products for babies;

- Germany – VAT decreased to 7% for food products, books, medical services, newspapers, cultural and entertainment events, hotels;

- Greece – VAT decreased to 13% for food products, pharmaceutical products, medical services, cultural, entertainment and sports events;

- Poland – VAT decreased to 8% for pharmaceutical products, passenger transportation, newspapers, hotels, restaurants, cultural, sports and entertainment events; and VAT decreased to 5% for food products;

- Slovakia – VAT decreased to 10% for books, food products and pharmaceutical products, medical services, cultural events.

Standardization of the categories of products to which the decreased VAT of 8 % applies.

We propose the standardization of the categories of products to which the decreased VAT of 8 % applies. For simple, clear and transparent accounting, we propose applying the decreased VAT to large categories of products, namely: **dairy products (0401, 0402, 0403, 0404, 0405, 0406), bakery products (1901, 1905), fruits and vegetables (0701-0714, 0801-0810, 1001-1008, 1201-1214).**

Article 93 p. 18 of the Fiscal Code. VAT refund mechanism

The fiscal legislation gives the right to VAT refund to the economic entities making capital investments in connection with the creation and/or purchase of fixed assets and equity meant to be used in the process of production (service rendering/performance of works). This restriction limits the possibility of the economic entities making investments in equipment and tools for other destinations to use considerable amounts of accounted monetary funds, which amounts could otherwise be invested in the development of entrepreneurship activity.

We recommend the amendment of the Fiscal Code provisions (art. 93 p. 18) and granting the right to VAT refund for all the capital investments in equipment and tools, not only for those used in the process of production (service rendering/performance of works), but also for those used for commercial purposes (warehousing, logistics, packing, etc.).

Article 95 (2) p. (c) of the Fiscal Code

Advertising materials have only an informative goal, they may not be used by the clients in any way and should have the same VAT treatment as the other forms of advertising;

The goal of printed advertising materials is to inform the consumers on the current promotions. The distribution of such materials (flyers, booklets) is a form of advertising, the same as radio, TV advertising and outside advertising boards. The nature and goal of the transaction are identical for these forms of advertising and, accordingly, the fiscal treatment should be identical;

Contracting a third-party company rendering advertising services including printing and distributing advertising materials does not fall within the provisions of art. 95 (2) p. (c). In this case, the nature of the transaction is identical, the final consumer receives booklets and flyers, but the fiscal treatment is different, depending on how the transaction is documented. During the application of the provisions of the Fiscal Code, it is essential to give priority to the nature and content of the transaction.

The distribution of newspapers is not a free of charge delivery, flyers are goods which do not have the destination of being sold. They are of no use for the consumers. Their goal is to inform and increase the sales.

Amendment of art. 95 (2) p. (c) of the Fiscal Code with a view to excluding the limit of 0.5 % of the income from sales obtained during the previous year for the application of VAT to the supply of goods and services done free of charge for advertising purposes and/or to promote sales.

Article 101⁶, para. (1) of the Fiscal Code

The current wording of this article makes practically impossible the application for the refund of the VAT amount relating to purchases of goods and services, practically obliging the economic entity to request from their suppliers the issue of tax invoices using e-factura, which creates unpleasant moments in the processes of collaboration between the parties, as well as the impossibility to apply for refund.

We propose the statement of para. (1) art. 1016 of the Fiscal Code in the following wording:

„The action of this article shall expand on the taxpayers registered as VAT payers, which document the supplies through "e-Factura" automated informational system and/or through tax receipts issued by the cash-register machines connected to the "Electronic monitoring of sales" automated informational, by which they dispose of the exceeding of VAT amount relating to purchases (including VAT related to imports) as compared to the VAT amount related to supplies, for the transactions recorded starting with 1 January 2024. "

Article 102 para. (18) of the Fiscal Code. Using/not using electronic tax invoices

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

We consider that the penalty for not using the electronic tax invoice should be imposed to the issuer and in no case should it be in form of depriving the buyer from VAT deduction. Thus, we propose the exclusion of art.102 para. (18) of the Fiscal Code.

Article 103 para. 24 of the Fiscal Code

The cars imported in the Republic of Moldova before 01.01.2025 have included in their cost the increased excise duties in force until 01.01.2025.

The additional application of VAT to the cost of cars imported before 01.01.2025 will increase significantly and unjustifiably their sale price. Used cars are most often bought by natural persons who will not be able to deduct the applied VAT.

Excluding from art. 103 para. 24 the cars imported after 01.01.2025.

We propose to keep the exemption from VAT for the cars imported before 01.01.2025 for which the import excise duty has been paid.

Article 117, para. (15) of the Fiscal Code

We propose excluding the obligation to send the tax invoices on paper carrier, for some services, when it is issued using the short cycle, through „e-Factura" Automated Information System (AIS), if the Buyer is registered in „e-Factura" AIS and has access to such tax invoice. The need to present the electronic tax invoice issued through „e-Factura" AIS on paper and to have it signed manually could be stipulated in the contract. If necessary, the Buyer, independently, will print the tax invoice signed electronically by the Supplier, with the right to deduct the expenses and VAT.

We propose completing paragraph (15) art. 117, as follows:

„(15) During the performance of regular supply of services (electricity, thermal energy, water, gas, electronic communications, etc.), in case of using the e-factura through the short cycle, the supplier shall not be obliged to print the tax invoice on paper, sign it manually and send it to the Buyer, if not otherwise provided by the contract."

OTHER TAXES AND DUTIES

Local taxes

The current criteria for the determination of the local taxes, by their recent capping, provide a non-grounded and excessive appreciation for the local public administration. Thus, the local councils establish the amounts of local taxes upon their discretion, without invoking any argument or justification for establishing them.

Because of the recent amendments to the Fiscal Code, we may notice a considerable increase – sometimes unjustified, of the fiscal burden on the economic entities.

We propose the amendment of the fiscal legislation, in the sense of approving a unique methodology, mandatory for all local public authorities, for the calculation of local taxes, which will protect both the local public authorities and the economic entities.

This would conduct to a maximally objective determination of the local taxes.

At the same time, we propose the annual indexation of local taxes, based on the inflation indices established by the competent authorities, and the exclusion of other reasons for increasing them, according to the EU practices and directives.

Article 277 para (1) let. c) of the Fiscal Code

Real estate tax, connection with the provisions of the Law on the access to properties and shared use of the infrastructure associated with the public electronic communication networks.

On 15.04.2016, Law no. 28 on the access to properties and shared use of the infrastructure associated with the public electronic communication networks came into force. Art.9 para. (3) and art.41 expressly provide that the supplier of public services may not be obliged to pay taxes, duties, tariffs, rent payments for the lease of internal and external premises for building or installing the networks. Until now, the suppliers of public electronic communication networks and/or services calculate the real estate tax for the premises / lands on which they have access rights.

To be able to use in practice the provisions of Law no. 28/2016, we propose to expressly stipulate in the fiscal legislation that the taxpayers shall be exempted from the calculation of the real estate tax for the areas / lands which are the object of an access contract.

It is proposed to amend art.277 para. (1) letter c) of the Fiscal Code, introducing after the words „Republic of Moldova" the text „except for those who hold access right, in accordance with Law no. 28/2016 on the access to properties and shared use of the infrastructure associated with the public electronic communication networks".

OTHER TOPICS

Annual inventory

In accordance with the provisions of the Law on accounting and financial reporting, the economic entities should perform the annual inventory.

At the same time, in accordance with the provisions of p.3 2) of the Order of the Ministry of Finance no. 60 of 29.05.2012 on the approval of the Regulations on inventory, the entity shall perform the inventory at least once during the reporting period.

Thus, we propose:

- Amending p.3 para 2) of the Regulations on inventory and stipulating the performance of the inventory of entity's property upon the decision of the shareholders or company management, but not more seldom than once in two years.
- Including in the Regulation the notion of "significance threshold", as a criterion pre-established by the entity for the determination of the need to perform inventory for the property, the value of which exceeds the limits established by the accounting policies. The approval of a significance threshold would give the entities the opportunity to establish the list of assets/stocks, which have an insignificant value in the total property of the company and does not have to be subjected to inventory, as they do not have any impact on the economic decisions of the information users.
- Including in Chap. IV. General rules on performing the inventory – **modern techniques and tools in the performance of inventory** (software, identification systems, etc.). P. 10 of the Regulation allows: *7) providing the inventory commission with enough adequate devices and tools for measuring, weighing, etc., with identification means (catalogues, samples, etc.), as well as with the necessary forms and supplies,* however these are not issues in the conditions of a fast evolution of the inventory means.

Regulations on the classification of assets and conditional commitments, approved by the Decision of the Management Board of NBM no. 231 of 27.10.2011

The application of a single approach (IFRS) to reflecting the discounts for losses to assets and conditional commitments of the bank subjected to credit risk.

Currently the banks ensure the accounting of discounts for losses to assets and conditional commitments according to the IFRS 9 standard, reflected in the financial statements (balance sheet accounting). At the same time, according to the Regulations on the classification of assets and conditional commitments, approved by the Decision of the Management Board of NBM no. 231 of 27.10.2011, it is necessary to ensure the extra-balance sheet accounting for prudential purposes.

Consequently, the existence of two approaches at the same time: IFRS on the one hand and prudential on the other hand, creates the preconditions for maintaining two methodologies concomitantly, as well as the redundant application of the processes of reflecting the discounts for losses.

Thus, it is proposed to examine the possibility of abrogating the **Regulations on the classification of assets and conditional commitments, approved** by the Decision of the Management Board **of NBM no. 231 of 27.10.2011**

IT Park activity

The IT Park acts as a catalyst of investments in the IT sector by promoting flexible governmental policies, creating an environment favorable to innovations in ITC and a transformed digital economy by means of a strong IT sector which may open new opportunities. Other fiscal burdens risk to strangle this industry, based in proportion of 90% on services with low added value, of outsourcing type. Namely for these reasons the fiscal and regulatory predictability is the most important to maintain the growing and visionary trajectory of the IT sector. It is vital to focus on the continuous development of this sector and on promoting digitization.

We request the extension of the IT Park, as well as the maintaining of the fiscal regime and guarantees for the activity of the IT Park, in order to ensure predictability.

Law no.1466/1998 on the regulation of the repatriation of cash, goods and services originating from foreign economic transactions

One of the challenges identified by the business environment relates also to the obligations on cash repatriation, imposed by Law no. 1466/1998. Due to the provisions of such Law, the resident economic entities acting in good faith are subjected to liability and may be penalized for the actions/inactions of the non-resident companies that do not fulfill their contractual obligations (namely, non-payment within the established term for the purchased goods/services). Thus, besides incurring financial prejudices caused by the non-fulfillment by third parties of their contractual obligations, the resident economic entities are additionally subjected to sanctions from the State – provided by the Law on repatriation. We consider that the economic entities should not be penalized twice for the impossibility of recovering the debts relating to foreign commercial activity. Moreover, we consider that the state security will not suffer because of the abrogation of such Law (as provided in art. 1 para. (2) of the Law), as the economic entities themselves are interested in the repatriation and collection of the monetary funds from foreign trade. Likewise, such regulations are not found in the practice of the European countries. In such conditions, it is logical to cancel the obsolete practice, which is not in accordance with the Acquis Communautaire.

We request the ***abrogation*** of Law no.1466/1998 on the regulation of the repatriation of cash, goods and services originating from foreign economic transactions (Official Monitor of the Republic of Moldova, 1998, no.28–29, art.203).

LABOR FORCE MARKET

The business welcomes the openness of the authorities towards the modernization of labor relations by means of the recent considerable legislative amendments.

At the same time, due to globalization and increased migration, especially population exodus, the labor force market of the Republic of Moldova is still vulnerable.

Thus, the modernization of the labor legislation to allow the employers to adapt to the high fluctuation of staff and/or, sometimes, lack of staff, is an imperative measure. The obsolete provisions imposing unjustified bureaucratic barriers, as well as additional costs, have to be replaced with norms offering flexibility in the labor relations to the employer and employees.

The implementation of the "work through a temporary-work agency", the introduction of the electronic register of employees, regulation of the "conflict of interest concept" bringing the educational curricula in accordance with the needs of the labor market, as well as other amendments to the labor legislation will contribute to increasing the efficiency and productivity of companies and, consequently, to the economic growth of the country.

Article 86, para. (1), let h) of the Labor Code, absence without grounded reasons from work during 4 consecutive hours (without taking into account the lunch break) during the working day

This ground for dismissals envisages the physical non-showing up to work of the employee at his/her place of work. With the introduction in the legislation of the concept of work from home and online, it is necessary to introduce in the Labor Code a similar provision to regulate the non-fulfilment by the employees of the work at home or online.

For adapting the provisions of art. 86 of the Labor Code to the conditions of performing the work at home or online, we propose amending this article, in the following wording:

h[1]) the non-fulfilment by the employee working from home or online, without grounded reasons, of the job duties during at least 4 consecutive hours (without taking into account the lunch break) during the working day – in case of employees with the daily duration of the working time of at least 8 hours a day, or during at least half of the daily duration working time – in case of employees with the daily working time less or more than 8 hours a day.

Art. 90 of the Labor Code. Liability of the employer for the illegal transfer or dismissal from work

In practice, the reinstating at the place of work after a conflict is not a beneficial option neither for the employer, nor for the employee. For this reason, art. 90, para. (4) of the Labor Code stipulates the possibility that the **parties, instead of the reinstatement at the place of work**, conclude a reconciliation agreement.

At the same time, in case of a conflict regarding the conditions of the transaction, the court, **with the consent of the employee**, may collect from the employer an additional compensation of at least 3 average monthly salaries. This provision is interpretable and does not give exhaustively to the employer the possibility of not reinstating the corresponding employee, except if such employee gives his/her consent to this.

For these reasons, to bring clarity to the cited norm and to exclude any confusion, we propose the exclusion of the ***consent of the employee*** and the stating of the paragraph in the following wording:

"(4) Instead of the reinstatement at the place of work, the parties may conclude a reconciliation agreement, and in case of a conflict caused by the impossibility of concluding such agreement – the court may collect from the employer in the benefit of the employee an additional compensation to the amount stated in para. (2) in the amount of at least 3 average monthly salaries of the employee."

