



IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones



Migration Management Moldova



Assessment 2003

Executive Summary

The assessment of the migration management system in Moldova was carried out in the fall of 2003. Its main objective is to serve as a tool in strengthening the Moldovan Government's capacity to develop a realistic and effective migration management system. It is envisaged that the results of the assessment will be useful to the relevant Moldovan authorities and potential donors in identifying key areas for action in the field of migration management.

The structure of the assessment report is as follows:

Chapter One describes the Moldovan migration assessment project and its background, as well as the working method of the two experts.

Chapter Two provides an overview of the migration situation in Moldova today. This chapter also includes statistics on migration in Moldova in recent years.

Chapter Three includes a description of the development of a Moldovan policy on migration from 1990 to the present and describes the main elements of the current policy. The legal framework governing the migration field is also described with specific emphasis on the recent Law on Migration.

Chapter Four outlines the tasks and the structure of the Moldovan ministries and departments working in the migration field. The recently created Migration Department is a main actor in this field, but the chapter also deals with the Ministry of Interior, the Ministry of Foreign Affairs, the Information and Technology Department and the Department of Border Guards.

Chapter Five contains a more detailed description of every stage of the immigration process, starting with the issuance of an invitation to a foreign national. Questions regarding emigration are also dealt with in this chapter.

A number of recommendations, italicized in the text, are given throughout the report. Some address the relevant Moldovan authorities and decision-makers, while others potential international donors. Some of the recommendations are very detailed and others are broader and more general in scope.

The main recommendations are listed below:

Providing training and equipment. All the main actors in migration management in Moldova are, in one way or another, in need of training and equipment, specifically the new staff of the Migration Department, the territorial officers of the Ministry of Interior, the Border Guards and the staff at the missions of the Ministry of Foreign Affairs.

Reforming the legal framework. As several laws regulating migration are currently in force in Moldova, some topics are being covered by one law, while others are not covered by any laws. To avoid such overlaps and gaps, the total set of laws should be examined with a view to streamlining them and, at the same time, to ensuring that the revised legal acts are fully compatible with the international obligations that Moldova has taken upon itself in the migration field.

Streamlining of the visa regime. There is a need to examine the system of invitations and visas closely in order to make it more effective. The examination should include both the legal framework governing the invitations/visa regime and the procedures and practices followed by the administration.

Creating a basis for a new migration data system. It has already been decided that a new migration data system is to be established in Moldova. In order to do so, the existing migration data structures should be mapped out, overall migration data indicators should be defined and new models developed. It is also necessary to map out in detail the procedures in the migration process from which the data should be derived. In doing so, it would be natural to consider how these procedures could be streamlined.

Improving border management. Border management is crucial to the effective management of migration and needs to be improved. This report contains a number of recommendations with respect to border management, including training and equipping of the Border Guards.

Creating an Information Centre. There is a clear need to ensure that potential migrants and the general public in Moldova have better access to information on migration-related issues. The majority of Moldova's economic migrants do not know where to seek reliable information about foreign employment and travel opportunities and thus are more susceptible to human traffickers, illegal employment agents, and human smugglers. A migration information centre can provide outreach to the potential migrant community by offering counsel on legal migration options, increasing awareness levels, and reviewing the risks associated with irregular migration.

Chapter 1 Project description

1.1 Background

After more than ten years of transition, Moldova is still grappling with high unemployment,¹ a poor investment climate, an enormous foreign debt and widespread corruption² within its borders. The breakaway territory of Transnistria³ within Moldova is a hotspot of illegal activity, including trade and smuggling in arms, cigarettes, petrol and alcohol. Furthermore, the Transnistrian region is transited by smugglers of irregular migrants trying to enter Western Europe from Africa or Asia.

The widespread poverty and lack of job opportunities drive many Moldovans to look for work elsewhere. Of the nation's 4.5 million citizens, unofficial estimates put the number of Moldovan nationals working abroad, mostly in Western Europe, at 600.000 individuals. The high number of irregular migrants has left the door wide open to criminal organizations ready to exploit an already vulnerable group. Moldova, by far, has the greatest number of trafficking victims in the region. More than 1.144 women and minors have been returned home through the IOM's⁴ counter-trafficking reintegration programme, but this is only a fraction of the numbers of those still trafficked abroad. Many are also trafficked for the purpose of labour exploitation and find themselves living in dismal conditions, which provide little or no remuneration and which are conducive to violation of their human rights. Despite the Government of Moldova's stated aim of joining the European Union in the future, a high degree of clandestine activity, including irregular migration, is a destabilizing factor in Moldova's further development as a democratic nation and its possible integration into European structures.

During international conferences on migration, the need for improved coordination between countries in the region was indicated – particularly among the EU candidate countries and those that will constitute the new border to the European Union.⁵ The relationship between uncontrolled migration and the rise in organized crime is being increasingly addressed. While Romania is moving closer to EU membership and is harmonizing its legislation and practices with those of the EU, Moldova, until now, has been left to address its future as a gatekeeper to Europe to the best of its abilities. As a sovereign state, Moldova should be able to develop its capacity to manage the inflows and outflows of migrants and to safeguard its own borders. This entails capacity building, training and equipment for relevant migration officials and improved coordination with the relevant migration management authorities, including the Moldovan Migration Department (MMD).

¹ ILO reports a 6.8% employment rate, but unofficial figures are much higher.

² Moldova has one of the lowest rankings in the world on the Transparency International Corruption Perception index, 2002.

³ In acknowledging the importance of the Transnistrian question, this assessment does not discuss the topic in depth. It is outside the scope and framework of the assessment to take fully into account the consequences of the existence of the Transnistrian question.

⁴ Moldova became IOM member number 101 in 2003. On 29 May 2003, the Moldovan Parliament accepted the IOM Constitution (Resolution no. 215-XV).

⁵ In March 2003, 17 countries participating in the Conference on Irregular Migration in the Black Sea Region agreed that there was a need for enhanced migration management within national boundaries, increased collaboration between all countries, improved information exchange and harmonization of migration practices and regulations.

In January 2003, the MMD first expressed interest in working with the IOM and Sida to develop a migration strategy for Moldova. A letter from the MMD specifically expressed the wish to develop a method of documentation and control of the migration flow to and from Moldova. The MMD also stressed the need for capacity building in migration management within Moldova's juridical and institutional frameworks. In early 2003, the full mandate of the MMD was unclear; hence it was difficult to determine the scope of the foreseen cooperation. Since January 2003, the MMD has worked to clarify areas of responsibility and jurisdiction, and the organization's role is becoming progressively clearer.

Furthermore, the Government of Moldova presented migration and counter-trafficking activities as priority issues during the Republic's chairmanship of the Council of Europe (May-November 2003).

1.2 Objective

This assessment report's objective is to strengthen the Moldovan Government's capacity to develop a migration management system that takes into account the Moldovan reality and is consistent with international standards. The foreseen result of this assessment will be the development of a migration management strategy for Moldova that will effectively combat irregular migration and trafficking of human beings for labour, begging or sexual exploitation. Another objective is to give Moldova a tool for setting priorities and developing measures to face the country's migration reality.

1.3 Purpose

The purpose of this assessment is to assess the current structure and functions of the MMD and other relevant authorities under the new migration law, to review technical assistance provided to date, to survey the need for training and facilities and to provide recommendations for further assistance in reforming the MMD in order to manage effectively migration in Moldova. The results of this assessment will be used as a basis for Moldovan authorities and potential donors to identify key areas for action within the sphere of migration management.

1.4 Working method

This assessment was carried out by two migration experts – one from the Danish Immigration Service and one from the IOM Technical Cooperation Centre in Vienna – who was assisted by staff from IOM Moldova.

Prior to their first visit to Chisinau, Moldova, the two migration experts reviewed, analyzed and processed all provided and available written material on the MMD's and Moldova's migration management frameworks, as well as relevant background material. The experts conducted three, four-day visits to Moldova to obtain information on the structure of the MMD and other relevant authorities and stakeholders and to prepare the assessment. As a part of the visits and the subsequent processing of materials, an analysis of the existing gaps and needs of the MMD was conducted.

The first two visits mainly consisted of information gathering and initial consultations. After four weeks, in which the results from the first visit were reviewed and analyzed, the two experts

returned to Moldova for another series of consultations to discuss the draft assessment and to review operational/functional options. During this trip, questions were answered and further details on the Moldovan migration framework were obtained. Meetings with the international organizations present in Moldova were scheduled in order to gauge their views and inputs.

During the final visit, meetings with key members of the Moldovan Parliament and Government were scheduled. A presentation of the findings and preliminary recommendations of the migration experts, as well as preliminary sketches of possible models for the further development of the MMD, were given. Furthermore, future possible activities were discussed.

During the visits, four border points and the Border Guards training centre were also visited.

As part of the project, a study-tour for key personnel in the MMD, the Ministry of Interior and the Department of Border Guards (BGs) was organized. Six high-ranking officials from these institutions visited Denmark and Sweden for a week to study the structures of relevant Danish and Swedish institutions and to learn about rules and procedures in the two countries.

Detailed programmes for the study-tour as well as the migration experts' visits to Moldova are attached as appendixes to the report.

Feedback on the draft version of this report was requested from the representatives of the central governmental institutions with whom the experts had assessment consultations during their visits.

The collection of data, which constitutes the basis of this report, ended in December 2003. With a few exceptions, developments that occurred after December 2003 are not included. Furthermore, committed officials from the relevant agencies in the interim have taken steps towards developing migration management in Moldova.

Chapter 2 The current migration situation in Moldova

This report was prepared during a period of transition for the Moldovan authorities responsible for migration management. A new structure is being built and tasks are being redistributed between institutions. This is a rather complicated process and several institutional parameters have to be taken into consideration.

While Moldova's geographical position makes it attractive for transiting irregular migrants, for Moldova itself the main problem remains the Moldovan citizens who have left the country in search of better job opportunities. With an estimated 600.000 Moldovans abroad, Moldova would like to be able to create stable economic and social development in order to attract citizens to return. Employment opportunities are therefore a crucial concern, and, in this regard, Moldova's present increase in job opportunities points in the right direction. However, much still needs to be done.⁶

Until more stable economic conditions are achieved, it is important to protect the Moldovans migrating to other countries from being exploited. To this end, Moldova hopes to be able to sign bilateral agreements with other states. The first agreement on labour issues was signed with Italy on 27 November 2003 during the Moldovan President's visit to Rome. The agreement targets the protection of the Moldovan migrants in Italy and their labour opportunities. Furthermore, the MMD also signed three agreements on collaboration on employment with different Italian partners during the visit.

Although Moldova has shown a strong desire to be integrated into the European Union, Moldovan authorities have acknowledged that this would not happen in the near future. In order to come closer to achieving this goal, Moldova will need further international assistance.

The Parliament has worked hard to create a legal basis for migration management. Emphasis has been placed on the implementation of laws, taking into account the situation for both the foreigners in Moldova and the Moldovans abroad. A special committee was created to oversee the implementation of a national plan on human rights, including the rights of refugees and immigrants; the Parliament will organize hearings on the matter. Continued joint meetings between the Parliamentary Commission on Human Rights and National Minorities and the MMD are being held.

Migration issues are at the forefront of Moldova's political agenda and the creation of the MMD has broad support.

2.1 Statistics on Moldovan migration⁷

The migration outlook in Moldova during 2002 can be described in statistical terms as follows:

⁶ The perspectives set in the introduction of this chapter are based on meetings held with the Chairman of the Foreign Policy Committee, Mr. Andrei Neguta, and the Chairman of the Committee on Human Rights and National Minorities, Mr. Mihail Sidorov, both of the Parliament of the Republic of Moldova, and with Mr. Vasily Iovv, First Vice Prime Minister of the Republic of Moldova.

⁷ These statistics are taken from "MMD: *Annual Report on Statistics for Migration Flows in the Republic of Moldova. Year 2002*".

- 1.297 foreigners were granted immigration certificates (hereinafter referred to as immigrants); 292 persons were issued permanent immigration certificates and 1.005 were issued immigration certificates for a fixed period.
- 249 persons have obtained permanent working permits and 377 persons obtained working permits for a fixed period.
- 1.181 immigrants settled in cities and 116 in rural localities. Together with their parents, 45 children under 16 have entered the country. Forty persons of the total number of immigrants are pensioners.
- 313 persons immigrated for family purposes, 620 for study purposes and 364 for labour purposes.
- 1.614 persons, of whom 336 were children, have repatriated to Moldova within the reference period;⁸ of the total number of repatriated persons, 829 persons are Moldovans, 302 persons are Ukrainians, 275 persons are Russians and 208 persons are of other nationalities.
- 801 persons have repatriated from the Russian Federation, 541 persons from Ukraine and 272 persons from other states.

