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POSITION NOTE

On the Transparency and Independence of the National Energy Regulatory Agency

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Defining the Issue

The energy sector of the Republic of Moldova faces a range of major challenges for the national energy security. Besides the major dependence on the same foreign suppliers¹, there is a systemic vulnerability due to the insufficient and defective regulation of the sector. Thus, the regulator in the field (electricity, natural gas, renewable energy, oil, thermal energy and water supply and sewerage), represented by the National Energy Regulatory Agency (hereinafter referred to as ANRE), encounters various deficiencies², which have a significant negative impact on the energy governance. The key problems are caused by the legal, institutional and management regulatory defects that reduce ANRE independence and transparency when adopting decisions. These shortcomings impact the interests of end consumers and sector operators, undermining the stability and security of the whole energy sector.

The transposition of the European legislation, as part of Moldova's commitments to the European Union, through the Association Agreement, and to Energy Community, plays a huge role in reducing the adverse regulatory effects. Specifically, the authorities are obliged to implement the "Third Energy Package"³, which focuses mainly on strengthening the sector regulator. So far, they only reviewed the Law on Natural Gas and Electricity (May 2016), where certain updated provisions on ANRE duties are found. In addition, an individualised approach to ANRE was adopted through the initiative to amend the Law on Energy, which is outdated and does not meet the current energy requirements and context, dating back to 1998⁴. Now, the draft Law on Energy⁵ is in the Parliament and was examined in the first reading on 3 November 2016.

The need to increase the transparency of the regulatory decisions in the energy sector is one of the conditions accepted by Moldovan authorities to access the IMF financing program.⁶ In their Letter of Intent, submitted IMF, the authorities undertook to strengthen ANRE's budgetary independence and make the appointment of directors a transparent and merit-based process.⁷ Also, the improvement of the regulatory quality in the energy sector was featured in the "Moldova's Priority Reform Action Roadmap", initiated by the Government in early 2016 and implemented during March-August.⁸ According to this document, the Prime Minister and the Parliament of the Republic of Moldova required the Energy Community Secretariat to assess ANRE's competencies and capacities, the evaluation report being published already in September 2016. In the report provided by the Secretariat⁹, ANRE is diagnosed with a range of institutional, operational and decisional constraints,

¹The dependence on the Russian Federation is in almost 100% for gas and 70-80% for electricity through the electricity producers from the Transnistrian region, Cuciurgan power plant, controlled by Russian concern INTER RAO UES.

²The Energy Community Secretariat Review "The National Energy Regulatory Authority of Moldova": Compliance, Governance, Independence and Performance", 8 September 2016, <http://www.euneighbours.eu/library/content/national-energy-regulatory-authority-moldova-compliance-governance-independence-and-performa>

³Electricity: Directive 2009/72/EC concerning common rules for the internal market in electricity; Regulation No 714/2009 on conditions for access to the network for cross-border exchanges in electricity; Gas: Directive 2009/73/EC concerning common rules for the internal market in natural gas; Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks.

⁴ Law on Energy No 1525 of 19.02.1998, <http://lex.justice.md/md/311606/>

⁵ The draft Law on Energy No 284 of 23.06.2016, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3318/language/en-US/Default.aspx>

⁶ IMF, Press release, 7.11.2016, <http://imf.md/press/pressw/press-161107ro.html>

⁷ IMF, Letter of intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, 24 October 2016, http://imf.md/press/MoldovaLOI_MEF_TMU_2016.pdf

⁸ ADEPT, "Expert-Grup" and LRCM, Monitoring report on the implementation of the Priority Reform Action Roadmap, 16 September 2016, <http://expert-grup.org/en/biblioteca/item/1324-raport-de-monitorizare-a-implement%C4%83rii-foii-de-parcurs-privind-agenda-de-reforme-prioritare>

⁹ The Energy Community Secretariat Review

which undermine its activity. Among the most significant sector problems, including those mentioned in the Secretariat Review are the following:

- Poor transparency and vague provisions on the process of appointment and dismissal of ANRE's directors, which generates the risk of conflicts of interest, abuses and political influences on the institution's activity and decisions;
- Insufficient selection criteria for the appointment of Director General by the Parliamentary Committee for Economy, Budget and Finance, which hinders the ANRE's effective management and, respectively, the regulation of the whole sector.
- Lack of a strong and inclusive mechanism of consultation on the regulatory activity. This is determined in part by the delay in establishing the Committee of Experts¹⁰ under ANRE, which limits the transparency and participation of sector relevant stakeholders in ANRE's decision-making.
- Failure to ensure ANRE's financial independence, determined by (in)actions of the Parliament, in charge of approving ANRE's budget, which may impede the appropriate operation of the institution;
- Existence of certain indirect political and public pressures on ANRE's decisions on adjusting the tariff for natural gas and electricity, especially during 2015-2016;
- The need to increase the staff's professionalism through training seminars.

