

## Follow-up on the implementation of the electoral reform in Moldova

The last legislative scrutiny took place on November 30, 2014 and thus, by the end of 2018, or at the latest by February 2019, the Republic of Moldova will hold regular Parliamentary elections. The activity of the current legislature and political parties is marked by many social and political events with negative connotations, and is critically perceived by citizens (*the theft of approx. 1 billion USD from the bank system in December 2014, the massive migration of the MPs, mayors and local councilors from different parties to the Parliamentary faction of the Democrat Party, which distorted the original representation of the political parties in the legislature and local public administration bodies*).

Under these circumstances, in July 2017 a Parliamentary majority, created mostly by the factions of the Democrat Party and Party of Socialists from Moldova, changed the electoral system for the election of MPs. As a result, under the adopted mixed electoral system the Parliament will be composed of 50 MPs, elected on parties' lists in a countrywide constituency, and 51 MPs, elected in single-member constituencies. This includes 3 constituencies established for Moldovans living abroad and 2 for those living in the Transnistrian region.

Although Promo-LEX acknowledges the right of the Moldovan Parliament to amend the electoral system, such a dramatic amendment should have been strongly correlated with the national standards established in the Constitution of the Republic of Moldova as well as the international commitments and recommendations of the Council of Europe/Venice Commission and OSCE/ODIHR. Unfortunately, the mixed electoral system was passed in a hurry, with limited discussions that merely simulated the public consultations (mainly due to the lack of feedback and analysis of the proposals made by different CSOs and experts in the area) and without a consensus within the society. Although the Moldovan authorities claim that all the recommendations formulated by the Venice Commission and OSCE/ODIHR were taken into consideration, Promo-LEX has proven that, in reality, only 12 out of 32 recommendations were fully or partially implemented<sup>1</sup>. Moreover, the main recommendation formulated by the Venice Commission and OSCE/ODIHR - not to change the electoral system - was ignored.

Consequently, the adopted mixed-member electoral system abounds with issues that may not only compromise its implementation during next Parliamentary elections, but also may put the free and fair character of the scrutiny in danger. Below is a list of problems that have been publicly addressed by Promo-LEX, and respectively brought to the attention -but unfortunately were neglected- by the authorities. At the same time, Promo-LEX is convinced that by taking into consideration and properly addressing these issues, the authorities can still significantly improve the adopted mixed electoral system and ensure its proper implementation for the upcoming Parliamentary elections:

- The first deficiency I want to bring to your attention refers to the ignorance of the Venice Commission Recommendation, which called for the Parliament to establish an independent commission for drawing the boundaries of the single-mandate constituencies. On the contrary, the Parliament empowered the Government, which is a political body subordinated to the Parliamentary majority, to set up the commission for the establishment of the single-member constituencies<sup>2</sup>. Unfortunately, the Parliament failed to include the boundaries of the single-member constituencies in the Electoral Code, as was recommended by many civil society organizations.
- Another major deficiency - the election of the MPs through a single round election<sup>3</sup> (compared to the election of the President and of the mayors, which take place in two rounds), as it is provided by the mixed electoral system, may result in a less representative Parliament, thus eventually infringing the Article 60 of the Constitution, which state that the Parliament is the supreme representative body.
- Furthermore, Promo-LEX is concerned with the violation of the principle of equality of votes. This observation is based on the fact that the minimum threshold to enter the Parliament on the basis of the list of candidates submitted by the political parties in the nationwide constituency will be higher than the threshold expected to be recorded in certain single-member constituencies. For example, at a minimum electoral score of 6% and a voter participation rate of 50%, a political party will be able to delegate only 3 members to the Parliament from the nationwide list of candidates, which equals about 28,000 votes per

<sup>1</sup> <https://promolex.md/11482-opinia-asociatiei-promo-lex-doar-12-din-32-de-recomandari-europene-cu-privire-la-sistemul-electoral-mixt-au-fost-indeplinite/?lang=en>

<sup>2</sup> <https://promolex.md/10189-opinia-asociatiei-promo-lex-cu-referire-la-proiectul-regulamentului-initiat-de-ministerul-justitiei-privind-activitatea-comisiei-de-delimitare-a-circumscripțiilor-uninomiale/?lang=en>

<sup>3</sup> <https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/?lang=en>

mandate. At the same time, in the single-member constituencies, at the same participation rate, an MP could be elected with only about 3-5 thousand votes. A special concern is that the principle of equality of votes would be impossible to enforce in the constituencies created on the territory of Gagauz autonomy, the Transnistrian, and in regions abroad where voters reside.

- In the light of the deficiency mentioned above, Promo-LEX also regrets that the Moldovan Parliament ignored the recommendation of the Venice Commission on the lowering of the electoral threshold from the 6% barrier. It should be underlined that, under the adopted mixed electoral system, the threshold for political parties to enter the Parliament was actually doubled in comparison with the previous proportional system. Under the mixed system, a political party with 6% popular support at the national level is able to delegate into the Parliament only 3 MPs.