Article 91 of the Labor Code. General requirements on the processing of personal data of the employee and guarantees regarding their protection

For the purpose of ensuring the human and citizen rights and freedoms, when processing the personal data of the employee, the employer and their representatives should observe the following requirements:

f) when taking a decision affecting the interests of the employee, the employer shall not have the right to rely on the personal data of the employee obtained exclusively as a result of automated or electronic processing;

We consider abusive the provisions of art. 91 let. f) and we request the abrogation of such norm which, effectively, cancels the right of the employer to have the opportunity to apply measures, including to apply disciplinary sanctions, obtained exclusively as a result of automated or electronic processing.

This provision has an impact especially in case of work from home or online, where the relations and communication between the employer and employee take place totally in electronic form.

At the same time, we consider that in the domain of protecting the personal data of the employees, the Labor Code should refer to Law no. 133 of 08.07.2011 on personal data protection, the same as in the domain of safety and health at work the Labor Code refers to the Law on labor safety and health (art. 244 of the Labor Code).

Article 102 of the Labor Code. Duration of work before the non-working public holidays

According to art. 102 para. (1), the duration of the working day (shift) before a public holiday shall be decreased by at least one hour for all the employees, except for those, for whom the decreased duration of the working time is established according to art.96, or the partial working day is established according to art.97.

The decrease of the working schedule by 1 hour before public holidays has a negative impact on company activity.

In the situation provided by this article, the company activity is prejudiced for the following reasons:

- The labor productivity on such day is lower due to the working schedule decreased by 1 hour. Thus, the company may not produce the amount of production planned during the normal working schedule.
- The employees may not use this hour effectively, as their travelling home is sometimes related to the transport schedule, which is organized according to the normal working schedule.
- The cost of benefits offered to the employee (for ex. food, transport) stays the same in conditions in which the labor productivity is decreased by 1 hour.

In this context and based on the stated arguments, we consider advisable the exclusion of art. 102 para. (1) from the Labor Code.

Article 104 of the Labor Code. Additional work

5) At the request of the employer, the employees may perform work outside the working hours, within the limit of 240 hours during one calendar year.

The extension of the number of additional hours would allow the reporting, as well as the full payment of the hours worked by the employees in the context of observance of legal norms.

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

We propose the reviewing and establishing of a larger amount for the additional hours allowed during one calendar year, by amending art. 104, para. (8), as follows:

*(8) The stipulation, in the collective labor agreement or individual labor agreement, of the opportunity of compensating the additional working hours with free hours, with the written consent of the parties, shall be allowed. In such case, the free hours shall be offered within **12 months** from performing the additional work.*

The compensation of the additional work with free hours may be done in the following way: 1) additional work, then compensation with free hours, or 2) offering free hours, then performing additional work. To make sure that the second scenario is in line to such provision, we consider necessary to make the following specification:

In such case, the free hours will be offered within 12 months from performing the additional work **or the performance of additional work will be done within 12 months from the offering of free hours, in advance.**

Article 113 of the Labor Code. Duration of the annual leave

(1) All employees are given a paid annual leave with the minimal duration of 28 calendar days, except for the non-working public holidays.

Offering the annual leave in business days is a practice used in many countries, for ex. Romania, Italy, Germany, Greece, Turkey, etc.

The proposal facilitates the negotiations on the annual leave period, as well as its calculation, the calculation of the annual leave in business days would allow the employees to benefit from more days of vacation, having, at the same time, a higher vacation indemnity, for ex. a vacation indemnity not lower than the basic salary for the business days.

Directive no. 2003/88 of 4 November 2003 on certain aspects of organization of the working time.

Article 7 para. (1): The member states shall take the necessary measures so that any worker benefits from a paid annual leave of at least **four weeks** in accordance with the conditions for obtaining and offering the leaves provided by the national legislations and practices.

As long as the minimal limit of 4 weeks per year, provided in the Directive, is observed, the national legislator is free to establish the annual leave in business days or in calendar days.

We propose the amendment of art. 113 para. (1) of the Labor Code, by replacing the wording *„28 calendar days”* with ***„20 business days”.***

Article 138 of the Labor Code. Compensation based on the annual activity results

(1) Besides the payments provided by the salary systems, a compensation may be established for the employees of a unit because of the results of the annual activity from the fund formed from the benefit obtained by the company.

(2) The Regulations on the way of payment of the compensation based on the results of the annual activity shall be approved by the employer by mutual agreement with the representatives of the employees.

We consider unjustified obliging the employer to issue **regulations** on making some incentivizing payments because of the results of annual activity. Should the compensation represent a fixed amount or a clear and non-interpretable ratio, the employer may issue an order in this regard.

At the same time, we consider abusive obliging the employer to pay the compensation based on the results of the annual activity, with the consent of the representatives of employees.

In this regard, we propose stating art. 138 in the following wording:

“Besides the payments provided by the salary systems, a compensation may be established for the employees of the unit based on the annual activity results, from the fund formed of the benefit obtained by the company, based on the order approved by the employer.”

Article 143 of the Labor Code. Terms for making the payments in case of termination of the individual labor contract

(1) If the sum of all the amounts which are due as a salary from the unit is not objected, the payments shall be made:

a) if the individual labor contract is terminated with an employee who continues to work until the day of dismissal – on the day of his/her dismissal;

b) if the individual labor contract is terminated with an employee who does not work until the day of dismissal (medical leave, non-grounded absence from work, imprisonment, etc.) – at least on the day immediately following the day when the dismissed employee asked the making of payments.

In the companies with a large number of employees, the payment in the last working day is not possible to be made, as work in shifts is being implemented, and the salary system is based on certain indicators, there are several departments involved in the process of calculation and payment of the salary, and there is also a high seasonal fluctuation.

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

We consider advisable to amend art. 143 of the Labor Code, regarding the term of payment, which shall ***not be later than the date of salary payment established in the individual labor contract***

Article 211 of the Labor Code. Validity period and effects of disciplinary sanctions

”(3) Within the validity period of the disciplinary sanction, the incentives provided by art. 203 may not be applied to the sanctioned employee.”

We consider such provision incoherent, as it limits without justification the rights of the employers to incentivize the employees for good results at work and, at the same time, the employees may be demotivated to work at their best during the period of validity of the disciplinary sanction.

We mention that we may not find a viable argument for the restriction provided by art. 211, para. (3) of the Labor Code.

At the same time, there are interpretations on the effect of application of some incentives provided in art. 203, para (3), for the employees that have been subjected to disciplinary sanctions, within the term of validity of the disciplinary sanction.

We propose the abrogation of para. (3) art. 211 of the Labor Code.

Article 214 of the Labor Code. Rights and obligations of the employees in the sphere of professional training

Often, in practice, the employers face situations in which they incur expenses for the professional training of the employees, but they do not benefit from such investments, as the employees decide to terminate the labor relationship before the employer feels their positive impact.

Below we see the best practice of the EU countries:

Estonia:
https://www.cedefop.europa.eu/en/tools/financing-adult-learning-db/search/agreement-compensation-training-expenses

We propose amending art. 214 of the Labor Code with para. 5), in the following wording: ***“The employees having benefited from professional training, in the conditions of art. 214 para. (1), may not come with the initiative of terminating the individual labor contract for***

The employers and employees may agree on a clause on reimbursing the training related costs. Thus, the employee shall work for the employer for an agreed period (not more than 3 years) for compensating the incurred training expenses.

In accordance with the Labor Code, the employees and employers may agree on the financial support for training, which shall be paid by the employer. In exchange, the employee is expected to work for the employer for an agreed period after the training – but not more than 3 years – depending on the duration and cost of the training. The employee should reimburse, according to the law, the training costs in case of resignation of the employee or their dismissal for infringing the labor obligations.

Romania:

Art. 198. [Obligations of professional training beneficiaries]

(1) The employees having benefited from a professional training course or internship, in the conditions of art. 197 para. (1), may not come with the initiative of terminating the individual labor contract for a period established by an additional act.

(3) The non-observance by the employee of the provision stipulated in para. (1) determines their obligation to incur all the expenses caused by their professional training, proportionally to the non-worked period from the period, established according to the additional act to the individual labor contract.

EU studies mention also Austria and Germany with such legal provisions: https://www.cedefop.europa.eu/files/5523_en.pdf

Law no. 200/2010 on the status of foreigners in the Republic of Moldova

Art.43[1] of the Law stipulates the obligation of paying an average salary per economy to foreigners, which generates a discriminatory treatment towards Moldovan citizens, who may work based on the minimal salary provided by the legislation. We mention that this represents an impediment in employing foreign citizens and institutes an inequitable and discriminatory treatment towards the citizens of the Republic of Moldova.

In support of the above stated, we are bringing to your attention additional arguments, but also the practice of other states on this dimension:

Germany
There is no minimal salary defined for these qualified workers. Nevertheless, the salary should be the same as of the Germans having comparable competences.
https://www.bmi.bund.de/EN/topics/migration/immigration/labour-migration/generell-information/general-information-node.html

Austria
After months of waiting, an important reform is on its way, starting 1 October 2022. The new legal reform of the Austrian Law on the employment of foreign citizens lowers their minimal gross salary
https://www.workinaustria.com/en/blog/legal-reform-of-the-red-white-red-card

Belgium
In any case, the salaries may never be lower than the "minimal guaranteed average monthly income".
https://www.vlaanderen.be/en/work-permits-for-foreign-workers/work-permits-wages-and-allowances

a period established by an additional act to the individual labor contract.

The non-observance by the employee of this obligation shall lead to the reimbursement of all the expenses incurred by the employer for their professional training, proportionally to the non-worked period from the period, established according to the additional act to the individual labor contract."

Thus, in the context of improving the business climate in the Republic of Moldova, we propose amending Article 43[4] of Law no. 200/2010 on the status of foreigners in the Republic of Moldova, accordingly: the wording *average monthly salary* per economy as written in the law to be replaced with ***minimal salary.***

Canada:
https://www.afl.org/minimum_wage_tfw_list_shows_program_undermining_canadian_wages#:~:text=Under%20the%20Temporary%20Foreign%20Worker,dollar%20is%20their%20standard%20practice

Law no. 10 of 03.02.2009 on the state supervision of public health. Training at the National Public Health Agency

Based on the provisions of Law no. 10/2009 on the state supervision of public health, the persons that will be employed in offices involving the activity with food products should be trained at the National Public Health Agency, in the Hygiene Training course.

We consider necessary the de-monopolization of such trainings by NPHA, offering the necessary certifications also to other participants, competent in this domain.

Law no. 10 of 03.02.2009 on the state supervision of public health. Periodical prophylactic medical check-ups

In accordance with art. 49 para. 7) of Law no. 10 of 03.02.2009 on the state supervision of public health and GD no. 1025 of 07.09.2016, the employees are mandatorily subjected to periodical prophylactic check-ups, **with the costs covered by the employers.**

Likewise, these prophylactic medical check-ups are done based on certain risk factors, which, de facto, do not have impact on the health of the employees. This is determined by the fact that GD 1025/2016 for the approval of the Sanitary Regulations on the supervision of health of the persons exposed to professional risk factors – stipulates the professional risk factors, which are general risk factors.

We propose amending art. 49 para. (7) of Law no. 10 of 03.02.2009 on the state supervision of public health and its stating in the following wording:

"The medical check-ups upon employment and the periodical check-ups performed for the purpose of preventing the onset of professional diseases shall be done within the public or private healthcare providers, ***and their costs shall be covered from the funds of mandatory medical insurance."***

We propose the review of GD 1025/2016 for the approval of the Sanitary Regulations on the supervision of health of the persons exposed to professional risk factors by reexamining the list of risk factors and exclusion of the factors:

2.1. (Non-ionizing electromagnetic field of the 0-300 GHz frequency band), **5.3** (Overuse of the visual analyzer (category of visual activity I, II, III; workers who, in the process of their activity (more than 50% of the working shift) use optical devices, follow screens and computer equipment displays, etc.); overuse of the chromatic sense).

GD 95/2009 for the approval of certain normative acts on the implementation of the Law on safety and health at work no. 186-XVI of 10 July 2008. Labor safety and health

In the context of digitalizing and optimizing the resources to decrease the use of paper documents, the need to perform the training in labor safety and health and confirming the performance of training by handwritten signature on paper acts remains an obsolete practice.

We propose amending GD 95/2009 for the approval of certain normative acts on the implementation of the Law on safety and health at work no. 186-XVI of 10 July 2008, as follows:

p. 47. „The training of employees in safety and health at work shall be made from the company's resources, during the working time, inside or outside of the company, ***including by means of electronic training and/or communication systems".***

At the same time, some types of activity/ works do not involve increased short-term or long-term risks for the health of the employee. Especially the office workers, whose work is organized in office premises and the working tools are the computer, phone, printer, are not subjected to specific professional risks. Thus, for the purpose of increasing the efficiency of enterprise work, we propose excluding the periodical training in labor safety and health for such types of works, or the performance of such training as needed, without singing additional acts, based on the confirming logs (without limiting such interval to 6 months).

p. 53. „The result of training of employees in health and safety at work shall be mandatorily recorded in the Personal card of training in safety and health at work, ***which shall be kept by the employer in hard copy or electronic format within the electronic archives provided by the employer.***"

p. 54. „After finishing the training, the Personal card of training in safety and health at work ***shall be deemed to be filled in either by its signing by the trained employee, or by storing the data (logs) on the training in the electronic record systems or electronic archives".***

p. 68. The wording ***"which shall not be higher than 6 months"*** – shall be excluded.

We also propose the amendment of art. 17 (2) let. b) of the Law 186/2008 on safety and health at work, in the end, with the wording ***"in case of establishments where activities are carried out without risk of injury or occupational disease"***

Performance of occasional non-qualified activities by day workers

In any company, independently on its domain of activity, the performance of certain occasional short-term works is sometimes necessary.

The legislator, based on the provisions of Law no. 22/2018 on the performance of occasional non-qualified activities by day workers, has legalize such relations, which are nevertheless *applied only in the sphere of agriculture*.