During 2002, the MMD registered and legalized the status of 403 labour migrants;⁹ of those migrants, 274 persons are active in 154 enterprises,¹⁰ another 108 persons have created these or other enterprises; and 166 persons are specialists, employed on a contract basis by the owners of these enterprises.¹¹

From 1992 to 2002, 15.597 foreign citizens immigrated to Moldova, including 6.804 persons for family reunification purposes, 6.777 persons for studies and 1.998 persons for working purposes. The immigrants have mainly come from the following countries: Ukraine – 3.575 persons, Russia – 2.402 persons, Syria – 2.244 persons, Jordan and Turkey – 1.075 persons and 1.010 persons respectively, and Romania – 990 persons.

From 1994 to 2002, 41.659 persons repatriated to Moldova, including 22.039 Moldovans, 7.774 Ukrainians, 7.188 Russians and 4.658 persons of other ethnic origins.

⁸ These are persons who are entitled to Moldovan citizenship. This refers first of all to cases of former Soviet citizens of Moldovan origin who, after the USSR collapsed, were entitled to acquire Moldovan citizenship in a simplified manner when repatriated from other CIS countries.

⁹ This number includes also the working permits issued in 2002, based on requests made in 2001.

¹⁰ Seventy enterprises are 100% foreign capital enterprises, 35 joint stock companies with partial investment of foreign capital, 22 limited liability companies, 16 funds, nine stock companies and two individual enterprises.

¹¹ On a contract basis, 59 foreign citizens are active in eight universities, 61 volunteers within the Peace Corps and nine foreign citizens within the Roman-Catholic Episcopacy. According to the data offered by the State Registration Chamber and by the Informational Technologies Department, 2.766 enterprises with foreign capital are registered in the country. Of these 2.766, 1.071 enterprises are 100% foreign investment companies and 1.695 enterprises are joint stock companies with partial investment of foreign capital.

21.262 persons have repatriated from Russia, 15.730 persons from Ukraine and 4.667 persons from other countries.¹²

Preliminary figures for 2003 show that about 1.400 persons immigrated to Moldova that year. Some 400 of these arrived to be reunited with family in Moldova, another 400 came for educational purposes and around 500 for working purposes.

¹² Repatriated persons for 1994 – 8.005, for 1995 – 8.163, for 1996 – 7.172, for 1997 – 6.344 and for 1998 – 4.791. The numbers of repatriates then decreased in subsequent years: for 1999 – 2.881, for 2000 – 1.427, for 2001 – 1.262 and for 2002 – 1.614.

Chapter 3 The Moldovan migration policy and legal framework

3.1 Overview of the Moldovan legal hierarchy

Moldova is a parliamentary republic. The Parliament is elected through universal, equal and direct voting. The Parliament elects the President and designates the Prime Minister, who is nominated by the President.

The competencies of the public authorities in the legal system are defined as follows:

1. The Parliament adopts the Constitution and the laws (organic and ordinary) and passes decisions and motions. According to the Constitution, the Constitutional Court can declare the Parliament's legal acts unconstitutional.
2. The President passes decrees that shall be in conformity with the Constitution and existing laws. If the President considers a Government act unconstitutional, he can suspend its execution until the Constitutional Court takes a decision.
3. The Government passes Decisions, Directives and Ordinances. The Government acts shall be in conformity with the Constitution and existing laws. The Decisions are issued with the purpose of organizing the implementation of the laws. The Directives are issued with the purpose of organizing the activities of the Government. According to the Law on Government, for the purpose of realizing Government tasks, the Government is also entitled to issue Ordinances in conformity with specific authorizing laws issued by the Parliament. The respective Ordinances have the same legal power as ordinary laws for specific periods of time and can only regulate areas that are not regulated by organic laws.
4. The Ministries and other governmental departments pass directives and instructions that specify the manner for implementing the Government acts.
5. The local public authorities issue legal acts falling within their competence that specify the implementation of the legislation and Government acts on the ground. These legal acts shall be in conformity with the laws and the Government acts.

3.2 History

Following its independence, Moldova adopted its first law on migration in 1990. However, it should be noted that a more comprehensive approach to the management of migration had not been taken until the adoption by the Parliament of a decree on the Migration Policy Concept of Moldova in October 2002. The period from 1990 to the present is described in the sections below.

1990 - 2000

Before the Declaration of Independence in 1990, migration issues were not regulated on a national level in Moldova. All issues related to the registration of foreigners and their place of residence were within the competence of the Ministry of Foreign Affairs through the comprehensive Soviet Union legislative acts, duplicated in the legislation of the Moldovan Soviet Socialist Republic (M.S.S.R).

The recognition of Moldovan state sovereignty by the international community required defining key elements of the state structure, such as territorial delineation and a population census.

In order to ensure the basic rights of the population residing within the territory of Moldova before the citizenship granting procedures were defined and to avoid uncontrolled migration, the Supreme Soviet of the M.S.S.R. adopted the Law on Migration in 1990.

Although the objectives declared in the law were numerous, in reality the law was reduced to serving the following purposes:

- Defining a migrant's (immigrant's) status;
- Describing forms of migration (immigration): family, employment, studies, special migration;
- Establishing a migration quota (this was to be decided by the Parliament of Moldova on a yearly basis, with a strict territorial distribution);
- Listing migrants' (immigrants') rights and responsibilities;
- Regulating migration for family, labour and educational purposes; procedures; fees; issuance of work permits and residence permits (temporary, fixed-term and permanent);
- Regulating special migration that, in essence, pertained to the re-establishment in Moldova of Moldovan military personnel dismissed in reserve or retired from active military service and former permanent residents of the M.S.S.R. who were released from detention.
- Declaring the right to free movement and protection of Moldova citizens who emigrate.

From an institutional point of view, the Ministry of Labour and Social Protection was authorized to deal with all the issues mentioned above, except emigration. A Department for Migration was created within the framework of the Ministry, and this department acted on the basis of a regulation.

With the purpose of regulating the repatriation processes, intensified as a result of the collapse of the Soviet Union, the Ministry of Labour was authorized to issue repatriation confirmations to repatriated persons and to establish the modalities for issuing and recording them.

A number of normative acts were approved, including rules on issuing, suspending and invalidating immigration certificates and work permits in Moldova and rules on issuing certificates and licenses to legal entities and individuals who acted as mediators in organizing temporary employment abroad for Moldovans.

A number of significant areas were left unattended and there was no comprehensive migration policy in place.

The legislation concerning the state borders of Moldova also underwent a series of modifications during this period. A Law on State Borders was adopted in 1994 that established the regime of the state border and border checkpoints and defined the functions of the BGs.

According to this law, the Border Service was initially subordinated to the Ministry of State Security (now the Information and Security Service), and the Ministry was performing the border guarding, the authorization of the border crossings, and co-operating with counterpart border services of the neighbouring countries.

In 1999, the Law on State Borders was modified in order to institute, within the Ministry of Interior, a border police authorized to manage border crossings at the Moldovan/Ukrainian border.

The border police was disbanded by law in July 2000, and the border guarding and all related functions were transferred to the Border Guard Department, which is now subordinated directly to the Government.

2000 - 2001

During the 1990s, Moldova implemented, with varying degrees of efficiency, a number of reforms. From 1994 to 1996, state property privatization was implemented in the industrial, social and commercial sectors, while from 1998 to 2000 an agricultural reform was implemented that resulted in massive liquidation of collective and state farms and the final reorganization of agricultural businesses. The inadequate timing of the reforms, the lack of steps to secure social protection, the unavailability of traditional jobs and the lack of a real mechanism for launching private (small) businesses led to massive outward migration of the population Moldova. As a result of the exodus, it became a priority for the Government to safeguard the rights and interests of Moldovan migrant workers.

Beginning in August 2001, a State Service for Migration was established to replace the Department of Migration within the Ministry of Labour and Social Protection by a Government resolution. The service was established as a governmental specialized institution, although without being part of the ordinary structure of central specialized authorities, such as ministries and departments. Moreover, it had no territorial subdivisions of its own. The number of staff members was, however, increased from eight to 25 persons.

A Regulation on the State Service for Migration was adopted, making the following areas the main objectives for the Service:

- Promoting a state migration policy, including regulation of the immigration and repatriation processes;
- Establishing the immigration quota and forwarding it for approval;
- Coordinating processes concerning temporary employment of migrant workers and ensuring their social protection;
- Developing draft inter-governmental agreements on migrant workers' employment;
- Executing functions formerly attributed to the Ministry of Labour and Social Protection, based on the 1990 Law on Migration.

The creation of the State Service for Migration demonstrated a tendency to unify and concentrate the migration-related issues within a single state authority. However, the functions of the Migration Service still did not reflect the entire spectrum of migration problems, as they were mostly limited to immigration and employment abroad.

At the same time, uncontrolled emigration and a lack of real data about migration flows in general generated more complicated problems pertaining to the economic and humanitarian situation in the country and to state security: trafficking in human beings, repatriation of illegal emigrants,

uncontrolled transit from third countries to the EU. The division of functions among a number of institutions and a lack of real Government control partially explained this development.

2002 - 2003

In order to improve the migration situation through legislative means, in recent years the Moldovan Parliament has adopted:

- “The Concept of the migration policy of the Republic of Moldova” (Resolution no. 1386-XXV of 11 October 2002) and
- The Law on Migration (law no. 1518-XV of 6 December 2002).

From an institutional point of view, the most significant development was the establishment of the Migration Department by Government Resolution no. 970 of 7 August 2003 (see chapter 4.2 for a detailed description). The Resolution provides for a transfer of functions from the Ministry of Justice, the Ministry of Foreign Affairs and the Information Technologies Department to the Migration Department, and, in general, the adopted Decisions can be seen as leading towards a unified approach to migration issues in Moldova.

3.3 The migration policy

3.3.1 The Migration Policy Concept

As mentioned above, in October 2002, the Moldovan Parliament adopted a Decree on the Migration Policy Concept¹³ of Moldova.

The Migration Policy Concept sets out objectives, principles and priorities for regulating and developing migration processes in Moldova. The Concept paper also describes the main public authorities in the migration field and their tasks and indicates how the migration policy should be implemented.

3.3.1.1 Objectives

The overall objectives of the migration policy are to regulate the migration processes in a way that limits possible negative consequences and to ensure national security. Concurrently, illegal migration and trafficking in persons should be combated and the rights of migrants protected.

3.3.1.2 Principles

The principles that constitute the basis of the migration policy are:

- Observance of human rights,
- Observance of the freedom of movement,

¹³ This decree is attached in the appendixes.

- Non-discrimination,
- Compliance with law,
- Non-refoulement (with respect to refugees and asylum-seekers).

3.3.1.3 Priorities

The Concept paper lists a number of activities that must be undertaken by the relevant public authorities.

1. The legal framework should be improved.
2. International treaties and organizations should be joined, the national legislation harmonized and migrant's rights protected in accordance with those treaties. Partnership with other countries and cooperation with international organizations should be promoted.
3. Better coordination and more efficiency in the implementation of the migration policy should be secured by creating a central public governing body in the migration field.
4. International agreements on job placement of Moldovans should be signed to regulate labour migration and to secure the rights of those migrating from Moldova.
5. Conditions for the integration of migrants and the re-integration of Moldovans returning from abroad should be created.
6. A computerized system to register migration movements should be created.

3.3.1.4 Implementation

To implement the migration policy, the Concept paper sets out the following measures:

1. The elaboration of a programme on the implementation of migration policy, which focuses on the development of the national economy.
2. The establishment of a central public governing body in the migration field authorized with a number of specified tasks.
3. The establishment of a computerized population migration information system with a number of functions.

3.3.2 The National Action Plan on asylum and migration

Since the fall of 2003, the MMD has been cooperating with other authorities to prepare a National Action Plan¹⁴ on asylum and migration. The Plan is to establish the priorities in the asylum and migration field for the coming years. It is in line with the Government's intentions, as stated in the Decision of 7 August 2003, to authorize the MMD to develop strategies and priorities for work in the asylum and migration fields. The National Action Plan will be part of a Government Decision and will be presented to the Parliament for discussions.

