

Terms of Reference – International and National Experts on Electoral System Design

Ref. No. 2 from 18.02.2017

1. Background and context

Republic of Moldova is a constitutional democracy with its 1994 Constitution dividing power among the legislative, executive and judiciary bodies. The Moldovan Parliament has 101 members, elected for a four-year term in one nationwide constituency through a proportional representation system based on closed party-lists.

Citizens reaching 18 years of age on or before Election Day have the right to vote, apart from those who have been declared incapacitated or were deprived of the right by a court. Moldova implements a passive system of voters' registration. In 2014 the State Registry of Voters was implemented for the first time at the Parliamentary elections. According to this registry, in Moldova there are about 3,2 millions of voters. The average voter turnout at Parliamentary elections was 63%.

All type of elections is regulated by the Constitution, the Election Code, the Law on Political Parties, as well as Central Election Commission (CEC) regulations and decisions and relevant sections of the Criminal and Administrative Codes. The elections are administered by three levels of election administration: The Central Election Commission, District Electoral Councils (DECs) and approx. 2,000 Precinct Electoral Bureaus (PEBs). The election administration of different levels includes representatives of political parties

proportional to their representation in Parliament. The current composition of CEC was appointed in 2016 for a five-year term, and consists of nine members, including two women – the Chairperson and Deputy Chairperson. One member is appointed by the President and the other eight members by Parliament, based on the composition of the 2014 Parliament. DECs consist of between 7 and 11 members who are nominated by the courts/local councils and parliamentary parties. PEBs consist of between 5 and 11 members who are nominated by local councils and parliamentary parties.

Overall, the legal framework provides an adequate basis for conducting democratic elections. However, the electoral system in Moldova has been an issue of discussion. The country has previously used both majoritarian and proportional electoral systems. In the first parliamentary elections of 1990, deputies of the National Assembly were elected by a majoritarian system through single-member constituencies. After the 1992 war in the Transnistrian region, this system became fully proportional in the parliamentary elections of 1994, with the entire country being considered one nationwide constituency. The proportional system has remained in place since 1994, but specific provisions have been adjusted. Since its adoption in 1997, the Electoral Code was amended more than fifty times. A reform in the Election Code of 2010 replaced the D'Hondt formula for mandate allocation with a new method which allocates "remainder seats" on an equal basis to all parties that pass the threshold rather than on a proportional basis.

In 2013, a reform of the electoral system was rapidly added to the agenda of the Parliament in the middle of a political crisis. The purpose of the draft amendments introduced in April 2013 was to alter the electoral system from a single nationwide constituency through proportional representation from closed party lists to a mixed member proportional system. Of the Moldovan Parliament's 101 MPs, 51 MPs were to be

elected through a proportional system from party lists and 50 MPs through single-mandate constituencies.

In this context, the Venice Commission and OSCE/ODIHR stated that “the choice of an electoral system is the sovereign right of each state; however, it should be decided and agreed upon through broad and open discussions in the Parliament with the participation of all political forces”. Unfortunately, when the draft proposal was submitted for analysis, there had been no open debate with political parties or civil society representatives. ODIHR and Venice Commission commented on the proposed amendments and expressed a series of concerns with regard to the draft law. Following reaction from stakeholders, the law was repealed and the previous proportional system was restored.

In addition to repealing the amendments, in May 2013 the Parliament raised the thresholds for representation. Since then, the minimum thresholds for obtaining seats in Parliament are: for political parties to 6 per cent (increased from 4 per cent), for an electoral bloc of two political parties to 9 per cent (increased from 7 per cent); and for an electoral bloc of 3 or more political parties to 11 per cent (increased from 9 per cent). The threshold for an independent candidate remained at the level of 2 per cent (none of the independent candidates won a seat in the Parliament during the entire history of Moldovan elections).

A number of additional amendments to the electoral framework have been adopted in the Parliament during 2015-2016, including initiatives on introducing a gender quota for party lists and more comprehensive party and campaign finance regulations.

