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# URGENT INTERIM OPINION ON THE DRAFT LAW OF THE REPUBLIC OF MOLDOVA ON THE CODE OF CONDUCT FOR PERSONS HOLDING PUBLIC OFFICE AND THE STAFF OF THEIR OFFICES IN MOLDOVA

## MOLDOVA

This Urgent Interim Opinion has benefited from contributions made by **Mr. Drago Kos**, Independent Expert, former Chairperson of the OECD Working Group on Bribery and former Chairperson of the Council of Europe's Group of States against Corruption (GRECO); **Mr. Martin Kreutner**, International Counsel, Dean Emeritus of the International Anti-Corruption Academy (IACA); **Ms. Nataša Novaković**, Anti-corruption Expert/EU GRECO Evaluator; and **Ms. Tamara Otiashvili**, Senior Legal Expert in Human Rights and Democratic Governance.

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



OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00
www.legislationline.org

# EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Republic of Moldova is undertaking comprehensive reforms to strengthen integrity, accountability and professionalism within the public sector. These initiatives aim to modernize public administration, embed ethical standards, and reinforce anti-corruption measures, in line with international and regional obligations and recommendations issued by international and regional monitoring bodies.

In this context, the proposed Draft Law on the Code of Conduct for Persons Holding Public Office and for the Staff of Their Offices (Draft Law) addresses a specific recommendation of the Council of Europe Group of States against Corruption (GRECO) to adopt a Code of Conduct for persons with top executive functions (PTEFs), which is a welcome development. At the same time, there are some structural and practical considerations that would merit further attention to enhance the clarity, coherence and effectiveness of the proposed integrity framework, and further align it with international and regional recommendations and good practices.

In general, codes of conduct are intended to serve as clear, accessible, and practical guides for PTEFs, focused on core ethical values, standards of professional behaviour, and a preventive - rather than regulatory - approach. As such, they contribute to fostering an institutional culture that supports compliance with anti-corruption, transparency, and other legal obligations, while avoiding the duplication of criminal, administrative, or disciplinary provisions.

The legal drafters chose to enact the Code of Conduct through the legislation, effectively elevating ethical and professional standards to legally binding norms. Since there are no universal standards or one-size-fits-all approach in this respect, states may choose to embed ethical rules in a binding legal framework. This may strengthen compliance and facilitate enforcement, particularly in light of the country's legal culture and institutional context. However, this approach results in making the Code more prescriptive and formalistic, rather than aspirational, promoting ethical and professional conduct.

The provisions of the Draft Law and of the Code should remain distinct from norms regulating criminal, administrative, or disciplinary processes, as these frameworks carry separate legal implications. It should primarily focus on autonomous standards of professional conduct, supported by appropriate internal enforcement and complaint mechanisms, without duplicating or creating parallel sanctioning regimes and, when necessary, cross-referencing other relevant laws.

The overall structure of the Draft Law could be streamlined to avoid repetitions and achieve a higher level of technical precision and clarity, while also refining the language and terminology to ensure greater consistency and legal certainty. Several provisions are formulated in broad and, at times, inconsistent terms, failing to provide sufficiently concrete guidance, for example with regard to the prevention of conflicts of interest, the management of public resources, or interactions with the public, while some other provisions are drafted in an excessively prescriptive manner.

In addition, specific concerns include the duplication of existing legal obligations – although not necessarily fully and with some inconsistencies with the existing legal framework, the introduction of new regulatory concepts not yet anchored in primary

legislation – such as lobbying, and an overlapping, fragmented institutional framework for ethics and integrity oversight.

To strengthen the integrity framework, the Draft Law should also be complemented by the adoption of and/or introducing amendments to special legislation regulating essential corruption prevention matters. For example, authorities should consider developing legislation regulating lobbying, introducing amendments to the legislation on conflicts of interest, etc. Regulating lobbying requires clear legal instruments – such as lobbyist registers, disclosure requirements, and cooling-off periods – alongside well-defined institutional responsibilities and effective enforcement mechanisms. These detailed elements should be regulated through a separate, dedicated law.

At the same time, codes of conduct may serve a complementary role by providing clear and accessible guidance on norms of professional behaviour and practical expectations with a preventive focus on the most common or highest-risk situations, and by supporting capacity development and awareness-raising, thereby reinforcing integrity and transparency measures, including with respect to lobbying.

In addition, the institutional framework envisaged in the Draft Law risks being fragmented, with potentially overlapping roles of Ethics Advisers, the Advisory Council for Ethics and Integrity, the National Integrity Authority and the National Ethics Commission, departing from good practice favouring a clearer distinction between preventive ethical guidance and statutory enforcement, and should therefore be reconsidered to ensure coherence and functional clarity. Specifically, the legal drafters should re-assess the necessity of maintaining two consultative authorities – Ethics Advisor and the Advisory Council for Ethics and Integrity – within the same ethical framework, or at minimum provide for clear referral and co-ordination arrangements, and mechanisms for resolving divergent guidance.

Finally, the Draft Law remains silent with respect to gender-related dimensions of the integrity and ethics framework, as well as other essential aspects of regulating the conduct of public officials, including, but not limited to, a clear commitment to equality and non-discrimination, the promotion of gender parity and diversity, the establishment of effective mechanisms to prevent and combat speech that incites hate, discrimination and/or violence, the use of sexist language, sexism and violence against women more generally.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further strengthen the Draft Law in accordance with the international standards and best practices:

A. To reconsider the approach to the Code so that it serves as a clear and accessible practical guide for PTEFs, centered on core ethical values and norms of professional conduct, introducing preventive measures and thus contributing to anticorruption and transparency obligations established in the relevant legislation; [para 22]

B. Regarding general provisions:

1. to emphasize in the Draft Law qualitative criteria that define categories of public officials falling within the scope of this Code Law, complemented by the specific list of PTEFs primarily for illustrative purposes, instead of providing the exhaustive list of officials; [para 33]

2. to explicitly include in the Draft Code the requirement to ensure equal treatment and non-discrimination, ensuring that public officials act impartially and respect the rights of all individuals without distinction based on any protected grounds; [para 37]
3. to explicitly provide for the highest standards of integrity, courtesy and mutual respect towards all individuals, including women, persons with disabilities, minorities, refugees and asylum-seekers, making it clear that sexist and other exclusionary language is intolerable; [para 38]

C. Regarding rules of professional conduct:

1. to explicitly refer in Article 17 to compliance with Law No. 133/2016 for all procedural and reporting requirements, including notification of the National Integrity Authority, and limit the Code's provisions to ethical expectations, early risk awareness and the duty to seek advice where potential conflicts arise; [para 43]
2. to amend Articles 21 (5) and (8) by replacing "good faith" with a "reasonable grounds"; [para 51]
3. to consider adopting dedicated lobbying legislation establishing specific regulatory instruments, such as lobbyist registers, disclosure requirements and cooling-off periods, while ensuring that codes of conduct remain principle-based instruments focused on integrity, conflicts of interest and professional behaviour; [paras 50, 59]
4. to clarify under Article 27 (3) that public statements should respect institutional integrity and coherence without restricting the right to communicate publicly on matters of genuine public interest; [para 65]

D. Regarding preventive and counselling mechanism:

1. to introduce a requirement of a mandatory self-training from the start of employment for all officials and supplement Article 33 of the Draft Code with mechanisms for ongoing monitoring and evaluation to ensure that training, counselling and coordination effectively prevent breaches in practice rather than functioning as purely formal compliance measures; [para 74]
2. to clarify in the Draft Law the respective roles of the Ethics Advisor and the Advisory Council for Ethics and Integrity, including criteria for referral and escalation, coordination arrangements, and mechanisms for resolving divergent guidance; [para 79]
3. to ensure that the Ethics Advisor's independence in the exercise of ethical counselling is not inadvertently compromised by concurrent obligations or reporting requirements associated with other ordinary functions, for example by explicitly delineating which functions are subject to administrative oversight and which remain fully independent; [para 82]
4. to envisage in the Draft Law provisions on independence of the Advisory Council for Ethics and Integrity by excluding active holders of executive power from membership or, at minimum, requiring the appointment of the majority of members from among independent experts or representatives of civil society with recognized experience in ethics, professional integrity and public administration; [para 85]
5. to further elaborate the modalities of selection and appointment of the members to ensure open and transparent selection process, based on clear and objective

criteria and merits-based assessment method, ideally involving multi-stakeholder selection panels; [para 85]

E. Regarding oversight and complaints:

1. to consider consolidating the mandates, authorities, tasks and powers currently assigned to Ethics Advisors, the Council and the Commission into a single independent body responsible for ethics and integrity oversight, in order to ensure clarity of mandate, avoid institutional overlap, and enhance public trust through a more objective, impartial and apolitical decision-making framework; [para 89]
2. to revise procedures for the National Ethics Commission's appointment, including a stronger representation of civil society or independent experts, in order to enhance public trust and comply with international standards; [para 91]
3. to further elaborate a clear internal complaint and monitoring mechanism for alleged breaches of professional ethical standards established by the Code, including detailed procedures for submitting complaints, defined timelines for their review, safeguards ensuring the right of the concerned official to present arguments, a transparent decision-making process, and a graduated system of sanctions ranging from minor measures, such as oral warnings, to more serious penalties. [para 99]

***These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.***

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

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# I. INTRODUCTION

1. On 19 February 2026, the Deputy Secretary General of the Government of the Republic of Moldova sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") an urgent request for a legal review of the Draft Law on the Code of Conduct for Persons Holding Public Office and for the Staff of Their Offices (hereinafter "Draft Law").
2. On 26 February 2026, ODIHR responded to this request, confirming the Office's readiness to prepare a legal analysis of the Draft Law assessing its compliance with international human rights standards and OSCE human dimension commitments.
3. Given the short timeline to prepare this legal review as the requestor asked for an urgent legal analysis, ODIHR decided to prepare an Urgent Interim Opinion on the Draft Law, which does not provide a detailed analysis of all the provisions of the Draft Law but primarily focuses on the most concerning issues in terms of compliance with international human rights and democratic governance standards.
4. A more comprehensive and detailed analysis may follow, that may revisit some of the preliminary findings and recommendations contained in the Urgent Interim Opinion and offer a final assessment of the compliance of the proposed measures with international human rights standards and OSCE human dimension commitments. The absence of comments on certain provisions of the Draft Law should not be interpreted as an endorsement of these provisions and the content of this Urgent Interim Opinion is without prejudice to any written analysis and recommendations that ODIHR may provide in the future.
5. This Urgent Interim Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

# II. SCOPE OF THE OPINION

6. The scope of this Urgent Interim Opinion covers only the Draft Law submitted for review. Thus limited, the Urgent Interim Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating public integrity and prevention of corruption in Moldova.
7. The Urgent Interim Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Urgent Interim Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing

1 See e.g., the *1999 OSCE Istanbul Document*, 19 November 1999, para. 33: "Participating States pledge to strengthen their efforts to combat corruption and the conditions that foster it, and to promote a positive framework for good government practices and public integrity". See also OSCE, *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, MC.DOC/2/12, Dublin, 2012, which underlines that "the development of and adherence to codes of conduct for public institutions are critical to reinforcing good governance, public-sector integrity and the rule of law, and to providing rigorous standards of ethics and conduct for public officials."

clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

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

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

# III. LEGAL ANALYSIS AND RECOMMENDATIONS

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

10. The importance of institutional and individual integrity of public officials has been increasingly recognized as critical to reinforcing good governance, public-sector integrity and the rule of law.[4]

11. Relevant legally binding documents at the UN level include in particular the United Nations (UN) Convention against Corruption (hereinafter "UNCAC")[5] concerning corruption of public officials, whether appointed or elected.[6] Particularly, Article 8 of the UNCAC provides that States Parties "*shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system*" (para. 1) and "*shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions*" (para. 2). The UN Office on Drugs and Crime (hereinafter "UNODC") Legislative Guide for the Implementation of UNCAC further elaborates the measures needed to implement Article 8 of the Convention in terms of mandatory requirements and other optional measures that states may consider, including in relation to the development of codes of conduct.[7] In addition, the principles related to the accountability and integrity of public officials, as reflected in UN General Assembly Resolution 51/59 "Action against Corruption", which contains a Model International Code of Conduct for Public Officials, provide authoritative non-binding guidance at the

2 See the *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Moldova acceded to the Convention on 1 July 1997.
3 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
4 See e.g., OSCE, *1999 Istanbul Document*, 19 November 1999, para. 33; and Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism, Dublin, 2012. See also e.g., the *International Code of Conduct for Public Officials* contained in the annex to General Assembly resolution 51/59 of 12 December 1996. See also GRECO, *Codes of conduct for public officials - GRECO findings & recommendations*, Strasbourg, 20 March 2019.
5 See *United Nations (UN) Convention Against Corruption*, adopted by the General Assembly of the United Nations on 31 October 2003. Moldova signed the UNCAC on XX.
6 See Article 2 (a) of the UNCAC which defines a "public official".
7 See UN Office on Drugs and Crime (UNODC), *Legislative Guide for the Implementation of the UN Convention against Corruption* (2nd revised edition, 2012), paras. 71-97.

international level and have informed the development of national codes of conduct.[8] In addition, Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR"),[9] particularly Articles 17 and 19, has to be respected as important guarantees of public officials' rights, especially their rights to respect for private and family life and freedom of expression.

12. Since Moldova is a Member State of the Council of Europe (hereinafter "CoE"), the European Convention on Human Rights and Fundamental Freedoms (hereinafter "ECHR"),[10] the developed case law of the European Court of Human Rights (hereinafter "ECtHR") and other CoE instruments are also of relevance, in particular the Criminal Law Convention against Corruption,[11] which requires States Parties to adopt effective measures to prevent and sanction corruption in the public sector (Articles 2-4). In addition, *CoE Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials* provides a framework for the development and implementation of codes of conduct for public officials in CoE member states,[12] offering detailed guidance on matters such as conflicts of interest, gifts, accountability, and enforcement mechanisms, and serving as a key reference point for national authorities.

