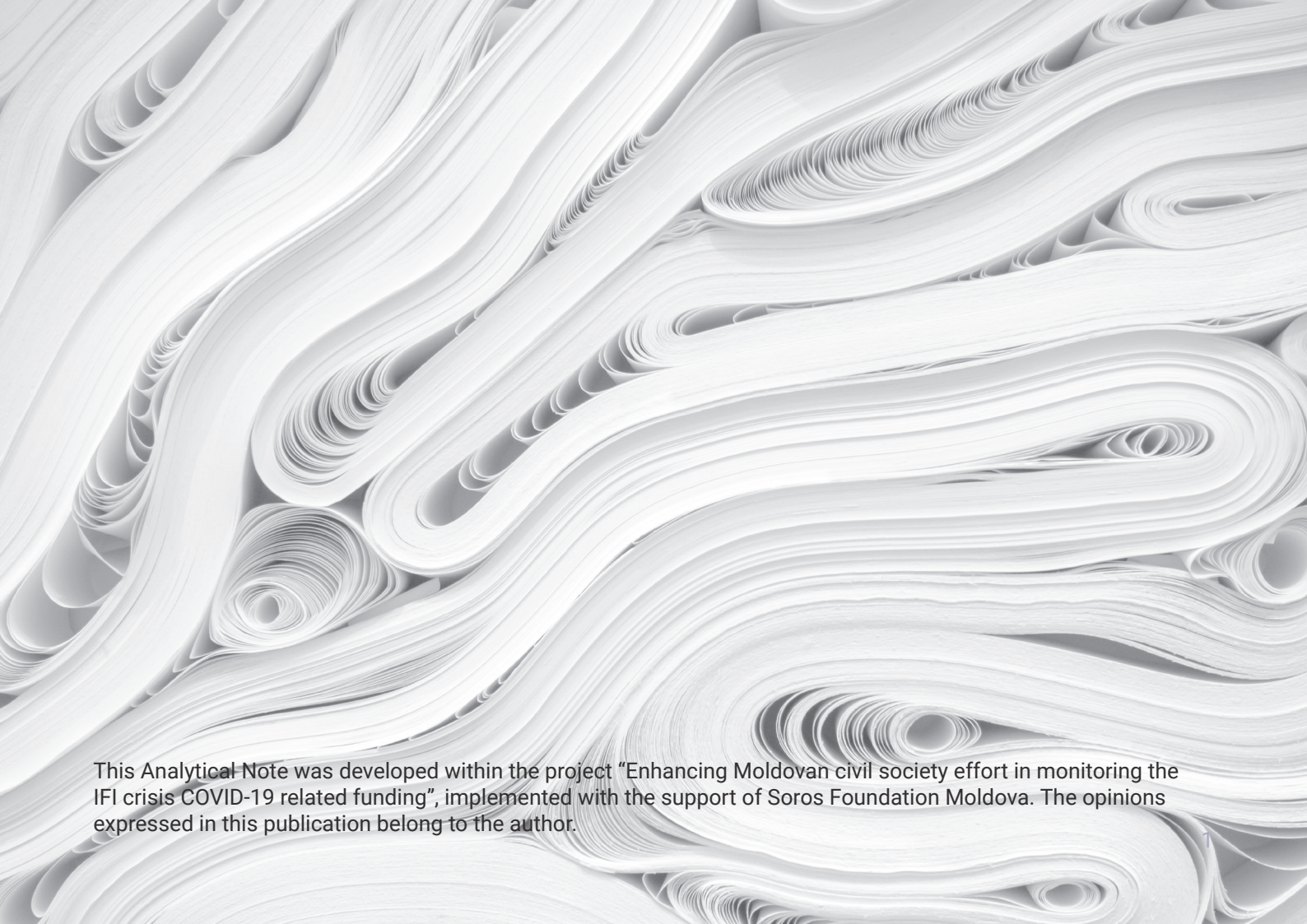


ANALYTICAL NOTE

Monitoring the IFI crisis COVID-19 related funding. Legal, transparency and anti-corruption approach

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I. Introduction

Enhancing Moldovan civil society effort in monitoring IFI in the context of COVID-19 crisis has as main goal to develop civil society and investigative journalists' capacity to monitor and inform the public about the use of IFI assistance. One of the activities under the framework of this project is to elaborate 3 analytical/expert notes on IFI assistance underlying the transparency gaps, legal, institutional obstacles, the potential corruption practices and embezzlements. Therefore, this analytical note would address following topics: state emergency and its malpractices (regulatory framework; public procurements, transparency and accountability); transparency of IFI funding projects.

