



## EVALUATION REPORT

# Moldovan public institutions' independence potential

*Viorel PIRVAN*



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The report is a product of the initiative "Supporting democracy, independence and transparency of key public institutions in Moldova". The initiative is implemented by the Institute for Development and Social Initiatives (IDIS) "Viitorul", in partnership with the Institute for Economic and Social Reforms in Slovakia (INEKO) and is financially supported by the Official Development Assistance Program of the Slovak Republic (SlovakAid). The initiative aims to inform the public about the development of democracy and the independence of key state institutions, as well as to improve the transparency and financial stability of local public authorities and state-owned enterprises in the Republic of Moldova.

The opinions expressed in this report are those of the author and do not necessarily reflect the official policy or position of INEKO and SlovakAid.



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**Contact adress:**

10/1 Iacob Hancu St., Chisinau, MD-2005, Republic of Moldova

Tel.: (37322) 21 09 32

Fax: (37322) 24 57 14

[www.viitorul.org](http://www.viitorul.org)

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# List of acronyms

<b>OO</b>	– Ombudsman’s Office
<b>ANRE</b>	– National Agency for Energy Regulation
<b>PSA</b>	– Public Services Agency
<b>NIA</b>	– National Integrity Authority
<b>NBM</b>	– National Bank of Moldova
<b>NAC</b>	– National Anticorruption Centre
<b>CNAS</b>	– National House of Social Insurance
<b>CNAM</b>	– National Health Insurance Company
<b>SCM</b>	– Superior Council of Magistracy
<b>NCFM</b>	– National Commission for Financial Markets
<b>TRM</b>	– ”Teleradio – Moldova” Company
<b>GPI</b>	– General Police Inspectorate
<b>FI</b>	– Financial Inspection
<b>STS</b>	– State Tax Service
<b>CS</b>	– Customs Service

# Summary

This report pursues the goal to evaluate the independence potential of Moldovan key public institutions and raise public awareness to this end, as well as to lay down the recommendations aimed at increasing the independence of public institutions. The ranking of the most independent public institutions represents an instrument to evaluate their independence potential, identify the major issues, barriers and gaps in the way how the governing bodies are organised and established, as well as in the public institutions' activity. Moreover, recommendations have been laid down with the aim to increase the independence of public institutions and support the competent public authorities in their endeavours to enhance the independence level.

Hence, according to the report, most public institutions subject to evaluation scored more than 50% of the maximum points available pursuant to the methodology and exceeded the overall average of 57% scored by all institutions, while five of them scored more than 70%, the top position being held by the General Prosecutor's Office. On the other hand, as per the methodology, seven public institutions scored less than 50% of the maximum points available, with the last positioned entity – the Public Services Agency – having scored only 25%.

To a large extent, the evaluation results are largely due to the appropriate regulatory framework, which governs the organisation and functioning of public institutions in the Republic of Moldova. The final score was altered by the fact that some institutions fall under the direct control and influence of the Government/line Ministries, as well as by the refusal of some institutions to respond to inquiries on access to information or to provide the requested data.

The process of appointing the governing bodies encompasses certain shortcomings, which may alter the independence of public institutions. In fact, there are few cases when this responsibility is shared among several subjects. The Parliament standing committees responsible for holding open competitions and selecting the candidates, pursuant to their mandate, do not represent actual tender commissions to involve other parties along with the members of Parliament (MPs). Moreover, public hearings is not a binding instrument of the selection process to fill the management positions in all public institutions, while the regulations in place are not applied in practice on a regular basis or fail to ensure holding actual public hearings.

A number of regulatory acts, which govern the organisation and work of public institutions, have no specific requirements in terms of education, work experience and political independence of candidates to fill a management position in an institution. Moreover, the evaluation of seven public institutions revealed cases when certain candidates were politically engaged/active during two years preceding their appointment.

Pursuant to the regulatory framework, the term of office of the Public Services Agency Management is not limited, while in eight public institutions the persons may hold management positions for an unlimited number of terms.

Six public institutions lack exhaustive and detailed grounds for the dismissal of governing bodies or do not have such grounds at all.

The information provided by public institutions reveal five entities where the income earned by the appointed persons and by employees represents an important element of independence of those institutions.

The review of gross average monthly income of governing body members shows that it is at least twice as much as the average monthly wage across the economy. There is also a notable discrepancy in the wage policy for the governing body members of different public institutions whereby some of the managerial positions are remunerated double, triple or even tenfold compared to other institutions. There are also significant discrepancies between the gross average monthly income of top rank managers and the management of some public institutions.

In most public institutions labour remuneration of ordinary employees is discouraging. In seven public institutions the gross average monthly wage of employees is comparable with the average monthly wage across the economy. The employees of “Teleradio – Moldova” Company, Superior Council of Magistracy and Constitutional Court have the lowest gross average monthly wages, which vary between MDL 6000 and MDL 7000.

## Expert committee's opinions

A committee composed of ten experts from different fields of activity and notorious people reviewed the main findings summary of the evaluation of 20 public institutions and formulated the following opinions and recommendations.

- It is timely to rename the report and the ranking to highlight that the results show de facto the institutions' independence potential rather than their actual independence as institutions' independence does not rely only on regulatory provisions, governing the organisation and work of public institutions.
- The biggest issue is not independence, as many Moldovan public institutions are sufficiently independent. It is needed to analyse, search and emphasize why public institutions fail to function in the Republic of Moldova. This is due to the lack of accountability for the actions carried out by such institutions, as the latter have rights and no obligations. They are not accountable for abuses, there are no efficient mechanisms to hold them accountable and liable, while the institutions justify themselves with the words “complain to the courts”, which, in the realms of our country means, de facto, the lack of actual defence possibility against the unlawful deeds of public institutions.
- The methodology has to be improved/supplemented with indicators that actually measure the independence of institutions, as in no way the General Prosecutor's Office is the most independent institution in the Republic of Moldova, in the context it is the most heavily criticised by the society, politicians and international organisations.
- The indicators evaluated abroad in compliance with the methodology are good enough and may show the independence level of a public institution. However, in the Republic of Moldova there are

other factors to be taken into account, such as personal relations, economic and political commitments upon the appointment of an institution management, so that the latter could subsequently bring financial, political and other types of advantages/benefits to certain policy makers who coordinate from the shadow or cooperate with the public institution management. Those 20 public institutions selected for evaluation are key institutions involved in collecting financial flows in the context of a captured state like the Republic of Moldova. Despite such realities and remarks, this evaluation is welcome and useful. It has been conducted in compliance with a predefined methodology, taken up from abroad, while the evaluation results do not pretend to be the absolute truth, as it does not intend to investigate the shadowed interests.

- The evaluation presents some aggregated results, as per certain indicators, which reveal and stress certain shortcomings in terms of independence of Moldovan institutions.
- The methodology encompasses several issues, which ultimately determine the evaluation results, leading to certain conclusions, which apparently are incorrect. At least, it is not clear how the General Prosecutor's Office holds the top position, while the State Tax Service ended up at the bottom of the ranking.
- According to the evaluation, public entities that could not be compared a priori were nonetheless compared. Like, for instance, the State Tax Service cannot be established outside the Government, while, as per the methodology, the fact to being subordinated to the Government lowered the institution score. In fact, those institutions, which are close by their nature and field of activity, may be compared. Likewise, it is not correct to line up public institutions governed by the Constitution and those that are not. The supreme law contains provisions about key public institutions, but not all public institutions may be governed by it.
- Public institutions subordinated to the Government do not need collegial/collegial bodies; the latter should be established in those institutions, which evaluate certain processes, such as the Court of Accounts, the activity tackling the interests of all power branches of the state. There are certain public institutions where the employees carrying out their duties are more important than management. In fact, it is more important how a tax inspector or an integrity inspector performs the tax inspection or the dignitaries' wealth inspection than the entity management, which plays a managerial role. Accordingly, it is needed to consider how those inspectors are appointed, not the management of the institutions concerned.
- The author shall stress in the methodology that the evaluation does not necessarily quantify the independence level, being a research that provides some inputs/insights and starting points for a more comprehensive analysis.
- The society position towards the public institutions subject to evaluation is not favourable, or, more accurately, it is rather negative. The General Prosecutor's Office is criticised for its incapacity to address the "billion theft" case-file, as well as for the lack of competent professionals, especially with economic background, who shall investigate such a complex case. Over the last few years, following the change of its Management, the Court of Accounts has vanished from the public space, while its few outcomes show what missteps should not be taken. Nowadays, the Financial Inspection has an uncertain status, and endeavours are being taken to reanimate this institution. Even if the top positions in the evaluation are held by heavily criticised and politically influenced institutions, it is advisable to publish the outcomes and hold large-scale discussions about public institutions' independence of in the Republic of Moldova.



# I. Research goal and methodology

The independence level of key Moldovan public institutions has been evaluated by the Institute for Development and Social Initiatives (IDIS) “Viitorul” with the assistance provided by the Institute for Economic and Social Reforms (INEKO) under the initiative “Supporting democracy, independence and transparency of key public institutions in Moldova”. This initiative is implemented by IDIS “Viitorul” in partnership with INEKO with the financial support provided by the Programme for Official Development Assistance of the Slovak Republic (SlovakAid). The Initiative is aiming to raise public awareness about democracy developments and independence of key public institutions, as well as to improve transparency and financial sustainability of local public authorities and public undertakings.