We recommend completing para. (2) of art. 1 of Law no. 22 of 23.02.2018 on the performance of certain non-qualified activities of occasional nature by day workers with other domains of activity, in which the work of day workers would be admitted.
For example, according to the legislation of Romania, activities of occasional nature may be performed in the following domains:
a) agriculture;
b) hunting and fishing;
c) silviculture, exclusively forestry exploitations;
d) fish-farming and aquaculture;
e) fruit growing and viticulture;
f) bee-keeping;
g) animal husbandry;
h) performances, cinema and audiovisual productions, advertising, activities of cultural nature;
i) manipulations of goods;
j) maintenance and cleaning activities.

We also propose extending the term for which the day workers may perform activities for the same beneficiary from 120 days to 180 days, according to the model of the Romanian legislation (Law no. 52 of 15 April 2011), which stipulates that:

"(4) No day worker may perform activities for the same beneficiary or for their authorized person for a period longer than 90 cumulated days during one calendar year, ***except for the day workers*** performing activities in the sphere of *agriculture, silviculture, viticulture, fruit-growing, vegetable growing, flower growing, fish farming, animal husbandry in extensive system by seasonal grazing of cattle, horses, seasonal activities within botanical gardens, as well as in the research-development-innovation activities in the agricultural domain of the «Gheorghe Ionescu-Șișești», Academy of Agricultural Science, of the research and development institutes, centers and stations subordinated to it, and of the national institutes, institutions of agricultural and forestry education*; in their case, the period may not exceed 180 cumulated days during one calendar year."

https://legislatie.just.ro/Public/DetaliiDocument/127831

It is also proposed to create an Electronic record book of day workers as the only way to transmit the data on the record keeping of day workers as well as to transmit the obligation of reporting and payment to National Medical Insurance Company and National House of Social Insurance to the "beneficiary".

Romanian experience: The IT system related to the Electronic record book of day workers is acquired form the Labor Inspection, in the conditions provided by the law.

Law no.110/2022 on dual education

The above-mentioned law stipulates that this type of practical training of the students in companies shall be applied only to technical vocational education.

The benefits of practical training of the students in the company have been proven during many pilot projects implemented by the higher education institutions of the country.

Nevertheless, the pilot projects implemented within the higher education do not fall within Law 110/2022 and, accordingly, the facilities by compensating the expenses of units in dual education are not applicable.

The benefits of dual education for the higher education (at least for the bachelor's degree cycle) are the same as in case of the technical vocational education: the training of professionals with practical skills necessary for an enterprise/unit participating in the dual education. For IT, for example, practical skills may be acquired in working with IT systems used in the company, not general knowledge obtained at the university.

We propose to extend the practical training according to the dual education principle also on the ***higher education***, to incentivize the practical training of students within the company and provide the possibility of remuneration of the students enrolled in training by dual education.

Conflict of interests

In the complex reality of the nowadays period, companies regularly, face situations in which the interests are in conflict. For the adequate functioning of an organization, it is important to solve such conflicts in an ethical and responsible manner. In the private sector, the conflicts of interests were identified as a major cause of the recent corporate governance problems. If the situations of conflicts of interests are not identified and managed accordingly, they may compromise the integrity of organizations and may result in corruption, both from the public and from the private sector.

We propose introducing in the Labor Code of an article regulating the conflicts of interests:

Art. XX: **Conflict of interests**

The employer may stipulate in the individual labor contract or in the internal procedures a clause on conflict of interests, by which the employee would be obliged to declare the conflicts of interests.

The employee should avoid the situation in which they are or may come into a conflict with the interests of the employer. The employee should inform the employer about such situation.

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

The employee should abstain from using, in their own benefit or in the benefit of affiliated persons, the opportunities to invest or perform activities, which became known to them while being in office or if the investment or activity has been proposed to the employer or the employer has had an economic or other interest in it according to the pursued goal, except for the case when the employer has refused the opportunity without the influence of the employee."

Art. 9 para. 2 let. j. of the Labor Code: "*The employee should declare the potential conflicts of interests, according to the procedures stipulated by the employer."*

Art. 74 para. 1 of the Labor Code: "…., *except for the cases of conflicts of interests."*

The notion of: *"conflict of interests – conflict between the fulfilment of the job duties/exercise of the held office and personal interests"*

Introduction and regulation of the notion "Work through a temporary-work agency"

In the conditions of a competitive economy, as well as of labor force insufficiency, companies are oriented towards applying various staff recruitment methods to become competitive and ensure the continuity of the initiated economic processes.

The recruitment methods vary depending on the profile and size of the company, difficulty and domain of functions for which employments are being done. Thus, the introduction of the concept of "work through a temporary-work agency" would give the companies the opportunity to decrease the time and expenses for employee recruitment and, at the same time, to hire people with the necessary qualification level.

We consider advisable the introduction of a new chapter in the Labor Code of the Republic of Moldova: **Work through a temporary-work agency.**

Art. X:

(1) The work through a temporary-work agency shall be the work performed by a temporary employee, who has concluded a temporary work contract with a temporary-work agency, and who is made available to the user to work temporarily under the supervision and management of the latter.

(2) The temporary employee shall be the person having concluded a temporary work contract with a temporary-work agency with the purpose to making them available to a user to work temporarily under the supervision and management of such user.

(3) The temporary-work agency shall be the legal person, authorized by the Ministry of Health, Labor and Social Protection, who concludes temporary-work contracts with temporary employees, in order to make them available to the user to work for the period provided in the contract on making employees available, under the supervision and management of such user. The conditions of operation of the temporary-work agency, as well as the procedure of their authorization shall be established by a Government Decision.

(4) The user shall be the natural or legal person for whom and under the supervision and management of whom a temporary employee made available by the temporary-work agency is temporarily working.

(5) The mission of temporary work shall mean the period in which the temporary employee is made available to the user to temporarily work under the supervision and management of such user for the execution of an exact task of a temporary nature."

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

In 2008, the European Parliament approved Directive 2008/104/CE on the work through a temporary-work agency, and the member-states of the European Union had to review the Directive until 2011.

Thus, Romania has amended in 2011 its Labor Code and approved Government Decision no. 1256 of 21 December 2011 on the conditions of functioning and procedure of authorization of the temporary-work agency in order to transpose such Directive.

Initiation at the place of work

Currently there is no expressly provided procedure in the labor legislation to regulate the initiation at the place of work, without concluding and signing a certain contract. In practice, there are cases when some employees, even in the first days after employment, do not show up at work, and the employer is in a situation when, on the 2nd day after preparing all the documents for employment, has to prepare the documents for the termination of the labor relations.

We consider advisable to introduce a legal notion and procedure to regulate the situation when the potential employee is being acquainted with the place and conditions of work, communicates with the employees, etc.

Thus, we recommend the inclusion of a new article in the Labor Code, with the following content:

"Art. X. **Initiation at the workplace**

(1) The future employer may, based on the written application of the future employee, establish a term of up to 5 business days for the future employee to get acquainted with the workplace, conditions of work and duties.

(2) The initiation provided in para. (1) shall be done with the mandatory participation and under the supervision of a representative of the future employer.

(3) Both parties shall have the right to refuse the conclusion of an individual labor contract after the expiry of the term provided in para. (1)."

It is also necessary to provide such situation in the Law on safety and health at work no. 186/2008.

Electronic register of employees (ERE)

From 1 September 2019, the workbooks mechanism is not applicable anymore and there is no electronic system for integrated and systematized recording of the information relating to the persons employed in the real sector, including information on their labor relations.

Currently, the only sources of information on the employed persons are the data declared by employers in the tax reports presented to the State Tax Service, information held by the National Social Insurance House and National Medical Insurance Company on the insured persons, as well as the information on the Register of public offices and civil servants.

At the same time, the data held by each institution in part are not complete and sufficient for the creation of a register at a national level, as the reports are submitted with the same data to various public institutions, at a certain time interval after the onset and/or amendment of the labor relation.

Not least, it is also necessary to take into account the fundamental rights of the employees, who does not have, currently, a centralized mechanism for the verification of their labor relations, both historical and current, registered or not. The Electronic register of employees will allow the monitoring in real time by the employee, individually, of the observance of obligations by the employer.

ERE proposes the automation of the processes of recording the employed persons, ensuring the keeping of history on the labor relations and facilitation of the access to data in real time.

Thus, in the context of accelerating the digitization of all public service, we consider advisable the ***extension*** of the State Register formed by the Automated Informational System "Electronic Register of Employees" (AIS ERE), approved by GD 681/2020 also on the real sector of the economy, as currently it applies only in the public sector, and it is an informational resource meant for the integrated and systematized recording of information relating to the labor relations of the employees.

COMPETITION

The member-companies of the Foreign Investors Association continuously advocate for transparent and clear rules in the performance of economic activity, being promoters of equitable competition conditions. Free and strong competition acts as a real impulsion factor for increasing innovation, incentivizing, at the same time, the markets to offer more benefits to the consumer, business and society, as a whole.

We consider the effective competition not only a goal as such, but a condition for the realization of a free and dynamic internal market, as this is one of the tools for promoting general economic wellbeing. We continue to believe that the creation and maintaining of a healthy competitive environment and the ensuring of independence of the Competition Council are major tasks, which may be implemented only with the joint efforts of the business and State authorities.

Strengthening the Competition Council

The Law on competition is a law of major importance for the country economy, and an operationally independent competition authority provided with adequate human and financial resources is an essential guarantee for the protection and incentivizing of competition.

According to the most recent Report on the activity of the Competition Council, on 31.12.2021 the Competition Council had 66 persons in staff, of which 4 public dignitaries, 59 persons holding the status of civil servant (of which 44 had investigation duties and 18 – administrative duties) and 3 persons in the technical staff. Of these persons, 22.7% of the Competition Council employees may be qualified as "beginners", having a length of service in the authority less than 3 years, and 40.9% are in process of advanced professional training, with a length of service in the authority from 3 to 5 years. Approximately one third (36.4%) of the staff of this authority may be classified as "qualified" and "highly qualified" staff, which represents the nucleus ensuring the keeping of institutional memory, transmission of experience and knowledge to the other employees. The fluctuation of staff in the Competition Council in 2022 was of 28.2%, which, as compared to 2021, is a continuous growth.

We consider advisable an external evaluation of the Competition Council activity, in order to find solutions allowing strengthening the functional capacities of the Competition Council and the effective increase of the degree of protection of the competitive environment.

Further, the review of the legal framework on the way of financing of the Competition Council is recommended.

The increase of the level of training of the Competition Council employees is another proposal on behalf of the business community.

Moreover, the Competition Council has reported among the challenges faced in 2022 (i) the lack of qualified staff materialized in the low degree of occupation of public office vacancies, which are inclusively due to the low salary level, not corresponding to the complexity of duties and competences required for the activity to be performed. Moreover, the Council reports that during 2022, 20 labor agreements were terminated, including with employees of the category of "qualified" and "highly qualified" staff, which represents the nucleus ensuring the keeping of institutional memory, transmission of experience and knowledge to the other employees; (ii) the deficit of technical provision, as most of the computer equipment is obsolete; (iii) the unsatisfactory working conditions for the performance of activity in the new headquarters of the institution. Our understanding is that the situation has not improved in 2023, either.

Also, taking into consideration that most often the providers of state aid do not have the necessary capacity to promptly and efficiently answer to the requests of the Competition Council within the notification procedure, we recommend the strengthening of capacity of the Competition Council and the adoption of a pro-business orientation, by which the competition authority would be the active part facilitating the notification, with the involvement of the beneficiary, at the possible extent.

As short- and medium-term measures, we propose the initiation of training courses, exchange of experience with representatives from other countries, the translation into Romanian and publishing of the international case law on the website of the Competition Council. As long-term measures, we recommend the inclusion of the Competition discipline in the curriculum of the universities or the training of professionals strictly in this domain.

Adjustment of the secondary normative acts in the sphere of competition to the European normative framework

The Competition Law no. 183/2012 is implemented through the regulations approved by the Competition Council, including:

- Regulations on the evaluation of horizontal anti-competition agreements no. 14/2013;
- Regulations on the evaluation of vertical anti-competition agreements no. 13/2013;
- Regulations on the evaluation of anti-competition agreements on technology transfer no. 15/2013;
- Regulations on establishing the dominant market position and evaluation of the abuse of dominant position no. 16/2013;
- Regulations on economic concentration no. 17/2013;
- Regulations on accepting the commitments proposed by the enterprises no. 2/2015.

The above listed regulations were developed by transposing the regulations, communications and guidelines of the European Commission in the sphere of competition in force at that time. Most regulations, communications and guidelines of the European Commission have been amended and adjusted to the new competitive challenges, including to those generated by the digital economy.

We recommend the amendment of the secondary normative documents developed for the implementation of the Competition Law, in accordance with the new regulations, communications and guidelines of the European Commission, as well as with the recent amendments made to the Competition Law.

Art. 47 para. (7) of the Competition Law no. 183/2012

On 18 August 2023, amendments to the Competition Law were published in the Official Monitor, which will come into force starting 18 September 2023.

According to the amendments, art. 47. para. (7) will have the following content:

We consider that this provision is a derogation from the provisions of the Administrative Code in relation to the decisions of the Competition Council. such derogation was not justified and grounded in any way by the authors of the draft and will lower the quality standard of the investigations performed by the Competition Council, and also of the decisions of this authority (which will not be obliged to strictly observe its own procedures) and opens the way towards abuses by the competition authority.

„(7) The court may not cancel the decision of the Competition Council, which is legal on the merits of the case, in case of finding certain procedural infringements which do not impact the merits of the case and which have not led to the limitation of the rights of the involved parties to defense, but it may send the case for reinvestigation to the Competition Council."

Moreover, such provision affects the right to defense of the party and represents an interference in the exercise of judicial power, which is a separate power in a state (art. 6 of the Constitution). The interference will take place by limiting the powers of the courts to fully examine the way in which the procedure was performed, the terms, etc.

Likewise, the mechanisms by which they will appreciate whether the procedural infringements impact or not the merits of the case and lead or not to the limitation of the right to defense – thus, the competence of the court to fully and completely issue a ruling on the decision of the Competition Council is limited. There are no justifications for such important derogations from ensuring the protection of the party in accordance with art. 6 of ECHR.

By means of Law no. 199/2023 a new article was introduced in Law no. 183/2012 regulating the liability of the enterprise for the acts of third parties.

Article 72². The penalty applied to legal or economic successors
If legal or organizational modifications took place in the enterprise having participated in committing an infringement of the competition legislation or if such enterprise ceased to exist, the Competition Council shall bring to liability the legal or economic successors of such enterprise and shall apply the penalties for infringing the competition legislation to the legal or economic successors.

