
Warsaw, 21 June 2024

Opinion-Nr: ELE-MLD/499/2024

OPINION ON LAW ON THE PARTIAL IMPLEMENTATION OF THE POSTAL VOTE

MOLDOVA

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Based on an official English translation of the Law provided by the Moldovan authorities.



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Adopted on 26 April 2024, the Law on the Partial Implementation of the Postal Vote introduces postal voting for Moldovan citizens residing abroad as an additional voting channel in presidential elections and referenda. For the next presidential election and national referendum scheduled for 20 October 2024, the postal voting will apply to six designated countries and its implementation assessed *ex post facto* to determine whether to adopt out-of-country postal voting on a wider-scale and on a permanent basis. According to its drafters, the Law responds to a need to facilitate voting for citizens abroad, given a sizeable diaspora which actively participates in elections and barriers faced in past elections, including long travel to reach polling stations abroad and long queues and long waiting times. Parliament intends to amend the Electoral Code to include postal voting, pending the successful partial implementation.

While enjoying considerable public support, the Law did not receive support from the opposition who assert political motivation due to its implementation only in certain countries and the binding nature of the implementation in its first-time use. Some civil society actors question the Law's late and limited rollout and call for universal access to postal voting abroad. Opposition parties and civil society alike criticize the limited and rushed consultations in the legislative-drafting process, also noting a lack of transparency at various stages of the drafting process. In the context of the adoption of a new Electoral Code in December 2022, the stability of the electoral legislation has been challenged with the introduction of postal voting shortly thereafter, and just half a year before a national election.

The Deputy Speaker of Parliament from the parliamentary opposition requested ODIHR to provide an external review in March, after the draft law was introduced in the first reading. Following the adoption of the Law, the Chair of the Legal Committee on Appointments and Immunities of the Parliament of the Republic of Moldova from the parliamentary majority also requested ODIHR to provide its expert legal opinion on the Law. This opinion responds to both requests and considers only the text of the adopted law. Based on its assessment of the Law in terms of compliance with OSCE commitments and international standards and good practice, ODIHR puts forward a number of recommendations on issues related to the timing of the legislation, selection criteria for countries where postal voting will be implemented, the postal voting registration and voting procedures, secrecy of the vote, validity of postal ballots, effective legal remedy, and observation of the postal voting process.

The Opinion makes the following key recommendations to enhance or supplement the Law:

- A. to ensure the objective selection of countries where postal voting will be implemented, it should be carried out by the CEC or other professional and/or politically-balanced independent body set up for this purpose, with

participation or consultation of civil society, MFA and other relevant institutions to recommend a list of countries based on newly-established objective criteria applied in a transparent manner;

- B. to ensure that provisions on postal voting registration and postal voting procedures are coherent and comprehensive, some provisions should be amended or supplemented, such as those related to registration deadlines, grounds for rejection of registration, identification requirements, and tracking of postal ballots;
- C. to ensure appropriate and effective reporting of undue influence on postal voters, the authorities should consider to repeal the obligation on voters to report undue influence so that they are not placed at greater risk. In addition, the law should mandate the relevant authorities to establish secure reporting channels for potential infringements and inform voters duly about such mechanisms;
- D. to ensure that postal ballots are validated or invalidated on clear and appropriate bases, the provisions should incorporate that the voter's signature on the declaration form returned with the completed ballot will be reliably verified and to stipulate that ballots will be considered valid in all cases where the intent of the voter can be ascertained;
- E. to ensure access to effective legal remedy against malfeasance in the postal voting process, legal standing for lodging such appeals should be clearly extended to all citizens and reasonably short deadlines set for their submission and adjudication by the court;
- F. to guarantee effective citizen and partisan observation of the postal voting process, the provisions should explicitly allow accredited persons to observe the electoral activities of all institutions and authorities involved in the postal voting process.

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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(LAW NO. 109/2024, 26 APRIL 2024)**

I. INTRODUCTION

1. On 11 March, Mr. Vlad Batrița, the Deputy Speaker of Parliament and an MP belonging to the Socialists and Communist faction, requested ODIHR to provide an opinion on the Draft Law on Piloting the Postal Vote. On 3 May 2024, Ms. Veronica Roșca, Chair of the Legal Committee on Appointments and Immunities of the Parliament of the Republic of Moldova from the parliamentary majority, sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of the Law on the Partial Implementation of the Postal Vote (hereinafter “the Act”) adopted on 26 April 2024.
2. On 5 April, ODIHR accepted the invitation by the Deputy Speaker. On 13 May ODIHR responded to the Chair of the Legal Committee on Appointments and Immunities, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Act with international human rights standards and OSCE human dimension commitments and that ODIHR will be preparing one review of the adopted law and share it with both requesters.
3. On 15, 16 and 24 May, ODIHR experts conducted a series of online interviews with relevant election stakeholders, including the representatives of parliamentary factions and extra-parliamentary parties, the civil society, the Central Electoral Commission (CEC), the Legal Committee on Appointments and Immunities of the Parliament, the Ministry of Justice and the Ministry of Foreign Affairs. ODIHR wishes to thank the representatives of Parliament and the Ministry of Foreign Affairs in setting up the meetings.
4. This Opinion was prepared in response to the above requests. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments. ODIHR staff and experts stand ready to present and discuss the Opinion’s main findings and recommendations with all relevant stakeholders.

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers only the Act submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating elections in the Republic of Moldova.
6. The Opinion raises key issues and provides indications of areas of concern. It focuses on the provisions that require amendments or improvements rather than on the positive aspects of the Act. 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 Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field.