Once the pandemic due to COVID-19 hit the European continent, Moldova followed the WHO recommendations on how to deal with prevention and consequences of Covid-19. Thus, on 16th of March, 2020 in Moldova were confirmed 23 cases of infections, and following the report of the Commission for Exceptional Situations it was proposed to the Parliament to declare the state of emergency under the Law no. 212/2004 on the state of emergency. In consequence, Parliament approved the decision and declared a state of emergency for a period of 60 days on the entire territory of the Republic of Moldova starting with 17th of March, 2020.

During the state of emergency, the Commission on Exceptional Situation is given wide powers related to management of the exceptional situation (in this case the sanitary crisis generated by Covid-19), as example: to establish special regime on entry/exit in the country; restriction on circulation within the country; introducing quarantine and issuing other sanitary-epidemiologic decisions; coordination of information issued by mass-media related to state of emergency, restrictions, particular use of telecommunication tools; calling

citizens for rendering services in public interest (if it will be the case) under the terms and conditions prescribed by the law, etc.

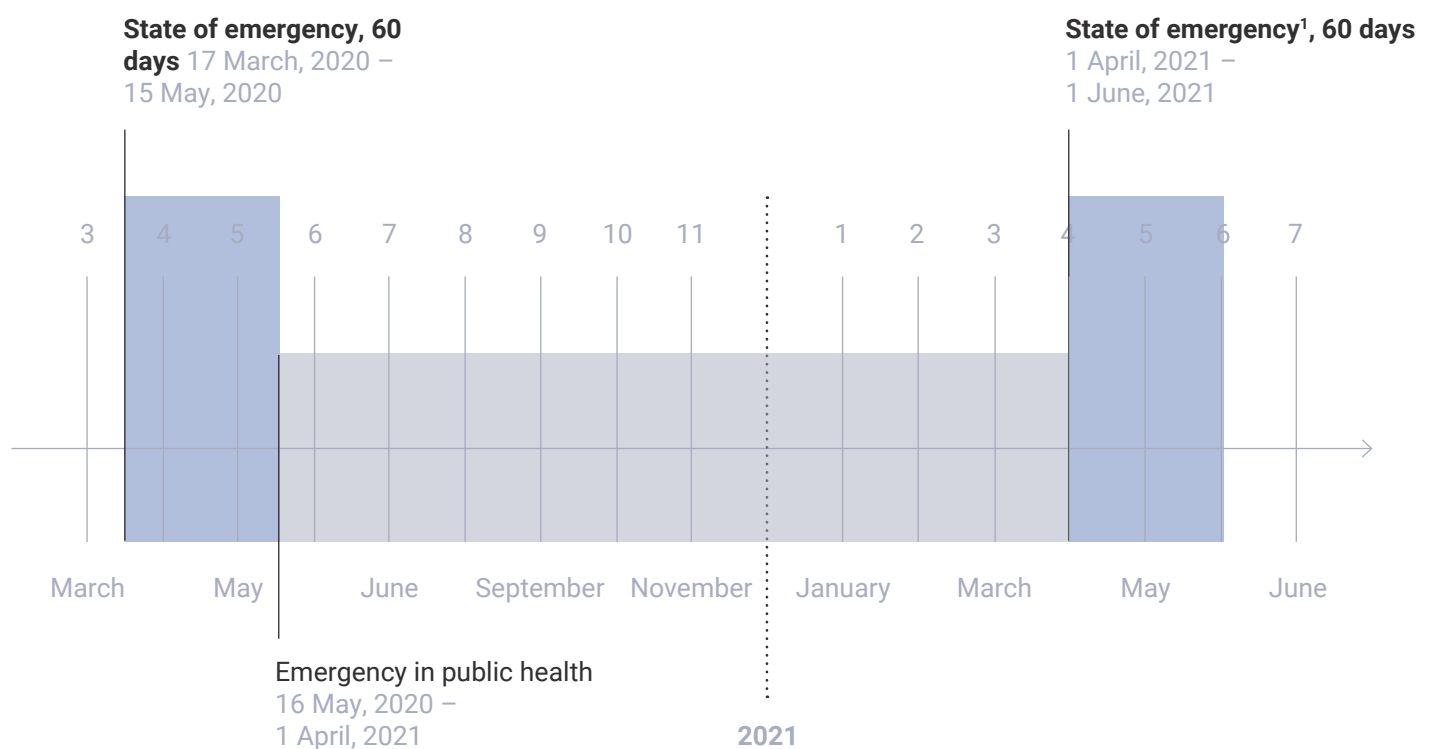
In order to ensure medical staff with proper equipment and adequate treatment of patients, the Government of Moldova used mainly public financial resources from state budget, and other available public resources such as from National Company of Medical Insurance, Population Support Fund, Government Reserve fund, etc. Additionally, all public medical institutions were obliged to suspend all capital and current repairs, and other expenses as acquisitions of fixed assets, except those of vital necessity for rendering medical assistance services.

