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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW ON CHANGES
TO THE ELECTORAL CODE
OF THE REPUBLIC OF MOLDOVA

LAW
on the amendment and completion of the Electoral Code no. 1381-XIII of 21
November 1997

Parliament adopts this organic law.

Sole Article – the Electoral Code no. 1381-XIII of 21 November 1997 (Official Gazette of the Republic of Moldova, 1997, no.81, article 667) with the subsequent amendments shall be modified and completed as follows:

1. In article 1, in the definition of the notion “electoral block”, in article 27 paragraph (4), article 29¹ paragraph (2), article 38² paragraph (1), article 41 paragraph (2) letter b) and article 61 paragraph (1) in the sequence “in case of parliamentary elections” the word “presidential” shall be intercalated before the word “parliamentary”;
2. In article 1 after the notion “electoral officer” the following new notion shall be added:
“*Initiative group* – a group of citizens with voting rights registered under the conditions of this Code by the Central Electoral Commission for collecting signatures to support a candidate to the elective office or with a view to initiate a referendum.”
3. In article 21 paragraph (2), the phrase “presidential elections” shall be included in the brackets, before the phrase “parliamentary elections”;
4. In article 23 paragraph (1) and (2), the phrase “presidential elections” shall be included in the brackets before the phrase “parliamentary elections”;
5. Article 29 paragraph (5) shall be excluded;
6. In article 42 paragraph (4) the word “indicates” shall be substituted with the phrase “personally fills in”. Hereinafter the text remains unchanged.
7. In article 43 paragraph (4) letter c), in the end, the phrase “paragraph 6” shall be replaced with “paragraphs (4) and (6)”;
8. In article 49 paragraph (6) and article 64¹ paragraph (5), before the phrase “parliamentary elections” the phrase “presidential and” shall be added;
9. In article 53 paragraph (3) letter e), the sequence “parliamentary elections or in the case of national referendum” shall be replaced with the phrase “presidential and parliamentary elections and republican referendum”;
10. In article 64¹ paragraphs (3) and (4), before the sequence “parliamentary elections” the phrase “presidential and” shall be introduced;
11. In article 65 paragraph (6) and article 69 paragraph (5) before the word “parliamentary” the phrase “presidential and” shall be added;
12. Title IV (articles 95-117) shall have the following content:

“TITLE IV
ELECTIONS FOR THE OFFICE OF THE PRESIDENT OF THE REPUBLIC OF
MOLDOVA

Article 95. The enforcement of this title

The provisions of this title (articles 95-117) are applicable only in the case of the elections for the office of the President of the Republic of Moldova.

Article 96. The election of the President of the Republic of Moldova

(1) The President of the Republic of Moldova shall be elected by universal, equal, direct, secret and freely expressed vote for a 4 years mandate.

(2) The elections for the office of the President of the Republic of Moldova shall be carried out in a single national electoral constituency.

Article 97. Electoral constituencies and polling stations; Constituency electoral councils and electoral bureaus of the polling stations

(1) In order to organise and carry out the elections, the Central Electoral Commission shall form at least 55 days before the elections, electoral constituencies corresponding to the 2nd level administrative and territorial divisions of the Republic of Moldova, the autonomous administrative and territorial unit of Gagauzia, the Municipalities of Chisinau and Balti and, at least 50 days before the elections, constituency electoral councils, under the conditions of article 27, which shall be accordingly applied.

(2) Electoral constituencies shall be divided in polling stations under the conditions of articles 29 and 29¹, which shall be accordingly applied.

(3) Electoral bureaus shall be created within polling stations. The establishment of the bureaus and the carrying out of their duties shall pursue articles 29, 29¹ and 30, which shall be accordingly applied.

Article 98. Setting elections' date

(1) The elections for the office of the President of the Republic of Moldova shall take place at the latest, 30 days before the expiry of the mandate of the President in office.

(2) In case of vacancy of the office of the President of the Republic of Moldova (in the event of resignation, removal, definite impossibility to exercise the duties or death), the date of the elections shall be set within 2 month from the day the vacancy originates.

(3) Parliament shall set the date of the elections for the office of the President of the Republic of Moldova at least 60 days before the day of the first round of elections.

Article 99. Special conditions for the candidates to the office of the President of the Republic of Moldova

Citizens of the Republic of Moldova with voting right who are at least 40 years old, had lived or have been living in the country not less than 10 years, possess the state language and meet the conditions established by this Code may stand in for the office of the President of the Republic of Moldova.

Article 100. The nominalisation of the candidates to the office of the President of the Republic of Moldova

The nominalisation of the candidates to the office of the President of the Republic of Moldova shall be carried out starting as of 60 days before the day of the elections for the given office and within 30 days before the day of the elections, under the conditions of article 41, which shall be accordingly applied.