7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*¹ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*² and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
8. The Opinion is based on an official English translation of the Act provided by the Moldovan authorities, which is attached to this document as an Annex. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.
9. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in the Republic of Moldova in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. BACKGROUND

10. Adopted on 26 April 2024, the Law on the Partial Implementation of the Postal Vote introduces the option of postal voting for Moldovan citizens residing abroad.³ For the next presidential election and national referendum expected to be held on the same day in fall 2024, the postal voting will apply to six designated countries.⁴ According to the Moldovan authorities, the Act responds to a need to facilitate citizens abroad in the exercise of their right to vote, given the sizeable diaspora and increase in the number of citizens abroad who actively participate in elections.⁵ According to its drafters, the postal voting method will contribute to eliminating various difficulties faced by electoral bodies in recent elections (logistical aspects and locations of polling stations abroad) and citizens abroad (traveling long distances, long queues at polling stations abroad, and shortages of ballots). Parliament informed ODIHR that it intends to amend the Electoral Code to include postal voting, pending the successful partial implementation.
11. While there is general public support for postal voting for the Moldovan diaspora, the Act did not receive support from the opposition. The opposition in Parliament and some extra-parliamentary parties assert political motivation as the postal voting will be implemented on a partial basis, only in select countries and will have a binding effect on the election results. On 14 May 2024, a challenge to the Act was lodged in the Constitutional Court by a group of independent and opposition

¹ 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. Ukraine deposited its instrument of ratification of this Convention on 12 March 1981.

² See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

³ Since 2010, voting abroad was only conducted in person at polling stations in the Moldovan diplomatic missions, and in other locations approved by the Ministry of Foreign Affairs. Postal ballots are to be dispatched from and returned to special polling stations in the host country, where they will be counted.

⁴ Art. 35(2) of the Act provides for postal voting in the United States, Canada, Norway, Sweden, Finland, and Iceland. The Act foresees the possibility of adopting postal voting on a wider-scale permanent basis, based on a mandated ex post facto assessment by the Central Election Commission of its partial implementation.

⁵ In the 2020 presidential election, overseas voting took place in 139 in-person polling stations across 36 countries, with 263,177 voters abroad casting ballots (approx. 16% of the total voter turnout). In the 2021 parliamentary elections, 212,434 voters abroad cast ballots.

members of Parliament (MPs) who called for it to be declared unconstitutional in its entirety on various grounds.⁶ At the time of publication of this Opinion, the court's decision had not yet been issued. Some civil society actors question the Act's late and limited rollout and call for universal access to postal voting abroad.

2. STABILITY OF ELECTORAL LEGISLATION

12. ODIHR emphasises the international good practice to refrain from revising fundamental elements of electoral laws less than one year prior to an election.⁷ The Act impacts the electoral legal framework that will apply for the presidential election (and national referendum) scheduled for 20 October 2024, half a year after its adoption. The Act directly impacts the ability to vote of those residing abroad and therefore can arguably be considered an amendment to fundamental elements of the electoral law.⁸ Further, the principle of stability of electoral legislation encompasses the aim to ensure legislative changes that advantage a particular electoral contestant are not introduced shortly before the election and in this case the introduction of postal voting on a partial basis in a limited number of select countries has led to political controversy and claims of political motivation, particularly due to its limited nature and adoption so near to a national election.⁹ Close to an election, care must be taken to avoid even the mere semblance of manipulation through changes that may be regarded as having impact on the election results.¹⁰ Even when no manipulation is intended, changes within one year of an election may appear to be dictated by immediate political party interests.
13. For the purpose of handling and counting postal votes, the Act envisages creation of polling election bureaus. Some stakeholders assert that this is contrary to Article 11(1) of the Electoral Code and jurisprudence of the Constitutional Court requiring that the procedures for establishing election management bodies are not changed within a year of the election. The authorities maintain that the new creation of such election bureaus is in line with the law. While it is questionable whether the introduction and partial implementation of postal voting is or is not a significant electoral change, it appears unproblematic in terms of a narrow interpretation of Article 11(1) of the Electoral Code.

⁶ The [petition](#) was submitted by nine MPs associated with a fugitive, convicted former MP, Mr. Ilan Shor, or members of political parties associated with him.

⁷ Guideline II. 2.b. of the Council of Europe Venice Commission's [Code of Good Practice in Electoral Matters](#) states that "[t]he fundamental elements of the electoral system proper, membership of electoral commissions and drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a higher level than ordinary law." Article 11(1) of the Electoral Code provides that "[t]he electoral system and the procedure for establishing electoral districts or electoral management bodies are not subject to amendment at least one year before the national voting".

⁸ Some ODIHR interlocutors assert that the Act's introduction of separate electoral bureaus established for postal voting abroad contravenes Article 11 of the Electoral Code, interpreting it as an amendment to the procedure for establishing electoral management bodies (within one year of a national election.) It is noted though that the Act does not introduce a different method for establishing the electoral bureaus for postal voting, or a different composition, which essentially remain the same as for the electoral bureaus established for in-person voting abroad. Moreover, granting additional competencies to the constituency electoral council for polling stations abroad to oversee the postal voting does not constitute a change to the procedures for establishing the election management bodies.

⁹ Some ODIHR interlocutors claimed that the parliament's selection (and exclusion) of the countries in which postal voting will be carried out, as incorporated into the Act, favours the ruling party from the perspective of a competitive election. It is important to add, however, that the introduction of postal voting channel comes as an additional channel to voters who already have opportunity for in person voting at the country where they reside. Citizens residing in countries where Moldova does not have a diplomatic representation can vote only if they travel to Moldova or a country where Moldova has opened polling stations.

¹⁰ See Section 2 of the Explanatory Report of the Venice Commission's [Code of Good Practice in Electoral Matters](#).