13. Given the EU candidate status of the Republic of Moldova and the opening of 'Cluster 1: Fundamentals' of the EU accession negotiations, which focuses *inter alia* on the functioning of democratic institutions, rule-of-law and public administration reform, preventing and combating corruption and enhancing public integrity is among the key priorities.[13]

14. At the OSCE level, OSCE participating States committed to strengthen their efforts to *"promote good government practices and public integrity"* in a concerted effort to fight corruption.[14] In addition, in the 2012 Dublin Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism, they also expressly recognized that "*the development of and adherence to codes of conduct for public institutions are critical to reinforcing good governance, public-sector integrity and the rule of law, and to providing rigorous standards of ethics and conduct for public officials"*.[15]

15. The Urgent Interim Opinion will refer to other guidance documents of a non-binding nature that are also relevant in this context, as they contain a higher level of practical details and examples of good practices including, among others:

    - standards and good practices identified by the Organisation for Economic Co-operation and Development (OECD), including the OECD Handbook on Public Integrity (2020) and other OECD legal instruments and relevant country-specific integrity reform reviews;[16]

8 See UN, *General Assembly Resolution 51/59 on Action against Corruption*, New York, 12 December 1996.
9 See *the UN International Covenant on Civil and Political Rights*, adopted by the UN General Assembly by the Resolution 2200A (XXI) of 16 December 1966; Moldova acceded to the Covenant on XX.
10 See the *CoE's Convention for the Protection of Human Rights and Fundamental Freedoms*, signed on 4 November 1950, entered into force on 3 September 1953.
11 See CoE, *Criminal Law Convention on Corruption* (Strasbourg, 27 January 1999).
12 See the CoE *Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials*.
13 See European Commission, *Republic of Moldova 2025 Report - Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions*, SWD(2025) 758 final, 4 November 2025, pp. 32-34.
14 See the *1999 OSCE Istanbul Document*, 19 November 1999, para. 33.
15 See OSCE, *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, MC.DOC/2/12, Dublin, 2012.
16 See Organisation for Economic Co-operation and Development, *OECD Handbook on Public Integrity: A Strategy against Corruption* (2020); OECD, *Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service* (2025), OECD/LEGAL/0298

- the comprehensive guidance of the CoE Corruption Prevention Authorities Network;[17]
- the studies, reports and recommendations of the CoE Group of States against Corruption (GRECO), notably its 2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies and the 2019 study on codes of conduct for public officials;[18]
- the European Commission's Study on Strengthening the fight against corruption: assessing the EU legislative and policy framework (2022).[19]

## 2. BACKGROUND AND GENERAL CONSIDERATION

16. The Republic of Moldova is undertaking a broad package of reforms aimed at strengthening integrity, accountability and professionalism within the public sector, driven by both national strategic planning and international obligations. Central to these efforts are the Roadmap on Public Administration Reform 2025-2027 and the National Integrity and Anti-Corruption Programme (NIAP) 2024-2028, which together set out steps for modernizing the public administration, reinforcing anti-corruption measures and institutional integrity frameworks as well as increasing transparency and accountability of public authorities.[20]These measures are part of Moldova's response to international and regional evaluation and monitoring, particularly by GRECO[21] and the European Commission.[22]

17. In this context, the Draft Law's objective is to codify ethical principles and rules of conduct, integrity standards, and accountability mechanisms for high-level public officials and the staff of their offices (or persons with top executive functions, "PTEFs") by establishing a framework of professional conduct and ethics. By developing a Code, the Draft Law aims to address a specific recommendation of GRECO's Fifth Evaluation Round[23] and align Moldova's domestic regulatory framework with international recommendations and good practices.

18. The Draft Law should be read together with other pieces of legislation that are relevant to the subject matters it covers, especially those on public integrity, declaration of assets and public interest, conflicts of interest, incompatibilities, public procurement, access to

17 See Council of Europe (CoE), *Corruption Prevention Authorities Network, Comprehensive Guide on Developing and Implementing Codes of Conduct*, and *Guide of Public Ethics*.

18 See CoE Group of States against Corruption (GRECO), *2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies* (2025); and *Study on Codes of Conduct for Public Officials: Findings and Recommendations* (2019). See also GRECO, *Fifth Evaluation Round Report* on Moldova, 12 March 2024.

19 See European Commission, Directorate-General Migration and Home Affairs, Study on Strengthening the fight against corruption: assessing the EU legislative and policy framework (2022).

20 See the *press release* on the adoption of Roadmap on Public Administration Reform 2025-2027; and the *National Integrity and Anti-Corruption Programme* (NIAP) 2024-2028.

21 In the Fifth Evaluation Round, GRECO acknowledged progress in establishing institutional integrity structures, including the National Anti-Corruption Centre, the National Integrity Authority, and the Anti-Corruption Prosecutor's Office, and the introduction of laws on access to information and whistle-blower protections. See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024. However, GRECO emphasized that the absence of a comprehensive code of conduct for persons with top executive functions (PTEFs) and effective enforcement mechanisms remains a significant gap in the anti-corruption framework and recommended the adoption of such a code, coupled with credible and effective monitoring, enforcement, education and counselling mechanisms for such high-level officials, with appropriate sanctions (see also the *press release)*.

22 See European Commission, *Republic of Moldova 2025 Report - Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions*, SWD(2025) 758 final, 4 November 2025, pp. 32-34.

23 See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024, para. 49 where GRECO recommended that *"(i) code(s) of conduct for persons with top executive functions, covering all relevant integrity matters (conflicts of interest, incompatibilities, gifts, contacts with lobbyists and third parties, post-employment restrictions, asset declarations, the handling of confidential information and ancillary, be adopted and made public, together with practical guidance, and (ii) the code(s) of conduct be coupled with a credible and effective mechanism for supervision and enforcement, including appropriate sanctions.*"

information, personal data protection, etc.[24] It is also noted that a separate Law no. 25 of 22 February 2008 already introduced a Code of Conduct applicable to all civil servants.[25]

19. Overall, while the objective of the Draft Law to introduce a specific code of conduct for PTEFs is welcome, certain of its provisions are formulated in broad, and at times, inconsistent, terms and do not provide sufficiently concrete guidance, for example with regard to the prevention of conflicts of interest, the management of public resources, or interactions with the public. A general problem with the present Draft Law lies, *inter alia*, in the lack of uniformity in the wording, language, and terminology used. While some of this may be attributable to translation from the original language, much appears to be inherent in the original text itself. Such inconsistencies can give rise to legal uncertainty, particularly when applying the principle of *argumentum e contrario*, which may lead to selective application or unintended exclusion of certain requirements. **The overall structure of the Draft Law could be streamlined to avoid repetitions and achieve a higher level of technical precision and clarity in both content and structure, while also refining the language and terminology to ensure greater consistency and legal certainty**.

20. Overall, the Draft Law establishes detailed regulatory requirements that are more typical of primary legislation that risks creating an instrument that may appear both insufficiently practical as an ethical guide and overly prescriptive as a regulatory framework on certain aspects.

21. It should be acknowledged that there is no "right" way of setting or enforcing ethical rules and it is not possible to prescribe a single, one-size-fits-all solution for improving integrity standards, including for PTEFs.[26] A variety of approaches have been followed across the OSCE region,[27] also depending on the risks that are identified as the greatest as well as the challenges deemed the most severe in a given country context.[28] In this respect, GRECO has specifically emphasized the importance of going beyond the mere adoption of strategic documents and stressed that they need to be designed in such a way as to address the concrete risks that are present in the respective jurisdiction for the PTEFs.[29] Systems for regulating and enforcing standards should ultimately be home-grown and tailored to each country's individual institutional and legal system, as well as political and social culture.[30] At the same time, given the nature and purpose of ethical principles or norms, they are often conceived as soft-law instruments, designed to provide ethical guidance, clarify behavioural expectations, and support prevention and awareness-raising, while binding obligations, sanctions, and enforcement mechanisms are usually

24 Including the Law No. 199/2010 on the status of persons occupying positions of public dignity, the Law No. 80/2010 on the status of staff in the cabinet of persons holding positions of public dignity, the Law No. 271/2008 on the verification of holders of, and candidates for, public office requires holders of and candidates for positions of public dignity, the Law No. 82/2017 on integrity (which repealed Law No. 90/2008 on preventing and combating corruption), the Law No. 325/2013 on the assessment of institutional integrity, the Law No. 132/2016 on the National Integrity Authority, the Law No. 133/2016 on the declaration of assets and personal interests, the Law No. 148/2023 on access to information of public interest, the Law No. 165/2023 on whistleblowers, the Law No. 239/2008 on transparency in the decision-making process, the Law No. 192/2025 on the mechanism for judging corruption and corruption-related cases.

25 See <LP25/2008>.

26 Article 8 of the UNCAC underlines that codes or standards of conduct for the correct, honourable and proper performance of public functions should be developed in accordance with the fundamental principles of a country institutional and legal system. See also e.g., European Commission, Directorate-General Migration and Home Affairs, Study on Strengthening the fight against corruption: assessing the EU legislative and policy framework (2022). As a comparison, with respect to the development of code of ethics/conduct for parliamentarians, see e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 15 and 30.

27 For a comparison of integrity frameworks with the European Union, including with respect to code of ethics/conduct for PTEFs, see European Commission, Directorate-General Migration and Home Affairs, Study on Strengthening the fight against corruption: assessing the EU legislative and policy framework (2022). As a comparison, with respect to the development of code of ethics/conduct for parliamentarians, see e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* pp. 38-41.

28 As a comparison, with respect to the development of code of ethics/conduct for parliamentarians, see e.g., ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 95.

29 See CoE Group of States against Corruption (GRECO), *2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies* (2025), p. 20.

30 *Ibid.* ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 25.

set out in primary legislation.[31] At the same time, policy- and law-makers may also consider it necessary to incorporate such ethical rules and systems into legally binding instruments to enhance compliance and facilitate enforcement in light of the country culture and context, which is not uncommon and also a conceivable approach.[32] The legal framework could state the fundamental values of public service and minimum obligatory standards and principles of behaviour, and provide the framework for guidance, investigation, disciplinary action and prosecution,[33] further elaborated in other pieces of legislation.

22. By providing for the adoption of the code of conduct as a law, the authors of the Draft Law effectively elevate it to the status of a mandatory legal instrument, naturally including legally binding obligations, which at times results in a text that appears overly prescriptive and formalistic rather than aspirational and encouraging good conduct in the wider positive sense.[34] In this regard, **the draft Code should be conceived not merely as a normative instrument, but as a clear and accessible practical guide for PTEFs, centred on core ethical values, norms of professional conduct, and preventive orientation rather than detailed legal regulation, with appropriate cross-references to legally binding obligations and enforcement mechanisms established through primary legislation**. A Code thus may contribute to creating an institutional culture conducive to compliance with anti-corruption and transparency obligations established in relevant legislation, while avoiding a replication of criminal, administrative, or disciplinary provisions. Further, incorporating ethical provisions in primary legislation means that these rules may be more difficult to change. A code of conduct or ethics should generally be a living document that is periodically reviewed and can be updated as necessary to address new challenges.[35] In this regard, **consideration could be given to setting out in the Draft Law a clear and accessible guidance on norms of professional behaviour and practical expectations with a preventive focus on the most common or highest-risk situations, and by supporting capacity development and awareness-raising, thereby reinforcing integrity and transparency measures. Moreover, the Draft Law should establish the relevant institutional mechanisms for the provision of ethics advice, the receipt and examination of complaints, and the application of appropriate measures in response to breaches of ethical rules**. **The Code should be developed by a dedicated ethics body through a participatory process involving the subjects concerned.**

23. More generally, as an important element of good lawmaking, a consistent monitoring and evaluation system on the implementation of legislation should be put in place that would efficiently evaluate the operation and effectiveness of draft laws, once adopted.[36] In this respect, **Article 43 of the Draft Law may be supplemented by the requirement to evaluate its implementation in a reasonable time (for example, in 2-3 years) and/or based on practical application of provisions regulating ethical conduct.**

24. While enforceability is important, one of the key determinants of an effective code of conduct is its internalization and ownership by those to whom it applies. Such internalization is generally achieved when the code is developed by, or with substantial

31 See e.g., *OECD Handbook on Public Integrity: A Strategy against Corruption* (2020), p. 68.
32 See e.g., as a comparison, with respect to parliamentary ethics, ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 17.
33 See e.g., OECD, *Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service* (2025), OECD/LEGAL/0298, Principle 2.
34 See e.g., as a comparison, with respect to parliamentary ethics, ODIHR Study: *Parliamentary Integrity: A Resource for Reformers (2022),* p. 43; ODIHR, *Public Ethics and Integrity Toolkit: Guidelines for Parliaments* (December 2023), p. 18; CoE *Toolkit for Drafting Codes of Conduct for Members of Parliament* (2023), p. 8.
35 See the *Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials*, para. 28 (5).
36 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).

input from, its addressees. Codes of conduct that are imposed as binding legal provisions without meaningful participation tend to be followed primarily out of fear of sanctions, rather than through genuine commitment to ethical principles. By contrast, codes that reflect the shared values and practical experience of their addressees foster internal motivation to comply. It is, therefore, **recommended that such a participatory approach be followed throughout the development of the draft Code, while also reflecting such an element explicitly in the draft Code, contributing to sustainable and effective implementation**.

25. Finally, under Article 3 (3) of the Draft Law, the Code shall apply concurrently with special laws on asset declarations, institutional integrity, anti-corruption, access to information, transparency, and fiscal responsibility. However, the provision does not clearly define the legal relationship between the Code and other relevant laws mentioned under Article 3 (3) . If the intent is to establish a hierarchy or rule of precedence, this should be stated explicitly and grounded in recognized principles of legal interpretation, such as *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, or *lex posterior derogat legi priori*. **This can be remedied by clarifying within the provision whether the Code is intended to be complementary to, subordinate to, or prevailing over those special laws, and by explicitly indicating the applicable rule of interpretation in cases of conflict.** More generally, several provisions of the Draft Law appear to duplicate or substantively overlap with other pieces of legislation, although not being fully consistent with their provisions – particularly with respect to conflicts of interest, asset declarations and incompatibilities.[37] This results in parallel but incomplete regulatory layers, which risks creating legal uncertainty and weakening the existing integrity framework. The overall coherence of the legal framework is an aspect assessed by GRECO, which has generally recommended legislative amendments to address inconsistencies across separate laws and to ensure that dispersed norms were consolidated and made accessible to PTEFs in practical terms.[38] It is therefore recommended to ensure full harmonization of the provisions of this Code with other laws, excluding potential discrepancies. Where relevant, the Draft Law may reference existing statutory obligations, reinforcing awareness and ethical standards, rather than reproducing legal provisions already regulated elsewhere.

26. Article 3 (4) of the Draft Law obliges subjects of the Code to co-operate with public authorities and independent bodies but does not define the scope or procedures for such co-operation. Similarly, Article 3 (5) introduces a range of potential consequences for breaches: disciplinary misconduct, contraventions, or criminal offences. However, it is important to ensure that the procedure of identifying violations of the Code does not substitute criminal investigation, with fair trial guarantees provided. Furthermore, while committing criminal offences or misdemeanors may also imply a violation of professional ethics and conduct, the nature of the committed acts is different.

37 For instance, **Article 16 of the Draft Law** correctly refers to the obligation to declare assets and personal interests in accordance with Law No. 133/2016, although it partially establishes or duplicates responsibility for non-compliance whereas a stronger, binding legal obligation already exists, with the consequences of non-submission, misrepresentation or concealment of assets being already comprehensively regulated by Law No. 133/2016 and subject to specific sanctions; Article 17 of the Draft Law largely duplicates the statutory conflict-of-interest regime established under Law No. 133/2016, while at the same time omitting key legal elements, notably the obligation of senior officials to notify the National Integrity Authority and the registration of declarations; under **Article 18 of the Draft Law** on Incompatibilities, restrictions and limitations, paragraph (6) introduces a dual advisory mechanism, allowing officials to seek guidance either from the Advisory Council for Ethics and Integrity or from the National Integrity Authority, which risks fragmenting responsibility for incompatibility assessments whereas under Law No. 133/2016, the National Integrity Authority is already designated as the competent body for matters relating to conflicts of interest, incompatibilities and integrity oversight; **Article 21 of the Draft Law**, while broadly aligned with Moldova's whistleblower protection framework, as it recognizes the right to report wrongdoing in good faith, prohibits retaliation and refers to statutory protection measures, although it largely duplicates obligations already established under Law No. 165/2023 on whistleblowers; **Article 24 of the Draft Law**, paras. 1-3, duplicates statutory conflict-of-interest rules provided in Law No. 133/2016, while also re-stating contract nullity already regulated by Article 15 of the Law but without referencing the statutory procedure or the National Integrity Authority's exclusive competence.