The Government of Moldova started negotiations with international financial institutions quite late, as it was clear that the internal financial capacity would not be enough to face the consequences of pandemic. During the first year of pandemic, it has been negotiated and approved five agreements, including with Development Bank of the Council of Europe (further CEB) and International Development Association (under the World Bank).

II. State emergency and its malpractices

A. Regulatory framework

As mentioned in introduction, Moldovan Parliament declared a state of emergency for a period of 60 days on the entire territory of the Republic of Moldova starting with March 17, 2020. Since then, Moldova is under a “continuous” state of emergency (see the timeframes below).



The main legal acts referring to state of emergency due to Covid-19 are following:

1. Law no. 212/2004 on the state of emergency;
2. Parliament Decision no. 55/2020 on declaration of the state of emergency;
3. Law no. 69/2020 on the establishment of measures during the period of state of emergency in public health and amendments to certain normative acts;
4. Parliament Decision no. 49/2021 on declaration of the state of emergency;
5. Commission for Exceptional Situations decisions (during the first period (2020) of state emergency issued more than 30 decisions, and in the second period (2021) of state of emergency issued 7 decisions);
6. Extraordinary Commission in Public Health (during the emergency in public health issued 53 decisions).

¹ The decision on declaring the state of emergency since has been claimed in front of the Constitutional Court. On April 28, 2021, the Court declared unconstitutional the Decision of the Parliament regarding the declaration of the state of emergency no. 49 of March 31, 2021.

B. Public procurements

Decisions of the Commission for Exceptional Situations² were referring mostly to the restrictive measures during state emergency, public acquisitions of medical equipment in short timeframes as exemption to the Law on public procurement, exemptions of VAT payments and import duties in case of medical equipment donations and procurement, etc.

This topic become very relevant in crisis times, when under the umbrella of the highest public interest corruption practices could flourish. Moldovan authorities continued to apply differentiated measures on public procurements even after the termination of state emergency from 2020. Parliament amended accordingly the Law on public procurement allowing exceptions to procurement procedures. The amendments allow to reduce the deadlines for public procurement, to increase the thresholds where is necessary to organize public bids, to be exempted in publishing announcements participations in bids, to avoid publishing the announcements on Mtender.gov.md³ or other electronic platforms, and could accept offers in electronically. More information on certain radical measures taken during state emergency could be found in an interesting analytical noted published by Freedom House⁴.

The state emergency situation allowed the authorities to organize significant procurements of medical equipment as stated above. The transparency of these acquisitions was totally compromised. Medical equipment had to be procured by the Center for Centralized Public Procurement in Health

without organizing invitations to public offers or contests. Additionally, under Decisions of the Commission for Exceptional Situations of the Republic of Moldova were restricted the right to claim certain procurement decision in front of the National Agency for Settlement of Claims. The procedures in front of this authority were possible only in written form without public hearings or verbal arbitration reports. Perhaps, these measures were reasonable at some extend due to pandemic, but in the same time opened a window of “opportunity” for corruption practices related to public procurements.

These practices could materialize in:

1. Favoring certain legal entities which have been created just before the bids or which had a completely different economic activity previously unrelated to medical procurements, or medical equipment in general, or are somehow politically related/affiliated.
2. Higher prices of the products which are much cheaper on the market. This finding was also emphasized in one recent study drafted by Initiativa Pozitiva⁵ stating that: during 2020 all procurement were made by the medical institutions showed that the same product was purchased with a difference in the price including VAT, being purchased approximately the same quantity and in the same period of time. This situation also led to exaggerated prices paid by some medical institutions.
3. A dysfunctional relation price versus quality (there have been attested situations of delivered products of an improper quality).