In regards to the practical preparation of the next Parliamentary elections under the mixed electoral system, Promo-LEX is extremely worried about the following aspects:

- The lack of a clear legal mechanism through which the constituency councils for the management of the electoral process within single-member districts shall be established. According to the law, the members of constituency councils should be proposed by courts of law, the district council and the People's Assembly of Gagauzia, as well as by political parties. As constituencies are established on the basis of several localities, it is not clear which district council (out of those included in the constituency) may propose candidates for the constituency councils. The same is true about courts of law.

- About 5% of the voters may be excluded from the electoral process, which constitutes of the approximately 158,000 voters who have neither domicile nor residence<sup>4</sup>. Moreover, as the official statistical data shows (updated on April 1, 2018), the number of citizens without a domicile or residence is continuing to increase, although there are no clear explanations for this phenomenon<sup>5</sup>. Article 87(4) of the Electoral Code states that the voter shall vote at the polling station situated in the single-member constituency in which he/she has domicile. The voters who do not have domicile in the corresponding constituency shall not participate in the parliamentary elections in single-member constituencies.

Table no. 1. Dynamics of the number of voters based on SRV data over the period of 2016 - 2018

DATA	31.04.2016 <sup>9</sup>	13.09.2016 <sup>10</sup>	31.03.2017 <sup>11</sup>	01.09.2017 <sup>12</sup>	31.03.2018 <sup>13</sup>
TOTAL voters per constituencies	2848634	2854557	2870500	2873707	2829171
Voters of no abode / of no fixed abode <sup>14</sup>	165 141	160 673	158 265	155 683	203 368
Voters from ATU on the left bank of the Dniester River and in the municipality of Bender	219 325	221 842	223 880	225 971	226 486
<b>Total in SRV</b>	<b>3233100</b>	<b>3237072</b>	<b>3252645</b>	<b>3255361</b>	<b>3259025</b>

- Article 87(2) of the Electoral Code provides that students and pupils eligible to vote may cast their vote in any polling station from the settlement in which they study. The official statistics show that in the Chisinau municipality, during 2016-2017, there were about 80000 students in universities and in vocational education training schools. Should these circumstances be applied in bad faith, this could play a fateful role in the majoritarian constituencies created in Chisinau<sup>6</sup>.
- Promo-LEX is also concerned by the possibilities of indirect and masked funding<sup>7</sup> of the election campaigns of the parties through the opportunity offered to the persons included in the parties' list of candidates established for the nationwide constituency to also run for elections in a single-member district, on behalf of the same party or as an independent candidate. In such cases, the funds used to promote the candidate, who is seemingly independent, would also add value to the promotion of the party, on the list of which the candidate is simultaneously running in the elections. This problem also opens the possibility of doubly funding the election campaign of the election candidate from the nationwide district and his/her representatives from the single-member districts. Moreover, it means that a person, who is on the list of candidates for both the nationwide district and the single-member district, contrary to the principle of equal opportunities, may benefit from the spending of financial resources both from the party's electoral fund and from the electoral fund of the independent candidate. These financial resources can almost double the ceiling for one single-member district. Unfortunately, the monitoring and supervising capacity of the Central

<sup>4</sup> <https://promolex.md/10404-efectele-sistemului-mixt-studiu-de-caz-limitarea-dreptului-constitutional-de-a-alege-al-alegatorilor-fara-domiciliu-sau-resedinta/?lang=en>

<sup>5</sup> [https://promolex.md/wp-content/uploads/2018/05/RAPORT-nr.2\\_MO-Promo-LEX\\_ALN\\_20.05\\_eng-1.pdf](https://promolex.md/wp-content/uploads/2018/05/RAPORT-nr.2_MO-Promo-LEX_ALN_20.05_eng-1.pdf)

<sup>6</sup> <https://promolex.md/10213-efectele-sistemului-mixt-studiu-de-caz-votul-studentilor-si-elevilor-poate-decide-soarta-alegerilor-din-unele-circumscripții-uninomiale/?lang=en>

<sup>7</sup> <https://promolex.md/10613-efectele-sistemului-mixt-studiu-de-caz-situatia-candidatului-din-lista-nationala-a-partidului-care-concomitent-este-si-candidat-independent-in-circumscripția-uninomiala/?lang=en>

Electoral Commission is limited, thus there are real concerns about the lawful implementation of provisions with regard to political parties and election campaigns funding.