At the moment 45 political parties are registered in Moldova. The political environment in Moldova is severely polarized between the major political parties with tensions increasing every election. The divergences are even more deepened when it

comes to discussions about the geopolitical orientation of the country, extensive corruption, the name of the language (Moldovan according to the Constitution but Romanian in fact), and other more recent phenomena like the theft of a billion US dollars from the banking system, allegedly supported by influential individuals closed to the political elites. A negative outcome of the elections is also the migration of the MPs between the faction/political parties in the Parliament after they got elected. Unfortunately, the lack of legal mechanisms to prevent this phenomenon is further eroding the trust of citizens in the electoral process and democratic institutions. These and other negative aspects of Moldovan politics led to a high level of distrust in political parties and main state institutions (Barometer of Public Opinion, October 2016). Thus, in Moldova 91% of people do not trust in political parties, 93% do not trust the Parliament, 90% do not trust the Government and 90% of people do not trust the justice system.

According to the Code of Good Practice and its explanatory report, the stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. This also applies to the electoral system, due to its decisive role in the election results. However, any electoral reform process should be subject to open debate and to expert opinions. Broad consensus is only possible when the public is well informed and all electoral stakeholders can express their opinion on the electoral changes under consideration. Inclusiveness and transparency are key aspects related to electoral reform and should be specifically ensured when modifying the electoral system.

Taking into account the previous evolution of the electoral system in Moldova, specifically the negative examples of sharp, non-transparent and non-inclusive changes of the electoral system, the negative social and political developments in the country but also the poor understanding by

simple citizens of the Pros and Cons of the current and other electoral systems, on one side, and the recently invigorated discussions about an eventual change of the electoral system, on other side, Promo-LEX consider that broad public debates and consultation with political parties and civil society concerning an eventual reform should be guaranteed.

When public confidence in the electoral system is compromised, the entire democratic process suffers. It is for this reason that Promo-LEX is seeking two experts (one International and one National expert) to conduct a comprehensive study on the Pros and Cons of the electoral system in Moldova, the opportunity or necessity to change it, and if relevant, the best electoral systems to put in place in order to cope with the social-political developments and conflicts. Additionally, the experts will contribute to the design and implementation of an information and advocacy campaign focused on the topic of electoral system reform in Moldova.

2. Objective

The overall objective of this assignment is to conduct a comprehensive analysis of the current electoral system applied in Moldova and its capacity/potential to cope with the social and political developments and conflicts. The analysis will also address the Pros and Cons of other different electoral systems that could fit to Moldovan society and their impact on the social and political landscape in the event of an electoral system change.

The assignment will also focus on assisting Promo-LEX with the design and implementation of an information and advocacy campaign focused on the topic of electoral system reform in Moldova.

This is expected to contribute to the strengthening of the expertise of various stakeholders in the field of electoral system analysis and ensuring better communication and

understanding within the society with regard to the role of the electoral system among the mechanisms meant to ensure democratic governance in Moldova.

Promo-LEX is looking to select one national and one international expert in electoral systems design who shall work together towards the achievement of the above mentioned objectives.

3. Scope of work

- Conduct a training for different electoral stakeholders (civil society representatives, media, experts, election observers etc.) with regard to the Pros and Cons of various electoral systems, what can be the impact of an electoral system change and how can these actors contribute to the improvement of the current electoral system or the implementation and consolidation of a new electoral system;
- Elaborate a comprehensive study on the electoral system in Moldova, the opportunity or necessity to change it, and if relevant, the best electoral systems to put in place in order to cope with the social-political developments and conflicts; the study will contain also recommendations on how can be improved the current electoral system, or implemented/consolidated a new electoral system;
- Assist Promo-LEX in designing and implementing an information and advocacy campaign focused on the topic of electoral system reform in Moldova.

4. Tasks to be performed by the International and National Experts

- Review the relevant background materials, including Moldovan Constitution, legal framework, previous assessment reports and other documents;
- Analyze the impact of the following social and political factors on the current electoral system and eventual

alternatives:

1. the evolution and current condition of the political parties' system,
 2. the activity of the state governing institutions (Parliament, Government and President) and their interaction,
 3. the role of the Central Electoral Commission in conducting elections,
 4. the structure and organization of the local public administration in Moldova,
 5. the administrative division of the country,
 6. the socio-demographic factors (no. of population, emigration, birth and death rates etc.),
 7. the large number of Moldovan citizens leaving abroad but who actively engage in the elections (about 9% of the voters at the 2016 Presidential elections),
 8. the internal conflicts (Transnistrian conflict) and social cleavages determined by the division of the society along many aspects (spoken language, geopolitical orientation of the country etc.);
 9. the situation of different ethnic groups and their views with regard to the most significant political and electoral issues;
 10. other relevant aspects.
- Conduct field research, hold meetings, interviews or focus groups with the relevant stakeholders in order to ensure an in-depth analysis of the most problematic issues related to the topic of the assignment (the research methods are to be selected by the experts and proposed in the draft of the methodology);
 - Collect and analyze relevant statistical data for a better understanding of the effects of the current electoral system as well as for the projection of the potential of other electoral systems to enhance the political developments in Moldova;

- Review the election observation reports of the national and international election observation missions, media and other sources for the identification of the most problematic issues connected to the elections in Moldova;
- Participate at the public presentation of the study on the electoral system in Moldova;
- Review the communication and advocacy Plan elaborated by Promo-LEX on the issue of electoral system reform and make suggestions for its improvement and implementation;
- Other relevant tasks.

NOTE! Ideally, the International and national experts should work together on achieving each of these tasks. Still, it is upon to the experts to agree by themselves on the tasks and roles of each other under this assignment. Promo-LEX recommends that the International expert would be engaged in the proportion of max. 60% and the national expert with max. 40% of the working days allocated for this assignment.

5. Timeline, deliverables and schedule of payments

During March – June 2017 the International and National experts will work together for a maximum of 20 days, both at distance (via e-mail, skype etc.) and in the country. The experts will provide to Promo-LEX the following outputs and deliverables:

Deliverables/ Outputs	Estimated duration to complete	Target due dates
1. Methodology and structure of the Study on the electoral system in Moldova including data collection approach, the tools to be used (e.g. questionnaire, question sheets for interviews/focus groups, etc.) and a list of stakeholders to be involved	3 working day	March 20, 2017

2. Preliminary assessment of the electoral system in Moldova (draft of the Study) done on the basis of the approved methodology	9 working days	April 20, 2017
3. Conduct a training on electoral systems for different electoral stakeholders (civil society representatives, media, experts, election observers etc.). Elaboration of the agenda and materials for the training	1 working day	April 20, 2017
4. Final version of the Study on the electoral system in Moldova, the opportunity or necessity to change it, and if relevant, the best electoral systems to put in place	5 working days	May 10, 2017
5. Feedback on the communication and advocacy Plan on the issue of electoral system reform and suggestions for its improvement and implementation	0,5 working days	May 15, 2017
6. Participation at the public presentation of the Study. Contribution to the development of the agenda and elaboration of the materials for the event (power point presentation, deliverables etc.)	1 working day	June 8, 2017
7. A summary report on the activities accomplished, capturing the entire process and outputs/deliverables produced during this assignment	0.5 working days	June 30, 2017

6. Institutional arrangements

The selected national and international experts will work as a team under the overall guidance and supervision of Promo-LEX management. The international expert shall work in collaboration with the national expert, but be the lead expert and will be responsible for producing all final deliverables. Promo-LEX will seek the possibility to support any administrative or technical aspects of the assignment, including for the implementation of the methodology, but such support shall be requested in advance by the experts and will be offered upon availability of the financial and human resources.

Promo-LEX and experts shall cooperate during the elaboration of the methodology and structure of the study, as well as of the calendar of the assignment, including during the progress evaluation meetings. After the approval of the above mentioned foundation elements of the assignment, the experts should have the overall responsibility for the management of the processes leading to the production of the deliverables of this assignment, including establishing those relationships and arranging meetings with those stakeholders from whom information will be collected. Where possible and appropriate, Promo-LEX will serve as the bridge between the experts and the relevant stakeholders.