14. A new Electoral Code was enacted on 8 December 2022. As a matter of stability of electoral legislation, its adoption would have been an opportune time to introduce in the law the option of postal voting for diaspora voters, well ahead of the next elections. This is especially so, as the reasons for introducing postal voting as put forward by the Moldovan authorities existed at that time. In addition, the local elections that took place on 5 November 2023 do not include a possibility for out-of-country voting and therefore would not have been affected. In this regard, for several years prior, the authorities were researching options for an alternative method for out-of-country voting. However, the option of postal voting was not discussed during the consultations on the draft electoral law, and the only new measure incorporated into the Code was for the option of a two-day voting period in some polling stations (including abroad) to be determined by the CEC on the basis of certain circumstances and for the increase the number of polling stations abroad. After consideration of the option of internet voting was set aside due to cybersecurity concerns and possible low trust of the electorate in the integrity of such systems, development of the legislation for postal voting took place through most of 2023. On 1 March 2024, the draft Act was registered in Parliament.
15. Regardless of the reasons for postal voting not to be introduced in the 2022 Electoral Code, its application to the October 2024 presidential election (and national referendum), as per Art. 35(2) of the Act could have been postponed until after the expected 2024 presidential election and well before the next parliamentary elections.¹¹ This approach may have mitigated the political backlash following its untimely introduction, only several months before a presidential election and key national referendum. In this regard, it is noted that a referendum on Moldova's European Union membership aspirations is scheduled to occur on the same day as the presidential election (20 October 2024), for which postal voting will also apply, which likely intensified political sensitivities toward its introduction in its current form. It should be underlined that the election authorities wish to potentially introduce postal voting for voting abroad for a majority of voters residing abroad in the 2025 parliamentary elections, which is perceived as consequential both politically and to ensure that voters will have sufficient possibilities to vote.
16. At the same time, the late introduction of postal voting (even on a limited scale) could pose administrative challenges for the election management bodies and undermine the stability of the electoral process, as well as the referendum. In this respect, the implementation of a new system of postal voting is a complex exercise. Indeed, the simultaneous applicability of postal voting to a national election and referendum for its trial run will pose an added burden. For postal voting to be effectively implemented, a number of administrative measures are necessary in a short period of time, including voter education, the creation and implementation of a digitalized platform for the registration of postal voters and a postal voter register, the establishment of new polling stations and bureaus for postal voting, training election officials, design, printing and distribution of postal voting materials and verification, counting and tabulation of postal votes.
17. It is noted that the CEC has confidence in its ability to effectively implement postal voting on such short notice. However, challenges posed in undertaking such a new, complex, and time-sensitive exercise so close to a national election and referendum

¹¹ Art. 35(2) provides that postal voting shall be implemented in the presidential elections carried out after the Act comes into force, and in case of carrying out of a national referendum on the same day as the presidential election, the postal voting shall also be applied.

may be difficult to overcome to ensure proper implementation. It is up to the Moldovan election authorities to assess and report in due time whether the implementation without critical barriers would be possible. This is especially so because any critical issues in implementation may lead to reduced electorate trust in the entire process.

RECOMMENDATION 1.

In case of indications that there is insufficient time to implement the postal voting system and ensure all administrative procedures are in place to provide the integrity of the postal voting system and to reinforce an effective rollout, the Moldovan authorities could consider postponing the introduction of postal voting until after the upcoming presidential election and national referendum. This will also address concerns of some of the stakeholders regarding political motivation.

3. SELECTION CRITERIA & LIST OF COUNTRIES

18. The Act establishes both the criteria for the selection of the countries to which the test for postal voting will apply (Article 8) and the list of countries itself (Article 35). The selection criteria were added to the draft law between the first and the second (final) reading, a step that was welcomed by several ODIHR interlocutors. The list of countries was also expanded from two to six, to better reflect the selection criteria.¹² Still, it remains a matter of concern that the countries listed in the Act are arguably not the only ones that may satisfy the criteria. Moreover, the Act does not establish which institution or advisory body is to determine or recommend the list of countries and it is unclear whether and how the criteria were applied when making the list. The Moldovan authorities did not publicly disclose this information, raising concerns about the transparency of the selection process. As a politically-sensitive matter, the safest method for applying the criteria would be the use of an *ad hoc* independent body, similar to international good practice for constituency delimitation. Such body would adopt regulations for application of the criteria and issue a reasoned decision on its selections.

RECOMMENDATION 2.

Consideration can be given to amend the law so that the list of selected countries is determined by the CEC or another professional and/or politically-balanced independent body, after the consultations with the civil society and relevant institutions. This body should continue to be utilized if partial postal voting is adopted on a permanent basis. If parliament wishes to retain the responsibility for establishing the list, it should be based on recommendation of the appropriate body, as described above.

19. Moreover, the criteria for the selection of countries themselves need further scrutiny. The criterion of the lack of sufficient polling stations in the host country (Art. 8(1)(a)) may only be applied based on the previous experience of conducting out-of-

¹² The first draft of the Act included the USA and Canada; the list of countries was expanded to include four Nordic countries.

country voting in the host country, and the problem of shortage of the polling stations may also be addressed by the establishment of additional polling stations, as is going to be implemented in parallel by the CEC. The criterion of the long distance to the nearest polling station may be difficult to apply, as it remains unclear how long should the distance be to qualify as a “long distance” and whether there is sufficient information as to where in the host countries the Moldovan citizens reside.

