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German Economic Team Moldova  
European Business Association Moldova

## Joint report

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# Improving the Business Climate – Boosting Investment

Proposals from  
European business  
in Moldova

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Berlin/Chișinău,  
November 2019



## About the German Economic Team Moldova

The German Economic Team Moldova (GET Moldova) advises the Moldovan government and other Moldovan state authorities such as the National Bank on a wide range of economic policy issues. Our analytical work is presented and discussed during regular meetings with high-level decision makers. GET Moldova is financed by the German Federal Ministry of Economic Affairs and Energy. Our publications are publicly available at our website ([www.get-moldova.de](http://www.get-moldova.de)).

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## About the European Business Association

EBA Moldova is an independent business support and non-profit organization delivering a wide range of business support services to all its members and partners. Being a member of the European Business Organization Worldwide Network, operating under the patronage of the DG Enterprise and Industry, the EBA is aspiring to implement European values to make the business environment in the country permissive and friendly for foreign investments. EBA is a developing organization and over its eight years of activity proved its dedication to its members through concrete outputs and results in the area of policy and advocacy, matchmaking and business empowering.

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## 1 Introduction

Despite some improvements in recent years, the investment climate in Moldova remains rather weak, thus inhibiting investment and economic growth. Economic reforms are necessary to increase growth and reach a higher level of socio-economic development.

A simple example underlines this point. With GDP per capita currently at USD 3,400 and assumed growth rate of 4% p.a., it would take Moldova 33 years to reach the current GDP per capita of Romania. Because of overall living standards being rather low, a large share of the population seeks opportunities abroad and has already left Moldova. This trend is likely to continue if growth will not speed up and the environment for business and the population is not going to improve.

One of the main challenges on the path towards a sustainably higher growth rate is to unlock private investment. Private investments were around 24% of GDP in the recent years in Moldova. According to World Bank, this is below the average value of Moldova's peer group of lower middle-income countries, which had a private investment share of around 26%.

A major component of increasing investment is to attract more foreign direct investment (FDI). We have shown in a separate study<sup>1</sup> that FDI already significantly contributes to the Moldovan economy, government revenues and the wellbeing of the population. To further facilitate these effects, an improvement of the overall conditions for business is necessary. While some progress has been made regarding the investment climate - Moldova improved its ranking in the Doing Business Report by the World Bank from 83 in 2013 to 48 in 2020 – a profound improvement of the investment climate is yet to come.

For this study, we collected reform proposals from European companies, the main foreign investors in Moldova. This work was done in cooperation with the European Business Association in Moldova.

Disclaimer: We are well aware that the most important topics for a better investment climate are improvements of the justice system and rule of law as well as independent regulatory institutions. These are essential conditions to ensure a level playing field for investors and existing companies. At the same time, these reforms are complex long-term projects. In this report we pursue a complementary approach to these necessary long-term reforms. Our goal is to provide the government with smaller, but fast and relatively easy to implement reform proposals, which will lead to quick and significant improvements of the investment climate.

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<sup>1</sup> [https://www.get-moldau.de/wordpress/wp-content/uploads/2018/01/PS\\_01\\_2017\\_en.pdf](https://www.get-moldau.de/wordpress/wp-content/uploads/2018/01/PS_01_2017_en.pdf)

## 2 Methodological approach

This study follows a bottom-up approach to generate reform proposals. It is based on a questionnaire on problems and reform proposals prepared by the German Economic Team Moldova that was sent to companies organised in the European Business Association (EBA). The reform proposals then underwent an extensive review and checking process between the team of authors from GET Moldova and the EBA, as well as external partners. The review process was centred around ensuring that the proposals are consistent with a general reform direction towards transparent, competitive markets, consistent with pre-existing contractual obligations of Moldova (such as the EU Association process and other commitments) and contribute to equitable, sustainable growth.

The main aim of the study was to generate proposals for reform that businesses themselves desire and that are relatively easy to implement. The focus was not, as is the case with many other studies, to ask what are the most important reforms that Moldova needs and to analyse “binding constraints” in each field. Our focus was to explicitly also include smaller, incremental reforms that are easy to implement and will lead to noticeable improvements for businesses in Moldova and their activities. Hence, the bottom up approach has resulted in a relatively large set of recommendations, both of smaller and larger nature, which are unified by a relative ease of implementation.

A necessary restriction of our approach is that the recommendations reflect the needs of incumbent companies and in particular the membership profile of the EBA. However, as many of the EBA’s member companies are not EU companies or their subsidiaries but Moldovan companies with business interest in the EU, the study does not reflect only the interest of foreign companies. Also, the advantage of partnering with the EBA with its wide array of members was that we were able to receive reform proposals from small to large companies from all the various sectors that characterise Moldova’s economy: From agri-food via industry to services companies.

It is methodologically almost impossible to collect bottom-up recommendations from companies that are not yet doing business in Moldova. But although our reform proposals stem from investors already present in Moldova, their proposals will often highlight issues that also deter potential investors. Furthermore, implementation of the proposals will enable existing investors to invest more and expand their business activity in Moldova as the proposals exactly touch the issues they are struggling with.

The reform proposals are structured as follows: We start with the “horizontal”, non-sector-specific proposals. First, we present proposals in the area of labour law and regulation, then proposals in the area of tax and accounting, followed by proposals in the area of “general law”, i.e. all horizontal proposals not fitting in the former two categories. We then present all sector-specific proposals in one joint section.

In the final two chapters, we draw up a list of four “quick wins” and two “high-impact reforms”. The quick wins are characterised by the great ease of implementation – usually just abolishing unnecessary restrictions – together with having solid impact, whereas the “high-impact reforms” are in our view the most impactful reforms suggested in this study but will be somewhat more difficult to implement.

