

## Policy Brief

# Review of provisions on incompatibility of offices held by local elected officials from gender equality perspective

Analysis





**POLICY BRIEF**  
**REVIEW OF PROVISIONS ON INCOMPATIBILITY OF**  
**OFFICES HELD BY LOCAL ELECTED OFFICIALS FROM**  
**GENDER EQUALITY PERSPECTIVE**

This study was carried out by the Center “Partnership for Development”, with the support of UN Women (United Nations Entity for Gender Equality and Empowerment of Women) and financed by Sweden. The opinions expressed in this study do not necessarily reflect the views of UN Women, the United Nations or the donor.

**AUTHORS: IGOR CIUREA, IGOR BOTNARU**

**CHISINAU, 2019**

# CONTENTS

Introduction.....	4
I. POLITICAL AND LEGAL NATURE OF INCOMPATIBILITIES AND OF CONFLICTS OF INTEREST.....	5
II. LEGAL REVIEW OF THE IMPACT OF ADOPTING THE LAW NO. 168.....	7
III. PEQUILIARITIES OF SPECIAL REGULATIONS ON GENDER EQUALITY.....	11
IV. CATEGORIES OF EMPLOYEES WHO FALL UNDER THE PROVISIONS OF ARTICLE 7 OF LAW NO. 768/2000.....	14
V. IMPACT OF LAW ON MANAGEMENT STAFF FROM INSTITUTIONS SUBORDINATED TO LOCAL PUBLIC AUTHORITIES.....	15
VI. INTERNATIONAL EXPERIENCE.....	15
Case Study 1: Romania.....	16
Case Study 2: Ukraine.....	17
CONCLUSIONS.....	18

# ANNEXES

Annex 1.	
Share of women in district councils of level-two ATU of the RM.....	21
Annex 2.	
Share of women in village (township) councils for ATU from Hincesti district.....	22
Annex 3.	
Share of women in municipal councils of Chisinau and Balti.....	23
Annex 4.	
Single Classifier of Civil Service Positions.....	23
Annex 5.	
Staff performing technical maintenance and ensuring operation of central and local public administration authorities.....	24

# Executive Summary

The Review of the impact of Law on the Status of Local Elected Officials is relevant in the context of the amendments to Article 7 of this Law, made to regulate the conflicts of interest and incompatibilities related to local elected officials, without considering gender perspective and impact on representation of women in these positions. This review aims at assessing the extent to which the provisions affect the access and performance of elective offices of both women and men, from legal viewpoint, at local level.

Thus, the share of education, trade and healthcare areas is only of 36% for men, in comparison with 75% for women, and if we look at the list of incompatible positions, we can note a negative and disproportionate effect on women. Given these components, it is imperative to assess the equity of the impact the provisions have in terms of incompatibility from gender perspective.

The legislator amended the provisions related to incompatibility in the context of the fight against corruption. Thus, this paper aims at assessing the achievement level of this goal and the appropriateness of these provisions and identify alternative solutions.

# Introduction

This public policy review document is developed under the 'Women in Politics' UN Program, implemented by United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and United Nations Development Programme (UNDP), in partnership with East Europe Foundation and 'Partnership for Development' Center, financially supported by Sweden.

The status of local/regional/municipal elected official is regulated by the Law No. 768 on the Status of Local Elected Officials. According to Article 7 of this Law. The mandate of the local elected official is incompatible with:

- another position of public dignity;
- the position of civil servant in the territorial offices of the State Chancellery;
- the position of civil servant, employee in the subdivisions of local public administration authorities (office of the district chairperson, mayor's offices, Chisinau municipality mayor's office and praetorships, divisions, sections and other subdivisions), including the subdivisions of the People's Assembly of Gagauzia and the Executive Committee of Gagauzia;
- the position of chairperson, deputy chairperson (including the interim to these offices) in the structures subordinated to local public authorities (public institutions, services, municipal enterprises).

Given that the legislative failed to carry out an impact review from gender perspective, in the context of the amendment made in relation to the incompatibilities of offices held by local elected officials, this Review aims at assessing the sensitivity of these perspectives and at drawing up some recommendations to eliminate these discrepancies and contradictions. In addition, the Review aims at assessing the general data that could indicate that the number of women, elected in deliberate bodies at local (district and municipal) level, in situations of incompatibility is higher than the number of men, because most of the employees holding the offices characterised by incompatibility conditions are women.

The methodology for the development of this paper consisted of a few steps:

- Review of the relevant legislation, including supporting documents of legislative amendments dossiers and of the practice and rulings of the Constitutional Court of the Republic of Moldova;
- Examination of the analytical reports and analyses related to the object of this Review;
- Conduct of two focus groups and 5 interviews with stakeholders relevant for research object;
- Collection of quantitative data from official sources and thematic surveys.



# I. POLITICAL AND LEGAL NATURE OF INCOMPATIBILITIES AND OF CONFLICTS OF INTEREST

Given that the Moldovan society and state policies manifest interest in the activity of civil servants and public dignitaries, it is relevant to establish and develop some measure for preventing and sanctioning corruption behaviour of holding a public office and/or mandate, including violating the legal regime for reporting revenues/properties, conflicts of interest, and last but not the least, incompatibilities. Specifically, we are interested in the impact of amendments on the legislation directly related to the incompatibility regime and the establishment of incidence of these legal regulations on the local elected official and civil servant from the LPA, as a subject of rights and obligations. Mixing up the conflict of interest and incompatibility is one of the most frequent problems in the administrative system.

To have a conflict of interests, a public official should take a decision influenced by a personal interest, in contrast to an incompatibility situation, which occurs simply because of holding two or several offices, the plurality of which is forbidden by law, and where it is not necessary for the public official to take any decisions. In the sense intended by the legislator, the incompatibilities are legal means by which local elected officials are protected while fulfilling their mandate. They refer to the limitation and prohibition of plurality of offices, which would affect the independence of the mandate. The aim of incompatibilities is to ensure objectivity while holding a public office, and to avoid abuses while fulfilling the mandate.

According to academic literature, the incompatibility of civil servants is defined as a prohibition (envisioned by law) to hold two public offices, the aim of which is to ensure that civil servants are independent in their actions, and to protect their professional and moral qualities<sup>1</sup>. Other authors do not specify the offices and positions that are incompatible with the civil service position held. Therefore, the incompatibility means that a civil servant or a local elected official is legally prohibited to hold particular positions, mandates or professions.

The incompatibility is determined either by the principle of the separation of state powers, or by rationales related to a particular position<sup>2</sup>. According to Article 15(1) of the Code of Conduct for the Civil Servants, annexed to the Recommendation No. R(2000)10 of the Committee of Ministers of the Council of Europe of 11 May 2000, the civil servant is neither entitled to engage in

<sup>1</sup>Explanatory dictionary of civil servant, author: Mihail Platon, Chisinau, S.n., 2008 (Polygraphic Plant), p. 164.

<sup>2</sup>Petrescu Rodica Narcisa, Administrative Law, Cluj-Napoca, Accent Publishing House, 2004, p. 478.

any activity or transaction, nor to hold any office or position, remunerated or not, which is incompatible with proper exercise of the public duties or harms them. Therefore, the position of civil servant is incompatible with any other position and activity carried out, remunerated or not, which contravenes the proper exercise of the public duties or harms them<sup>3</sup>.