According to international evaluations<sup>1</sup>, the Republic of Moldova is a state with less and less democracy and records reduced scores for a series of indicators, such as independence of justice, fight against corruption<sup>2</sup>, functionality of public institutions, etc. Likewise, the national surveys<sup>3</sup> reveal the lack of trust in public institutions and a low democracy level in the Republic of Moldova.

All these indicators have an impact on the quality of citizens’ life, on how the social problems are addressed, the needed services are provided, and how citizens’ rights are protected and defended. One of the core solutions is strengthening the independence of Moldovan public institutions, having curbed the influence and control exercised by the executive power and politics, as well as enhancing public oversight onto the activity carried out by such institutions.

At the same time, independence of public institutions has got certain limits. An inadequate degree of independence may lead to the annihilation of the possibility of democratically elected forces to interfere in the institutions’ workstrands, which could reduce substantially the remedying possibilities in case of their failure. It is important to have a balance between independence and political influence, by having established ways of sharing political influence amongst several actors, having limited it with explicit and clear rules, so that the risk of abuse exercised by a small group of politicians is minimised.

Hence, the report pursues the goal to evaluate **the independence potential of key Moldovan public institutions and raise public awareness to this end**, as well as to formulate recommendations aimed at increasing the independence of public institutions.

To this end, **20 public institutions<sup>4</sup> with regulatory and control functions, service rendering and judicial activity have been selected to be subject to evaluation based on 45 indicators, included in four areas**. According to the methodology, to a large extent the evaluation is based on

1 [Democracy Index 2019](#)

2 [Corruption Perceptions Index 2019](#)

3 [Public Opinion Barometer 2019](#)

4 For the purpose of this report, by public institutions it is meant several categories of public authorities, such as central administrative authorities, public institutions subordinated to the Government, administrative authorities subordinated to Ministries, autonomous administrative authorities, judicial authorities, other public authorities.

the regulatory provisions, which govern the ways of organising the institutions, electing/appointing the governing bodies, dismissing from the position held. Moreover, a number of indicators referring to the transparency of governing body election processes have been considered, having evaluated also the income earned by the appointed persons and employees of public institutions.

	<b>Public authorities with regulatory and control functions, service provision and judicial activity</b>	<b>Web address</b>
1	Ombudsman's Office	<a href="http://www.ombudsman.md">www.ombudsman.md</a>
2	National Agency for Energy Regulation	<a href="http://www.anre.md">www.anre.md</a>
3	Public Services Agency	<a href="http://www.asp.gov.md">www.asp.gov.md</a>
4	National Integrity Authority	<a href="http://www.ani.md">www.ani.md</a>
5	National Bank of Moldova	<a href="http://www.bnm.md">www.bnm.md</a>
6	National Anticorruption Centre	<a href="http://www.cna.md">www.cna.md</a>
7	Constitutional Court	<a href="http://www.constcourt.md">www.constcourt.md</a>
8	National House of Social Insurance	<a href="http://www.cnas.md">www.cnas.md</a>
9	National Health Insurance Company	<a href="http://www.cnam.md">www.cnam.md</a>
10	Audiovisual Council	<a href="http://www.audiovizual.md">www.audiovizual.md</a>
11	Competition Council	<a href="http://www.competition.md">www.competition.md</a>
12	Superior Council of Magistracy	<a href="http://www.csm.md">www.csm.md</a>
13	National Commission for Financial Markets	<a href="http://www.cnpf.md">www.cnpf.md</a>
14	Court of Accounts	<a href="http://www.ccrm.md">www.ccrm.md</a>
15	"Teleradio – Moldova" Company	<a href="http://www.trm.md">www.trm.md</a>
16	General Police Inspectorate	<a href="http://www.politie.md">www.politie.md</a>
17	Financial Inspection	<a href="http://www.if.gov.md">www.if.gov.md</a>
18	General Prosecutor's Office	<a href="http://www.procuratura.md">www.procuratura.md</a>
19	State Tax Service	<a href="http://www.fisc.md">www.fisc.md</a>
20	Customs Service	<a href="http://www.customs.gov.md">www.customs.gov.md</a>

The maximum score of an institution, including all areas, is **29 points**. The evaluation of each institution varies from 0% (the weakest) to 100% (the best).

	Areas (Independence criteria)	Score
I	Appointing the governing body and members of the Board of Directors	11
II	Dismissal of appointed persons	4
III	Sovereignty and constitutional foundation	9
IV	Income earned by the appointed persons and employees	5

The evaluation has been performed in compliance with a methodology taken up from the Institute for Economic and Social Reforms (INEKO), which implemented a similar project in the Slovak Republic. More details about the used methodology and the indicators subject to evaluation are available at: [Democracy, independence and transparency of key public institutions of Moldova](#).

## II. Ranking of institutions' independence potential

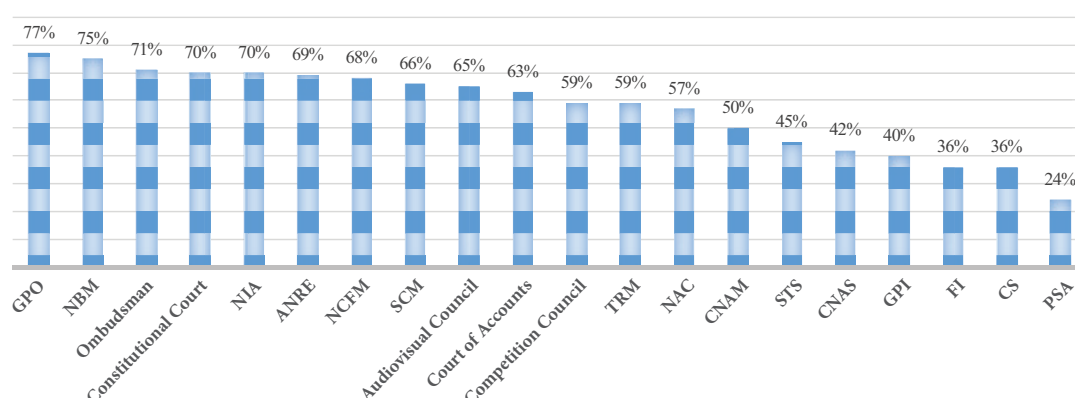
Following the performed evaluation the ranking of independence potential of key Moldovan public institutions has been defined. The position held by an institution within the ranking should show its independence potential. According to the applied methodology, the higher the institution is positioned the less it can be influenced from outside. However, even an extremely independent institution may be influenced and vice versa, an institution lacking independence shall not be seen as being fully controlled by the country politics and decision-makers.

Moreover, as independence level varies across different categories of institutions, **the evaluation and the ranking represent a reference point, comparison, discussions rather than certainty that the highest positioned institution in the ranking is the most independent and vice versa, the institution positioned at the bottom of the ranking totally lacks independence.** In fact, the more an institution meets the methodology indicators, the higher the chances to reach a high level of independence in the end. However, institutions' independence does not rely only on appropriate regulatory provisions; it also depends on the decisions taken and the activity carried out by the institution. Moreover, there are other factors that may influence or even compromise the independence of an institution with perfect regulations.

Essentially, this **ranking represents an instrument for** the evaluation of institutions' independence potential, **identification of major issues, barriers and gaps** in the way the governing bodies are organised and established, as well as in the public institutions' activity. Moreover, a number of **recommendations has been laid down with the aim to increase the independence of public institutions** and support the competent public authorities in their endeavours to enhance the independence level.

Following the evaluation, **the General Prosecutor's Office ranks the first with a score of 77%**, followed by the National Bank of Moldova with 75%, the Ombudsman's Office with 71%, Constitutional Court and National Integrity Authority with 70%. On the opposite pole, **the Public Services Agency ranks the last, scoring 24%**. At the same time, there are five public institutions positioned in the lower part of the ranking, which failed to obtain more than 50 out of the maximum points available. This includes the Customs Service (36%), the Financial Inspection (37%), the General Police Inspectorate (40%), the National House of Social Insurance (43%), and the State Tax Service (46%).

**The overall average** on independence of those 20 key public institutions subject to evaluation **makes up circa 57%.**



**Diagram 1.** Ranking of public institutions' independence potential

### III. Main findings of the evaluation of institutions' independence

#### 1. Appointing the governing body and members of the Board of Directors

An institution's independence is higher if it has collegial bodies, i.e. the governing body is composed of several persons or besides the executive body it has a Board of Directors/Supervisory Council. Out of those 20 institutions subject to evaluation 13 have collegial bodies.

Bearing on the legal provisions, in all those **13 institutions with collegial bodies, their management does not participate in the election of Board members, while members of the Board of Directors are not employees of the entity**. In 12 institutions the management does not hold any position on the Board. Only in the National Bank of Moldova the Governor is concomitantly the Chairperson of the Supervisory Council, and such situation is in breach of the standards of independence.