The Plan will consist of contributions from a number of ministries and departments, not all linked directly to migration, and the responsibility to implement the various parts of the Plan will also involve a number of actors. The preparatory work is being coordinated by the MMD.

¹⁴ The October 2003 version is attached in the appendixes.

Whereas work on the Plan is still in progress, the first draft shows that the proposed activities are a mix of specific activities to be undertaken, e.g. the creation of a database and an information system, and of broader, more policy-oriented measures. Many of the activities seem to be subject to international funding and partnership.

Recommendation: The creation of a National Action Plan containing a set of priorities is strongly supported. However, it is important that the relevant Moldovan authorities strike the right balance between goals and realities in the course of drafting the Plan. It is recommended that the National Action Plan not consist of too many activities and that they are prioritized, which could be reflected in established timeframes. If possible, long-term “milestones” and timeframes should be developed for each of the broader activities in the Plan. Thus, the points in the Plan will not only be statements but also operational activities. Moreover, it is strongly recommended that institutional responsibilities and milestones and timeframes be clearly delineated.

3.4 The legal framework

3.4.1 The Law on Migration

As prescribed by the Concept paper, the Law on Migration was passed by the Moldovan Parliament on 6 December 2002 (hereinafter, the Migration Law). This law is the cornerstone in the legal framework on migration. It sets out principles and objectives of migration and the competencies of the administrative bodies involved in migration issues, as well as lays out the basic rules on emigration and immigration, although matters related to asylum-seekers and refugees are not covered by the law (see below).

3.4.1.1 The principles and objectives

The principles and objectives set out in the law correspond to those in the Concept paper (Articles 4 and 5).

3.4.1.2 The authorities and their competencies

The law specifies the MMD as the central public governing body in the migration field (Article 7) and describes its tasks in 22 points (Article 8).

The other relevant authorities mentioned in the law (Article 9) are the Ministry of Foreign Affairs, the Ministry of Interior, the Department of Border Guards and the Department of Information Technologies, as well as local governance, tax bodies and law enforcement whose tasks are described in less detail. They are all to inform the MMD about their activities.

The authorities and their tasks are described in more detail in chapter four.

3.4.1.3 Emigration

Citizens of Moldova have a right to choose their place of residence and, thus, are free to leave the country unless they serve sentences, are under investigation for criminal offences or have liabilities

to the state or to physical or legal persons (Articles 10 and 12). All persons leaving Moldova must be registered (Article 10).

Emigration for labour purposes is also regulated (Article 17).

3.4.1.4 Immigration

Immigration to Moldova must fall within the limits of the annual immigration quota set by the Government at the proposal of the MMD. The quota cannot exceed 0,05 % of the population (it was set at 2.114 persons in 2004) (Article 14). Public order measures can also limit immigration (Article 15).

Recommendation: The main purpose of the immigration quota, which is to regulate the number of foreigners coming to Moldova for work thereby protecting the Moldovan workforce, could also be achieved by the regulations on work permits. This would allow for more flexibility. Once when the quota was exceeded, the problem was solved by a presidential decree. This is not a satisfactory way to resolve such issues, but rather is likely to undermine the quota and the idea behind it. On this basis, it is recommended that the relevant Moldovan authorities and decision-makers consider whether a quota system should be upheld.

Immigration is divided into the following three main categories:

- **Family immigration.** Spouses, children and parents of and persons in the custody of an individual residing in Moldova have a right to immigrate to Moldova under certain conditions (Articles 16 and 24).
- **Labour immigration.** Work permits can be granted to both employees and persons establishing a company in Moldova, provided that certain conditions are met (Articles 17, 24 and 25).
- **Immigration for educational purposes.** Immigration to Moldova for educational purposes is conducted on the basis of agreements with other countries and foreign educational institutions (Articles 19 and 24).

Special rules apply to foreign companies who conduct work in Moldova and want to use a foreign workforce (Article 26).

The categories of immigration as well as emigration are dealt with in more detail in chapter five.

3.4.1.5 The legal status of immigrants

A foreign citizen can obtain the right to residence in Moldova by requesting an immigration certificate. Thus foreigners who wish to stay in the country for more than 90 days must apply to the MMD for a certificate that can be granted either temporarily or permanently. A certificate is granted if the conditions for immigration are met (Article 24). The procedure that the MMD will follow for granting certificates is to be set out in a regulation, which should be approved by the Government (Article 28).

From the moment an immigration certificate is granted, the foreign citizen also receives immigrant status (Article 21). This means that the immigrant is entitled to the same basic rights that Moldovan

citizens enjoy, with certain exceptions (Article 22). It also means that a number of duties must be observed (Article 23).

The immigrant status will be valid until the person becomes a Moldovan national or leaves the country permanently (Article 22).

If the grounds for staying in Moldova are no longer present, the right to stay can be revoked. When foreign citizens are held responsible for certain offences, they can be expelled from the country (Article 32).

3.4.2 Other laws

In addition to the law on Migration, a number of other laws regulate parts of the migration field. These laws are described below.

3.4.2.1 The Law on Citizenship of the Republic of Moldova (law no. 1024-XIV of 2 June 2000)

The law determines the manner in which Moldovan citizenship is acquired and lost, renounced and withdrawn.

Although the law contains no provisions that directly refer to foreign citizens, migrants and stateless persons, it does serve as a basis for resolving repatriation issues (persons entitled to acquire Moldovan citizenship). This specifically refers to former soviet citizens of Moldovan origin who, after the USSR collapsed, were entitled to acquire Moldovan citizenship in a simplified manner when repatriated from other CIS countries.

In 2003, a new law was adopted which allowed Moldovans to hold dual citizenship. However, this law does not clearly define the legal status of the persons holding dual citizenship in Moldova, including the legal rights and obligations of these persons.

3.4.2.2 The Law on the Status of Foreign Citizens and Stateless Persons in the Republic of Moldova (law no. 275-XIII of 10 November 1994)

This law determines:

- Rights and obligations of foreign citizens and stateless persons residing in Moldova (the right to employment and education, to have a family, to associate, the privacy of persons, home and property, the right to move freely within the territory of Moldova, access to justice and effective satisfaction of judicial needs and rights). The law also indicates the specific status of the diplomatic officers located on the territory of Moldova, as well as that of their family members.
- Restrictions pertaining to foreign citizens. The restrictions are not formulated exhaustively. The law states that foreign citizens and stateless persons cannot be involved in activities for which Moldovan citizenship is required by law (examples are government officials and positions within the Army.) Foreign citizens do not have voting rights and cannot finance electoral campaigns at any level, just as they do not have the right to associate with political parties.

- Liability of foreign citizens and stateless persons to the state. Offences can reduce the term of stay, and deportation can be the result of violations of the legal regime of staying in the country.
- Criteria for deportation or extradition of foreign citizens from the country.

3.4.2.3 The Law on Identity Documents Comprised in the National Passport System (law no. 273-XIII of 9 November 1994)

The law:

- Determines the identity documents (identity cards, passports) to be used in the national passport system both for the citizens of Moldova and stateless persons permanently residing on the territory of Moldova.
- States that identity cards shall be issued to stateless persons permanently residing on the territory of Moldova. Such identity cards shall be issued at birth and changed at the age of ten, 16, 25 and 45 years. When travelling, stateless persons permanently residing on the territory of Moldova can obtain passports.
- Provides foreign citizens who permanently reside on the territory of Moldova with a residence permit. The residence permit is valid for up to ten years, but shall not exceed the validity term of the national passport. For foreign citizens and stateless persons who temporarily reside on the territory of Moldova, the residence permit shall be issued for a term of up to one year, except for students who receive their residence permit for a period stipulated in their contracts with the educational institutions. A special rule applies to founders of companies with an investment of at least 100.000 USD, who will be granted a residence permit for a period of up to five years.

The competence to prolong a period of stay has been held by the Information and Technology Department of Moldova (ITD), but is now to be transferred to the MMD.

- Indicates the authorities entitled to document the population (MOI and ITD).

Documents issuance procedures, coordination, fees and functions are stated more comprehensively in a Government resolution from 1995.

3.4.2.4 The Law on the State Border (law no. 108-XIII of 17 May 1994)

This law regulates the manner of crossing the state border and the structure of the Department of Border Guards in the fields of border protection and border control at the checkpoints.

3.4.2.5 The Law on Exiting and Entering the Republic of Moldova (law no. 269-XIII of 9 November 1994)

The law:

- Defines the right to exit and enter Moldova and states the restrictions to this right;
- Regulates the procedures for applying for documents for exiting and entering Moldova.

In particular, the law determines the grounds for issuing a passport (individual application); the grounds for and the manner of issuing invitations (the procedure for individuals was further regulated by a Government resolution in 1995 and a recent one in 2003); and the grounds for refusing to issue a passport (exit), an invitation (entrance) and a residence permit.

The law requires that foreign citizens staying in Moldova possess a valid national identity document and a residence permit issued by competent authorities in Moldova, and that they leave the country after their term of stay expires.

Recommendation: As part of a law reform, this law should be updated and incorporated in the Migration Law.

3.4.2.6 The Law on Tourism (law no. 798-XIV of February 11 2000)

In general, the law regulates the principles of organizing tourism (legal, social and economic), the competencies of relevant public authorities and the rights and obligations of tourist agencies, etc.

The law on Tourism has generated some confusion in the activity and rapport between the Department for Tourism and the MMD, the Border Guard Department, the Department of Informational Technologies and the Ministry of Foreign Affairs. The law has stipulated the attraction of tourists and the improvement of investment opportunities to Moldova as a priority. In conformity with the law, tourism is defined as “an area of national economy with complex functions that incorporates a wide range of goods and services offered for consumption to persons travelling outside their regular environment for a period of less than one year with a purpose other than compensated activity in the place visited.” As such, all visits pertaining to academic study, family visits and business can be regarded as tourism. This approach is in conflict with a number of mechanisms in Moldova, for example the issuance of invitations (which are supposed to be issued not by the tourism agencies, but by the MMD) and visas. The confusion this system generates was particularly apparent when the migration experts were told that there have been examples of educational institutions requesting the issuance of visas for educational purposes to persons invited to study in Moldova by tourism agencies.

A separate problem involves the record keeping of the number of citizens of Moldova who have relocated abroad by using documents provided by tourism agencies. Though the law and the Resolution of the Government of the Republic of Moldova (no. 1470 as of December 27, 2001 “On introducing tourist contracts, tourist vouchers and statistical evidence cards of tourist flows at the border of Moldova”) states the necessity of such record keeping, so far the registration of the passports cannot be strictly linked with the tourist voucher. This is due to the fact that the latter does not specify any names, only the number of persons leaving Moldova, and the registration of vouchers and passports at the border is being done separately. Moreover, the law on Tourism does not provide for any liability of the tour operators, which, in turn, does not ensure the return of persons to Moldova. This could allow such firms to use tourism as a way of taking persons abroad for employment purposes.

Recommendation: There is a strong need for the relevant Moldovan authorities and decision-makers to make the tourism and migration policies compatible. From a migration point of view, it is evident that the tourism policy hampers the stated objectives on registering the number and identity of people entering and leaving Moldova, which is a basic migration management tool. It

should be noted that the experts have only discussed this matter with the migration authorities and, thus, have not had the possibility of assessing the points of view of the tourism authorities.

3.4.2.7 The Law on Refugee Status (law no. 1286-XV of 25 July 2002)

This law establishes a legal, economic, social and organizational framework for granting asylum (refugee status, political asylum and temporary protection) in Moldova and determines the status of asylum seekers and refugees. The asylum field is not dealt with in detail in this assessment.

Recommendation: The total set of laws should be examined closely in order to streamline the regulations, fill gaps and avoid overlaps. As it stands, some subjects seem to be regulated by several laws, while other subjects need to be elaborated and described in more detail. Overall, there are too many laws regulating the same field.

A review of the laws should also include an assessment of the correspondence between Moldova's laws and the international obligations stemming from treaties, conventions, etc., to which Moldova is a party. In the framework of such a review – or law reform – it would be natural also to be inspired by the EU Migration Acquis, given Moldova's stated intention to integrate into the European Union.

