

EU-Moldova Civil Society Platform		Platforma societății civile UE-Moldova
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Rule of Law and Good Governance in the Republic of Moldova

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1. Conclusions and recommendations

The EU-Moldova Civil Society Platform welcomes:

- the considerable efforts undertaken at state level to put into practice the National Action Plan implementing the Association Agreement (NAP AA) running between 2014 and 2016, as recognised in the Progress report on the implementation of the EU-Moldova Association Agenda - September 2014 - March 2016;
- the commitment of the new Chisinau government to maintaining the European course of the country, by continuing reforms and recovering the time lost during the period of political instability last year;
- the implementation actions and timetable adopted by the Republic of Moldova in the Roadmap for the priority reform actions - Key measures to be achieved by 31 July 2016;
- the commitment of the government to involving and consulting civil society in the Republic of Moldova and the EU-Moldova Civil Society Platform, as expressed in the statement by Prime Minister Pavel Filip in the European Parliament on 15 March 2016, in the presence of the members of the Committee on Foreign Affairs.

The EU-Moldova Civil Society Platform believes the following actions to be essential for reinforcing the rule of law and good governance in the Republic of Moldova:

- keeping to schedule on implementing the measures set out in the Roadmap for the priority reform actions - Key measures to be achieved by 31 July 2016;
- reorganising the judicial system, improving its management and the selection process of judges, prosecutors and auxiliary staff;
- strengthening the organisational, functional and operational independence of the National Anti-Corruption Centre;
- increasing the capacity and efficiency of the system for monitoring the assets and interests of public officials, by establishing a National Commission for Integrity which, inter alia, should manage the continued development and upgrading of the automatic electronic system for on-line submission of declarations of wealth and interests;

- clarifying the law on the remits of the National Anti-Corruption Centre and the National Commission for Integrity in relation to other institutions with similar responsibilities;
- clarifying certain aspects of Law No 178 of 2014 on the disciplinary liability of judges, in order to take into account the Common opinion of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights;
- involving the relevant civil society organisations in evaluating the current achievements of the National Anti-Corruption Strategy 2011-2015, holding a public debate on the results achieved and identifying the lessons learned that could be useful for pursuing the fight against corruption;
- starting consultations for drawing up the National Anti-Corruption Strategy 2017-2018 and involving civil society organisations in this process;
- improving regulation through greater transparency and higher quality in the consultation process;
- promoting programmes aimed at increasing the capacity of the social partners and civil society organisations and at strengthening the institutional mechanisms for social and civic dialogue;
- conducting a thorough and impartial investigation of the cases of fraud affecting the banking system in 2014, in order to recover embezzled funds and bringing those responsible to justice;
- conferring greater independence and supervisory powers on the National Bank and the National Commission for Financial Markets;
- identifying solutions for ensuring the logistic and financial support needed to ensure the sustainability of the Moldovan side of the EU-Moldova Civil Society Platform.

2. General comments on the purpose and scope of the report

This report is drafted on the basis of Article 443a of the Association Agreement (AA), between the Republic of Moldova (RM) and the EU and expresses the position of EU civil society representatives on the principles, objectives, challenges and tools which must be taken into account when developing policies and the legal framework for strengthening the rule of law and good governance in the RM.

The report does not claim to offer an exhaustive analysis of the subject matter – the rule of law and good governance – instead, it focusses on finding practical courses of action in this regard, both for the relevant public institutions and, particularly, for organised civil society in the EU and in the Republic of Moldova.

EU-Republic of Moldova relations have been extensively documented¹, but in order to better coordinate the efforts of European institutions and organisations, we used as reference documents the “Progress Report on the implementation of the Republic of Moldova – European Union Association Agenda September 2014 – March 2016” (especially Chapter 2.1 – “Political dialogue and reform” and Chapter 2.3 - “Judicial cooperation, freedom and security”), the “Council conclusions on the Republic of Moldova” of 15 February 2016, the “Moldova’s Priority Reform Action Roadmap – Key measures until 31 July 2016” and the “Position paper on the implementation of the Association Agreement

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Two relevant studies in this respect are: “Assessing the First Year of Moldova’s Implementation of the Association Agenda – Progress and Opportunities in the Political Sphere”, January 2016, Soros Foundation Moldova; „Mapping the EU-Republic of Moldova Trajectory: Roadblocks on the Way to Economic Integration with the EU”, Gabrielle G. Bulgari, Romanian Journal of European Affairs, Vol.15, No.4, December 2015.

between the Republic of Moldova and the European Union" drafted by the EU-Moldova Civil Society Platform and presented at the meeting of the EU-Moldova Association Council on 14 March 2016.