The aforementioned shortcomings explain why ANRE decisions lack dynamics and public support, which decreased significantly during 2013-2016. Therefore, enhancing the transparency and strengthening the independence of ANRE are crucially important in order to restore the market players' confidence (state and private operators, and consumers) in the sector's sustainability and to boost domestic and foreign investments in the sector.

¹⁰Article 26 of the Regulation on ANRE Organization and Operation of 26.10.2012 provides for the establishment of an advisory board (Committee of Experts) under ANRE, regulated by separated Regulation. According to the Secretariat Review, ANRE developed the draft regulation, according to which experts must have at least a five-year experience in relevant fields (energy, sewerage, technical, economic and legal studies) and can be members of the committee only if appointed directly by ANRE directors.

How Should the Regulatory Independence Look According to the European Legislation on Energy?

In general, the good operation of the energy sector is determined by the extent to which the State manages to protect the regulator against the influence of political and private entities, working in the energy sector. On the one hand, the private entities show a persistent interest to maximise their revenue by increasing the tariffs. On the other hand, the authorities' representatives (decision makers) are often tempted to influence the regulator's tariff policy to minimise the costs for consumers, consolidating thus their public legitimacy.

In order to prevent such negative practices, the European legislation on the energy sector includes a range of provisions aiming to guarantee the regulator of the energy market a neutral status and immunity against external influence. However, ANRE's decision-making autonomy is perceived through ex ante and ex post influence, when political stakeholders or private interests may exercise pressure during the decision-making and, respectively, during their implementation.¹¹ So far, the provisions of the Third Energy Package¹² on the independence of the regulatory authority are omitted from the Law on Energy of 1998, but are included in the draft Law on Energy, which is currently examined in the Parliament.¹³ Therefore, the European legislation provides the following features that the regulator in the energy sector must meet:

- Is legally distinct and functionally independent from any other public or private entity.
- Acts independently from any other market interest, and impartially in relation to the Government or other public institutions.
- Its independence is protected by ensuring a financial autonomy.

Provisions related to the regulator's transparency, included in the European legislation, rather prescribe the general rules of publishing annual progress reports and transparent approval of tariffs (distribution, transmission). No concrete provision on the decision-making transparency of the regulatory authority is specified.

¹¹ Commission Staff working paper, Interpretative Note on Directive 2009/72/EC concerning common rules for the internal market in the electricity and Directive 2009/73/EC concerning common rules for internal market in natural gas, January 2010, https://ec.europa.eu/energy/sites/ener/files/documents/2010_01_21_the_regulatory_authorities.pdf

¹² Directive 2009/73/EC concerning common rules for the internal market in natural gas, Article 40. Directive 2009/72/EC concerning common rules for the internal market in electricity, Article 35.

¹³ Draft Law on Energy, 23.06.2016,

<http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3318/language/en-US/Default.aspx>

What Do Good Practices Recommend?

The good regulatory practices, including in the field of energy, contain seven basic principles¹⁴:

1) Role clarity

- The legislation precisely describes the regulator's purpose and objectives for representatives of the regulatory institution, regulated entities and citizens (consumers). In this respect, the legislation shall exclude overlapping functions between different regulators.
- In order to decrease the overlaps, a coordination and cooperation relationship should be established among regulators, but also between public authorities and nongovernmental organisations, including by signing some Memoranda of Understanding.

2) Preventing undue influence and maintaining the public trust

- The regulator's decisions may have a huge impact on certain private interests, this is why, its independence is a must.
- Any decision that is new or has a major impact on public interest must be based on empirical evidence and on the assessment of previous actions, and the rationale must be made public.
- The criteria of appointing the regulator's management must be clearly specified in the legislation, including the conditions for its dismissal. The Parliament or a legal entity must be involved in the appointment and/or dismissal to ensure a high level of transparency and accountability of the regulator.