Nonetheless, the existing definitions and surveys, as we have seen, refer to the status of persons occupying the positions of public dignity and civil servant. However, the position of local councilor does not fall within any of the two categories. According to Article 12 of Law No. 436 of 28 December 2006 on Local public Administration, the legal status and organisation of work of local elected officials from the local public authorities, including from the autonomous territorial unit with special legal status, shall be regulated by the Law on the Status of Local Elected Officials. In the sense of Article 2(1) of Law on the Status of Local Elected Officials, the notion of local elected official covers a wide range of people and implies councilors from village (communal), city (municipal), district councils and Chisinau Municipality Council, members of People's Assembly of Gagauzia, mayors and deputy mayors, district chairpersons and deputy chairpersons. Most of these persons having the status of local elected officials fall under other special laws that establish their legal regime, including the regime for incompatibility. In this way, the mayor, deputy mayor, district chairperson, deputy chairperson are local elected officials, but, according to Article 1 of Law No. 768/2000, their status and fulfilling of mandate shall be regulated by the Law on Local Public Administration and by other regulatory acts.

It is therefore pertinent in this context to invoke the Law No. 199/2009 on the Status of Person Occupying Public Dignity Position, which provides explicitly the categories of public dignity position, among which, the local councilor position. We believe that this shows a particular difference between the local elected officials with the status of public dignity (mayors, deputy mayors, district chairpersons, district deputy chairpersons) and local elected officials without this status (councilors). One of the key difference worth noting is the gratuitous or not-for-profit nature of the local councilor. It is maybe because of this that the incompatibility regime of these categories of local elected officials should be treated differently.

Another aspect arousing interest, which is to be clarified in the context of this Review, is the fact that the legislator, for own aspirations to increase the integrity of local elected officials, gives up on some legal tools, aimed at addressing unwanted phenomena in administration, and adopts tools that in their opinion are other more effective. Approval of Law No. 169/2012 is an eloquent example in this regard. It doubles an already existing tool. In this way, the Law on Local Public Administration states in Article 12(1) that the councilor shall be entitled to a deliberative vote to all the issues examined in the council's meeting<sup>4</sup>. At the same time, the legislator established, appropriately, the condition for limiting the councilor's right to vote, so

<sup>3</sup> Conflict of interests and incompatibility regime in the local public administration institutions of the Republic of Moldova. IDIS Viitorul, 2012.

<sup>4</sup> Law No 436/2006 on Local Public Administration

that the councilor may be present at the council's meeting, but shall not participate in decision making if there is a conflict of interests<sup>5</sup>.

The conditions are set out expressly in Article 2 of the Law 436/2006 and imply the situations when:

- the councilors themselves, the spouse, children, parents, have a patrimonial interest in the issue discussed;
- hold the position of head or of the member of management of enterprise, institutions, organisation or of their branches and representative offices, in respect of which the decision is made;
- are in a situation of incompatibility, according to this Law and the Law on the Status of Local Elected Officials, and the incompatibility lasts for more than 30 days since the day it appeared.

In this context, note the situation regulated in paragraph (2) of this article, wherein we can see that the sanction that may be applied for the failure of the councilor to abstain from voting has a general impersonal character, limited only to the annulment of the administrative act, so that the decisions adopted by the local council in violation of the above provisions, may be declared null under the law by the administrative court.

However, the practice shows that this tool, set out in Article 21(2) of Law No. 436/2006, has weaknesses that will be analysed below.

It is important to identify the efficiency of the existing arrangements related to the incompatibility of the elected local officials to the detriment of the mechanism of abstaining from voting (Article 12 of Law on Local Public Administration). If by introducing some barriers, limitations in exercising the right to elect and to stand for election, the aim of these provision is not justified from the statistical and practical viewpoint, then we have the right to doubt the need and appropriateness of these provisions. In the same train of thoughts, note that this Review does not question the legality of provisions on incompatibility, introduced by the legislator, the constitutionality of which is analysed by the Constitutional Court in its Ruling<sup>6</sup> No. 19 of 16 July 2013. At the same time, this Review assesses the impact on the gender perspective, and appropriateness, in compliance with the initial will of the legislator.

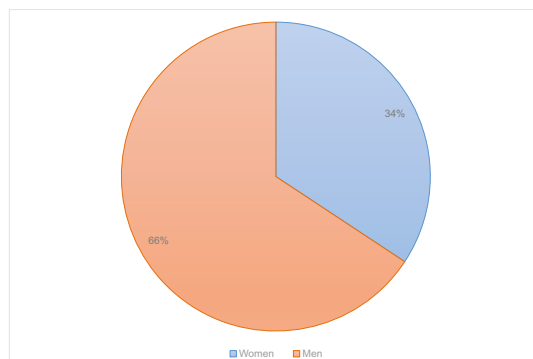
<sup>5</sup>Idem, Article 21.

<sup>6</sup><http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=349239>

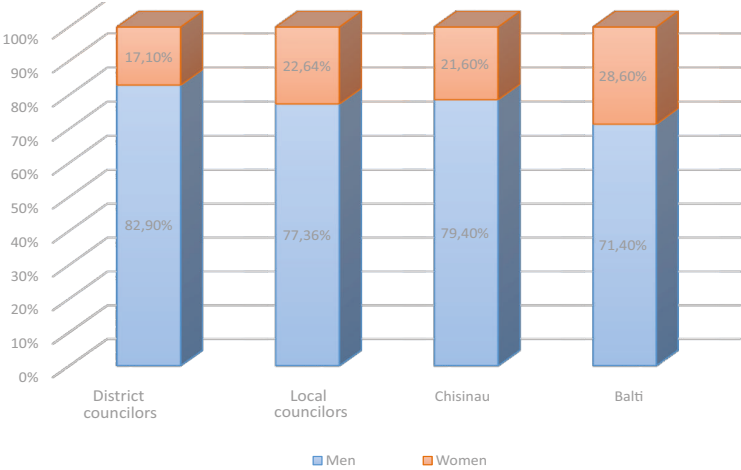
## II. LEGAL REVIEW OF THE IMPACT OF ADOPTING THE LAW NO. 168

On 11 July 2012, the Parliament of the Republic of Moldova adopted the Law No. 168 amending the Law No. 768-XIV of 2 February 2000 on the Status of Local Elected Officials that established new incompatibilities of the local elected official's mandate. Thus, the letters c) and d) of the paragraph (1) of Article 7 were presented in a new wording. The Constitutional Court issued its ruling and stated expressly the following: 'The following phrases are acknowledged as being constitutional "of employee in subdivisions of the local public administration authorities (office of the district chairperson, mayor's office and pretorships of Chisinau municipality, divisions, sections and other subdivisions), including of those of the People's Assembly of Gagauzia and of the Executive Committee of Gagauzia;" from letter c) and provisions of the letter d) of the Article 7(1) of the Law No. 768-XIV of 2 February 2000 on the Status of Local Elected Officials, in the wording of the Law No. 168 of 11 July 2012, in the way interpreted in the Law No. 263 of 16 November 2012, in the extent the above do not apply to local elected officials, who obtained their mandate after local elections held until the date when the Law No. 168 of 11 July 2012 Amending the Law No. 76-IV of 2 February 2000 on the Status of Local Elected Officials entered into force - 14 September 2012, as well as the above does not apply to deputy candidates.' At the same time, no impact assessment from gender perspective was carried out when the law was adopted.

