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PROMO-LEX ASSOCIATION

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Monitoring the national constitutional referendum of 5 September 2010

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Monitoring report on the electoral campaign for the national constitutional referendum on 5 September 2010

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I. EXECUTIVE SUMMARY

The lack of a dialogue among the governing parties and the parliamentary opposition in the parliament formed after 29 July 2010, in particular on the issue of the presidential vote, has led to a constitutional deadlock. The the AEI member-parties agreed to concentrate the constitutional reform on the amendment of Art.78, which would allow for the election of the president by a direct popular vote.

On 5 September 2010, Moldova will hold its first ever constitutional referendum, where the voters will be asked to express their opinion about the proposal to introduce a direct vote for the president. The voters will be asked to answer the question: “*Would you agree with the amendment of the Constitution which would allow for the election of the President of Moldova directly by the people?*”, with two options given: “Yes” and “No”.

The monitoring reports by the Civic Coalition for Free and Fair Elections which observed the elections in 2005, 2007 and 2009 have served as sources or inspiration for amendments to the Election Code.

The Central Election Commission has developed a series of regulations and guidelines aimed to improve the quality and transparency of the electoral process. However, some of these documents contain provisions that run counter to the provisions of the Election Code or leave room for interpretation.

For the purpose of the constitutional referendum, special polling places will be opened abroad apart from those traditionally established within Moldova's diplomatic missions.

At the September 5 referendum, 45 polling stations will test the Electronic Voter Register.

Twenty-five political parties and sociopolitical organizations got registered as participants in the upcoming referendum. Running afoul of its won regulations, the CEC registered participants that failed to express their option as to the question of the referendum. The CEC also banned voters to register as participants and campaign for the referendum.

Contrary to the legal provisions, the local authorities in some districts of the country engaged in campaigning by calling on voters to refrain from participating in the constitutional referendum.

The Timetables approved by the CEC suffer from a host of deficiencies. There were cases where the time limits for some electoral operations were exceeded.

The constitutional referendum arouses less interest in the national and international observers.

Two parliamentary parties failed to delegate representatives to electoral councils and electoral bureaus.

The voters living in the Transnistrian region and in certain settlements on the western side of the Nistru which are controlled by the secessionist authorities will continue to vote in special polling places on the territory controlled by the legitimate authorities of Moldova. The CEC hasn't established electoral councils for those constituencies.

II. PROMO-LEX'S MONITORING EFFORTS

The monitoring of the national constitutional referendum, which will take place on September 5, is a project implemented by the Association Promo-LEX as part of the Civic Coalition for Free and Fair Elections. “Coalition 2009” is a voluntary union of non-governmental organizations aiming to enhance the electoral process and raise public confidence in this process. The programs of monitoring elections within the framework of the “Coalition 2009” are implemented by Promo-LEX as well as other member organizations.

The monitoring effort by Promo-LEX will include 42 long-term observers, who will monitor the electoral process in all the electoral constituencies in Moldova in the period from 13 August 2010 to 10 September 2010. The long-term observers will be assisted by some 300 short-term observers (15% of the total polling stations, distributed across the territory of Moldova based on a representative sample) who will monitor the electoral process on election day. The activity of all the observers will be coordinated by a central team whose structure was conceived prior to the poll.

III. PRE-ELECTION CONTEXT

On 29 July 2009, Moldova held early parliamentary elections. As a result of the vote, representatives of five political parties entered Parliament, as follows: the Moldovan Party of Communists (PCRM) – 48 deputies, the Liberal Democratic Party (PLDM) – 18 deputies, the Liberal Party (PL) – 15 deputies, the Democratic Party (PD) – 13 deputies, and the Our Moldova Alliance (AMN) – 7 deputies. The last four parties formed a governing coalition which they called the “Alliance for European Integration” (AEI).

With AEI's effort, Parliament elected its chairman, the prime minister and the members of the Cabinet.

On 10 November 2010, the MPs made the first attempt to elect the head of state. But with the parliamentary opposition refusing to take part, the attempt failed.

The presidential vote was repeated on 7 December 2010, but it failed again for the same reason.

Under Art. 78 par.5 of the Moldovan Constitution, if repeat elections fail to produce a president, the acting president shall dissolve Parliament and establish the date of new parliamentary elections.

The lack of a dialogue among the governing parties and the parliamentary opposition after 29 July 2010, in particular on the issue of the presidential vote, has led to a constitutional deadlock.

Acknowledging the need to overcome the constitutional crisis, the acting President on 1 December 2009 decreed the establishment of a Commission for Constitutional Reform, consisting of MPs, lawyers and civil society representatives. The Moldovan Party of Communists refused to delegate representatives to this parliamentary commission.¹

Weighing the opportunity to amend the supreme law entirely or partially, the AEI member-parties agreed to concentrate the reform on the amendment of Art.78 of the Constitution, which would allow for the election of the president by a direct popular vote.

The Moldovan Civic Coalition for Free and Fair Elections saluted, on 9 June 2010, the willingness of all the political forces to modify Art.78 of the Constitution as a solution for future potential deadlocks related to the election of the head of state after the parliamentary polls in the autumn of 2010.²

In the period between December 2009 and July 2010 a number of attempts were made to overcome the constitutional crisis, which involved efforts from international organizations, including the Council of Europe, the Venice Commission and the European Union.