Article 101. Registration of the candidates

(1) In order to register the candidates to the office of the President of the Republic of Moldova, the Central Electoral Commission shall be provided the documents indicated in article 44 and the subscription lists under the conditions of article 102.

(2) The Central Electoral Commission shall release standard ID cards to the registered candidates.

Article 102. Special conditions for subscription list

(1) In order to be registered by the Central Electoral Commission, all candidates to the office of the President of the Republic of Moldova shall submit subscription lists comprising the signatures of at least 15000 electors from at least half of the 2nd level administrative and territorial divisions of the Republic of Moldova, including the autonomous administrative and territorial unit of Gagauzia, the Municipalities of Chisinau and Balti and shall meet the other provisions of this Code.

- (1) The 2nd level administrative and territorial divisions of the Republic of Moldova where no less than 600 signatures have been collected shall be considered compliant.
- (2) In the case in which the Central Electoral Commission detects upon verification of the subscription lists forged signatures or signatures repeated in several lists, the given signatures, as well as those indicated in article 43 paragraph (4) shall be excluded.
- (4) if upon verification it is established that the number of signatures is not sufficient or that following the exclusion of the invalid signatures their number dropped in relation to the minimal limit stated in paragraphs (1) and (2) of this Code, the given candidate shall not be registered, the respective decision being brought to their notice within 24 hours from the adoption.
- (5) The Submission of additional subscription lists after the verification of the subscription lists by the Central Electoral Commission shall not be allowed.

Article 103. Initiative groups for the nominalisation of the candidates to the office of the President of the Republic of Moldova

- (1) In the case in which the initiative of proposing candidates to the office of the President of the Republic of Moldova comes from the citizens, an initiative group, comprising at least 25 and at most 100 persons with voting right, shall be formed in order to propose the candidate. The initiative group may nominalise only one candidate to the office of the President of the Republic of Moldova. The members of an initiative group may not be concomitantly members of another initiative group. Political parties and electoral blocks shall register the initiative group with the Central Electoral Commission under the same conditions.
- (2) The list of the members of the initiative group, indicating the leader of the group, shall be filed with the Central Electoral Commission at the latest 50 days before the day of the elections by the person proposed as candidate for the office of the President of the Republic of Moldova. The lists shall comprise the name, surname, year of birth and home address of the members of the initiative group.
- (3) If these conditions are met, the Central Electoral Commission shall register the initiative group and release ID cards to the members of the group within 3 days from the filing of the members' list.

Article 104. Electoral lists

Electoral lists for the election of the President of the Republic of Moldova shall be compiled in accordance with chapter 5 (articles 5 and 40), which shall be enforced accordingly.

Article 105. Electoral Campaign

- (1) The electoral campaign for the election of the President of the Republic of Moldova shall be carried out in accordance with chapter 7 (articles 45-47), which shall be enforced accordingly.
- (2) The candidate to the office of the President of the Republic of Moldova may have in every electoral constituency aides that may help them in the carrying out of the electoral race, campaign for their election, represent their interests in relation to public authorities, with the electors and the electoral bodies. The aide shall represent the interests of a single candidate. The number of aides shall be established in accordance with article 45 paragraph (1).
- (3) The same aide may represent the candidate in several constituencies on the condition to meet the allowed number of aides in each constituency. The aide may work only in the electoral constituencies where they have been appointed by the Central Electoral Commission.

Article 106. Ballot papers

Ballot papers shall be drawn up pursuant to chapter 8 (articles 48 and 49), which shall be enforced accordingly.

Article 107. Voting

The voting in the elections for the office of the President of the Republic of Moldova shall be carried out in accordance with chapter 9 (articles 50-55), which shall be enforced accordingly.

Article 108. The counting of the votes and tabulation of the elections results

The counting of the votes and tabulation of the elections results for the office of the President of the Republic of Moldova shall be carried out in accordance with chapter 10 (articles 56- 60), which shall be enforced accordingly.