38 See GRECO, *2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies* (2025), p. 18.

27. **Greater clarity and more detailed guidance are required to ensure the practical and consistent enforcement of ethical standards. In particular, it is necessary to clearly define what constitutes unethical conduct, identify the competent authority responsible for making such determinations, and specify the applicable procedures and consequences.**

28. Moreover, and as will be elaborated in greater details below (see Sub-section… *infra)*, the Draft Law currently provides that certain acts constituting a breach of integrity "*may result in disciplinary, administrative, or criminal liability in accordance with applicable law*". This formulation creates ambiguity and risks confusion in its application. Where a conduct qualifies as a criminal or administrative offence under applicable law, it should be addressed exclusively within the relevant legal framework.

29. **It is important that the Code of Conduct does not seek to replicate or mirror provisions of criminal, administrative, or disciplinary law. Instead, it should focus on establishing clear and autonomous standards of professional conduct, along with appropriate internal mechanisms for their enforcement.**

> **RECOMMENDATION A.**
>
> To reconsider the approach to the Code so that it serves as a clear and accessible practical guide for PTEFs, centred on core ethical values and norms of professional conduct, introducing preventive measures and thus contributing to anticorruption and transparency obligations established in the relevant legislation.

## 3. General Provisions

### 3.1. Objective and Scope of the Draft law

30. The objective of the Draft Law, as provided in Article 1, is "*to establish ethical principles and clear rules of professional conduct in order to ensure credibility during the exercise of public office and, respectively, during the employment relations of office staff*", further underlining the need for transparency, accountability, primacy of public interest, institutional integrity, and high-quality public services. These are commendable, and overall in line with good practice regarding the development of codes of conduct for public officials.[39] At the same time, limiting the objective to ensuring "credibility" would appear too narrow, not capturing the broader responsibilities of top executive office-holders, whose conduct may affect not only institutional reputation but also equality, democratic legitimacy, public trust, and the protection of fundamental rights more generally. International and regional recommendations increasingly approach public ethics and codes of conduct as a framework going beyond prevention of corruption and quality of public services, to also include substantive rights-based commitments for **equality, non-discrimination, inclusiveness, safeguarding public trust, institutional legitimacy, and respect for fundamental rights. The legal drafters should consider supplementing Article 1 of the Draft Code in this respect** (see also Sub-Sections 4 and 5 *infra*).[40]

39 See, the *OECD Handbook on Public Integrity: A Strategy against Corruption*, paras. 4.1 (d) and 13.1. See also CoE *Guide of Public Ethics*, page 16. See also UN, *General Assembly Resolution 51/59 on Action against Corruption*, New York, 12 December 1996; and the CoE *Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials*.

40 See e.g., European Commission against Racism and Intolerance (ECRI), *Policy Recommendation No. 15 on Combating Hate Speech* (2016), para. 6 (a), which encourages the adoption of appropriate codes of conduct including "*provisions for combating the use of hate speech, providing for suspension and other sanctions for breach of their provisions*"; CoE Recommendation CM/Rec(2019)1 on

31. Given the key roles of PTEFs when deciding on certain political/public appointments and acknowledging **the importance of diversity and fair representation in preventing corruption and strengthening democratic governance**,[41] **this aspect could also be emphasized more under Article 1 of the Draft Code.**

32. Article 3 establishes the scope of persons to whom the Draft Code applies, covering both high-ranking public office holders within the central public administration, including the President,[42] and the office staff of these officials, as defined under Law No. 80/2010, including Chiefs of Staff, Principal Advisors, Advisors, Assistants, and Secretaries. As such, the Draft Law seeks to address a specific recommendation of GRECO to adopt a Code of Conduct for PTEFs,[43] meaning those who have executive functions as they participate or have a decisive influence in public decision-making processes as well as those who provide direct advice and support to PTEFs, which is a welcome development. It is noted that other high-ranking positions within the central public administration, for instance Deputy Secretaries General of the Government as well as Ministries' Secretaries General and their Deputy Secretaries General, are appointed based on professionalism, in accordance with Law no. 158/2008 on the civil service and thereby have the status of civil servants, bound by the Code of Conduct applicable to all civil servants.[44] It is noted that integrity frameworks should reflect the constitutional structure of government, institutional competences and accountability mechanisms. In that respect codes of conduct for public office holders typically cover members of government and senior executive officials, while heads of state may be subject to a separate integrity framework, especially when the President is not hierarchically accountable to the Government and where oversight and/or advisory bodies would lack authority over the head of state. It is thus not uncommon for the President and staff of the presidential office to **be governed by a separate integrity framework/code of conduct aligned with constitutional arrangements**[45] **and it may be advisable for the legal drafters to consider such an option in Moldova.**

33. In addition, as stressed by GRECO, codes of conduct should be comprehensive and cover all categories identified as persons entrusted with executive functions, recognizing that the content of provisions may differ for various categories of subjects reflecting the different nature of their positions. At the same time, providing an exhaustive list of individual persons and authorities under the "Scope of Application" may not appear

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Preventing and Combating Sexism, para. II.E.1, which invites member states to *"[i]nclude provisions against sexism and sexist behaviour and language in internal codes of conduct and regulations, with appropriate sanctions"*; CEDAW Committee, General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems, 25 October 2024, para. 39 (d), which recommends introducing "*codes of conduct, with an intersectional perspective, in parliament, government, regional and local councils and political parties, public service and private sector companies to eliminate all forms of gender-based violence against women and hate speech, with independent complaint mechanisms and confidential counselling and provide corresponding training to all officials and staff*".

41 See e.g., CoE GRECO, 25th general activity report (2024), CM(2025)63, 4 April 2025, Section on Gender Diversity.

42 This includes all high-ranking public office holders within the central public administration, including the President, Prime Minister, Deputy Prime Ministers, Ministers, Secretaries General of key institutions, State Secretaries, Directors General, heads of subordinated administrative authorities, and the Governor of the Autonomous Territorial Unit of Gagauzia. Of note, although a possible issue of translation, the Draft Law uses the term "persons holding public office", which, unless read in conjunction with Article 3 of the Draft Law, may be confusing and should not be misinterpreted as meaning "public official" as broadly defined in Article 2 (a) of the UNCAC as: *"(i) any person holding a legislative, executive, administrative or judicial office [of a State Party], whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law [of the State Party and as applied in the pertinent area of law of that State Party]; (iii) any other person defined as a "public official" in the domestic law [of a State Party]"*.

43 See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024, para. 49. See also UN Open-ended Intergovernmental Working Group on the Prevention of Corruption, Good practices in the prevention of corruption and regulation models in the public sector, CAC/COSP/WG.4/2010/2, para. 58, which provides that *"[a]dditional and more stringent regulation models may be adopted for cabinet ministers or other senior political officials who occupy positions of power, influence and seniority not enjoyed by other public servants"*.

44 See <Law No. 25/2008 on the Code of Conduct for Civil Servants>.

45 See e.g., the Code of Ethics of the Presidency in France (2025 GRECO Report on France); see also GRECO, *2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies* (2025).

particularly effective. New equivalent authorities may emerge over time, while some existing ones might be inadvertently omitted. It is also important to ensure that temporary experts or consultants (non-tenured advisers), who may not necessarily be considered as being "staff", but nevertheless directly provide technical or specialized advice to PTEFs, and as a consequence decisively influence the development of policies or public decision-making processes, are included in the scope of the Draft Code.[46] **Accordingly, consideration could be given to emphasizing in the Draft Law qualitative criteria that define applicability, with specific persons or authorities cited only as illustrative examples where necessary.**

34. It is noted that the scope of the Draft Law is limited to the central public administration, with local public authorities/officials and other public sector entities entirely excluded. Although certain aspects may be covered by separate legislation, this limitation leaves a potential gap in coverage at the local level. Although international and regional standards do not impose a strict requirement to adopt a code of conduct for persons holding local public office or locally elected executive officials, good practice emphasizes that ethical standards and codes of conduct should be applied consistently across all levels of government to prevent integrity gaps and ensure uniformity in ethical conduct, and constitute an expected component of good local governance and accountability as well as corruption prevention.[47] Although going beyond the scope of this Urgent Interim Opinion, and unless already addressed in separate legislation or other documents, the legal drafters should discuss modalities for strengthening the ethical framework at the local/regional level, also in light of the scope of GRECO's Sixth Evaluation Round which focuses on preventing corruption and promoting integrity at the sub-national level.[48]

### 3.2. Definitions

35. Certain of the definitions under Article 2 of the Draft Law present some shortcomings and/or lack clarity and/or should be adjusted in order to align with international standards and recommendations, especially:

- the terms used to define "advocacy" and "lobbying" (Articles 2.2 and 2.3)[49] make it very difficult to distinguish between the two legal concepts whereas it is essential that legislation on "lobbying" clearly and unambiguously define what is lobbying and who is to be considered a lobbyist and a lobbying target,[50] although noting that

46 See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024, para. 49. See also UN Open-ended Intergovernmental Working Group on the Prevention of Corruption, Good practices in the prevention of corruption and regulation models in the public sector, CAC/COSP/WG.4/2010/2, para. 58, which provides that *"[a]dditional and more stringent regulation models may be adopted for cabinet ministers or other senior political officials who occupy positions of power, influence and seniority not enjoyed by other public servants"*.

49 Article 2.2 defines "advocacy" as "the legitimate activity of publicly promoting interests, positions or causes of natural or legal persons, including civil society organizations, carried out through communications or meetings with persons holding public office, for the purpose of influencing the decision-making process, under conditions of transparency and in compliance with the public interest", while Article 2.3 defines "lobbying" as "any activity carried out by representatives of private interests consisting of contacts, communications or meetings with a person holding public office, with the aim of directly or indirectly influencing the process of drafting, amending or adopting decisions, public policies or normative acts."

50 See CoE Committee of Ministers, Recommendation CM/Rec(2017)2 and explanatory memorandum, Legal Regulation Of Lobbying Activities In The Context Of Public Decision Making; OECD, Recommendation of the Council on Transparency and Integrity in Lobbying and Influence (2024), OECD/LEGAL/0379; ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, paras. 75 and 91: "*regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations, including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs. Individuals and associations have the right to express their opinions and petition public officials, bodies and institutions, whether individually or collectively, and to participate in public affairs by campaigning for political, legislative or constitutional change. While some civil society organizations may be involved in lobbying, not all contacts between civil society and politicians or political institutions, nor forms of advocacy by civil society organizations should be characterized as lobbying*". See also ODIHR, Urgent Opinion on the Law of the Slovak Republic Amending Act No. 213/1997 Coll. on Non-profit Organizations providing Public Benefit Services and Amending Other Acts (print 245, adopted on 16 April 2025), Annex on the definition of "lobbying".

the Republic of Moldova has not yet adopted a specific legislation regulating "lobbying";

- the definitions of "conflict of interest" and "appearance of a conflict of interest" (Articles 2.4-2.5) omit several elements, which should be reflected to more closely align with international standards and recommendations, in particular to explicitly cover conflicts arising from the interests of family members, close associates, or entities with whom the official has a relationship, as well as requiring the declarant to identify, disclose, and manage potential or actual conflicts (see also paras. 52 and 61 *infra*);[51]
- the definition of "personal interest" under Article 2.6 would benefit from explicitly referring to "current or past" activities, while a definition of "close persons" should be included, covering individuals with whom a public official has personal, family, professional, financial, or political relationships that may reasonably be considered capable of influencing, or appearing to influence, the impartial exercise of official duties – although political affiliation or membership as such should not be treated as an automatic conflict of interest.[52]

## 3. ETHICAL PRINCIPLES

36. The Draft Law lists nine ethical principles that should guide the exercise of public office.[53] Overall, these principles reflect the core elements also widely featuring in international recommendations and comparative practices, such as the primacy of the public interest, legality, integrity, accountability, transparency and responsible management of public resources.[54] Acknowledging that the definition of ethical principles and values falls primarily within the competence of the State and is closely shaped by the country's historical and political context, the Urgent Interim Opinion does not seek to review in detail Articles 5 to 14 of the Draft Law, which further elaborate these principles; nevertheless, the following considerations should be taken into account:

- the further elaborations of the ethical principles in Articles 5 to 14 are formulated in rather broad terms and do not really provide sufficiently concrete and practical guidance, at times also being rather repetitive and/or redundant;
- the framing of the principle of loyalty under Article 14 puts emphasis on loyalty toward public authorities, whereas the ultimate loyalty of public officials should be to "the public interest", as expressed through democratic institutions not to "public authorities" as such;[55]
- the principle of loyalty must not be interpreted as requiring silence or uncritical obedience and public officials retain the right to exercise lawful, good-faith criticism

51 See the *Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials*, Article 13).

52 Ibid

53 These include: (i) priority and protection of the public interest; (ii) legality; (iii) integrity and personal example; (iv) professionalism and responsibility for performance; (v) rational use of public resources; (vi) free consent and respect for autonomy; (vii) transparency and public information; (viii) individual responsibility; and (ix) loyalty

54 See OECD *Public Integrity Handbook*, 2020, Chapter 4 ("Standards of conduct and values"), which identifies public interest, integrity, transparency, accountability and professionalism as core values underpinning public-sector ethics frameworks. See also Council of Europe, *Revised Guide on Public Ethics*, CDDG(2019)9, which highlights legality, integrity, impartiality, transparency, responsibility and loyalty as foundational principles for public officials' conduct.

55 See e.g., UN, *General Assembly Resolution 51/59 on Action against Corruption*, Annex, para 1, which provides that "*a public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government*". See also ExpRec(2000)10 - *Explanatory Memorandum to Recommendation Rec(2000)10 on Codes of conduct for public officials*, which provides that general principals "*set out the public official's general obligations to act lawfully, obediently, ethically and loyally. He or she is expected to be honest, impartial, conscientious, fair and just, and to act politically neutral, only in the public interest and with courtesy to all with whom he or she has contact.*"

of policies or decisions that may undermine legality, integrity, or the public interest and any restrictions on expression derived from the duty of loyalty should be narrowly defined, proportionate, and necessary in a democratic society, in accordance with the three-pronged test for limiting rights;[56]

- the extension of the ethical framework to private life envisaged under Article 8 of the Draft Law (principle of integrity and personal example) may create challenges in defining its scope and monitoring compliance, and may risk unduly interfering with the right to respect for private and family life protected under Article 8 of the ECHR and Article 17 of the ICCPR, as well as the exercise of other rights and fundamental freedoms, unless more precise guidance is provided to clarify which private behaviours are directly relevant to the exercise of public office or capable of affecting the proper performance of official duties, public trust, or institutional integrity;[57]
- Given the heightened representative role of PTEFs, public communication that legitimizes sexism, hate speech or discriminatory hostility may directly affect institutional legitimacy and may therefore legitimately fall within the scope of ethical regulation.