A crucial contribution to the settlement of the constitutional deadlock was made by the Council of Europe, in the person of General Secretary Thorbjørn Jagland, who held negotiations both with the AEI and the opposition represented by the PCRM. On 3 June 2010, while in Chisinau, the European official saluted the initiative of the governing parties to hold a referendum to amend Article 78 of the Constitution. The parties agreed that the referendum would be held in the first half of September and new parliamentary elections would be organized in autumn after the Parliament's dissolution in October.³ The Council of Europe highlighted the need for an intervention by the people, once the political forces had failed to come to a consensus.⁴

Despite the Council of Europe's endorsement to the AEI on the dissolution of Parliament and calling of early parliamentary elections, the PCRM believes that after the referendum the promise to hold early legislative elections will not be kept⁵. Previously, on the request of the Moldovan Constitutional Court, the Venice Commission concluded that, under the current constitutional provisions, early parliamentary elections shall be called after the failure of repeat elections of the country's President by the Moldovan Parliament.⁶

On 18 June 2010, Parliament adopted a Law on the modification and supplementation of the Election Code⁷, which introduced amendments related to the holding of constitutional referenda.

In the period that followed, the PCRM expressed its willingness to vote for the amendment of Art. 78 in Parliament on condition that the date of the dissolution of the current legislature was announced simultaneously. On 31 March 2010, the PCRM submitted for assessment to the Constitutional Court an initiative related to the amendment of Art.78 of the Constitution. It proposed keeping the vote for the president in Parliament, but in three attempts, with a gradual decrease in the number of MP votes required

¹ Constitution of Moldova, Chapter V, <http://www.presedinte.md/>

² Position of the Civic Coalition for Free and Fair Elections, <http://www.alegeliber.md/>

³ <https://wcd.coe.int/ViewDoc.jsp?>

Ref=PR453%282010%29&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet

⁴ “The Council of Europe confirms its support for the AEI's decision. [...] Since a consensus of opinion hasn't been reached, I think it would be right if the people could decide on it. The European organizations and the Venice Commission support this proposal as well. I encourage the Moldovan people to participate in the vote”, CoE Secretary General Thorbjørn Jagland, 3 June 2010, <http://www.azi.md/ro/story/11752>

⁵ News conference by Communist leader Vladimir Voronin, www.pcrm.md

⁶ [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)002-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)002-e.asp)

⁷ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335036>

to elect the president – 61 in the first round; 57 in the second; and a simple majority of 52 votes in the third.⁸ On 29 April 2010, the Constitutional Court sanctioned the initiative of the PCR.

On 14 April 2010, the Alliance for European Integration submitted a proposal of its own for the amendment of Art.78, which proposed the election of the president by direct popular vote. This proposal, too, was approved by the Constitutional Court on May 4.

At the Parliament's session on 7 July 2010, the AEI deputies adopted the Decision on the holding of a national constitutional referendum, which was scheduled to take place on 5 September 2010.

On 5 September 2010, Moldova will hold its first ever constitutional referendum, where the voters will be asked to express their opinion about the proposal to introduce a direct vote for the president. The voters will be asked to answer the question: “*Would you agree with the amendment of the Constitution which would allow for the election of the President of Moldova directly by the people?*”, with two options given: “Yes” and “No”.

Consequently, according to the Decision of Parliament on the holding of the national constitutional referendum, the validation of the referendum will lead to the essential amendment of Art.78 of the Constitution, as follows:

“(1) The President of the Republic of Moldova is elected by universal, equal and direct vote, secretly and freely expressed;

(2) Any citizen of the Republic of Moldova over 40 years of age with the right to vote that has been living in the country for at least 10 years and speaks the official language can run for the office of President of the Republic of Moldova. The procedure of electing the President of the Republic of Moldova shall be established by organic law.

(3) The candidate who wins at least a half of the votes cast by the voters who participated in elections shall be declared elected.

(4) In case no candidate gathers the required majority, a second round shall be held between the first two candidates that won most of the votes in the first round. The candidate who wins most votes shall be declared elected.”⁹

A. IMPLEMENTATION OF RECOMMENDATIONS ON IMPROVING THE ELECTORAL PROCESS

The monitoring reports that observed the parliamentary elections of 6 March 2005, published by the Civic Coalition for Free and Fair Elections “Coalition 2005”, proposed a set of recommendations to improve the electoral process:

- *Guarantee the right to vote to all the citizens of the Republic of Moldova who are eligible to vote, including: students, Moldovan nationals who reside in the Transnistrian region and those working or living abroad.*

The students who, by the date of the referendum, will not have a temporary residence permit for the town they are studying in will be able to vote either in the place where they have permanent residence or at any other polling station in the country, provided that they hold a voting certificate.

According to the Decision of the Central Election Commission (CEC) on the requisition of the Government of Moldova no.2204/45 of 20 July 2010, it was decided to open 78 overseas polling stations in the countries and foreign cities where Moldovan citizens live. Compared with the previous poll, the number of overseas polling stations has been increased by 45, and these additional stations will be opened outside of the diplomatic and consular offices of Moldova. Information on the location of the polling stations, with exact addresses, was published on the website www.voteaza.md, which is operated by the CEC.

However, the specific organization activity of the diplomatic missions involved in the electoral process is to a great extent deficient, and in some cases even nonexistent. Out of 12 Moldovan embassies, only the embassy in the United Kingdom and that in the United States provide on their websites a complete set of information on the holding of the referendum and the addresses of the polling stations to be opened in these countries. Incomplete information is provided by the embassies in Germany, Italy and Romania.

⁸ <http://www.europalibera.org/content/article/2028316.html>

⁹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335188>

The online resources of the diplomatic offices in Portugal, Greece and the Russian Federation provide no information whatsoever about the holding of the referendum, no contacts or addresses for the polling stations. A near-total information void in the virtual space is a problem that characterizes the Moldovan diplomatic missions responsible for Canada, France, Cyprus and Spain, which do not possess any on-line instruments for communicating with and informing the Moldovan citizens. These deficiencies run counter to p.12¹⁰ of the Guidelines on the voting by the Moldovan citizens abroad.