20. It is also unclear why the criterion of experience of postal voting in a host country (Art. 8(1)(b)) is appropriate. ODIHR interlocutors stated that this criterion should serve as a guarantee for both the efficiency of the postal service in the host country and an indication of the prior experience of the Moldovan citizens in using this method of voting. However, the efficiency of the postal service may be assessed by other means and many Moldovan citizens may not be citizens of the host country eligible for voting there. Also, the safety and reliability of the postal/courier service is already included as another stand-alone criterion in Article 8(1)(d), a criterion in line with international good practice.¹³
21. The criteria of excluding countries that “do not respect international standards regarding the conduct of free and fair elections” (Art. 8(2)) raises some concerns. It is difficult if not impossible to objectively assess which countries fall under this category, even if relying on the reports of reputable international observer organizations as was suggested by Moldovan authorities in meetings with ODIHR. Such reports do not aim to provide an overall yes/no answer to such a question and rather assess the respect of standards for all aspects of the process in the context of a specific election (e.g. many may be respected but some not) and international observers simply may not have observed recently in some of these countries. The bottom line is that determining the democratic nature of elections is a complex and nuanced assessment that is not called for in the context of postal voting and in its strictest application could exclude many countries that fall on a spectrum. Other objective-based criteria should be used to address any concerns related to the integrity or security of the postal voting.

RECOMMENDATION 3.

The Moldovan authorities should revise the established criteria for selection of countries to provide a set of relevant, clear, objective criteria that limit the risk of arbitrary application. The criteria should be applied in a transparent manner and a reasoned decision issued providing the basis for including and excluding certain countries.

4. ELECTION ADMINISTRATION

22. Article 9 of the Act provides for the organization of the postal voting to be carried out by the CEC, the Constituency Electoral Council of the polling stations abroad and the *electoral bureaus of the polling stations abroad* established in the electoral period. However, Article 13 of the Act refers to the establishment of *electoral bureaus of the polling stations for the postal vote* which are different than the bureaus of the polling stations abroad established under Article 39 of the Electoral

¹³ See Guideline 3.2.iii and Section 3.2.2.1 of the Explanatory Report of the Venice Commission’s [Code of Good Practice in Electoral Matters](#).

Code. It is also noted that Article 13 does not reference Article 39 in the Electoral Code on the method of appointing the members of the electoral bureaus. In addition, while Article 9 envisages the Constituency Electoral Council of the polling stations abroad to organize postal voting, establishing its additional powers under Article 12, it does not reference Article 35(12) of the Electoral Code that establishes that Constitutional Electoral Council. These oversights challenge the legal clarity of the Act.

RECOMMENDATION 4.

The wording in Art. 9(2) of the Act should be clarified, in particular, that the Constituency Electoral Council of the polling stations abroad is as established under Art. 35(12) of the Electoral Code and to correct the title of the electoral bureaus for the postal vote. Further, in Art. 13 of the Act, the method for appointing the members of the electoral bureaus should be clarified or referenced to Art. 39 of the Electoral Code.

23. Apart from the rules on technical matters and detail – which may be included in regulations of the executive – rules of electoral law must have at least the rank of a statute.¹⁴ In this regard, Article 35(7) of the Act provides that, within three months from the date of the publication of the Act, the CEC shall approve its normative acts necessary for the partial implementation of postal voting.¹⁵ While not referencing specific matters, the Commission raised a concern with ODIHR in terms of the Act not sufficiently regulating on some issues in the postal voting process that should be prescribed by the legislation, noting that it does not have the power to adopt regulations to fill substantive legislative gaps. It noted that parliament “delegating” its legislative powers to them, in essence, brings the Commission into the political/legislative field with a high risk of decreasing public confidence in the institution and its independence.

RECOMMENDATION 5.

The Moldovan authorities should conduct further consultations with the Central Electoral Commission to determine and fill in the legislative gaps in the Act, to ensure that the key matters of the postal voting process are not relegated to administrative regulations.

5. POSTAL VOTING REGISTRATION

24. The timelines established for the postal voting is a matter of practical concern. The Act establishes a system of prior registration of postal voters, which provides voters up until 45 days before the election to register for postal voting. While in the case of regular elections, this timeline should allow a sufficient time for the postal voting process, compressed timelines for early elections may pose significant challenges. The Constitution of Moldova provides up to two months for an early presidential

¹⁴ See Guideline II.2.a. of the Venice Commission’s [Code of Good Practice in Electoral Matters](#).

¹⁵ Other provisions in the Act reference specific regulations to be adopted by the Central Electoral Commission, such as Article 5(3) which provides that the Commission shall adopt detailed electoral procedures on securing the vote and preserving and ensuring the integrity of the envelopes with ballots received up to and outside the postal voting deadline.

election from the date when the position is vacated (Art. 90(4)), which leaves up to 16 days for the registration for postal voting. At the same time, a possible solution to maintain the registration for postal voting from previous elections may pose additional challenges (e.g. voters moving their residence without informing election authorities) and cause confusion among voters.

RECOMMENDATION 6.

The Moldovan authorities should consider how the postal voting process will be effectively implemented in the case of early elections which have compressed deadlines and to amend the Act accordingly.

25. Article 17 of the Act requires voters who wish to vote by mail to register through the official web page of the CEC. As a matter of good practice, if possible, a voter should have multiple means to request a postal ballot, such as by mail, in person or electronically – including by phone, email or online. It is noted, though, that as technology and country experiences permit, consideration could be given to phasing out such methods of requesting postal ballots as mail-in applications are less immediate and reliable and can lead to voters being disenfranchised. In any case, valid reasons exist to allow for alternative means of registration, for instance, for elderly voters who are not as familiar with online platforms and may benefit from the option of in-person registration (at embassies or consulates or in Moldova, in case travel to those locations but are located remotely at time of elections) or by phone.

RECOMMENDATION 7.

In Article 17 of the Act, consideration can be given to establishing in-person registration, made available at the diplomatic missions, or at the constituency electoral bureaus or a system of registering by phone, given that other safeguards are in place to ensure voter eligibility.

26. Article 17(6)(b) of the Act provides for the rejection of the postal voting registration request if the address provided by the voter is non-existent. The Act does not explicitly provide for a systematic verification of whether the address, in fact, exists, but, in any case, it remains unclear how the election management body would verify the address in a reliable in a non-arbitrary manner, considering that comprehensive address databases do not exist, for some countries.