### 3 Reform proposals in the area of labour regulation and labour law

As several reform proposals of companies focused on labour regulation and -law, we have split this category from that of general law and highlight 4 reform proposals in this area.

**Table 1 Overview of reform proposals in the area of labour regulation and labour law**

<b>Labour-1</b>	Including small-scale business services in the tax scheme for independent activities
<b>Labour-2</b>	Substituting “patents” for merchants and retail traders by the tax scheme for independent activities
<b>Labour-3</b>	Improving the regulations on overtime work in the labour code
<b>Labour-4</b>	Introducing a trial period for all newly hired employees

#### Labour-1:

### Including small-scale business services in the tax scheme for independent activities

#### Responsible institution

Ministry of Economy and Infrastructure, Ministry of Health, Labour and Social Protection

#### Legal act concerned

Law 1163/1997 Tax Code, Art. 69

#### Problem for companies

It is very difficult for companies to legally purchase services from individual entrepreneurs providing small-scale business services, such as repairs in buildings, smaller paintjobs or plumbing because Moldova lacks a usable legal and tax regime under which these entrepreneurs can operate. A VAT-free SME taxation scheme for companies up to MDL 1.2 m per year in turnover of 4% of revenue exists, but is essentially not used by individual entrepreneurs. Payments to entrepreneurs with “patents” cannot be accounted as business expenditures and the “Taxation of Individuals Carrying out Independent Activities” (at 1% of revenue), established in 2017, is restricted to retail activities. Hence, companies aiming to comply with regulations are basically obliged to treat individual entrepreneurs performing incidental tasks almost like employees with cumbersome procedures such as calculation of social contributions. This effectively drives these tasks into the informal sector and incentivises companies to keep “black cash” to pay for informal performance of these tasks.

#### Suggested reform measures

We suggest extending the “Taxation of Individuals Carrying out Independent Activities” scheme to small-scale business services typically performed by individual entrepreneurs. Under this regime,

individual entrepreneurs with revenues up to MDL 600 thsd. per year are taxed at 1% of revenues, with at least MDL 3 thsd. per year of taxes<sup>2</sup>.

Expenditures for services provided by companies under this regime should be tax-deductible as business costs. Assistance in the form of training courses or helpdesks should be made available to entrepreneurs to help them understand the new regime and hence facilitate and accelerate the adoption of it. At the same time, the “patents” system should be phased out for activities in the “Taxation of Individuals Carrying out Independent Activities” scheme.

### **Effect on Moldova**

Implementation of this proposal could be a significant step towards reducing the informal sector in Moldova. With the “Taxation of Individuals Carrying out Independent Activities” scheme, a suitable tax scheme for individual entrepreneurs with a very modest tax rate and limited accounting obligations already exists. Companies could legally engage in formal B2B transactions for all required works and tasks. This would improve tax revenues and the business climate at the same time.

### **Labour-2:**

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## **Substituting “patents” for merchants and retail traders by the tax scheme for independent activities**

### **Responsible government institution**

Ministry of Economy and Infrastructure, Ministry of Finance

### **Legal act concerned**

Business Patent Law 93-XIV/1998, Law 1163/1997 Tax Code, Art. 69

### **Problem for companies**

“Patents” for service providers are being used far more widely than originally intended. Especially the use of patents by retail traders on local markets (“rinoks”), which often have substantial turnover, is highly problematic. By not paying taxes and not underlying any accounting requirements, the continued use and abuse of the patents system promotes unfair competition against regular retail companies and encourages the sale of smuggled goods, to the detriment of the Moldovan state and Moldovan domestic producers. Existing revenue caps for patent traders cannot be enforced in highly scalable trading activities due to lack of accounting requirements. Consumer protection suffers as well.

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<sup>2</sup> These thresholds could be revised and differentiated by activity and location to link minimum tax levels to the current annual costs of patents, ranging from MDL 240/year for cultural activities in rural localities to MDL 6480/year for retail trade in city markets.

Patents were devised as a tax regime for very small businesses run by a single natural person, offering very limited manual services or selling own produce (e.g. from one's garden) to private people. Purchasing the patent from the state absolves the patent holder from any further taxation or accounting obligations. Although no more new patents are being given by the government, existing ones are getting prolonged.

### **Suggested reform measures**

Patents for retail traders should be phased out as soon as possible (under current law, patents are permitted until December 2022). With the "Taxation of Individuals Carrying out Independent Activities" scheme, a suitable tax scheme for retail traders already exists. This system is well suited to supersede the patents system, with subsidised electronic receipt printers and low tax rates comparable to annual patent costs for companies within the revenue threshold. It should become the most basic legal and tax regime for small individual entrepreneurs in Moldova, including retail traders previously operating with patents as well as small craftsmen rendering services to businesses as referred to in Labour-1.

### **Effect on Moldova**

Implementing this reform would lead to a reduction of unfair competition and of sales of smuggled goods in Moldova. This would substantially benefit Moldovan producers and regular retail traders. Tax revenues would rise as companies with higher revenues than permitted under the patents system, hitherto using patents and hiding their revenues, would be required to pay a fair tax share.

## **Labour-3:**

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### **Improving the regulations on overtime work in the Labour Code**

#### **Responsible government institution**

Ministry of Health, Labour and Social Protection, Ministry of Economy and Infrastructure

#### **Legal act concerned**

Law 154/2003 Labour Code, Art. 104, 157 and 158

#### **Problem for companies**

The Labour Code of the Republic of Moldova contains several problematic issues especially with regard to overtime work, its compensation, and holiday entitlements.