Article 109. The second round of the elections; Special provisions

- (1) In the case in which none of the candidates standing in for the office of the President hasn't gathered at least half of the validly expressed votes, the second round of the elections shall be organised for the first two candidates established in decreasing order of the number of votes accumulated in the first round.
- (2) If several candidates have accumulated equal numbers of votes for entering the second round, the Central Electoral Commission shall break the tie by drawing lots and reflect this fact in the minutes. Candidates shall have the possibility to decide together who will stand in for the second ballot or will take part in the drawing.
- (3) If the two candidates who take part in the second round have gathered the same number of votes in the first round, the order of their names on the ballot papers shall be decided by drawing lots.
- (4) The second round ballot shall take place within 2 weeks from the date of the first ballot, under the conditions of this Code. The information regarding the carrying out of the second round ballot shall be brought to public notice by the Central Electoral Commission within 24 hours from the date it has been set for. In the case when the date of the second round ballot has not been established in Parliament's decision regarding the date of the elections, the date of the second round ballot shall be established by the Central Electoral Commission.
- (5) The candidate who obtains the most votes in the second round ballot shall be declared elected. The votes cast for one candidate shall be considered to be expressed against the other candidate.
- (6) In the case in which the two candidates have obtained the same number of votes, the candidate having obtained the most votes in the first round shall be considered elected. In the case when both candidates have accumulated the same number of votes in the first round as well, the Central Electoral Commission shall draw lots and reflect this fact in the minutes.
- (7) In the case in which one of the candidates shall withdraw, the remaining one shall be considered elected if they have gathered at least half of the validly expressed votes.

Article 110. Tabulation of votes

- (1) If, following the tabulation of votes, it is established that a candidate has obtained at least half of the valid votes, the Central Electoral Commission shall declare the validity of elections and the candidate as elect.
- (2) The Central Electoral Commission shall, within a three-day term from the date of the tabulation minutes signing, submit to the Constitutional Court a report on the elections results and the documents mentioned under Article 60.

Article 111. Confirmation and publication of the elections results for the office of the President of the Republic of Moldova

The Constitutional Court shall, within a ten-day term from the receipt of the documents from the Central Electoral Commission, but not earlier than the final settlement by courts of contestations submitted according to the procedures provided by law, confirm or refute, by notice, the lawfulness of elections.

Article 112. Validation of the presidential term in office

The Constitutional Court shall confirm the votes and validate the election of a candidate by adopting a decision, which shall be immediately published.

Article 113. Oath of office

(1) The candidate whose election has been validated by the Constitutional Court shall take before the Parliament and the Constitutional Court, within the term provided under Article 79 para (2) of the Constitution, the following oath:

“I swear to devote all my strength and abilities to the prosperity of the Republic of Moldova, to respect the Constitution and laws of the country, to defend democracy, human rights and fundamental freedoms, sovereignty, independence, unity and territorial integrity of Moldova.”

(2) The term in office of the President of the Republic of Moldova shall actually start on the day of the oath taking.

Article 114. Invalid elections

The Central Electoral Commission shall consider invalid the elections if less than one third of voters entered in electoral lists have participated in the first round. In the second round, the candidate elect shall be considered the one who has obtained the highest number of votes, regardless of the voter turnout.

Article 115. Null elections

In case the Constitutional Court establishes that, in the process of elections and/or of votes counting, violations of this Code have been committed, the elections shall be declared null.

Article 116. Repeated voting

(1) The repeated voting shall take place if the elections are declared invalid and null.

(2) The Central Electoral Commission shall, within a two-week term from the declaration of elections as invalid or null, order the performance of repeated voting based on the same electoral lists, for the same candidates and with the same electoral councils and bureaus.

(3) In case the repeated voting is carried out following the second round, the provisions under Article 109 shall apply.

(4) The electoral contestants guilty of the fraud that have influenced the results of the whole elections shall be excluded from elections, and the electoral councils and precinct electoral bureaus that have committed such frauds, shall be replaced.

Article 117. New elections

(1) New elections shall take place:

a) if the repeated voting is declared invalid or null;

b) if one or two candidates have participated in the elections and none of them has obtained at least ½ of the number of votes cast;

(2) The date of new elections shall be set out by the Parliament within at most 30 days from the date of the previous ordinary or repeated elections in which the President of the Republic of Moldova has failed to be elected, at least 60 days prior to elections day, under the provisions of this Code.”

13. In Article 143 paragraph (1), the word “legislative” shall be followed by the text “on the removal from office of the President of the Republic of Moldova”;

14. Article 168 paragraph (1) shall be supplemented at the end by a new sentence, as follows: “The decision on the removal from office of the President of the Republic of Moldova shall be deemed adopted by republican referendum if it has been voted by a number of voters equal to or higher than for the election of the President of the Republic of Moldova, but not lower than half of the number of voters that have participated in the referendum.”.

INFORMATION NOTE

on the amendment and completion of the

Electoral Code no. 1381-XII of 21 November 1997

This draft law was drawn up based on the Decision of the Parliament of the Republic of Moldova no. 42 of 18 March 2016 on the creation of the working group for the development of the draft law on the amendment and completion of the Electoral Code.

According to Article 2 of the mentioned decision, the working group was to develop and submit to the Parliament, within 30 days, the draft law on the amendment and completion of the Electoral Code in compliance with the decision of the Republic of Moldova no. 7 of 4 March 2016.

We reiterate that, according to the decision of the High Court, the provisions of the law for Constitution revision regarding the procedure of election of the President of the Republic of Moldova by the Parliament with the votes of 3/5 of MPs were declared unconstitutional.