RECOMMENDATION 8.

The Moldovan authorities should consider repealing Art. 17(6)(b) on the rejection of requests for postal voting on the ground of a non-existent address or it should be clarified by what method electoral officials will reliably and objectively determine the non-existence of each address.

27. Article 17(6)(h) of the Act provides for the rejection of the registration request for postal voting if the applicant fails to submit online an identity document confirming the right to vote. However, the provisions neither establish which identification documents are acceptable proof of the right to vote nor whether the list of acceptable proofs of identity established in Article 78(6) of the Electoral Code applies in the case of postal voting. It also does not indicate if the CEC will determine this matter by its regulation on postal voting.

RECOMMENDATION 9.

Article 17(6)(h) should be revised to clarify the issue of acceptable proof of identity for postal voting registration, whether explicitly or by reference to other legal acts. As a matter of consistency, proofs of identification allowed for in-person voting under Art. 78(6) of the Electoral Code should equally apply for identification purposes for postal voting.

6. POSTAL VOTING PROCEDURES

28. The Act does not refer to any requirement for the postal voter to include a copy of their identification document when returning the marked ballot. A key issue in postal voting is how to establish identity of the voter when casting the ballot. Identity requirements for postal voting vary across the OSCE region. Most postal voting systems rely on some combination of practices to establish identity including a voter affidavit (to attest to the fact that the voter is who they say they are), witness signatures, and enclosed copies of voter identification documents. The voter affidavit may be required to be signed by one or more witnesses or notarized. While an identity document is required during the registration process to protect the integrity of the process (e.g., making it more difficult for family members to engage in proxy postal voting or ballots stolen and returned by third parties), for the same reasons some proof of identity should also be required to be disclosed with the returned ballot.

RECOMMENDATION 10.

Consideration should be given to establishing a requirement for the voter to include a copy of their identification document and/or to have them sign an affidavit attesting to their identity. This attestation could be also included with the declaration that a person voted in secret, already included in the package. The lack of any required identity document inside the returned outer envelope should be grounds for annulling the postal package.

29. The possibility for voters to withdraw their registration for postal voting until 25 days before the election is a welcome step as it allows for additional flexibility for voters and for planning by the electoral management bodies. The possibility to cast a ballot at the polling station even after having voted by mail is also a welcome provision that gives additional assurance of a secret and freely expressed vote and can remedy the challenges that postal voters' opinions may change, candidates can withdraw, etc. The procedures to verify those who replace their postal ballot with voting at the polling station do not appear too cumbersome for the electoral

management body. The law does not explicitly provide for the possibility for voters to personally deliver their postal voting envelopes to the polling stations for postal voting, even though some ODIHR interlocutors did not see any obstacles for voters to do so.

RECOMMENDATION 11.

As an added flexibility measure, the Moldovan authorities could consider providing for the possibility to personally deliver postal voting envelopes by the established deadline to the polling station for postal voting.

28. Article 32 of the Act also provides for the option of postal voting in the case of a second round. The ballot papers for both rounds of the election are to be printed at the same time, as per Article 21(1). However, the provisions do not explicitly state that the second-round ballots and duplicates of other voting materials such as the secret envelope, declaration form, security seals, and pre-paid post stamps are to be sent out to postal voters together with the first-round ballot and materials in the same package. Specifically, Article 22 which describes the content of the postal voting packages, does not refer to any of the second-round materials. In addition, Article 20(3) of the Act does not reference the text of the second-round ballot, whether blank or otherwise, in light of the fact that it will be printed before the names of the second-round contenders will be known.

RECOMMENDATION 13.

Article 22 of the Act should explicitly provide for the distribution of second-round ballots and materials together with the first-round materials. Further, Article 20(3) should clarify the text of the second-round ballots, whether blank or otherwise. Postal voting instructions sent to voters should include clear information about a possible second round, how to fill in a second-round ballot, and the established deadline for returning the second ballot. Consideration could also be given to revising the two-week timeline for holding a second round, possibly extending it to three or four weeks to allow for distribution of second-round ballots to postal voters after they are printed with candidates' names.

29. Election authorities are increasingly creating systems whereby the voter can verify whether their completed ballot was actually received by election officials and taken into account. In this respect, Article 26(1) of the Act provides that confirmation of the receipt of the returned postal ballot envelope, including the date and time, is to be entered into the state's automated information system for elections, which allows voters to track the receipt of their envelope. However, the Act does not provide for updates to the automated information system regarding the exclusion or annulment of postal voting envelopes under Article 27.

7. SECRETARY OF THE VOTE AND UNDUE INFLUENCE

30. Various provisions in the Act minimize the risk to voting under pressure or violations of the secrecy of the vote during postal voting, by establishing certain administrative measures, prohibitions, and sanctions. However, the obligation for postal voters to

report undue influence on them (Art. 3(2)) can be considered inappropriate as it may put the voter subject to pressure under risk of additional harm. Rather than victims of electoral misconduct being obliged to report such behaviour, the law enforcement and electoral authorities should be mandated to establish simple, efficient reporting mechanisms, including anonymous ones, to make reporting of potential infringements as accessible and efficient as possible. Information on the process for filing such complaints should be provided in the postal voting package.

RECOMMENDATION 15.

The authorities should consider to repeal the obligation on postal voters to report incidents of undue influence and to mandate the relevant institutions to establish appropriate and effective reporting channels for potential infringements related to the postal voting process. Postal voters should be informed of such reporting mechanisms.