1. For workers on fixed (monthly) salaries, Article 157 regulates payment for overtime work, whereas Article 158 regulates the compensation for work performed on rest days and on official holidays. It is not clear whether only one of the Articles applies or the compensation required by both Articles needs to be added to the normal salary. Companies must choose between paying unreasonably high overtime payments (up to 4x the normal salary) or risking

being deemed to inadequately pay their workers by courts. This creates disproportionate costs and legal uncertainty for employers, as well as unjustified discrimination among different types of workers (on monthly salaries vs. on hourly salaries).

2. The maximum overtime work limit in Moldova is excessively strict. Article 104 stipulates a maximum 120 overtime hours per year (240 hours in exceptional cases). This is much stricter than for example the EU working time directive, which permits ca. 400 hours per year. Due to scarcity of labour, the Moldovan overtime limits hence create a real problem for companies and may lead to production stoppages once the annual limit is reached for a large share of employees.

### **Suggested reform measures**

In addition to the process around the current draft law on amendments to the labour code, we suggest addressing the two issues in the Labour Code as follows:

1. Article 158 should be amended by adding a new paragraph 4 to ensure reasonable overtime payment for employees on a fixed (monthly) salary, stipulating that the specified payment includes the payment required by Article 157. The compensation for extra hours worked, including on public holidays should not substantially exceed twice the usual salary and should be the same for all types of workers, regardless of their mode of compensation (per hour or per month). This will solve the question regarding dual applicability of Articles 157 and/or 158.
2. Article 104 should be adjusted to limit overtime work, in line with EU legislation, to a maximum of 8 hours per week.

### **Effect on Moldova**

Resolution of these issues will bring Moldovan labour law more in line with international practice, remove legal uncertainty or excessive overtime compensation and reduce the likelihood of labour bottlenecks created by scarce labour availability and strict overtime limits. This would facilitate investment into labour-intensive production in Moldova.

### **Labour-4:**

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## **Introducing a trial period for all newly hired employees**

### **Responsible institution**

Ministry of Health, Labour and Social Protection, Ministry of Economy and Infrastructure

### **Legal act concerned**

Law 154/2003 Labour Code, Art. 62

**Problem for companies**

Currently, trial periods with relaxed constraints for the premature termination of employment contracts are not permissible for some categories of employees, including employees hired through a competition, minors and people with disabilities. In practice, this is a hindrance on hiring with regular contracts people from vulnerable groups, where it is often uncertain at first whether they will perform well. As employers cannot easily dismiss them in case it does not work as intended, they often shy away from hiring people from such groups altogether.

**Suggested reform measures**

Cancel the restrictions concerning the applicability of trial periods for newly hired employees. Reasonable trial periods, subject to a legal limit to their length, should be permitted for every new hire of an employee.

**Effect on Moldova**

Removing these restrictions will lead to a more inclusive labour market and better job opportunities for young people and other vulnerable groups. At the same time, constraints on the labour market would be relaxed as people from disadvantaged groups would become more attractive employees to employers who often face difficulties in finding employees in Moldova.

## 4 Reform proposals in the area of tax and accounting

In the area of tax and accounting, we have identified five reform proposals:

Table 2	Overview of reform proposals in the area of tax and accounting
Tax-1	Simplifying invoicing requirements for companies
Tax-2	Abolishing the “act of completed works” in tax procedures
Tax-3	Cancelling the environment tax for companies under EPR
Tax-4	Refining customs regulations for various shipments to/from Free Economic Zones
Tax-5	Establishing a “free port” regime for Moldova’s port in Giurgiulesti

Tax-1:

### Simplifying invoicing requirements for companies

#### Responsible institution

Ministry of Finance

#### Problem for companies

Moldova requires the use of “fiscal facturas” as invoices for business purchases. Companies are obliged to purchase prenumbered facturas templates from the state or use the “e-factura” system. The facturas system was introduced to combat VAT fraud but did not solve the problem. Instead, the requirement to purchase and use prenumbered facturas is an administrative burden for businesses. Many smaller companies do not use facturas and prefer to work in the informal sector partially due to the difficulty of the facturas system, forcing other companies to operate “black cash” accounts in order to purchase goods and services from them, counteracting the intent to improve tax enforcement.

#### Suggested reform measures

The requirement to use fixed-form facturas should be dropped. Invoices in any form should be allowed as long as they contain the required and necessary information for proper VAT enforcement (names and addresses of parties involved in the deal, VAT number of seller). Instead of the ineffectual facturas, modern digital-based approaches such as the successful recent model of VAT enforcement in Ukraine could be adopted, linking VAT transactions through the supply chain to combat fraud.

#### Effect on Moldova

Abolishing the requirement to use cumbersome and ineffectual fixed-form facturas would reduce the administrative burden of companies and could, as part of a broader effort including new models of VAT enforcement, contribute to the de-shadowing of the economy.

Tax-2:

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## **Abolishing the “act of completed works” in tax procedures**

### **Responsible institution**

Ministry of Finance

### **Legal act concerned**

Law 133/2007 on accounting, National Accounting Standards, Government Decision 93/2013 on approval of the Provision on VAT refund

### **Problem for companies**

The “act of completed works” (or “act of acceptance”) is a document for signing off services or goods provided by the receiver of the goods or services. It is a required documentation for tax purposes but serves no real purpose: An invoice and documentation of payment would be entirely sufficient for tax authorities. Furthermore, business partners from outside the space of the former Soviet Union are not used to such a document and, not understanding its purpose or implications, sometimes refuse to sign it. The “act of completed works” only adds complication and red tape to business transactions without having any intrinsic value.

### **Suggested reform measures**

Abolish the legal requirement of this document, especially for international transactions.

### **Effect on Moldova**

An easily achieved improvement in business climate through the reduction of unnecessary paperwork.