- *Provide voters in Moldova's Transnistrian region with transport to travel to the polling stations opened in nearby communities and ensure the conducting of the election campaign in the region.*

As of 16 August 2010, the CEC didn't adopt any decision to regulate the procedure of providing eligible voters in the Transnistrian region with transportation to the polling places. Furthermore, there hasn't been established any rule on the specific conditions for the conducting of an information campaign destined for the Moldovan citizens living in the eastern districts. As of August 16, neither the CEC nor the electoral participants or the media were observed carrying out particular activities to inform and/or provide electoral education for the Transnistrian region.

- *Identify ways to prevent multiple voting*

The CEC ordered the application of the seal "Referendum 2010" to the identity documents produced by the voters in order to exclude multiple voting.¹¹

Of the recommendations mentioned in the monitoring reports published by the Civic Coalition for Free and Fair Elections "Coalition 2009", the following remain in place:

- *Amend Art.39 par.9 of the Election Code as follows: "In case the voter changes his/her residence in between the date of drawing up the voter rolls and election day, the electoral bureau of the respective polling station issues a voting certificate, on the request of the voter and upon the presentation of the identity card, the passport or any other piece of identification."*

Still, the CEC hasn't provided expressly for the right of the people living in the region controlled by the secessionist authorities to get hold of voting certificates. And some of the amendments, like the inscription "Special Ballot Box", bear notes of discrimination against the voters living on the eastern side of the Nistru.

- *Establish separate electoral bureaus for the Transnistrian region and create optimal conditions to encourage more active participation [...].*

On 9 July 2010, the CEC created 37 electoral constituencies, including two, and namely no.3 Bender and no.37, for the settlements located on the eastern side of the Nistru. No electoral councils have been established for these two constituencies.

On August 13, the CEC issued Decision no.3444 to establish the procedure of the participation of the Moldovan citizens living in certain settlements on the eastern side of the Nistru, in Bender municipality, and in certain settlements in Causeni district, in the national constitutional referendum on 5 September 2010. The voters in the given settlements were assigned to polling places located on the western side of the Nistru. They will be included in the additional voter lists, with the indication of the respective electoral bureau and polling station, and their ballots will be introduced in separate boxes having the inscription "Special Ballot Box".

¹⁰ "P.12 says: *The heads of the diplomatic missions and consular offices of Moldova shall ensure the information of the Moldovan citizens in the respective countries about the date, the hours and locations of the conducting of the poll by providing such information at their premises (inside the building and/or on their announcement boards), on their websites, as well as through mass media.*" Guidelines on the voting by the Moldovan citizens abroad, Annex to the CEC Decision no.3375 of 27 July 2010, http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_Regulament_Votarea_pestre_Hotare237

¹¹ <http://stireazilei.md/c-2153-4612,Moldovenii-din-strainatate-se-pot-inregistra-online-pentru-referendum>

- *Organize and hold information and electoral education campaigns to encourage the involvement of the people in the Transnistrian region in the electoral process.*

No initiatives have been undertaken so far to conduct information and electoral education campaigns for the people in the Transnistrian region to get them involved in the electoral process.

B.3. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (THE VENICE COMMISSION)

On 15 October 2009, the Moldovan Parliament adopted Decision No.39-XVIII on the establishment of the special Parliamentary Commission for the improvement of the electoral legal framework, which was tasked to develop and propose amendments to the Election Code and other relevant pieces of legislation. The Venice Commission welcomed the intention expressed on 15 October 2009 by the Moldovan government to modify the legislation through the Bill on the amendment and supplementation of the Election Code.

Some of the recommendations formulated by the Venice Commission were reflected in the new Election Code. The right to vote was ensured to the people convicted of serious and very serious offenses. Also, the voter turnout requirement was lowered to one-third of the eligible voters, in an attempt to avoid a repeat referendum.

Another innovation of the Election Code is the allotment of a minimum amount of free airtime by the public broadcasters for electoral advertising.

The Venice Commission has repeatedly recommended further regulation of the procedure of creating polling stations in the countries where Moldova doesn't have representative offices and of establishing additional polling stations apart from the Moldovan diplomatic and consular offices. Consequently, voting abroad will be possible not only within the diplomatic missions of Moldova, but also at other institutions. The Government will be responsible to negotiate the opening of polling stations in the areas inhabited by large numbers of Moldovans. It will also be responsible to fund the implementation of the Electronic Voter Register, which is expected to eliminate the imperfections from the traditional voter rolls.

Other novelties of the Election Code, which are in line with the recommendations of the Venice Commission and of the OSCE/ODIHR, are: the establishment of an Ongoing Training Center for electoral matters as a subdivision of the Central Election Commission; greater freedom in conducting and covering electoral campaigns for the media; clearer competences for the bodies authorized to examine complaints and appeals.

C. THE LAW OF 18 JUNE 2010 ON THE AMENDMENT AND SUPPLEMENTATION OF THE ELECTION CODE

A number of amendments were brought to the Election Code of the Republic of Moldova on 18 June 2010, which were published in the Official Gazette on 29 July 2010 and took effect on the publishing date (except for several provisions which are due to take effect in 2011 and 2013).

One amendment concerns the minimum voter turnout required for constitutional referenda to be deemed valid. Under the amendment, the poll will be considered valid if at least one-third of the eligible voters will take part in the referendum, instead of 60 percent previously.