The evaluation has checked if the members of governing body and members of the Board of Directors are not replaced at the same time. The results show that in 15 public institutions this process is gradual, which ensures continuity and reduces the influence on the entity management.

As regards to the National Anticorruption Centre and Ombudsman's Office, the legal regulations stipulate that the deputies are appointed for the term of office of the NAC Director, respectively, of the Ombudsman. Concerning the Competition Council, the regulatory framework does not have clear provisions; however, the latest appointments show that, practically, all members were appointed at the same time; therefore, their term would end concomitantly. In the "Teleradio – Moldova" Company the term of office of Deputy General Directors is similar to the one of the General Director (Note: the term of office of TRM Supervisory Council members does not expire at the same time). Likewise, the term of office of General Prosecutor's deputies ends simultaneously with the one of the General Prosecutor.

Only in three institutions, the governing body members are appointed in different ways, having involved different authorities, which share the responsibilities of horizontal appointment as a chance to avoid concentrations of influence. Hence, the NIA Integrity Council members have been nominated by six subjects; judges of the Constitutional Court are appointed by three distinct public authorities; some members of the Superior Council of Magistracy are holders of rights, some are appointed by the Parliament, and some are elected by the General Meeting of Judges.

Only members of the governing body/Board of Directors of the National Integrity Authority and the General Prosecutor's Office are elected by several actors (vertically). In fact, the NIA Chairperson is appointed by the President of the Republic of Moldova upon the proposal of the Integrity Council, and the General Prosecutor is appointed by the President of the Republic of Moldova upon the proposal of the Superior Council of Prosecutors.

**As regards to many public institutions, the regulatory framework stipulates the involvement of additional actors in the appointing process along with the competent authority, such as the Parliament Standing Committees responsible for holding open competitions and selecting the candidates proposed for appointment to the Parliament.** However, this is about the Parliament governing bodies, created as per the principle of proportionality out of the same majority of MPs who take the decisions also at the Parliament Plenary level, respectively, de facto, there is one single actual actor. The situation would be significantly different if special open competition commissions would be created involving several actors, not just the MPs, vested with the required competences and decision-making authority to select the final candidates.

In 14 institutions certain collegial bodies are responsible for appointing the entity Management/Board and partially in other three institutions (when appointing the Board), thus, having mitigated the threat of influence as the appointments are made directly by an individual actor. As for the Public Services Agency, the Financial Inspection, the State Tax Service and the Customs Service, the governing bodies are appointed by an individual subject, as a rule, a Minister or the Secretary General of the Government in the particular case of the Public Services Agency.

Deserves specific mention the appointment of the General Prosecutor. Although the latter is not appointed by a collegial body, the Superior Council of Prosecutors, as a collegial body, plays a determinant role in appointing the General Prosecutor. The President of the Republic of Moldova may reject the selected candidate just once. If the same candidate is selected/nominated again, the President has to appoint him/her in that position.

As regards to the candidates for the governing body of the Public Services Agency, the National House of Social Insurance, the National Health Insurance Company and the Financial Inspection, regulatory acts which govern the organisation and work of those institutions do not cover particular requirements in terms of their education, work experience and political independence. In case of the National Commission for Financial Markets the law does not stipulate any specific requirements in terms of education. As for the State Tax Service and the Customs Service, the regulatory framework does not include specific requirements in terms of political independence of candidates. The remaining 13 public institutions shall fulfil the aforementioned three requirements.

For as many as 14 institutions subject to evaluation, public hearings are not part of governing bodies' selection process. In case of three institutions (the Constitutional Court, the Superior Council of Magistracy and the National Agency for Energy Regulation), public hearings apply only to certain members of the collegial governing body. At the same time, public hearings have been conducted to fill the governing positions in the Ombudsman's Office, the National Anticorruption Centre and the General Prosecutor's Office.

As regards to this indicator (public hearing), we checked both the regulatory framework provisions and the latest selection and appointing practices of candidates to fill the governing positions. As for the cases of subjecting the candidates to consideration during the Parliament plenary meetings, we pointed the situations when there were at least two candidates for a position, and the MPs had the opportunity to question the nominees (for instance, the Ombudsman). Concerning the cases when open competitions were conducted by certain standing committees or collegial bodies (the Integrity Council, the TRM Supervisory Board), we took into account only the situations when open competitions were effectively performed (including interviews, questioning the candidates, live

broadcast or audio/video recorded and made public afterwards). It is worth noting that through this *evaluation we could not determine whether the open competitions and selections were performed accurately, we just checked if public hearings* were used in the process of appointing the governing bodies of public institutions.

The Law on the Prosecution Office No. 3/2016 may serve as an example of a rule of law stating expressly the open competition public feature, namely Article 17 (3) and (9): “The interview phase shall be broadcasted online in real time. The Superior Council of Prosecutors shall ensure access to the meeting for Media representatives when the interviews are conducted ... The candidates’ interview shall be conducted during a public meeting”. On the other hand, a number of regulations concerning the selection procedures through open competition of members of some public institutions (as a rule, regulations developed by Parliament Committees) stated expressly that the candidates’ interview as well as their appraisal shall be conducted in camera. In practice, in some cases, such meetings are held public upon the organisers’ initiative, with the participation of media and other parties. However, such a decision is subjective and sporadic, bearing a non-binding character.

While most institutions have explicit regulations concerning the governing body term of office, the legislation does not impose any restrictions in case of the Public Services Agency, the National House of Social Insurance, the General Police Inspectorate, the Financial Inspection, and the Customs Service. Nonetheless, save the Public Services Agency, the provisions of the Law on the status of persons holding offices of public dignity shall apply to four institutions mentioned above, thus, limiting the term of office to four years.

At the same time, in **11 institutions subject to evaluation (in addition to those five mentioned above, this category includes the National Bank of Moldova, the Competition Council, the National Commission for Financial Markets, the State Tax Service, and the Superior Council of Magistracy, the National Health Insurance Company), the persons appointed as members of the governing bodies may exercise this function for unlimited terms and years.** This fact poses a number of risks, such as maintaining close ties with politics and decision making bodies, possible abuses of power and lack of accountability with the institution, including lower efficiency of operation. For nine institutions, the domestic regulatory framework stipulates that the appointment may be renewed once or, in general, it cannot be renewed.

Likewise, certain interpretable rules of regulatory acts effective for the Competition Council and the National Commission for Financial Markets have been revealed. It is stated that members of governing bodies of those institutions have the right to two consecutive terms of office. Such fact implies (at least hypothetically) that upon the expiry of one or two consecutive terms, the same persons, after a break, may become members of the governing bodies again. The Superior Council of Magistracy is another particular case, as its members may not be elected for two consecutive terms; however, it is not forbidden to be elected again after a break.

**The evaluation conducted in seven public institutions shows cases of appointment to the governing bodies of certain candidates that were politically engaged/active during two years preceding their appointment (ANRE, the NBM, the Constitutional Court, CNAM, the Audiovisual Council, the Competition Council, and the Court of Accounts).** As a remark, the analysed indicators relate only to certain situations when a member of the governing body was involved in political activity two years ahead of his/her appointment, and only this fact was scored.



However, quite often, the appointed persons are affiliated to a political party without being a member thereof. Such persons were always promoted by the party to different functions. Although this is a publicly tackled issue, such persons are not active members; therefore it is not possible to get evidence and evaluate these aspects.

One of the indicators subject to evaluation implies that members of the governing body are forbidden to hold certain positions after their term of office expires. All institutions scored the highest for this indicator. In fact, following the adoption of the Integrity Law No. 82/2017, certain binding restrictions and limits have been stipulated for the former public agents. Hence, companies shall avoid hiring a former public agent throughout one year after the end of his/her term of office (if that person, as a public agent, supervised and/or controlled directly the company concerned) and avoid granting representation powers in front of a public entity (if the person worked for that entity).

Moreover, the transparency indicator has been evaluated, which contributes also to public oversight of institution governing bodies. Hence, **one institution only (the Public Services Agency) failed to make public the CVs of its governing body members, while other two institutions failed to publish some of their governing body members' CVs (SCM and TRM).**

## 2. Dismissal of appointed persons

Bearing on the idea that a public institution is stronger if the grounds for dismissal of a governing body/Board member are expressly, clearly and justifiable mirrored in the regulatory framework, the evaluation focused on the identification of the following grounds for dismissing a member of the entity governing body: exhaustive justification; based on a decision of a control body; based on a valid court judgment or when holding an incompatible position.

The evaluation shows that in **14 out of 20 institutions, the legal provisions cover the aforementioned grounds for the dismissal of governing body members.** In case of the Constitutional Court, it lacks the “based on a decision of a control body” ground, as the Court itself has the competence to decide when to cease exercising the position of a Constitutional Court judge. Concerning the National Health Insurance Company, although it relies on two grounds mentioned above, the regulatory framework does not comprise all grounds that may occur when dismissing the management, having relied instead on a general rule, like “engaged in activities that are not compatible with the Director position”.