37. Most importantly, as indicated above, it is essential to also include in the Draft Code substantive rights-based commitments. While some provisions of the Draft Law refer to equal treatment and/or non-discrimination (e.g., Articles 21, 26 and 30), it would be advisable **to explicitly include in the Draft Code the requirement to ensure equal treatment and non-discrimination, ensuring that public officials act impartially and respect the rights of all individuals without distinction based on any protected grounds**.[58] The CEDAW Committee General Recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems specifically recommends introducing codes of conduct, with an intersectional perspective, in government and public service, to eliminate all forms of gender-based violence against women and hate speech.[59]

38. The elaboration of the principle of equality in the Code could also go further in terms of strong commitment towards equitable, non-discriminatory and violence/harassment-free working environment and treatment of all individuals in the performance of public functions, as well as more generally.[60] In this regard, it would be useful **to clarify that**

56 See ODIHR *Comparative Note* on the Application of International Freedom of Expression Standards in Relation to Breaches of Codes of Conduct by State Officials (2025), paras. 22-23 and reference therein. As underscored by the UN Human Rights Committee in its 2011 General Comment No. 34 on freedom of expression, speech by politicians, public officials, and other public figures concerning the public interest merits robust safeguards, while restrictions must meet strict necessity and proportionality criteria (see UN Human Rights Committee, *General Comment No. 34* (Article 19: Freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 38). Where an employer fails to address an unlawful practice despite being made aware of it by an employee, the latter may no longer be required to show qualified loyalty, reserve and discretion (see ECtHR, *Heinisch v. Germany*, no. 28274/08, 21 July 2011, para. 73).

57 See e.g., CoE, *Recommendation No. R(2000)10 on Codes of Conduct for Public Officials* and the accompanying Model Code of Conduct for Public Officials, especially Article 15; see also OECD *Public Integrity Handbook*, 2020, p. 6. Handbook recognizes that expectations regarding private conduct should be limited to behaviour that may affect the proper performance of official duties. The level of protection that public figures and especially politicians are entitled to has been extensively considered in defamation cases by the ECtHR (see, for example, ECtHR, *Lingens v. Austria,* no. 9815/82, 8 July 1986), as well as in a narrower range of cases that directly concern the balance between the degree of privacy politicians as public figures are entitled to and the right of the wider public to freedom of expression (see e.g., ECtHR *Von Hannover v. Germany*, no. 59320/00, 24 September 2004; and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, 16 February 2005), which have generally found that such figures do have the right of protection for their private life but with some qualifications, including a reasonable expectation of privacy test that takes into account public function/power/profile as relevant criteria (see, for example, *Oberschlick v. Austria* (No. 1), no. 11662/85).

58 See UN, *General Assembly Resolution 51/59 on Action against Corruption*, Annex, para. I.3

59 See e.g., CEDAW Committee, General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems, 25 October 2024, para. 39 (d), which recommends introducing "*codes of conduct, with an intersectional perspective, in parliament, government, regional and local councils and political parties, public service and private sector companies to eliminate all forms of gender-based violence against women and hate speech, with independent complaint mechanisms and confidential counselling and provide corresponding training to all officials and staff*".

60 See e.g., parliamentary ethical framework as a comparison, Parliamentary Assembly of the Council of Europe (PACE), *Parliaments free of sexism and sexual harassment*, p. 5.

**those subject to the Draft Code are expected to treat all persons with equal consideration, and not knowingly permit discriminatory conduct by persons subject to their direction or control**.[61] It is also important **to address, either in the Code or in written commentary, the many forms that gender- and diversity-related integrity issues may take, including sextortion, sexual and other forms of harassment, sexual and other discrimination, gender bias, unequal gender representation, gender stereotyping or inappropriate sexual conduct**.[62] While violence against women, sexual or other forms of harassment or incitement to discrimination and hatred are prohibited by the legislation, a clear guidance to this effect in the Code would demonstrate a strong commitment to prevent and combat violence in politics and in public life more generally.[63] **Moreover, the Code could explicitly provide for the highest standards of integrity, courtesy and mutual respect towards all individuals, including women, persons with disabilities, minorities, refugees and asylum-seekers, making it clear that sexist and other exclusionary language is intolerable.**[64] **It is also advisable that it clearly identifies the behaviours and acts that are prohibited towards both the other public officials and staff as well as the sanctions and consequences for such breaches.** Moreover, good practices suggest establishing a dedicated procedure for addressing the aforementioned violations that should be victim-centred and trauma-informed, ensuring that proceedings are conducted with due sensitivity to the needs and experiences of affected individuals. Furthermore, the mechanism should be independent, or include strong elements of independence, in order to guarantee impartiality, effectiveness, and trust in its outcomes.

**RECOMMENDATION B.**

1. To emphasize in the Draft Law qualitative criteria that define categories of public officials falling within the scope of this Code Law, complemented by the specific list of PTEFs primarily for illustrative purposes, instead of providing the exhaustive list of officials.
2. To explicitly include in the Draft Code the requirement to ensure equal treatment and non-discrimination, ensuring that public officials act impartially and respect the rights of all individuals without distinction based on any protected grounds.
3. To explicitly provide for the highest standards of integrity, courtesy and mutual respect towards all individuals, including women, persons with disabilities, minorities, refugees and asylum-seekers, making it clear that sexist and other exclusionary language is intolerable.

61 See e.g., as a comparison, judicial ethical framework, *Bangalore Principles of Judicial Conduct*, adopted by the Judicial Group on Strengthening Judicial Integrity, 2002, value 5.3-5.4

62 See e.g., as a comparison, judicial ethical framework, *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 75.

63 See e.g., ODIHR, *Tool 1: Introduction to Violence against Women in Politics* (2022), p. 22. See also UN Women Report *"Safe Cities and Safe Public Spaces for Women and Girls"*. See also ODIHR, Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region (2016). See also e.g., *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 6.

64 See e.g., European Commission against Racism and Intolerance (ECRI), *Policy Recommendation No. 15 on Combating Hate Speech* (2016), para. 6 (a), which encourages the adoption of appropriate codes of conduct including provisions for combating the use of hate speech, providing for suspension and other sanctions for breach of their provisions; CoE Recommendation CM/Rec(2019)1 on Preventing and Combating Sexism, para. II.E.1, which invites member states to "[i]nclude provisions against sexism and sexist behaviour and language in internal codes of conduct and regulations, with appropriate sanctions".

## 4. RULES OF PROFESSIONAL CONDUCT

39. Article 15 provides a general framework of conduct that directly reflects the ethical principles, including respect for the separation and balance of powers within a constitutional democracy; transparency of administrative action and citizens' access to information of public interest; the exercise of mandates with professionalism, efficiency, fairness and diligence; the avoidance of conflicts of interest and undue advantages; dignified and appropriate behavior and language, including in public and online environments; the promotion of a positive image of the State through integrity and irreproachable conduct; the prohibition of using office, prerogatives or information for personal or group advantage; the responsible and careful management of public and State-administered resources; the exclusive use of public resources in the public interest; and the assumption of personal responsibility for any breach of the code.

40. Subsequent Articles address areas of ethical risk. In all these cases, the rules in question either complement or duplicate the existing legislative provisions to which each article already refers. Such duplication may create legal uncertainty. Codes of conduct are most effective when they are concise, clear, and practical, rather than serving as comprehensive restatements of existing legislation. Their purpose should not be to replicate criminal or administrative law, but to translate legal obligations and public-service values into concrete behavioural guidance that assists officials in navigating everyday situations.[65] Short, well-structured codes grounded in core values, such as integrity, impartiality, and service to the public interest, are generally more useful than lengthy documents, particularly when they include practical examples addressing issues such as conflicts of interest, gifts, or the misuse of information.[66] In addition, when drafting the Code, it is also useful to provide concrete guidance on how these values can be translated in public officials' daily activities.

41. Practical examples help specify the generally formulated values. This can also be achieved by supplementary documents, such as guidelines. **Consideration could be given to streamlining the code of conduct so that it complements, rather than duplicates, existing legal provisions and focuses on clear, practical guidance for public officials. Typically, these aspects should be further clarified through examples elaborated and detailed in separate written guidance or manual on practical implementation of the ethical rules. At the same time, the existing legal obligations can be cross-referenced where necessary to avoid potential duplication, overlaps and/or legal uncertainties.**

### 5.1. Conflicts of Interest, Incompatibilities, and Undue Advantages

42. Under Article 16, subjects of the Code must fully and accurately declare all income, property, financial assets, and liabilities of themselves, their spouse, and dependent minor children, as required by Law No. 133/2016. While Article 16 correctly refers to the obligation to declare assets and personal interests under Law No. 133/2016, some of its provisions duplicate and/or overlap with those of the Law No. 133/2016 governing non-compliance, including the consequences of non-submission, misrepresentation or concealment of assets, although not being fully consistent nor as comprehensive as the

65 As GRECO emphasizes, "*codes of conduct are not meant to replace existing legislation*" and should serve to complement, clarify, and guide officials in fulfilling their legal obligations (see GRECO, *Codes of Conducts for Public Officials*, Section 2). See also *OECD Public Integrity Handbook*.

66 For example, Canada links high-level public-service values to clearly defined expected behaviours; Croatia, Estonia and Slovenia, combine general principles with practical guidance and illustrative scenarios, or explicitly connect public-service values with enforceable standards of conduct.

provisions of that Law.[67] Instead of re-stating what is provided in other pieces of legislation, **the Draft Law could be refined to focus on reaffirming the obligation of public officials to submit asset declarations and act transparently, while clarifying that all sanctions and enforcement measures apply exclusively in accordance with relevant legislation. To ensure legal coherence, it is recommended to delete Article 16 (1) and amend/supplement Article 16 (2) by requiring that declarations of the subjects of the Code submitted in accordance with Law No. 133/2016 on income, assets, and personal interests shall be complete, accurate, and consistent with reality.**

43. Article 17 addresses conflicts of interest and the prohibition of favoritism, requiring all subjects of the Code to comply with procedures for declaring, managing, and sanctioning conflicts of interest in line with Law No. 133/2016. Among others, subjects must avoid any actual or potential conflicts that could compromise their objectivity, impartiality, or integrity.[68] Critically, the Code omits several statutory safeguards, including the duty of senior officials to notify the National Integrity Authority, the registration of conflict-of-interest declarations in the official public Register, and explicit procedural linkage to the integrity authority responsible for oversight. By only partially addressing the issues in the primary legislation, and omitting other aspects, Article 17 presents a weaker and incomplete framework, potentially creating confusion among officials regarding proper procedures, undermining the role of the National Integrity Authority, and incentivizing internal or *ad hoc* management of conflicts rather than independent oversight. **It is recommended that Article 17 be streamlined to explicitly refer to compliance with Law No. 133/2016 for all procedural and reporting requirements, including notification of the National Integrity Authority, and limit the Code's provisions to ethical expectations, early risk awareness and the duty to seek advice where potential conflicts arise. Alternatively, Article 17 could simply refer to Law No. 133/2016 and only elaborate the additional requirements applicable to the subjects of this Code.**

44. Article 18 obliges the subjects of the Code to perform their duties with impartiality, integrity, and independence, avoiding conflicts of interest or favoritism (Article 18 (2)); to refrain from holding other offices or activities that could compromise their objectivity or credibility (Article 18 (3)); to avoid accumulation of duties involving remunerated activities that influence decisions, membership in private management or supervisory bodies unless legally permitted, or any other activity contrary to the legal regime of incompatibilities (Article 18 (4)); to declare in writing any professional activity, contract, patrimonial interest, or legal relationship that could affect impartiality (Article 18 (5)); to seek guidance from the Advisory Council for Ethics and Integrity (hereinafter "Council") or the National Integrity Authority in case of uncertainty about incompatibilities before accepting new duties (Article 18 (6)); to avoid involving direct relatives or relatives by affinity in matters under their authority (Article 18 (7)); and to

67 For instance, Article 4 (1) and (2) of Law No. 133/2016 requires holders of public office to declare not only their own income, assets, and personal interests, but also those of their family members or cohabitants during the previous fiscal year. By contrast, Article 16 of the Draft Law limits this obligation to holders of public office, their spouses, and dependent minor children. The coexistence of divergent legal provisions governing the same subject matter creates legal uncertainty, which cannot be resolved through general interpretative principles such as *lex specialis derogat legi generali* or *lex posterior derogat legi priori*, as Law No. 133/2016 would constitute the *lex specialis*, while the Draft Law would represent the *lex posterior*. In addition, the language of Article 16 (2) of the Draft Law, which provides that any omission, false declaration, or misrepresentation constitutes a serious breach of the Code and entails disciplinary, contravention, administrative, or criminal liability, remains largely unimplementable as there are no effective mechanisms to enforce it in practice, except to the extent that sanctions are already provided under Law No. 133/2016.

68 They are obliged to refrain from participating in decisions that may benefit themselves, family members, or close associates, and must declare any conflicts in writing within three working days to the relevant authority, including the President, Speaker of Parliament, or Prime Minister, depending on their position. Measures include abstaining from affected duties or decision-making until the conflict is resolved (Article 17(3)). Specific notification rules are outlined for various hierarchical positions, ensuring supervisors are informed to request abstention if necessary (Article 17(4)). Any participation in administrative acts or decisions in the presence of a conflict is strictly prohibited (Article 17(5)). Candidates for public office must resolve conflicts before appointment, and office staff must adhere to these rules within their contractual duties, according to Law No. 80/2010 and internal regulations (Article 17(6) (7)).

refrain from intervening in personnel decisions affecting relatives, using office for undue benefit, or participating in decisions where a kinship or direct patrimonial interest exists, instead recusing themselves or delegating competence (Article 18 (8)). To some extent, the matters addressed in this Article are already covered by Article 17, resulting in unnecessary repetition, particularly with regard to provisions on conflicts of interest and the prohibition of favoritism.

45. Article 18(6) establishes a dual advisory mechanism, allowing officials to seek guidance either from the Council or from the National Integrity Authority. This "either/or" approach creates institutional ambiguity and risks diluting responsibility for assessing incompatibilities. Under Law No. 133/2016, the National Integrity Authority is already the designated body for conflicts of interest, incompatibilities, and integrity oversight. Introducing an additional advisory body with overlapping functions could create parallel channels of interpretation, produce inconsistent guidance, undermine the National Integrity Authority's credibility, and incentivize officials to engage in forum shopping to obtain more favorable opinions. In its current form, Article 18 (6) effectively creates an additional advisory channel in an area already regulated by law, blurring the line between ethical guidance and legal enforcement**. Article 18 (6) could be amended to remove referral to the Advisory Council for Ethics and Integrity, leaving formal assessments of incompatibilities solely with the National Integrity Authority under Law No. 133/2016.** The Council should instead serve a purely ethical and preventive role, supporting Ethics Advisors, providing guidance and training, promoting integrity culture and ethical leadership, and identifying systemic risks.