² During the state emergency Commission for Exceptional Situations issued 30 Decisions, <https://gov.md/ro/content/informatii-privind-coronavirus>

³ Mtender is an electronic procurement tool launched in order to make transparent and streamline procurement processes within public authorities. And, all the public procedures shall be noticed and register on this platform.

⁴ https://freedomhouse.org/sites/default/files/2021-01/Rule-of-Law-in-Moldova%27s-Age-of-COVID-19_Rom.pdf

⁵ https://positivepeople.md/upload/info/lib/s0k63vf3h_.pdf

There have been identified suspicious procurements which were object of different media investigations⁶. Almost all public procurement organized during the state emergency were financed from public sources, such as the funds of the National Medical Insurance Company, or government reserve fund and state budget.

During state of emergency, as mentioned above, the public authorities were granted with the right to organize public procurements under exemptions of the Law on public procurements. All these measures at first sight seem reasonable, but in long term jeopardize the objectives and transparency of public money expenditure in general.

The risks that could be envisaged are following:

1. Lack of accountability on spending public money (concerning the admitted exemptions of the Law on public procurements, there are insufficient monitoring tools in place to guarantee the rational expenditure of public resources);
2. Restrictive competition of applicants to public bids, which lead to higher prices and low-quality products;
3. Feeds the quasi-general perception of corruption related to public procurements;
4. Lack of open data to track certain public procurements during these pandemic times restrict general public/civil society to keep a critical eye on malpractices, and eventually to raise awareness.

The low transparency and lack of access to data have only increased society's suspicions of corruption schemes in the public sector, which are often targeted by the media. Moreover, the transparency of the public pro-

curement process is reduced because CAPCS continues to use the old public procurement system. CAPCS is to return to the www.mtender.gov.md electronic system only from January 1, 2021, meanwhile it cannot fully ensure the transparency of the procurement process. The delay is argued by the lack of the necessary technical functionalities.

C. Transparency and communication of information by the Commission for Exceptional Situations

The pandemic found the Government of the Republic of Moldova completely unprepared for all the consequences that it might have, the situation as many other countries had faced. The communication of public authorities with the general population before the pandemic did not excel, the situation has not changed while managing the sanitary crisis.

The only available source for general population related to Government's response to Covid-19 were public conferences, and the decisions of the Commission for Exceptional Situations. The decisions were drafted very technically without any explanatory notes to understand their content. Even the specialists in various domains had encountered difficulties in understanding the extent of decisions' enforcement into practice. The Commission for Exceptional Situations issued around 30 decisions, and the Extraordinary Commission on Public Health issued more than 50 decisions, which is a huge pool of just technical information.

⁶ Few sources on public procurement situations: <https://newsmaker.md/ro/ce-nu-e-in-regula-cu-licitatiile-si-achizitiile-publice-in-conditiile-starii-de-urgenta-din-moldova-analiza-nm/>
<http://www.viitorul.org/ro/content/achizi%C8%9Biile-publice-afectate-de-covid-19>
<https://faracoruptie.md/research/achizitiile-publice-pandemie-cat-de-eficient-institutiile-publice-cheltuielile-banii>
<https://blog.pwc.ro/2020/05/06/achizitiile-publice-pe-timp-de-pandemie-in-republica-moldova/>
<https://agora.md/stiri/81873/opinie-achizitiile-medicale-in-regim-de-pandemie-sau-cum-autoritatile-violeaza-transparenta-procesului> <http://sanatateinfo.md/News/Item/9582>
<http://sanatateinfo.md/News/Item/9582>

Moldova in comparison with other countries does not have a unique portal on official information related to Covid-19 info, and the information is issued through different channels such as Government website, Ministry of Health Labor and Social Protection website, and other public institutions.