Chapter 4 Overview of authorities in the Moldovan migration system

4.1 In general

A number of administrative institutions are involved in the migration processes in Moldova to various degrees.

Until recently, functions within the migration field were decentralized. The objective set forth in the Migration Policy Concept, however, is to establish a central public governing body in the area of migration. As stipulated in the Migration Law, that body is the MMD, whose functions are described in detail both in the law and in the Government Decision of 7 August 2003.

The law on Migration transfers some functions from various state authorities to the MMD. In reality, this transfer, or at least part of it, has yet to take place. Furthermore, even after the transfer of competencies, there will still be relevant actors in the migration field. These actors and their competencies are described below.

4.2 The Migration Department

The historical background prior to the creation of the MMD is described in chapter two.

4.2.1 Background

The creation of the MMD was introduced in the Law on Migration of December 2002, after the Migration Policy Concept of October 2002 acknowledged that a more efficient and coordinated effort on the part of the State was needed and that such an effort would require a bigger and stronger central public governing body.

Thus, the intention is to centralize competencies within the MMD in order to enable it to follow the migration process from the issuance of an invitation to, and the arrival of, a foreign national until the foreigner is issued a residence permit or leaves the country. It is hoped that this will make the administration more efficient and better coordinated.

The Government Decision of 7 August 2003 establishes the functions of the MMD and authorizes the transfer of competencies from other state authorities to the MMD. The main tasks are laid out in annexes to the Decision, based on the structure of the MMD. In the Decision, the number of staff members in the central office of the MMD, based in Chisinau, is set at 46. The allocation of the 46 staff members between the directorates of the MMD is also determined.

The MMD can move resources internally between the different directorates in the department by creating working groups and assigning staff to them for limited periods. However, the MMD cannot dispose of the staff of the Refugee Directorate for such purposes, although the Directorate is part of the MMD.

Based on its number of tasks and responsibilities, the MMD determined that it needed a larger staff than the number assigned to it. Moreover, the MMD acknowledged that the relative number of

tasks to the number of staff members inevitably meant that tasks had to be prioritized. In order to do so, the MMD would like to establish a picture of the total migration situation.

The Government Decision provides for the transfer of the following competencies from other governmental institutions to the MMD:

- Transfer of 18 staff members who deal with asylum issues and their responsibilities from the Ministry of Justice to the General Directorate for Refugees within the MMD. This transfer has already taken place.
- Transfer of the authority to issue invitations to foreign nationals, upon the request of legal entities, from the Ministry of Foreign Affairs.
- Transfer of the authority to issue invitations to foreign nationals, upon the request of natural persons, from the Department of Information Technologies (ITD).
- Transfer of the authority to prolong entry visas and terms of stay and to issue exit visas for foreigners who overstay, as well as to grant permanent residence to foreigners from ITD.

The transfer of these functions, except for those concerning asylum and refugees, is still pending mainly because a new electronic informational system and new documents have to be developed first and certain issues clarified.

The MMD hoped to finalize this process before the end of 2003, but it has to be understood that the transfer of functions entails certain difficulties.

One is the recruitment of staff. It is worth noting that, except for the General Directorate for Refugees, the MMD has to recruit new staff. The MMD was in the middle of that process at the time of the finalization of this report.

The MMD might be able to recruit people who have experience from previous employment with other government agencies in implementing relevant tasks for some of the 21 new positions. Higher wages in other agencies (e.g., in ITD), among other reasons, might become an obstacle in the recruitment of new staff, however.

The MMD does not currently have the budgetary funds for supplying new staff members with furniture and computers.

Another difficulty concerns the funding of the new activities. One example is those territorial offices whose functions were transferred from the Ministry of Labour and Social Affairs to the MMD, which does not have the funds for establishing or maintaining regional offices. Funds for such activities may be available in the 2004 budget, however.

The MMD would like that a higher percentage of the fees charged for the issuance of invitations. ITD charged 45 leis for issuing invitations, out of which nine leis went into the state budget and 36 lei into the ITD budget. Such a solution appears to be no longer possible, but other arrangements are being discussed with the Ministry of Finance.

Other ways of funding the activities are being contemplated. The MMD would like to analyze “migration chain” costs and compare them with those of other organizations. The MMD has also expressed a wish to know how such activities are organized and funded in other countries.

Recommendation: The centralization of competencies in the migration field is strongly supported. The transfer of competencies from other ministries and departments to the MMD should take place as soon as possible in order to achieve the objective of the Government to strengthen and coordinate better the efforts of the state in the migration field. It is noteworthy that there is no date for the transfers from ITD in the Government Decision of 7 August 2003, while dates have been established for the other transfers.

Recommendation: The effect of the strengthening of the MMD with new responsibilities and more staff is limited if the staff is not properly equipped and trained. Training of new and existing staff in administrative practices, as well as migration topics, is required. Funding for this purpose, as well as for the acquisition of office infrastructure and supplies.

4.2.2 Tasks

According to the Government Decision, the MMD shall, among other tasks:

- Promote a consolidated state policy on migration and submit proposals for priorities;
- Coordinate the activities of administrative bodies in the migration field;
- Propose policies and development strategies;
- Contribute to the harmonization of the national legislation with international norms and standards;
- Monitor the implementation of the legislation on migration;
- Create and maintain a database on migration;
- Collect and exchange information nationally and internationally;
- Forecast and manage migration flows;
- Draft proposals on the funding of the MMD;
- Issue, when necessary, normative acts, standards, instructions, etc.;
- Represent the Government in international for a;
- Take part in international cooperation mechanisms on the relevant issues.

In the immigration field, the MMD shall:

- Propose to the Government the annual immigration quota;
- Issue invitations upon request;
- Grant immigrant and repatriate status;
- Issue immigration certificates and work permits;
- Prolong visas, certificates and permits;
- Take decisions on the right to establishment for foreign nationals;
- Update the State Register with necessary information on foreign nationals;
- Take up controlling measures.

In the asylum field, the MMD shall:

- Elaborate draft regulations, etc.;
- Elaborate procedures, forms, etc., as necessary for processing asylum claims;

- Collaborate with relevant international organizations.

In the emigration field, the MMD shall:

- Negotiate international treaties and agreements,
- Register individual labour contracts made by Moldovans employed abroad,
- Inform potential emigrants on employment conditions abroad,
- Take up controlling measures.

4.2.3 The structure

The MMD is headed by a General Director who is appointed by the Government, as stipulated by the Law on Migration (Article 8). The General Director holds the overall responsibility for all activities carried out by the MMD and for implementing laws, decrees, decisions, etc. The General Director is accountable directly to the first Vice Prime Minister.

The Government, at the proposal of the General Director, appoints a Deputy Director. The Deputy Director acts on behalf of the General Director in his absence.

Furthermore, the Government Decision stipulates that a board should be instituted, consisting of seven members, including the General Director, the Deputy Director and the five heads of the MMD Directorates. The board's primary task is coordination.

The MMD consists of the following Directorates: Directorate for Immigration and Repatriation, Directorate for Labour Migration and Foreign Relations, Legal Directorate and State Inspectorate, Directorate for Administration, Finance, Logistic and Information and Directorate for Refugees.

The total number of staff members has been set at 46, not including the staff of 18 in the Directorate for Refugees.

The MMD hopes that the 2004 budget will earmark funds for setting up territorial units in some of the Moldovan regions and possibly, over the years, extend that to more or all regions in the country.

It is also one of the MMD's stated aims to have officers at international border points, probably starting at the International Airport in Chisinau, and at Moldovan embassies and representations abroad.

Recommendation: The Directorate for Refugees should, for staff purposes, be an integral part of the MMD, so as to enable the MMD to assign its staff, including the 18 persons in the Directorate for Refugees, to the Directorates where they are most needed. The staff structure should be flexible, especially considering the large amount of tasks to be carried out by relatively few people. The board should be able to make decisions regarding the rotation of staff.

Recommendation: It is strongly recommended that authorities dealing with migration matters are present in the regions of the country. For example, it should not be necessary to have to go to Chisinau in order to file an application for an immigration certificate. However, in the course of implementing this initiative, the relevant Moldovan authorities and decision-makers should

consider how these objectives concerning a regional presence are best achieved. One way is to establish regional branches of the MMD, as has already been suggested. Another way is to make better use of the territorial officers under MOI (see chapter 4.3 for a description of the territorial officers).

The necessity of stationing the MMD officers at the international border points could be questioned, as it could complicate the procedures at the border points. The need to control better the number of foreigners and Moldovans entering and leaving the country is acknowledged. It ought to be possible to achieve this goal by strengthening the Border Guards and encouraging close cooperation between the Border Guards and the MMD, including the future regional offices of the MMD or the territorial officers under MOI (see chapter 4.6 regarding the Border Guards).

The placement of MMD officers at Moldovan embassies abroad can be debated as well. It seems that the regular personnel at the embassies should be able to handle the questions and cases relating to migration, in close cooperation with the MMD when necessary. All things considered, it is recommended that emphasis is placed on establishing and consolidating the main tasks of the MMD and that necessary staff is assigned to this task.

4.2.4 The data system

The MMD has a data system¹⁵ that is used as a case record system. It is basic, but well-functioning, and contains data such as name, birth date and nationality of applicants. The data is kept in electronic format and serves as a tool for identifying previous cases and the status a person might have had. The information contained in the database is limited, however. For example, only positive decisions taken by the MMD are recorded, whereas a negative decision (for instance a refusal to grant an immigration certificate) is not.

It is the MMD's objective, as stated in the Migration Policy Concept of October 2002, to develop a computerized migration information system in order to implement the migration policy of Moldova. Furthermore, the MMD considers such a system helpful for periodical projections, research and control.

The Government and the MMD have acknowledged at an early stage that consistent, reliable and timely information on migration patterns, flows and trends is needed to plan and manage the development of the migration policy. The MMD has also underscored the need for a transparent, flexible and comprehensive national data collection system that is compatible with the systems of neighbouring countries in order to formulate coordinated responses for cross-border migration issues.

Recommendation: To strengthen the exchange and sharing of available migration data in Moldova, the establishment of a network should be considered, i.e. an inter-ministerial "working group" that will include core data collection institutions, focal points with well-defined responsibilities and organizations or individuals that would coordinate data exchange.

¹⁵ Operating system – MS Windows 2000; Main Server – MS SQL 2000.

A further in-depth analysis and overview of existing migration data structures in Moldova should be conducted with the aim of supporting the development of a migration data system in Moldova. The workflows and management of the cases should be described in full detail, so as to provide the basis for the further development of electronic processing of applications.

As a part of creating a basis for the development of the system, the MMD and the inter-ministerial “working group” should define a minimum set of five to ten overall migration data indicators that could be collected, actively applied and shared regularly at the national (and later regional) level using an agreed-upon format (e.g. data on asylum applications, labour migration, irregular migration, etc).

Areas for possible training by external experts reinforce existing data structures or to provide new models, where requested and appropriate, should be identified. A test case CD-ROM, containing training modules on data quality, collection, and coordination issues could be created and internship and “trainer-of-trainers” programmes developed.

To anchor and strengthen the creation of the migration information system, an appropriate IT platform for national data collection and exchange should be developed, starting with pilot infrastructures, e.g. software/hardware. As an integrated part, working group officials should be readied for study-visits and workshops to assess data collection methods.

4.3 Ministry of Interior of Moldova – Service of Combating Illegal Stay and Migration of Aliens (MOI/SC)

4.3.1 The tasks

The Service of Combating Illegal Stay and Migration of Aliens was established as a unit within the Ministry of Interior (MOI/SC)¹⁶ in July 2001.

Among the MOI/SC’s main tasks are the control of stay of foreigners in Moldova and the combating of illegal and irregular migration. The investigation, apprehension and deportation of irregular migrants are carried out according to the MOI/SCs’ mandate. The unit drafts proposals on amendments to the legislation in these areas and plans and develops strategies for the migration mandate of the MOI/SC.

In the first seven months of 2003, 2.122 investigations were launched by the MOI/SC in the migration sphere (in the same period of 2002, the number of investigations was only 1.500), 135 court orders for deportation were issued (compared to 30 for the same period of 2002) and 28 foreigners had their stay reduced (compared to seven for the same period of 2002).

¹⁶ In fact, the service was in reality established by an internal ruling of the MOI, based on the Government Decision no. 398 of 6 June 2001 on the creation of the ITD. According to this Decision, all functions related to the registration and documentation of the foreigners in Moldova were transferred from the MOI to the ITD, except the control of the regime of stay of foreigners. Until this Decision, the ITD was part of the MOI and was called the “General Directorate for the registration and documentation of the population”.