46. Under Article 19, the subjects of the Code are prohibited from soliciting, accepting, or offering any gifts, favors, or benefits that could compromise, or appear to compromise, their impartiality, integrity, or the reputation of the public authority or the State. This approach aligns well with international anti-corruption standards and good practice. The Law No. 82/2017 on integrity includes provisions specifically addressing the issue of gifts, along with Government decision no. 116/2020 on the legal status of gifts.[69]

47. Positively, Article 19.2 adopts a clear prohibition in principle against soliciting, accepting, or offering gifts or benefits that could compromise, or appear to compromise, impartiality and integrity. International recommendations underline the need for a "*consistent and robust framework on gifts*" that not only prevents corrupt relationships but also protects institutional reputation,[70] while making it clear that it is for each country to establish the criteria to differentiate between what is acceptable and the gifts which fall within the general prohibition rule.[71]

48. Article 20 establishes post-employment restrictions. In this respect GRECO has consistently stressed the importance of an independent ethics or oversight body empowered to assess post-employment situations and, where necessary, issue tailored opinions on how risks should be mitigated.[72] Article 20 does not provide for such an *ex ante* advisory or approval mechanism, nor does it clarify whether any authority evaluates the compatibility of post-employment activities with previous public duties. As a result, the prevention of conflicts of interest relies largely on self-assessment by former officials,

69 See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024, paras. 77-80. See Government decision no. 116/2020 on the legal status of gifts.
70 See Recommendation No. R(2000) 10, Article 18; See also GRECO, *Codes of Conducts for Public Officials*, Section 6.
71 See *Explanatory memorandum to Committee of Ministers' Recommendation No. R(2000)10*.

which falls short of GRECO's emphasis on structured oversight.[73] **Unless regulated separately, such mechanism could be added in this Draft Law.**[74]

49. With regard to transparency and notification obligations, GRECO links information requirements directly to monitoring and supervision and recommends that an effective supervision mechanism be established to implement the rules on post-employment restrictions in respect of persons with top executive functions.[75] Article 20 (4) refers to notification of the National Integrity Authority, but it does not specify the level of detail required, the assessment process, or how this information is used to prevent or manage conflicts. This may limit the practical value of the notification obligation as a preventive tool.

50. Finally, GRECO has highlighted the importance of explicit restrictions on lobbying activities by former public officials and has criticized systems that allow such restrictions to be waived. In its evaluations, GRECO has observed that narrowly framed disclosure and regulatory frameworks are insufficient to effectively identify lobbying interests and broader outside relationships that may give rise to conflicts of interest.[76] GRECO has pointed to good practice, where the concept of "interest" is interpreted in the widest possible sense and extends beyond formal lobbying activities or financial interests to include previous positions held (such as work as a lobbyist), arrangements or guarantees concerning post-term employment, and other circumstances that may reasonably be perceived by third parties as relevant.[77] Against this background, Article 20 contains no express prohibition on post-employment lobbying directed at public authorities and does not address the broader range of interests and arrangements that may facilitate undue influence after leaving office. **It is, thus recommended to regulate a "cooling-off" period during which former high public officials are prohibited from engaging in lobbying or advocacy activities directed at their former institution or related public authorities, preferably through a dedicated law**. **Related general guidance on this matter could also be incorporated into the Code itself.**

### 5.2. Institutional Integrity and Transparency in Reporting

51. International standards and recommendation recognize the importance of whistleblower protection laws as part of an effective anti-corruption framework.[78] Article 21 (4)-(8) emphasizes the promotion of integrity within public authorities and the responsibilities of leaders to model ethical behavior and provides detailed provisions on whistleblower protection, including confidentiality, non-retaliation, and co-operation with competent

74 See, for example, in France - Public/private mobility control: For a period of three years, any person who has held one of these positions (former ministers, presidents of local executives and members of an Independent Administrative Authorities (IAAs) and Independent Public Authorities (IPAs) must refer the matter to the High Authority so that it can examine whether the new private activities he or she intends to pursue are compatible with his or her former duties. This applies to liberal activities (e.g. the practice of the profession of lawyer) or remunerated private activities within a public or private company (salaried activity, creation of a company, etc.) as well as those carried out within a public establishment of an industrial and commercial nature or within a public interest grouping of an industrial and commercial nature.

75 See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024, para. 84.

76 See, for example, *Fourth Round Evaluation Report in respect of the Slovak Republic*, para. 46;

77 See *Fourth Evaluation Round*, Compliance Report for the Netherlands, para.6

78 Article 33 of the *UNCAC* states that *"[e]ach State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention"*. See also *Recommendation CM/Rec(2014)7 and explanatory memorandum* of the Committee of Ministers to member States on the protection of whistleblowers. Whistleblower protection requirements have been also introduced in the *2021 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions* and the *Council of Europe Civil and Criminal Law Conventions on Corruption* (1999). See also UNGA, *Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression*, 2015 A/70/361 para. 26, where the UN Special Rapporteur noted that state practice in this area is distinctly uneven with individuals being "*subjected to harassment, intimidation, investigation, prosecution and other forms of retaliation. States and organizations implement the protections only in part or fail to hold accountable those who retaliate against whistle-blowers*" also noting that, "*laws should favour disclosures of information in the public interest', not least because State actors 'have most of the power— the power to intimidate, to investigate, to prosecute*," in short, they have broad access where whistle-blowers and others have only a smaller window;

authorities, which largely reflect international standards and recommendations. However, while describing whistleblowers' reports, Articles 21 (5) and (8) refer to "good faith", a concept no longer used, neither in Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, nor in the 2021 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions; the term "good faith" has been replaced by "*reporting on reasonable grounds*".[79] **In line with this, it is recommended to amend Articles 21 (5) and (8) by replacing "good faith" with a "reasonable grounds".**

### 5.3. Management of Public Resources and Organizational Decisions

52. Articles 22, 23, 28, and 29 of the Draft Law regulate the management of public resources, public procurement, staff selection, and official travel. As for previous provisions, while referencing respective laws is important, the articles primarily restate legal obligations rather than translating them into practical, behavioral guidance, which may diminish the Code's effectiveness as a tool for day-to-day decision-making and may create legal uncertainty. In some cases, the provisions of the Draft Code are also not fully consistent with the existing legal framework.[80]

53. Another area of concern is the use of absolute or overly broad prohibitions (or lack of), particularly in Articles 22 (5) and 23 (3). Good practice provides that codes be proportionate and provide clarity on what constitutes improper conduct.[81] Article 22 (5) prohibits the use of public assets for personal purposes, including activities not expressly forbidden by law, while Article 23 (3) bars any direct or indirect favoring of persons or interest groups in procurement or funding. Article 22, while prohibiting the use of resources for personal purposes, does not extend this prohibition to political purposes. It does not explicitly forbid the use of administrative resources for campaign-related activities to support a candidate or political party, which in principle would amount to a misuse of admin resources.[82] **Consideration could be given to revising these prohibitions to clarify acceptable and unacceptable conduct.**

54. Under Article 23 (1), only individuals who hold managerial positions within public authorities are currently covered by this provision. It is unclear why compliance with public procurement procedures and the rules governing state budget funding should be limited to this group, rather than applying to all subjects of the Code. While not all individuals have decision-making authority in public procurement or budget allocation, they are still required to adhere to the relevant rules and procedures. **It is recommended to remove the phrase "who hold managerial positions within public authorities" to ensure the provision applies uniformly to all relevant personnel. On the other hand, Article 23 (3) could be expanded in order not to be limited to favouring of "persons, interest groups or affiliated economic entities" but also other organizations to cover all potential beneficiaries of favouring by the subjects of the Code**.

79 See e.g., Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, which underlines that to enjoy protection under the *Directive*, reporting persons should have reasonable grounds to believe, in light of the circumstances and the information available to them at the time of reporting, that the matters reported by them are true. The OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021) applies to whistleblowers, and their protection is triggered when they report suspected offences on reasonable grounds; see also *OECD Anti-Bribery Convention - Report on Belgium (2025)*.

80 For example, Article 23(2) sets out the principles governing public procurement and the allocation of funding in Moldova, including transparency, fair competition, the efficient use of public funds, and equal treatment of all participants. However, Article 6 of Law No. 131/2015 on public procurement, which is referenced in Article 23(1), contains a broader set of principles.

81 See CoE *Recommendation Rec(2000)10 on Codes of conduct for public officials*, Article 19.

82 See ODIHR-Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (2016).

55. Moreover, Articles 22 and 23 outline abstract principles such as efficiency, prudence, transparency, and fair competition, but do not offer clear practical guidance or concrete instructions to help officials apply these principles in everyday situations, although these could also be elaborated in separate guidance documents. As emphasized by the OECD, "*Codes of conduct and codes of ethics clearly present and illustrate the diverse legal and regulatory frameworks, and are a useful tool to guide behavior. […] Practical examples in the Code or in associated guidance help to specify the generally formulated values, as well as further elaborate with practical examples on how the public official can act when faced with certain circumstances.*"[83] Article 28 addresses staff selection, emphasizing integrity and professionalism, but largely mirrors existing civil service and administrative rules, without highlighting the ethical risks of impartiality, favoritism, or informal influence that a code of conduct is well suited to prevent.[84] Article 29 similarly calls for integrity in official travel without specifying acceptable practices or clarifying grey areas such as the mixed use of public resources or hospitality arrangements.[85] **The legal drafters should consider providing clearer behavioral guidance linked to each core value to make the Code more actionable and practical.**

56. Several provisions emphasise procedural transparency without clearly linking it to ethical conduct. Articles 22 (6), 23 (4), 28 (2), and 29 (2) focus on documentation and reporting in line with access to information laws, framing transparency mainly as a compliance obligation rather than a behavioural standard, missing the opportunity to guide officials toward proactive, principled decision-making.[86] While transparency is critical, this should go beyond mere access to information and encourage pro-active disclosure, while also seeking to ensure meaningful and inclusive involvement of the public through structured and effective dialogue, to trigger accountability, public trust, and ethical behaviour.[87]**.**

### 5.4. Relations with Third Parties

57. Article 24 establishes rules to prevent conflicts of interest and ensure transparency in relations with third parties. Among others, it prohibits subjects of the Code from entering into private contracts or commitments that conflict with their official duties or compromise impartiality and integrity, and requires advance declaration of any relationship likely to create a conflict of interest. The Article also obliges subjects to actively avoid conflicts in dealings with third parties, ensures transparency of advocacy and lobbying activities through recording or publication of relevant interactions, and requires public disclosure of significant meetings.

58. Article 24 (1) and (3) largely duplicate existing statutory conflict-of-interest rules already regulated by Law No. 133/2016, raising question of unnecessary repetition of the existing legal framework within the Code. At the same time, Article 24 (1) could be strengthened to reflect not only actual conflicts of interest but also situations that may undermine public trust through their appearance. While the provision correctly prohibits contracts, commitments or private legal relationships that conflict with official duties or affect impartiality, objectivity or integrity, it does not explicitly address perceived conflicts.

83 See *OECD Public Integrity Handbook*, page 67.
84 For example, the Australian Public Service Act 1999 outlines core values for the public service, which are then expanded into a concrete code of conduct within the same document. Similarly in Canada, the Values and Ethics Code for the Public Sector combine both codes by defining values, including integrity, and then including a chapter on "expected behaviors" for each value.
85 See GRECO, *2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies* (2025), p. 35.
86 See GRECO, *Codes of Conducts for Public Officials*, Section 6. See also, for example, Fourth Round Evaluation Report in respect of Turkey, para. 57, Cyprus para. 52, Armenia para. 43, Slovenia para. 44.
87 See GRECO, *2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies* (2025), pp. 27-29. See also *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), Principle 6 on Openness and Transparency of the Lawmaking Process.

**Consideration could be given to adding "or appear to conflict" to align the provision with widely accepted public ethics standards, as well as the definition provided in Article 2 of the Draft Code.**

59. Article 24 (4) and (5) introduces obligations related to transparency of advocacy and lobbying activities that have no basis in primary legislation Moldova has not yet adopted a specific legislation regulating "lobbying". Law No. 133/2016 contains no provisions on lobbying transparency, registers of meetings or disclosure of interactions with private interests. As such, the Draft Law effectively establishes new regulatory duties, creating *de facto* regulation of external influence although without definitions, sanctions, institutional oversight or a clear legal mandate. More fundamentally, incorporating lobbying-style provisions into a Code may blur the distinction between ethical guidance for public officials and regulation of external influence on public decision-making. International guidance recommends separate regulation of lobbying since lobbying requires specific legal instruments such as lobbyist registers, disclosure rules and cooling-off periods, while codes of conduct should remain principle-based tools focused on integrity, conflicts of interest and professional behaviour.[88] Although going beyond the scope of this Urgent Interim Opinion, it is essential to reiterate the need to adopt a dedicated legislation on lobbying covering these aspects[89] rather than regulating lobbying through a code of conduct.[90] At the same time, with a view to offer advice pending the adoption of dedicated legislation establishing the regulatory obligations, sanctions and enforcement mechanisms applicable to lobbying, this Urgent Interim Opinion highlights certain aspects, which should be addressed in order to promote the highest possible degree of transparency. This includes the requirement to proactively disclose interactions between PTEFs and any persons or entities seeking to influence public decision-making, such as lobbyists, as well as the adequate description of issues discussed. The relevant (lobbying) legislation should also provide corresponding sanctions and enforcement mechanisms, otherwise such provisions may have limited practical effectiveness.

60. Article 24 (4) requires that meetings and communications aimed at influencing the decision-making process be recorded *or* published in an internal register within 30 days. **In line with international good practice, lobbying-related regulations should require both recording and publication, by replacing "or" with "and", and the reference to the register being *internal* should be removed to ensure real and unrestricted public access to information on advocacy and lobbying activities.**

61. Article 24 (5) further reinforces this concern by imposing public disclosure obligations for so-called "significant" meetings, which is vague and may allow for inconsistent application and trigger legal uncertainty. **It is recommended to define the term or situating the requirement within a broader transparency framework.**

62. Article 25 requires officials to strictly follow laws on personal data protection, state secrets, and confidential information when performing their duties (Law No. 195/2024 on personal data protection and Law No. 245/2008 on state secrets). They must keep such

88 *Ibid.*

89 See CoE Committee of Ministers, Recommendation CM/Rec(2017)2 and explanatory memorandum, Legal Regulation Of Lobbying Activities In The Context Of Public Decision Making; OECD, Recommendation of the Council on Transparency and Integrity in Lobbying and Influence (2024), OECD/LEGAL/0379; ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, paras. 75 and 91: "*regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations, including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs. Individuals and associations have the right to express their opinions and petition public officials, bodies and institutions, whether individually or collectively, and to participate in public affairs by campaigning for political, legislative or constitutional change.100 While some civil society organizations may be involved in lobbying, not all contacts between civil society and politicians or political institutions, nor forms of advocacy by civil society organizations should be characterized as lobbying*". See also ODIHR, Urgent Opinion on the Law of the Slovak Republic Amending Act No. 213/1997 Coll. on Non-profit Organizations providing Public Benefit Services and Amending Other Acts (print 245, adopted on 16 April 2025), Annex on the definition of "lobbying".