- The National Commission for the Establishment of Permanent Single-Member Constituencies has ignored the special criteria for the determination of the number of constituencies to be established on the left bank of Nistru river, as well as for voters residing abroad. The Commission approved the establishment of 3 constituencies abroad and of 2 on the left bank of Nistru River, without explaining what criteria were used to establish the formation of the 5 constituencies in these territories, nor from where the 3+2 formula came. Promo-LEX has proposed an alternative clear mathematical formula, based on the criteria provided by the law, that suggested that six constituencies need to be established abroad<sup>8</sup>. Unfortunately, although the Commission has requested the contribution of the specialized CSOs, the proposal made by Promo-LEX was neither discussed nor analyzed.
- The National Commission for the Establishment of Permanent Single-Member Constituencies has also failed to observe the demographic criterion for the establishment of constituencies in the territory of the Republic of Moldova<sup>9</sup>. Although the law stipulates that one constituency shall have from 55,000 to 60,000 voters, and the difference in the number of voters between constituencies shall not exceed 10%, in practice, between 15 to 30 established constituencies exceeded the 10% margin established by law.
- Promo-LEX also found that the use of administrative resources in the election campaign was not clearly regulated by the law<sup>10</sup>. Thus, since some mayors and district councilors belong to certain Parliamentary parties, we may assume that they could be tempted to 'help' their party colleagues by using the administrative resources at their disposal.
- Promo-LEX has also pointed out another specific shortcoming which relates to the compulsory integrity certificates for those who register as candidates for a particular public position, including for MPs<sup>11</sup>. The foreseen deficiencies, in this regard, are related to the capacity of the National Integrity Authority to issue integrity certificates and their effects. Promo-LEX has recommended, inter alia, to establish expressly in the law the public character of integrity certificates, as well as to strengthen NIA's capacity to process a large number of applications within a short period of time.

In conclusion, Promo-LEX acknowledges that there are no good or bad electoral systems, but rather that there are systems that are either appropriate or not appropriate for a certain country or society during a specific period of time. Additionally, the Parliament, as the only legislative body, is entitled to adopt the electoral system. However, as it can be seen from the information provided above, and also taking into account a series of other essential deficiencies<sup>12</sup> regarding the conduct of elections that remained unaddressed and noted by the Constitutional Court to the Moldovan Parliament after the 2016 Presidential elections, the changing of the electoral system has generated too many risks for the 2018 Parliamentary elections.

At the same time, civil society organizations, as watch dog institutions, have the right and obligation to signal the deficiencies in adopted laws. Promo-LEX has formulated many recommendations for the improvement of the above-mentioned aspects of the electoral system, thus striving to contribute to the organization of free and fair elections in Moldova. The main recommendation formulated in this regard by Promo-LEX for the authorities was to cancel the mixed electoral system or at least to implement it no earlier than for the 2022 Parliamentary elections, and only after all the gaps are settled and citizens are better informed about this change<sup>13</sup>. Unfortunately, the Parliament and political parties that promoted the amendment of the electoral system have ignored our appeals. Still, Promo-LEX believes that many of the issues raised above can be tackled even before the start of the election campaign for the next Parliamentary elections, should the Parliament display a proper openness and political will. That is why, on behalf of Promo-LEX Association I thank you for the opportunity to speak in front of the EU Delegation to the Euronest Parliamentary Assembly and kindly invite you to address these issues in communication and collaboration with the authorities of the Republic of Moldova in the context of the upcoming Parliamentary elections.

For more information, please contact:

**Nicolae Panfil**

**Program Coordinator, Promo-LEX Association**

**e-mail: [nicolae.panfil@promolex.md](mailto:nicolae.panfil@promolex.md), mob.: +373 79381842**

---

<sup>8</sup> <https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumscripții-uninomiale-care-urmeaza-a-fi-create-peste-hotarele-tării-si-repartizarea-acestora-potrivi-zonelor-geografice-1/?lang=en>

<sup>9</sup> <https://promolex.md/11014-circumscripțiile-electorale-uninomiale-intre-opunitate-politica-si-legalitate/?lang=en>

<sup>10</sup> <https://promolex.md/11014-circumscripțiile-electorale-uninomiale-intre-opunitate-politica-si-legalitate/?lang=en>

<sup>11</sup> <https://promolex.md/11654-initiativa-legislativa-privind-certificatul-de-integritate-necesita-imbunatatiri-semnaleaza-asociatia-promo-lex/?lang=en>

<sup>12</sup> <https://promolex.md/4939-apelul-public-al-organizatiilor-semnatare-cu-privire-la-necesitatea-crearii-unui-grup-de-lucru-responsabil-de-elaborarea-propunerilor-de-modificare-a-codului-electoral-si-a-legislatiei-conexe/?lang=en>

<sup>13</sup> <https://promolex.md/9925-d-e-c-l-a-r-a-t-i-e-cu-referire-la-modificarea-sistemului-de-alegere-a-deputatilor-in-parlament/?lang=en>