A special operation called “Guest” is an example of the MOI/SC’s overall coordination role. It was carried out from 5 to 15 August 2003 with the aim of combating illegal stay and transit. Sixty specialized local officers co-coordinated the action, which involved police forces at the national level. According to the MOI/SC, the operation was met with a successful response from Moldovan citizens, foreigners and mass media. It resulted in 42 deportations for illegal stay. Persons staying both legally and illegally were subject to these controls and the operation also included ordinary police checks. One hundred and eighty persons were caught and 1.200 cases on breaching the migration laws and regulations were subsequently filed.¹⁷ Similar operations are taking place continuously, although, given the time and resources used, this particular operation has had the largest scope and has received the most attention, even at the political level.

Despite the relatively positive outcome of the above action, the MOI/SC concluded that the staff is not yet sufficiently trained and that there is an obvious need for an automated data/information system, i.e. the officers should use the telephone or postal system to obtain information on a foreigner’s status rather than the methods that were employed in the operation. For example, before or after office hours, officers are not able to obtain any information. According to the MOI, problems revealed during the operation also pertain to the BG, the MMD and the MFA.

4.3.2 The structure

The central management of the MOI/SC is based in Chisinau while 60 high-ranking officers process tasks on a local level. Due to the relatively low caseload, these officers also deal with other tasks. Some police officers can be assigned a variety of tasks, while others are more specialized. Specific migration tasks are listed in the “Law on Police”.

4.3.3 Specific problems

It is very difficult for the MOI/SC to obtain the travel documents for persons who have to be deported. Such persons do not cooperate since they want to extend their appeal procedure and, at the same time, only few countries have diplomatic representation in Moldova. The identification of persons is described as the main problem; it has even been suggested to make copies of passports at entry points to reduce the problem.

A procedure to identify foreigners has been established by an MOI/SC internal directive, however. This procedure pertains to what actions the police should take when a foreigner without proper documents and authorizations is identified, e.g.: fingerprint registration and verification; verification of the criminal history in collaboration with Interpol and other international police organizations; the request of all information and data on the respective person from the MMD and the ITD; and the submission of the person’s profile through the MFA to the Embassy of the person’s presumed country of origin, etc.

The establishment of detention centres (for deportation) is also being considered. The MOI/SC has drafted a project proposal on the establishment of a detention centre, which has been submitted to

¹⁷ In the case of a foreigner breaching the legislation, but not to the degree where deportation is in question, the foreigner receives a receipt and must address him- or herself to the MOI. It is the MOI’s experience that foreigners who are not detained tend to disappear, which is especially true of foreigners who could face deportation.

the Government and approved. The centre has not been established yet, as questions concerning financing and identifying the right place for the centre have yet to be answered.

Currently, foreigners who face deportation are placed in centres for homeless people and a semi-closed centre (capacity of 100 to 200) for foreigners without documents and for deportees.

Another proposal is the establishment of a deportation fund. The current regulation states that the inviting party or the invitee has to pay for the costs related to the deportation; in practical terms, it is the MOI that first pays and then tries to recoup the cost from the invitee. If no invitee exists, the funds are paid from the state budget.

A deposit scheme has been proposed to support the costs of and to facilitate deportations and will be financed by the fees and/or by a deposit of the firm issuing the invitation¹⁸ to the foreigner in question. The MOI/SC officials have studied the legislation of Germany, Poland and Romania for inspiration in potential ways of handling this matter. However, no amendments to the law on Entry and Exit to this effect have yet been approved. During the meetings with the experts, however, the MOI/SC expressed a wish that the funding be established by IOM.

Recommendation: The issue of who is to take responsibility for expenses during the stay and in the event of the deportation of a foreigner is a legitimate one. In many cases, the traveller himself must show proof of adequate funds upon entry, and it is only if there is doubt about the traveller's ability to support himself that a "sponsor" within the host country is required to take responsibility. There are many models for such requirements, but the scope of such obligations should be described in a rather detailed and precise manner for the responsible person to know the "risks" involved in taking on such responsibilities.

The funds that should be provided to secure the exit of a person could carry a heavy administrative burden and experiences from other countries show that such a scheme often does not balance the aim it tries to reach. It should therefore be carefully considered if such a scheme should be introduced.

4.3.4 Regional officers

As mentioned above, 60 local officers are implementing the MOI/SC's migration-related tasks locally.¹⁹ The officers also deal with other tasks, and these differ locally according to their Terms of References. Tasks specific to migration are stated in the "Law on Police".

The officers lack access to information on foreigners since most offices do not even have an external telephone. Access to legal documents is scarce, which makes the division of labour between authorities at times very unclear. Hard copy files on foreigners are kept in each local MOI/SC office. To overcome language problems, the foreigner's families or friends, or students from local universities, act as translators.

Thus, the officers have to be creative in implementing their migration-related tasks, e.g. an officer conducted interviews with the local press as part of her information dissemination tasks.

¹⁸ Companies that appear to have issued invitations often do not exist.

¹⁹ The local officer in Balti was visited during one of the expert's field trips to Moldova.

Recommendation: The idea of having authorities able to deal with basic migration matters placed in the regions is strongly supported. For example, it should not be necessary to go to Chisinau in order to file an application for an immigration certificate. However, in implementing this idea, the relevant Moldovan authorities and decision-makers should consider how the objectives of a regional presence are best achieved. One way is to establish regional branches of the MMD, as has already been suggested. Another way is to make better use of the territorial officers under the MOI/SC. These officers will, in any event, be dealing with foreigners locally as a part of their daily police work.

If what appears to be the least burdensome solution is chosen, namely building on the existing the MOI/SC migration structures with territorial officers, these officers should be supported in their work through substantial training in migration matters. Furthermore, the officers should be provided with basic equipment (communication and general office equipment, basic fraudulent document detection equipment for key offices, access to legislative and other reference materials, etc.) and be linked to any database that would be developed.

Recommendation: The proposal for the establishment of detention centres (for deportation) was approved in mid-October; however, no follow-up developments occurred after the approval of the Government Decision. The main constraint is the lack of resources, and it seems there will not be developments in this regard without international support. International donors could consider supporting the establishment of such a centre, paired with schemes for both deportation and assisted voluntary return (which will be both more humane and cost effective).

4.4 Ministry of Foreign Affairs of Moldova, Consular General Direction (MFA)

4.4.1 In general

The main task for the MFA in the migration field is the actual issuance of visas. This issuance takes place at four consular issuance points at the border, which are staffed with MFA officials. Moldova has 21 Diplomatic and Consular Missions around the world, 18 of which have consular functions.²⁰

Visa issuance is based on the presentation of a personal invitation, which is processed in Moldova by the authorities and the inviting party. By presenting the original invitation at the Consular post, a potential visitor to Moldova can obtain a visa. A visa can also be granted through the postal system for a limited number of visa categories, e.g. for well-known business people or for visitors living in remote areas without nearby Consulates, etc. If the Consular officers suspect that an invitation is falsified, they verify it with the relevant MFA authorities in Chisinau. It is important to note that certain examination procedures have to be followed that pertain to a "Blacklist" of unwanted persons and "High Risk States".²¹

Nationals from EU Member States, the U.S. and Canada can obtain exit-entry visas for Moldova for a term of up to 90 days without submitting invitations from Moldovan natural persons or legal

²⁰ A list of these is attached in the Appendix.

²¹ The lists exist in paper form only.

entities and the visa can be expedited within 24 hours. (The issuance fee is 40 USD from abroad and 60 USD at the border.)

Agreements on visa-free regimes exist with CIS countries and bilaterally with Romania.

Consular officers are also responsible for notary functions, in addition to their regular consular duties. For example, if a Moldovan citizen wishes, s/he can be registered at her/his Embassy for such services, and this is usually the same post where s/he obtains other citizen services.

Information on the visas that have been issued is sent to the MFA from the Consular posts, either in hard or electronic copy. This information is also shared with the MMD; and to further facilitate information exchange, a system integrating these two databases is planned for the future.

4.4.2 The Moldovan Embassy in Vienna

In order to have an impression of how cases are processed in Moldovan Embassies abroad, the Moldovan Embassy in Vienna was visited. The following information was derived from that visit.

The Embassy can issue all types of visas: Diplomatic, Official, Business, Tourist and Ordinary visas (see section 5.2 for a description of the different types of visas). The Consul ensures that the applications are filled in correctly and that the necessary documents are present.²² The Embassy has never detected a false invitation, but verification calls to Moldova are occasionally made.

For information on the Moldovan visa regime, the Embassy encourages people to look at the following websites: www.tourism.md and www.moldova.md.

For security equipment, the Embassy uses UV light and magnifying glasses to detect false documents.²³ Visa stickers are transported from Moldova to Vienna in a diplomatic pouch physically carried by Embassy staff members. At the Embassy, the Consul is the only one with authorized access to the stickers.

MFA Consular staff members participate in an annual consular meeting in Moldova where they receive training on the detection of false documents. In Vienna, "The Consular Club" arranges visits and serves as a valuable network for the Consular officers.²⁴

Official instructions on visas and other consular matters exist. Any revisions are published in the official Government paper "Monitorul Oficial". A comprehensive MFA handbook is being drafted, although, due to budget constraints, it is not clear when it will be published.

Furthermore, the Embassy conducts functions for Moldovan citizens. As mentioned earlier, Moldovan citizens may be registered at the Embassy²⁵ if they wish to do so. From March 2003,

²² The fees received by the Embassy for the issuance of visas goes into the Embassy's budget.

²³ In one incident, six Thai citizens were detected with Chinese passports containing Moldovan visas.

²⁴ The Consular Club has 78 members.

²⁵ If Moldovan citizens face deportation from Austria, they have one week to prove their identity. After a week, they receive a certificate from the Embassy as proof of their identity. However, most Moldovans who stay illegally in Austria do not want to return to Moldova; therefore, they often change their identity and claim asylum when arrested.

Moldovans staying legally in Austria (including asylum seekers) may obtain passports and other official documents through the Embassy.

Recommendation: It seems that the current personnel at the embassies are able to handle the questions and cases relating to migration. With a strengthened MMD, closer cooperation between the MMD and embassies could be established when circumstances warrant it. Training should be continued and a specific migration curriculum should be developed for new, as well as existing, consular staff within the MFA.

The consular instructions should be further consolidated and developed, ideally as a handbook with an easy to update format to allow content alterations as procedural changes occur. In a future Migration Information System, an electronic link to the MMD should be an integrated part of this manual. An electronic case-handling component should be considered as well, and the handbook and “Black Lists” should also be made available electronically.

Resources permitting and specific situations demanding, the MMD could consider having special attachés stationed at targeted embassies in special situations.

4.5 The Information and Technology Department of Moldova (ITD)

4.5.1 In general

The Information and Technology Department of Moldova (ITD) was established in 1995 and is located in Chisinau, although it has 140 satellite offices across the country.

The ITD consists of five different sub-divisions: the Main Directorate for Documentation of the Population, the Main Directorate for Recording Transportation Means and Drivers’ Licenses, the Main Directorate for Civil Status, the Enterprises Registration Chamber and the State Enterprise “Registru”.

The Enterprise “Registru” has the following main responsibilities:

- Establishing and maintaining the Central Data Base of the ITD;
- Hosting the State Register of the Population, transportation means and drivers;
- Hosting the State Register of Legal Entities;
- Producing ID documents, registering certificates for transportation vehicles and drivers’ licences;
- Producing other special documents with protective features.

The ITD’s management unit, which produces statistical data, used to be a part of the MOI. Recent legislation transferred these MOI functions to the ITD.

The “Law on State Register” stipulates that all documents have to be kept both in hard and electronic copy. In order to make this possible and to individualize the process, each person in Moldova has been given with a 13-digit personal number. The first time a person applies for any

document, the ITD verifies the person's identity and retrieves their personal information from the documents issued in the old system. The ITD, which is self-financing, issues up to 100.000 identity documents each month. Technically, all Moldovans can access their information in the database.

However, only 450 legal entities have been authorized access to the database. These typically include state authorities and private business entities. Access is based on agreement and law; only 70% of those applying gain access to the database. The application for access is negotiated at a logistical level (depending on a person's access to the main server) and a procedural level (access depends on a "need-to-know" basis). The system is also compatible with all IT systems currently operating in Moldova.