Tax-3:

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## **Cancelling the environment tax for companies under EPR**

### **Responsible institution**

Ministry of Agriculture, Regional Development and Environment, Ministry of Finance

### **Legal act concerned**

Law 1540/1998 on payment for environmental pollution

### **Problem for companies**

The “environment tax” in Moldova is essentially a tax on waste production by companies. However, “extended producer responsibility” (EPR), in accordance with EU Directive 2008/98/EC on waste has been introduced in Moldova, requiring producers to ensure and bear all costs for the proper disposal of waste generated by them. The continued existence of the environment tax creates a contradiction

as producers and importers are charged for the waste they create, although they have to fully dispose of it at their own cost.

### **Suggested reform measures**

The environment tax should be cancelled for companies falling under the EPR principle. At the same time, it should be ensured that there is a complete legal environment for waste disposal so that companies can fulfil their responsibilities on waste disposal.

However, as capacities of the state to monitor implementation of “extended producer responsibility” remain limited, a full cancellation of the environment tax for companies falling under “extended producer responsibility” is not realistic at this point in time. Therefore, in the short term, a mechanism for full reimbursement of the environment tax should be established for companies that can prove to have fully implemented the extended producer responsibility principle, as provided in Annex XI of the MD-EU Association Agreement.

### **Effect on Moldova**

In addition to a costs reduction for production companies that currently have to pay twice for their waste (environment tax plus disposal costs), cancellation of the environment tax plus the creation of a complete legal framework for waste disposal will improve the business and investment climate by removing a contradictory situation in Moldovan legislation that deters potential investors.

### **Status Quo**

In July 2019, Ministry of Agriculture, Regional Development and Environment established a working group on the amendment of the Law 1540/1998 with the participation of the relevant central public authorities and Business Support Organisations.

Tax-4:

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## **Refining customs regulations for various shipments to/from Free Economic Zones**

### **Responsible institution**

Ministry of Economy and Infrastructure, Ministry of Finance

### **Legal act concerned:**

Law 440/2001 on Free Economic Zones

### **Problem for companies**

Customs regulations for Free Economic Zones (FEZ) reflect the main purpose of a Free Economic Zone: Adding value to inputs that are subsequently exported again. In general, customs procedures in FEZs work well, but a few specific issues pose difficulties to companies in FEZs:

- 1) Bringing back waste “from production and related processes” from the FEZ into Moldova is in general regulated adequately in *Paragraph 3<sup>4</sup> of Art. 7, Law 440/2001*. However, the lack of a clear definition of “related processes” poses problems as it leaves the determination of what are related processes up to each customs post. This creates uncertainty for FEZ residents as such wastes could be considered as (more expensive) imports instead of as taxable deliveries.
- 2) The regulations do not foresee *temporary* removal of machines or equipment from FEZ, e.g. for showing materials at exhibitions or repair of machines. Such shipments could in the first stage be considered imports into Moldova, subject to duties, although the removal from the FEZ is only temporary in nature.
- 3) Bringing goods into the FEZ for non-commercial purposes (e.g. paint for repainting walls, office supplies, coffee for employees) without customs clearance is only possible for a value of up to EUR 500 per day. For larger companies, this threshold is too low, and the burden associated with customs clearance for such goods is excessive.

### **Suggested reform measures**

Law 440/2001 should be amended to

- 1) Provide a workable definition of what counts as “related processes” generating waste comparable to production waste.
- 2) Allow the temporary removal of goods from the FEZ without paying customs, duties and fees.
- 3) Either abolish or make more generous, flexible and size-dependent the threshold for imports of goods for non-commercial purposes into the FEZ without customs declaration.

### **Effect on Moldova**

Implementing these reforms will facilitate the business activity of companies in Free Economic Zones and will make FEZs more attractive for investment by companies.

Tax-5:

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## **Establishing a “free port” regime for Moldova’s port in Giurgiulesti**

### **Responsible institution**

Ministry of Economy and Infrastructure, Ministry of Finance

### **Problem for companies**

Giurgiulesti port on the Danube river, Moldova’s only port, has the status of a Free Economic Zone. However, customs procedures designed for the typical inland Free Economic Zones, typically used by industrial companies, are not fully suitable for the operations of a port, especially with regard to international transshipment of goods. At present, the port has two customs borders that need to be

cleared for any cargo – one when loading/unloading goods between ships and the port and the other for goods entering/leaving the territory of the port to inland Moldova by road or rail. Especially for goods intended for transshipment (i.e. neither destined for nor originating in Moldova), this creates unnecessary customs procedures.

### **Suggested reform measures**

The rules and customs treatment of the port should be changed to establish a special regime of a free port for Giurgiulesti: There should only be an obligatory customs control on land between the area of the port and mainland Moldova. As Moldova has no other port and goods cannot be shipped by ship to anywhere else in Moldova, it is not necessary for goods arriving by ship on the territory of the port to clear Moldovan customs before leaving the territory of the port on the land side. In addition, if goods imported by sea are processed in the port and again exported by sea (for which they would need new customs papers), customs clearance procedures could be done on request of cargo owners.

### **Effect on Moldova**

This measure will raise the attractiveness of the port for international transshipment, as well as improving overall procedures in the port, without compromising customs enforcement for Moldova. Increased attractiveness and use of the port will help attracting more ship traffic and hence contribute to faster and cheaper transport by sea/water of goods to and from Moldova, compensating partially for the disadvantages of being a landlocked country.

## 5 Reform proposals in the area of general law

This area covers all cross-cutting (i.e. non sector-specific) regulations that do not fall into the domain of labour law or tax and accounting, which are displayed separately. We have identified five reform proposals in the area of general law.