3. Justice – a guarantor of social and economic development in the Republic of Moldova

Western European society has managed to develop, over time, strong and independent legal institutions which were the basis for effective justice systems, thus facilitating the emergence of inclusive political institutions, which foster free enterprise and economic and social development².

Some states in Central and Eastern Europe, while constantly interacting with Western civilisation, have in recent centuries remained hostage to despotic systems that built corrupt political and economic institutions. In many of these states, the elites have tried to rein in the justice system. This is the reason why the Justice and Home Affairs Chapter has been the most difficult hurdle in the negotiation process for EU accession for states such as Romania and Bulgaria.

Recent events in the Republic of Moldova prove once more, if proof were still needed, that without a strong, independent and efficient justice system, the European course of the country remains an illusion. The good news is that, at European level, we have the experience needed to support the Republic of Moldova, but this requires a responsible political class and/or a dynamic civil society willing to develop from an economic, social or cultural perspective.

Without Justice, the Republic of Moldova will not succeed in reducing corruption in public administration and economic crime. Citizens and organised civil society are catalysts and legitimate forces that can demand the establishment of a free and independent justice system, as a separate power in the state, which would guarantee respect for human rights and ensure optimal conditions for the country's economic and social development.

4. Reform of judicial and government institutions in the Republic of Moldova

The European path of the Republic of Moldova will be dependent (as was the case for other Central and Eastern European states) on the pace of reform in the judicial system and in the government institutions.

Genuine commitment and willingness to reform the political class in Chisinau will be key to a swift, peaceful and constructive transition of the Republic of Moldova from the type of political and economic institutions typical of Soviet times into modern institutions, capable of responding to the challenges of globalisation and the knowledge-based society.

The Progress report on the implementation of the Association Agenda between the Republic of Moldova and the European Union for September 2014-March 2016 acknowledges in general terms that "considerable efforts have been undertaken by the country to put into practice the National Action Plan for the Implementation of the Association Agreement (PNA AA) for 2014-2016", including in the field of strengthening institutional coordination and the monitoring mechanism.

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"Why Nations Fail: The Origins of Power, Prosperity, and Poverty", Daron Acemoglu, James A. Robinson

However, the political instability caused by the fall of three consecutive cabinets, the lukewarm implementation of the National Anti-Corruption Strategy, of the Strategy for the reform of the justice sector, but also of obligations imposed by the Association Agreement between the Republic of Moldova and the EU have cast a serious shadow over the credibility of the political class in Chisinau. This was reflected internationally in the downgrading of the country by a few positions: the 2015 Corruption Perceptions Index³ ranked Moldova 103 out of 168 rated states.

In order to restore the European Agenda, an important step was taken on the initiative of the Chisinau government, which, in a letter sent by Prime Minister Pavel Filip to Commission president Jean-Claude Juncker on 5 February 2016, proposed a Roadmap to address the challenges highlighted in the Conclusions of the EU Foreign Affairs Council of 15 February 2016.

Discussing this roadmap with representatives of the EU has the immediate aim of establishing a robust legislative and institutional base, as well as harnessing the political will and external support required for decisive reform in the Republic of Moldova.

The members of the EU-Moldova Civil Society Platform welcome and fully support the key actions related to the rule of law and good governance, which are to be implemented by 31 July 2016, as provided for in the Roadmap.

4.1 Reform of the judicial system in the Republic of Moldova

The European Commission for the Efficiency of Justice within the Council of Europe believes that the pillars for a modern justice system are independence, professionalism, responsibility and transparency.