3) The decision-making and the internal organisation to ensure the regulator's independence

- The regulator's internal organisation should correspond to the risk level specific to the regulated field, which ensures the needed level of discretion and strategic oversight.
- In order to avoid conflicts of interests, advisory committees should be created to enable the formal involvement of relevant stakeholders in the regulator's decision-making.
- Procedures and criteria to select the members of regulator's management boards shall be established and published appropriately in order to help increase transparency and attract the most skilled candidates.

4) Accountability and transparency

- Regulators must report regularly and on request on measures taken and important decisions adopted.
- The Government or the Parliament should monitor periodically the regulatory system to ensure its proper operation. In order to facilitate the evaluation, regulators should develop comprehensive performance indicators.
- All major decisions taken by the regulator should be accompanied by the underpinning rationale, which should be necessarily made public.

5) Engagement of relevant stakeholders

¹⁴ OECD Best Practice principles for Regulatory Policy, 2014, <http://www.oecd-ilibrary.org/docserver/download/4214061e.pdf?expires=1478438888&id=id&accname=guest&checksum=09A436954A0AE11DB52093E308FFFD23>

- Regulators shall carry out activities to engage the regulated entities (business environment) and other stakeholders (public) in the decision making in order to improve the operational regulatory framework.
- The engagement procedures and mechanisms shall be institutionalised as a regular, structured and transparent practice, which prevents conflicts of interest and the eventual capture of the regulator by groups of interest.

6) Funding

- The financial means available for the regulator should be enough for it to operate efficiently. The funding process must be transparent.

7) Performance evaluation

- Besides the internal evaluations, the Government, Parliament and even the regulators shall conduct regular external evaluations.
- It is necessary to specify clearly the aspects of the regulators' mandate subject to evaluation, including at the level of legislative provisions.
- The documents adopted by the regulators should be reviewed periodically.
- The evaluations of the institution's and staff's performance aim to improve the regulator's activity, the results being made public.

The Actual Independence and Transparency of ANRE

ANRE' s independence

Aspects that define ANRE' s actual transparency refer to: (a) appointment and dismissal of Directors General; (b) tariff regulation and (c) financial autonomy.

a) Appointment and dismissal of the General Directors is the most visible manner that allows the interference of political stakeholders. According to the existing legislation, the only way to prevent the intervention of political stakeholder in ANRE' s activity is the engagement statement and statement of interests, signed by the directors general, which prove that they are independent of the sector and political stakeholders' interests.¹⁵ The possibility to infiltrate certain narrow interests in ANRE' s activity may result from the manner the directors are selected and appointed. Thus, criteria applied at present exclude neither the previous membership of candidates to political parties, including to governing parties, nor the association with the interests of private stakeholders from the energy sector.¹⁶

In addition, ANRE' s independence is also determined by the manner the directors general may be dismissed. The legislation in force contains ambiguous provisions¹⁷ that allow committing acts of abuse. Thus, during 2013-2014, the Parliament dismissed twice the Director General Victor Parlicov (in July 2013 and February 2014), invoking the vague principle of "incompatibility", and subsequently, the charges on unsafe keeping of classified documents.¹⁸

b) The regulation of tariffs is the field that attracts the greatest interest and, respectively, the reactions from the public, including political parties (parliamentary parties, opposition etc.). During the recent years, ANRE used incorrect practices of tariff regulation. Thus, during 2015, ANRE' s decision to increase tariffs for energy by 37% and natural gas by 15% was suspended. According to the Energy Community Secretariat's Report, the decisions were taken on the background of strong reactions from the part of authorities (Prime Minister Valeriu Strelet), Supreme Council of Security and other stakeholders (mass-media, citizens associations), addressed openly to the Agency.

During 2016, other coincidences between the public declarations of political stakeholders and decisions adopted subsequently by ANRE were noted. Thus, ANRE decreased the tariffs for gas by 10% on 26 January, 2 days after the Prime Minister Pavel Filip spoke publicly about the need to reduce tariffs to gas. A similar situation followed with the tariff for electricity, which was decreased by 10% on 2 March, 10 days after the public declarations of the Prime Minister, who announced in advance a possible reduction of electricity tariffs by 10%.

c) Financial autonomy is another aspect that may diminish the regulator's independence. According to the legislation in force, ANRE benefits from a significant financial independence¹⁹, but not exhaustive, as to the final approval is made by the Parliament. As example may serve the delayed adoption of ANRE budget for 2015, entered into force only in November 2015 due to delays from the part of the Parliament.