Table 3 Overview of reform proposals in the area of general law	
Law-1	Accepting EU certifications for imported goods and equipment
Law-2	Establishing a public register of companies under insolvency regime
Law-3	Ensuring the compatibility of data protection with anti-money-laundering legislation
Law-4	Facilitating the use of private expert witnesses for court cases
Law-5	Simplifying the reporting requirements of companies

Law-1:

### Accepting EU certifications for imported goods and equipment

#### Responsible institution

Ministry of Economy and Infrastructure, Ministry of Agriculture, Regional Development and Environment

#### Legal act concerned

Law 235/2011 on accreditation and evaluation of conformity, Law 306/2018 on food safety, Government decision 938/2018 on import border crossing of products under food safety supervision

#### Problem for companies

Equipment and goods imported from the EU have to be certified by the Moldovan government before they can be used or consumed, although they are already certified by authorities in the EU. Samples of significant size of imported food must be given to the relevant certification agencies in Moldova for testing/certification. Imported equipment cannot be used before it is certified. Certifications only last 1 year and must be renewed. The costs are borne by the importing entrepreneur.

In the context of the EU Association Agreement, it is foreseen to establish equivalence of certifications between Moldova and the EU. This implies mutual recognition of EU certifications in Moldova and vice versa. However, equivalence will not be achieved in a short time, as it requires significant changes to the certification processes in Moldova (i.e. full implementation of EU standards) before the EU will be ready to accept Moldovan certifications. Nevertheless, not recognising strict and comprehensive EU

certifications in Moldova does not make sense and only imposes costs in terms of money and time on importing businesses.

### **Suggested reform measures**

Moldova should unilaterally accept EU certifications for goods, allowing EU-certified goods to be sold and used inside its borders without further certification requirements for as wide a range of goods as possible.

### **Effect on Moldova**

Reduced certification costs would lead to improved quality and choice for consumers as well as lower equipment costs for businesses using imported equipment.

Law-2:

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## **Establishing a public register of companies under insolvency regime**

### **Responsible institution**

Ministry of Justice

### **Problem for companies**

As no easily accessible public register of companies in an official state of insolvency exists, an excessive risk of insolvency of a client exists in business-to-business (B2B) contracts in Moldova. Some information about insolvency filings is accessible in public court registers, but hard to access and search. Hence, companies lack information, whether other companies with which they intend to engage in transactions might be in insolvency procedures. This puts them at risk of losing money (e.g. no payment for goods delivered if insolvency is not resolved) in such transactions.

### **Suggested reform measures**

A public register of all companies currently under official insolvency proceedings should be established and maintained in real time. This should take the form of a searchable e-platform. Once a company files for insolvency, this should be immediately visible to interested/potential and current business partners such that these can take adequate precautions when interacting with insolvent companies.

### **Effect on Moldova**

Reduced risks of transactions will significantly improve the willingness of companies to engage in business with new partners and hence contribute to business activity across all sectors.

## **Ensuring the compatibility of data protection with anti-money-laundering legislation**

### **Responsible institution**

Ministry of Finance, Ministry of Economy and Infrastructure, State Chancellery, Ministry of Interior, National Centre for Personal Data Protection

### **Legal act concerned**

Law 133/2011 on protection of personal data and law 308/2017 on prevention and combating money laundering and terrorism financing, current draft law on data protection (approved in first hearing on 30<sup>th</sup> November 2018)

### **Problem for companies**

The anti-money-laundering legislation of Moldova is not consistent with the law on personal data protection. Financial institutions are required to disclose (and receive from potential clients) information under the anti-money-laundering legislation that are not allowed to be disclosed under data protection legislation, such as copies of ID documents of potential clients. This affects both banks as well as their clients seeking credit etc. and creates a risk of penalties for violating either of the two laws.

### **Suggested reform measures**

The data protection and anti-money-laundering laws should be made consistent in line with international practice to ensure that any information that must be disclosed under anti-laundering legislation is not forbidden from disclosure by data protection legislation.

### **Effect on Moldova**

Eliminating the risk of punishment for companies (who have to violate one of two laws at present) and improving access to credit for companies will facilitate investment using domestic credit, hence also contributing to a reduction of foreign-currency credit exposure.

## Facilitating the use of private expert witnesses for court cases

### Responsible government institution

Ministry of Justice, Ministry of Economy and Infrastructure

### Problem for companies

Expert witnesses (i.e. technical expertise of issues under dispute) for court cases can be provided either by experts of the National Centre for Judicial Expertise (under the Ministry of Justice) or by private experts. However, private experts need to be officially approved by the National Centre for Judicial Expertise as satisfying its quality requirements. This creates a clear conflict of interest for the National Centre for Judicial Expertise, which benefits more from providing expertise itself and hence effectively bars private judicial experts from providing such forms of expertise to clients. The de-facto monopoly of the Centre in Judicial Expertise leads to elevated prices and sometimes quality issues with expert witnesses required by companies to prove their points in court cases.

### Suggested reform measures

In order to defuse the conflict of interest, it is necessary to formally and effectively separate the activities of providing expert witnesses and certifying private experts. Expert witnesses are usually not civil servants or other state employees, mainly due to the wide range of issues that expert witnesses can be required for. It should be evaluated, whether there is a need for such services to be provided by the state or whether the National Centre for Judicial Expertise could be tasked solely with certifying private experts, that can thereafter be freely appointed by courts and any party in legal disputes. If it is deemed necessary to provide such services through the National Centre for Judicial Expertise, the task of certifying experts must fall to a wholly separate (in form and substance) institution.

### Effect on Moldova

As a result of this reform, costs and quality of available expert witnesses (by the National Centre for Judicial Expertise and by private experts) would improve, allowing companies a cheaper and better representation of their interests before courts and facilitating an improvement in the accuracy of court decisions.