The institutions of the European Union, the governments of the Member States, but also the social partners and the civil society organisations in the EU and in the Republic of Moldova, believe that *reform of the judicial system should aim at:*

- strengthening the stability, independence and efficiency of the institutions in order to guarantee democracy and the rule of law;
- ensuring respect for human rights;
- adopting European best practice with regard to the workings of the judicial system;
- strengthening the dialogue with organised liberal professions and with civil society, as well as involving them in the process of modernisation of the judicial system;
- ensuring the transparency of the judicial institutions and their procedures;
- ensuring the integrity and sense of responsibility of those involved in the administration of justice;
- ensuring respect for the citizen as final beneficiary of the public service provided by the justice system.

³ Transparency International

The European institutions and civil society organisations which have assessed the quality of the justice system in the Republic of Moldova have identified *the main challenges facing the judicial system*:

- meeting the imperative need to improve the efficiency and quality of judicial services;
- guaranteeing free access to justice;
- protecting the rights of citizens who come into contact with the justice system;
- reducing the length of judicial procedures;
- improving the enforcement of Court decisions;
- improving the judicial statistical data collection system;
- avoiding excessively lengthy procedures;
- the failure to enforce judicial decisions;
- implementing modern technology in courts.

The measures and instruments agreed upon for achieving the objectives pertaining to the reform of the judicial system in the Republic of Moldova are referred to in the Progress report on the implementation of the Republic of Moldova – European Union Association Agenda, but they are presented in detail in the Roadmap for the priority reform actions - Key measures to be achieved by 31 July 2016.

Summarising the official positions adopted by EU institutions on the Republic of Moldova, but also the various opinions and documents drafted by civil society organisations, including the European Economic and Social Committee, *the EU- Moldova Civil Society Platform considers the following key actions to be essential for the reform of the judicial system in the Republic of Moldova*:

- reorganisation of the judicial system, improving its management and the selection process for judges, prosecutors and auxiliary staff;
- establishing a modern and efficient system for random case-allocation in courts;
- strengthening the capacities of the Supreme Judicial Council (CSM) and of other national authorities to assess the efficiency and quality of the justice system;
- drafting amendments to the Constitution in order to clarify the procedure on the initial appointment of judges and selection of the judges of the Supreme Court of Justice, and to clarify the role of the Superior Council of Magistrates in the self-administration of the judicial system, its competence and composition;
- clarifying certain aspects of Law No 178 of 2014 on the disciplinary liability of judges, in order to take into account the Common opinion of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights⁴;
- strengthening the organisational, functional and operational independence of the National Anti-Corruption Centre;
- increasing the capacity and efficiency of the system for controlling the assets and interests of public officials, by establishing a National Integrity Center which, inter alia, should manage the continued development and upgrading of the automatic electronic system for the on-line submission of declarations of wealth and interests;
- ensuring legal clarification of the remits of the National Anti-Corruption Centre and the National Commission for Integrity in relation to other institutions with similar responsibilities;

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[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)006-e)

- involving the relevant civil society organisations in evaluating the current achievements of the National Anti-Corruption Strategy 2011-2015, holding a public debate on the achieved results and identifying the lessons learned that could be useful for pursuing the fight against corruption;
- starting the consultations for drawing up the National Anti-Corruption Strategy 2017-2018 and involving civil society organisations in this process;
- implementing police reform, crime prevention and the fight against organised crime (Police Reform Strategy for 2016-2020).

4.2 Good governance and administrative reform in the Republic of Moldova

The deplorable situation regarding the lack of trust citizens and external partners have in the political class and the institutions in the Republic of Moldova is due to the institutions' inability to ensure good regulation and optimal management of the essential functions of the State.

The roadmap on priority reform actions – key measures to be achieved by 31 July 2016, contains an implementation schedule accepted by RM, which envisages the adoption of a number of legislative acts in order to recover the time lost and to place the subject of good governance back on the public agenda.

The regulations and political measures in this timetable of activities will concern:

- anti-corruption;
- government reform;
- increasing transparency of party funding and accountability of elected representatives;
- freedom of the press;
- strengthening the independence and supervisory powers of the National Bank and the National Commission on Financial Markets;
- thorough and impartial investigation of the cases of fraud affecting the banking system in 2014, in order to recover embezzled funds and bringing those responsible to justice;
- improving the business and investment climate, making it more attractive and stable;
- improving transparency and investment conditions in the energy sector;
- cooperation with civil society;
- speeding up implementation of the EU–Moldova Association Agreement, including all aspects concerning a deep and comprehensive free trade area.