¹⁵ Regulation on ANRE Organisation and Operation (p.17).

¹⁶ Idem

¹⁷ Law on Energy (Article 4² (6) (f)), the Regulation on ANRE Organisation and Operation (p. 19, (f)) on the vague principle of "incompatibility".

¹⁸ Energy Community Secretariat Review

¹⁹ Law on Energy (Article 4³ paras (1) and (4)), the Regulation on ANRE Organisation and Operation (p. 27).

ANRE's transparency

Major deficiencies related to transparency comprise the following aspects: a) appointment of Directors General; b) adoption of decisions by ANRE; c) accountability of ANRE.

a) Appointment of Directors General is a non-transparent process, which excludes the possibility to promote the most professional and strong candidates to manage ANRE. According to the legislation in force, the appointment of directors is not based on an open competition and clear criteria established in good time. At the same time, no mechanism to organize the selection competition (announcement of the competition pre-selection, hearing, adoption of the final decision) and appointment of directors by the Parliamentary Commission for Budget, Economy and Finance is prescribed. No clear requirements of knowledge of the regulated field and of the regulatory activity are provided.

b) Adoption of decisions by ANRE should allow for an active and inclusive involvement of the civil society and other stakeholders (authorities in the field). At present, ANRE focuses on public consultations of completed documents, not on the intermediary steps of the decision-making, such as the development and proper completion of draft decisions, especially, of the administrative ones, such as the establishment and periodical updating of tariffs. ANRE shows a limited interest to truly involve the interested stakeholders in preparation of documents, which is contrary to clear procedures related to informing, consulting and participating in projects development, established back in 2010.²⁰ Besides, there isn't any clear calendar to indicate the periods for draft documents consultation.

In addition, contrary to transparency procedures of ANRE²¹, the results of public consultations with the summaries of recommendations made by sector stakeholders, including ANRE's arguments on accepting or rejecting recommendations are not presented and/or accessible. Also, the contact data of the person who at present coordinates the process of public consultations are not presented. But, these have to be visibly published under heading "Public Consultations" on ANRE's website. The last information on the contact persons dates back to 2010 and is stated in a decision of ANRE.²²

An integrated table with all the relevant information on the consulting process is not available on ANRE's website: draft documents, the period of publication, the consultation period and relevant documents (briefing note, preliminary analysis of the regulatory impact etc.). At present, ANRE publishes two different tables: one for drafts subject to approval (development stage) - filled in sporadically²³ and one for public consultations (consultations stage) - more consistent²⁴. This is not enough to ensure the traceability and good understanding of ANRE's decision-making. More than that, according to the Secretariat Review, the representatives of the civil society, business environment and even international organisations criticise ANRE for: lack of broad involvement of representatives of the civil society, perfunctory consultations, lack of an openness and cooperation of ANRE in consulting and adopting decisions.

c) Regulation in the energy sector does not contain a pronounced accountability framework, which would help improve ANRE's activity and, respectively, prevent abuses. The legislation in force provides that ANRE should work within its own budget, based on payments made by sector operators, not on sources allocated of the public budget, which makes the institution not eligible for financial auditing

²⁰ The Decision of ANRE's Management Board No 374 on the Rules on Ensuring Transparency in the Decision Making of ANRE, 10.05.2010

²¹ Idem

²² Idem

²³ A review of the official site of ANRE revealed that the periods of consultations of 15 draft documents developed during 2014-2016 are not indicated. <http://www.anre.md/ro/content/proiecte-supuse-aprob%C4%83rii>

²⁴ <http://www.anre.md/ro/content/consult%C4%83ri-publice-0>

by the Court of Accounts.²⁵ Contrary to the legal provisions, the Court of Accounts insisted on initiating a performance audit in September 2014, challenged by ANRE in the court of law (Court of Appeal), which decided that the Court of Accounts exceeded its powers (July 2016). As a matter of fact, the Court of Accounts has neither legal competencies, nor appropriate knowledge to audit the energy regulator. Nonetheless, given the impossibility of the Court of Accounts to audit ANRE's performances, the legislation provides no obligations for ANRE to conduct internal and/or external performance audits with the view to enhance the accountability of ANRE directors for the activities performed and decisions adopted. In such circumstance, ANRE acts in a vacuum of accountability, and the sole element of "checks and balances" is the possibility of the Parliament to dismiss the Directors General.²⁶

²⁵Law No 261 of 5.12.2008, Article 28, <http://lex.justice.md/md/330168/>

²⁶ Law on Energy, Article 4² (6). The Director General can be dismissed if - he/she loses the citizenship, cannot exercise his/her function due to health issues, is elected for another position, is irrevocably convicted by courts of law, is involved in conflicts of interests, stays in incompatibility and failure or refuse to submit the statement of assets and interests.