90 See OECD *Recommendation on Principles for Transparency and Integrity in Lobbying* (2010).

data confidential, use it only in accordance with applicable legislation, and ensure that the rights of third parties and the integrity of public authority procedures are protected at all times. This is complemented by Article 27 (5), which requires that relations with the media be handled transparently and professionally, while strictly respecting the confidentiality of sensitive or classified information and avoiding any disclosure that could affect institutional functioning or security.

63. While both articles strongly emphasize confidentiality and compliance with data protection and state secrecy laws, they do not clearly define boundaries between legitimate confidentiality and the public interest in disclosure. Protecting personal data is often a legitimate reason for restricting access to information, but it can also serve as a shield to avoid transparency requirements. GRECO has urged Member States to strike a fair balance between protecting individuals' privacy and ensuring the right to information, and to limit the use of restrictions under the applicable laws governing access to official information.[91] The absence of explicit references to proportionality, whistleblower protection (although this is covered in Article 21), or public-interest disclosures may therefore allow officials to invoke confidentiality too broadly, potentially undermining transparency and integrity objectives.[92] Access to information or disclosure should not be limited in the absence of the public authorities showing of a real and identifiable risk of significant harm to a legitimate national security interest that outweighs the public interest in the information to be disclosed.[93] **Consideration could be given to including explicit references to proportionality, whistleblower protections, and public-interest exceptions[94] to ensure that confidentiality is not applied too broadly when upholding privacy obligations.**

### 5.5. Public Communications

64. In addition to privacy data, Article 27 also regulates conduct in international relations, digital communication, and public statements. It lists the principles the subjects of the Code must uphold, including to be accurate, objective, and free from disinformation or defamatory content. Public statements should also uphold institutional loyalty, impartiality, and responsibility, without harming government (Article 27 (3)). The use of digital platforms and social media must follow ethical standards, confidentiality, and public interest, reflecting the dignity and neutrality of the office (Article 27 (4)).

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91 See *Overview of GRECO's findings under the Fifth Evaluation Round (Access to Information)*. See also CoE, *Recommendation Rec (2002) 2* of the Committee of Ministers to member states on access to official documents.

92 In *Guja v. Moldova* (Application no. 14277/04), the ECtHR held that civil servants may be protected under Article 10 ECHR when disclosing confidential information if the disclosure concerns wrongdoing or matters of public interest. See also ECtHR, *Heinisch v. Germany*, no. 28274/08, 21 July 2011.

93 See, *Interim Joint Opinion on the Draft Law of the Kyrgyz Republic on the Mass Media (as of 13 May 2023)*, ODIHR-OSCE/ RFoM 26 July 2023, para. 79; see also *Guidelines on the Protection of Human Rights Defenders*, ODIHR, 2014, para. 144. In particular, legislation should indicate clearly the criteria, which should be used in determining whether or not information can be declared secret, and therefore classified, with potentially different level of classification, so as to prevent abuse of the label "secret" for purposes of preventing disclosure of information that is in the public interest; disclosure should not be limited in the absence of the public authorities showing of *a real and identifiable risk of significant harm to a legitimate national security interest* that outweighs the public interest in the information to be disclosed; clear and transparent procedures should be put in place to avoid over-classification of documents, unreasonably long time-frames before de-classification and undue limitations in accessing historical archives; the classification of documents as secret need to be revisited on a regular basis, as information that was initially considered highly confidential may no longer fall under this category some years later; exceptions to the principle of disclosure of public information should be determined by an independent body, preferably a court, and not by the body holding the information; see UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, 21 July 2011, para. 30; International Mandate-Holders on Freedom of Expression, *2004 Joint Declaration* (6 December 2004), Sub-Section on "Secrecy Legislation", para. 3; *Report on the Protection of Sources and Whistleblowers*, United Nations Special Rapporteur on Freedom of Opinion and Expression, A/70/361, 2017, para. 47; and the *Global Principles on National Security and the Right to Information* (The Tshwane Principles), developed and adopted on 12 June 2013 by a large assembly of experts from international organisations, civil society, academia and national security practitioners, Principle 3(b); any public personnel who believe that information has been improperly classified should be able to challenge such classification (Principle 14); Principle 37 also offers useful guidance with respect to the disclosure by public personnel of information, regardless of its classification, which shows serious wrongdoing that has occurred, is occurring, or is likely to occur, such as criminal offenses, human rights violations, international humanitarian law violations, corruption, dangers to the environment, among others.

94 See e.g., the *Global Principles on National Security and the Right to Information* (The Tshwane Principles), which offer useful guidance with respect to the disclosure by public personnel of information, regardless of its classification, and public interest exceptions.

65. Some wording in Article 27 could be refined in order not to unduly limit the right to freedom of expression, especially in relation to "loyalty". It is important that public officials do not make statements that could undermine the authority of the public bodies they work for or affect the respect for these public bodies. However, the primary responsibility of public office holders is to serve the public interest, not merely the government. It is therefore important to consider whether an issue involves a significant matter of public interest, such as those that "*affect the public to such an extent that it may legitimately take an interest in them, which attract its attention, or which concern it to a significant degree, especially insofar as they affect the well-being of citizens or the life of the community*",[95] which should prevail over loyalty. Exceptions to the duty to be loyal may arise when the government engages in illegal acts,[96] when government policies jeopardize life, health, or safety, or when the public official's criticism does not affect their ability to perform duties effectively or the public perception of their competence.[97] **To reflect this balance, the wording of Article 27 (3) could be modified to clarify that public statements should respect institutional integrity and coherence without restricting the right to communicate publicly on matters of genuine public interest.**

66. In order not to be misinterpreted, the terms "accurate" and "disinformation" may deserve further elaboration. In a 2021 Joint Declaration on politicians and public officials and freedom of expression by international mandate-holders, it was provided that states should adopt certain standards in relation to disinformation and false news, including to refrain from adopting general prohibitions on the dissemination of inaccurate information and instead ***"[a]dopt policies which provide for disciplinary measures to be imposed on public officials who, when acting or perceived to be acting in an official capacity, make, sponsor, encourage or further disseminate statements which they know or should reasonably know to be false"*** **and** ***"[e]nsure that public authorities make every effort to disseminate accurate and reliable information, including about their activities and matters of public interest."***[98] **Such parameters should be reflected under Article 27 of the Draft Code** (see also para. … *infra* regarding so-called "hate speech" by politicians and public officials).

67. In addition, Article 27 (6) of the Draft Code provides that public office holders must avoid commenting on ongoing judicial or administrative proceedings in order to avoid influencing them or undermining the authority of competent institutions. At times, it may be unavoidable to comment on ongoing judicial proceedings at least to acknowledge the existence of such proceedings in order to maintain transparency and openness although the primary obligation is to preserve the integrity of the institutions involved. **In order to reflect this in Article 27(6), the wording could be further strengthened to emphasize the obligation not to influence or create a perception of such influence, as well as avoid expression that would undermine credibility and impartiality of justice system, rather than referring to mere commenting. At the same time, the provision could also go further by emphasizing that PTEFs the subjects of the Code**

95 See ODIHR *Comparative Note* on the Application of International Freedom of Expression Standards in Relation to Breaches of Codes of Conduct by State Officials.

96 For instance in case of serious wrongdoing that has occurred, is occurring, or is likely to occur, such as criminal offenses, human rights violations, international humanitarian law violations, corruption, dangers to the environment, among others; see Principle 37 of the *Global Principles on National Security and the Right to Information* (The Tshwane Principles).

97 As indicated by the ECtHR, while civil servants owe their employer a duty of loyalty, reserve and discretion, that duty is not without limits, particularly since civil servants may become aware of or have knowledge of information in the course of their work, including secret information, which carries with it a strong public interest in its publication or divulgation. It was made clear that where an employer fails to address an unlawful practice despite being made aware of it by an employee, the latter may no longer be required to show qualified loyalty, reserve and discretion (see e.g., ECtHR, *Ahmed and Others v. the United Kingdom*, nos 65/1997/849/1056, 2 September 1998, para. 56).

98 See the *Joint Declaration on politicians and public officials and freedom of expression (2021)* by the United Nations (UN) Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights, (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2021, para. 7 (a) and (b).

**should not personally attack individual judges nor encourage disobedience to judicial decisions nor violence against judges, and more generally refrain from statements that undermine public confidence in the judiciary or delegitimize judicial institutions**,[99] while preserving legitimate public debate and criticism[100].

68. 71. As mentioned above, codes of conduct should also include substantive rights-based commitments (see Sub-Section 3.1 *supra*). **From this perspective, a number of additional provisions related to public communications should be added, including provisions for combating the use of speech that incites hate, discrimination and/or violence**[101] **and provisions against sexism and sexist behaviour and language.**[102]

69. While Article 27 (4) provides that the use of digital platforms and social media must follow ethical standards, confidentiality, and public interest, reflecting the dignity and neutrality of the office, more practical guidance aligning with the evolving international legal framework governing artificial intelligence could be provided.[103] As underlined in the ODIHR Guidelines on Democratic Lawmaking for Better Laws, "*Lawmakers should be transparent when AI systems are used in lawmaking, with clear explanations of the decision-making logic used by algorithms*".[104] In particular, **the Draft Code could further underline the importance of providing clear and accessible information to the public when using or providing AI-generated content in the exercise of public functions, as well as clear explanations of the decision-making logic used by**

99 See e.g., CoE *Recommendation CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities*, para. 18; and CoE, Consultative Council of European Judges (CCJE), *Opinion no. 18 (2015)*, para. 52, which states that "*Politicians should not use simplistic or demagogic arguments to make criticisms of the judiciary during political campaigns just for the sake of argument or in order to divert attention from their own shortcomings. Neither should individual judges be personally attacked. Politicians must never encourage disobedience to judicial decisions let alone violence against judges, […]. The executive and legislative powers are under a duty to provide all necessary and adequate protection where the functions of the courts are endangered by attacks or intimidations directed at members of the judiciary. Unbalanced critical commentary by politicians is irresponsible and causes a serious problem because public trust and confidence in the judiciary can thereby be unwittingly or deliberately undermined*".

100 At the same time, the provision could also go further by emphasizing that PTEFs should not personally attack individual judges nor encourage disobedience to judicial decisions nor violence against judges, and more generally refrain from statements that undermine public confidence in the judiciary or delegitimize judicial institutions, while preserving legitimate public debate and criticism. See e.g., CoE *Recommendation CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities*, para. 18; and CoE, Consultative Council of European Judges (CCJE), *Opinion no. 18 (2015)*, para. 52, which states that "*Politicians should not use simplistic or demagogic arguments to make criticisms of the judiciary during political campaigns just for the sake of argument or in order to divert attention from their own shortcomings. Neither should individual judges be personally attacked. Politicians must never encourage disobedience to judicial decisions let alone violence against judges, […]. The executive and legislative powers are under a duty to provide all necessary and adequate protection where the functions of the courts are endangered by attacks or intimidations directed at members of the judiciary. Unbalanced critical commentary by politicians is irresponsible and causes a serious problem because public trust and confidence in the judiciary can thereby be unwittingly or deliberately undermined*".

101 See e.g., European Commission against Racism and Intolerance (ECRI), *Policy Recommendation No. 15 on Combating Hate Speech* (2016), para. 6 (a), which encourages the adoption of appropriate codes of conduct including provisions for combating the use of hate speech, providing for suspension and other sanctions for breach of their provisions. See also CoE, *Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech*, Section 3, which outlines recommendations for public officials, elected bodies, and political parties and clearly states that serious forms of hate speech are not protected and fall outside of the protection of freedom of expression under international human rights law, while emphasizing the responsibility of public officials and political representatives to clearly and publicly condemn hate speech, and to refrain from engaging in or legitimizing such expression themselves. See also CEDAW Committee, General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems, 25 October 2024, para. 39 (d), which refers to hate speech. See also *Joint Declaration on politicians and public officials and freedom of expression (2021)* by the United Nations (UN) Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights, (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, para. 3 (i) which recommends the adoption of codes of conduct by political parties for their officials and candidates to elected office to address speech that promotes intolerance, discrimination or hatred, or constitutes disinformation which is designed to limit freedom of expression or other human rights.

102 See e.g., CoE Recommendation CM/Rec(2019)1 on Preventing and Combating Sexism, para. II.E.1, which invites member states to *"[i]nclude provisions against sexism and sexist behaviour and language in internal codes of conduct and regulations, with appropriate sanctions"*; CEDAW Committee, General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems, 25 October 2024, para. 39 (d), which recommends introducing "*codes of conduct, with an intersectional perspective, in parliament, government, regional and local councils and political parties, public service and private sector companies to eliminate all forms of gender-based violence against women and hate speech, with independent complaint mechanisms and confidential counselling and provide corresponding training to all officials and staff*".

103 See CoE, Framework Convention on Artificial Intelligence (CETS 225), adopted on 5 September 2024; EU, *Regulation 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence* and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

104 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 125.

**algorithms, ensuring human oversight of the use of AI and AI-generated content while ensuring identification, assessment, prevention and mitigation of risks posed by artificial intelligence systems, including on human rights**.

**RECOMMENDATION C.**

1. To explicitly refer in Article 17 to compliance with Law No. 133/2016 for all procedural and reporting requirements, including notification of the National Integrity Authority, and limit the Code's provisions to ethical expectations, early risk awareness and the duty to seek advice where potential conflicts arise. Law No. 133/2016 may also be amended to incorporate additional mandatory requirements.
2. To amend Articles 21 (5) and (8) by replacing "good faith" with a "reasonable grounds".
3. To consider adopting dedicated lobbying legislation establishing specific regulatory instruments, such as lobbyist registers, disclosure requirements and cooling-off periods, while ensuring that codes of conduct remain principle-based instruments focused on integrity, conflicts of interest and professional behaviour.
4. To clarify under Article 27 (3) that public statements should respect institutional integrity and coherence without restricting the right to communicate publicly on matters of genuine public interest.

## 5. PREVENTIVE AND COUNSELLING MECHANISMS

70. Article 31 establishes a preventive system to avoid breaches of the Code by combining three mechanisms: first, self-learning, training, and information activities on ethics and professional integrity, delivered by the National Integrity Authority; second, specialized ethical counselling provided by the Ethics Advisors to support public officials in addressing ethical issues; and third, the coordination and promotion of ethical standards by the Advisory Council for Ethics and Integrity.

71. The CoE Technical Guide to Corruption Prevention Instruments underscores that communicating ethical codes, raising awareness of their provisions, and providing targeted training on integrity and ethical decision-making are core elements of a credible prevention strategy, essential for cultivating an organizational culture where ethical issues are openly discussed and corruption risks can be anticipated and managed.[105] Similarly, GRECO's evaluations and studies on Codes of Conduct for Public Officials highlight that effective integrity frameworks extend beyond written rules to include training across all levels of public service to raise awareness of anti-corruption policies and strengthen officials' understanding of the standards expected of them.[106]

105 See *Technical guide to corruption prevention instruments*.
106 See *GRECO Findings and Recommendations - Codes of conduct for public officials* (2019); and *2025 Study on Key Principles, Trends and Challenges from GRECO's Fifth Evaluation Round – Top Executive Functions in Central Governments and Law Enforcement Agencies* (2025), pp. 24-25.