In line with the above, but following the review of the EU's neighbourhood policy, in April 2016 the Government of the Republic of Moldova proposed a number of aspects regarding EU cooperation programmes that target good governance⁵. In this respect, public administration reform is considered to be an essential element; the Republic of Moldova is keen to continue to explore the possibilities offered by this tool, in order to improve cooperation and exchanges of experience at European level with respect to e-Government, anti-corruption measures, audio-visual media, but especially with regard to civil servants: merit-based recruitment and career; fair and transparent remuneration system; career development; performance assessment; promoting integrity and prevention of corruption.

⁵ Non-paper proposals by the Republic of Moldova on the implementation of the ENP priorities according to the new ENP revised in November 2015)

The theft of 1 billion USD from the largest banks in Moldova (Banca de Economii, Banca Socială and Unibank), has impacted the financial system of the country, undermining the trust of European partners and the international financial institutions in the authorities in Chisinau, including the trust that the National Bank of Moldova is able to ensure bank regulation and supervision.

The Kroll report⁶, (which was published only after more than 10 000 people protested, demanding its publication), gives a worrying picture of the situation of key institutions of the State, controlled by the interests of a number of oligarchs who benefit from support from important politicians and/or business leaders.

The measures put in place in response to the crisis, even if some have even been suggested by the IMF and the World Bank, give the impression that they offer nothing but further opportunities for the misappropriation of public money. Winding up the banks involved in the “theft of the century” before resolving the criminal cases can be seen as an attempt to delete the traces of the criminal acts.

Moldovan citizens have the right to know how the assets of these banks will be used, especially as they were saved by public money. There is a risk that, with the liquidation of these banks, the tracking of stolen money gets more difficult and that the bank assets will be undervalued and sold by dubious means, increasing the burden on the taxpayer.

Through a twinning programme launched in July 2015⁷, the EU has supported the capacity-building of the National Bank of Moldova in the fields of bank regulation and supervision. The measures taken concerned the implementation of Basel III and the transposition into national law of Directive 2013/36/EU and Regulation 575/2013. The working meetings were attended by experts from the National Bank of Moldova, the central banks of Romania and the Netherlands and representatives of the EU Delegation to Moldova. Other three meetings took place with representatives of the banking sector, to discuss the European framework and how this could be translated into legislative acts of the NBM.

The EU-Moldova Civil Society Platform has identified the following actions as essential for better governance:

- keeping to schedule on implementing the measures set out in the Roadmap for priority reform actions - Key measures to be achieved by 31 July 2016;
- enhancing institutional capacity for strategic planning through better human resources management and closer coordination between the different administrative levels;
- cutting red tape for citizens and businesses;
- improving regulation through greater transparency and higher quality in the consultation process;
- strengthening institutional social and civil dialogue mechanisms;
- continuing the implementation of e-government digital applications and making them more accessible to citizens;
- increasing management capacity and public procurement monitoring;
- modernising the regulatory framework and public finance management;

⁶ http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf

⁷ Twinning project “Capacity building at the National Bank of Moldova in the field of banking regulation and supervision in the context of EU Regulation”, worth 1,2 million euro, is financed by the EU and will run over two years, with the assistance of 44 technical experts from the National Bank of Romania and the Central Bank of the Netherlands.

- capacity-building at the National Bank of Moldova in the fields of regulation and banking supervision;
- creating conditions for attracting investment and for stimulating economic development.

5. The role of civil society in strengthening the rule of law and good governance in the Republic of Moldova

5.1. Legal framework and context in which civil society is evolving in the Republic of Moldova and in the EU

At European level, the Treaty on European Union and the EU-Moldova Association Agreement provide the legal and political framework for the involvement of the the civil society, including social partners, in decision-making processes, both at legislative and advisory level. Article 15 of the Treaty on the Functioning of the European Union recognises the role of civil society in the good governance of the EU. Article 11 of the Treaty on the European Union stresses the need for the EU institutions to maintain an open, transparent and regular dialogue with civil society organisations⁸. Title X of the Treaty – Social Policy – contains references to social dialogue and the consultation of the European Economic and Social Committee.