To exemplify, it was witnessed recently an anecdotal situation when the Commission for Exceptional Situations issued a Decision no. 1 from 01.04.2021 establishing the restriction of visiting public places (such as public gardens, woods, etc.). During the next days a completely different decision was issued by Municipal extraordinary commission in public health (Chisinau) allowing people to visit public gardens, woods, playgrounds in a group of people not exceeding 3 family members. And, by consequence, on 8th of April, 2021, the Commission for Exceptional Situations is withdrawing its own decision in this sense, granting people with the rights to visit public gardens, woods, playgrounds in a group of people not exceeding 3 family members. The communication of these restrictions was a complete mess, and improper communication (like Facebook posts

of Chisinau mayor), general population was totally confused whether these restrictions are in force or not. This is just one situation to underline on how uncoordinated, confusing and improper communication tools were used in managing a sanitary crisis.

In conclusion, it remains very difficult to follow the information and to evaluate its adequacy, objectiveness and trueness. In pandemic conditions the factuality of the information itself changes quickly and becomes outdated, having one source of information for general population would had been more than a tool of transparency, but a fundamental right of the population to be properly informed. The right to be informed is a constitutional right granted by art. 34 par. (2) of the Constitution of the Republic of Moldova, which expressly prescribes: Public authorities, according to their competences, are obliged to ensure a correct information of citizens on public affairs and on issues of personal interest.

III. Transparency and openness of information related to IFI loans

Referring to the financial support, or donations received by the Republic of Moldova by other countries as response to Covid-19 is still a challenging exercise. During the state of emergency, it was possible to follow the external assistance as response to Covid-19 pandemic only by accessing the text of Commission for Exceptional Situations decisions. This information was available in the context of the VAT, import and custom duties exemptions granted by the Government for donations offered to the Republic of Moldova (medicines, gloves, masks, protective screens, respirators, protective coveralls). The donations were offered by private entities, and by other Governments (such as Romania, China, Turkey, Russia). It still remains unclear on how this medical equipment were distributed across the medical institutions and other medical facilities, and how Ministry of Health, Labor and Social Protection ensured a proper distribution based on the needs.

As mentioned previously, up to this date, Moldovan Government managed to negotiate and sign two loans agreements with IFIs, and namely:

1. Development Bank of the Council of Europe (further CEB), agreement was ratified by the Law no. 168/2020 on ratification the Framework loan agreement between the Republic of Moldova and the Development Bank of the Council of Europe for the realization of the project "Emergency response to Covid-19 and support for micro, small and medium-sized enterprises"⁷.
2. Agreement between Republic of Moldova and International Development Association on the implementation of the "Emergency Response to Covid-19" Project, worth of 52,9 million EUR, signed on April 28, 2020, ratified under the Law no. 68/2020⁸.

* Apparently, there could be also other agreements negotiated by the Government of the Republic of Moldova, one of them is the loan from International Monetary Fund. Information about this agreement could be accessed only

through the portal of normative acts in which could be found the Law no. 58/2020 for attracting the external state loan from the IMF through Rapid Credit Facility (RCF). The text of the law comprises

3 provisions, which in fact provide the Government the right to attract the foreign state loan from International Monetary Fund through RCF in the amount of 57500000.00 special drawing rights (SDR) which shall be used to finance the state budget deficit.

** Also, from general information available on internet, there is also a loan from the European Commission. On April 22, 2021 the European Commission announced a macro-financial assistance package (Omnibus) of EUR 3 billion for 10 EU neighboring countries, including EUR 100 million for the Republic of Moldova. These funds would be available within 12 months in the form of preferential loans and to supplement the emergency loans provided by the IMF to cover financing needs immediately after the budget, which would alleviate the negative socio-economic consequences of the Covid-19 pandemic.

⁷ https://www.legis.md/cautare/getResults?doc_id=123128&lang=ro

⁸ https://www.legis.md/cautare/getResults?doc_id=121528&lang=ro

Given that the information about these loans is not very certain, we will continue to refer to the 2 basic agreements approved and ratified by the Parliament of the Republic of Moldova with CEB and WB.

The CEB Agreement was presented to public in advance to approval by the Government, through the official website of the Government, and also via the public platform www.particip.gov.md between 17.07.2020 – 21.07.2020⁹. Unfortunately, the draft of the Agreement was uploaded only in English, which certainly restricted the access to the content of the document by a common user/citizen in order to understand all the conditions and responsibilities on Government behalf. Also, when the Agreement was ratified by the Parliament, the annex of the Law is available only in English on the national platform of the normative acts www.legis.md. According to the Law no.100/2017 the author of the normative acts has to present the project to the institution in charge with approval/adoption in Romanian language, and if it is the case also in Russian.