### 6.1. Self-Training and Training Obligations

72. Training and self-learning mechanisms would generally lose effectiveness when they are optional, *ad hoc*, or insufficiently tailored to real-life ethical dilemmas. Awareness-raising activities, confidential counselling, and practical guidance are important tools to strengthen integrity in decision-making and to help officials navigate ethical dilemmas in their daily functions, particularly when new codes of conduct are adopted.[107] Therefore, proper implementation requires that self-learning and training activities be systematic, periodic, and role-specific, rather than one-off or purely informational. Effective training should combine formal instruction with experiential learning, peer discussions, and realistic case studies, enabling officials to practice ethical reasoning and decision-making in simulated real-world scenarios.[108] In this respect, Article 32 is commendable, as it mandates both self-learning (Article 32 (2)) and organized training (Article 32 (3)), addressing earlier GRECO recommendations while laying the groundwork for a systematic, continuous integrity development program.[109]

73. Article 33 establishes clear obligations for public officials upon appointment and throughout the exercise of office. Officials must familiarize themselves with the Code within 15 days of appointment and confirm this through an electronically signed declaration submitted to the Advisory Council for Ethics and Integrity (Article 33(1)). Within 60 days, officials are required to become familiar with key integrity-related legal frameworks (Article 33(2)), and first-time appointees to high public office must attend a mandatory training course on the application of the Code organized by the National Integrity Authority, with non-compliance subject to disciplinary sanctions (Article 33(3)). Additionally, the National Integrity Authority must organize at least biennial training or information sessions for office holders and provide ongoing informational and methodological support regarding relevant legislation (Articles 33(4-5))[110]. OECD guidance emphasizes that continuous engagement, refresher courses, and role-specific learning are essential to maintain awareness and prevent ethical lapses. Moreover, training alone is insufficient without mechanisms to monitor participation, assess comprehension, and measure real-world impact.[111]

74. While Article 33 promotes early awareness, there remain risks of training being formalistic or insufficiently practical, especially for PTEFs. The 15- and 60-day deadlines encourage initial engagement but may be too long in situations requiring immediate ethical responsibility. Moreover, although a 60-day deadline is set for training organized by the Authority, Article 33 (4) provides that such training is conducted only once every two years. Consequently, first-time members of the target group may have to wait more than a year before attending these courses, potentially facing disciplinary consequences in the meantime. Alternatively, the National Integrity Authority would need to organize *ad hoc* training sessions for newly appointed officials. Self-learning should ideally begin from the very start of employment, with structured follow-up. The OECD underscores that monitoring participation, evaluating outcomes, providing mentoring, and integrating integrity principles into performance management systems enhance the practical effectiveness of training.[112] **To ensure effectiveness, self-training should be imposed from the start of the employment for everyone, as a part of an**

107 See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024, para. 50.
108 See *OECD Public Integrity Handbook*, Section 8.2, particularly pp. 125-126.
109 See *GRECO* recommended that (i) dedicated awareness-raising trainings or briefings of persons with top executive functions on integrity related matters be systematically provided, when taking up their positions and at regular intervals thereafter, and (ii) confidential counselling on integrity related issues be made available to and documented upon.
110 This is without prejudice to the requirement that any responsibilities assigned to the NIA under the Code should also be clearly reflected in the dedicated legislation governing the NIA's mandate, status, and functions, in order to ensure legal clarity and coherence.
111 See *OECD Public Integrity Handbook*, Section 10 for risk management and 8.2.2 for training.
112 *Ibid.*

**induction training. In addition, Article 33 should be supplemented with ongoing monitoring and evaluation to ensure that training, counselling, and coordination prevent breaches in practice, rather than serving merely as formal compliance exercises.**

### 6.2. Counseling Instruments

75. Access to specialized ethical counselling, and the promotion of ethical standards by a consultative integrity body aligns closely with international recommendations on preventive integrity mechanisms, which emphasize the need for confidential counselling on integrity related issues.[113] According to Article 34, "to prevent violations of ethical principles and professional conduct norms, a mechanism of confidential specialized counseling in professional ethics is established through extending the service duties of a public servant within the public authority where the Code subjects perform their activity (hereinafter Ethics Advisor)". However, in the Draft Law, **the roles of the Ethics Advisor and the Advisory Council for Ethics and Integrity** (established under Article 35 (3) of the Draft Law), **often overlap, raising questions about the necessity of maintaining two consultative authorities within the same ethical framework**. Both bodies share a common preventive objective: the Ethics Advisor, under Article 34, provides individualized counselling and methodological support to the subjects of the Code to prevent breaches of ethical principles, while the Council, under Articles 35–39, promotes uniform application of the Code, issues consultative opinions, and develops methodological instructions to foster a culture of integrity in the public service. In this sense, both bodies perform advisory and methodological functions, albeit at different levels of scope and formality.

76. While they are intended to complement each other, the Draft Law leaves certain ambiguities in terms of practical application. Specifically, the Draft Law does not clearly define when a public office holders should consult the Ethics Advisor versus the Council, how to coordinate guidance between the two bodies, or how to manage cases of potential conflict between recommendations. International monitoring bodies have consistently identified fragmentation of institutional ethics responsibilities as a structural weakness.[114] Hence, if both Ethics Advisors and Advisory Council are retained, clearer procedural rules and communication channels would enhance the efficiency of the advisory system, ensuring that the preventive and methodological functions of both the Ethics Advisor and the Council operate in a complementary rather than overlapping or conflicting manner.

77. More specifically, the Ethics Advisor operates within a single public authority and addresses routine or case-specific ethical questions for individual public office holders (Article 34 (3)(a)-(d)), maintaining confidentiality and independence in all recommendations (Article 34 (8), (10)). By contrast, the Council has a broader remit: it deliberates collectively, provides consultative opinions on compliance for persons holding public office of dignity (Article 36), issues methodological instructions (Article 37), participates in system-wide training activities (Article 35 (7)(e)), and publishes evaluation reports on the application of the Code (Article 39). Notably, Article 38 (2) allows the Council to provide confidential counselling in situations "*that could not be clarified through the Ethics Advisor*", acknowledging a potential functional overlap in practice.

113 See GRECO, *Fifth Evaluation Round Report on Moldova*, 12 March 2024, para. 50; and See *OECD Public Integrity Handbook*, Section 8.2.3.

114 See *OECD Public Integrity Handbook*, Section 12.1. See also *OECD Recommendation on Public Integrity* (2017), OECD/LEGAL/0435, Section II.2.

78. Both the Ethics Advisor and the Council are expressly prohibited from investigating complaints or imposing disciplinary sanctions (Article 34 (5), Article 35 (10)). Nevertheless, the Council's opinions and methodological instructions, while consultative in nature, may carry greater perceived authority due to their formal adoption process (Articles 36 and 37), potentially creating tension with the individualized recommendations of the Ethics Advisor. This is compounded by overlapping roles in training and methodological guidance, which may result in duplication, unless clear internal rules are established to ensure coordination as well as delineate responsibilities and referral protocols. The Council should not issue opinions on individual cases, assess compliance or non-compliance, examine complaints or publish individual case-related opinions. Ethical counselling should remain with the Ethics Advisors, while all investigations, breach determinations and referrals should remain exclusively within the competence of the National Integrity Authority and other statutory bodies.

79. **In light of the foregoing, the legal drafters should re-assess the necessity of maintaining two consultative authorities within the same ethical framework. If nevertheless retained, it is recommended to clarify in the Draft Law the respective roles of the Ethics Advisor and the Advisory Council, including criteria for referral and escalation, coordination arrangements, and mechanisms for resolving divergent guidance.** For example, this can be achieved by removing the Council's mandate to issue advisory compliance opinions, consolidating ethical guidance within the Ethics Advisor function, and reserving all formal integrity determinations to the National Ethics Commission, thereby ensuring a clear separation between prevention and enforcement and avoiding parallel advisory structures. In the absence of such clarification, the coexistence of both bodies risks being counterproductive.

### *6.2.1. Provisions Governing Ethics Advisors*

80. Article 34 (3) among others, outlines the main duties of the Ethics Advisor: providing individual counselling, issuing non-binding recommendations, identifying integrity risks, participating in training, co-operating with relevant authorities for preventive purposes, and keeping records of requests while ensuring confidentiality. This structure largely aligns with OECD recommendations for advisory functions; however, the OECD also emphasizes that record-keeping should balance accountability with confidentiality.[115] As a consequence, records should ideally be anonymized or aggregated to protect individuals seeking advice. Without such safeguards, officials may hesitate to consult the Advisor, reducing the function's preventive impact. **Such clarification could be added in Article 34 (3) of the Draft Code.**

81. Under Article 34 (6), the Ethics Advisor is appointed and reappointed by the head of the public authority for a three-year term, with one possible extension. Article 34 (7) further provides the eligibility criteria for candidates to such positions, including "impeccable reputation".[116] While these criteria aim to ensure that the Ethics Advisor possesses sufficient experience, integrity, and independence, certain elements, particularly the requirement of an "impeccable reputation", may be inherently subjective (the same comment applies with respect to Article 35 (3) regarding the Council members). Without clear procedural safeguards, such criteria may be misapplied, undermining transparency and the perceived fairness of the selection process. International recommendations advise to foster a professional, merit-based public service that upholds good governance and public service values, including by implementing transparent and objective human

115 See OECD Public Integrity Handbook, Section 9.3.5.

116 i.e., the following cumulative conditions: (a) have at least three years of professional experience in the public service; (b) enjoy an impeccable reputation and have no disciplinary record; and (c) not be in a situation of incompatibility or conflict of interest, in accordance with the legislation.

resource practices to prevent favoritism, nepotism, and undue political influence, and establishing formalized recruitment, selection, promotion, and appraisal systems that reinforce accountability and a culture of ethical public service.[117] In addition, there are no further details on the criteria for selection and appointment or for their dismissal, which may undermine both the transparency of the process and the independence, legitimacy and credibility of the function.[118] **Article 34 (6) could be amended to specify the requirement to select and appoint Advisors based on transparent criteria and documented procedure, in line with international standards on integrity and independence. To enhance objectivity, it is recommended that evaluators rely on verifiable evidence, such as documented disciplinary records, performance evaluations, and professional references, and complement subjective assessments with clear, transparent, and standardized procedures that align with international integrity recommendations. Considerations linked to achieving gender balance in the pool of Ethics Advisers should also be added, though not to the detriment of merit.[119] In addition, the Draft Law should be supplemented by elaborating clearly and strictly circumscribed, reasonable and proportional grounds for dismissal.**

82. Under Articles 34 (9) and (10) provide that the Ethics Advisor is administratively subordinated to the head of the public authority only with regard to service relations, and in performing their duties, the Advisor is not subordinated to any authority or person and cannot receive instructions on the content of specific recommendations. While this formulation clearly aims to safeguard the Advisor's independence, reinforced by the explicit prohibition of interference in Article 34 (11) and exemption from disciplinary liability in Article 34 (12), it may create some practical ambiguity. Administrative subordination for service-related matters coexists with potential subordination to other structures in respect of the Advisor's ordinary duties, which could lead to confusion regarding lines of accountability and independence in practice. **More clarity could be provided to ensure that the Ethics Advisor's independence in the exercise of ethical counselling is not inadvertently compromised by concurrent obligations or reporting requirements associated with other ordinary functions, for example by explicitly delineating which functions are subject to administrative oversight and which remain fully independent.**

### *6.2.2. Provisions Governing the Advisory Council for Ethics and Integrity provisions*

83. Under Article 35 (3), the Advisory Council is composed of five permanent members and two alternates drawn from central public authorities and civil society, selected on the basis of competence, experience, professional qualities, and integrity. Members who are not public office holders may not belong to political parties. All members are appointed by the government for a four-year term, with civil society representatives selected through a public competition. The Council operates through deliberative meetings, with decisions adopted by majority vote in quorate sessions (Article 35 (5)).

84. While the inclusion of civil society representatives and the use of a public competition are positive elements, the fact that all members are ultimately appointed by the government concentrates appointment power in the executive. This may raise concerns regarding perceived or actual independence, particularly in the absence of additional checks such as parliamentary involvement, multi-stakeholder selection panels. Usually,

117 See e.g., *OECD Public Integrity Handbook*, Section 7.1

118 International recommendations emphasize that appointments to key ethics and integrity positions must be transparent, merit-based, and protected from undue influence to safeguard independence and public trust (see e.g., *UNCAC*, Article 7(1)(a); *OECD Public Integrity Handbook*, Section 7, which recommends implementing safeguards to prevent perceived dependence, such as clear, documented selection criteria, formalized appointment procedures, and protection against arbitrary dismissal).

119 See CEDAW Committee, *General recommendation No. 40 on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 47 (a).

the consultative tasks are assigned to independent bodies, with conflict-of-interest management functions as part of the corruption prevention mechanism, especially in countries where specific anti-corruption and conflict of interest laws have been adopted.[120] While in the current case, the body is only consultative, institutions in charge of prevention of corruption-related cases should enjoy independence and autonomy appropriate to their functions, be free from improper influence and have the effective means for preserving the confidentiality of the case before a decision is taken.[121] In addition, there are no provisions regarding the grounds for dismissal of Council members, which creates a gap that may affect the integrity of the institution.

85. In light of the foregoing, **it is recommended to enhance the guarantees of independence of the Advisory Council by explicitly excluding active holders of executive power, or at minimum, to require the appointment of the majority of members from among independent experts or representatives of civil society with recognized experience in ethics, professional integrity, and public administration. The modalities of selection and appointment of the members should result from an open and transparent selection process, based on clear and objective criteria and merits-based assessment method, ideally involving multi-stakeholder selection panels. In addition, the Draft Law should be supplemented by elaborating clearly and strictly circumscribed, reasonable and proportional grounds for dismissal of Council**

86. Article 35 (8) provides that the Council shall submit its annual activity report by 31 March of the year following the reporting year. However, the provision does not specify the addressee of the report. **For clarity, transparency, and accountability, it would be useful to specify explicitly to whom the Council should report and to reflect this clarification directly in the first sentence of paragraph (8).**

87. Article 38 (2) provides that subjects of the Code may request confidential consultation from a member of the Council in specific situations concerning the application of the Code, including in the management of sensitive or ethically delicate situations that could not be clarified through the Ethics Advisor. This arrangement may raise several concerns. First, allowing the subjects of the Code to approach an individual member of the Council directly may create potential conflicts of interest and undermine the institutional integrity of the Council. Second, it may weaken the role and authority of the Ethics Advisor, whose function is precisely to provide guidance and clarification on ethical matters. Furthermore, it should not be possible for subjects of the Code to freely choose the member of the Council with whom they wish to consult, as such discretion could expose the Council to criticism regarding impartiality and equal treatment. **In order to avoid these risks, it is recommended to revise this provision.**

**RECOMMENDATION D.**

1. To introduce a requirement of a mandatory self-training from the start of employment for all officials and supplement Article 33 of the Draft Code with mechanisms for ongoing monitoring and evaluation to ensure that training, counselling and coordination effectively prevent breaches in practice rather than functioning as purely formal compliance measures.