31. Under international good practice, proportionate and dissuasive sanctions for electoral misconduct should be established, such as for violating the secrecy of the vote and undue influence on voters.¹⁶ The importance of sanctions is magnified when postal voting is used due to the increased risk of these types of infringements, as the voting process does not occur in controlled environments (i.e., the polling stations). In this respect, Article 35 of the Act amends Article 49 of the Contravention Code by: (1) increasing the minimum fine for photographing or public display of a completed ballot to MDL 600 (approx. EUR 31) and (2) prohibiting the conveyance of the ballot paper by the voter to a third person subject to a fine of MDL 2,500 – 7,500 (approx. EUR 130 – 390). These fines appear low for such misconduct in the postal voting process, and as such may not serve as an effective deterrent in the postal voting context.

RECOMMENDATION 16.

To counter the increased risks of undue influence and violation of the secrecy of the vote during postal voting, the Moldovan authorities should consider establishing separate higher fines for such infringements committed in the course of the postal voting process.

29. As a security measure, the electoral law may prohibit or impose limitations on the number of completed postal ballot packages that a person can return on behalf of other voters or limiting this right to immediate family members. As noted above, the Act amends the Contravention Code to establish a fine for “conveyance of the ballot paper by the voter to a third person”. However, while this may include both marked and unmarked ballots, it does not clearly apply to the conveyance of the outer envelope containing the marked ballot. The absence of any restriction on returning other voters’ ballots may lead to “ballot harvesting” when representatives of political parties or candidates collect completed ballots from voters and are sometimes compensated to do so. Such practices may lead to schemes to illicitly influence

¹⁶ See Guideline 4.d and Sections 3.1.a, 3.1.b and 3.2.1 of the Explanatory Report of the Venice Commission’s [Code of Good Practice in Electoral Matters](#).

voters' choices, including through family voting, or to intentional spoiling of voters' ballots.

RECOMMENDATION 17.

Consideration can be given to including in the Act a prohibition or limitation on the number of completed postal ballot packages that a person can return on behalf of other voters or limiting this right to immediate family members. It can also be established as a criminal offence, subject to a proportionate and dissuasive sanction.

8. INVALIDATION OF POSTAL BALLOTS

32. The method of casting the vote differs for postal ballots as compared to voting in person. Postal voters are requested to mark the ballot in pen with a tick mark (Articles 20(2) and 25(2) of the Act), whereas voters in the polling stations are to apply a "Voted" stamp (Articles 73(6) and 79(2) of the Electoral Code). In line with international good practice, with regard to in-person voting, the Electoral Code provides in Article 82(2) that "as long as the intention of the voter is clear, the ballot may not be declared as invalid simply because the voter affixed the stamp marked "Voted" several times in a single quadrangle, or affixed the stamp outside of the quadrangle's circle or on the candidate's electoral symbol or sign".¹⁷ However, a similar provision tailored to the method for marking postal ballots is not included in the Act to bring it in line with good practice to honour the postal voter's intention. This is especially important due to a possible lack of postal voter awareness on the new method of marking the ballot, which may result in a significant number of ballots not marked in the prescribed manner.

RECOMMENDATION 18.

A sub-article should be added to Article 28 of the Act on respecting the intention of the postal voter when determining the voter's will in marking the ballot, in circumstances where the intention can be ascertained.

33. Article 28(1) of the Act lists the grounds for invalidation of postal ballots (that supplement the grounds stipulated in Art. 82 of the Electoral Code). Article 27(5)(c) of the Act includes another ground for declaring the invalidity of postal ballots, that is if the ballot in the inner envelope is accompanied by the signed declaration of the voter. This ground is merited due to the need to preserve the secrecy of the vote. However, this ground should also be reflected in Article 28(1) of the Act to ensure a comprehensive and exhaustive list of invalidation grounds. In addition, Article 28(1)(c) provides that the name of the voter written on the ballot paper invalidates the ballot as a matter of breach of secrecy. However, it will not be possible to ascertain whether the name is the voter's or another person's name so the ballot should be invalid if any name is indicated. Further, the Act should be clear on whether the

¹⁷ Section 3.2.2.4 of the Explanatory Report to the [Venice Commission's Code of Good Practice in Electoral Matters](#) provides, in part: "It is best to avoid treating too many ballot papers as invalid or spoiled. In case of doubt, an attempt should be made to ascertain the voter's intention."

inclusion of any extraneous material in the postal voting envelope, other than the voter declaration, will invalidate the ballot.

RECOMMENDATION 19.

Article 28(1) of the Act should be revised to incorporate the invalidation ground established in Article 27(5)(c), to clarify Article 28(1)(c) as to the voter's name or any name on the ballot, and to reference the legal effect of any extraneous material in the postal voting envelope.

31. Good practice dictates that clear procedures and instructions for election officials on ballot verification should be designed with an aim to include votes and to avoid excess rejection of ballots. Article 28(1)(b) of the Act requires the invalidation of a postal ballot if “the sign confirming the option of the voter has not been marked with a pen in any circle of the ballot paper”. This implies that if the voter clearly marks the ballot with a pencil (or other marking tool) it will be considered invalid. While this reading may not have been the intention of the legal drafters of the Act, the provision should be reworded to avoid this interpretation. This principle applies not only to interpreting voters' choice on ballots but also to other aspects of postal voting, such as in the verification of returned envelopes, where some level of tolerance for “human error” is often acceptable, for example, in relation to inadvertent omissions, misspellings or minor errors.

RECOMMENDATION 20.

Article 28(1)(b) of the Act should be amended so that it does not imply that marks other than in pen will invalidate the ballot. In addition, clear procedures and instructions on annulment and invalidity of ballots should be adopted to ensure consistent decisions that aim to avoid excess rejection of ballots.