As regards to the Public Services Agency, the National House of Social Insurance, and the Financial Inspection, their basic laws do not cover the grounds for dismissing the governing bodies. Except for the Public Services Agency, the general rules for ceasing the term of office within the National House of Social Insurance and the Financial Inspection are covered by the Law on the status of persons holding offices of public dignity No. 199/2010. Likewise, when speaking about the General Director of “Teleradio-Moldova” Company, the grounds and cases for ceasing the term of office are not elaborated. As regards to members of the Supervisory Council, the law stipulates several grounds, which are not sufficient to be treated as “justifiable”. Besides, there are such phrases like “the Chairperson and the Secretary could be dismissed due to loss of confidence on behalf of the Supervisory Board”.



For all public institutions subject to evaluation, the dismissal of a governing body/Board of Directors member is not performed by several authorities, a single authority being involved, as a rule, the public oversight authority.

### 3. Sovereignty and Constitutional Foundation

**Only five institutions subject to evaluation have a legal base in the Moldovan Constitution (the Ombudsman's Office, the Constitutional Court, the Superior Council of Magistracy, the Court of Accounts, and the General Prosecutor's Office).** The constitutional provisions offer an extra guarantee of independence for public institutions.

The basic competences of those five institutions mentioned above are defined by the Moldovan Constitution, at least, in general terms.

Except for the Superior Council of Magistracy, the Moldovan Constitution defines the procedure for appointing the entity management for the remaining four public institutions. However, the Constitution defines no procedures for appointing the entity deputies.

The evaluation shows that **no institution needs a “constitutional” (qualified) majority for the election of its management or a member of the governing body.** As a rule, to appoint the governing bodies by collegial bodies (e.g., Parliament) a simple majority of votes is sufficient (e.g., the Parliament appointment decision is passed by the majority of attending MPs).

**The Moldovan Constitution defines the procedure for drawing up the budget of none of the evaluated institutions.** Nonetheless, the legislation provides expressly for 17 institutions that their budget is approved separately within the State Budget or that the institutions themselves approve their budget, which means greater independence. Only the budgets of the General Police Inspectorate, the State Tax Service and the Customs Service are subject to a different approval procedure, being part of the line ministries budget.

Moreover, it has been revealed that seven public institutions (the National Agency for Energy Regulation, the Public Services Agency, the National Bank of Moldova, the Audiovisual Council, the Competition Council, the National Commission for Financial Markets, and “Teleradio - Moldova” Company) are financed from several sources as per the current provisions of the regulatory framework (except for the EU funds).

Concerning the National Bank of Moldova, the recent amendments of the regulatory framework, which allows for sharing the NBM profit with the State Budget, may curtail the NBM independence.

All institutions subject to evaluation are responsible exclusively for their own personnel and for filling the managerial positions. However, **ten authorities out of 20 subject to evaluation are not empowered to decide on their internal organisation (the Public Services Agency, the National Integrity Authority, the National House of Social Insurance, the National Health Insurance Company, the Audiovisual Council, the Competition Council, the General Police Inspectorate, the Financial Inspection, the State Tax Service, and the Customs Service).** As a rule, the number of employees of those institutions and organisational structure is approved via Parliament/Government Decision or

via a written order issued by the responsible Minister/Secretary General of Government.

The institutions' independence depends also on the Government influence onto them. **Out of 20 institutions subject to evaluation, seven fall under direct Government/line Ministry influence (the Public Services Agency, the National House of Social Insurance, the National Health Insurance Company, the General Police Inspectorate, the Financial Inspection, the State Tax Service, and the Customs Service).** In particular, such influence can be tracked when the governing bodies are appointed, the internal organisation is governed, and when control is exercised. At the same time, in six institutions the appointment of deputies belongs exclusively to Government/responsible Ministry. The National Health Insurance Company has a different procedure as its deputies are appointed via a written order issued by the General Director.

The entity sovereignty to take decisions was also scored during the evaluation. Most regulatory acts, which govern the organisation and activity of public institutions, mention expressly the institutions' independence guarantees, their autonomy relative to any public authority. Specific mention deserves those seven institutions, which are subordinated to Government/line Ministry. Hence, as central administrative authorities, on the one hand, they enjoy autonomy in decision-making related to the accomplishment of their mission; on the other hand, those institutions' activity is subject to control by Government/responsible Ministry.

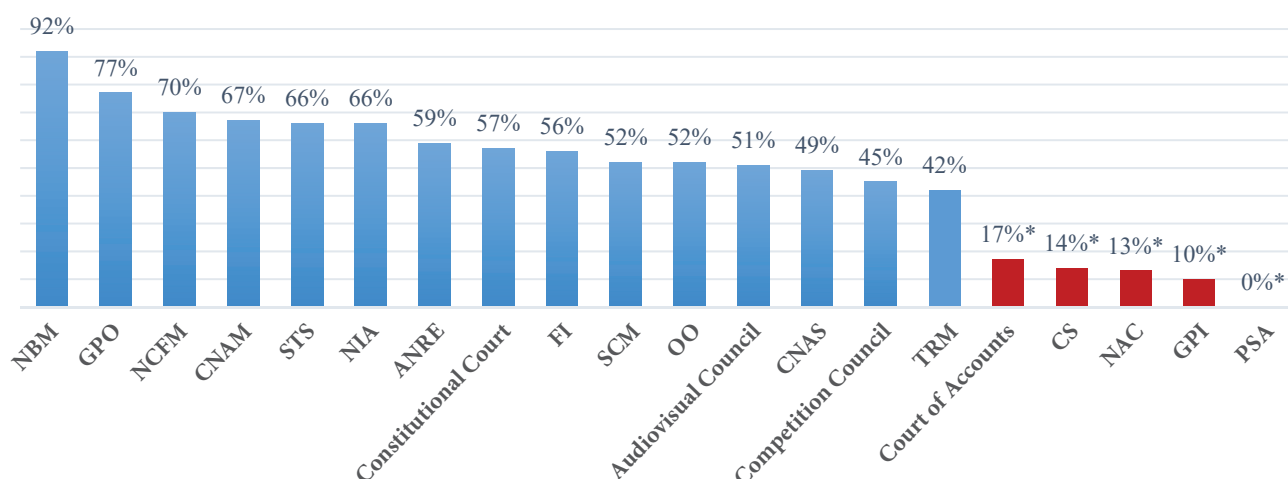
#### 4. Income earned by appointed persons and employees

The indicators of this area are calculated in accordance with the public information (e.g., declaration on wealth and personal interests of the entity management) and with the responses provided by institutions to the inquiries of access to information.

On the date of developing this report, **five institutions (the Court of Accounts, the Customs Service, the National Anticorruption Centre, the General Police Inspectorate, and the Public Services Agency) failed to respond to inquiries of access to information or refused to provide the data on the gross average monthly wage** of the entity management, deputy(ies), top rank managers, members of the board (where applicable) and the gross average monthly salary of employees.

The evaluation and the score granted to the institution for the aforementioned indicators is calculated on the basis of a pre-defined formula, as per the principle "higher wages lead to greater independence", taking also account of the correlation of employees salary within an institution and amongst institutions.

The evaluation revealed six institutions, which scored more than 60% of the maximum score for this area, namely: the National Bank of Moldova (92%), the General Prosecutor's Office (77%), the National Commission for Financial Markets (70%), the National Health Insurance Company (67%), the State Tax Service (66%) and the National Integrity Authority (66%).



**Diagram 2. Ranking of institutions by the wage amount**

**\*Note:** The wages for those five institutions were calculated as per the available public data, especially the declarations on wealth and personal interests of the institution management (save the Public Services Agency, as there is no public information in this regard).

**Higher wages of management of a public institution may play an important role in the appointed/elected persons' independence relative to political factors, as well as possible financial benefits associated with the position held.** Moreover, a competitive wage may attract highly qualified professionals to fill the position. In fact, on the one hand, the NBM Governor has the highest wage, followed by the Chairperson of the National Commission for Financial Markets. Wages varying between MDL 30 – 40 thousand have the management of ANRE, the State Tax Service, the Constitutional Court, the National Health Insurance Company, the General Prosecutor's Office, the Superior Council of Magistracy, and the National Integrity Authority. The lowest wages varying between MDL 15 – 20 thousand are paid to the management of the General Police Inspectorate, Competition Council, Audiovisual Council and the National House of Social Insurance.

**Table 1. Gross average monthly wages of public institutions' management.**

Wage	Public institution
> MDL 150 thousand	National Bank of Moldova
> MDL 50 thousand	National Commission for Financial Markets
MDL 30 – 40 thousand	National Agency for Energy Regulation State Tax Service Constitutional Court National Health Insurance Company General Prosecutor's Office Superior Council of Magistracy National Integrity Authority

MDL 20 – 30 thousand	Customs Service
	"Teleradio – Moldova" Company
	National Anticorruption Centre
	Court of Accounts
	Ombudsman's Office
	Financial Inspection
MDL 15 – 20 thousand	National House of Social Insurance
	Audiovisual Council
	Competition Council
	General Police Inspectorate

In terms of wages of public institution deputies, as a rule, these are slightly lower than the wages of management or identical, depending on a number of factors, which affects the final wage (seniority, etc.), the organisation of public institution being also a factor. This particular case refers to those institutions that are managed by collegial bodies (e.g., the National Commission for Financial Markets, the Competition Council, and the Audiovisual Council).