*Figure 1: Gender breakdown of candidates in the 2015 local elections*



**Figure 2: Gender breakdown of local officials elected at the 2015 elections**



After consulting the statistics of the Central Electoral Commission<sup>7</sup>, we noted that the share of women in local councils, if compared to the share of men, is quite low<sup>8</sup>.

Detailed data on the gender breakdown are included in Annexes 1 to 3 of this Review.

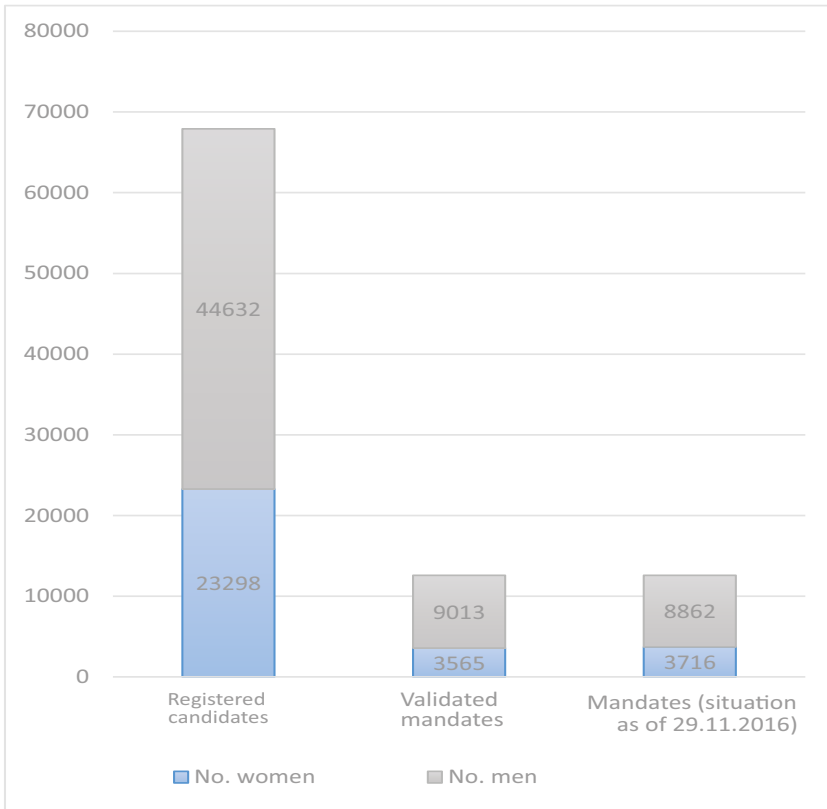
These data reveal that the share of women in local councils, if compared to the share of men, is quite low. Hence, we need to find an answer to the following basic questions: to what extent do the current provisions of Article 7(1)(d) of the Law No. 768/2000 contribute to the situation described above, and to what extent do the current provisions of Article 7 (1)(d) of the Law No. 768/2000 limit the right of women, who occupy a management position in an institution subordinated to LPA, to exercise also the mandate of local councilor?

The analysis of data on the number of female and male candidates, as well as the analysis of data on local elected officials, at both level-one and level-two LPAs, show that, after elections, about one fourth of women occupied the position of elected local officials. We found, in this respect, that women are under-represented both among candidates and, even more, among elected local officials. This situation is caused by a number of factors, including certain legal barriers.

A detailed analysis of CEC data on local councilors resigning from their offices due to incompatibilities show that the number of men and women is almost the same in this regard. Below you can visualise some general data, as well as of some reference regions.

<sup>7</sup> www.cec.md  
<sup>8</sup> Data on level-one local councils are relevant exclusively to Hincesti district.

Figure 3: Developments in the share of women, 2015-2016

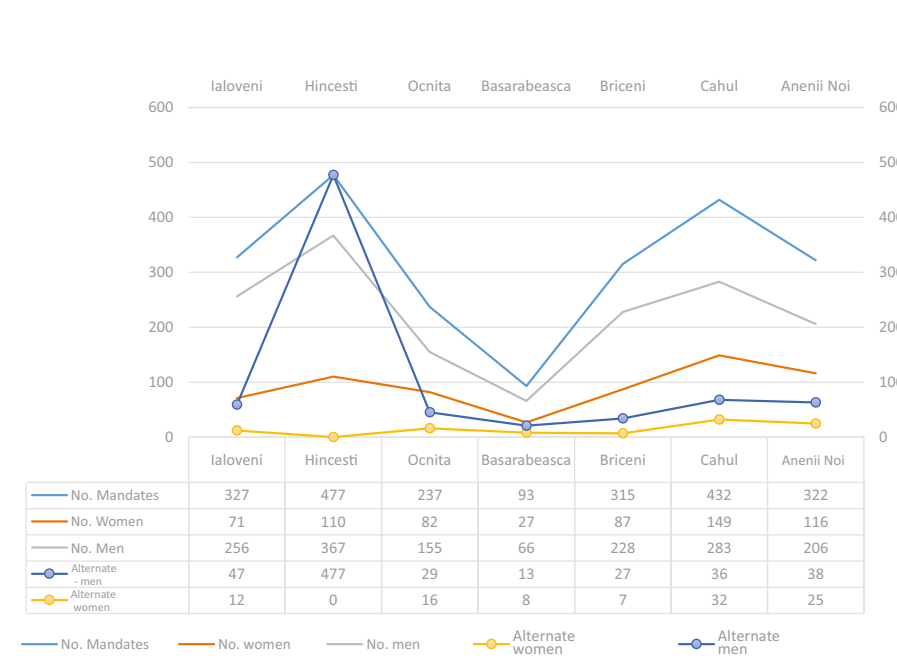


Generally speaking, countrywide, the share of women is relatively constant over time at all levels of LPAs. We found a slight increase in the share of women, but the percentage difference is about 1.2%. It is important to note that these figures include data and mandates that were resigned or withdrawn irrespective of reason (including the incompatibility with the position). To identify the impact of these figures in territorial profile, we collected randomly data for level-one localities from the following districts: Ialoveni, Hincesti, Ocnita, Basarabasca, Briceni, Cahul and Anenii Noi (see the chart on the developments in gender share of local elected officials in level-one LPAs).

To assess from gender perspective the direct impact on the situations of incompatibility, we extracted the data for the above regions. According to Central Electoral Commission's Decisions, only 3 situations of incompatibility were identified in these regions - all of them in Ialoveni district. Out of these 3 cases, two men and one woman had to resign. Most of the dossiers are

based on 2 legal situations: unjustified absence from 3 meeting of the local council and request for resignation. Theoretically speaking, both situations could really be caused by a situation of incompatibility, but, in the absence of some qualitative data in this regard, we can only make assumptions.

**Figure 4: Developments in the share of local elected officials (level-one LPAs) from gender perspective**



At the same time, to understand the appropriateness of the measures introduced in 2012, we will analyse the main corruption indicators since 2010 till present.

According to the Corruption Index of the Transparency International, the Republic of Moldova registered a downtrend in the period of 2010-2016. The positive leap was significant in 2012, but in the next years it turned back to the figures registered before changes, which makes us believe that the fluctuations are not generated by certain systemic reforms, but are rather influenced by political indicators. According to the Global Corruption Barometer, this indicator registered a downtrend in the period of 2011-2013. However, the 2016 report ranked the Republic of Moldova in the top countries by the indicator: top problems a country faces<sup>9</sup>.