Articles 377, 442 and 443 of the EU-Moldova Association Agreement set out obligations to inform and consult civil society and the social partners on issues related to the implementation of the Association Agreement and the EU-Moldova DCFTA.

In the context of the negotiations for the signature of the Association Agreement, the executive and the legislative powers in Chisinau have taken some measures to provide support to civil society organisations. Relevant in this context is Law No. 205 of 28.09.2012 on approval of the civil society development strategy for 2012-2015 and the action plan for the implementation of the strategy. The aim of this law was to:

- boost civil society involvement in drafting and monitoring the implementation of public policies;
- promote and strengthen the financial sustainability of civil society;
- encourage the development of active citizenship and voluntary work.

Although only around one quarter of the actions provided for in the strategy have been implemented, it was important for civil society organisations, as it contributed to a better understanding of the concerns of the non-governmental sector, both for the political environment and for the general public.

On 15 March 2016, Mr. Pavel Filip, prime Minister of the Republic of Moldova, gave a speech in the European Parliament, in the presence of members of the Committee on Foreign Affairs, which reaffirmed the political will of the Executive in Chisinau to continue determinedly with the reform process necessary for the country's path towards Europe, reiterating the important role of civil society in the Republic of Moldova and the EU-Moldova Civil Society Platform.

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http://eur-lex.europa.eu/summary/glossary/civil_society_organisation.html?locale=ro

Members of the Parliament, the government and the National NGO Council met on 27 April 2016 to discuss the establishment of a trilateral working group involving Parliament, government and the non-profit sector, in order to find tangible ways of more actively involving Moldova's citizens in decision-making processes at both legislative and executive level.

5.2 Social dialogue and the current concerns of the social partners in the Republic of Moldova

The 2016-2018 Work Programme of the Moldovan Government provides for "the approval of a new Labour Code or the updating of the existing one"⁹. The trade unions do not support the drafting of a new Labour Code, as they consider that improving labour law should be made only by amending and supplementing the current code with international law standards, including international agreements, the European Social Charter, the ILO conventions and EU directives.

With the purpose of improving labour law, the Ministry of Labour, Social Protection and the Family created a tripartite working group composed of representatives of the social partners (government, employers' organisations and trade unions), which prepared a draft law proposing to amend 40 articles of the Labour Code. Subsequently, based on the work of this tripartite group, the Moldovan Parliament adopted Law No 205 of 20.11.2015 amending and supplementing the Labour Code.

The social partners were also involved in the debate on the transposition of Directive No 91/533/EEC on the employer's obligation to inform employees of the conditions applicable to the labour contract or employment relationship, as well as of Directive No1999/70/EC on the framework agreement regarding fixed-term work.

The National Confederation of Employers of Moldova advocates amending the labour law so as to boost the business climate of the Republic of Moldova. The National Trade Union Confederation of the Republic of Moldova considers that the amendments concerned only weaken the trade union rights and lower the level of social protection, by liberalising employment relationships to an excessive degree, to the detriment of the employees and in breach of international labour standards ratified by the Republic of Moldova.

In the context of the adoption of Law No 131 of 8.06.2012 on State control over entrepreneurial activity, trade unions submitted a complaint to the International Labour Organization against the Moldovan Government for non-compliance with the provisions of Article 12 of ILO Convention No 81/1947 on labour inspection in industry and commerce. The ILO Tripartite Committee responded to this complaint by Decision No GB.323/INS/11/6 of 24 March 2015, in which it urged the government "to take, without further delay, the steps needed to eliminate contradictions between the legislation of the Republic of Moldova and the provisions of Articles 12 and 16 of Convention No 81". Trade unions consider that, so far, the remedial measures have not been taken, and that the efficiency of the State Labour Inspectorate is seriously compromised.