Top rank managers working for public institutions play an important role, being responsible for coordinating and achieving the institution mission and carrying out the activities. The evaluation shows pretty high wages of top rank managers (MDL 20 – 23 thousand) in a number of institutions such as the Ombudsman's Office, the National Integrity Authority, the Constitutional Court, the National Health Insurance Company, the Superior Council of Magistracy, the National Commission for Financial Markets, and the State Tax Service. The National Bank of Moldova ranks the first in this area, where high-ranking managers have a salary of over 50 thousand lei, followed by the General Prosecutor's Office, as its top managers (for the purpose of this methodology, this category includes prosecutors leading a department/division within the General Prosecutor's Office, Anticorruption Prosecutor's Office and Combating Organised Crime and Special Cases Prosecutor's Office) have a wage > MDL 30 thousand (in the territorial prosecutor's offices it is over 20 thousand lei). The top rank managers of "Teleradio – Moldova" Company have the lowest gross average wage, i.e. < MDL 10 thousand.

It is important to see also the obvious discrepancies between the wages of top managers and of public institution management. Hence, the **largest discrepancy in the labour remuneration of the aforementioned subjects has been found in "Teleradio – Moldova" Company, where the gross average wage earned by a regular manager amounts to no more than 34% of the wage earned by the top management of the institution, the National Bank of Moldova (35%), the National Commission for Financial Markets (35%) and the National Agency for Energy Regulation (43%).** On the other hand, there are institutions where the wages of senior managers make up > 75% of the gross average monthly wage of entity management: the Financial Inspection (76%), the Audiovisual Council (85%), the Competition Council (87%), and the General Prosecutor's Office (90%).

As for the institutions with collegial governing bodies (composed of several people or having a Board of Directors/Supervisory Council by the executive body), there are some specific remuneration-related issues for "Teleradio – Moldova" Company, representing some loopholes. In fact, the gross average

monthly wage earned by the Chairperson of the Supervisory Board (including that earned by the Supervisory Board Secretary) is about four times higher than the gross average monthly remuneration earned by members of the Supervisory Board.

Relevant remuneration of public entity employees is an essential condition for the smooth functioning of a public institution. According to the information provided by public institutions, employees of **“Teleradio – Moldova” Company, Superior Council of Magistracy and Constitutional Court have the lowest gross average monthly salaries (varying between MDL 6 – 7 thousand).**

On the other hand, employees of **the National Bank of Moldova, the National Health Insurance Company, the State Tax Service, the Financial Inspection, the National Commission for Financial Markets, the Audiovisual Council, including the National Integrity Authority** (Integrity Inspectors for the purpose of this methodology) **have the highest salaries (MDL 11 – 16 thousand).** Only the employees of the General Prosecutor’s Office have salaries exceeding MDL 27 thousand, as we took into account (for the purpose of this methodology) the wages of prosecutors from the General Prosecutor’s Office and from the specialised Prosecutor’s Offices (Anticorruption and Combating Organised Crime and Special Cases). The prosecutors working for territorial offices have wages of MDL 19 thousand, while the salaries of ordinary employees/civil servants vary between MDL 5 – 8 thousand.

## IV. General conclusions

- 1 In the end, most of the evaluated public institutions (13) scored more than 50% of the maximum points available according to the indicators chosen for evaluation in line with the approved methodology. These results were largely due to the provisions contained in the legal acts, governing organisation charts of the institutions, selection/appointment of the governing bodies and dismissal from public offices.
- 2 The evaluation results of seven public institutions that have acquired half of the maximum score (namely: the Public Services Agency, the Customs Service, the Financial Inspection, the General Police Inspectorate, the State Tax Service, and the National Health Insurance Company) were influenced by the fact that those institutions were acting under direct control and guidance of the Government/relevant line Ministry, which curtailed their decision-making autonomy. Moreover, some of those institutions failed to grant access to/provide information as inquired on the gross average monthly wages earned by the management and by other categories of employees hired by the entity.
- 3 As many as 13 public institutions have collegial governing bodies. Alternatively, in some of these, in addition to the executive body there is a board vested with supervisory powers, which fact serves to scale up the independence of these institutions. Regarding the supervisory boards, it is important that these are not influenced by the executive body of the respective institution, as for example, is the case of the NBM Governor, who concomitantly acts as the Chairperson of the NBM Supervisory Board.
- 4 In the domestic regulatory framework, cases of governing bodies' appointment by a number of authorities, sharing the appointment responsibilities, are not customary. The horizontal appointment/promotion through different procedures applies to members of the Integrity Council of the National Integrity Authority, judges of the Constitutional Court, and some of the Superior Council of Magistracy members. While the vertical appointment, with the involvement of several actors, applies to the Chairperson of the National Integrity Authority and to the General Prosecutor. Although, in a number of cases the regulatory framework provides for the involvement of Parliament Committees responsible for organising open competitions and selecting applicants, de facto, there is only one actual actor vested with decision-making powers, i.e. the Parliament.
- 5 The evaluation shows that public hearing as the selection process actual instrument was basically applied to fill the top managerial positions in the institutions, such as the Ombudsman's Office, the National Anticorruption Centre, the General Prosecutor's Office, while for the Constitutional Court, the Superior Council of Magistracy, and the National Agency for Energy Regulation it applies to just some of the collegial body members. Our findings were based on the provisions of the regulatory framework and on the latest practices used for the selection and appointment of candidates for governing bodies, being guided solely by the situations in which the competitions were actually conducted with interviews and questions for the candidates, live or audio/video records that later on were publicly disseminated.
- 6 The appointment of governing bodies by an individual subject, such as the Minister/Secretary General of the Government, could be for once justified in case of a public institution subordinated to the Government/line Ministry, acting in a rather important domain (the State Tax Service, the



Customs Service, the Financial Inspection, and the Public Services Agency). On the other hand, it could enhance its influence onto this specific public institution. An option to mitigate this threat would be to make the collegial bodies accountable for appointing the management of public institutions.

- 7** The practice of concomitant appointment and replacement of the managerial staff and deputies of public institutions is rather malignant for the independence and continuity of the public entity work. As a rule, such provisions are expressly mirrored in the regulatory acts governing the organisation and functioning of public institutions (the National Anticorruption Centre, the Ombudsman's Office, the "Teleradio-Moldova" Company, and the General Prosecutor's Office).
- 8** Lack of specific requirements for educational background, work experience and political independence of candidates for taking office with the governing body of public institutions could facilitate access to such by certain politically connected persons or other interest/decision-making groups. The respective gaps were also identified in the regulatory acts governing the organisation and activity of the Public Services Agency, the National House of Social Insurance, the National Health Insurance Company and the Financial Inspection. Moreover, in case of the National Commission for Financial Markets there is no provision in the law on specific education requirements, and in case of the State Tax Service and the Customs Service, the national regulatory framework contains no specific requirements concerning political independence of candidates.
- 9** The evaluation conducted in seven public institutions shows cases of appointment to the governing bodies of certain candidates that were politically engaged/active during two years preceding their appointment (the National Agency for Energy Regulation, the National Bank of Moldova, the Constitutional Court, the National Health Insurance Company, the Audiovisual Council, the Competition Council, and the Court of Accounts).
- 10** The regulatory framework does not limit the effective term of office for the management in case of the Public Services Agency, while in eight institutions subject to evaluation (the Public Services Agency, the National House of Social Insurance, the National Health Insurance Company, the General Police Inspectorate, the Financial Inspection, the Customs Service, the National Bank of Moldova, and the State Tax Service) the persons nominated/appointed to the governing bodies are allowed to exercise this function for an unlimited number of terms. Moreover, the interpretable provisions contained in the regulatory framework effective for the Competition Council, the National Commission for Financial Markets and the Superior Council of Magistracy, allow, at least hypothetically, after a break, upon the expiry of one or two consecutive terms, for the same persons to become members of the governing bodies again. All these pose a number of risks, such as maintaining close ties with politics and decision making bodies, possible abuses of power and lack of accountability with the institution, including lower efficiency of operation.
- 11** Provisions set forth by the regulatory framework with regard to dismissal of governing body members are far from being uniform. While for the 14 evaluated institutions there were explicit grounds and justifications for dismissal, then for the Public Services Agency there were no grounds for dismissal of the governing bodies. Again, for some of the institutions the regulatory framework does not govern exhaustively and in detail all of the grounds for management dismissal that may arise or the grounds invoked are insufficient to be treated as "justifiable".
- 12** Existence of legal provisions in the Constitution of the Republic of Moldova serves as an extra guarantee of independence for public institutions such as the Ombudsman's Office, the Constitutional Court, the Superior Council of Magistracy, the Court of Accounts, and the General Prosecutor's Office. However, the lack of constitutional provisions does not necessarily stand for a decisive factor that curtails the independence of an institution, as the Constitution cannot govern the organisation and functioning of all public institutions.