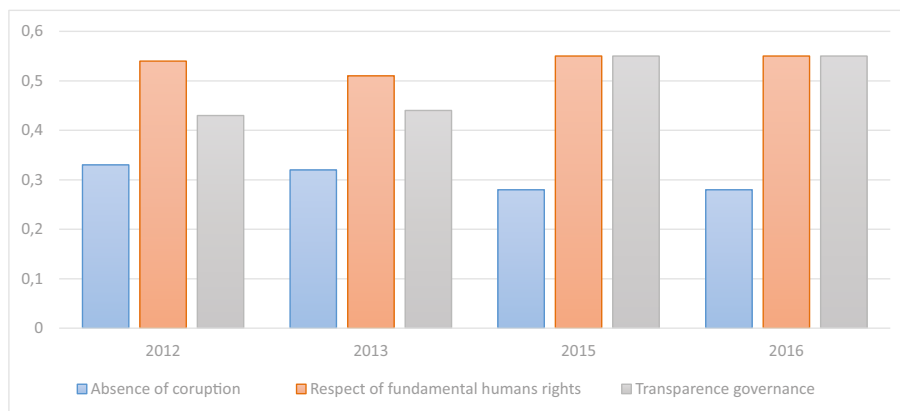
The Republic of Moldova was included in the Rule of Law Index in 2012<sup>10</sup>.

<sup>9</sup> [http://transparencia.org.es/wp-content/uploads/2016/11/informe\\_barometro-2016-ingles.pdf](http://transparencia.org.es/wp-content/uploads/2016/11/informe_barometro-2016-ingles.pdf)

<sup>10</sup> <https://worldjusticeproject.org/our-work/wjp-rule-law-index> Индекс верховенства закона – исследование организации The World Justice Project®, измеряющее степень реализации концепции верховенства закона и ее восприятие широкой общественностью во всем мире.

The analysis of the most relevant indicators for 2012-2016 shows a negative trend, with a few exceptions, registered with regards to transparency, corruption and human rights.

*Figure 5: Corruption index in the Republic of Moldova, 2007-2016*



All the above data show the lack of an effective impact of the legal measures implemented in relation to the conflict of interest and incompatibility. Most of the measures implemented in 2012 were found to be unjustified barriers in exercising the right to elect and stand for election, and did not generate any successes in combating conflicts of interest and corruption.

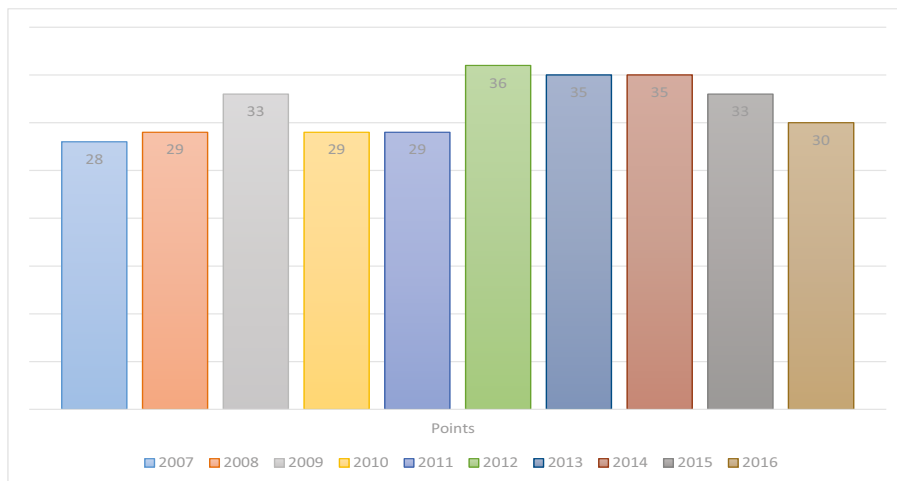
The Transparency International reports point out the lack of impact from the legal measures implemented and underscores the need to implement some real, structural reforms to beat corruption, because the limitations in exercising certain rights are not a viable solution, moreover, it has a negative impact on the representation of certain social groups, including the representation of women in local elective bodies<sup>11</sup>.

The analysis of Public Opinion Barometer for 2012-2016 also shows a negative image, over time, on the corruption phenomenon, with this indicator constantly worsening since then. Thus, the actions of the legislator neither created direct conditions to improve the climate of combating corruption in LPAs, nor increased people's trust in these institutions. The data for this period can be seen in the chart below.

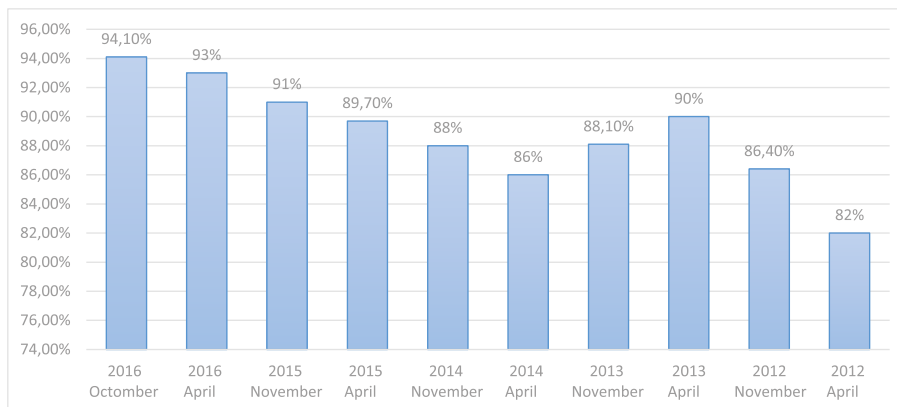
<sup>11</sup>[http://www.transparency.org/news/pressrelease/corruption\\_index\\_reflects\\_moldovas\\_disappointing\\_response\\_to\\_corruption](http://www.transparency.org/news/pressrelease/corruption_index_reflects_moldovas_disappointing_response_to_corruption)



**Figure 6: Rule of Law Index – the Republic of Moldova**



**Figure 7: Public Opinion Barometer. Cumulative response – completely dissatisfied and somewhat dissatisfied**



# III. PEQUILIARITIES OF SPECIAL REGULATIONS ON GENDER EQUALITY

The basic law regulating gender equality is the Law No. 5 of 9 February 2006 on Gender Equality. Thus, according to Article 5 ‘women and men shall enjoy equal rights and freedoms, equal opportunities being also guaranteed’<sup>12</sup>. The same Article states that promoting a policy or performing actions that do not ensure equal opportunities for women and men shall be deemed as discriminatory and removed by the competent public authorities under the law. The actions limiting or excluding, in any respect, the equal treatment of women and men are considered discriminatory and are forbidden. The court of law invalidates the legal act containing gender-based discriminatory provisions<sup>13</sup>.