Another adopted amendment is that the political parties which receive financing from abroad face removal from the race; according to the legal procedures, the Central Election Commission will submit a request to the Court of Appeals to annul the registration of the candidate in question from the electoral race. Furthermore, the voters who will engage in multiple voting will be liable to criminal punishment.

Also, a new method was introduced to appoint members on the Central Election Commission. The Central Election body will be composed of 9 members – one appointed by the President and eight by Parliament, with the principle of proportional representation of the majority and opposition respected. In case the term in office of the CEC members expires in the middle of an electoral campaign, it will be automatically extended for 90 days until new members are appointed.

The deadline for the validation of the elections by the Constitutional Court was left unchanged at 10 days, despite an initial proposal to increase it to 30 days.

The current bill also proposes the creation of an ongoing training center in electoral matters, so that in the future only holders of qualified training certificates can be appointed to election bodies of all levels.

III. FINDINGS FROM THE PRE-ELECTION PERIOD

A. Legal framework

The legal framework of the electoral process related to the national constitutional referendum on 5 September 2010 consists of the Election Code, decisions, regulations and guidelines by the Central Election Commission.

In the electoral period preceding the national referendum on 5 September 2010, in conformity with Art.22 par.c of the Election Code, the Central Election Commission developed a series of regulations and guidelines aimed to improve electoral procedures.

The following regulations and instructions were adopted:

- 1. Regulation on the participation of political parties and other sociopolitical organizations in the election campaign preceding the national constitutional referendum on 5 September 2010**, adopted by CEC Decision no.3281 of 13 July 2010. The positive aspects of this document are related to the explanation of the meaning of participant, the procedure of getting registered for the referendum and the description of the participants' rights. Its deficiencies are related to the ambiguity of the meaning of “representative with consultative authority of the participant to the electoral bodies”, and of the meaning of “the participant's trusted person”. This is also the reason why the registration terms of these categories of persons with the election bodies are uncertain.
- 2. Regulation on the procedure of posting electoral advertising on billboards in the electoral period**, adopted by CEC Decision no.3338 of 16 July 2010. The regulation states that the participants in the referendum have the right to display campaign posters on equal terms. Unfortunately, however, this regulation fails to describe in detail the required content of the electoral advertizing in order to avoid instances of infringement of the Law on advertizing. Furthermore, there is a discrepancy between the title of the regulation and its content, in the sense of the regulation of electoral advertizing in the private sector.
- 3. Regulation on the financing of electoral campaigns and of political parties**, adopted by CEC Decision no.3336 of 16 July 2010. This set of guidelines was published on the CEC's website under the “Referendum 2010” rubric. However, this regulation doesn't specify whether the participants in the referendum are required to submit weekly financial reports, this requirement applying expressly only to “electoral contestants”.
- 4. Regulation on media coverage of the constitutional referendum**, adopted by CEC Decision no.3337 of 16 July 2010. The regulation establishes the form of expressing one's option concerning the referendum, which can be only “yes” or “no”. Thus, the airtime and newspaper space are allotted to political parties or sociopolitical organizations, upon request, only after their registration with the Central Election Commission and only after they expressing their option, either “yes” or “no”, as to the question of the constitutional referendum.
- 5. Regulation on the procedure of examining complaints by the election bodies in the electoral period**, adopted by CEC Decision no.3353 of 20 July 2010. The Regulation states that “each voter and electoral contestant” may submit an electoral complaint; however it omits the national observers, who are also voters.
- 6. Regulation on the preliminary registration of Moldovan citizens abroad**, adopted by CEC Decision no.3354 of 20 July 2010. The regulation establishes the procedure and terms of preliminary registration of the Moldovan eligible voters who are abroad. The purpose of the preliminary registration, which is not a mandatory procedure, is to gauge the approximate number of voters that could cast ballots at overseas polling stations and determine the number of the needed ballots. This regulation helps to ensure transparency and accuracy in the electoral process. The persons who take the preliminary registration are registered in additional electoral lists. An advantage of this regulation is that the preliminary registration procedure is very simple, as the Moldovan citizens who are abroad and wish to be registered in the main voter rolls may do so by accessing the website www.voteaza.md, which is operated by the CEC.

7. **Regulation on drawing up, administering, transmitting and updating voter rolls**, adopted by CEC Decision no.3364 of 23 July 2010. This regulation establishes a set of guidelines that supplement the provisions of Art.39 on the electoral rolls of the Election Code. However, the regulation runs counter to the Election Code in that it allows the voters to ask for a voting certificate from the electoral bureau of the polling station where they have their residence, whereas the Election Code allows this only if they have their domicile there. Another contradiction between the Regulation and the Code is related to the time limit for declaring one's new place of stay; the Code provides for a term of 45 days, while the Regulation for 30 days.
8. **Decision on the requisition by the Moldovan Government no. 2204/45 of 20 July 2010 on the arrangement of overseas polling stations for the September 5 referendum**. This decision was challenged by the PCRM in its capacity as a participant in the referendum. The PCRM argued in particular that the time limits for establishing polling stations were breached. The Election Code doesn't expressly render CEC's decision null in case time limits are exceeded, but it is certain that the CEC established the overseas polling stations in breach of the legal provisions. The argument put forward by the CEC in favor of its decision is that it will enable a greater number of voters to express their option.
9. **Guidelines on the voting by the Moldovan citizens abroad**, adopted by CEC Decision no.3375 of 27 July 2010. This is for the first time that CEC adopted a regulation to establish the particularities of organizing the voting of the Moldovan citizens abroad.
10. **Instructions for the voting procedure with a mobile ballot box**, adopted by CEC Decision no.3391 of 30 July 2010. This set of instructions states that the number of ballot papers given to the polling officers who carry a mobile box shall coincide with the number of voters who asked to vote elsewhere than at the polling station. However, the CEC omitted the fact that, according to the Election Code, each voter has the right to one error and may request another ballot paper. Additionally, the instructions state that the ballots from the mobile box shall be added to ballots in the fixed boxes before the fixed boxes are unsealed.
11. **Decision on the procedure of the participation of the Moldovan citizens living in certain settlements on the eastern side of the Nistru, in Bender municipality, and in certain settlements in Causeni district, in the national constitutional referendum on 5 September 2010**. On 9 July 2010, the CEC adopted Decision no.3255 to form the electoral constituencies no.3 Bender and no.37 for other settlements on the eastern side of the Nistru. These two constituencies still remain without electoral councils, as the deadline for establishing such councils expired on 16 July 2010 and the Central Election Commission hasn't adopted any decision to address this issue. CEC Decision no.3444 of 13.08.2010 discriminates against the people living on the eastern side of the Nistru in that they will be included in additional voter rolls; furthermore, these people will have to cast their ballots in boxes reading "Special Ballot Box". The results of counting the ballots will be noted down on a special form and there will be separate written records. The electoral constituency no.3 Bender should have its own electoral councils and polling stations. While constituencies no.37 and no.3 lack electoral bodies, simply transferring the burden on the electoral bodies in other constituencies is not a solution. Roundabouts to avoid the legal provisions should not be sought; instead, legal provisions should be executed so that we can have free, fair and valid elections.