4.5.2 The tasks

The ITD is also the designated state structure that deals with the registration, production and issuance of most official documents in Moldova; 56 different documents are issued by the ITD, ranging from drivers' licenses and passports to ID cards for aliens.²⁶ The present procedure of attaching an additional piece of information to the ID, which contains pre-1991 data on the person, will cease when all relevant authorities are able to access the database.

The ITD produces most of the security documents at its central department in Chisinau. The production takes place in a secure environment on modernized equipment.

Different authorities address the ITD to obtain information, either on an ad-hoc or a regularly agreed basis. Since new workstations have been installed in the airport and at the Consulate in Moscow, the ITD has met with all representations abroad as one of the steps in developing a unified state register.

Recommendation: A working group on migration-related data could be set up with the aim of allowing other authorities in the migration field to get the optimal use from the ITD's experience within the data processing field. In developing their Migration Information System, the MMD should consider how the data available in the ITD could be of use.

4.6 The Department of Border Guards

4.6.1 In general

The Department of Border Guards (BG) was established in 1999. In 2001, it began to work with migration on the borders. The BG has a staff of approximately 6.000 persons, of which approximately 50% are full-time conscript personnel, while the rest are professionals contracted as officers. It is expected that in the future contracted professionals will fill the positions in the BG to a larger extent.

The borders with Ukraine cover 1.222 km, and 76 border crossings have been established (of which 26 are in Transnistria). Moldova's borders with Romania span 862 km and nine crossings have been

²⁶ It is planned to produce refugee IDs soon.

established to date. Out of the total border crossings, 17 are international and every nationality may cross. At the remaining interstate border crossings, only Moldovans and Ukrainians may cross while at the regional ones, local inhabitants may cross.

The BG uses the “Pasager” (i.e. Passenger) registration system, which was modelled after the systems available in Austria, Hungary and Romania. Moldovan specialists have visited the Belarusian Company “Regular” and adapted the “Pasager” components from the “Regular” concept. Therefore, “Pasager” is only partly licensed from “Regular” and partially based on its own developments. “Pasager” is only used to 60% of its anticipated capacity due to lack of equipment and insufficient infrastructure. Currently, data is entered into the system, which contains a warning list of “wanted persons”. Information from the system’s database is collected every 24 hours. At the Chisinau airport, the BGs are continually on-line with “Moldtelecom”, the national telecommunications system. The BG intends to develop the system further, so that it contains a collection of fingerprints, iris and face-recognition software.

All information registered at the borders is sent to the MMD from the BG headquarters²⁷ within a ten-day period. In the future, The BG intends to expand the amount of information passed to the MMD. In general, the BG is of the opinion that the current direct cooperation and contact with other Moldovan authorities works well.

The “Pasager” system is only in place at international since the lack of funds has, until now, made it impossible to equip the interstate and regional borders with the same system.

Seven to eight millions border-crossings take place every year. The crossings over the 453 kilometres of border between Transnistria and Ukraine are estimated at approximately three million. As a substantial number of illegal entries take place through Transnistria, an attempt is being made to allow joint control on the Ukraine/Transnistria border, a proposal which the Ukrainian authorities are still considering. Otherwise, the cooperation with Romania and with Ukraine, which is expressed in the form of a protocol on cooperation,²⁸ is described as good.

In general, the following equipment is available for the BGs: passport machine readers, detection equipment, UV light, infrared light and magnifying lenses. “Regular” equipment is provided for some border posts and samples of visas can be used in cases of doubt. The BG has access to the ITD’s system, but only as far as it concerns information on Moldovan citizens.

Some equipment needs are already being addressed. The EU plans to equip fully two to three border posts within the TACIS programme. In addition, the US government has equipped the BG with 42 vehicles, as well as with radio stations and passport readers.

4.6.2 Border crossing points visited

²⁷ Direct on-line delivery of information to the MMD will be possible when a fibre connection is delivered to all international crossings.

²⁸ A joint declaration on cooperation in border control was signed by the Moldovan and Ukrainian leaders in November 2003. Moldova has concluded a readmission agreement with Ukraine and a protocol is being prepared. The BG is working on enforcing an agreement with Romania.

Recognizing how important the role of the BG is for the total management of migration in Moldova, since the border is literally the first and the last point foreigners and Moldovans face in “migratory situations”, a number of border points were visited during the assessment. The border points shared many similar features, but definitely some notable differences as well. The method of listing the descriptions below may seem repetitive at first, but this is essentially to allow for easier comparison of the features that do differ among the border crossings visited.

4.6.2.1 Border Crossing, Palanka (border to Ukraine)

This border crossing point consists of an entry gate regulated by a border guard. The sequence of the border control goes as follows: the custom inspection takes place first, followed by the border control; in the final stage, the passengers exit through a gate controlled by BGs.

The border crossing also has staff on hand to provide special services such as banking and currency exchange, as well as veterinary and preventive medical inspection and care. The BG officers act upon suspicion; e.g. if animals are crossing the border, they might be checked by a veterinarian.

When a person has been cleared by customs and special services, s/he receives a receipt with which customs and the BG authorize the exit from the country. Even if all documents are found to be in order, the person will not be allowed to exit if s/he is under investigation for breaches of the criminal code.

As far as equipment is concerned, the Palanka border crossing was equipped with two PCs in 2002, and, in 2003, the “Pasager” software was installed. Even though the staff received technical training at the Ungheni BG Training Centre, further practical training is still needed. Without the additional targeted training, the BG staff is basically being trained “on-the-job”.

The staff works in 24 hours shifts on alternating dates, due to a shortage of technical staff. This is not too inconvenient since all the staff live close to the border crossing.

The green border is controlled by points and patrols; but the BGs do not control the Transnistrian part of the border.

Since the beginning of 2003, approximately 300.000 persons have crossed the border, resulting in an estimated 500.000 yearly. Of those, 65-70% have been Moldovans, with the remaining mainly Russians, Romanians and Bulgarians.

The control of transiting persons takes place by first identifying them individually through face recognition, after which machine-readable and manual registration takes place. False documents are, in most cases, recognized visually in the case of evident falsifications, but the BGs admitted that they cannot detect highly sophisticated falsifications. UV light and magnifying glasses are available to support the detection. Secondary control would, thus, have to be conducted in Chisinau, but this has not yet occurred.

If a person is detected travelling with a falsified document, s/he can be apprehended for up to three hours. The person in question is registered and the consulate of the country of which the person is a national is contacted. Subsequently, the person is brought to the local court. The person may be held

for up to 24 hours at the court under special circumstances. In very special cases, the police from Chisinau are called in to detain the person. If they cannot identify the person or no embassy or consulate can be reached, the central authorities are contacted; the person is then passed to the MOI, the ITD, the Security Department or the section of customs combating economic crime.²⁹ Apprehension is allowed for the operational authorities up to 72 hours, after which the normal court procedure has to take place.³⁰

Ukraine and Moldova have signed a cooperation agreement and local protocols establishing procedures and division of responsibilities at the Palanka crossing. The Palanka BGs have meetings to exchange information with their Ukrainian counterparts, and the minutes from the meetings are followed by decisions and concrete actions. This is to say that the cooperation is both concrete and practical, although the Ukrainians have not yet delivered any persons defined under the “suspicions procedure”. This procedure for “the escorting and handing over of persons and commodities between the Moldovan and Ukrainian border authorities” was established by the Agreement between the MOI and the BGs from Moldova and Ukraine, signed 11 March 1997. The BG escorts the persons who are apprehended at the checkpoints and the green border. However, if the persons are apprehended on the territory of the country, the police escort them. An escort document, serving as a delivery protocol, is used for this procedure; it stipulates the personal data of the returned person(s) and/or data on the returned items, the grounds for returning the persons, the transportation means and a description of the items.

At the Palanka site, there is a road that is officially "rented" to Ukraine, which passes by the border post without any division demarcating where the border post territory ends and the road begins. In order to address this security gap, the BG expressed their wish for a fence to be put up to delineate clearly the border post territory from the road.

Another need for the BG is modern types of equipment for the verification of vehicles. At present they use sticks and flashlights. People smuggled in vehicles have not been detected at Palanka, although there have been such cases at other border points. Nonetheless, information exchange and cooperation between customs and the BG works well, e.g. checking of trucks is done jointly.

A problem faced by the BGs is the “crossing of passports” since passports are frequently carried in bulk by a single person across the border in order to bring them to cities such as Bucharest for visa application at embassies. “Employment agencies” are often involved in this transport, and the BGs believe that it is most likely associated with criminal activity. The BGs apprehend the passports, since their bulk transportation is illegal and they are considered state property. The status of other national passports in this context, however, remains unclear.

4.6.2.2 Border Crossing, Leuseni (border to Romania)

²⁹ In the case of a Lithuanian who lost his passport. His identity was first verified, and then he received a certificate proving that the passport was stolen or lost, only after which the BG could issue him a certificate that enabled him to exit.

³⁰ By 3 August 2003, 11 cases had already been apprehended at Palanka.

The first part of the crossing consists of the entry gate.³¹ Border control follows, then the individual passes customs control where the person crossing receives a ticket that needs to be stamped by the BG, Customs³² and the Transport Authorities.

The ticket system demonstrates to the other border personnel that the different fees have been paid. Moldovan car owners are required to pay the Ministry of Transport once a year. For foreign passengers there is a fee per crossing if they transport goods or passengers. There is also an ecological fee that needs to be paid in the case of foreign passengers.³³

Registration takes place upon exit. For vehicles such as buses, only the registration numbers, the drivers and the numbers of persons are registered. If the vehicle is a tourist bus, the BG also registers the tourist vouchers. The BG has basic "Regular" document detection equipment.

Staff work 12-hour shifts every two days and there are eight to ten BG staff working per shift. Approximately 3,000 persons and 800 vehicles cross per day and the crossing has a 24-hour consular service, one per shift, covered by four MFA staff.

The BG cooperates well with the Romanian colleagues; they share information through the telephone and at official meetings. The Romanians' EU aspirations are reflected in the amount of traffic through this crossing point, since a lot of people now want to use Romania as a transit to the EU. The Moldovan BG senses that the control has become more stringent on the Romanian side. For example, the Romanians restrict entry for returning illegal Moldovan citizens with a deportation stamp in the passport. Identification documents can be used in Romania by Schengen citizens (but not in Moldova); this causes problems since some persons think this also applies for Moldova.

Apprehended persons are kept in a special room. There is no regulation to cover cases of rejected persons, however negotiations to this effect are ongoing at the diplomatic level.

4.6.2.3 Chisinau Airport

Before passengers are even allowed to enter the airline ticket counter area, the MOI officers check passports while luggage is x-rayed. The passengers then proceed to customs control, after which they are able to check-in with their respective airlines and, lastly, to continue to border control.

At this particular border crossing in the airport, the "Pasager" system functions in real time and on-line for the BG Department. The documents of the passengers are checked and registered/entered into the system. Through the verification of the documents of Moldovan citizens, a direct line to the ITD is made available and a check can be conducted on-line.

The BG is not able to conduct the secondary control of documents due to the lack of equipment and hand training. If needed, documents are sent to the MOI forensic laboratory, although it usually takes at least a couple of days to receive the results.

³¹ At the beginning of the experts' visit to the border crossing, there was no electricity; apparently the BG had not paid the bill, and customs, in control of utilities, had closed their access.

³² Customs information was only available at the board in the passenger hall in the local language.

³³ If a checkpoint does not have the ecological service, the fee is paid to customs.

After the border point, the passengers undergo an MOI (police) security check, again with x-rays. For each flight, an Airline security officer is appointed to ensure the safety of the flight.

If a person is apprehended or is subject to deportation, the BG will try (in an entry situation) to get the person back on their original arrival plane, otherwise the person stays in the transit area without being provided any special form of care. If a person applies for asylum at the border, the BG contacts the UNHCR, which takes over the situation from that point.

4.6.2.4 Border Crossing, Criva (border to Ukraine)

The BG was provided with a building in October 2003; previous work was conducted in a shed.