32. Signature verification is a critical safeguard used in postal voting, especially if a copy of an ID document is not required to be returned together with the ballot (in the outer envelope). It is essential to establish the identity of the voter casting the ballot, although often, these procedures are conditioned by the resources and technologies available. In this regard, it is noted that the Act does not include any requirement for verification of signatures included in the returned envelope. Although such verification may be applied differently and with various degrees of rigor, typically, signatures on the ballot envelope or voter affidavit/declaration are compared with those in the voters register (and other signatures on public records available to electoral management bodies). In partisan electoral bodies, signature verification is often done by politically-balanced teams. At the same time, clear guidelines and instructions for verification of signatures are crucially important and adequate training of election officials on signature verification should be given to ensure that votes are not invalidated in error.

RECOMMENDATION 21.

A provision on signature verification for postal voting envelopes could be included in the Act; the regulations of the Central Electoral Commission should further elaborate the signature verification process. Training on this process for all officials involved should be provided, potentially using resources from law enforcement or other state agencies with experience in signature verification techniques.

9. LEGAL REMEDY

33. Article 35(4) of the Act provides that in case of finding objective circumstances of electoral fraud, the CEC must propose, with justification, to the Constitutional Court to nullify or invalidate the results in a polling station for posting voting. However, the provision does not include deadlines for the submission and adjudication of the matter. According to international good practice, decisions on the results of elections must not take too long, especially where the political climate is tense.¹⁸ As such, the time limits for appeals must be very short and the appeal body must make its ruling as quickly as possible. Time limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision. While three to five days at first instance (both for lodging appeals and making rulings) are reasonable for pre-election cases, a little more time may be granted to Supreme Court and Constitutional Courts for their rulings.
34. Furthermore, with respect to Article 35(4) noted above, as a matter of the right to effective legal remedy, complaints against failures to comply with the electoral law, including challenges to the election results on grounds of irregularities in the voting procedures, must clearly be open to individual citizens and electoral contestants.¹⁹ While the legal drafters of the Act may not have intended to limit the standing to appeal against the postal voting results to only the CEC, this provision should be made clear that it does not preclude such complaints to be lodged with the CEC which should be referred to the Constitutional Court in case of credible evidence of electoral fraud. The Act also does not establish the legal effect of such annulment or invalidation, in terms of holding repeat voting or elections in cases of potential impact on the results.

RECOMMENDATION 22.

Article 35(4) should be revised to clarify that the postal voting results at one or more polling stations can be appealed by individual citizens or electoral contenders. Reasonably short deadlines for submission of such appeals, including to the Constitutional Court by the Central Electoral Commission, as well as for the adjudication should be established. The Act should make clear the legal effect of any invalidation or annulment.

¹⁸ See Section 3.3 of the Explanatory Report of the Venice Commission's [Code of Good Practice in Electoral Matters](#).

¹⁹ Ibid.

10. OBSERVATION OF POSTAL VOTING

35. Observation of elections plays an important role as it provides evidence of whether the electoral process has been regular or not.²⁰ In this respect, the Act should be clear on the right to observe the activities of all authorities involved in the administration of postal voting, including relevant public authorities and electoral management bodies at all levels. Observers should have access to monitor critical processes like the postal voter registration, dispatch and return of ballots, storage of materials, verification, opening and counting of ballots, including determination of ballot validity and tabulation of results. Without explicitly referencing observers, Article 14(2) of the Act provides that all operations of the electoral bureaus for the postal vote can be attended by persons authorized pursuant to the Electoral Code.²¹ However, the Act does not explicitly provide for observation of other aspects of the postal voting process.

RECOMMENDATION 23.

The Act should be revised to provide explicit provisions allowing accredited persons to observe the electoral activities of all institutions and authorities involved in the postal voting process.

11. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING THE DRAFT LAW

11.1. Impact Assessment and Participatory Approach

34. OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 Copenhagen Document, para. 5.8).²² 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” (1991 Moscow Document, para. 18.1).²³ The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.²⁴ As also specifically recommended by principle 7 of the ODIHR’s Guidelines for Democratic Lawmaking for Better Laws, “All interested parties and stakeholders should have the opportunity to access the lawmaking process, be informed about it and be able meaningfully to participate and contribute. Consultations are one means of interacting with the public, in addition to information-sharing and participation, the latter implying greater involvement.”²⁵
35. According to the information available to ODIHR, the legal drafters of the Act did not seek, on a broad and inclusive basis, to consult with civil society and opposition parties in the concept development and initial drafting phase for the initiative on pilot posting voting. Throughout 2023, an exclusive working group developed the concept and drafted the law, while the group’s composition and activities were not made public even after the draft law was registered. The Moldovan authorities

²⁰ See Section 3.2 of the Explanatory Report of the Venice Commission’s [Code of Good Practice in Electoral Matters](#).

²¹ Article 88 of the Electoral Code provides for the accreditation of observers.

²² Available at <<http://www.osce.org/fr/odihr/elections/14304>><http://www.osce.org/fr/odihr/elections/14304>>.

²³ Available at <<http://www.osce.org/fr/odihr/elections/14310>><http://www.osce.org/fr/odihr/elections/14310>>.

²⁴ See Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

²⁵ See ODIHR’s [Guidelines on Democratic Lawmaking for Better Laws](#), page 20.