Advantages and Deficiencies of the New Draft Law on Energy for a Stronger Transparency and Independence of ANRE

The development of the draft Law on Energy is a part of the general efforts to harmonise the national legal framework with the European legislation in the field of energy (Third Energy Package). It results in taking over the European rules and practices on regulating the energy sector, which requires supplementing, extending and strengthening ANRE's competencies. Thus, the draft Law on Energy improves the transparency and independence of ANRE²⁷:

- Prohibits explicitly the ANRE to adopt certain decisions influenced by political or private entities (Article 10(9)(a)).
- Provides the organisation of a public competition to appoint ANRE's directors by the specialized Parliamentary Committee (Article 10, paras 1-2).
- Extends the requirements towards the candidates for ANRE directors, and specifies the express condition of non-political affiliation (Article 10(3)).
- Clarifies the conditions that allow to dismiss Directors General and restricts the probability of abuses (e.g. The clause on "state of incompatibility" is removed) (Article 10(5)).
- Requires ANRE to notify the Parliament on the budget, cancelling the Parliament's prerogative to approve the budget (Article 12(5)).
- Offers ANRE the right to establish an Advisory Board (article 13(4)).
- Obliges ANRE to approve and publish the professional Code of Conduct for the Directors General and employees (Article 11(6)).
- Specifies that ANRE must be subject to financial auditing by the Court of Accounts (Article 12(7)).
- Introduces a set of provisions dedicated to the transparency of the decision-making (Article 16).
- Obliges energy companies to publish on their official websites information about their activity and invokes the accountability of the companies' management in case of distorted information. (Article 26).

Thus, the draft Law contains a list of deficiencies that may diminish the potential future of ANRE. This is why, many adjustments are proposed to ensure a sufficiently strong legal framework to strengthen the regulator's independence and transparency. (*See the Table below*)

Draft Law on Energy	Proposed amendments to the draft law
ANRE's independence	
1. Article 10 on ANRE Management (para 3) regarding the requirements towards the candidates for ANRE	1.1. Exhaustive specification of criteria for the selection of candidates for ANRE directors is needed. ²⁸ 1.2. Non-affiliation to political parties during at least 2-3

²⁷ Draft Law on Energy, 23.06.2016,

<http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3318/language/en-US/Default.aspx>

²⁸ A similar recommendation was formulated by the National Anticorruption Center in the Report on Corruption Proofing of the draft Law on Energy. Available at: <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3318/language/en-US/Default.aspx>

directors 2. Article 10 on ANRE Management (para 6) regarding the duration of the directors' mandate. 3. Article 12 on ANRE Management (para 5) regarding the preparation of ANRE's budget. 4. Article 12 on ANRE Management (para 7) regarding ANRE being subject to financial auditing by the Court of Accounts.	years before applying for the position of ANRE director must be specified. According to the current version of the draft law, the candidate is eligible even if he/she leaves the political party right before submitting the application. 2. In order to exclude the possibility of the Parliament to influence the appointment of ANRE director, the draft law should specify a concrete deadline (not more than 3 months) to appoint the new director when the mandate of one of the five directors expires.²⁹ 3. The provision stipulating that the budget is formed by ANRE without the approval of the Parliament should be kept. But, in order to ensure a minimum level of legislative supervision, it is important to hold the budget hearing in the Parliament as a form of information. The draft law does not specify exactly how ANRE should inform the Parliament about the formed budget. 4. The audit report on the financial administration in ANRE should be submitted to the Parliament to ensure a minimum legislative supervision. In addition, this provision is aligned to the European good practices and aims at increasing the accountability of ANRE. The draft law requires that the Court of Accounts' financial audit report should be submitted to the Parliament for purposes of information only.
ANRE's transparency	
1. Article 10 on ANRE Management (para 3) regarding the requirements towards candidates for ANRE directors	1. In order to ensure ANRE's transparency for the external partners, the Directors General of ANRE should speak English. This will facilitate the integration of the country and of ANRE into the relevant European governmental and nongovernmental structures.³⁰ In this respect, the criteria for the selection of candidates should provide expressly the obligation to know English and the state language. The draft law stipulates, as a criterion, the knowledge of an international language, which is vague and allows the selection of candidates that speak only Russian, which is an advantage, but not enough to facilitate ANRE's interaction with the European and international structures.