- 13 Independence and diversification of budgetary resources are playing an important role in the efficient functioning of public institutions. Except for the General Police Inspectorate, the State Tax Service and the Customs Service, the budgets of which are making a constituent part of the line ministries budgets, the rest of the evaluated institutions have their budgets separately approved within the state budget or approve their own budget. In addition, seven public institutions (the National Agency for Energy Regulation, the Public Services Agency, the National Bank of Moldova, the Audiovisual Council, the Competition Council, the National Commission for Financial Markets, and “Teleradio-Moldova” Company), according to the explicit provisions set up by the regulatory framework, are financed from a number of sources.
- 14 While all institutions subject to evaluation bear exclusive responsibility for their own staff and filling up the managerial positions, ten of them do not have the authority to decide on their internal organisation, while other public authorities are entitled to approve their payroll and their organisational structure (the Public Services Agency, the National Integrity Authority, the National House of Social Insurance, the National Health Insurance Company, the Audiovisual Council, the Competition Council, the General Police Inspectorate, the Financial Inspection, the State Tax Service and the Customs Service).
- 15 Bearing on the principle “higher wages lead towards greater independence”, and on the correlation of wages across different categories of workers within the same institution, the evaluation showed six institutions, where the income earned by the appointees as well as such of the employees stand as an important element of the institution independence – the National Bank of Moldova, the General Prosecutor’s Office, the National Commission for Financial Markets, the National Health Insurance Company, the State Tax Service, and the National Integrity Authority. As a remark, we would like to underline that the final picture could have looked differently if all of the evaluated institutions, especially the National Bank of Moldova, would be willing to provided information on the gross average monthly wages earned by their managerial staff and different categories of employees.
- 16 The wages earned by members of the institution governing bodies are at least twice the amount of the average monthly wage across the economy (MDL 7,953 in 2020), which fact could contribute to the independence of persons appointed to such management positions. However, we observe a notable discrepancy in the wages earned by the management of various public institutions, whereby some of the managerial positions are remunerated double, triple or even tenfold compared to other institutions. For example, by far the highest wage is earned by the Governor of the National Bank of Moldova (about MDL 160 thousand), followed by that earned by the Chairperson of the National Commission for Financial Markets (about MDL 59 thousand).
- 17 The evaluation shows high level of remuneration paid to top rank management (MDL 20-23 thousand) across a wide range of institutions such as the Ombudsman’s Office, the National Integrity Authority, the Constitutional Court, the National Health Insurance Company, the Superior Council of Magistracy, the National Commission for Financial Markets, the State Tax Service, and the General Prosecutor’s Office. However, the highest salaries are held by high-ranking managers from the National Bank of Moldova and the General Prosecutor’s Office. Also, there were also obvious discrepancies between the average monthly gross salaries of senior managers and the management of the “Teleradio-Moldova” Company (the gross average wage earned by the senior manager amounts to no more than 34% of the wage earned by the top management of the institution), the National Bank of Moldova (35%), the National Commission for Financial Markets (35%) and the National Agency for Energy Regulation (43%). With regard to “Teleradio-Moldova” Company it is worth noting that the gross average monthly wage earned by the Chairperson of the Supervisory Board (including that earned by the Supervisory Board Secretary) is about four times higher than the gross average monthly remuneration earned by



members of the Supervisory Board. These facts could indicate certain loopholes in case of this public institution.

- 18** For a number of public institutions, the payroll of simple employees is a major issue, which directly affects the good functioning of the public entity. The employees of seven public institutions subject to evaluation receive gross average monthly wages comparable to the average monthly wages paid across the economy, while the lowest gross average monthly wages (ranging from MDL 6 to 7 thousand) are paid to the employees of the “Teleradio-Moldova” Company, the Superior Council of Magistracy, and the Constitutional Court.

## V. Recommendations

- 1 Public institutions must comply with the legislation on access to information, respond to inquiries and provide information of public interest requested by individuals, legal entities and other stakeholders. In this case, the Court of Auditors, the Customs Service, the National Anticorruption Centre, the General Police Inspectorate and the Public Services Agency shall be required to provide information of public interest on the gross average monthly wages earned by the management of the entity as well as by all other categories of employees.
- 2 The requirement stipulating the need of establishing viable mechanisms of individual accountability and responsibility for the officials of public institutions in case of violation of legal provisions and abuses committed by the latter is still topical. The viability of these mechanisms also depends on the efficient functioning of justice in the Republic of Moldova, addressing such issues as protection against unlawful action on behalf of public institutions and their staff.
- 3 It is recommended to measure and make publicly available the results of activity performed by public institutions bearing on the predefined objectives and indicators. This should scale up and strengthen public control over the institutions and curtail the need for exercising control by the politicians.
- 4 For public institutions that have supervisory (administrative) councils, it is important to strengthen the role played by the latter in checking up the decisions taken by the management. In order to meet the standards of independence, the supervisory councils should not be influenced by the executive body of the institution while members of the board should be independent from the entity management.
- 5 When appointing the members of the governing bodies, it is appropriate to involve a number of public authorities to share the responsibilities of horizontal appointment in case of collegial bodies as a chance to avoid concentrations of influence. This recommendation also refers to the autonomous public institutions found under the supervision of the Parliament, which currently enjoy exclusive competence in appointing members of the governing bodies of the Competition Council, the Court of Accounts, the National Commission for Financial Markets, the National Agency for Energy Regulation, and the National Bank of Moldova.
- 6 For public institutions, including the ones subordinated to the Government/relevant line Ministry, operating in an important domain (the State Tax Service, the Customs Service, the Financial Inspection, and the Public Services Agency), it is important to engage a number of public authorities on the vertical in the process of governing body appointment, including certain collegial bodies that could bear the responsibility for the appointment of the management in these public institutions.
- 7 It would be appropriate to review the method of appointing deputy heads in public institutions directly influenced by the Government or by the relevant line Ministry, following the model suggested by the National Health Insurance Company, whereby the deputy directors are appointed by the written order signed by the General Director of the institution.
- 8 In order to become the actual subjects in the process of appointment, the parliamentary committees responsible for conducting open competitions and selecting the candidates proposed for appointment to the Parliament should be replaced by special tender committees, engaging a number of parties, not just the members of Parliament, vested with the required competences and decision-making authority to select the final candidates.

- 9** Public hearings should be a mandatory instrument and part of the selection process when filling the senior positions in all public institutions. The existing regulations on public hearings must be implemented as part of each and every selection process. Where such regulations are missing or failing to ensure the conduct of actual public hearings (examples: regulations drafted by the parliamentary committees), it is necessary to intervene with clear and detailed provisions. In such a case, the regulations should provide for as follows:

  - a.** candidates should be publicly known in advance;
  - b.** candidates information (CVs, additional information) should be made publicly available;
  - c.** holding public hearings with the possibility of put questions to the candidates by political representatives as well as by the public, media and other stakeholders;
  - d.** live broadcast or audio/video recording and public dissemination of public hearings;
  - e.** granting the chance to participate in public hearings to foreign experts.
- 10** It would be appropriate to make public the evaluation and scoring sessions of candidates, as it would essentially scale up the transparency and also the credibility of these open competitions.
- 11** In order to ensure the continuity and curb possible influences, the members of the governing bodies and deputies of public institutions should be appointed and replaced stepwise, rather than concomitantly. In case of the National Anticorruption Centre, the Ombudsman's Office, the "Telera-dio-Moldova" Company and the General Prosecutor's Office, it is necessary to intervene into the regulatory framework, and in case of the Competition Council it is necessary to set up the process in such a way as to avoid the concomitant appointment of members.
- 12** The regulatory acts governing the organisation and activity of the Public Services Agency, the National House of Social Insurance, the National Health Insurance Company and the Financial Inspection should be explicitly supplemented with specific requirements for educational background, work experience and political independence of candidates for taking position with the governing body of public institutions. In case of the National Commission for Financial Markets, it is necessary to specify in the law some specific requirements concerning educational background, and in case of the State Tax Service and Customs Service, it is necessary to supplement the national regulatory framework with specific requirements concerning political independence of candidates.
- 13** The regulatory acts governing the organisation and activity of public institutions should be supplemented with explicit provisions prohibiting acceptance of candidates to the managerial positions in case the latter were involved during the last two years in political activities as a member of any political party or as an employee with the standing bodies of any political party (an example of such a provision could be found in Art.18 (4) f) of the Law on the National Anticorruption Centre No. 1104/2002).
- 14** It is necessary to explicitly regulate the effective term of office of the governing body of the Public Services Agency. It is also appropriate to specify in the regulatory acts (complementary to the norms provided for in Law No.199/2010 on the status of persons holding offices of public dignity) the effective term of office of the governing body of the National House of Social Insurance, the General Police Inspectorate, the Financial Inspection and the Customs Service.
- 15** We recommend supplementing the national regulatory framework with the provisions pursuant to which any person previously appointed to the governing bodies of a public institution could be reappointed for a new term only once or, in general, not to be appointed for a new term in within this public institution. In this case, such provisions should apply to the Public Services Agency, the National House of Social Insurance, the National Health Insurance Company, the General Police Inspectorate, the Financial Inspection, the Customs Service, the National Bank of Moldova, and the State Tax Service.