Apparently, Law No. 168 of 11 July 2012 amending the Law No. 768-XIV of 2 February 2000 on the Status of Local Elected Officials can be interpreted as discriminatory in relation to women. We concluded this on the basis of several facts: (i) the provisions on incompatibility have a discouraging impact at the stage of applying for elective offices in LPAs (conclusion reached as a result of interviews and focus groups, women were asked to choose between a potentially non-remunerated elective office and their current job), an assumption supported also by the fact that most of the female candidates come from medicine and education areas, while men mainly come from business and agriculture, which places women in the risk of being incompatible from the very beginning<sup>14</sup>, (ii) the provisions creates barriers for certain categories and do not have a good effect or do not solve a problem of public interest (statistics show no improvements in the fight against corruption), (iii) there are legal alternatives to eliminate situations of incompatibility without limiting the right to stand for election, (iv) according to case studies, the number of women holding offices that fall under the provisions on incompatibility is much higher than the number of men (the statistics for Hincesti district show that 38 of 50 headmasters of pre-university educational institutions are women, and 52 of 53 headmasters of other institutions (44 kindergartens, 5 secondary schools-kindergartens and 4 primary schools) are again by women).

It is worth mentioning that one in two women running for 2015 elections worked in the educational sector, one in ten – in health sector and 13% – in

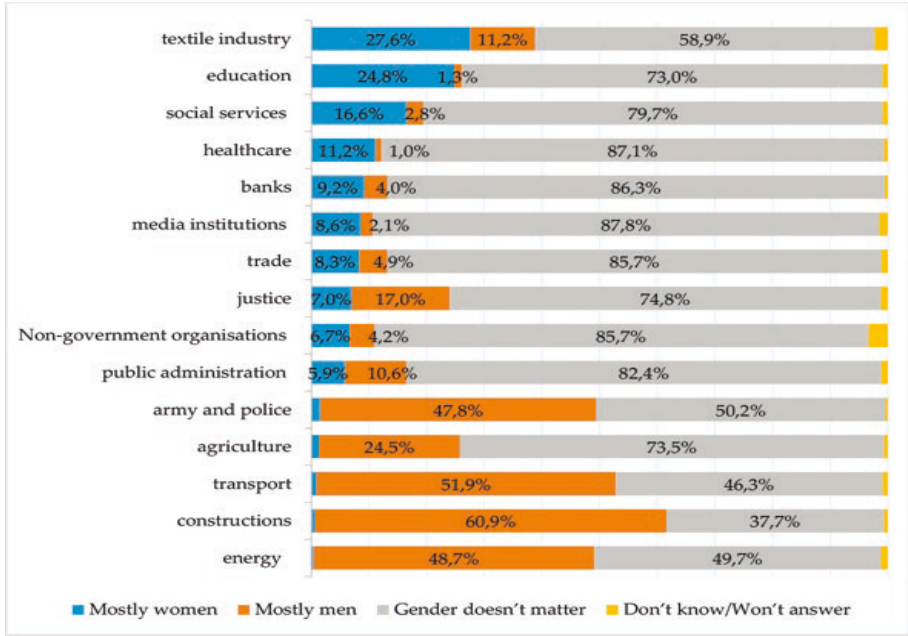
<sup>12</sup>Article 5 of Law No 5 of 9 February 2006 on Gender Equality.

<sup>13</sup>Idem

<sup>14</sup><http://egalitadedegen.md/biblioteca/participarea-femeilor-in-politica/> Gender Barometer: How do Women and Men Participate in Politics and Decision-Making? - 2017

trade sector. Note that 75% of female candidates represented particularly these three sectors. The women’s concentration is very strong even compared to the labor market, where a total of only 28% work in the education, health and public administration sectors. In case of men, there no such concentration, particularly when it comes to education sector. Most male candidates come from agriculture (25%), trade (19%) and only then education (18%). Thus, the share of education, trade and healthcare areas is only of 36% for men, in comparison with 75% in case of women. If we look at the list of incompatible positions, we can note a negative and disproportionate effect on women.

**Figure 8: Gender breakdown of candidates to elections, by professional areas**



\* The shares of candidates who took on the offices for what they participated in elections and are currently working in the LPA sector (42% – men and 28% – women) were removed from distribution.

According to Article 38 of the Constitution of the Republic of Moldova ‘The right to stand for election is guaranteed to all citizens of the Republic of Moldova enjoying the right to vote, according to the law’, while according to Article 39, ‘Citizens of the Republic of Moldova shall enjoy the right to take part in the administration of public affairs directly, as well as by way of their representatives.’<sup>15</sup>

<sup>15</sup>Constitution of the Republic of Moldova.

Thus, if we admit, at least hypothetically, that they exercise their right to vote and to participate in the administration of public affairs, it will undoubtedly fall under the negative impact of Article 7 of Law No. 768/2000 and, in this way the above rights remain only declared. In these circumstances, we cannot speak of equal opportunities for women, which conflicts with Article 5(4) of the Law No. 5 of 9 February 2006 on Gender Equality.

We can suppose that the reason of this shortcoming is the ordinary negligence of the legislator, which originates from the persistent stereotype in relation to men-women, and from the imperfect procedure of drawing up legislative acts. This Review shows that the legislator overlooks gender analysis while drawing up legislative acts. A simple analysis of Law No. 780 shows that Article 22 of the Law provides for a number of expert reviews, except for the gender one, which obviously contradicts Law No. 5/2006, which stipulates that Parliament shall approve a legal framework that ensures gender equality in all areas.

## IV. CATEGORIES OF EMPLOYEES WHO FALL UNDER THE PROVISIONS OF ARTICLE 7 OF LAW NO. 768/2000

The Law No. 768/2000 on the Status of Local Elected Officials provides for the incompatibilities of the elected local official in Article 7. We are particularly interested in the categories of employees envisioned at letters c). and d). According to provisions set out at letter c) the mandate of local elected official is incompatible with the position of civil servant, employee in the subdivisions of local public administration authorities (office of the district chairperson, mayor's offices, Chisinau municipality mayor's office and praetorships, divisions, sections and other subdivisions), including the subdivisions of the People's Assembly of Gagauzia and the Executive Committee of Gagauzia. From this provision we learn that there are two categories of employees who cannot hold the office of councilor: civil service employees and non-civil service employees.

Further, we will refer only to the category of employees from the level-one and level-two local public authorities. Thus, the Single Classifier of Civil Service Positions, approved by Law No. 155 21 July 2011, establishes the employees having the status of civil servant. The Law No. 158 of 4 July 2009 on the Public Office and Civil Servant Status establishes the categories and classifies them as follows:

- public top management positions;
- public management positions;
- public executive positions<sup>16</sup>.

Every category is coded and marked with letters A, B and C, as provided by law. Location, categories of titles of public positions for local public authorities are presented in Annex 4.

According to paragraphs 17, 171, 172 from Annex 5 to the Government Decision No. 201 of 11 March 2009 'Enforcing the Provisions of the Law No. 158-XVI of 4 July 2008 on the Public Office and Civil Servant Status', the non-civil service employees are called 'position' that are classified in technical positions ensuring the operation of public authorities, special positions and worker's positions<sup>17</sup>.

<sup>16</sup> Law No 158 of 4 July 2009 on the Public Office and Civil Servant Status.

<sup>17</sup> Government Decision No 201 of 11 March 2009 'Enforcing the Provisions of the Law No 158-XVI of 4 July 2008 on the Public Office and Civil Servant Status', Annex 5.v

The first category covers the positions responsible for the auxiliary activities of secretariat, protocol, administration, as well as for the management of information systems, including input and processing of information underpinning the operation of public authority, as well as other positions not dealing with the exercise of public power prerogatives. This category also covers the management positions that coordinate these auxiliary activities.