120 See e.g., UNODC, *Conference of State Parties to the United Nations Convention against Corruption, Preventing and Managing Conflict of Interest*, para. 59. See also *ODIHR Opinion on Draft Provisions on Conflict of Interest in Italy*, paras. 17-21.

121 See Principle 3 (Twenty Guiding Principles in the Fight Against Corruption). See also *ODIHR Urgent Opinion on the Draft Amendments to the Integrity and Prevention of Corruption Act of the Republic of Slovenia*, para.23.

2. To clarify in the Draft Law the respective roles of the Ethics Advisor and the Advisory Council for Ethics and Integrity, including criteria for referral and escalation, coordination arrangements, and mechanisms for resolving divergent guidance.
3. To ensure that the Ethics Advisor's independence in the exercise of ethical counselling is not inadvertently compromised by concurrent obligations or reporting requirements associated with other ordinary functions, for example by explicitly delineating which functions are subject to administrative oversight and which remain fully independent.
4. To envisage in the Draft Law provisions on independence of the Advisory Council for Ethics and Integrity by excluding active holders of executive power from membership or, at minimum, requiring the appointment of the majority of members from among independent experts or representatives of civil society with recognized experience in ethics, professional integrity and public administration;
5. To further elaborate the modalities of selection and appointment of the members to ensure open and transparent selection process, based on clear and objective criteria and merits-based assessment method, ideally involving multi-stakeholder selection panels.

## 6. Oversight and Complaints for Alleged Violations of the Code of Conduct

### 7.1. The National Ethics Commission and Complaints Mechanism

88. The Draft Law creates the National Ethics Commission (hereinafter "Commission") – a collegial body for evaluation, monitoring, and ascertaining compliance with ethical principles and professional conduct norms, administratively subordinated to the Government, exercising its powers with functional and decisional autonomy (Article 40 (1)). The Commission monitors the application of the provisions of this Code by persons subject to it and issues findings and recommendations regarding the alignment of their behaviour and actions with ethical principles and professional conduct norms, under the conditions established by this Code (Article 40 (2)). The Commission is responsible for examining complaints concerning alleged violations of ethical principles and professional conduct standards, determining whether ethical breaches have occurred, and preparing reasoned reports with findings and recommendations (Article 40 (8)). It may refer cases to the competent authorities when elements of a disciplinary breach, administrative offense, or crime are identified and approves internal procedures for handling complaints, while also performing other duties provided by the Code. According to Article 40 (9), the Commission does not impose disciplinary sanctions or issue binding decisions.

89. At the same time, even if the Commission's competence is primarily focused on the handling of complaints for alleged violations of the Code of Conduct, there may be potential confusion that may arise from the existence of multiple bodies addressing issues of ethics and integrity, which may also potentially lead to inconsistent interpretation and application of the ethical framework. In particular and as noted above, many of the provisions of the Code duplicates the existing legal framework, which means that in practice, the proposed Commission may duplicate functions already vested in the

National Integrity Authority, and disciplinary and other statutory bodies in charge of overseeing possible violations of the existing legal framework. This creates overlapping mandates and risks institutional fragmentation, and inconsistent application. In order to avoid "over-institutionalization" efforts in the area of ethics and integrity, the legal drafters could **consider merging the mandates, authorities, tasks, and powers of the different bodies, while still retaining an effective, independent complaint mechanisms that would be addressing issues falling within the scope of the Code of Conduct which are not of the competence of the National Integrity Authority or other disciplinary or statutory bodies. To ensure the effectiveness of the body, its mandate should be supported not only by clearly defined tasks but also by adequate human and financial resources to enable full implementation of its responsibilities.**

90. Under Article 40 (4), the Commission consists of five full members, including a Chairperson and a Secretary, all appointed by the Prime Minister of the Republic of Moldova. Its membership includes a representative from the Ministry of Justice, two representatives from the National Integrity Authority, a representative of the Prime Minister's Control Corps, and one civil society expert in integrity, ethics, and anti-corruption. Members serve four-year terms, renewable once, and, except for the civil society representative, each member has an alternate who can act in their place if needed Article 40 (5)-(6)). The procedure for the selection and appointment of Commission members appears unclear. Article 40 (3) provides for the Prime Minister's (unilateral) appointment of all Commission members, whereas Article 41 (2) allows for a "pre-appointment" by the respective institution. This raises the question of whether the latter constitutes merely a "nomination" or a substantive appointment, which is subsequently formalized by the prime minister. In this context, it is unclear whether the Prime Minister can insist on alternative candidates being pre-appointed or nominated. A related concern arises regarding civil society members selected through a public competition organized by the Ministry of Justice in accordance with Article 41 (3). This implies that the **Prime Minister may have the power to reject such a candidate and refuse to effectuate the appointment. Clarifying this issue is particularly important, as, without such clarity, the Prime Minister could, in extremis, effectively paralyze the Commission by refusing to formally appoint the candidates proposed by nominating authorities.**

91. **Similarly to previous mechanisms, while this structure brings together relevant governmental and technical expertise, the predominance of government-appointed officials may compromise the Commission's independence and impartiality or perception thereof. Ethics and integrity oversight bodies are generally more credible and trusted when they operate independently of the executive branch**.[122] A composition heavily weighted toward government representatives may not ensure unbiased decision-making, highlighting the need for greater autonomy and a stronger role for independent or civil society members to safeguard transparency and public confidence. **It is recommended that the Commission's composition and selection/appointment procedures be revised to ensure greater independence and impartiality, including a stronger representation of civil society or independent experts, in order to enhance public trust and comply with international standards. Considerations linked to achieving gender balance in the composition of the Commission should also be added, though not to the detriment of merit.**[123]

122 Article 6 of the *UNCAC* provides that "*Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided*."

123 See CEDAW Committee, *General recommendation No. 40 on equal and inclusive representation of women in decision-making systems*, 23 October 2024, para. 47 (a).

92. Article 40 (8) (e) provides that the Commission approve internal regulations regarding the procedure for examining complaints. At the same time, it is important that the provisions related to the procedure, enforcement and sanctions for non-compliance with the Code already be elaborated in the Code of Conduct to ensure transparency and effectiveness of the ethical framework (see also Sub-Section 7.2. *infra*). Insufficient or poorly designed enforcement mechanisms and a lack of due process guarantees may render the ethical framework ineffective.

93. There are usually three essential elements to this process: an initial complaint about the conduct of one or more public officials; an investigation to establish the facts and enable a decision as to whether ethical rules have been breached; and, where misconduct is found to have occurred, the imposition of appropriate sanctions, unless the case is referred to other competent bodies. Overall, the relevant mechanism should provide for: clear procedure for lodging complaints about alleged breach of the Code; clear admissibility criteria and timelines in accordance to which such complaints should be reviewed; clear mechanism for presentation of the argumentation from the side of the public official whose conduct is being reviewed; clear decision mechanism on sanctioning; clear sanctions ranging from mild, such as oral warning, to more severe – although disciplinary, administrative, civil or criminal liability should be examined and pursued exclusively by the competent statutory bodies, in accordance with the applicable legal framework and with full respect for fair trial guarantees. A graduated range of ethics-related measures may be envisaged, beginning with mild responses such as an oral warning and extending to more serious consequences where appropriate. **Given the above, a clear complaint and monitoring mechanism needs further elaborating, including templates for complaints and due process guarantees.** Indeed, an insufficient mechanism may potentially contribute to the abuse, misuse of or errors in the complaints process by individuals or groups, either inside or outside of the office, seeking to unfairly criticize or intimidate specific public officials.[124] Allegations of misconduct can destroy the career of a public official, even if the complaint lacks foundation.

### 7.2. Liability for Violation of the Code

94. Under Article 42, public office holders may face disciplinary, administrative, or criminal liability and staff in their offices may face disciplinary actions under labour and other laws. Commission findings can trigger referrals to relevant authorities. One type of liability does not prevent others, including civil liability, from being applied. In addition, Article 5 of the Draft Law provides that "*a breach of the Code shall constitute, as the case may be, a disciplinary misconduct, a contravention or a criminal offence, and shall be subject, accordingly, to the provisions of special legislation, labour legislation, the Contravention Code or the Criminal Code*".

95. It is generally accepted that legal liability should be founded on statutory or otherwise legally binding provisions, rather than on ethical framework alone. While codes of ethics and codes of conduct play an important role in promoting integrity, guiding professional behaviour and preventing misconduct, they typically operate as soft-law instruments and do not, in themselves, create legally enforceable offences or sanctions. In systems governed by the principle of legality, individuals may only be held liable where the prohibited conduct and corresponding penalties are clearly established by law in advance, ensuring legal certainty, foreseeability, and due process.Ethical standards may nonetheless acquire legal relevance where the applicable legal framework explicitly incorporates them into clearly defined binding rules or disciplinary regimes. In such

124 See as a comparison, with respect to parliamentary ethics, *ODIHR Study: Parliamentary Integrity: A Resource for Reformers (2022), Part 3.* p. 78. For instance, certain sanctions leading to suspension could be abused to banish MPs from the chamber in order to distort the natural majority, thus, in some countries, such as Austria, suspended members retain their right to vote; see *ibid.* p. 86.

circumstances, a breach of a code of conduct may constitute a disciplinary offence or give rise to administrative consequences because the law itself attaches legal effect to those standards. As also emphasized by the OECD, codes of conduct and ethics should be embedded within the broader legal and regulatory system to clarify expectations and provide a basis for appropriate disciplinary, administrative, civil and/or criminal investigation and sanctions only "as appropriate" under existing law, rather than creating autonomous liability simply by virtue of being ethical norms.[125] Similarly, the Council of Europe's Recommendation No. R(2000)10 on Codes of Conduct for Public Officials, states that such codes are intended to specify standards of integrity and conduct and to inform public officials and the public of expected behaviour, but they are not intended to replace or independently create legal obligations or sanctions outside the existing legal framework.[126]

96. Conversely, limiting liability exclusively to situations where the conduct already constitutes a disciplinary or criminal offense may risk rendering ethical codes largely declaratory and reduce their practical impact. A balanced approach therefore appears preferable, whereby the code of conduct provides clear guidance on expected standards of behaviour while allowing for proportionate responses to breaches, ranging from preventive or corrective measures (such as warnings, counselling, or ethics training) to disciplinary, administrative and criminal sanctions, providing that the applicable legal framework clearly defines the relevant grounds and sanctions.

97. At the same time, as mentioned above (see paras. ... *supra*), **it is essential to ensure that procedures for identifying violations of the Code do not substitute criminal or other forms of investigations**. While certain conduct may simultaneously constitute a breach of professional ethics and a criminal or administrative offence, the nature and legal implications of these acts are distinct. Conduct that qualifies as a criminal or administrative offence should be addressed solely within the relevant legal framework, and the Code should not replicate or mirror provisions of criminal, administrative, or disciplinary law. Instead, it should focus on establishing clear, autonomous standards of professional conduct that do not necessarily amount to criminal, administrative, or disciplinary offences, but should nonetheless be supported by appropriate internal enforcement and complaint mechanisms.

98. This approach helps ensure that ethical standards are effectively enforceable without creating parallel or overlapping sanctioning regimes that could raise concerns regarding legal clarity and due process.

99. In light of the above, **it is advisable that the Draft Law more clearly defines the relationship between the ethical framework and existing disciplinary and legal liability regimes. In particular, the Code should establish clear and autonomous standards of professional conduct, supported by appropriate internal enforcement mechanisms. At the same time, non-compliance with the Code may lead to disciplinary or administrative liability under applicable legislation, while a criminal liability may arise only where conduct constitutes a criminal offence under the Criminal Code.** Such an approach would help ensure both the effectiveness of ethical regulation and compliance with principles of legal certainty and proportionality.

125 See *OECD Handbook on Public Integrity: A Strategy against Corruption*, Chapters 4 and 11.
126 See *Code of Conducts for Public Officials*.

100. Given the comments to expand the scope of the Code of Conduct to also cover violence against women, it is essential that **the complaints-handling mechanism ensures safety, confidentiality and expediency of the complaint process**.[127]

**RECOMMENDATION E.**

1. To consider consolidating the mandates, authorities, tasks and powers currently assigned to Ethics Advisors, the Council and the Commission into a single independent body responsible for ethics and integrity oversight, in order to ensure clarity of mandate, avoid institutional overlap, and enhance public trust through a more objective, impartial and apolitical decision-making framework.
2. To revise procedures for the National Ethics Commission's appointment, including a stronger representation of civil society or independent experts, in order to enhance public trust and comply with international standards.
3. To further elaborate a clear internal complaint and monitoring mechanism for alleged breaches of professional ethical standards established by the Code, including detailed procedures for submitting complaints, defined timelines for their review, safeguards ensuring the right of the concerned official to present arguments, a transparent decision-making process, and a graduated system of sanctions ranging from minor measures, such as oral warnings, to more serious penalties.

## 7. PROCESS OF DEVELOPING AN ETHICAL FRAMEWORK FOR PTEFS

101. The importance of open, transparent and inclusive lawmaking process throughout the development and adoption of the Draft Law should be highlighted. In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure.[128] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*".[129] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages.[130]

102. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case the relevant public office holders and their staff, as well as independent experts or representatives of civil society with recognized experience in ethics, professional integrity andpublic administration. Sufficient time should also be provided to ensure that

127 See e.g., CEDAW Committee, General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems, 25 October 2024, para. 39 (d). See as a comparison, with respect to parliamentary ethics, *ODIHR Study: Parliamentary Integrity: A Resource for Reformers (2022), Part 3.* p. 63.
128 See *1990 OSCE Copenhagen Document*, para. 5.8.
129 See *1991 OSCE Moscow Document*, para. 18.1.
130 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also *Venice Commission, Updated Rule of Law Checklist*, CDL-AD(2025)002, 16 December 2025.

the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft legislation throughout the legislative process.[131]

103. The planning and preparation for the drafting of a set of ethical rules or code of conduct/ethics, and the drafting process itself are fundamental to ensure broad consensus about and ownership of its content, greater acceptance and ultimately compliance with its rules. At the initial stage, the process of developing such an ethical framework requires a comprehensive assessment of the particular context, compatibility with formal and informal rules and (international and national) norms in the existing legislative framework, as well as challenges and risks affecting the work of the public officials in the given country. Further, catalyzing an inclusive, open and meaningful public discussion on integrity standards and expectations of public office holders' conduct enables the government to develop a common understanding on appropriate conduct, thereby boosting a sense of ownership, as well as addressing the level of public confidence in the institution.[132]

104. Consultations throughout the process of developing a code of conduct [133] should be conducted with the wider public but also with all relevant internal stakeholders, aiming for a cross-party consensus, and ensuring balanced participation of women and men and other groups. This is crucial in building legitimacy, developing a sense of shared ownership and contributing to an effective, responsible and consistent use of the developed ethical framework. Practice suggests that ensuring the clearly delineated responsibility of one body for driving the development process, established in a fair, inclusive and transparent process, is another vital precondition for an effective and enforceable code of conduct.[134]

105. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, when developed by the government but also throughout the parliamentary process. As a principle, accelerated legislative procedure should not be used to pass such types of legislation.

*[END OF TEXT]*

131 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), paras. 169-170.

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

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

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