Thus, the reason for imposing liability on one enterprise for the actions of another enterprise is the cessation of existence of the enterprise having participated in committing an infringement of the competition legislation or the performance of some legal or organizational modifications in the enterprise having participated in committing an infringement of the competition legislation.

These reasons are extremely vague and, obviously, do not satisfy the quality requirements of the law.

In its case law, the Constitutional Court stated that, in accordance with art. 23 para. (2) of the Constitution, the legislation should fulfill certain quality conditions. The law quality requirement is contoured from the point of view of the legal security principle in the composition of the conditions of predictability and clarity of the law. To comply with all the three quality criteria – accessibility, predictability and clarity – the legal norm should be formulated with exact precision, to allow the person to decide on their conduct and provide, reasonably, depending on the circumstances of the case, the consequences of such conduct. Predictability and clarity represent sine qua non elements of the constitutionality of a norm, they may not be omitted in any case in the law-making activity (see, in this regard, Constitutional Court Decision no. 10 of 16.03.2017, § 40-43).

Directive 2019/1 and the case law of the European Court of Justice recognize the right of the competition authority to bring to liability for the infringements of the competition norms other subjects than the offender in case of continuation of the economic activity, but such liability arises **only in exceptional cases** (with very clearly described criteria).

The vague formulation of the conditions of imposing the liability for the actions of third parties leaves place for abuse during the identification of such successors by the competition authority and, subsequently, by the courts, and for the unjustified bringing to liability certain persons for the infringements committed by third parties.

Thus, bringing to liability of the legal and economic successors would block any potential purchases in the future of the shares/assets in companies in Moldova, as the investors would not like to overtake the risk of being penalized for an infringement committed by a company before its purchase.

We propose to clearly define the conditions in which an enterprise may be liable for an infringement of the competition legislation committed by another enterprise, in accordance with the communitarian case law.

As different from the communitarian legislation, **Law no. 183/2012 establishes minimal thresholds of the penalties that may be applied.**

It is to be emphasized that the lack of such a threshold does not impede the Competition Council to establish any amount of the penalty within the limits of the maximum threshold established by the law.

The application of such thresholds deprives the Competition Council of a flexibility necessary to establish the penalty amount, which would take into consideration the share of the activity within which the infringement has been committed in the total incomes obtained by the enterprise, the gravity of the deed, its duration, whether such deed had consequences, the extent at which the market has been affected, whether the infringement has been remediated by own initiative, the profit obtained from the infringement, the calculation basis for the penalty, etc.

There might be situations when the infringement does not justify a large penalty, taking into consideration all the relevant circumstances, even if according to the formal criteria it qualifies as an infringement of medium or high seriousness.

Thus, according to p. 13 of the Guidelines on the calculation of penalties applied on the basis of article 23 paragraph (2) letter (a) of Regulations (CE) no. 1/2003, *„to determine the basic amount of the penalties to be applied, the Commission shall use **the sales value** of the goods or services sold by the enterprise, **which are directly or indirectly (1) related to the infringement,** in the relevant geographic sector of the SEE territory. The Commission shall use normally the sales done by the enterprise during the last complete year of its participation in the infringement (hereinafter referred to as "sales value")."*

Establishing such thresholds calculated from the total turnover does not allow individualizing the penalties in accordance with the EU Guidelines and creates and excessively repressive legal framework, which, through the financial risks it, generates, discourages any investments in the Republic of Moldova.

We propose ***eliminating the minimum thresholds of the penalties,*** keeping just the maximum thresholds for infringements of various nature and seriousness.

The Chapter from **Competition Law no. 183/2012** dedicated to the economic concentrations erroneously transposes the provisions of the Regulations (CE) no. 139/2004 of the Council of 20 January 2004 on the control of economic concentrations between enterprises in the part relating to the moment when the enterprises should notify an economic concentration to the Competition Council.

Article 22 para. (1) of Law no. 183/2012 stipulates that the economic concentration shall be notified before its putting into application. Further on, para. (2) of the same article stipulates that *„ putting into application of the economic concentration operation shall mean, as the case may be, the conclusion of the agreement, notification of the public offer or the overtaking of the control package".*

Nevertheless, according to p. 4 par. (1) of Regulations (CE) no. 139/2004, „the concentrations having the communitarian dimension defined in these regulations should be notified to the Commission before their putting into application and **after the conclusion of the agreement, notification of the public offer or overtaking of the control package.** The notification may be also performed when the involved enterprises prove to the Commission their intention in good faith to conclude an agreement or, in case of a public offer, if they announced publicly their intention to make such offer, on the condition that the result of the planned agreement or offer is a concentration with communitarian dimension".

We request the amendment of art. 22 para. (1) and (2) of Law no. 183/2012 and p. 136 of Decision 17/2013 of the Competition Council Plenum in accordance with p. 4 para. (1) of Regulations (CE) no. 139/2004, as well as the completion of Decision 17/2013 of the Competition Council Plenum with a paragraph stipulating that the conclusion by the parties of the economic concentration of an agreement (contract) (for ex. in relation to the transfer of shares, conclusion of a transaction, etc.) under a suspensive condition may not be seen as a putting into application of an economic concentration.

Consequently, according to the communitarian legislation, the conclusion of the agreement, notification of the public offer or overtaking of the control package are not considered putting into application of the economic concertation, as the enterprises should mandatorily notify the economic concentration not before, but after the conclusion of the agreement, notification of the public offer or overtaking of the control package. At the same time, the enterprises have the right, but are not obliged to notify the economic concentration before the conclusion of the agreement, notification of the public offer or overtaking of the control package, if they prove to the Competition Council their intention in good faith to conclude an agreement or, in case of a public offer, if they announced publicly their intention to make such offer, on the condition that the result of the planned agreement or offer is a concentration.

P. 136 of the Decision of the Competition Council Plenum 17/2013 should be amended similarly.

In this sense, a contract (agreement) signed between the parties to an economic concentration, under a suspensive condition (Art.352 of the Civil Code), may not be seen as such as a putting into application of the economic concentration. The measures for putting into application of the economic concentration are correctly specified in p. 137 of the Decision of the Competition Council Plenum 17/2013.

The defective regulation of the moment until which the notification should be performed creates practical difficulties, as it obliges the parties to an economic concentration to prepare and submit to the Competition Council a detailed Notification File without being able to set beforehand the agreements of the parties on the main conditions of the future transactions, which would be mandatory for the parties.

Such provision would be in line with the EU practices in this domain, including Romania and other countries.

Likewise, we propose the exclusion of art. 22 para. (2/1), introduced by Law no. 199/2023, which doubles art. 20 para. (5) of the same law.

Promotion of competition culture

The competition legislation remains misunderstood by enterprises, civil servants and other stakeholders of the social life the educational institutions of the Republic of Moldova do not pay enough attention to the competition law' training courses. The market lacks economists specialized in making competition analysis. The local enterprises pay a low importance to the prevention of infringing Competition Law.

Likewise, the support measures granted as state aid are identified and notified by the providers, which are usually public authorities. Beneficiaries of the support measures are usually private legal persons having a direct interest in the authorization of the support measures by the Competition Council. In practice, the public authorities are not active enough in notifying the support measures (as they don't have the necessary capacity or knowledge), and the Competition Council does not offer enough support to the authority to facilitate its role of state aid provider, in the detriment of the legal person – beneficiary of state aid.

Thus, we recommend:

- performing educational campaigns with the participation of the Competition Council for the large public, to inform on the competition rules and role of the Competition Council;
- financing from the state budget the Competition Law courses and competition economic analysis in the higher education institutions of the country;
- performing informational campaigns with the participation of the Competition Council to encourage the enterprises to implement programs of compliance with competition norms;
- active and broad dissemination of the information on the notification of state aids by the providers, by organizing informative workshops by the Competition Council, where the competition authority would be educated on the peculiarities of notification;
- making the Decisions of the Competition Council transparent by publishing:

a. their explained denomination, which would reflect the object and subject of the decision,

b. certain analysis/reports reflecting the practice and visions of the authorities on certain domains of activity in the economy or on certain competition issues.

Informal economy

According to the recent data of the National Bureau of Statistics, the share of informal economy in the Republic of Moldova, for the previous years, amounted to approximately 25% of the GDP. Traditionally, in the non-declared segment the largest share is held by agriculture, followed by constructions and then by trade.

We appreciate the effort and decision of the authorities to exclude the trade activity based on patents and to incentivize the transition to independent activity.

We consider that the informal economy has a negative impact on the entire economy of the Republic of Moldova and distorts loyal competition.

In this regard, the experts of FIA member-companies listed a series of proposals:

- Monitoring the activity of regional commercial units by the empowered control bodies;
- Systematic measures for the limitation and exclusion of the import of counterfeit and smuggled products;
- Incentivizing the economic entities to decrease the transaction in cash and to perform the transactions by bank transfer;
- Organization and performance of informative campaigns to raise the awareness of the civil society on the performance of payments using bankcards;
- Support & contribution of the State to installing POS terminals in each commercial unit (by developing the corresponding infrastructure);
- Establishing by the authorities of the interbank commission fees applied for "Domestic" transactions (card issued in RM – POS from RM).

Commercial Sector / Interference of the State in enterprise activity

In accordance with the Constitution of the Republic of Moldova, the market, free economic initiative, loyal competition are the basic factors of the economy.

In accordance with the basic competition principles, the intervention of the state in the enterprise activity performed by the issued decisions or by the adopted acts of the central or local public administration, which have a direct or indirect impact on the competition may be admitted in exceptional situations, when such measures are taken in the application of other laws or for the protection of a major public interest.

In accordance with the regulation principles stipulated by the Law on normative documents no. 100 of 22.12.2017, when developing a normative act, the constitutionality, consecutiveness, predictability and transparency of the normative act should be ensured.

The following are recommended:

- Analysis of the initiative in order to correspond to the international treaties, a party of which the Republic of Moldova is; to the unanimously recognized principles and norms of international law, as well as to the legislation of the European Union.
- Evaluation and regulatory impact analysis, in accordance with art. 13 of Law no. 235/2006 on the basic principles of regulation of the enterprise activity.

Obtaining the endorsement of the Competition Council for any initiative of the state, which may, directly or indirectly, influence competition.

Government Decision no. 774/2016 on the sales prices of socially important products

We consider Government Decision no. 774/2016 on the sales prices of socially important products an obsolete one, which is a remnant of the economic policy of the Soviet period, year 1995. No similar decision is present in other European States. In the context of obtaining by the Republic of Moldova of the status of a candidate country to join the EU and of the will to follow a European pathway, we consider advisable implementing the best practice of the EU countries, where a free and competitive market economy exists and perfectly operates, and not stagnating in the period of controlled economy. Recently, our neighboring country, Ukraine refused the existence of a list of socially important products.

Issuing from the fact that this Government decision is contrary to the principles of a free economy and to the provisions of the Constitution of the Republic of Moldova and other legal provisions in force, we consider it necessary to give up on the "list of socially important products", to return to the free, civilized and

- At this moment, no grounded study has been published proving that the list of socially important products is necessary, has a positive effect on price formation and on the consumers.
- Thus, such project is contrary to the principles of a free economy and is in contradiction with the Constitution of the Republic of Moldova and other legal provisions in force.
- According to art. 9 and 126 of the Constitution of the Republic of Moldova, the market, free economic initiative, loyal competition are the basic factors of the economy. The Constitution expressly and clearly provides that the State should ensure the freedom of trade and enterprise activity, protection of loyal competition, creation of a favorable framework to valorize all production factors.
- The Competition Law no. 183 of 11.07.2012 establishes the basic competition principles (art.3), by which:

(1) The State shall ensure the freedom of enterprise activity, protection of competition, and

(3) The prices for products shall be determined in the process of free competition, based on demand and offer, if not otherwise provided by the special law.

The law provides, as an exception, the possibility of the State to intervene in the enterprise activity and to regulate prices for a strictly determined period, having, as a basis, an objective justification,

(4) For the economic sectors in which competition is limited or does not exist, as well as in exceptional circumstances (such as: crises, major disbalance between the demand and offer), the Government shall have the right to dispose and/or apply measures of a temporary nature to impede or even block the excessive price rise. Government Decision shall approve such measures for a period of 6 months, which could be successively prolonged for periods of not more than 3 months, as long as the circumstances justifying the Government Decision persist.

- Moreover, in accordance with the provisions of art. 2116 para. (1) let. b) of Law 231/2010 on internal trade, „the requesting and offering of commercial discounts for the socially important products of first need according to the list approved by the Government" shall be forbidden and represents a non-loyal commercial practice. Such regulation, on the contrary, is in the detriment of the consumer, as, by establishing a minimal price; the consumer will not be able to benefit from a lower final price.

competitive market economy, by ***abrogating*** Government Decision no. 774/2016 on the sales prices of socially important products.

Parallel imports

- Currently there is a conflict between the primary and secondary legal norms as regards the admissibility of parallel imports.
- Thus, art. 13 para. (1) of the Law on trademark protection no. 38/2008 forbids the holder of a registered trademark to request the interdiction of usage by other persons of such trademarks on the products and/or services placed on the market of the Republic of Moldova by themselves or with their consent. In other words, art. 13 para. (1) allows the holder of a registered trademark to forbid other persons to use such trademark on products/services if the products were not placed in the Republic of Moldova by the holder or if they were placed without their consent.
- At the same time, art. 63 of the Regulations on the evaluation of vertical anti-competition agreements no. 13/2013 stipulates that the policy of restraining parallel imports, by which the seller restricts the right of the distributor to active or passive sales in various countries, shall be deemed to be forbidden. Only the restraining of active sales on a certain territory allocated exclusively to one distributor shall be allowed.

- We recommend 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 Regulations on the evaluation of vertical agreements, so that the conflict of norms related to the admissibility of parallel imports is eliminated.

- Such conflict creates a state of uncertainty, both for trademark holders and for the importers of products and services as regards the legality of forbidding parallel imports. Thus, even if forbidding parallel imports is admitted in certain conditions established by the law on the protection of trademarks, the trademark holders and distributors risk to be accused of anti-competition behavior by concluding vertical anti-competition agreements on forbidding parallel imports according to the Competition Law.