A more precise description of these positions can be found in the Law on the Payroll System in the Public Sector No. 355-XVI of 23 December 2005 (Annex 5).

The second category – ‘special position’ – covers the positions from the public authorities requiring a special training in particular areas, do not provide for the exercise of public authorities power prerogatives, but do not fall under the category ‘technical position underpinning the operation of the public authorities’<sup>18</sup>. The position of driver is a good example in this regard.

The third category – ‘auxiliary position’ – covers the position of workers<sup>19</sup>. According to the Classification of Occupations of the Republic of Moldova, there are two categories of workers – skilled and non-skilled.

<sup>18</sup> Government Decision No 201 of 11 March 2009 ‘Enforcing the Provisions of the Law No 158-XVI of 4 July 2008 on the Public Office and Civil Servant Status’, Annex 5.

<sup>19</sup> Idem

## V. IMPACT OF LAW ON MANAGEMENT STAFF FROM INSTITUTIONS SUBORDINATED TO LOCAL PUBLIC AUTHORITIES

According to Article 7(d) of Law No. 768/2000, the mandate of local elected official is incompatible with 'the position of chairperson, deputy chairperson (including the interim to these offices) in the structures subordinated to local public authorities (public institutions, services, municipal enterprises)'. According to Articles 14 and 43 of Law No. 436/2006 on Local Public Administration, the first-level and second-level local councils are empowered to decide on the establishment of institutions and enterprises of local interest, and to appoint managers, respectively. Thus, according to Article 14(2) letters h) and i) of the above Law, the first-level local council shall:

- h) decide on the establishment of public institutions of local interest, organise public utility services, determine the financial aid in case of budget expenditures, decide on rules for ensuring cleanliness in the settlement;<sup>20</sup>and
- i) decide, under the conditions laid down by law, on maintenance of municipal enterprises and commercial companies or on participation in statutory capital of commercial companies<sup>21</sup>.
- According to Article 43(1)(p) of the law, the district council shall:
- p) decide or, if necessary, propose to establish, under the law, public institutions and enterprises of district interest, as well as to participate in establishment of commercial companies, while according to provisions set out in letter n), it shall assign, on a competitive basis under the law, the secretary of the district council and managers of the subordinated institutions and subdivisions<sup>22</sup>.

Thus, according to the law in force and set competencies, the local councils may establish public institutions in such areas as education, social assistance, health care, culture and arts, tourism, sports, science etc. In this train of thoughts, any position established by an act of local public authorities falls under Article 7 of the Law No. 768/2000.

<sup>20</sup> Law No 436/2006 on Local Public Administration.

<sup>21</sup> Idem

<sup>22</sup> Idem

## VI. INTERNATIONAL EXPERIENCE

At international level, the regulation of incompatibilities and of conflicts of interest is very uneven. Some countries have detailed regulations of the incompatibilities of the local elected officials and of conflicts of interest, while the others limit themselves to general provisions.

There is a significant difference between the EU Member States and institutions in terms of number of acts regulating the conflicts of interests, but also in terms of their number, which is not yet regulated. Despite the differences in details, we can draw some general conclusions. The new Member States have more regulations in this regard than the 'old' Member States of EU. Latvia, followed by Bulgaria, are the countries with the highest number of regulations in this regard, across Europe. To make it short, the new Member States are, generally, more regulated than the 'old' ones (80.5% vs. 66.5%). The most strict system is applied in Latvia, where all categories of conflicts of interests are regulated for all institutions (100%). Portugal, followed by the United Kingdom and Spain are some of the old Member States with well-regulated systems. Austria, Denmark and Sweden are the countries with the smallest number of aspects regulated in this regard. The main aim of promoting ethical standards for civil servants is to prevent conflicts of interest and corruption acts, and to improve civil service management.

Generally, the conditions of incompatibility do not refer to gender component as a crucial component, which is integrated in separate legal acts. At the international level, there is no regularity in having gender sensitivity covered by provisions on incompatibility and conflicts of interest, which are to be treated separately according to specific national context.

### Case Study 1: Romania

In Romania, the Law No. 393 of 28 September 2004 on the Status of Local Elected Officials and, partially, the Law No. 2015 of 23 April 2001 on Local Public Administration regulate the status of local councilor, however, none of them regulate the incompatibility regime of local councilors. The law that gives us an answer in this regard is the Law No. 161 of 19 April 2003 on Certain Steps for Assuring the Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the



Corruption. According to this law, the position of local councilor or county councilor is incompatible with:

- position of mayor or deputy mayor;
- position of prefect or deputy prefect;
- position of public servant or employed based on an individual labor contract in the staff of the respective local council or in the staff of the respective county council, or of the prefect's office of the respective county;
- position of president, vice-president, general director, director, associate, manager, member of the board or auditor of local interest state controlled companies and commercial companies created or being under the authority of the respective local or county council or of national interest state controlled companies and commercial companies, which have their location or have affiliates in the respective territorial-administrative unit;
- position of president or secretary of general assemblies of shareholders or associates of a local interest commercial company or of a national interest commercial company having its location or affiliates in the respective territorial-administrative unit;
- position of representative of the state in a commercial company having its location or affiliates in the respective territorial – administrative unit;
- position of deputy or senator;
- position of minister, state secretary, state sub - secretary and any other positions assimilated to these.

No person may hold simultaneously a mandate of local councilor and one of county councilor<sup>23</sup>.

Here we can see a distinction between the incompatibilities provided for in the Romanian law and the ones provided for in the Moldovan law: the Romanian legislator established that the position of councilor is incompatible only with the positions of managers of local interest state controlled companies and commercial companies created or being under the authority of the respective local or county council or of national interest state controlled companies and commercial companies, which have their location or have affiliates in the respective territorial-administrative unit<sup>24</sup>, the Moldovan legislator included in this list not only the managers of enterprises, but also the management staff of public institutions and services subordinated to local public authorities.

<sup>23</sup> Law No 161 of 19 April 2003, Article 88, see <http://legislatie.just.ro>

<sup>24</sup> Law No 161 of 19 April 2003, Article 88, see <http://legislatie.just.ro>

## Case Study 2: Ukraine

In Ukraine, the status of local councilor is also regulated. The special law establishing incompatibilities for the elected local officials of Ukraine is the Law No. 93-IV of 11 July 2002 on the Status of Local Council Members (original name: Про статус депутатів місцевих рад). According to Article 7 of the above law, 'The incompatibility of the status of local council member with some positions and types of activities': the member of a local council, being in the position of head of local executive authority or in another position that falls under the remit of the Ukrainian Constitution and of the laws limiting multiple office-holding – may not hold simultaneously the position of mayor of village, township, city, as well as the position of secretary of regional and district council, and may not engage in another activity for an unlimited period in the councils, their executive bodies and offices.

The local council member may not use his/her mandate in other purposes than those related to the activity of local council member. The local council member may not hold another representative mandate.

We noted that the Ukrainian law does not provide for the incompatibility in the way provided by the legislator from the Republic of Moldova. We will express our views about the reasons why these differences occurred in separate reviews.