At the same time, the Court reinvigorated the provisions on the election of the President through universal, equal, direct, secret and free voting, in the wording preceding the unconstitutional amendment.

With a view to avoid the legislative vacuum, the Court declared as unconstitutional the Law on the election of the President of the Republic of Moldova and reinvigorated the provisions of the Electoral Code regarding the election of the President by direct voting by citizens.

The High Court also mentioned the need to adjust the electoral legislation to the new circumstances related to the direct election of the head of the state.

Therefore, in order to carry out the above-mentioned provisions, the working group had several meetings, involved experts, from the Central Electoral Commission inclusively, and has drawn up the draft law on the amendment and completion of the Electoral Code no. 1381-XII of 21 November 1997.

The working group established that, since 2000, when more provisions, repealed by Law no. 1227-XIV of 21 September 2000, were reinvigorated, multiple amendments and supplements operated to the Electoral Code have been in conflict with many rules applied repeatedly, which fact can generate obstructions and misinterpretations upon the implementation thereof.

The draft law provides for two types of the Electoral Code amendment. Firstly, a series of articles throughout the Code is supplemented technically with phrases related to the presidential elections or the elections of the President of the Republic of Moldova, taking into account the content and the meaning of the current legal provisions.

The second and most important element of the draft law is the chapter pertaining to the procedure of the election of the President of the Republic of Moldova.

Despite the fact that Title IV of the Electoral Code was reinvigorated, the wording from 2000 is completely outdated and it had to be brought in line with the general part of the Electoral Code in the current wording.

Since we had to amend practically every other article, the working group suggested rendering Title IV, namely Articles 95-117 of the Electoral Code, in a new wording.

The main amendments were operated on provisions related to the terms of establishment of constituencies and polling stations, establishment of the elections date, special conditions for the subscription lists for entering the candidates for the position of the President of the Republic of Moldova, special provisions for carrying out the second round of elections, confirmation of elections and, obviously, the procedure of suspension and removal from office of the President by referendum.

Therefore, the President of the Republic of Moldova shall be elected by universal, equal, direct, secret and free voting for a four-year term.

The constituencies and the electoral councils of the second level shall be created 55 and 50 days, accordingly, prior to the Election Day.

The presidential elections shall be conducted 30 days at least prior to the expiry of term of the acting President. In case of vacancy of office, the date of elections shall be fixed within the two-month term from the day the vacancy occurred, which shall be 60 days at least prior to the first round of elections.

The citizens with the voting right of the Republic of Moldova shall be eligible to run for the position of the President if they have turned 40, have lived or live in the country for not less than 10 years, speak the official language of the state and meet the conditions provided in this Code.

In order to register with the Central Electoral Commission, all candidates for the position of the President of the Republic of Moldova shall submit subscription lists containing the signatures of minimum 15 000 voters and not less than 600 signatures of at least half the number of territorial-administrative units of the second level.

The initiative group for the nomination of candidates for the position of the President of the Republic of Moldova shall be made up of at least 25 and at most 100 persons.

In case none of the presidential candidates has obtained at least half of the valid votes, the second round of elections shall be organised for the first two candidates established in order of decreasing of the number of votes obtained in the first round.

The second round shall take place in two weeks from the date of the first round.

The candidate who obtained the highest number of votes in the second round of elections shall be declared elect. The votes cast for a candidate shall be considered as votes cast against the other candidate.

The Central Electoral Commission shall declare the elections valid and the candidate elect, if, after vote tabulation, it is established that a candidate obtained at least half of the valid votes.

The Central Electoral Commission shall, within a three-day term from the date of signing the tabulation minutes, submit to the Constitutional Court a report on election results. The Constitutional Court shall, within a ten-day term from the receipt of the documents from the Central electoral Commission, but not before the final settlement by courts of contestations

submitted in compliance with the legal procedures, confirm or refute, by notice, the lawfulness of elections.

The Central Electoral Commission shall consider the elections null if less than one third of the number of voters entered in electoral lists have participated in the first round of elections. In the second round of elections, the candidate shall be considered elect if he/she has obtained the highest number of votes, regardless of the voter turnout.

The President of the Republic of Moldova may be removed from office by republican referendum. The decision on the removal from office of the President of the Republic of Moldova shall be considered adopted through republican referendum if it is voted by a number of voters equal to or higher than for the election of the President of the Republic of Moldova, but not less than half of the number of voters that have participated in the referendum.

The working group and the authors of this draft law seek support from the Parliament to give priority in adopting this draft law with a view to initiate the legal procedure of organising presidential elections in order to ensure the exercising of the sovereign right of the people of the Republic of Moldova to elect their President by universal, equal, direct, secret and free voting.

Members of Parliament

Signatures