B. TRIAL OF THE ELECTRONIC VOTER REGISTER

The Central Election Commission has decided to experiment with the use of the Electronic Voter Register in a number of polling stations created for the September 5 referendum.

Each voter who will participate in the trial will be assigned a personal code which will be introduced into the computer, as the data will be processed directly by the CEC.

According to CEC Secretary Iurie Ciocan, the Electronic Register will help to exclude the so-called "electoral tourism" and improve the quality of the voting system.

Yet there are risks that this system could be the target of cyberattacks, like it happened in the polls in April and July 2009; then the authorities dealt with them successfully. The commission said that it cooperated with the Security and Intelligence Service to ensure the electronic security of the electoral data.

45 polling stations in Chisinau's Centru district will be involved in the experiment on September 5. Each station will have two computers with two operators to assist the voters. To secure the Electronic Voter Register, the CEC will rely on more than one server and several electricity sources.¹²

C. ELECTORAL PARTICIPANTS

The Central Election Commission registered the first participants in the national constitutional referendum on 16 July 2010. According to the timetable developed by the commission, the deadline for registration of participants in the referendum was 6 August 2010.

In the period between 16 July and 6 August, the Commission registered 25 participants. Of these, 16 political parties will campaign for the “yes” option:

- The Democratic Party of Moldova (PDM);
- The “Moldova Noastra (Our Moldova)” Alliance (AMN);
- The Liberal Party (PL);
- The Liberal Democratic Party of Moldova (PLDM);
- The “Actiunea Europeana (European Action)” Movement¹³ (MAE);
- The People’s Republican Party;
- The National Liberal Party;
- The Republican Party of Moldova;
- The Ecological Party of Moldova “Alianta Verde (Green Alliance)”¹⁴;
- “Pentru Neam si Tara (For Nation and Country)” Party;
- The Humanist Party of Moldova;
- The Roma Social-political Movement of the Republic of Moldova;
- The National Romanian Party;
- The Labor Party;
- “Moldova Unita (United Moldova)” Party;
- The Centrist Union of Moldova¹⁵;

The following 6 political parties did not take a “Yes” or “No” position in the referendum:

- The Communists Party of the Republic of Moldova (PCRM);
- “RAVNOPRAVIE (Equality)” Republican Social-Political Movement;
- “Patria-Rodina” Socialists Party of Moldova;
- The Conservative Party;
- “Forta Noua (New Power)” Social-Political Movement;
- The Socialist Party of Moldova.

The Christian Democratic People’s Party (PPCD) was registered as participant on 16 July, and did not take a stance on the referendum, saying it would announce its position on the constitutional reform and the best course to follow for Moldova during the electoral campaign.

The only participant in the referendum who expressed a “No” option to the question to be addressed in the referendum is the “Patriotii Moldovei (Moldova’s Patriots)” Political Party, registered on 5 August. On the same day the electoral competition was joined by the Social Democratic (PSD), which declared it would convince the citizens to boycott the plebiscite.

On July 27, the CEC warned the political parties registered as participants in the referendum on 16 July about the potential consequences of their failure to submit reports on their financial situation for 23 July 2010. Warnings were issued to the Democratic Party of Moldova, “Moldova Noastra (Our Moldova)” Alliance, the Communists Party of Moldova, the Liberal Party, “RAVNOPRAVIE (Equality)” Republican Social-Political Movement, the Liberal Democratic Party of Moldova, “Actiunea Europeana (European Action)” Movement, the Christian Democratic People’s Party and People’s Republican Party.¹⁶

¹² <http://www.azi.md/ro/story/13184>

¹³ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_16Iulie140

¹⁴ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_20Iulie210

¹⁵ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_5August204

¹⁶ [http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_27Iulie\(Sedinta\)165](http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_27Iulie(Sedinta)165)

At its meeting on 5 August, the Commission reversed its July 27 decision which warned the 9 participants on their failure to submit financial reports.