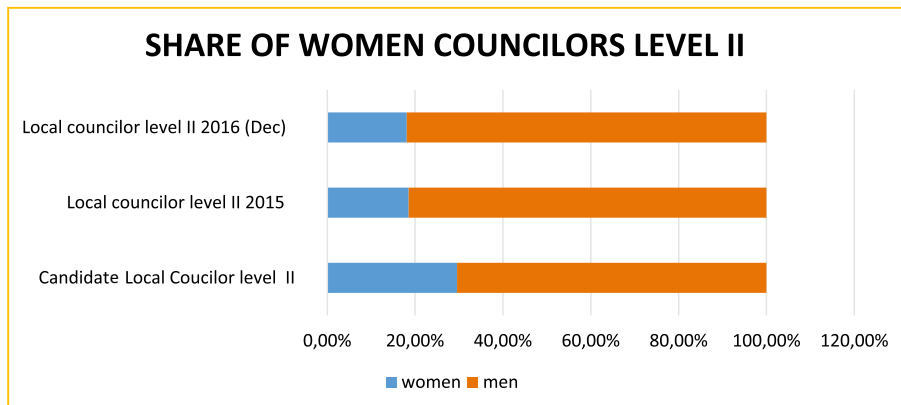
# CONCLUSIONS

Given the above assertions about the reviewed situation, it is safe to say that the authors of the adjustments to the incompatibility regime did not aim specifically at ensuring women's access to the decision making. Therefore, we doubt that the promoted regulation were subject to an impact review from the perspective of gender equality and balance, which was proved by the analysis of dossier of draft Law No. 168/2012. A higher number of women on labour market, given that women constitute more than a half of the population, not always results in a higher influence of women because, traditionally, the decision-making and power positions are held mainly by men.

Regrettably, this fact is also proved by the statistical data provided by CEC (letter No. 8/772 of 30 November 2016), on the basis of which we can conclude that the amendments made to Law No. 768 did not lead to the low share of women in local councils. The data laid down in the above letter show that the provisions of 2012 do not encourage women to stand for elections in local councils.

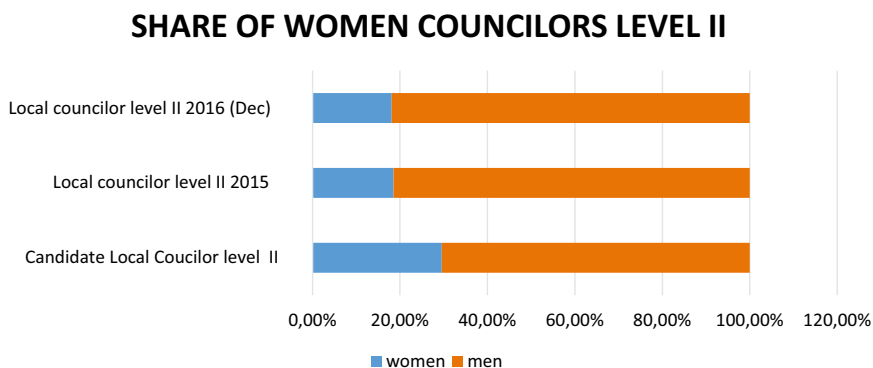
However, we should admit that these provisions do not influence the share of women in LPAs after the elections, thus, at this stage, women are not affected by these provisions, but by the ones on incompatibilities of the position, at least this is what statistics show. Nonetheless, it is difficult to find out the real number of women who resign from their offices due to incompatibility, as it can be done at least by four distinct ways: (i) third parties invoke the situation of incompatibility, which leads to automatic termination of the mandate, (ii) filing a request for resignation and giving up on the mandate of local elected official due to incompatibility, (iii) resigning from the job that is incompatible, (iv) failure to show up at 3 meetings and, respectively, termination of the mandate due to this reason. The statistical data provided so far by CEC do not allow assessing separately each of these situations. However, the interviews and focus groups revealed the high vulnerability of women to these provisions.

Figure 9: Share of female local councilors (level-one)



These figures show us that the women's representation in politics is mainly determined by the low share of women standing for elections and by the reticence and stereotypes which lead to underrepresentation of women, the success rate of whom are lower in electoral campaigns than of men.

Figure 10: Share of female local councilors (level-two)



Either way, this gives women a derisory capacity to have a direct influence and is a drawback affecting the democratic process of decision-making. It is a well known fact that promotion of gender equality is significantly broader than the prohibition of gender disparities, while the positive regulations supporting women's involvement may be essential for their full integration in the decision-making process in the politics, economy and society as a whole. In such conditions, we believe that the women's participation in the decision-making should be supported by state policies aimed at establishing an unambiguously legal framework for political actors (parties), that would lead to a more balanced representation of women and men in local councils, as well as in the Parliament. The importance of the primary phase, which comes before assigning the mandate of elected local official, particularly the drawing up and submission of voter lists based on parity principles – where men and women alternate their original positions, is undeniable. Particularly in this phase, women holding management positions in local administrative structures and/or in subordinated councils and falling under the legal regulations on incompatibilities of local elected officials, have the possibility to deliberately set out the option for the non-executive councils.

Without denying the importance of quotas in increasing the presence of women in political decision-making, we want to highlight that the existing imbalance between men's and women's participation in political and public decision-making cannot be reduced by laws only. It requires a complex and sustainable methodological approach that would envisage eradication of obstacles to women's representation and fall within the broad policies on combating gender discrimination and stereotypical behaviors that persist in politics in particular and in society in general.

In addition, we have no doubts in relation to the legality and constitutionality of the amendments made in 2012 (the Constitutional Court expressed its views in this regard), but based on statistical data, surveys and opinion barometers, we can conclude that their appropriateness is not justified. The analysis of development indicators in corruption, transparency in decision-making process, respect for the human rights lead us to the conclusion that the amendments made in 2012 were not appropriate in the context of fight against corruption, did not have any impacts on this problem. In addition, a number of indicators related to the fight against corruption, according to both national and international tools, had worsened and there are no legal or political conditions that could justify it. Moreover, the amendments only established a number of limitation in exercising the right to stand for an election without being subsequently justified. In this context, the amendments made in 2012 only restricted the possibility to exercise the right to stand for an election and did not have any impact on the fight against corruption.

However, the existing legal framework needs some adjustments because, considering the above analysis of Article 5 of the Law No. 5 of 9 February

2006 on Gender Equality, it is essential to insist and perpetuate equal exercise of rights and freedoms by both women and men. In its turn, this fact requires the Parliament to expressly carry out a gender review, besides the expert reviews set out in Article 22 of the Law No. 780/2001 on Legislative Acts, when it draws up draft legislative acts aimed at mainstreaming gender equality. This would mean that the Law No. 780 of 29 December 2001 on Legislative Acts needs to be amended and supplemented by inserting the following words 'gender expert review' in Article 22(1). The entire Article would have to be supplemented by a new paragraph stipulating the purpose of this review. In the same train of thoughts, we want to reiterate the existence of an alternative mechanism for eliminating conflict of interests, which is set out in Article 21(2) of the Law No. 436/2006, and as an alternative to make the adjustments not limiting the right to stand for an election.