- 16 In order to exclude any misinterpretation, the regulatory acts having regard to the Competition Council, the National Commission for Financial Markets and the Superior Council of Magistracy, should explicitly stipulate that upon the expiry of one/two consecutive terms of office, the same persons cannot become members of the governing bodies of public institutions again.
- 17 In order to increase transparency of and public oversight onto management of institutions, the CVs of governing body members should be published on the website of the Public Services Agency, while the CVs of all members of the management and supervisory bodies should be made publicly available on the websites maintained by the Superior Council of Magistracy and “Teleradio-Moldova” Company.
- 18 The provisions set out by the regulatory framework should govern explicitly, clearly and justifiably the grounds for dismissal of governing body members. In particular, for the Public Services Agency, it is necessary to specify the grounds for the dismissal of governing bodies, while in case of the National House of Social Insurance, the National Health Insurance Company, the Financial Inspection, and the “Teleradio-Moldova” Company it is necessary to provide for exhaustive and detailed provisions with regard to all possible grounds for management dismissal.
- 19 When governing the grounds for dismissal of governing body members, it is necessary to avoid general and interpretable wordings such as “engages in activities incompatible with the position of director” or “the Chairperson and the Secretary could be dismissed due to loss of confidence on behalf of the Supervisory Board”.
- 20 Similarly to the case of appointment, in case of dismissal of a public institution management, it would be appropriate to engage a number of public authorities, in addition to the public supervisory authority, while duly amending the regulatory framework to this end.
- 21 A balanced wage policy for governing body members of public institutions is required in order to avoid major discrepancies currently existing in this area. In addition, the level of wages paid should be interdependent on the performances achieved by the institution and namely, by the public entity management.
- 22 Senior level managers of public institutions needs to be further financially motivated so as to ensure practical achievement of the mission and activities/objectives by these institutions, while the wage policy should provide for a balance between their wages and such paid to the management of public institutions, in particular, it applies to the “Teleradio-Moldova” Company, the National Commission for Financial Markets, and the National Agency for Energy Regulation.
- 23 We recommend reviewing the wages paid to the members of the Supervisory Board of “Teleradio-Moldova” Company in order to reduce the major discrepancy in relation to the gross average monthly wage paid to the Chairperson of the Supervisory Board (including that paid to the Secretary of the Supervisory Board).
- 24 Motivating remuneration of simple/executive employees of public institutions is necessary so as to ensure proper functioning of public institutions and hiring personnel featuring high level of professionalism. Besides, it is necessary to identify some additional motivation and incentive tools (an example would be by granting performance boost by the management /administration, provided for by Law No. 270/2018 on the unitary wage system in the budget sector and Government Decision No.1231/2018 on the implementation of the provisions of Law No. 270/2018 on the unitary wage system in the budget sector).

# Bibliography

1. Constitution of the Republic of Moldova.
2. Law on Ombudsman's Office No. 52/2014.
3. Law approving the Regulation on the organisation and functioning of the Ombudsman's Office No. 164/2015.
4. Energy Law No. 174/2017.
5. Parliament Decision approving the Regulation on the organisation and functioning of the National Agency for Energy Regulation No. 334/2018.
6. Government Decision on setting the Public Services Agency No. 314/2017.
7. Law on the National Integrity Authority No. 132/2016.
8. Integrity Law No. 82/2017.
9. Parliament Decision approving the structure and personnel number of the National Integrity Authority No. 9/2018.
10. Law on the National Bank of Moldova No. 548/1995.
11. Law on the National Anticorruption Centre No. 1104/2002.
12. Parliament Decision approving the structure and personnel number of the National Anticorruption Centre No. 34/2016.
13. Law on the Constitutional Court No. 317/1994.
14. Code of Constitutional Jurisdiction No. 502/1995.
15. Law on the public system of social insurance No. 489/1999.
16. Government Decision on the organisation and functioning of the National House of Social Insurance No. 230/2020.
17. Law on mandatory health insurance No. 1585/1998.
18. Government Decision approving the CNAM Charter No. 156/2002.
19. Code of Media Audiovisual Services of the Republic of Moldova No. 174/2018.
20. Parliament Decision approving the charter, organisational structure, budget and monthly payroll for members and employees of the Coordination Council of Audiovisual No. 433/2006.
21. Law on Competition No. 183/2012.
22. Law on the Superior Council of Magistracy No. 947/1996.

23. Regulation on the organisation and work of the Superior Council of Magistracy, approved by Decision of the Superior Council of Magistracy No. 668/26 of 15 September 2015.
24. Law on the National Commission for Financial Markets No. 192/1998.
25. NCFM Decision approving the Regulation on the organisation and functioning of the NCFM No. 49/16 of 1.11.2018.
26. Law on the organisation and functioning of the Court of Accounts of the Republic of Moldova No. 260/2017.
27. Regulation on the organisation and functioning of the Managerial Committee of IPNA “Teleradio – Moldova” Company.
28. Regulation on open competition to fill the position of Director General of “Teleradio – Moldova” Company.
29. Law on Police activity and the status of policeman No. 320/2012.
30. Government Decision on the organisation and functioning of the General Police Inspectorate No. 547/2019.
31. Law on civil servant with special status within the Ministry of Internal Affairs No. 288/2016.
32. Government Decision for the enforcement of Law No. 288 dated 16 December 2016 on civil servant with special status within the Ministry of Internal Affairs No. 460/2017.
33. Government Decision on organising the activity of the Financial Inspection No. 1026/2010.
34. Law on Prosecutor’s Office No. 3/2016.
35. Tax Code No. 1163/1997.
36. Government Decision approving the Regulation on the organisation and functioning of the State Tax Service No. 395/2017.
37. Law on public function and status of civil servants No. 158/2008.
38. Law on the status of people holding positions of public dignity No. 199/2010.
39. Law on the state budget for 2020 No. 172/2019.
40. Law on the unitary wage system in the budget sector No. 270/2018.
41. Government Decision No. 1231/2018 for the enforcement of Law No. 270/2018 on the unitary wage system in the budget.
42. Customs Code of the Republic of Moldova No. 1149/2000.
43. Law on the Customs Service No. 302/2017.
44. Government Decision approving the personnel number and the Regulation on the organisation and functioning of the Customs Service No. 4/2007.
45. Written Order of the Minister of Finance No. 117/2019 approving the Regulation on holding open competition for selecting the Director of the Customs Service.

## Annex 1

## EVALUATION RESULTS OF MOLDOVAN PUBLIC INSTITUTIONS' INDEPENDENCE POTENTIAL

Indicators	Points without the Board	Points with the Board	OO	ANRE	PSA	NIA	NBM	NAC	Constitutional Court	CNAS	CNAM	Audiovisual Council	Competition Council	SCM	NCFM	Court of Accounts	TRM	GPI	FI	GPO	STS	CS
APPOINTING THE GOVERNING BODY AS WELL AS THE MEMBERS OF THE BOARD OF DIRECTORS																						
The governing body consists of a group of people (Board)	1,00		0,00	1,00				0,00	1,00			1,00	1,00	1,00	1,00	1,00		0,00	0,00	0,00	0,00	0,00
(R) The management of the entity does not take part in the election of the board members		0,33			0,33	0,33	0,33			0,33	0,33						0,33					
(R) The management of the entity is not entitled to hold a position on the board		0,33			0,33	0,33	0,00			0,33	0,33						0,33					
(R) Members of the Board of Directors are not employees of the entity		0,33			0,33	0,33	0,33			0,33	0,33						0,33					
(R) Members of the governing body are not replaced concomitantly	0,50	0,38	0,00	0,38	0,50	0,38	0,38	0,00	0,38	0,38	0,38	0,38	0,20	0,38	0,38	0,38	0,00	0,50	0,50	0,00	0,50	0,50
(R) Members of the Board of Directors are not replaced concomitantly		0,13	0,00	0,13	0,00	0,13	0,13	0,00	0,13	0,13	0,13	0,13	0,00	0,13	0,13	0,13	0,13	0,00	0,00	0,00	0,00	0,00
Members of the governing body are appointed in a number of different ways (by different authorities)	0,50	0,50	0,00	0,00	0,00	0,50	0,00	0,00	0,50	0,00	0,00	0,00	0,00	0,50	0,00	0,00	0,00	0,00	0,00	0,50	0,00	0,00