At the same time, CEC issued a warning to the “RAVNOPRAVIE (Equality)” Republican Social-Political Movement, People’s Republican Party, “Patria-Rodina” Socialists Party of Moldova, the Republican Party of Moldova¹⁷, which did not submit financial reports before the deadline fixed in article 38 (8) of the Election Code.¹⁸

D. ROLE OF LOCAL AUTHORITIES

The representatives of the local public administration were encouraged by the Central Election Commission to pay increased attention to the process of compilation and verification of voter rolls.¹⁹

According to the Election Code, voter rolls are compiled by the mayor's offices, in two copies for each polling station and include all citizens with the right to vote residing within a polling station, regardless of their current location. The rolls prepared by the mayor's offices should be verified by them at the residence of the voters inscribed.

The commission highlighted the importance of the quality preparation of voter rolls as a key element for the good organization and implementation of the electoral process.

An analysis of the events in the Balti Municipal Council, where on 27 June 2010, the majority of councilors approved a declaration calling upon the voters to boycott the constitutional referendum on 5 September, reveals the following:

The activity of local councils is limited by the territory they administrate. Therefore the councils cannot decide on issues of national interest/importance, e.g. the national referendum. This is the idea behind the administrative decentralization – of the division of power in the state and the division of the state territory in administrative units. Consequently, each territorial-administrative unit has its own ruling bodies, which are responsible for the area they manage. According to article 112 (2) of the Moldovan Constitution, “Local Councils [...] act as autonomous administrative authorities and are assigned the task of solving public affairs in villages and towns”. Article 14 of the Law on the Local Public Administration reads: “The local council has the right to initiative and decides, within the limits of the law, on all issues of local interest, with the exception of those assigned to other public authorities”. The analysis of the quoted legal provision shows that local councils have legal powers only within the limits of the territory they administrate and are not allowed to interfere in the national public issues.

Local councils are state authorities and in this capacity they should cooperate with other state authorities. They should operate within the scope of the competences assigned to them by the law. Law-making is an exclusive activity reserved for Parliament. Therefore, given that Parliament is the only legislative authority, which decides and initiates the revision of the Constitution, other authorities are to comply with its legal acts and should not obstruct the legal and practical implementation of these acts.

Councilors who are party members do not have the right to make political propaganda through the mandates they were invested with and neither are they entitled to use the council’s sittings as a means to achieve their own political ends. The act of misusing the mandate for the purpose of electoral campaigning constitutes an electoral violation and should be penalized accordingly. According to article 10 of the Law on the status of the local elected officials no.768 of 02.02.2000, “the local elected official has to be worthy of the voter’s trust and should contribute, through his/her personal example, to the consolidation of the local public administration’s authority, the due honoring of civic obligations, ensuring public order and respect for the legislation”. Art.16 of the same law reads: “The local elected official, within the scope of his competences, contributes to the implementation of laws and other normative acts, to the implementation of national and local plans and programs in all areas of socioeconomic activity”. Thus, the elected local official should contribute to the implementation of laws, the right to vote. Therefore, through its illegal actions, and given that it doesn’t even have the legal power to boycott the elections (the referendum), Balti Municipal Council attempts to restrict the citizens’ right to vote.

According to the article 47 (1) of the Election Code, only the citizens of the Republic of Moldova, parties and other sociopolitical organizations, electoral blocs, candidates and trustees of candidates have

¹⁷ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_5August204

¹⁸ Art. 38 (8) of the Election Code stipulates: “*Electoral contestants shall submit bi-weekly financial reports to the electoral bodies, which will include data on the income and expenses and their sources*”.

¹⁹ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_11August208

the right to engage in electoral campaigning and only through means permitted by the law. The local councils are not part of this list which is exclusive.

Intentions, similar to those in Balti, were reported in Ocnita, Basarabeasca and UTA Gagauzia.

E. CODE OF CONDUCT

On 16 July the electoral participants, both political parties and media organizations, were invited to sign, through their empowered representatives, *The Code of Conduct on the Organization and Media Coverage of the Electoral Campaign for the National Constitutional Referendum on 5 September 2010*²⁰. According to the Election Code, the Code of Conduct can be signed before the launch of the electoral campaign.

According to the data provide by CEC, “Moldova Noastra” Alliance is currently the only political party to have signed the *Code of Conduct on the Organization and Media Coverage of the Electoral Campaign for the National Constitutional Referendum on 5 September 2010*, on 20 July.²¹

F. OBSERVANCE OF TIMETABLES BY THE ELECTION AUTHORITIES

The Timetables for the implementation of actions for organizing and conducting the national constitutional referendum on 5 September 2010 was approved by the Central Election Commission Decision no. 3254 of 9 July 2010.

Potential irregularities in the implementation of the timetable were alleged by the Communists Party of the Republic of Moldova, in the person of the party’s legal representative, Sergiu Sirbu, who took legal action against the CEC in the Chisinau Court of Appeals on 5 August 2010. The PCRM challenged the consent of the Commission for the opening of polling stations abroad, additionally to those within diplomatic missions.²² According to PCRM, the CEC has thus violated the provisions of the Election Code. Besides the lack of agreements signed by the national authorities with the host states where additional out-of-country voting stations are to be opened, the Communists claimed that the deadline for the establishment of these stations was exceeded by at least 4 days.²³

On 6 August 2010, the CEC published an official response to the PCRM’s appeal for the annulment of the Decision no.11 of 3 August 2010, adopted by the Chisinau municipal electoral council No.1, on the issue of opening of polling stations abroad.²⁴ According to the issued document, the Commission denied all accusations with regards to the violation of art. 29 (3) of the Election Code, which regulates the creation of polling stations abroad before the completion of the preliminary voters registration procedure. According to the assessment done by CEC, voter rolls outside the country are compiled by the diplomatic missions and consular offices in the case of polling stations opened by this structures and, respectively, by CEC in the case of preliminary registration of citizens, based on the information obtained from the registration of citizens through the website www.voteaza.md, administered by CEC.