## **Simplifying the reporting requirements of companies**

### **Responsible government institution**

Ministry of Economy and Infrastructure, Ministry of Finance and National Bureau of Statistics

### **Problem for companies**

Despite the efforts to combine reports by companies to public authorities, the burden of reporting to diverse authorities remains high. Some reports are unnecessary as either the information is of no use to anybody or is already contained in other reports. Other reports could be reorganised to create less work at companies. Although some reports can be made automatic by companies (and hence create little work thereafter), this does not work for all types of reports and several companies state that they have to employ extra staff or dedicate a significant number of man-days to producing reports of little to no value.

### **Suggested reform measures**

We recommend a complete review, overhaul and streamlining of the reporting requirements for companies to all public authorities from statistics services to tax and customs authorities. The review should ensure that information is gathered by the state as efficiently as possible: Companies should never be required to report the same information multiple times to different public authorities, the number of individual reports should be kept to minimum at regular frequencies to allow for maximum automation of report preparation by companies. Authorities should not be allowed to impose new reports without proper process that includes impact and cost-benefit assessment.

In the context of this review, changes to the following reporting requirements that were highlighted by companies in our survey should be considered:

- 1) Replacing the bimonthly report of the list of employees to the social insurance system / tax authorities with companies reporting only changes in their payroll to the authorities once per month, as is internationally common.
- 2) Cancelling the report on completed documents on which declarations of origin are completed (Annex 3 to Decision No. 385 of 16.06.2015). All the data in this report are already held by the Customs Service in the ASYCUDA system (Invoice and Customs Declaration).
- 3) Cancelling the report M3 on wage earnings and labour cost. The data in this report are contained in both the M1 Report and the IPC report.
- 4) Restricting the FORPRO report on training activities to entities providing training services, educational institutions and similar entities as preparing this report takes a long time and such detailed information seems to be unnecessary to public authorities.

- 5) Restricting report 1-tr.(auto) on transported quantities of goods to transport services companies. It is unreasonable for companies to report on the transport of their own goods between subdivisions.
- 6) Simplifying the AGR reports by agricultural enterprises. Each company should only submit one report on all lands owned or used by it to the rayon/district statistical organisation, where the company has its legal headquarters.
- 7) Simplifying the financial statements report RSF1, in particular Annex 9, relations with non-residents. It is proposed to remove Tables 1, 3 and 5, the data of which are contained in the 1-INVEST reports (quarterly and yearly).
- 8) Cancelling the quarterly reports of entry and exit of goods into Free Economic Zones (FEZs) by FEZ residents. The report is unnecessary because the Customs Service has access to all necessary information on customs-relevant entries and exits to and from FEZs through the ASYCUDA information system.

#### **Effect on Moldova**

The reduction of superfluous reporting requirements would improve the business climate and reduce unnecessary overhead costs of companies.

## 6 Reforms of sector regulations

Seven reform proposals are sector-specific: Three for the industry sector, two for telecommunications and one each for the agricultural and financial sectors.

**Table 4** Overview of sector specific reform proposals

<b>Sector-1</b>	[Agriculture] Improving the management of agricultural land
<b>Sector-2</b>	[Industry] Increasing or abolishing the transport facility ceiling
<b>Sector-3</b>	[Industry] Fully implementing ISPM 15 standard for wooden packaging
<b>Sector-4</b>	[Industry] Permitting “inward processing” companies to return metal waste to owners
<b>Sector-5</b>	[Financial sector] Reviewing the regulations on business with affiliated persons
<b>Sector-6</b>	[Telecommunication] Applying the “Access to Property” act
<b>Sector-7</b>	[Telecommunications] Abolishing the “portability fee”

Sector-1:

### [Agriculture] Improving the management of agricultural land

**Responsible government institution:**

Ministry of Agriculture, Regional Development and Environment

**Problem for companies:**

Although Moldova has strong comparative advantages in agriculture due to soils, climate and inherited land meliorations, the agricultural sector is unproductive at present. Many agricultural plots are unused and there appears to be a large problem of “abandoned land”, where owners of small plots may have emigrated. Landowners are not legally and effectively obliged to use or maintain the quality of their land. Pastures owned by municipalities were often used as a commons in past and are now largely unused. Unused agricultural land not only is an idle resource, but also has negative effects on neighbouring land areas, for example due to decay of irrigation networks. Inadequate upkeep of public infrastructure, such as reservoirs for irrigation, further contributes to the decay of Moldova’s land quality.

At the same time, commercial agricultural companies are interested in leasing and using agricultural land in Moldova but report vast difficulties in attempting to lease private or municipal land. The land lease market in its entirety remains underdeveloped as legal regulation promotes inadequately short lease periods of 5 years (recently raised from 3 years), well below the depreciation periods for most investments into the land.

### **Suggested reform measures:**

We recommend a comprehensive approach to this large problem through the following steps:

- 1) Conducting a stocktaking of unused agricultural plots and their ownership – private, municipal, state – to determine the magnitude of the problem and whether it relates mainly to absent private owners or difficulties in the management of state or municipality owned land.
- 2) If unused and abandoned private land is determined to be a major problem, the possibility of instituting a legal obligation to use agricultural land should be explored. Unused land could then legally be leased out through a highly monitored and accountable state or state-mandated fiduciary institution to other users, under the condition that the revenues are kept for the owners of the land.
- 3) If unused state or municipal land turns out to be a large problem, the management of state land should be comprehensively improved, ensuring that the relevant public bodies (e.g. municipalities) have both the right and an interest (i.e. receiving rents) in leasing out currently unused land.
- 4) Eliminating the recommendation of short-term lease contracts in the Land Code and developing non-obligatory draft lease contracts that specify reasonable standard lease terms, rights and obligations for lessee and lessor according to international best practice, e.g. the “Musterpachtverträge” of German states.
- 5) Comprehensively reforming public bodies tasked with the maintenance and upgrading of agriculture-relevant infrastructure, especially with regard to water management in order to ensure the upkeep and improvement of land quality.