Indicators	Points without the Board	Points with the Board	OO	ANRE	PSA	NIA	NBM	NAC	Constitutional Court	CNAS	CNAM	Audiovisual Council	Competition Council	SCM	NCFM	Court of Accounts	TRM	GPI	FI	GPO	STS	CS
(R) The management of the entity is nominated (appointed) by a collegial body	1,00	0,75	1,00	0,75	0,00	0,00	0,75	1,00	0,75	0,75	0,75	0,75	0,75	0,75	0,75	0,75	0,75	1,00	0,00	0,00	0,00	0,00
The Board members are nominated (appointed) by the collegial body		0,25	0,00	0,25	0,00	0,18	0,25	0,00	0,25	0,25	0,25	0,25	0,25	0,20	0,25	0,25	0,25	0,00	0,00	0,00	0,00	0,00
(R) Members of the governing body are elected by a number of actors	1,00	0,75	0,00	0,00	0,00	0,75	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	1,00	0,00	0,00
(R) Members of the Board of Directors are elected by a number of actors		0,25	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
The candidates for management position shall meet specific requirements in terms of education	0,33	0,33	0,33	0,33	0,00	0,33	0,33	0,33	0,33	0,00	0,00	0,33	0,33	0,33	0,00	0,33	0,33	0,33	0,00	0,33	0,33	0,33
The candidates for management position shall meet specific job experience requirements	0,33	0,33	0,33	0,33	0,00	0,33	0,33	0,33	0,33	0,00	0,00	0,33	0,33	0,33	0,33	0,33	0,33	0,33	0,00	0,33	0,33	0,33
The candidates for management position should meet specific requirements with regard to their political independence	0,33	0,33	0,33	0,33	0,00	0,33	0,33	0,33	0,33	0,00	0,00	0,33	0,33	0,33	0,33	0,33	0,33	0,33	0,00	0,33	0,00	0,00
Members of the governing body are not allowed to hold certain positions upon completion of their term of office	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00



Indicators	Points without the Board	Points with the Board	OO	ANRE	PSA	NIA	NBM	NAC	Constitutional Court	CNAS	CNAM	Audiovisual Council	Competition Council	SCM	NCFM	Court of Accounts	TRM	GPI	FI	GPO	STS	CS
The term of office of governing body members must be limited	1,00	1,00	1,00	1,00	0,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00
The appointment could be renewed only once (or none)	1,00	1,00	1,00	1,00	0,00	1,00	0,00	1,00	1,00	0,00	0,00	1,00	0,00	0,00	0,00	1,00	1,00	0,00	0,00	1,00	0,00	0,00
Public hearing is making part of the selection process for taking the management functions	1,00	1,00	1,00	0,20	0,00	0,00	0,00	1,00	0,33	0,00	0,00	0,00	0,00	0,33	0,00	0,00	0,00	0,00	0,00	1,00	0,00	0,00
CV's of governing body members are publicly available	1,00	1,00	1,00	1,00	0,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	0,47	1,00	1,00	0,78	1,00	1,00	1,00	1,00	1,00
Members of the governing body were not politically engaged/active during two years prior to their appointment	1,00	1,00	1,00	0,40	1,00	1,00	0,75	1,00	0,83	1,00	0,75	0,71	0,80	1,00	1,00	0,86	1,00	1,00	1,00	1,00	1,00	1,00
DISMISSAL OF APPOINTED PERSONS																						
Dismissal of the entity management takes place in case of exhaustive justification only, upon a decision taken by the supervisory body or on the grounds of a valid court judgement or if performing an incompatible function	3,00	2,25	3,00	2,25	0,00	2,25	2,25	3,00	1,50	0,75	1,50	2,25	2,25	2,25	2,25	2,25	0,00	3,00	0,75	3,00	3,00	3,00
(R) Dismissal of the entity management is possible in the event of exhaustive justification only	1,00	0,75																				

Indicators	Points without the Board	Points with the Board	OO	ANRE	PSA	NIA	NBM	NAC	Constitutional Court	CNAS	CNAM	Audiovisual Council	Competition Council	SCM	NCFM	Court of Accounts	TRM	GPI	FI	GPO	STS	CS
(R) Dismissal of the entity management is left at the exclusive discretion of the supervisory body	2,00	1,50																				
(R) Dismissal of the entity management takes place in case of having a valid court judgement or if performing an incompatible function	3,00	2,25																				
Dismissal of a member of the Board of Directors requires justification		0,75	0,00	0,75	0,00	0,75	0,75	0,00	0,75	0,00	0,00	0,75	0,75	0,75	0,75	0,75	0,00	0,00	0,00	0,00	0,00	0,00
(R) Dismissal of the entity management must be done by more than one authority	1,00	0,75	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
Dismissal of the member of the Board of Directors must be done by more than one authority		0,25	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
SOVEREIGNTY AND CONSTITUTIONAL FOUNDATION																						
A public entity has its legal grounds outlined in the Moldovan Constitution	0,40	0,40	0,40	0,00	0,00	0,00	0,20	0,00	0,40	0,00	0,00	0,00	0,00	0,40	0,00	0,40	0,00	0,00	0,00	0,40	0,00	0,00
The procedure of appointing the entity management is established by the Moldovan Constitution	0,20	0,20	0,20	0,00	0,00	0,00	0,00	0,00	0,20	0,00	0,00	0,00	0,00	0,00	0,00	0,20	0,00	0,00	0,00	0,20	0,00	0,00

Indicators	Points without the Board	Points with the Board	OO	ANRE	PSA	NIA	NBM	NAC	Constitutional Court	CNAS	CNAM	Audiovisual Council	Competition Council	SCM	NCFM	Court of Accounts	TRM	GPI	FI	GPO	STS	CS
The procedure of appointing the entity deputy is established by the Moldovan Constitution	0,20	0,20	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
The constitutional majority is required for the election of the entity management or of a member of the governing body	0,40	0,40	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
The formation and use of the entity budget is established by the Moldovan Constitution	0,40	0,40	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
The powers of the entity are established by the Moldovan Constitution	0,40	0,40	0,40	0,00	0,00	0,00	0,00	0,00	0,40	0,00	0,00	0,00	0,00	0,40	0,00	0,40	0,00	0,00	0,00	0,40	0,00	0,00
The entity is established outside the direct influence of the Government (the entity is not one of the central bodies of the Government)	1,00	1,00	1,00	1,00	0,00	1,00	1,00	1,00	1,00	0,00	0,00	1,00	1,00	1,00	1,00	1,00	1,00	0,00	0,00	1,00	0,00	0,00
The entity enjoys sovereignty in decision-making	1,00	1,00	1,00	1,00	0,50	1,00	1,00	1,00	1,00	0,50	0,50	1,00	1,00	1,00	1,00	1,00	1,00	0,50	0,50	1,00	0,50	0,50
The budget of the entity is approved separately within the state budget	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	0,00	1,00	1,00	0,00	0,00
The entity is financed from a number of sources (except for the EU funds)	1,00	1,00	0,00	1,00	1,00	0,00	1,00	0,00	0,00	0,00	0,00	1,00	1,00	0,00	1,00	0,00	1,00	0,00	0,00	0,00	0,00	0,00

Indicators	Points without the Board	Points with the Board	OO	ANRE	PSA	NIA	NBM	NAC	Constitutional Court	CNAS	CNAM	Audiovisual Council	Competition Council	SCM	NCFM	Court of Accounts	TRM	GPI	FI	GPO	STS	CS
The entity has the authority to decide on its internal organisation	1,00	1,00	1,00	1,00	0,00	0,00	1,00	0,00	1,00	0,00	0,00	0,00	0,00	1,00	1,00	1,00	1,00	0,00	0,00	1,00	0,00	0,00
The appointment of a deputy is not the exclusive competence of the Government	1,00	1,00	1,00	1,00	0,00	1,00	1,00	1,00	1,00	0,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	0,00	0,00	1,00	0,00	0,00
The entity is solely responsible for its own personnel and filling in its own managerial positions (other actors shall not be involved in the staff recruitment process)	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00	1,00
INCOME EARNED BY THE APPOINTED PERSONS AND EMPLOYEES																						
(R) The gross average monthly wage earned by the entity management	2,0	1,50	0,4	0,5	0	0,5	0,9	0,4	0,5	0,4	0,5	0,3	0,3	0,5	0,6	0,3	0,4	0,3	0,4	0,5	0,5	0,5
(R) The gross average monthly wage earned by the entity deputy	1,0	0,75	0,2		0	0,2	0,4	0,2		0,2	0,3	0,1	0,1		0,3	0,2	0,2	0,2	0,2	0,2	0,3	0,2
(R) The gross average monthly wages earned by the senior officers (managers)	3,0	2,25	1,1	0,8	0	0,9	1,3	0	1	0,7	1	0,6	0,6	0,9	0,8	0	0,5	0	0,8	1,1	1	0
(R) The gross average monthly wages earned by the Board members	0,0	0,75		0,4	0		0,4		0,3			0,2	0,2	0,3	0,4	0,3	0,1					
The gross average monthly salaries earned by the employees	2,0	2,00	1,1	1,2	0	1,6	1,6	0	1	1,2	1,6	1,3	1,1	0,9	1,4	0	0,9	0	1,5	2	1,5	0
<b>Total</b>	<b>29</b>	<b>29</b>	<b>20,60</b>	<b>20,00</b>	<b>7,00</b>	<b>20,20</b>	<b>21,70</b>	<b>16,6</b>	<b>20,20</b>	<b>12,20</b>	<b>14,60</b>	<b>18,70</b>	<b>17,20</b>	<b>19,20</b>	<b>19,70</b>	<b>18,20</b>	<b>17,00</b>	<b>11,50</b>	<b>10,50</b>	<b>22,30</b>	<b>13,00</b>	<b>10,40</b>