At the same time, according to the provisions of the Regulation on the preliminary registration of Moldovan citizens abroad, adopted through the Decision no.3354 of 20 July 2010, preliminary registration of voters is not mandatory. Even if they are not registered in time, citizens of Moldova can make use of their right to vote by coming to the respective polling station on election day.

Consequently, PCRM’s claims on the violation of deadlines for the creation of polling stations abroad were dismissed as unfounded by the Commission, because the preliminary registration is an optional procedure for Moldovan citizens. This means that this procedure can not condition the creation of polling stations. It was rather introduced in order to estimate the number of voters, a procedure that lasted until 10 August 2010.²⁵

The timetable provided that the estimate of expenses for the organization and conducting of the national constitutional referendum was to be approved by 13 July 2010. CEC approved the estimate on 16 July 2010.

²⁰ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_16Iulie601

²¹ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_20Iulie210

²² <http://www.azi.md/ro/story/13052>

²³ <http://www.azi.md/ro/story/13052>

²⁴ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_3441_PCRM117

²⁵ [http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_9August\(Pre-Inregistrare\)135](http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_9August(Pre-Inregistrare)135)

The timetable also provided for the organization of training seminars with the chairpersons and secretaries of district electoral councils (district, municipal, UTA Gagauzia) by 13 July 2010. However, the training session took place on 28 July 2010.²⁶

G. OBSERVATIONS ON THE DEVELOPMENT OF THE ELECTORAL CALENDAR FOR CONDUCTING THE NATIONAL REFERENDUM ON 5 SEPTEMBER 2010

With regards to the errors committed within the timetable approved through the CEC Decision no. 3254 of 9 July 2010, several things should be emphasized:

1. One of the flaws was the indication that participants are obliged to submit, weekly, to CEC financial reports on financial and other material support received, because the provisions previously mentioned in art. 38 (1) a) of the Election Code was referring to the parliamentary elections. Because of this error in the timetable, the Commission issued its Decision no. 3373 of 27 July 2010, in which it warned the registered participants of the requirement to submit financial reports weekly. Later however, at the initiatives of the participants in CEC meetings, the Commission annulled it through another decision. In spite of this, no amendments were made to the original timetable, so that the errors persist till now.
2. Another mistake is the wrong indication that voters who changed their place of residence are required to declare their new residence to the local public administration before August 5 2010 (not later than 30 days before the day of the referendum) for being registered in the voters rolls for participation in the referendum. Indeed, these provisions comply with the new content of art.39 (8) of the Election Code, adopted through the Law no. 119 of 18.06.2010 on the amendment of the Election Code. However, the new provisions of art. 39 will enter into force only in 2011 and until then the old provisions of the Code are to be applied, according to which not later than 21 July 2010 (45 days before the day of the referendum), the voters who changed their residence are required to declare their new residence to the local public administration for being registered in the voters rolls for participation in the referendum
3. It was erroneously indicated that CEC would submit the electronic versions of voters rolls by 13 July 2010. According to the p. 22 of the CEC Regulations on the drafting, administrating, transmitting and updating of voters rolls, the rolls will be posted on the CEC webpage 20 days before the day of the referendum. This means that the rolls are to be posted online before 15 August.
4. It was mistakenly stipulated that by 16 August 2010, voters rolls, signed by the mayor are to be submitted to electoral bureaus of polling stations. According to art.40 (2) of the Election Code, voters rolls, signed by the mayor, are submitted to the electoral bureaus of polling stations 20 days before the day of the referendum. Thus the rolls are to be submitted by 15 August 2010.
5. The timetable indicated that by 16 August 2010, the Central Election Commission will post the voters rolls on the website and will ensure accessibility to the rolls within the premises of the polling stations. However, art.40 (1) of the Election Code provides that the voter roll shall be made available for inspection in a public place within the polling station and posted on the CEC website 20 days before elections. Thus rolls are to be posted online and made available in polling stations before 15 August.
6. It was erroneously stipulated, that by 2 September 2010, voting ballots would be printed and distributed to district electoral councils. Art.49 (2) of the Election Code stipulates that ballots shall be printed and distributed to district electoral councils no later than three days prior to the day of the referendum. Therefore, by September 1 2010, ballots are to be printed and distributed to district electoral councils.

H. NATIONAL AND INTERNATIONAL OBSERVERS

CEC Secretary, Iurie Ciocan, has confirmed the participation of 2 observers delegated by the Organization for Security and Cooperation in Europe (OSCE). However, the international organization sees the referendum as an internal affair of Moldova related to a legal reform. According to OSCE, the

²⁶ [http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_28Iulie\(seminar\)174](http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_28Iulie(seminar)174)

leading role in the monitoring should be played by local NGOs and groups of observers working in the country.²⁷

On 5 August, the commission has created the International Observers Protocol Office, which is expected to ensure a more efficient activity of the observers. The Office will be composed of 9 members with different responsibilities, including coordination with CEC for ensuring the proper activity of international observers.²⁸

206 national and international observers will monitor the national constitutional referendum on 5 September 2010. This number is considerable smaller than the figures registered in the early Parliamentary Elections on 29 July 2009 and the Parliamentary Elections on 5 April 2009.