Analyzing all open data related to Government loans agreements with international financial institutions, in particular CEB agreement there is insufficient information available for a common user to understand whether this agreement started or not, have been already operated payments, what is the level of absorption and so on. Moreover, this agreement had not been published on the www.amp.gov.md platform. This platform is an automated information system accessible online on external assistance projects/programs. It aims to offer an operative and complete information on the financial assistance available for Moldova; contribute to a permanent increase of the absorption rate of external funds, and ensure transparency.

According to the terms of CEB agreement, the share of CEB financing is 90%, and 10% remains to the Government of the Republic of Moldova. It remains unclear from which sources this share would be covered.

There is a piece of information from the informative note of the Ratification agreement law which states that the Government's contribution would be from revolving sources from the Office on Management of External Assistance (under Ministry of Finance) from similar projects for SMEs, financed by other international creditors. There shall be taken into consideration that this agreement has also health component, not only support for SMEs.

In conclusion, there is little information regarding CEB agreement, and the only information could be collected from different sources (official websites as press releases or announcements). The Office on Management of External Assistance does not provide any particular information on that, even if it is an institution in charge according to Government Decision no. 377/2018.

In comparison with CEB Agreement, the second agreement signed with IDA (under World Bank) there is more open information. This agreement has been published with the law on its ratification also in Romanian language. It also had been widely described on the platform www.amp.gov.md where could be followed information on disbursements and absorption. Based on open data it was disbursed EUR 18 889 166,04, and absorbed EUR 2 869 194,96, which is around 15% absorption rate. The reasons why the absorption rate is small it is unclear, as the project just has started.

The implementation unit in case of WB agreement is under Ministry of Health, Labor and Social Protection (MoHSP).

⁹ <https://particip.gov.md/ro/document/stages/proiectul-hotararii-guvernului-cu-privire-la-aprobarea-semnarii-acordului-cadru-de-imprumut-dintre-republica-moldova-si-banca-de-dezvoltare-a-consiliului-europei-pentru-realizarea-proiectului-raspuns-de-urgenta-la-covid-19-si-suport-pentru-intreprinderile-micro-mici-si-mijlocii/7556>

On MoHSP website could be found a separate sub-page on WB project¹⁰. There could be accessed some information related to the project, disbursement letter, plans of procurement. The procurement plan is published, but not the list of current procurement procedures or awarded contracts. According to the procurement plan many of procurement procedures had to be closed already, and by consequence information on awarded contracts had to be publicly available. The procurement procedures under the WB project follow the WB Procurement Regulations, and definitely a disclosure of information related to awarded

contracts would benefit the project and its transparency. Once the projects under these agreements started to be implemented, there is not sufficient information to follow on how these financial resources have been spent so far.






¹⁰ <https://msmps.gov.md/informatie-de-interes-public/>

IV. General conclusions

Communication plays a crucial role in any crisis management. Correct, coordinated and updated information allow citizens to properly comprehend the gravity of the situation, and make public authorities accountable for decisions they take. Moldova had not done its best to ensure a proper communication related to COVID-19 response, and this generated by consequence a low level of trust in public institutions, a low level of enforcement of restrictions issued by the Government, and still a high perception of corruption.

Corruption is a threat to people's lives and livelihoods, especially in public health emergencies. There is a direct link between the level of corruption in the public sector and increased investment in health care. According to the latest CPI 2020 (Corruption Perception Index), Moldova ranked on 115 out of 180 countries¹¹.

As a general overview on openness, transparency and accountability of public authorities in dealing with Covid-19 response could be followed in the table hereunder.