7. Qualification and experience

The International and National experts must meet the following criteria:

- **Education:** university degree in law, political science, public administration, public policy, finances, management or other relevant fields. Postgraduate degree in one of the above mentioned areas would be an advantage;
- **Experience:**

1. At least 5 years of working experience in assessing and

designing of electoral systems and/or evaluation of electoral processes;

2. Pertinent research experience and advanced knowledge/abilities in elaborating and implementing research methodologies and studies in this area;
3. At least two years of consultancy/training experience on this issue;
4. Good understanding of the electoral systems, election organization and political processes in the East-European / Eastern Partnership area; awareness of the same processes in Moldova would be considered a strong advantage;
5. Previous experience in consultancy/assistance for a donor organization, governmental institutions, NGO/think-tank in the East-European / Eastern Partnership area. Working experience on this subject and/or electoral assistance in Moldova would be considered a strong advantage;

▪ ***Professional skills and abilities:***

1. Deep analytical and presentation skills;
2. Excellent self-organization skills;
3. Ability to work in sensitive political environments;
4. Good communication skills;
5. Experienced user of computers and office software packages (MS Word, Excel, etc.);
6. Fluent in English; knowledge of Romanian or Russian languages would be considered an asset;
7. Display cultural, gender, religion, race, nationality and age sensitivity and adaptability.

▪ ***Availability to deliver the required services*** and products during March – June 2017.

Method of application and criteria for the selection of the experts

Ideally, the International and National experts should form a

team before applying and submit a common proposal. Nevertheless, Promo-LEX will accept applications also from individual experts, both international and national ones, thus creating the team of experts just before this assignment. In each of these cases, Promo-LEX will sign individual contracts with the experts.

Therefore, Promo-LEX request the candidates to submit the following information and documents:

Technical and Financial offer:

- ***Draft of the methodology and proposed structure of the Study*** (please specify the data collection approach, the tools to be used and the stakeholders to be involved);
- ***Number of working days to complete the above mentioned tasks and implement the proposed methodology*** (see the above estimated number of working days and propose your vision on the total duration of the assignment);
- ***Expected brutto rate per day, in USD.***

Note! Promo-LEX will separately cover the costs of international travel, accommodation and per-diems during the accomplishment of this assignment.

Other documents:

- ***CV(s) of the expert(s)*** (max. 3 pages, please include contact phone and/or Skype ID for an eventual interview);
- ***List of relevant publications elaborated by the candidate(s)*** on electoral systems analysis and design;
- ***Availability statement(s)*** (please confirm the availability to provide the services during March-June 2017);
- ***Letters of Recommendation*** from other organizations for whom the expert(s) delivered similar services in the past, including the name and contact data of a responsible person from these organizations;

The contract will be awarded to the most experienced experts that will present the best proposal, both from the perspective of the technical and financial offer. The following criteria for assessing the quality of the proposals will be applied:

- ***Experience of the experts*** (max. 30 points);
- ***The draft of the methodology proposed to accomplish the above mentioned tasks and deliverables*** (max. 35 points);
- ***Financial offer*** (maximum 35 points);

Interested International and National experts should send their applications, containing the above listed documents to the e-mail angajare.promolex@gmail.com by **March 3, 2017 (6 P.M. Chisinau time)**, with the subject line "Application_International/National Expert on Electoral Systems_Full name".

The evaluation of the applications will be done in two steps: (1) at the first stage, the applications will be analyzed in terms of compliance of the candidates and their technical and financial offers with the requirements stated above and (2) the second phase will consist of interviews with the pre-selected candidates. Only shortlisted candidates will be contacted for interview.

For any additional questions please contact Mr. Nicolae Panfil, Program Coordinator at Promo-LEX Association via e-mail nicolae.panfil@promolex.md. Deadline for questions is February 24, 2017 (6 P.M. Chisinau time). In order to ensure equal treatment and equal chances for all the potential experts, Promo-LEX will answer all the questions by February 27, 2017.

9. Short description of Promo-LEX Association

Promo-LEX Association is a non-government organization established in 2002 by a group of young lawyers with the aim at developing democracy in the Republic of Moldova, including in the Transnistrian region. Promo-LEX Association operates on

the basis of two programs:

- Human Rights Program – the overall goal of the Program is to promote and implement international human rights standards in the Republic of Moldova;
- Monitoring Democratic Processes Program – the overall aim of the Program is to improve the quality and to increase citizen's trust in democratic processes in the Republic of Moldova (monitoring of electoral processes, sectorial reforms and decision-making processes in Association's priority areas).

Promo-LEX Association is member of several national and international networks and platforms, such as: Civic Coalition for Free and Fair Elections, Eastern Partnership Civil Society Platform, European Network of Election Monitoring Organisations, European Platform for Democratic Elections and others. More information about Promo-LEX Association can be found on www.promolex.md.