By 22 July 2009, CEC provided accreditation to 122 international and 2374 national observers, representing different NGOs and diplomatic missions.²⁹

At the same time, it is important to mention that the Parliamentary Elections on 5 April 2009 were monitored by 3134 national and international observers. Of the total number of accredited persons, 2532 were national observers representing 14 NGOs as well as electoral competitors. The other 602 international observers were proposed for accreditation by 28 international organizations, foreign governments and foreign nongovernmental organizations.³⁰

I. ESTABLISHMENT OF ELECTORAL BODIES

Members of the following political parties with parliamentary factions participated in the formation of electoral bodies: PCRM, PLDM, PL, PD and AMN. In compliance with the provisions of art.27 and 29 of the Election Code, electoral bodies are established with the participation of representatives of “parties represented in parliament”. Delegates of other political formations that have representation in the legislative body could not participate in this process; among them - “Actiunea Europeana (European Action)” Movement (MAE) and “Moldova Unita (United Moldova)”.

IV. TRANSNISTRIAN REGION

In compliance with the obligations stipulated in the Election Code, the body responsible for maintaining public order in the towns and villages which host polling stations for voters in Transnistria region is the Ministry of Interior.

On the other hand, the Commission made an appeal to national and international observers as well as the Joint Control Commission to monitor the peaceful organization of the electoral process and maintaining safety within polling stations in villages situated in the Security Zone.³¹

In one of his public statements, CEC representative Petru Denisenco said that “the authorities in Tiraspol will not allow the opening of polling stations for the referendum on the territory of Transnistria, but will also abstain from obstructing the realization of this right of the citizens of Moldova, who will be able to vote on the western bank of the Nistru River”. No official statement was issued however regarding the opening of the polling station in Corjova Village, Dubasari.

Activities peculiar to the electoral campaign are practically absent in the Transnistrian region. Voters do not have full access to information on the referendum to be held on 5 September 2010, its purpose, effects, participants and their electoral message. As a rule, electoral competitors ignore the voters from the Transnistria Region.

²⁷ <http://www.europalibera.org/content/article/2125529.html>

²⁸ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_3419684

²⁹ <http://www.e-democracy.md/elections/parliamentary/20092/electoral-news/20090722/>

³⁰ <http://www.e-democracy.md/elections/parliamentary/2009/electoral-news/20090402/>

³¹ http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_13August%28Transnistria%29180

One of the region's peculiarities is that information in the mass media is confusing and ambiguous. On the one hand, some of the media agencies tried to provide citizens with some information on the referendum to be held on 5 September. Others, however, published opinions of political analysts from the region, but also from Russia on the essence of the referendum, which as they suggested "was organized in the interest of the current government".

V. CONCERNS

- Lack of information or incomplete information in some polling stations abroad could negatively influence participation of Moldovans staying abroad.
- Exceeding time limits for the creation of polling stations, stipulated in art.29 of the Election Code could lead to an eventual challenging of the results of the voting in those stations and even to their annulment.
- The piloting of the Electronic Register could be compromised as a result of potential cyberattacks, which were also reported in the 2009 elections.
- The fact that some electoral participants and media institutions ignore the Code of Conduct could lead to violations of legal provisions or a vicious course of the electoral campaign.
- Low participation of national and international observers could decrease the international legitimacy with regards to the constitutional reform undertaken by the Alliance for European Integration.
- The activity of electoral bodies could be paralyzed because of legislative lacks, such as the failure to penalize those members of electoral bodies who do not show up or avoid working in the day of the referendum.
- The Directive on the mobile ballot box voting procedure stipulates that the number of ballots issued to voters corresponds to the number of voters, a fact that could violate one's right to vote and the principle of the equality of voting, in the case that the ballot is damaged.
- The delayed organization of training seminars with the members of electoral bodies could affect their capacities for efficient management of the electoral process.
- Low levels of participation among the population of the eastern bank of the Nistru River as a result of the lack of regulations that would ensure availability of public transportation to the polling stations on the right bank, the possibility to obtain voting certificates, as well as because of the very poor quality of the information and electoral education campaign.
- In the situation of utilization of "special ballot boxes" for the voters on the left bank of the Nistru, this could turn into a risk of discrimination in the case of some villages in Causeni and Bender districts.
- Some polling stations could become crowded on the day of the referendum with taking over the obligation to ensure the voting of citizens from the left bank of Nistru and some villages of Causeni and Bender districts.

VI. RECOMMENDATIONS

To the Central Election Commission:

- Strict compliance with the provisions of the timetable with regards to the time limits set for the creation of polling stations, and introduction of certain comprehensive amendments with regards to the polling stations abroad.
- Taking additional measures for ensuring the security of the Electronic Electoral Registry against cyberattacks.
- Revising the Directive on the mobile ballot box voting procedure in order to ensure the availability of the required number of voting ballots, so that citizens are guaranteed their right to vote.
- Organization, within the time limits set in the timetable, of trainings with the members of electoral bodies in order to ensure the efficient management of the electoral process.
- Carrying out information and electoral education campaigns in order to ensure high electoral participation of the population from the left bank of the Nistru River.
- Establishment of polling stations for citizens from the left bank of Nistru, some villages in Causeni and Bender, in the electoral districts indicated earlier.

To the Ministry of Foreign Affairs and European Integration and the Government of the Republic of Moldova:

- Efficient functioning of diplomatic missions that would ensure the good organization of the electoral process for the citizens of Moldova who are abroad.
- Improving the online component of communication and information activities destined for Moldovan citizens who are abroad in the period when the national referendum takes place – 5 September 2010.

To the Electoral participants:

- Signing the Code of Conduct by all electoral participants, regardless of their option or message in the referendum.

To the Mass Media:

- Signing the Code of Conduct in order to ensure accurate, honest and unbiased information coverage of the electoral process.

To the Civil Society and international organizations in Moldova:

- Paying particular attention to the national referendum, by increasing the number of national and international observers.