	Low	Medium	High
Accesibility of information			
Clarity, completeness of information			
Publicity			
Transparency/digital tools			
Accountability			

¹¹ <http://www.transparency.md/2021/01/28/indicele-perceptiei-coruptiei-2020-coruptia-generalizata-slabeste-raspunsul-la-covid-19-si-pune-sub-pericol-restabilirea-globala-dupa-criza/>

V. Main findings and recommendations

As a result of analysis on how the Government of Moldova managed to communicate, to ensure openness of information on IFI funds are presented **following main findings and recommendations:**

#	Finding	Recommendation
1	Lack of clear communication to the general public of the Commission for Exceptional Situations' decisions, in particular external assistance that was received during state emergency in public health and afterwards.	To ensure greater visibility of the IFI funds received by Moldovan Government, external financial/technical assistance received on bilateral level or from development partners, humanitarian aid. The information shall comprise total value, the scope of aid, beneficiary institutions, available monitoring and evaluation instruments related to proper enforcement of activities under IFI loans or technical assistance agreements.
2	The information during the state emergency was delivered in a technical language, difficult to be comprehended by general population, and in some cases by specialists.	To draft and approve a risk communication strategy, and to deliver information to the public in most comprehensive manner, such as infographics or other visual tools.
3	It lacks an integrated and unique electronic portal (as one source) where to be gathered all relevant information on Covid-19 Government's response. The information is spread through different channels, and official websites of each institution according to its competences.	To develop an electronic/online platform where to be presented all official information related to COVID-19 measures, prevention, restrictions, etc. A good example in this sense would be Romanian experience such as www.stirioficiala.ro
4	The existing platforms on external aid assistance does not comprise an updated information;	To update the current platform on external aid assistance www.amp.gov.md by including the latest loan agreements that Government has signed. It would be useful to introduce on this platform also other external aid received on bilateral level (such as from Romania, China, Turkey, Russia) as for COVID-19 response.
5	The public procurement procedures allow exemptions to the main Law on public procurement aiming to accelerate procurements of basic and most needed equipment for health sector. In the same time, there are no clear control tools on these individual procurements and exemptions of the law.	To create and apply monitoring tools on procurements organized under exemptions of the Law on public procurements. To draft and public analytical reports on procurements organized during state of emergency by medical institutions.

6	Certain loan agreements regulate particular procurement procedures (of the Creditor, such as for WB), in these cases the risk of corruption practices is minimal. An adverse situation is in case of procurements organized under national laws, where the corruption perception is a high, and there are already media investigations on procurements organized during state emergency.	To ensure an increased visibility on activities/ procurements organized under the framework of international loans agreement where national procurement regulations are applied.
7	The visibility of the loans with CEB and WB is low, all the information that could be found in media is related to the date when a certain loan was signed or ratified. No follow up on disbursements, absorption, etc.	To upload all relevant data on this agreement on public platform www.amp.gov.md , and to ensure visibility of the activities under the framework of this agreement by the Ministry of Finance, and by assigned implementation unit.
8	The political instability in Moldova during 2020-2021 heavily impacted all the processes: disbursements, negotiations with loan institutions, planning of activities, etc. There have been a lot of discussions on political level on the powers of a caretaker government. Certain Ministers were avoiding issuing/signing orders necessary for the current activity of the ministries. On 4th of March 2021, the Constitutional Court issued a Decision bringing more "light" on these issues. ¹²	It is already a consumed topic. Nevertheless, all public institutions shall ensure at least a rational institutional memory in this period of time, and to secure the continuity of projects vital to combat the effects of pandemic.
9	There was no criminal investigation started on public procurements organized during state of emergency, and emergency in public health. At least this information was not present in the media. By contrary, in Romania were started 33 criminal investigations related to public procurements during the state of emergency in public health. ¹³	As Prosecution office is quite a closed institution, the media representatives shall use the tool prescribed by the law and to seek access to this information.
10	A related problem to the transparency was the limitation of the access to public information during the state emergency. On 18th of March 2020, the Commission on Exceptional Situation extended the deadline for responding on the requests of information by public institutions from 15 days to 45 days, without any official explanations on the grounds of this kind of decision ¹⁴ .	This measure was valid during the first state of emergency period (in 2020), this kind of measure was not prescribed during emergency in public health. But, it was used afterwards when the second state emergency was declared in 2021. Nevertheless, the access of public information is still challenging, and shall be addresses as a priority especially in crisis time. Media representatives shall be more vocal when a certain public institution is not delivering requested information which is of a public interest. And, when it is the case to request attorneys' help in fill claims in national courts.

¹² <https://constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=763#top>

¹³ <https://romania.europalibera.org/a/dna-33-de-dosare-penale-privind-achizitii-efectuate-in-timpul-pandemiei/30625764.html>

¹⁴ https://freedomhouse.org/sites/default/files/2020-06/Balan%20and%20Stegniy_FINAL-RO_0.pdf