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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

**DRAFT LAW ON
AMENDING AND SUPPLEMENTING THE CONSTITUTION OF
THE REPUBLIC OF MOLDOVA**

Draft Law on Amending and Supplementing the Constitution of the Republic of Moldova

The Parliament enacts the present constitutional law

Article I. - The Constitution of the Republic of Moldova, enacted on July 29, 1994 (Official Gazette of the Republic of Moldova, 1994, No.1), with further amendments, is amended as follows:

1. To the Article 116:

Paragraph 2 shall have the following content:

(2) Judges of courts of law shall be appointed, according to the law, until the age limit has been reached, by the President of the Republic of Moldova, at the proposal of the Superior Council of Magistracy. The President of the Republic of Moldova may reject only once the nomination proposed by the Superior Council of Magistracy.”;

Paragraphs (3) and (4) are repealed;

Paragraph (5) shall have the following content:

(5) Decisions on the appointment of judges and their career shall be adopted on the basis of objective and merit-based criteria, and in a transparent procedure, according to the law. The promotion or transfer of judges shall be done only with their consent.”

Shall be supplemented by paragraph (5¹) with the following content:

(5¹) Judges shall have only functional immunity under the law.”

2. Article 121 shall be supplemented by paragraph (1¹), with the following: content:

“(1¹) In the process of drafting, approving and amending the budget of the courts, the consultative opinion of the Superior Council of Magistracy is required. The Superior Council of Magistracy is entitled to present to Parliament proposals to the draft budget of the courts”.

3. Section 2 of Chapter IX shall be supplemented by Article 121¹, with the following content:

Article 121¹ The Role

The Superior Council of Magistracy is the guarantor of independence of judicial authority”.

4. The article 122 shall have the following content:

Article 122 Composition

(1) The Superior Council of Magistracy shall consist of 12 members, six judges, elected by the General Assembly of Judges, representing all levels of courts of law and six persons who enjoy a high professional reputation and personal integrity, with experience in the area of law or another relevant field, who do not work within the bodies of legislative, executive or judicial power, and are not politically affiliated.

(2) The procedure and requirements of electing, appointing and terminating the term of office of members of the Superior Council of Magistracy are established by law. Members of the Superior Council of Magistracy can be revoked, within the conditions of law.

(3) The candidates to the position of member of the Superior Council of Magistracy who are not judges are selected through competition, based on a transparent procedure, based on merits and are appointed by Parliament with the votes of three-fifths of elected MPs.

(4) If the appointment of candidates to the position of member of the Superior Council of Magistracy who are not judges within the conditions of paragraph (3) failed, the procedure and conditions of their appointment shall be established by law.

(5) The members of the Superior Council of Magistracy are elected or appointed for a term of office of 6 years, without the possibility to hold two consecutive terms of office.”

5. The Article 123, paragraph (1) shall be supplemented by the sentence: "The Superior Council of Magistracy shall exercise its powers either directly or through its specialized bodies”.

Article II. – (1) The present law enters into force at the expiration of 6 months from the date of publication in the Official Gazette of the Republic of Moldova.

(2) Judges in regard of whom, at the date the present law enters into force, the initial term of appointment as a judge has not expired, shall be considered appointed until reaching the age limit by the effect of the present law.

(3) Members of the Superior Council of Magistracy on behalf of judges who are in office at the date of entry into force of the present law, shall exercise the term of office until the expiration of the term they have been elected for. Ex-officio members will cease their functions on the date of entry into force of the present law. The mandate of the lay members who are in office on the date of entry into force of the present law is to be confirmed, for a term of office of 6 years in total, with the vote of three-fifths of elected MPs.

(4) Within 3 months from the date of publication of the present law, the Government shall present to Parliament proposals to bring the legislation in accordance with the present law.

Speaker of Parliament