²⁹ Idem

³⁰ Moldova has been part of the Energy Community since 2010 and ANRE submitted the application for membership as an observer at the Council of European Energy Regulators (October 2016).

2. Article 13(4) on the establishment of an Advisory Board	2. The draft law does not specify the establishment of an Advisory Committee as an obligation, but as a right of ANRE. Therefore, the existing regulatory framework contains a more concrete formulation about this Council than the draft law. ³¹ ANRE has already developed the Regulation on the Committee of Experts, subject to repeated public consultations. ³²
3. Article 16 (7) on the transparency and decisions of ANRE	3.1 It is necessary to clarify the legal restrictions related to ANRE' s Management Board meeting "with limited access" or limited access to "information that constitutes a trade secret". ANRE' s discretion to organise sessions with limited participation of stakeholders or to limit the access to information about sector regulation shall be diminished. 3.2 It is recommended to sent invitations to the general public and, nominally, to relevant stakeholders from the sector, at least 5 working days before the meeting. The draft law stipulates that invitations shall be sent 3 days beforehand, which is not enough to ensure a consistent participation. 3.3 It is recommended to include an explicit obligation of ANRE to inform the civil society and other relevant stakeholders from the sector (private entities, mass-media etc.) on publication of applications for licenses on Agency's website.
4. Article 16 (12) on the transparency and decisions of ANRE	4. It is necessary to clarify what information is "official information with limited accessibility", which ANRE can limit the access to.

³¹ Point 26 of the Regulation on ANRE Organisation and Operation states that a Committee of Experts shall be established under ANRE as an advisory board.

³² Regulation on the activity of the Committee of Experts,
<http://anre.md/files/Acte%20Normative/Proiect%20Regulament%20Consiliu%20de%20experti.pdf>

Final Conclusions and Recommendations

The ANRE assessment made by the Energy Community Secretariat is an important step towards reforming the regulator. This effort has to be further supported by concrete measures of adjusting the legal framework and, respectively, the manner of the actual operation of the regulator. The real transition of ANRE to European practices and rules of energy governance, the most advanced in the region, can take place provided that ANRE's independence from political and private influences is strengthened, and an extended transparency in decision-making is ensured and implemented efficiently.

In order to increase ANRE's transparency and independence, according to the good regulatory practices at the international level (OECD), EU recommendations in the field of electricity and natural gas³³ and taking into account the existing deficiencies in the energy sector, the following actions are recommended:

Change the draft Law on Energy, which is now in the Parliament for review:

- Establish a transparent mechanism to appoint ANRE directors, with clear criteria of selection, that would prohibit any form of affiliation to political interests, manifested during at least 2-3 years before the submission of application (party member, (un)paid political activity, family relationship, other political conflicts of interests).³⁴
- Enhance accountability of the regulator by introducing in the draft Law on Energy the obligation of ANRE to carry out regular external performance audits (once in two years), with the participation of international audit companies, in parallel with the audit on financial activity that should be conducted by the Court of Accounts and submitted to Parliament.
- Introduce in the law the obligation to establish a Committee of Experts (Advisory Board) of ANRE, with duties and method of establishment provided by the law.
- Remove the vague interpretations about ANRE's Management Board meeting "with limited accessibility" or limited access to "information that constitutes a trade secret".
- Remove any possibilities of other authorities to intervene in ANRE's regulatory process or in the regulator's inspections or audits in the licensed companies.

Enhance the cooperation with other institutions:

- Sign Memoranda of Understanding between ANRE and Competition Council and other institutions that would clarify and institutionalize the form of cooperation between them in order to improve the governance and transparency in the energy sector.
- Resuscitate the Memorandum of Understanding between ANRE and Court of Accounts, signed in 2012, by establishing a more efficient cooperation based on trust between the two institutions.

Strengthen further on the transparency:

- Develop a set of performance indicators by ANRE for the internal assessment of the institution's performance, additionally to the development of the annual report of activity at sector level.