Law 96/2021 amending Law no. 461/2001 on the oil products market and Decision of NAER management Board no. 446 of 12.10.2021 on the approval of the Methodology of calculation and application of prices for oil products (hereinafter – the "Methodology")

- The above-mentioned normative acts create a very unfavorable framework in the sphere of wholesale and retail trade of oil products.
- According to Law 96/2021, the maximal retail sales price for the main oil products of standard type shall be established by NAER based on the Methodology.
- Thus, after implementing the Methodology, the commercial margin (namely the profit of the retail sellers of main oil products of standard type) is a limited one and may not exceed the values established by NAER on a quarterly basis.
- The current situation, created as a result of implementing Law 96/2021 and the methodology practically confirms that the value of the established margins do not even cover the expenses of the oil companies, not to speak about profits.
- Moreover, in accordance with p.13 of the Methodology, if one oil product of the standard type (namely, COR 95 gasoline and diesel, without commercial name) is missing at the fueling station, the economic entity **shall stop immediately the sale of other types of products of the same category,** shall inform the consumers by excluding the prices from the board of the fueling station, and shall prepare a report on the lack of main oil products of the standard type, sending it to NAER within no more than one business day.
- In the current geopolitical conditions, influenced by the armed conflict in Ukraine, such a legal nonsense creates danger both for the energy safety of the Republic of Moldova, and for the safety of the business environment and regular consumer, as, in the hypothesis when on the internal market the oil products of the standard type would not (temporarily or permanently) exist, the retail trade in other types of main oil products would be impossible.

- We request the ***abrogation*** of Law 96/2021 and Decision of NAER 446/2021 and the return at least to the normative framework existing before 1 July 2021 in this domain, and the alignment to the practices of the European Union, so that the prices are established by the oil companies according to the market economy principles and with the observance of the legislation on competition and market economy.

Implementation of the "self-service" concept at the fueling stations

- The possibility of self-service when refueling at the fueling station is currently forbidden in the Republic of Moldova. According to p.51 of the Regulations to GD 1117/2002 on the approval of the Regulations on the retail sale of oil products, in the most permissive case the client may refuel the car themselves, but under the supervision of the operator, which means that the refueling station operator should be present onsite. In consequence, the indication by the oil company that the client should refuel themselves (without the operator) may lead to complaints by the consumers and to sanctions (including regulatory) for the non-observance of the licensing conditions / legislation on the retail sale of oil products.
- Such limitation is not found in EU and other countries of the region (for ex., Ukraine).

- We request the corresponding amendment or exclusion of p.51 of the Regulations to GD 1117/2002 on the approval of the Regulations on the retail sale of oil products.
- (ii) Inclusion of a norm (for example, in the Regulations to GD 1117/2002), according to which the oil company shall have the right to decide independently the mechanism based on which

The clients should be able to refuel themselves without the supervision of the operator (for ex., on the basis of certain steps displayed at the fueling station) and the oil company should have a legal remedy on the basis of which to show to the client that, according to the rules of the station, they refueling may be done by the clients themselves (without the participation of the operator).

the clients would refuel the cars at the fuel distribution station (including without the participation/supervision of the operator).

Implementation of the concept of fuel distribution station of the *unmanned* type

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

The practice of the fuel distribution stations of the *unmanned* type is widely expanded in the EU (see Austria, Germany, Greece, etc.).

We recommend amending art. 26 of Law 461/2001 on the oil products market and GD 1117/2002 on the approval of the Regulations on the retail sale of oil products by developing and including such concept in the legislation, according to the best practices of the EU.

Creation of a favorable and equitable competition environment for the economic entities of the Republic of Moldova, from both banks of Nistru river

According to Government Decision no. 1001 of 19.09.2001 on the declaration of goods by the economic entities from the eastern districts of the Republic of Moldova, the imports in the districts located on the left bank of Nistru river have advantages compared to the producers of the Republic of Moldova. The local producers (right bank of Nistru) are unfavored in front of the importers (left bank of Nistru) which do not pay import duties (excise duties, VAT) to the customs authorities.

In exchange, the local producers (right bank of Nistru) should pay taxes in Moldova and when performing sales to the entities from the left bank of Nistru – they have to pay taxes on the left bank of Nistru. Thus, the State favors the importers (left bank of Nistru) in the detriment of the local producers (right bank of Nistru) who wish to sell products on the left bank of Nistru.

We request the abrogation of Government Decision no. 1001 of 19.09.2001 on the declaration of goods by the economic entities from the eastern districts of the Republic of Moldova and the ensuring of a favorable and equitable competition environment for all the entities selling or intending to sell in the eastern districts of the Republic.

TRANSITION TO GREEN ECONOMY

During the last years, the concept of green economy and the transition to it got a major importance in public discussions, both at a national, and at an international level. The development policy at the level of the European Union promotes the transformation towards an ecological economy, which generates economic growth and contributes to decreasing poverty by sustainably managing the natural capital.

One proof of the important role obtained by the transition to green economy is the large number of legislative initiatives at EU level, especially the approval of the European Green Deal – a set of political initiatives of the European Commission with the general goal to make Europe climatically neutral by 2050. The status of candidate country of the Republic of Moldova reiterates the importance of the topic related to the development of initiatives to incentivize investments, green economy, and economic growth as a whole. Under the Association Agreement with the European Union, the Republic of Moldova engages to promotion of the ecological economy, harmonization of the national legislation with the European one, as well as the reasonable use of resources and the energy efficiency in all the national economy sectors.

In this regard, FIA experts bring a series of proposals to the authorities in order to facilitate transition to green economy and stimulate the growth of governance level on this segment.

National Strategy for the transition to green economy

Climate changes and environment degradation are an existential threat for the entire world. To be able to fight these challenges, an economic strategy is necessary for the transition to green economy, which will transform the State in a modern, competitive economy, efficient from the point of view of resource usage.

The development and approval of the National Strategy of transition to green economy, which has to stipulate the main directions of development and investments in this regard, political programs and related legislative amendments, performance indicators of the strategy, envisaged sources of funding and national action plan, as well as the development of Roadmap for the promotion of green economy.

Offering tax incentives to the entities implementing and promoting green economy by their activity

- The concept on the development of the Program for the Promotion of green and circular economy in the Republic of Moldova contains measures to promote policies in this domain.
- Currently, a maximal focus is made on harmonizing the legislation of the Republic of Moldova with the EU Directives.
- The European Green Deal is a set of political initiatives of the European Commission with the general goal to make Europe climatically neutral by 2050. As Moldova is a candidate country since 2022, we reiterate the importance of the topic related to the development of initiatives to incentivize investments, green economy, and economic growth as a whole.
- In the last 2-3 years, the dependence of the Republic of Moldova on sources of energy produced by burning fossil fuels was emphasized. The excessive increase of the price of fossil fuel lead to a historical increase of the price to electricity. The need to accelerate investments in green energy is obvious and necessary, including through tax incentives.
- From a fiscal point of view, those companies which will not invest will continue to consume energy at current prices, will have higher costs and, accordingly, their profit will decrease, and the income tax collected by the state will be lower.
- On the green economy segment, the State should imperatively intervene as soon as possible, incentivizing companies to produce/offer more ecological products/services, thus contributing to the general greening of the economy and market of the Republic of Moldova.

- The creation of a local fund or the attraction of European funds and their direction towards subsidizing the investments in the sphere of renewable energy, circular and green economy, inclusively dedicated to large companies, for the purpose of decreasing the carbon print and increasing the competitiveness of the local goods in the context of the process of transition to green economy.
- The support to economic entities may be both in form of direct subsidies and grants, as well as in form of tax exemptions or preferential loans.
- Encouraging the financial system to develop "green" regulations to credit the economy.
- The offering of tax incentives will be efficient in this regard, following the examples of other states, such as:

1. Tax credit for renewable energy – the investors may benefit from a tax credit for renewable energy (Investment Tax Credit), which may help to decrease the initial investments costs for solar and wind energy projects.
2. Tax discounts for electric cars – a tax discount of up to EUR 7,000 is offered for buying an electric car.
3. Accelerated depreciation – companies investing in green energy production equipment will benefit from accelerated depreciation, which means that they may deduct a large proportion of the cost of equipment in the first years.
4. Tax discounts for solar panels – generous subsidies and tax discounts are offered for solar panels, to increase the production of renewable energy.
5. Deductibility of environmental expenses – the companies making investments to decrease the impact on the environment, like installing green energy equipment or improving the energy efficiency of buildings, may benefit from tax discounts.

Law on environmental taxes

- The development and approval of the Law on environmental taxes, which would clearly stipulate all the environmental obligations of the companies, natural persons, and authorities, which will simplify their relationship with the environmental authorities and will allow a better management of the accumulated funds.

Regulations on waste from electrical and electronic equipment (WEEE), approved by Government Decision no. 212/2018

- Although according to p. 111 of GD 212/2018, the economic entities selling EEE should register in the List of producers, this obligation may not be fulfilled as the large suppliers having exclusive representation of some brands on the territory of the Republic of Moldova do not register in the List of producers, and the distributors may not give up on the corresponding suppliers due to the lack of alternatives.

- In such conditions, we recommend to the competent authorities the following measures:
  - development of the normative framework regulating the obligations of natural persons on recycling WEEE, including on their penalizing for the nonfulfillment of such obligations (for ex. non-bringing the WEEE to the collection points notified by the seller).
  - amending the Regulations on WEEE with the obligation of producers/distributors to inform the final consumers during the purchase of WEEE about the possibility of free of charge handing over of the old equipment.

Regulations on packages and package waste, approved by Government Decision no. 561/2020

- Currently there is a lack of a collective operational system to ensure the valorisation of several types of paper/plastic/wood/metal packages. At this point, there are authorized economic entities processing only one type of package: either paper or polyethylene and plastic mass, or metal, or wood.
- This will lead to a situation when the package holders have to join several collective systems, depending on the type of package, which will involve additional financial and time resources.

- Thus, we consider imperatively necessary the undertaking and implementation of the following measures:
  - Creation of favourable conditions for the development of regional waste collection platforms and their collaboration with collective systems of extended producer responsibility (EPR).
  - Reformatting the National Ecological Fund and redirecting its money towards EPR systems. Subsidizing by grants and co-financing the collective waste management system to incentivize their activity.
  - Development by the Environment Agency, in collaboration with the producers, of an electronic list with the possibility of permanent completion, which would contain all types of packages, their features and weight.
  - Clear definition of the property on the waste.
  - In case of subsidizing by the state of the activity of package waste collecting/using economic entities, the introduction of a norm is necessary to regulate the corresponding deductions from the cost applied by such operators to the producers for management.
  - Obligation of the local public authorities to have the separate waste collection model implemented by the corresponding services.

Deposit system for packages

- Nowadays, GD no. 561/2020 for the approval of the Regulations on packages and package waste stipulates the existence of a concept/notion of deposit for the returnable/reusable packages, the value of which will be established by the producers and Government.
- At the same time, no normative document refers to the creation and management of the package return systems.
- In the current legal formula, the market players are not encouraged in any way to be part of collection/return systems.
- Further on, in the opinion of the business community, for the due implementation of the deposit system, a series of impediments and uncertainties should be eliminated, such as:
  - Examination of the deposit systems in EU countries and clear definition of the concept of deposit system which is desired to be implemented in the Republic of Moldova, as well as establishing the main responsibilities of each party (producer, seller, management system) by including the general regulations in Law 209/2016;

- As a result of many discussions and technical meetings, FIA business community makes a series of proposals in this regard:
  - Establishing by law **one single** deposit system as an obligation for all drink packages, to encourage the return of the package against payment at the commercial units and specialized collection points;
  - Definition of the deposit mechanism for reusable packages;
  - Development of a list that may be permanently completed, which would include all types of packages subjected to deposit and the amount of the deposit;
  - Encouraging, by law or tax incentives, to use the returnable package for all non-alcoholic drinks and drinks with low alcohol content that do not involve counterfeit risk;
  - Development, during one year, of the fiscal mechanism of the deposit system and other secondary normative documents relating to the Regulation of activity of the deposit management system;
  - Identification of the possibility of allocating the implementation costs of the deposit management system to deductible expenses relating to the enterprise activity, which would encourage companies to become part of the system. Possibility to obtain an authorization for the collection/valorisation of glass only by simple notification, which would encourage the creation of autonomous collection points, especially in the rural areas;

- Lack of clarity on the fiscal regime of the amounts paid/collected for the deposit, which needs an amendment to the Fiscal Code;
- Lack of clarity on the way of operation of the deposit system for the single use and reusable packages.

- Regulating the role of the Environment Agency in the creation/appointment of the administrator of the deposit system and control of its activity;
- Participation of the State in co-financing the creation of the necessary infrastructure for the operation of the deposit system (for example: tax exemption, grant offering, etc.).

Creation of mechanisms for the collection/valorisation or repairs of damaged or out of use goods and equipment by means of the "*green ticket*"

- Expansion of the "*green ticket*" mechanism, which would allow subsidizing the repairs of damaged or out of use goods and equipment, or their replacement with energy efficient ones, or the separate collection. Such programs may include household appliances, furniture, electrical and mechanic tools, computers, etc. Besides energy efficiency and correct waste management, such tickets have the potential to accelerate the economy and create new jobs (in repair shops).

DIGITAL TRANSFORMATION

FIA expert community, together with the colleagues from other business associations, is an active contributor to the development and periodical update of the Roadmap of the Economic Council Secretariat to the Prime minister. The lack of a national vision and of an efficient mechanism of policy implementation in the sphere of digital transformation affects the innovation in the national economy and the digitization of the interaction with authorities.

We appreciate the recent approval (6 September 2023) by the Government of the Digital Transformation Strategy for 2023 – 2030, which sets the vision of the Ministry of Economic Development and Digitization for the digital development of the country until 2030 and reconfirms the determination of the authorities to build a modern society, focused on the private sector, citizens, and aligned with the European integration agenda.

At the same time, we notice the dispersion of the digital transformation efforts among various authorities, and the strengthening of efforts of the authorities is necessary, as well as a better coordination among the relevant institutions – Ministry of Economic Development and Digitization, Electronic Governance Agency, Information Technology and Cyber Security Service, Public Services Agency, Centre for Information Technology in Finance, etc. Another series of recommendations from the business community would be adjusting the governmental structure and creating institutional capacities for the implementation of the Strategy; eliminating the administrative barriers to digitization of processes inside companies; creating the conditions for the digitization of B2B interaction; promoting digitization and financial inclusion programs, and others.