Transport, passenger and car documents are checked together with the passport(s) at the first “stop” line. A ticket for the payment of all services is paid at an on-site bank located at the first stop in the line. The fee is nine Leis for cars, but local inhabitants only pay a small fee for disinfecting the car, which costs four Lei.³⁴

The persons (as well as all vehicles) travelling across the border are entered into the "Pasager" system. Subsequent to this, the BG and Customs inspect cars jointly in search of hidden persons, contrabands and narcotics. For this exercise, they are only equipped with sticks and flashlights. Finally, all persons crossing show all their documents at the exit gate.

Roughly 800 to 1.000 persons pass through the border post every 24 hours. Each shift at the Criva border crossing has five to six officers on duty for 12 hours every second day. In addition, the border post is in radio contact with the green border patrols, which cover 450 km of border in the area divided between ten stations.

At Criva border post, the BG has standard basic "Regular" document detection equipment as well as the "Pasager" system. Information entered into “Pasager” is uploaded to the BG headquarters every 24 hours, and, at the same time, information is updated from the BG headquarter to the local server located in Criva. The electrical supply is described as “ok”, but the BGs would like to have a back up generator. Furthermore, the reference book on passports, "Atlas", is only available in volumes 1-2, missing volumes 3-4.

The BGs register Tourist Vouchers for travelling groups on site, noting the voucher ID number and the number of persons. This information is then provided to the Moldovan Tourist Department, which registers each group member individually.

If there is a reason to apprehend certain individuals or to initiate further investigation, the officer informs the presiding senior officer; contact is then established with the local police or the local prosecutors office, which determines if the person should be brought into custody. The BG makes a report on the details of the apprehension and provides information on the person and the alleged violation of the law or regulation. By law, the police or the territorial part of the MOI should pick up the apprehended person within three hours. These control instructions were made available to the consultants.

³⁴ The disinfection basically did not take place.

4.6.2.5 Border Crossing, Sculeni (border to Romania)

The Sculeni border crossing has only one stop for handling all procedures. Customs determines who pays a fee.

At the border post, the BG has standard basic "Regular" document detection equipment as well as a "Pasager" system. Data is uploaded to the BG headquarters every 24 hours, and at the same time information is updated from the BG headquarters to the local server.

The electrical supply is described as "ok", but the BGs would like to have a back up generator.

The reference book on passports "Atlas" is only available in Volumes 1-2, and is missing volumes 3-4. No vehicle detection equipment is currently available.

Approximately 1.500 to 2.000 people pass through the border post every 24 hours. The shifts have six officers on duty for 12 hours a shift. During the high season, more staff is on site and duty is every second day. The whole team comprises 20 people, but ideally should amount to a total of 40 officers according to the BGs. The result of this understaffing is quoted as "no rest, no training, no vacation." The border post is in radio contact with the green border patrols, which cover the 450 km of border in the area divided between ten separate stations.

In addition, the border post has a Consular Section staffed by personnel from the MFA who issues visas at the border. The Consular Section is open from 8 a.m. to 5 p.m. every day, but even after operating hours, the Consul can be called since he lives nearby. (A total of only four checkpoints in all of Moldova have a 24- hour service for contacting the Consul).

4.6.2.6 Ungheni BG Training Centre.

The Ungheni Training Centre is the training place for all personnel who work at the Moldovan border crossing points.

One thousand two hundred students are expected to study at the training centre each year, the majority of whom (roughly 900 students) matriculate at the same time. Among the students, 30 to 40 professional controllers are being trained at the centre. They attend a three to four month course before being placed at a border post.

The curriculum used at the Centre is developed at the headquarters in Chisinau, but the Training Centre submits proposals for amendments of the curriculum. The main areas for the curriculum are:

- Specialized Border Guard techniques
- Humanitarian approaches
- Military training

The Centre gives both practical and theoretical training, but has basically no equipment and no laboratory. Some equipment is even borrowed from the closest border post. Regarding specimens of documents, the Centre receives copies in black and white from the headquarters.

The Department of the Training Centre covers nine main areas of study:

1. Legal matters
2. Internal regulation
3. Technological services and coordination
4. Construction of vehicles and smuggling methods
5. Psychology of perpetrators
6. Document training, including secondary control; and methods of detection, including training on the "Regular" and "Atlas" 1 and 2 IT systems
7. Personal identification
8. Administrative procedures, e.g. on apprehension
9. Military border training (30-40% of the total training)

Each area has an officer that conducts the training. The officials at the Ungheni Border Post also serve as trainers (without any extra resources). However, in most cases, positions at the Training Centre are usually filled with more permanent and technically skilled staff.

Recommendations: The entire BG in Moldova, which has about 3.000 officers serving in its units that are the first and last line of contact with foreigners, needs substantial support to be able to face the growing challenges in migration flows affecting Moldova. The geographical challenges speak for themselves; the border with Ukraine covers 1.222 km and there are 76 operating border crossings (of which, 26 are in Transnistria). Moreover, borders with Romania cover 862 km and nine crossings have been established. As mentioned, 17 of the total number of border crossings are international where everyone can cross, underscoring the need for skilled staff for all of these sites.

It is therefore recommended:

To set a precedent for and to assist in the consolidation of existing legislative and procedural rules into thematic manuals that could serve as a quick source of reference for BGs and other relevant officials.

To enhance the capacity of the Ungheni Border Guard Training Centre by providing physical facilities and equipment, as well as by assisting in curricula development.

To raise the awareness of border officials on the possibilities and needs of the “next generation” of border control equipment by organizing a presentation and a practical training session on the use of such technology.

To get further direct input on the full set of existing conditions in the Ungheni Border Guard Training Centre and selected border crossing points and to provide training, on-the-spot, as well as longer-term advice and recommendations for the relevant personnel by means of an expert visit.

To provide hands-on training and exposure in modern border management practices for Moldovan officials by means of study tours to Schengen area border crossings.

To familiarize the target group with the EU/Schengen Acquis and other relevant international documents by translating them into Romanian and Russian.

To address the needs identified in the implementation of other project components, such as lack of equipment and reference materials.

To provide training for the personnel who will conduct further courses on the means of gaining the full potential of the identified and purchased border control equipment.

To provide the BG with further infrastructure support, such as housing and office facilities and communication equipment.

Chapter 5 The migration field, subject by subject

This chapter contains a description and assessment of each stage of the migration process. The descriptions are based on the material provided to the experts and the information obtained during the experts' visits to Moldova. The experts' recommendations are included with the description of each of the stages.

The starting point is a description of the immigration process: from the issuance of an invitation, to the residence permit, to the foreign national exiting the country. This methodology is in line with the aspiration to create a single state authority in Moldova that can follow the case of a foreign national from one end of the process to the other. It is inevitable that some exceptions and deviations from this pattern will be made, however, as will be explained below.

It should be noted that the process regarding asylum-seekers is not dealt with in this assessment.

5.1 Invitations

A foreign national wishing to enter Moldova must have an invitation. Citizens of a number of countries, however, are exempted from this requirement. The invitation can be issued at the request of legal or natural persons who permanently reside in Moldova. The invitation is issued by the ITD if the inviting party is a natural person and by the MFA if s/he is a legal person. Both functions are to be transferred to the MMD, although it is likely that the competence to issue invitations to officials and other guests invited by the authorities and diplomatic missions will stay within the MFA.

Before an invitation is issued, the competent body examines the application for the invitation, which has to be made using a special form. The examination includes an assessment of whether the invitee is a threat to the public order or has violated Moldovan legislation during previous visits.

If the intention of the invitee is to request permanent residence in Moldova on the basis of family reunification, it is also necessary to prove that the housing requirement is met (see below).

The invitation, for which there is a fee of approximately 10 USD, is issued to the inviting party. The inviting party, in turn, is to send it to the invitee, who can then apply for a visa to Moldova on this basis (see below).

The procedures regarding the application for and issuance of invitations are stipulated in a regulation that was prepared by the MMD and adopted in January 2004.

Recommendation: It is recommended that the entire system of invitations and visas be closely examined with a view to reforming and thereby streamlining the system. Ultimately, the system should be simplified so as to provide for a "one-stop-shop" procedure to the benefit of the administration and the public.

As part of such a reform – or even in the event that a real reform is not carried out - the legal framework governing the invitations/visa regime should be made more clear and transparent. The basic rules ought to be contained in the 1994 Migration Law, which is the central piece of

legislation on migration. Currently, the rules on invitations are contained in the Law on Exit from and Entry into Moldova dating from 1994, which seems to be at least partly outdated.

Recommendation: The requirement of an inviting party gives the government some sense of assurance that the invitee is entering the country with a legitimate purpose. However, it must be noted that this may stifle development of new business and tourism. Some legitimate businesspersons may not have contacts that can provide the necessary invitation; rather, they may be seeking to come to Moldova to develop such contacts. Similarly, some tourists prefer to make their own arrangements and to use local accommodation, or simply do not have access to a properly registered Moldovan tourist firm. A universal invitation requirement would keep out such businesspersons and tourists and thus reduce the economic benefit Moldova might otherwise seek. This should also be considered if the present scheme is upheld.

5.2 Visa

A multitude of normative acts regulates the Moldovan visa issuance procedures.³⁵

The Law on the State Border of the Republic of Moldova stipulates that natural persons have to cross the state border through the official crossing points where BG controlling units (Article 10), entitled to authorize the crossing of the state border on the basis of documents valid for the right to enter or exit Moldova (Article 27), are present. This law does not clearly define the type of documents needed or the authorities issuing these documents. Only the Ministry of Foreign Affairs, within its competencies, can issue documents for entry or exit of Moldova to foreign nationals and for stateless persons (Article 23).

The Law on Entering and Exiting the Republic of Moldova states that foreign nationals may enter or exit Moldova on the basis of their valid national identity documents and of documents certifying the right to enter or exit Moldova (Article 1). The law specifies the entities that are authorized to invite foreign nationals to Moldova (Article 5) and the grounds for such an invitation (Article 6), as well as the term for issuing an invitation (Article 7) or for refusing to issue an invitation (Article 9).

The legislation has no explicit provisions that visas should be issued based on invitations, as there are no explicit provisions comprehensively regulating the visa regime. It is stipulated only under Article 7 that “the members of diplomatic missions accredited with the Republic of Moldova, as well as the members of their families who live together with them and who hold accreditation cards

³⁵1) Law on the state border of the Republic of Moldova no. 108-XIII of 17 May 1994; 2) Law on the legal status of foreign nationals and stateless persons in the Republic of Moldova no. 275-XIII of 10 November 1994; 3) Law on entering and exiting the Republic of Moldova no. 269-XIII of 9 November 1995; 4) Law on the state fee no. 1216 X-XII of 3 December 1992; 5) Law on tourism no. 798 X-IV of 11 February 2000; 6) Ordinance on the establishment of consular fees, no. 1 of 26 September 2000; 7) Government Decree “On certain facilities afforded to nationals originating from European Union Member States, the United States of America and Canada visiting the Republic of Moldova” no. 1150 of 11 December 1997; 8) Government Decree “On the implementation at the border of the Republic of Moldova of the tourist contract, voucher and of the statistical record card on the circulation of tourists” no. 1470 of 27 December 2001; 9) Government Decree “On additional measures for the implementation of the National Passport system” no. 376 of 6 June 1995; 10) Government Decree “On the Migration Department” no. 970 of 7 August 2003; 11) Regulation on the visa issuing procedure for entry-exit from the Republic of Moldova, approved by the order of the Minister of Foreign Affairs of 23 September 2002.

issued by the Minister of Foreign Affairs, shall be entitled to enter and to exit the Republic of Moldova without any need for visas during the entire period of their mission.”

Since the legislative acts have not established a clear visa issuance mechanism, normative acts subordinated to the law partially provide for such a procedure. Consequently, “the Order of the Minister of Foreign Affairs” provides for the procedure of issuing entry-exit visas for Moldova. In 1995, through the Government Decree “On additional measures for the implementation of the National Passport System”, the procedure for issuing exit and exit-entry visas for Moldova was established.

The Order of the Minister of Foreign Affairs prescribes the types of exit-entry visas in Moldova, depending on the number of entries and all necessary documentation.

Therefore, pursuant to the Order, the MFA issues the following types of visas:

- Diplomatic visa (for persons enjoying diplomatic privileges)
- Business visa (issued to businessmen, civil servants or students travelling for business or study purposes who are invited by Moldovan companies, institutions or organizations);
- Ordinary visa (issued to foreign nationals, visiting friends, relatives or acquaintances of citizens of Moldova on the basis of their invitations);
- Tourist visa (issued to foreign nationals travelling for tourist purposes);
- Transit visa (issued to foreign nationals to cross the territory of Moldova on their way to another state. There may be plain transit, single entry for a maximum duration of 48 hours; or double transit, two passages, round trip, with a maximum stay of 48 hours for each crossing).