- informed ODIHR that the group was composed of the co-sponsors of the Act, that is, several ruling party members of the parliament's legal committee and members of parliament who had resided or reside abroad. The CEC was actively consulted on technical aspects of the draft legislation early in the drafting process.
36. As a welcome approach in line with OSCE commitments, the legal drafters sought to consult the public, including civil society, about the Act after the first draft was registered on 1 March 2024. In line with international good practice, following registration of the first draft, all interested stakeholders were invited and provided sufficient opportunity to submit oral and written comments and proposals on the draft. A document that consolidated and analysed the comments and proposals was developed. Positively, some key proposals were incorporated into the draft before its second and final reading. However, the analysis of the comments and proposals and the updated version of the draft were published only on the day before and the day of voting, respectively, with stakeholders deprived of adequate time to review and provide feedback on the draft before the second (final) vote.²⁶
37. To guarantee effective participation, consultation mechanisms must allow for input from the public, including civil society, at an early stage and throughout the process,²⁷ meaning starting when the draft is being prepared by relevant ministries and through when it is discussed before Parliament (e.g., through the organization of public hearings). The exclusion of civil society (and the opposition) in the early stages of drafting, the insufficient time given to stakeholders to prepare and submit comments on the draft law, and the lack of a timely feedback mechanism whereby authorities acknowledge and respond to contributions providing for clear justifications for including or not each proposal raises doubt as to whether the consultations were sufficiently comprehensive and inclusive.²⁸ Further, the lack of transparency at various stages of the law-making process raises concern.
38. The legal drafters prepared an Information Note to the first version of the draft Act, which lists a number of reasons justifying the reform, as well as a brief overview of the comparative country research on postal voting undertaken in its development. However, the Note does not present the research in a methodical manner or refer to an impact assessment on which these findings are based.²⁹ Given the potential impact of the Act on the exercise of political rights, primarily related to the right to vote and to be elected, an in-depth regulatory impact assessment is essential, which should contain a proper problem analysis, using evidence-based techniques to identify the most efficient and effective regulatory option.³⁰ As a positive measure,

²⁶ While interested stakeholders were invited to a consultation meeting shortly before the second reading, the revised version of the draft law was not provided to them, nor was the document that consolidated and analysed the initial comments and proposals. Complex updates to the draft were only presented orally for discussion.

²⁷ See e.g., op. cit. footnote 90, Section II, Sub-Section G on the Right to participate in public affairs (2014 OSCE/ODIHR [Guidelines on the Protection of Human Rights Defenders](#)).

²⁸ See e.g., [Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

²⁹ Although the legal drafters considered various options for alternative voting for diaspora voters, including online voting, the results of the study were not included in the Information Note. The only impact assessment referred to in the Note concerned the economic and financial implications of its implementation. According to a civil society organization involved in the consultation process, the legal drafters did not share any feasibility studies, specifications, actions plans or other pertinent documents related to the proposed piloting of postal voting.

³⁰ See Chapter IV4 of the ODIHR's [Guidelines on Democratic Lawmaking for Better Laws](#), page 85; and Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

the Act provides for an *ex post facto* assessment of the implementation of the partial postal voting.³¹

39. In light of the above, **the public authorities are encouraged to ensure that draft laws are subjected to inclusive, extensive and effective consultations, including with civil society, offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including during the initial drafting process and as the changes are being considered before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the legislation should be put in place that would efficiently evaluate its operation and effectiveness.**³² Any future amendments to the Electoral Code, including on establishing postal voting on a permanent basis, should be preceded by the aforementioned process.
40. The Act contains provisions that modify other legal acts. While the amendments to the Contravention Code are related to the subject matter of the Act (as they concern sanctions for postal voting-related misconduct), the amendments to the Electoral Code concerning the mandate of the Central Electoral Council of Gagauzia and the activities of the Broadcasting Council (both in Art. 36(2)) are not. These provisions were incorporated into the draft Act late in the drafting process and not presented for consultation, thereby denying an opportunity for interested stakeholders to submit comments or proposals on them prior to the final reading. In addition, such an omnibus draft law may not have been referred to the appropriate specialist parliamentary committees overseeing these unrelated issues and prevented individual parliamentarians from voting in favour or against these specific measures contained in the proposed law.

11.2. Gender-neutral Legal Drafting

34. It is noted that the Act generally does not use gender-neutral terminology.³³ Throughout its provisions, references to individuals occupying certain official positions or belonging to a certain category use only the male form of a term, which would imply that the position is occupied by a man only. For instance, Article 3(2) refers to the “voter” and Article 17(6)(h) refers to the “applicant”, both in the male form only.³⁴ Furthermore, the male forms “him/his/he” are always used instead of “him or her”/“his or her”/“he or she”. Established international practice requires legislation to be drafted in a gender neutral/sensitive manner.³⁵ It is recommended that, whenever possible, the reference to post-holders or certain categories of individuals be adapted to use a gender-neutral word. Alternatively, the plural form of the respective noun could be used instead of the singular (e.g., voters) or it is

³¹ Within three months after the completion of the partial implementation of postal voting, the Central Electoral Commission is to present to the parliament a report on its implementation which will include proposals and provisions on its applicability on a permanent basis.

³² See e.g., OECD, [International Practices on Ex Post Evaluation](#) (2010).

³³ It is noted, though, that the official English translation of the Act consistently uses gender neutral terminology. It is understood that the general legislative practice in Moldova does not include a gender-neutrality approach.

³⁴ Other provisions in the Act that use male only terminology include Articles 1 (definition of remote identification by digital means), 7(2), 16(3)(d), 17(5), 17(7), 19(4), 20(2), 22(a), 24(g), 25(2), 25(4), 26(3), and 36(2).

³⁵ See e.g., ODIHR, [Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective](#) (2020), pars 105-107; and [Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation](#) (2017), page 63. See also the UN Economic and Social Commission for Western Asia (ESCWA), [Gender-Sensitive Language](#) (2013); European Parliament, [Resolution on Gender Mainstreaming](#) (2019); Council of the European Union, [General Secretariat, Inclusive Communication in the GSC](#) (2018); and European Institute for Gender Equality’s [Toolkit on Gender-sensitive Communication](#) (2019).

recommended to use both male and female words, for instance “chairman/chairwoman”.³⁶ **The Moldovan authorities should consider introducing a gender-neutral drafting policy in its legislative processes to bring the country’s legal framework in line with international good practice.**

[END OF TEXT]

³⁶ See e.g., ODIHR, [Report on the Assessment of the Assessment of the Legislative Process in the Republic of Armenia](#) (October 2014), pars 47-48.