Development of a mechanism for the implementation and application of the remote interaction with public authorities

- According to the national legislation, the electronically signed document is assimilated, according to its effects, with an analog document on paper with handwritten signature. Despite this, the representatives of economic entities must submit personally hard copy signed documents in various situations of interaction with the state authorities and other organizations.
- Maintaining the obligation to visit the authorities takes time, creates impediments and involves costs, and, in some cases, it involves even high risks for business performance, when the investors are away or abroad.

- It is recommended to intensify the processes of implementation and application of the remote interaction with public authorities, the broad implementation of the new legal provisions on the digitization of the interaction with authorities and proliferation of the electronic signature and electronic document, the broad application of the "digital by default" principle.
- The immediate actions to obtain the implementation of digital solutions would be:

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

With the joint effort of FIA expert community, NGO sector and donors, on the platform of the Economic Council to the Prime minister, the development and promotion of Laws 175/2021 and 126/2023 for promoting remote businesses was achieved, as well as the promotion of legislation on trusted services (Law no. 124/2022), legislative packages for deregulation, etc. Their implementation continues to be a necessary objective and FIA will focus its efforts in this direction.

(b) identifying the less sensitive interactions which may take place without advanced authentication (by signature);

(c) developing and publishing the remote interaction mechanism for two categories of situations: by means of an electronically signed documents and by means of electronic communication without using the electronic signature;

(d) establishing the measures to impose the observance of legislation on the electronic document (as a priority based on the existing provisions and with the approval of additional provisions).

Implementation of the solutions for registration, deregistration and amendments of the documents on the registration of enterprises and other entities with status of a legal person

Theoretically, this objective is attained at a legislative level by the Law no. 175/2021. However, in practice, due to certain provisions of the secondary legislation, internal instructions, and obsolete informational systems, currently the rendering of these services online is not possible, only the application by e-mail and the receipt of electronic documents from the applicants for the registration of enterprises and other entities with status of a legal person by Public Service Agency.

We recommend the authorities to continue the efforts in this regard, until obtaining the full digitization of these services for companies, with the corresponding adjustment of the secondary normative framework and internal procedures in the competent authorities. Primarily, the Public Service Agency should exclude the impediments for the receipt and issue of electronic documents related to the registration, deregistration and amendments of the Statutes of enterprises and other legal persons.

Facilitation of the issue of electronic signature and its use as broad as possible

The current procedure of obtaining the electronic signature is a less friendly one, it requires time resources, as well as the presence of all the decision makers of a company, and its validity period is deemed to be too short. The simplification of access to this service, the automation of the process of renewing the digital signature, prolongation of the validity period, utility and broader application of these services are the new objectives in this regard, and the new law on trusted services (Law no. 124/2022) has created the necessary background in this regard.

The possibility to apply for the digital signature in the embassies is an achievement, but it still requires the physical presence, doubling the validity period to 2 years was an achievement, ***but the regional practice is close to 5 years.*** Also, the renewal of the digital signature based on a valid one is a positive step – but these achievements on which the business community insisted are not enough in a society in which the focus in the digitization of the G2B/B2G interaction is mainly based on digital signature.

Thus, we request the continuation of the process of issue and the extension of validity of the electronic signature for the period of **3 - 5 years,** with the notification of the beneficiary on the expiry of the term and offering more possibilities to remotely prolong the validity period. The possibility to apply for digital signature in other authorities that also have the capacity of identifying the person or which may fulfill such conditions and remote identification of the *eKYC* beneficiary would facilitate much the access to digital signature.

At the same time, it is necessary to incentivize the authorities and economic entities to obtain a broader utility of digital signatures, which will incentivize the processes of modernization, saving time and resources.

We also request the promotion of new modern solutions of digital signature (of the *MobiSign* type), which would ensure a better interaction with authorities and business digitization.

Creation of the universal technological platform for remote client identification *(eKYC)*

The development of a remote identification platform, along with new electronic signature methods is necessary for an easier digital enrolment of the clients, interaction with business partners and authorities. The business community needs such services and avoiding multiple investments in such digital platforms.

We request the promotion of this objective by creating:

- Credible, universal and easily accessible remote identification instruments: eKYC/eKYB,
- Completion and definition of the necessary legal framework, including in the sphere of AML (anti-money laundering).

Digital notarization services for entrepreneurs, diaspora, and foreign investors

With the approval of Law no. 126/2023 on remote business development, the necessary legal framework has been created for the digitization of notary services, but the hope for a fast implementation of this objective is still low. The business community needs modern tools in the sphere of notary services, if the legislation stipulates the presence of a notary in several types of transactions/ decisions undertaken by companies.

The proposals of FIA community in this regard are:

- Secondary legislation for remote business development should be developed and implemented accordingly;
- Digital notary services and instruments, accessibly implemented on a unique technological platform.

Incentivizing the market of electronic payment services in the support of the digital economy and electronic trade

The approval of the necessary legal framework for the harmonization of the internal legislation with the European Directive on payment services (PSD2) has been a great achievement, but the corresponding implementation of those provisions is still a constant concern. Open competition, including for the absorption of FinTech innovation, open IPAs, Open Banking – they need an increased attention from the business community and a considerable effort from the authorities.

Likewise, one the ways to incentivize the consumers to integrate in the new range of digital payment services is the provision of payment services with easy access, within the limit of some admissible monetary values. Currently, the limitations imposed to the payment service providers and to the companies issuing electronic money significantly exceed the regulations of the Directive (EU) 2015/849 of the European Parliament and Council of 20 May 2015, which sets exclusions from the application of certain due diligence measures on the clients, especially relating to client identification and client identity verification.

According to art. 12 of the mentioned Directive, it is allowed that "based on an appropriate risk assessment which demonstrates a low risk, a Member State may allow obliged entities not to apply certain customer due diligence measures with respect to electronic money, where all the following risk-mitigating conditions are met:

(a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit of EUR 250 which can be used only in that Member State;

(b) the maximum amount stored electronically does not exceed EUR 250";

Such monetary limits were also stipulated in the national legislation, before the coming into force of Law no. 66/2023, but they were excluded without solid argumentation and regulatory impact analysis.

Therefore, we recommend the following measures and objectives to the authorities:

- Competition, access to online payment services at competitive tariffs, FinTech and open IPAs;
- Development of economic trade, incentivizing non-cash economy and decrease of informal economy (non-loyal competition).

We request the review of the national legislation, especially of Law no. 308/2017 on the prevention and fighting of money laundering and terrorism financing, to exclude the limitation of using anonymous accounts with the limit of the monetary values, which are applicable inclusively at a European level.

Identification and promotion of a set of measures to optimize fiscal and customs procedures for business digitization and electronic trade

This domain of activity needs continuous attention, especially in the context of postponing the application of the new Customs Code, existence of numerous constraints and barriers in this domain for online trade and business digitization.

Thus, we consider the following actions advisable:

- Periodical scanning of the administrative procedures in the fiscal-customs area. Optimization and digitization;
- Incentivizing the formalization of business and elimination of non-loyal competition;
- Proliferation of digital economy.

HEALTHCARE AND PHARMACEUTICS

Currently, although many efforts are made for digitization, simplification and de-bureaucratization, we conclude that no significant progresses were registered in this regard. These desiderata are in accordance with the recommendation on the European Recovery and Resilience Facility, as the European Commission proposes the approval, at the level of each State, of specific reforms to give priority to digitization and bureaucracy decrease. Thus, it is imperative to prioritize the proposals creating a synergy effect by embedding specific measures to decrease bureaucracy, both for the environment of activity of the medical and pharmaceutical staff, and for the citizens that require healthcare services.

At the level of the Government, the undertaking and implementation of reform measures applicable to the domain is requested, such as: simpler rules, ensuring the transparency, a single efficient management system, and others.

The simplification of rules and national legislation regarding the access to healthcare services, by decreasing the waiting time, are mandatory conditions for high-quality medical services and to ensure the needs of the patient.

The effect of de-bureaucratization of the medical act will have a beneficial impact on all stakeholders, especially on the patient.

Digitization in Healthcare

- The transformation of medical assistance by digitization brings benefits to the healthcare systems, economy, and citizens. Digital technologies, like mobile communication, artificial intelligence or data management, governance and analysis (including of Big Data) offer new opportunities to transform the way in which the healthcare services are being provided and received. The data on health and their advanced analysis may support a better management of the information, its optimization in the conditions of a limitation of human and material resources, avoiding resource wasting, and the decrease of pressure on the healthcare system.

- The national public health system needs the implementation of the E-health concept and the provision of new generation medical services to the final beneficiaries. In this regard, the inclusion in the Action Plan of the Government for 2023-2025, Chapt. VI Social and health protection, of p. 6.4, actions of „Development of the e-health integrated informational system" is necessary.

- We propose the evaluation of needs and models of implementation of the electronic health record (EHR) and the development, regulation and implementation of telemedicine services in the Republic of Moldova, for ensuring the health of population and communities, as one of the major factors to advance the digitization process in the healthcare sector.

The word „integrated" represents the starting point with a view to developing such a comprehensive system. In p. 3 of the Regulations on the way of keeping the medical record, approved by GD no. 586 of 24 July 2017, it is stipulated that the medical record is a state informational resource containing the following informational systems: SIA AMP, SIA AMS, SIERUSS, SIA SS, SIA TRANSPLANT and the Portal of medical leave certificates. Likewise, according to pts. 22 and 23 of the same regulations, the medical record is interconnected with such services as (MPass), (MLog), (MSign), (MConnect) and with the State Population Record, as well as with the Informational System (IS) for reporting and recording medical services - Case-Mix DRG and with the automated IS "Mandatory medical insurance", IS "verification of the status of insured person within AOAM", IS „Register of persons registered in medical-sanitary institutions providing primary medical healthcare within the system of mandatory medical insurance", IS „Payment for medical services", IS „Compensated medicines" held by the National Medical Insurance Company (NMIC), and IS „State nomenclature of medicines" (SIA NSM), held by the Agency of Medicines and Medical Devices, integrated IS of the National Social Insurance Agency (IIS „Social Protection"). Nevertheless, we found that in practice all these informational systems in the sphere of healthcare are either partially interconnected, or not interconnected, which seriously affects informational integrity and the possibility of ensuring data interoperability. In relation to this, one of the options would be the inclusion of an IS in the system (like: Electronic Health Record (EHR), widely used in the countries of the region) which would represent a centralized informational system, with a set of cooperative/interactive databases, which would have special mechanisms for integration with other informational systems. Each sectoral automated informational system (AMP, AMS, Blood Service, Emergency Service, E-prescription, and other systems) will supply and have access to the data relating to such 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 record containing data from the birth of the persons with all the following recorded information: vaccination, prophylaxis, monitoring, diagnostics, visits and check-ups, important interventions / procedures made, prescriptions, medical leaves, etc. The data from EHR are automatically uploaded from (public or private) medical information systems, on an interoperable basis. Without this digital element - EHR, the manually collected data have a limited use, they are not accessible to other institutions/medical staff, limiting the necessary access to the information about the patient, including in critical situations. EHR based on the use of information and communication technology (ICT) may support the advancement of the telemedicine and redesign the way in which statistical data are collected, as well as increase the transparency and efficient use of resources in the healthcare system. The high level of development of the electronic communications and the access to Internet in the Republic of Moldova create the necessary preconditions for a fast progress in this domain.

- At the same time, the opportunity of providing remote healthcare services was identified together with the accelerated development of information and communication technology in many healthcare systems of the world, as a solution to the chronic deficit of doctors and to provide a more equitable access of the population to healthcare services. Telemedicine is also recommended by the World Health Organization and is considered an instrument which could contribute to attaining the sustainable development goal on the universal coverage of the population with medical services, by ensuring the access to high-quality, safe and cost-efficient healthcare services for the patients. Telemedicine may bring an added value to those who live in remote areas, vulnerable groups, elderly people with chronic diseases. Likewise, the technology may facilitate communication among the members of the medical care team, improving the coordination of care given to the patients.

- The development, approval and application of the legal framework for telemedicine services will include:

1) criteria for the medical-sanitary institution and specialized doctor authorized to provide telemedicine services;
2) way of organization and communication;
3) obligations provided in the Code of ethics in relation to the quality of medical care, relationship with the patient;
4) observance of the professional secret;
5) personal and medical data management, storage, processing, and free circulation of such data;
6) situations in which technology may not substitute personal consultation, for which reason the opportunity will be analyzed to perform a remote consultation or even its continuation if already initiated;
7) ensuring the limits of professional commitment and observance of patient rights provided by the law;
8) development and approval of the cost of telemedicine services and criteria for contracting the providers of telemedicine services from the fund of mandatory medical insurance.

Creation of a transparent mechanism of contracting medical services

The medical services within the System of Mandatory Medical Insurance (SMMI) are annually contracted by the National Medical Insurance Company (NMIC) based on a joint order with the Ministry of Health (MH). At the same time, it is necessary to promote a visionary strategy on behalf of the line national authorities in relation to the active purchases of medical services, based on the needs of the population, conformity with the national Strategy and active stimulation of the behavior of providers with a view to increasing the efficiency of the medical act.

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

The current process for contracting medical services takes place with the omission of the provisions of some important legislative acts, such as Law no. 235-XVI of 20.07.2006 on the basic principles regulating the enterprise activity (art. 8 and 9); art. 5, 6 and 7 of Law no. 239 of 13.11.2008 on transparency in decision-making, which stipulate the obligations of the public authorities to ensure the transparency of the process of development and approval of new regulations; art. 21 and 32 of Law no. 100 of 22.12.2017 on normative documents.

With a view to remediating such situation and in accordance with the provisions of the Law on healthcare no. 411/1995, Law no.1585/1998 on the mandatory medical insurance and Government Decision no.1387/2007 on the approval of the Single Plan of Mandatory Medical Insurance, the Government Decision on the criteria for the contracting of medical service providers within SMMI should be approved. Such criteria should represent the totality of norms regulating the process of selection of the medical service providers for the conclusion of medical care contracts (medical service contracts) within SMMI.