# ANNEXES

## *Annex 1. Share of women in district councils of level-two ATU of the RM after 2015 local elections*

No	District Council	Total number of mandates	Women	%	Men	%
1	<b>Hincesti</b>	35	8	22,9	27	77,1
2	<b>Anenii Noi</b>	33	2	21,2	26	78,8
3	<b>Basarabasca</b>	27	2	14,8	23	85,2
4	<b>Briceni</b>	33	7	21,2	26	78,8
5	<b>Cahul</b>	35	7	20,0	28	80,0
6	<b>Cantemir</b>	33	5	15,2	28	84,8
7	<b>Calarasi</b>	33	2	6,1	31	93,9
8	<b>Causeni</b>	33	5	15,2	28	84,8
9	<b>Cimislia</b>	33	3	9,1	30	90,9
10	<b>Criuleni</b>	33	4	12,9	27	87,1
11	<b>Donduseni</b>	27	6	22,2	21	77,8
12	<b>Drochia</b>	33	6	18,2	27	81,8
13	<b>Dubasari</b>	27	5	18,5	22	81,5
14	<b>Edineti</b>	33	8	24,2	25	75,8
15	<b>Falesti</b>	33	6	18,2	27	81,8
16	<b>Floresti</b>	33	9	27,3	24	72,7
17	<b>Glodeni</b>	33	5	15,2	28	84,8
18	<b>Ialoveni</b>	35	6	17,1	29	82,9
19	<b>Leova</b>	33	11	33,3	22	66,7
20	<b>Nisporeni</b>	33	3	9,1	30	90,9
21	<b>Ocnita</b>	33	9	27,3	24	72,7
22	<b>Orhei</b>	35	7	20,0	28	80,0
23	<b>Rezina</b>	27	3	11,1	24	88,9

24	Riscani	33	5	15,2	28	84,8
25	Singerei	33	4	12,1	29	87,9
26	Soroca	33	2	6,1	31	93,9
27	Straseni	33	3	9,1	30	90,9
28	Soldanesti	27	8	29,6	19	70,4
29	Stefan Voda	33	8	24,2	25	75,8
30	Taraclia	27	4	14,8	23	85,2
31	Telenesti	33	5	15,2	28	84,8
32	Ungheni	35	8	22,9	27	77,1
		1030	176	17,1	845	82,9

## Annex 2.

*Share of women in village (township) councils for ATU from Hincesti district after 2015 local elections*

Nº	Council	Total number of mandates	Women	%	Men	%
	Hincesti	23	3	13,0	20	87,0
	Balcean	11	4	36,4	7	63,6
	Bobeica	13	1	7,7	12	92,3
	Boghiceni	13	2	15,4	11	84,6
	Bozieni	13	3	23,1	10	76,9
	Bujor	13	5	38,5	8	61,5
	Buteni	13	2	15,4	11	84,6
	Caracui	11	1	9,1	10	90,9
	Calmatui	11	3	27,3	8	72,7
	Carpineni	23	5	21,7	18	78,3
	Cataleni	9	3	33,3	6	66,6
	Cioara	11	4	36,4	7	63,6
	Ciuciuleni	13	2	15,4	11	84,6
	Cotul Morii	11	2	18,2	9	81,8
	Crasnoarmeiscoe	13	1	7,7	12	92,3
	Dancu	11	5	45,5	6	54,5



	<b>Draguseni Noi</b>	11	2	18,2	9	81,8
	<b>Firladeni</b>	9	4	44,4	5	55,6
	<b>Fundul Galbenei</b>	13	3	23,1	10	76,9
	<b>Ivanovca</b>	9	1	11,1	8	88,9
	<b>Lapusna</b>	15	2	13,3	13	86,7
	<b>Leuseni</b>	11	4	36,4	7	63,6
	<b>Loganesti</b>	13	3	23,1	10	76,9
	<b>Mereseni</b>	13	1	7,7	12	92,3
	<b>Mingir</b>	15	3	20,0	12	80,0
	<b>Miresti</b>	9	2	22,2	7	77,8
	<b>Negrea</b>	11	2	18,2	9	81,8
	<b>Nemteni</b>	11	3	27,3	8	72,7
	<b>Obileni</b>	11	7	63,6	4	36,4
	<b>Onesti</b>	11	3	27,3	8	72,7
	<b>Pascani</b>	13	3	23,1	10	76,9
	<b>Pervomaiscoe</b>	9	3	33,3	6	66,7
	<b>Poganesti</b>	11	3	27,3	8	72,7
	<b>Sarata-Galbena</b>	15	2	13,3	13	86,7
	<b>Secareni</b>	11	2	18,2	9	81,8
	<b>Sofia</b>	11	1	9,1	10	90,9
	<b>Stolniceni</b>	11	4	36,4	7	63,6
	<b>Sipoteni</b>	9	4	44,4	5	55,6
	<b>Voinescu</b>	13	0	0	13	100,0
		477	108	22,64	369	77,36

### *Annex 3.*

#### *Share of women in municipal councils of Chisinau and Balti after 2015 local elections*

No	Municipal council	Number of mandates	Women	%	Men	%
1	<b>Chisinau</b>	52	11	21,6	40	78,4
2	Balti	35	10	28,6	25	71,4

*Annex 4.  
Single Classifier of Civil Service Positions*

	Chapter III. Local public administration authorities  Section I. Level-two local public administration authorities and the ones from Balti municipality  1. Public management positions
B	Secretary of the district/municipal council
B	Praetor/deputy praetor of the district
B	Praetorship secretary
B	Head/deputy head of general division
B	Head/deputy head of division
B	Head of division in a general division
B	Head/deputy head of section
B	Head of section in a division
B	Head of service
	3. Public executive positions
C	Chief accountant
C	Chief architect
C	Main internal auditor
C	Senior internal auditor
C	Internal auditor
C	Chief specialist
C	Senior specialist
C	Specialist
	Section II. Level-one local public administration authorities
B	1. Public management positions Local council secretary
C	2. Public executive positions
C	Chief accountant
C	Chief architect
C	Main internal auditor
C	Senior internal auditor
C	Internal auditor
	Specialist

**Annex 5.**

*Staff performing technical maintenance and ensuring operation of central and local public administration authorities*

<b>Position</b>
Head of division
information technology
other areas
Head of section
information technology
other areas
Head of section in a division
information technology
other areas
Head of service
information technology
other areas
Head of library, head of reading room, head of hearing room, head archiver, head typist, head dispatcher
Administrator, head of storehouse, head of copying and duplicating office
Main information systems analyst, main programmer, main information systems operation engineer, main information security engineer; main administrator: databases, computer network, information systems
Senior information systems analyst, senior programmer, senior information systems operation engineer, senior information security engineer; senior administrator: databases, computer network, information systems
Information systems analyst, programmer, information systems operation engineer, information security engineer; administrator: databases, computer network, information systems
Main engineers in all specialities, main economist, main accountant, main cashier-accountant, main translator, main editor, main expert in commodities
Senior engineers in all specialities, senior economist, senior accountant, senior cashier-accountant, senior translator, senior editor, senior expert in commodities
Engineers in all specialities, economist, accountant, cashier-accountant, translator, editor, expert in commodities
Senior technicians with secondary specialized education
Technicians with secondary specialized education
Secretary responsible for the college
Secretary of the head (except for those included in Annex 12)
Senior funds keeper, senior statistician, senior inspector
Statistician, inspector, dispatchers, cashier, funds keeper, data entry, validation and processing operator
Administrator, building administrator, shorthand-typists, typist, computer text-editing secretary
Archiver, restorer of materials from archive and library

Courier, consigner, person on duty at the permits office
Chancellery staff:
Chancellery chairperson, chief secretary
Senior judgement enforcement control inspector
Judgement enforcement control inspector
Senior administrative secretary
Administrative secretary