³³ Commission Staff working paper, Interpretative Note on Directive 2009/72/EC concerning common rules for the internal market in the electricity and Directive 2009/73/EC concerning common rules for internal market in natural gas

³⁴ The mechanism used to select the NBM Governor in 2016 can serve as good practice that may be also replicated in the case of ANRE

- Speed up the establishment of the Committee of Experts (Advisory Board) and clarify ANRE's obligations towards the Committee³⁵, so that it becomes a strong, representative, transparent and functional advisory authority.
- Adopt an internal Regulation on organisation of public consultations, that must be implemented, which would ensure open, transparent and consistent consultations and contain clear responsibilities, undertaken by ANRE with a focus on good practices of the European regulators.³⁶ This will replace the Rules on Ensuring Transparency in ANRE's decision-making, adopted by the Decision of ANRE's Management Board No 374 of 10.05.2010.
- Information on the list of participants in public consultations, summaries with arguments on recommendations approved and rejected by ANRE, and data of person(s) in charge of public consultations must be made public, visibly, on ANRE's web page.

Besides ensuring ANRE's political independence and impartiality in the decision-making, authorities must also offer an exhaustive financial autonomy, which would be offset by the introduction of a strict financial audit by the Court of Accounts.

Also, a bigger and unrestricted involvement of civil society representatives is needed in the completion and consultation of draft decisions, activity of the Committee of Experts, selection of ANRE directors, monitoring the regulator's activity, together or in parallel with the external partners (Energy Community, EU Member States, USAID and others).

In order to ensure the legislative supervision and a higher accountability of ANRE, both the budget and the report of the Court of Accounts should to be submitted to the Parliament, but without the need to have it approved. It will make ANRE's finances more transparent and will offer an additional leverage for oversight by the civil society.

These recommendations reflect the principles and spirit of good practices of operation of the regulators at the Energy Community level, and reconfirm the strategic objectives of energy structural reforms, reflected in the commitments towards the external partners (IMF³⁷, EU³⁸)

³⁵ Regulation on the Activity of the Committee of Experts of ANRE

<http://anre.md/files/Acte%20Normative/Proiect%20Regulament%20Consiliu%20de%20experti.pdf>

³⁶ Council of European Energy Regulators, Guidelines on CEER's Public Consultation Practices, 17.03.2011,

http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Founding_Documents_and_Rules/Other/E07-EP-16-03_PC-Guidelines_CEER.pdf

³⁷ IMF, Press-release, IMF Executive Board Approves US\$178.7 million Arrangements Under the Extended Fund Facility and the Extended Credit Facility for the Republic of Moldova, November 7, 2016, http://imf.md/press/SR_finpub_CR16343.pdf

³⁸ Joint Analysis Paper, 13 October https://eeas.europa.eu/delegations/moldova/11922/delegaia-ue-n-republica-moldova-mpreun-cu-statele-membre-au-prezentat-guvernului-republicii-moldova-raportul-comun-de-analiz-_ro

Annex: The Task Force for emergency reforms

Expert Group set up a Task Force to promote emergency reforms in the Republic of Moldova. The Task Force is focused on 3 priority sectors: **(i) financial sector; (ii) energy sector; (iii) state-owned enterprises**. We think the Republic of Moldova accumulated most of its weaknesses in these sectors and the most imperative reforms of economic policies should be undertaken in these sectors namely.

The Task Force is to be formed of almost 40 persons with an irreproachable reputation and with a rich experience in at least one of the three listed sectors.

Three objectives of the Task Force:

1. Raise the Government's awareness to reform the three priority sectors;
2. Inform the general public on the main trends / issues / risks identified in the three sectors, and on the necessary reforms
3. Provide solutions to upgrade the three priority sectors.

The Task Force Activities:

- Permanent monitoring of trends and authorities' actions in the three sectors;
- Draw up analyses / short position notes on the trends / issues / risks identified and recommendations proposed for the three sectors (analysis will be drawn up by Expert Group and the members of the Task Force will express their views on them prior to the publication);
- Promote petitions to boost reforms in the three sectors (Expert Group will draft and coordinate petitions and the members of the Task Force will express their views on the petitions' content and will promote them publicly);
- Attend press conferences in other forms of public promotion of reforms in the three sectors.

The Task Force Coordinators

Adrian Lupusor – Team Leader, in charge of monitoring the financial sector (adrian@expert-grup.org)

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Activity Period: The Task Force started its activity on 28 September 2016. Its activity is not limited in time.

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