The basic objectives for the development and approval of such normative document are:

1) ensuring the access of the patients to safe, qualitative and efficient medical services;
2) ensuring the transparency of using the financial funds from the Compulsory Health Insurance Fund;
3) selection of medical service providers based on preestablished criteria and on transparency, equality and accessibility principles.

We propose the development and approval of a Government Decision on the criteria for the contracting of medical service providers within SMMI, which would ensure the access of the patient to the medical services provided by the medical-sanitary institutions selected through a transparent and equitable mechanism, guaranteeing the efficiency and efficacy of use of the financial funds from SMMI.

Review of the criteria for the accreditation of medical service providers

One of the advantages to promote the concept of continuous improvement of the quality of medical services, by which the state could evaluate the level of their quality, is the procedure of evaluation and accreditation in healthcare. It envisages establishing the fact that the conditions of security and quality of the medical care and treatment given to the patient are taken into consideration and ensured by the service provider. Patient security results from the observance by the service provider of patient's rights stipulated in the international and national legislative and normative acts, strict observance of sanitary-hygienic and anti-epidemic regime for the purpose of preventing infectious diseases, maintenance of the premises of the institution and adjacent territory, electric, thermal communications, etc., free from physical dangers both for the patients and for the staff, metrological testing of medical devices in accordance with the legislation in force, etc.

We propose the development/review of the normative framework on the mechanisms of accreditation, contracting and financing healthcare services.

The accreditation confirms that the provider has the necessary resources and professional competences to provide medical care in the specialties included in its structure, observing the safety of their patients and employees. By accreditation, the conformity of the healthcare services performed by medical service providers with the developed and approved standard is validated, which means that a medical service provider makes efforts to offer such medical care which will satisfy the expectations of the patients, from the point of view of both the result and conditions in which it is provided.

The experience of the last years has proven that the national system of evaluation and accreditation in healthcare does not correspond to the international evaluation technologies and needs a change. The evaluation standards should be revised, ensuring a system of classification of the accredited qualification into 1) "accredited", 2)" accredited with recommendations", 3)" accredited with reserves", 4)" accredited with reduced trust", 5)" decision of prolongation" and 6)" not accredited".

The classified result will represent a comparative degree of availability of resources and optimization of all processes to ensure the best results of the healthcare process, according to the possibilities of the current medical science, with the lowest risks, lowest costs, in the shortest time and for the full satisfaction of the patients.

The contracting and offering of financial sources by the National Medical Insurance Company for the medical services rendered by the medical services provider according to the accreditation category will force the provider to be permanently patient-oriented. This principle consists in the development of the capacities of provider to understand and satisfy the needs of its patients. The identification of the requirements needs and expectations of the patients will allow their transposition in specifications regarding certain quality characteristics, which are the basis for the provided healthcare services. The continuous improvement of the performances, involvement and consistency at all levels and in all sectors of activity, concerning the increase of hospital performance is a continuous process.

Preparation and production of medicines

The local producers of medicines face difficulties in their activity, namely we refer to the import/export processes, according to the Lists of medicinal raw materials, approved by Government Decision no. 1165/2016, which does not reflect anymore the realities and necessities of the constantly developing pharmaceutical market.

To improve the existing situation, we recommend the identification, by mutual agreement, of a mechanism for simplified completion of 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, articles, primary and secondary packaging used during the preparation and production of medicines.

LAND ISSUES

Land-related legislation continuously needs additional attention from the public authorities. Its current provisions functionally limit and restrict the foreign investors to make medium and long-term investments in this sector. In addition, in the conditions of global warming, climate and environmental changes, farmers face difficulties in the process of irrigation of the agricultural lands. .

Land Code no. 828-XII of 25 December 1991

The Land Code no. 828-XII of 25 December 1991 – Chapter X relating to the consolidation of lands: Due to the excessive fragmentation and small areas of the agricultural land (consequences of the "Land" Program), the agricultural productivity decreased dramatically, and the non-observance of the agricultural crop cultivation technologies and their succession in the crop rotation has led to soil degradation, and to the impossibility to invest in modern and economically viable technologies. The current regulation on the consolidation of lands turned to be inefficient.

In such conditions, we consider necessary to revise the current regulation incorporated in Chapter X of the Land Code, regarding the consolidation of lands. In addition, we propose to include imperative norms to stipulate the obligation of the landowners holding not more than 10 percent of the consolidated field to join the consolidation project and to cultivate 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, regarding the obligation to provide a compulsory compensation to the investors who, for ensuring the integrity of their own plantations, cultivated the lands of the neglectful owner (owner of the fallow land/lands).

It is important to pass a new Land Code regulating these and other issues relating to the reasonable and efficient use of the land resources, as well as the post-privatization conditions, including certification of the agricultural massifs (fields), with the mandatory monitoring of the crop rotation and institution of minimal requirements towards the cultivation of lands depending on the crop in the crop rotation.

Law no. 1308-XIII of 25 July 1997 on the normative price and sale–purchase of land procedure

Art. 6. The sale and purchase of lands with agricultural destination in private property. (2) The right to sell and purchase lands with agricultural destination belongs to the state, to the natural persons – citizens of the Republic of Moldova, as well as to the legal persons, the share capital of which *does not contain foreign investments*.

The foreign investors recommend and consider reasonable to amend the legislation (art. 6 of Law no. 1308-XIII of 25 July 1997 on the normative price and procedure of sale and purchase of the land) in order to exclude the norms limiting the right to the sale and purchase of lands with agricultural destination of the legal persons with full or partial foreign share capital.

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

In order to avoid passive speculations, a mechanism should be developed to oblige investors to use land only for agrifood production, excluding thus any possibility to change the purpose of land's use. As an argument, it is necessary to make an inventory of all agricultural lands purchased by various local enterprises or natural persons which are fallow lands, as compared to the agricultural lands managed (rented) by entities with mixed or foreign capital, which have a European technological level, providing the population with jobs and substantially contributing to the formation of local and state budgets.

Irrigation of agricultural lands

The Water Law 272/2011 stipulates irrigation as a major priority for the holders of hydrographic basins (except for meeting the needs of population for drinking water and household needs). However, this is impossible due to the lack of a single owner of the water basins and no centralized management of these basins. Contradictions also persist between farmers who ask to irrigate agricultural crops and fish farmers, given that water reserves are not enough due to the non-corresponding exploitation of water ponds and, in the foreground, ponds and reservoirs, given their siltation.

We propose the review by the councils of the local public administrations of the rent contracts for water objects (ponds, accumulation lakes, pools, etc.) the basic object of activity of which is fish farming, for initiating new tenders in order to prioritize the use of such water basins by farmers for the irrigation of agricultural crops.

Water management and hydro-amelioration in the Republic of Moldova

In the conditions of global warming, climate and environmental changes, a sustainable development of the agrarian sector is not possible, as the agricultural activity is subjected to a huge risk due to excessive draughts. Consequently, there is a risk of compromising the country's food security and it is strictly necessary to develop a concept and a strategy to decrease risks in agriculture, to ensure a hydrothermal balance, to assess the hydrological potential of the state and to develop this potential.

Thus, we recommend elaborating and approving a Strategy of development of the water management and hydro-amelioration in the Republic of Moldova for 2023-2030. Prior this, we suggest to evaluate the hydrological potential, underground and terrestrial water reserves, to identify the development measures and rational use of the water accumulation lakes, focusing the financial funds from the National Fund of Agriculture and Rural Development (AIPA) and other structures to restore and put into operation large irrigation systems from Prut and Nistru rivers.

Insurance of production risks in agriculture

- Currently we notice the difficult access to the insurance of risks in agriculture against natural calamities, as non-attractive conditions are offered for the insurance of such risks.

- In this regard, the institution and accreditation of Mutual Funds by the competent authority is recommended (separately by agricultural branches or by product chains) for unfavorable climatic phenomena and for environmental incidents, in accordance with the national and communitarian legislation, which would allow the affiliated farmers to join it and to conclude an insurance by means of which the affiliated farmers – with economic losses caused by unfavorable climatic phenomena would benefit from compensation payments.
- Mutual funds are based on establishing financial reserves, created from the contributions of their participants, which may be used for compensations to members, in case of important losses of incomes, according to certain predefined rules. The basic idea, common for the insurance principle, is to distribute the risk among a community of members, with additional effect; by long-term commitments, the mutual funds offer the sharing of risks and are also efficient in time. The creation of mutual funds may be encouraged by various types of public support, among which:

  i. contribution to the start-up capital;

  ii. annual contributions to the fund from the state;

  iii. compensation of payments made to farmers;

  iv. tax incentives for deposits of funds.
- Also, in this section, it is proposed to create Insurance Funds on repayment of bank loans.

Exercise of the preemption right

- Currently there are cases when the lands are sold without observing the preemption right of the tenant.
- In case of registration at the cadastral authorities, the encumbrance is noted, but in case when the lands are registered at the village hall, the encumbrance is not noted.

- We recommend amending the legislation in order to supplement the mandatory documents submitted to the notary by the seller for concluding and legalizing the sale-purchase contracts of agricultural lands, **with a document named Certificate**, issued by the Village/City Hall in the territorial area of which the agricultural land is located, confirming or not the fact of registration, in the registry of the village/city hall, of the rent contract, the object of which is the land with agricultural destination proposed for sale (in case of rent of agricultural lands for up to 5 years), similar to the Excerpt from the Real Estate Registry.
- Amending the legislation as mentioned above has the goal of guaranteeing the observance of the preemption right of the tenant (art. 1295 para. (4) of the Civil Code of the Republic of Moldova), when the owner – landlord intends to alienate/sell the land with agricultural destination transmitted into rent for a period less or equal to 5 years to another natural/legal person than the tenant.

Subsidizing the agricultural producers. Promotion of high performance strategic agricultural crops

- Subsidizing the agricultural producers by reviewing the mechanisms of the agricultural subsidies fund in order to support innovative crops, the use of advanced technologies and digital solutions.
- A separate attention should be given to the industries that might disappear – we refer, among others, to the sugar producing industry, and Moldova could change its status from exporting country to importing country. These support measures will certainly lead to the increase of the country's food security, as this is one of the priority subjects on the government agenda.

FINANCIAL SYSTEM

Financial stability is a necessary condition for the national economy's good functioning. In case of perturbations, these may lead to systemic crises, to the incapacity of financial institutions to perform accurately their operations or, even worse, to the collapse of financial markets. Thus, the financial system has a very important role in ensuring the functioning and efficiency of the economy of the Republic of Moldova.

During the last period, the financial sector has undergone a period full of turbulences with impact on the country's economy and wellbeing of the population, which led to multiple amendments to the financial legislation and to its correlation with the Acquis Communautaire. At the same time, the sector faced external challenges, and the national Bank of Moldova (NBM) continued the process of prudential supervision of the banks, following the observance of legal requirements with the purpose of ensuring the stability and viability of the banking sector.

In the continuation of establishing a functional balance and ensuring the advantageous collaboration for all the providers and beneficiaries of the financial sector, FIA experts bring to the attention of the authorities a series of challenges and impediments, and also give a set of proposals on adjusting the regulatory framework, as follows:

Increase of efficiency in the cooperation with bailiffs

- For the forced execution of enforcement orders, the bailiff has the right to request and receive free of charge, on paper and online, from the central and local authorities, institutions (including financial), other organizations holding state registries and relevant information for the enforcement procedure, any information which would allow the identification of the debtor, their property, and their location. The presentation of such information by commercial banks leads to incurring additional administrative costs, as well as to the irrational consumption of the working time of the employees, given the fact that only 60 % of the requests sent by bailiffs refer to the clients of a certain bank. Annually, approximately over 76,000 requests get answers showing the fact that the bank does not have the requested information.

- Currently, an electronic communication solution in the process of exchange of information between bailiffs and banks is being tested and is based on SIA CCDE, implemented by the State Tax Service.
- By analogy, with the switching to the communication with the State Tax Service only through SIA CCDE, the activity of bank employees has become much more efficient in this regard.
- We request the continuation of the works for the implementation of the single informational communication channel with bailiffs, including the adaptation of the normative framework for the good operation of this mechanism, including NBM Regulations no. 375 of 15.12.2005.

Art. 11 let. n¹) of the Enforcement Code

- Art. 11 let. n¹) of the Enforcement Code of the Republic of Moldova stipulates that the leasing contract has the value of an enforcement document only if the lessor is a non-banking credit organization or a leasing company.
- The current regulation is restrictive, non-competitional and is contrary to the legal nature of the financial leasing, as the rights of the banks in the process of forced recovery are limited without justification. Thus, the bank, as a lessor, should request the legal repossession of the objects of leasing only through a court, which directly affects the cost of risk and the quality of leasing portfolio.
- Thus, the amendment of art. 11 let. n¹) of the Enforcement Code of the Republic of Moldova is requested, with the purpose of including the banks in the list of lessors that may benefit from this provision.
- The importance of such amendment derives especially in the context of a stricter legal framework, under which banks operate, and the leasing activity is part of the entire activity of bank financing regulated by the norms of NBM.

Improvement of the conditions of performance of the agricultural business, to allow the banks to finance it by minimizing related risks

- The performance of a detailed analysis of the land market of Moldova is proposed, in order to identify the problems considerably lowering the liquidity of agricultural lands (small, insulated areas, deceased owners without heirs or inherited property rights, etc.) and to define an adequate legal framework meant to offer specific actions for increasing the efficiency of the process of sale of agricultural lands this would increase their collateral value and would result in the possibility of financing within a controlled risk framework for the bank.
- Also, the implementation of an *„exchange of goods"* concept at a country level is proposed, which would make the process of selling vegetable crops transparent and would allow the primary producers to obtain the finished product at a commercial price, which would not be monopolized. This may be in form of dedicated, B2B platform, where information on the availability of the stock to be sold may be placed, as well as the purchase price of the former, offers of the logistic companies, as well as the bank, as a stakeholder in production and process of sale, which would finance a specific B2B relation between a producer and a former. It would be perfect to integrate it with the system of online payment and transaction documentation / transparent formalization of the contractual basis, etc.