### **Effect on Moldova:**

This reform would have a substantial impact on the entire agricultural sector of Moldova. Output would be raised through bringing unused land into use. Land quality would be maintained through proper use of lands and facilities. Significant investments into the agricultural sector would be unlocked through the development of a proper land lease markets with adequate lease periods. Social considerations would be preserved as relevant decisions would be taken at local level.

### **Sector-2:**

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## **[Industry] Increasing or abolishing the transport facility ceiling**

### **Responsible government institution:**

Ministry of Finance

### **Legal act concerned**

Fiscal Code (1163/1997), Government decision 693/2018 on tax obligations related to the income tax, Annex 1 Art. 34

### **Problem for companies**

Many manufacturing companies hire staff in villages due to the lack of labour force around their site and need to transport the employees to and from the company at the start and end of the working shift. The cost of transportation services is deductible until the amount of MDL 35 per person and day. However, this ceiling often does not cover the transportation costs in full. Furthermore, companies have to pay salary tax on the overrun of the ceiling as this is considered a non-monetary benefit (rather than as operating costs). This leads to additional costs for creating jobs.

### **Suggested reform measures**

The limit of the ceiling should either be raised from MDL 35 to MDL 50 or, preferably, abolished altogether such that these very real costs are tax deductible in full. Additionally, overruns of the ceiling (if retained) should not be subject to the salary tax.

### **Effect on Moldova**

Implementation of this change would make Moldova a more attractive location for companies with labour-intensive production technologies and would furthermore incentivise investment in less densely populated regions.

## Sector-3:

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### **[Industry] Fully implementing ISPM 15 standard for wooden packaging**

#### **Responsible government institution**

Ministry of Agriculture, Regional Development and Environment, Ministry of Economy and Infrastructure

#### **Problem for companies**

The ISPM 15 standard (International Standards for Phytosanitary Measures No. 15) is a phytosanitary standard applicable to wooden packaging, requiring treatment of wood to ensure that wooden packaging in international trade does not lead to the spread of diseases or bacteria negatively affecting ecosystems. Moldova applies this standard, but there are deficits in implementation. Currently, the General Inspectorate of Phytosanitary Supervision and Seeds Control is unable to properly monitor whether wood used in packaging (e.g. pallets widely used for shipping goods) has been treated chemically or with heat, but hands out the ISPM 15 stamp. This could, at worst, lead to Moldovan products with wooden packaging being refused entry into other countries if a mislabelling of packaging with the ISPM 15 stamp takes place.

#### **Suggested reform measures**

The General Inspectorate of Phytosanitary Supervision and Seeds Control should be supported and financed to set up a comprehensive monitoring system to ensure proper observance of the ISPM 15

standard by producers of wooden packaging such that the stamps are only handed out to producers and products that meet the standard.

### **Effect on Moldova**

Proper implementation of the ISPM 15 standards, which is already now possible for Moldovan manufacturers of wooden packaging, would ensure that Moldovan exports requiring wooden packaging do not face risks of non-acceptance in their destination countries due to packaging not meeting international standards.

### Sector-4:

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## **[Industry] Permitting “inward processing” companies to return metal waste to owners**

### **Responsible institution**

Ministry of Economy and Infrastructure, Ministry of Agriculture, Regional Development and Environment

### **Legal acts concerned**

Law 160/2011 on regulating entrepreneurial activity by means of a permit (Annex 1, p. 5) and law 209/2016 on waste

### **Problem for companies**

According to the law on regulating entrepreneurial activity and the law on waste, the export of metal waste is a licensed activity and hence, all metal waste must be sold to local, licensed companies. Only these companies are allowed to export metal scrap. This constitutes a problem for companies working under the inward processing regime, who do not own the metal scrap and are obliged to return both the product and waste materials to their supplier (e.g. not only completed cable trees but also the cuttings from cables, which have significant material value). They run the risk of not being allowed to return waste materials to their owners unless they use a licensed company for this task, which adds costs without adding value. The Ministry of Economy and Infrastructure issued a letter stating that an authorisation for export is not required in such cases. However, the Customs Office still asks for it sometimes and the Ministry of Agriculture, Regional Development and Environment will not issue an authorisation without a license.

### **Suggested reform measures**

The Laws 209 and/or 160 should be amended to except metal waste resulting from production processes of companies working under the inward processing regime, provided that an orderly disposal of the waste is ensured.

## **Effect on Moldova**

The risk of companies not being able to fulfil their contracts in parts of returning remains of production would be eliminated and there will be no need for companies to sell metal waste below market prices to licensed companies. This would make inward processing of metals in Moldova more attractive for investors.

## **Status Quo**

In September 2019, the Ministry of Economy and Infrastructure launched the process to liberalise the market of ferrous and non-ferrous metals. The amendments to the Law 209/2016 are under discussion with all relevant stakeholders.

## Sector-5:

### **[Financial sector] Reviewing the regulations on business with affiliated persons**

#### **Responsible government institution**

Ministry of Finance, National Bank of Moldova

#### **Problem for companies**

In applying the International Accounting Standards (IAS) 24, Moldova has adopted a very strict definition of “affiliated persons” and of what interactions with them are permitted. This has led to it being impossible for banks for example to give credit on special conditions to its own employees and managers, despite having excellent information about their creditworthiness.

#### **Suggested reform measures**

The definition and restrictions related to affiliated persons should be reviewed in order to ensure that no unnecessary limitations in excess of the IAS 24 requirements are enforced. Especially, the distinction between related and affiliated persons should be applied carefully to ensure that related, but not affiliated persons are not subject to restrictions that should only apply to affiliated persons. Access to credit on preferential conditions from their own bank should be possible for bank employees provided that care is taken to prevent any conflicts of interest from occurring in the decision making.