The EU-Moldova Civil Society Platform believes the following measures are needed to strengthen social dialogue in the Republic of Moldova:

- streamlining social dialogue at national level by means of granting a higher status to the decisions of the National Commission for Consultation and Collective Bargaining, and

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http://www.gov.md/sites/default/files/document/attachments/guvernul_republicii_moldova_-_programul_de_activitate_al_guvernului_republicii_moldova_2016-2018.pdf

ensuring compliance with the principles of equality and parity of partners in chairing the National Commission's meetings;

- strengthening employers' structures at branch and regional level;
- promoting programmes aimed at increasing the capacity of the social partners and at strengthening the institutional mechanisms for social dialogue;
- promoting bipartite social dialogue at branch level (currently, legislation provides only for the tripartite dialogue involving the branch ministries where economic units are predominantly private);
- stepping up training activities in social dialogue and collective bargaining aimed at the social partners (the EU financial assistance and the experience of social partners from other Member States should be harnessed in this direction);
- strengthening a culture of social and civic dialogue in society, by raising the awareness of population on the provisions of labour law and legislation in the field of social partnership and by more actively promoting these themes in the media and social media.

5.3 Financial support for civil society organisations in the Republic of Moldova

The updated priorities (February 2016) of the Roadmap for the involvement of Moldovan civil society for the 2014-2017 period will focus on promoting the role of civil society as a key national player in implementing the EU-Moldova Association Agreement, on facilitating the monitoring role of civil society organisations and increasing their capacity and on strengthening the role of civil society as an active and independent actor of development. The Roadmap was updated in close cooperation with the Member States and served as a basis for the joint analysis (European Commission and the Government of the Republic of Moldova) of the civil society sector as part of the common response exercise.

Currently, in the Republic of Moldova there are 15 ongoing projects (3 projects under implementation are funded through the Civil Society Facility (CSF 2011-2013), 7 projects through the European Instrument for Democracy and Human Rights (EIDHR 2013-2014), 2 projects through the new 2014-2020 Multiannual Indicative Programme for civil society organisations and local authorities (CSO – LA 2015) and 3 projects through the EU Programme for Sustainable Urban Demonstration Projects (SUDeP 2013)).

In the 2013-2014 period, EUR 3.8 million were paid out under the EIDHR/CSF/CSO-LA, and in 2016, it is expected to start the allocation of EUR 8 million for supporting civil society organisations as part of the AAP 2015 (projects for supporting the implementation of the Association Agreement). Financing will be granted for projects pursuing the following objectives: capacity-building for good governance, social and economic development and enhancing social cohesion through better social protection. Moreover, through the Confidence-building measures, an additional amount of EUR 6.5 million is earmarked for activities in progress or planned in Transnistria and Gagauzia. One cause for concern is the lack of financial support for ensuring the sustainability of the Moldovan side of the EU-Moldova Civil Society Platform.

5.4 The partnership with civil society organizations for strengthening the rule of law and good governance in the Republic of Moldova

The members of the EU-Moldova Civil Society Platform and of the European Economic and Social Committee believe that the European institutions and the Moldovan Government must give priority to the implementation of programmes aimed at strengthening the rule of law and good governance, at the same time enhancing the opportunities and the extent of financial assistance for civil society organisations.

As discussed in Chapters 3 and 4 of this report, the radical change of the institutions and of the situation regarding justice, in Republic of Moldova, is a *sine qua non* condition in the process of European integration. In recent years, civil society organisations in the Republic of Moldova have gathered sufficient international and European experience to help national authorities initiate and implement measures to comply with the Community *acquis*.

The objectives of cooperation with civil society organisations

- legal and civic education of the population so as to increase social cohesion by reducing corruption and boosting economic development;
- increasing the population's legal education by providing essential information on national and European laws and institutions and on their role in achieving justice;
- making the justice system in the Republic of Moldova more efficient by improving the communication skills of staff working in the justice and law enforcement systems, and, therefore, the capacity of the corresponding institutions to interact properly with litigants;

Specific actions that can be targeted

- designing information, legal education and awareness-raising campaigns, developing information guides/material;
- developing and diversifying legal advice and assistance in line with the needs of citizens, through cooperation with governmental and local authorities/other entities competent in the field of civil society;
- promoting and consolidating alternative dispute settlement methods by rolling out campaigns aimed at litigants and magistrates;
- organising conferences, seminars, training and specialisation courses.

Expected outcome

- a healthier legal culture for society;
- a high degree of public access to information on the state of justice;
- improved public perception indicators as regards trust in justice.