NBM Decision no. 78/2018 on the approval of the Regulations on cash operations in the banks of the Republic of Moldova. Client identification during cash operations performed at the banks

- P. 15 let. h) and Attachment no. 1 (Elements of the cashing orders) of NBM Decision no. 78/2018 on the approval of the Regulations on cash operations in the banks of the Republic of Moldova stipulates that the withdrawal of cash by the clients is done only on the basis of the *identity document*.
- According to art. 2 para. (1) of the Law no. 273/1994 on the identity documents in the national passport system, the passport of the citizen of the Republic of Moldova is issued for travels abroad, so it may not be used internally.
- We request the amendment of NBM Decision no. 78/2018 on the approval of the Regulations on cash operations in the banks of the Republic of Moldova by ***extending the categories of identity documents***, which may be used by the clients for identification.
- In this regard, we consider it reasonable, taking into account the practice of other countries, to allow client identification also based on the *passport for travels abroad and driving license,* taking into consideration the fact that the latter contains the identification data (IDNP of the person, photo, etc.).

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

- Art. 12 para. (3) let. c) line 4 of the Law stipulates that for the registration of branches of the legal entities, it is mandatory to indicate *the name and surname of the person performing the duties of management of the branch,* which we consider inconvenient, due to the fluctuation of staff and tendencies to decrease bureaucracy in the enterprise activity.
- This provision, imposing the legal persons to perform amendments in the branch regulations every time they replace the administrator does not bring any benefit to anyone, it is just a burden. It is to mention that for the legal entities with many branches (for ex., banks) the amendment of the branch administrator is something usual and should not relate to the amendment of the regulations, this being a right of the legal person, not an obligation, analogically as this works for the Constituent act of a legal person (in which case the indication of the administrator is not mandatory).
- We consider advisable amending Art. 12 para. (3) let. c) line 4 of the Law, so that the indication of the branch administrator in the Regulations of the branch of a legal person to be given as an option, not as an obligation.

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

- One prerequisite for the implementation of this concept would be the lowering of the risk of exposure to price fluctuations and foreign exchange rate, as the agricultural receipt allows fixing the prices or specifying the formulas for its recalculation.
- The agricultural receipt stipulates the unconditional obligation of the debtor to supply agricultural products or to pay in cash in certain conditions specified by the parties.
- The agricultural receipt may be requested by the persons having property right over an agricultural land or having the right to use a plot of land for production of agricultural products.
- In case of an agricultural receipt, the guarantee for the fulfilment of the loan obligations will become the future harvest of the debtor. In case of non-fulfilment of the contractual obligations, the receipt will become an extra-judiciary procedure to penalize the debtor by obtaining the property right on the future harvest of the debtor by the creditor, which claims to the debtor will have priority to other claims.
- The pledge value should not be less than the value of the obligation guaranteed by the agricultural receipt. On the date of its issue, the future harvest of agricultural products may not serve as a pledge for other agricultural receipts.
- In case of loss of the harvest, which is the object of pledge, the debtor should by mutual agreement with the creditor, substitute the pledge with other form equivalent to it. This shall be mentioned in the agricultural receipt and confirmed with the signature of the debtor and creditor.
- According to the Ukrainian legislation, the agricultural receipt is a document establishing the non-conditional obligation of the debtor, guaranteed by a pledge of the future harvest, to supply agricultural products or to pay cash, in the conditions specified in it.
- We propose amending the provisions of the Civil Code or approving a Special law for the implementation of the concept of **„agricultural receipt"**, having as a basis the model implemented in Ukraine, as well as the **need to institute a mechanism of notarization of the agricultural receipt and to provide this concept with enforcement formula.**

Enforcement Code of the Republic of Moldova:

Art. 92 Claims against the money on the accounts

The banks execute the mandatory indications of the bailiffs free of charge, incurring, in relation to this, significant expenses for maintaining the staff and necessary IT solutions, but undertaking, at the same time, a civil, contravention and criminal liability risk for the admitted errors. Besides the above mentioned, which does not seem justified at all, the Enforcement Code does not even stipulate the right of the banks to charge commission fees established for the current work (account servicing), at the same time, the banks do not even have the right to stop rendering the account servicing, due to the applied seizure, and they are imposed to continue servicing their clients free of charge.

We propose the amendment of **art. 92 of the Enforcement Code of the Republic of Moldova** with the following provisions: *"The seizure applied by bailiffs on the bank accounts/funds in the bank account of the debtor shall not limit the right of the bank to collect from such account commission fee for servicing the account and commission fees related to the execution of operations in the account, including the execution of collection orders."*

Art. 127 Lifting the seizure

The bailiffs, infringing art. 111 of the Enforcement Code of the Republic of Moldova, when raising claims against salaries/incomes, avoid to address to the place of work of the debtor, and when the debtor submits claims stating that the seized account is a salary account, the bailiffs submit to the banks resolutions by which indicate various methods (not necessarily clear) of making the calculation at the seizure of amounts from the account and/or partial lifting of the seizure from the account. Thus, besides the fact that the banks process free of charge thousands of documents received from bailiffs, the execution of some of them requires an additional effort for the interpretation and performance of special calculations, every month, and often holding debates with the debtors on the way of application of such formulas. It is obvious that such situations would have been avoided if the bailiffs observed the provisions of art. 111, instead on transferring their obligations to the banks. We consider that the introduction of the proposed norm in the Enforcement Code would force the bailiffs to fulfill the legal framework and would stop the abuses from some of them.

We propose amending **art. 127 of the Enforcement Code of the Republic of Moldova** with the following provisions: *"The application/ lifting of the seizure on the funds may be ordered by the bailiffs only by stating the exact amount to be seized, without obliging the bank to deduct the amount by making certain calculations."*

Art. 127 Lifting the seizure

The bailiffs apply the seizure on all the accounts existing in all the banks, inclusively if the account balance is zero, and after the execution procedure is over, they do not bother lifting the applied seizures, thus, the banks are obliged to maintain such seized accounts with zero balance, without a time limit, servicing them free of charge and incurring expenses. In the meantime, each bank accumulates a huge number of such accounts, which bring only expenses and overload the IT systems of the bank, often impeding the implementation of innovative or even mandatory IT solutions. It is obvious that if during one year after the seizure of the account its balance does not increase, the chances for this to happen are minimal.

We propose amending **art. 127 of the Enforcement Code of the Republic of Moldova** with the following provisions: *"Should the balance of the bank account on which seizure is applied be equal to zero during 24 consecutive months after the date of application of the seizure, the bank shall have the right to close such account with the lifting of the seizure, informing subsequently the bailiff about this."*

Fiscal Code of the Republic of Moldova, in the part relating to seizing the funds in the bank accounts and suspending the operations in the bank accounts at the decision of the State Tax Service

The grounding of these proposals is analogical to p. 7.

Art. 229 of the Fiscal Code of the Republic of Moldova:

We propose amending para (8) by amending the sentence with *"as well as in case of deregistration of the taxpayer from the state register of legal persons."* and adding the new sentence *"at the same time, the orders on suspension shall cease in relation to a bank account, the balance of which is equal to zero during 24 consecutive months after the date of applying the suspension, and the bank takes the decision on closing such account, informing subsequently the State Tax Service about this."*

We propose amending **let. d)** and its stating in the following redaction: let. d) *"the commission fees of the bank (branch), payment company, electronic money issuing company and/or post service provider relating to servicing the account and those relating to the execution of operations in the account, including execution of collection orders."*

Art. 202 of the Fiscal Code of the Republic of Moldova:

Amendment of **para. (1) art. 202** with additional cases in which the seizure may be lifted:

- *"deregistration of the taxpayer from the state register of legal persons."*
- *"closure by the bank of the account of the taxpayer if the balance of such account is equal to zero during 24 consecutive months after applying the seizure, informing subsequently the State Tax Service about this."*

Art. 200 of the Fiscal Code of the Republic of Moldova:

Amendment of **art. 200** with the following provision: *"The seizures applied by the State Tax Services on the funds in the bank account of the taxpayer shall not limit the right of the bank to collect from such account commission fees for servicing the account and commission fees relating to the execution of the operations in the account, including collection orders."*

Art.729 Civil Code of the Republic of Moldova

Article 729. Insurance of the mortgaged asset

(1) The mortgage debtor should insure the mortgaged asset in the benefit of the mortgage creditor against all risks of loss or accidental damage. The mortgage creditor may insure the mortgaged asset on the account of the mortgage debtor, if the mortgage debtor has not insured the asset.

We propose amending art. 729 of the Civil Code of the Republic of Moldova so as the conditions of insurance of the real estate "land without construction" is not mandatory, but facultative, taking into account that there is no risk of loss or accidental damage in relation to such an asset. Thus, the insurance expenses to be incurred by the mortgage debtor reasonable are not considered reasonable, they are just a financial burden.

Consequently, we propose amending para. (1) art. 729 by introducing after the words "mortgaged asset" the syntagm *"except for the plots of land free of constructions or other things and free of works attached permanently to the plot of land"*.

Regulations on the framework of administration of the activity of banks, approved by the Decision of the Executive Board of the National Bank of Moldova nor.322 of 20.12.2018

The existing redaction of p. 160 subpoint 7 let. b) line two of the Regulations no. 322/2018, was approved on 20.12.2018 without subsequent amendments. We think that, since 2018 until present, the social-economic realities determining the setting of this maximal threshold of credit balance have essentially changed, thus such values may not satisfy today, at the same extent, the needs of natural persons, individual entrepreneurs, patent holders, other natural persons performing enterprise activity or performing licensed or authorized professional activity, as well as those of legal persons.

Also, the obligation of the banks to obtain, hold and update, in accordance with Attachment no. 1 and Attachment no. 2 to Regulations no. 322/2018 of documents and relevant information regarding the debtors of the bank, which do not fall within the exceptions provided in p. 160 subpoint 7 let. b) line two, envisages, among other things, obtaining, holding and updating information on the:

- spouses, relatives and kins of the first and second degree of kinship of the owner/debtor, spouses of the mentioned relatives and kins, information on the office of member of a managing body held in other entities, as well as the shareholding in the amount of 20 percent and more in the capital of commercial companies, in case of the debtors of the bank – natural persons;

We propose amending p. 160 subpoint 7 let. b) line two, as follows:

"- debtors, to whom the bank has issued loans and financial leasing, the total balance of which for one debtor amounts up to MDL one million, inclusively – in case of an individual entrepreneur, patent holder, other natural person performing enterprise activity or practicing licensed or authorized professional activity, and up to MDL 5 million, inclusively – in case of a legal person;"

- spouses, relatives and kins of the first and second degree of kinship of the members of the board and executive body of the holder/debtor, spouses of the mentioned relatives and kins, information on the office of member of a managing body held by such persons in other entities, as well as the shareholding in the amount of 20 percent and more in the capital of commercial companies, in case of the debtors of the bank – legal persons.

The banks obtain this information preponderantly based on the statements made by the debtor (in form of a questionnaire, confirmed by signature), with the subsequent verification and confirmation with the information from other reliable sources.

We consider such request exaggerated, taking into consideration the following aspects:

- in most cases, the persons stated by the debtor do not form a group with them (taking into consideration the rules for forming groups of clients, established in the NBM norms), accordingly, such information is not used during the determination of a concerted action;
- excessive processing of personal data is done (we do not see a clear reason for it);
- most often, especially in case of debtors – natural persons, the stage of filling of such questionnaires becomes a burden from the point of view than they have to request from their relatives, kins of first and second degrees, including their spouses, personal information, and have to justify the need for such information (which is not equitable, as the application for a loan is a personal action, which the applicant does not want to reveal to other persons).

We would also like to draw the attention to the fact that such requirements are not found in the European banking practice, and the context that has underlying the introduction of such provisions has been overcome.

Following the stated reasons, we consider advisable the increase of the maximal balance of loans for the debtors of the banks that have benefited from loans and financial leasing, including direct, indirect holders and their beneficial owners, for which it is not necessary to obtain, hold and update documents and relevant information in accordance with Attachment no. 1 and Attachment no. 2 to Regulations no. 322/2018.

Insurance sector

Although many important achievements have been obtained in the insurance area, by implementing a new legislation partially transposing the best international and European Union practices, especially in the area of corporate governance, as well as other achievements for the reforming, development and strengthening of the insurance sector, it is further on necessary to increase the predictability of the legal framework and term of implementation of the normative documents.

The insurance sector of Moldova remains weakly developed, which is also confirmed by the low level of the degree of penetration of products and services, as well as by the high deficit of protection of the population in front of certain risks. The insurance sector needs a change, including by ensuring the financial literacy of the population, accompanied by joint actions of all the relevant authorities, expressed in the development of favorable fiscal and economic policies, including by promoting capital market development.

At the same time, the new reality forces the insurance sector to switch to a higher level of innovation and development by introducing and applying innovative technologies and by developing electronic products and services to ensure a faster and more convenient access of the consumers to the insurance services. All these may be developed only based on a legal framework prepared in this regard with high attention given to IT related risk, aspects relating to the development of IT infrastructure, which should correspond to the best international standards and ensure the corresponding security level.

We recommend to the competent authorities to undertake the following measures:

- Strengthening the actions of the authorities, especially autonomous public authorities, in the law-making process, to ensure the uniform transposition of the predictability principle and accessibility of normative acts, which would ensure the elimination of judicious practices of coming into force of the normative documents on the date of their publishing, without offering a reasonable term to adapt the behavior or business model.
- Giving up on the practice of coming into force of the normative documents at the moment of their publication in the Official Monitor.
- Adapting the legal framework and creating conditions for the ***issue through electronic means*** of the insurance products that do not need the evaluation of the insured object (Medical insurance for travels abroad, assets insurance, etc.). In this regard, we mention the imperative need to amend the Civil Code, art.1830 regulating that the insurance application and insurance contract shall be concluded only in written form, with the amendment or completion of the normative acts, including secondary legislation.

NOTE

ABOUT FIA

The Foreign Investors Association of the Republic of Moldova (FIA), the first non-profit and non-political association of companies with active foreign capital in the Republic of Moldova, celebrated its 20th anniversary in 2023. The Association consists of 26 companies from 15 countries – these are the largest enterprises with foreign direct investments in Moldova. These are the most active enterprises contributing to the sustainable development of the Republic of Moldova and generating progress in all key sectors: agriculture, industry, winemaking, telecommunications and IT, petroleum industry, healthcare and pharmaceuticals, banks and insurance, distribution, consulting and audit, et al.

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.

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