#### **Effect on Moldova**

As the Moldovan market is small, removing unnecessary restrictions to bank activities will improve business activity by banks.

## **[Telecommunication] Applying the “Access to Property” act**

### **Responsible government institution**

Ministry of Economy and Infrastructure

### **Legal act concerned**

Law 28/2016 on access to property

### **Problem for companies**

Landline phone and internet operators need to install some equipment in houses where customers reside. However, in multi-party houses, companies often face problems when attempting to install or service equipment in order to serve customers in such houses. Property managers occasionally charge telecommunications operators for accessing their own equipment installed in that house or prevent access to it, probably due to an arrangement with a rival operator. Law 28/2016 on access to property (the “Access to Property” act) stipulates a methodology for calculating appropriate charges to be paid for the right to access equipment on sites owned by third parties, but is not implemented thus far. The current state impedes competition between telecommunications operators and reduces the incentive to roll out higher-quality communications infrastructure (e.g. fibre-optic cable-based internet) in Moldova.

### **Suggested reform measures**

Ensure that law 28/2016 on access to property is fully implemented and telecommunications operators can access their equipment in privately owned sites for an appropriate charge.

### **Effect on Moldova**

Implementing the existing act will lead to more competition in the market and accelerated rollout for landline telecommunications, especially fast internet.

Sector-7:

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## **[Telecommunications] Abolishing the “portability fee”**

### **Responsible government institution**

Ministry of Economy and Infrastructure

### **Problem for companies**

In order to allow the portability of numbers for customers when switching phone operators, a database maintained by a private operator was created. Telecommunications companies pay a small monthly fee per number on their book. However, in sum, the payments to the private operator are excessive compared to the marginal costs of operating such a database and sum up to several million Euro per year.

### **Suggested reform measures**

The charges payable by telecommunications companies to the operator of the database should be lowered.

### **Effect on Moldova**

Small effect but improving the attractiveness of the Moldovan telecommunications for investment due to reduction of unnecessary costs.

## 7 Quick wins: Recommendation of easily implementable priority measures

In order to generate quick wins – visible successes of reform measures that lead to noticeable improvements for as wide a range of businesses as possible, reinforcing the momentum for reforms in the government – we see four reform proposals as standing out. These proposals are all characterised by being very easy to implement as they mainly involve abolishing superfluous and ineffectual regulations and requirements, as opposed to proposals that require building up new institutions or regulatory schemes. At the same time, the proposals listed here affect a wide range of businesses, especially the first two, and will hence benefit many companies at the same time. We recommend speedy priority implementation of the following four reform proposals:

Table 5 Recommended 4 priority reforms for quick wins	
<b>Tax-1</b>	Simplifying invoicing requirements for companies
<b>Tax-2</b>	Abolishing the “act of completed works” in tax procedures
<b>Law-1</b>	Accepting EU certifications for imported goods and equipment
<b>Labour-1</b>	Including small-scale business services in the tax scheme for independent activities

The two first proposals only require abolishing unnecessary complications: The ineffectual facturas and “act of completed works”. Both types of documents were introduced or justified (the “act of completed works” is a heritage of the planned economy of the Soviet Union) with the intent to combat tax and other fraud but have clearly failed to achieve success. Hence, their abolition will reduce bureaucratic complications for businesses without compromising tax and legal enforcement. Although we mention some suggestions towards improving e.g. VAT enforcement in the proposal on invoicing simplification, this would effectively be a next step in order to achieve the original objectives of facturas that they never achieved.

Also, the acceptance of EU certifications for goods and equipment is easily implementable without having to wait for the acceptance of Moldovan certifications as equivalent by the EU. It would strongly facilitate the activities of businesses selling and using goods and equipment from the EU by cutting entirely unnecessary procedures. At the same time, this will not endanger or prolong the process of acceptance of Moldovan certifications by the EU, which depends solely on Moldova making its standards and certification institutions equivalent with those of EU member states.

Including individual entrepreneurs conducting business services in the “Taxation of Individuals Carrying out Independent Activities” would only require amending the respective law to include these activities. This will strongly contribute to de-shadowing the economy, promoting normal, effective business practices without excessive bureaucratic burden such as the “quasi employee treatment” of legally employed business service providers.

## 8 Recommendation of two high-impact-reforms

Finally, we would like to highlight two reform proposals that in our view are those with the largest overall importance for the Moldovan economy. These proposals focus on key weaknesses of the Moldovan economy and its regulatory environment but will require some more work and elaboration for successful implementation.

Table 6	Recommended 2 high impact reform proposals
Law-2	Establishing a public register of companies under insolvency regime
Secotr-1	Agriculture: Improving the management of agricultural land

A register of insolvent companies would address a key problem of conducting business in Moldova. Entering business relationships without knowing whether the business partner may already be in a state of insolvency is a strong deterrent for business activities, compounded by a weak judicial system in which redress and recovery of losses arising from such situations is unreliable at present. Building up and properly maintaining this real-time register of insolvent companies would require some investment and work, but overall would not be overtly difficult and could probably be achieved in a relatively short time.

The second high-impact reform would require more time, but probably also yield yet more growth and investment. Improving the regulation and management of agricultural land could help unlocking significant potential for growth and investment both in Moldova’s agricultural sector as well as in food processing. Although successful improvements of regulating and managing agricultural land are hard to achieve, the benefits could be quite vast. Moldova should have significant comparative advantages in agriculture and food production that are insufficiently exploited at present. Reforming land management and regulation would not only increase aggregate growth but would also support weaker, rural areas of the country.