Visas are issued for one, two, three or six months or for one year.

All types of entry-exit visas for Moldova are issued by diplomatic and consular missions of Moldova, by the four consular offices at international border crossing points and by the General Consular Direction of the MFA. The prolongation of validity of a diplomatic or business visa falls under the competence of the MFA.

All fees cashed for issued visas are disbursed to the state budget.

Pursuant to Governmental Decree no. 1150 of 11 December 1997, arrangements have been established for nationals from EU member states and from the U.S. and Canada (holders of business passports and ordinary passports), to obtain exit-entry visas for Moldova for a term of up to 90 days without an invitation from a Moldovan natural person or legal entity.

The Governmental Decree no. 376 of 6 June 1995 “On additional measures for the implementation of the National Passport system” also prescribes that foreign nationals and stateless persons may obtain entry-exit visas for a period of up to 90 days (Article 2) at diplomatic and consular missions

of Moldova, while the prolongation of stay visas and exit-entry visas (business, plain, tourist and transit visas) is performed by the ITD (Article 10).

Consequently, for foreign nationals who enter Moldova on the basis of MFA issued visas, the prolongation and issuing of entry-exit shall be performed by the ITD.

Entry-exit visas and ordinary exit visas shall be issued to foreign nationals and stateless persons, temporarily or permanently residing on the territory of Moldova, for a term of up to one year, but no longer than the validity of the national passport or the established term of stay.

The fees cashed for issuing these visas are disbursed to the account of the ITD.

The amount of the fees for visa issuance is prescribed by the Government Ordinance no. 1 of 26 September 2000. It refers only to the amount of the fees and to the Consular services rendered by the MFA. The amount of the fees for visas issued by the ITD is harmonized with the amount of fees prescribed by the Ordinance.

A draft Government Decree is currently being elaborated with the aim of establishing a single mechanism for visa issuance and prolongation by the MFA/ITD for the harmonization of visa types, due fees, procedures, etc.³⁶

A single regulation on the invitation issuance procedure (serving as a basis for visa issuance) has already been developed and adopted by the Government.

Recommendation: The overall visa framework should be examined closely in order to streamline the visa policy, visa practice and relevant laws and regulations and, furthermore, to fill gaps and avoid overlaps. As it stands, some subjects seem to be regulated in more than one place, while other subjects need to be elaborated and described in more detail.

The examination of the overall visa framework should also include an assessment of the correspondence between those laws and the international obligations stemming from treaties, conventions etc., to which Moldova is a party. In such an examination, or reform of the visa framework, the EU/Schengen Acquis could also provide inspiration, given Moldova's stated intention to integrate into the European Union.

Training on international visa policies, practices and security measures for BG officials, Consular officers and other relevant officials could be considered. The training could review the meaning and intent of a visa, and present internationally agreed-upon standards for production and desirable practices for issuance. Exemptions for visa issuance, data sharing, different visa categories, and pre-inspection and entry-controls could also be reviewed. The officials would receive a compendium of materials on the Schengen visa regime and other international visa policies.

5.3 Entering Moldova

³⁶ The status of the draft could not be established before the release of the assessment.

All persons entering Moldova, with or without a visa, are checked at the border. The order in which a person is checked by the different services at the border varies from border crossing to border crossing.

Apart from the “classic” services (BGs and customs), special veterinary, sanitary and preventive medicine services are also present. A bank where different collected fees are paid is located at all border points visited. The “special services” only check border crossers on suspicion or if the need for checking is evident; e.g. if animals are crossing, the veterinarian will check them.

Once a person is cleared by customs and the special services, s/he receives a receipt. Customs and the BGs then authorize entry into the country based on the receipt.

The Law on Exiting and Entering Moldova does not specifically list the requirements for and obligations connected to entry as such.

Recommendation: The overall legal framework concerning entry should be carefully examined and revised. Subsequently, the Law on Exiting and Entering Moldova should be updated and the incorporation of the rules into the Migration Law considered.

The procedures on entry should be streamlined, with as few differences as practically possible. The number of services at the border crossings could possibly be reduced. If the services, for one reason or another, would have to remain in place, it should be more transparent which services are delivered for the fees paid by the border crossers.

5.4 Short term stay and registration

If a person stays less than 90 days in Moldova, the person will have to register at the ITD within three days of entering the country. If a person stays in a hotel, the hotel staff does the registration and a fee of nine lei is paid. The registration should be carried with the passport during the stay in Moldova.

The registration is used for checking if a person stays legally in Moldova, but no on-line access to the information is possible.

If a person does not register, s/he will be subject to a fine, the amount of which varies from 360 to 540 lei (from 28 to 41 USD). The MOI is giving the fine, which could be made subject to further court examination and approval.

Recommendation: Abstaining from registering a person staying less than 90 days in Moldova could be considered, since citizens from most countries must have a visa, which in itself constitutes a registration and, paired with the registration of entry, should be sufficient. No practical use of the registration was demonstrated to the experts.

5.5 Immigration certificate

A foreign national who wishes to stay in Moldova for a period exceeding 90 days has to obtain an immigration certificate in order to do so. The certificate is issued by the MMD upon application, and the application has to be filed no later than one month before the 90-day period ends.

An immigration certificate can be issued to foreign citizens who fulfil the conditions of stay in Moldova for reasons of work, establishing a business or family reunification.

5.5.1 Immigration for employment purposes

Approximately 500 persons are granted work permits on a yearly basis, including those who already had an immigration certificate on other grounds, e.g. family reunification. A work permit is needed to perform labour activities in Moldova. A person who fulfils the conditions for a work permit is also entitled to an immigration certificate.

In order to have a work permit, a detailed draft employment contract has to be presented to the MMD together with a number of documents. In order to protect the Moldovan workforce, the employer also has to prove that there is a need for the professional skills of the foreigner in question.

In very special cases, the permits are granted permanently. Normally, they are granted for the period of the working contract, although not longer than for one year with the possibility of extension for additional one-year periods.

A foreign national with an immigration certificate on grounds of family reunification is entitled to a permanent work permit.

Work permits for persons employed by a non-Moldovan company that conducts business/work in Moldova on the basis of a contract are granted for the duration of the contract. For the protection of the internal labour market, there is a maximum number of work permits issued. If such work is carried out for periods not exceeding 30 days, a work permit is not issued. In that case, a business visa is sufficient.

Recommendation: As persons holding immigration certificates on grounds of family reunification are entitled to a permanent work permit without any additional requirements, granting work permits to such persons automatically, and concurrently with the immigration certificate or even as part of the immigration certificate, could be considered. Thus, both the administration and the foreigner in question could avoid the extra application and the work involved in the processing of that application.

Recommendation: See the recommendations applicable to all types of immigration below.

5.5.2 Immigration in order to establish companies, etc.

Foreign nationals wishing to establish a company in Moldova should present to the MMD a number of documents to prove that the company is serious. The establishing of a company in Moldova only requires a capital stock of about 400 USD. Furthermore, the registration formalities will amount to

another 300 USD. However, a special status is given to founders of companies with foreign investment of at least 100.000 USD, as they will be granted a residence permit for five years.

Recommendation: See the recommendations applicable to all types of immigration below.

5.5.3 Immigration for educational purposes

Up to 700-900 foreign students are invited to Moldova each year. An invitation from an educational institution is needed and sufficient academic credentials are required; the Ministry of Education is responsible for overseeing this.

Once a student arrives, the MMD, after having checked the invitation and the visa, issues a certificate for the duration of the study in question. The educational institution has to inform the MMD when the studies are completed, after which an exit visa is issued. In the case of expulsion from the educational institute, the certificate is withdrawn.

If a foreign student gets married during her/his stay in Moldova, s/he must change status.

A foreign student cannot be granted a work permit and is, thus, not allowed to work during his stay in Moldova.

Moldova has entered several bilateral agreements on exchange students and professors. However, professors/teachers still need a permit to work in Moldova (see above).

Recommendation: See the recommendations applicable to all types of immigration below.

5.5.4 Family immigration

Family reunification can comprise spouses, children, parents and “dependents” of persons residing in Moldova. The person residing in Moldova must have lived there for a minimum of three years, except for in cases of reunification with spouses or of children who are minors, for which there are not any such requirements. Proof of available housing and insurance of funds necessary to meet the family’s needs are also required.

The application for family reunification has to be filed with the MMD, which verifies that the requirements are met before issuing a certificate. When issued, the certificate is permanent.

Recommendation: See the recommendations applicable to all types of immigration below.

5.5.5 Information applicable to all types of immigration

Applications are to be handed in at the MMD office in Chisinau. The processing time should not exceed 30 days from the date when all necessary documents are filed.

It is not possible to apply for the aforementioned types of immigration certificates before coming to Moldova.

There is a fee for an immigration certificate of about 5 USD.

According to the Migration Law (Article 28), the Government has to approve a regulation describing the procedures to be followed in issuing and cancelling immigration certificates, work permits and repatriation certificates. The MMD must prepare a new regulation on this subject, but this has yet to be done.

Recommendations: The procedures applied to issuing immigration certificates and work permits should be reviewed and analyzed in order to uncover if and where there is potential for making them more effective. Changes could be described in a new regulation as provided for in the Migration Law (Article 28).

The procedures or workflows should be described in great detail so as to provide the basic instruments for creating an information system on applications made by foreigners in Moldova and the processing of their cases. See section 4.2.4 for the description of the plans for a new information system.

In this regard, it could be considered whether it should be possible to apply for an immigration certificate from abroad. In many countries, the general rule is that applications for residence permits should be filed before entering the country in question.

Recommendation: The procedures should be simplified to make it easier for the applicants and the administration itself. As it stands, there are too many steps in the procedure and, perhaps, too many authorities involved in the issuance of immigration certificates (MMD), residence permits (ITD), and work permits (MMD).

Recommendation: Whether cooperation with local authorities, e.g. local police, is possible should be considered in order to make it possible, in turn, to hand in applications without having to go to Chisinau. See the recommendations in section 4.2.5 and 4.3.4 concerning the setting up of regional MMD offices or the use of the regional officers of the MOI.

5.6 Immigrant status and residence permit

Once an immigration certificate is issued, the foreign citizen is granted immigrant status and, as such, the rights and duties described in the Migration Law are applicable to her/him.

Among his/her duties, the foreign citizen has to present himself to the ITD within three days after obtaining the immigration certificate in order to receive a residence permit. The residence permit is valid for the duration of the validity of the person's passport.

The general fee for a residence permit corresponds to approximately 25 USD (320 lei). The fee for a student's resident permit is approximately 23 USD (290 lei).

A foreign national can apply for Moldovan citizenship after having resided for three years in the country.

Recommendation: See above

5.7 Control of stay

The control of stay of foreigners, staying either on a permanent or temporary basis, and the combating of illegal migration is within the mandate of the MOI. This control is an integrated part of the law enforcement tasks conducted in general by the MOI. A central unit, the MOI/SC, coordinates the general framework for the control of the stay of foreigners, as well as special actions directed against breaches against the migrations laws.

The MOI officers are responsible for controlling the stay of foreigners as an integrated part of policing, although 60 local higher officers are designated to deal specifically with enforcing migration tasks locally (see chapter 4.3.4 for a more detailed description).

Recommendation: Since all the MOI officers are likely to deal with foreigners during the performance of their usual tasks, they should have basic training in migration matters and access to manuals with basic regulations, as well as special training in cultural sensitivity. Moreover, the designated 60 local officers should have a more thorough training.

Further recommendations on this subject are to be found above in chapter 4.3.

5.8 Prolongation and lapse of permits, certificates, etc.

Immigration status is terminated either by the granting of Moldovan citizenship to the person in question or by emigrating for permanent residence abroad. In the Migration Law, however, what constitutes “permanent residence” is not carefully defined.

According to the Migration Law, a foreign citizen can lose the right to stay in Moldova if the reasons for her/his stay are no longer applicable. A foreign citizen who is in Moldova on the basis of marriage does not lose her/his right to stay in Moldova if s/he is divorced. The right to stay is also lost in case of breaches of legislation. It is not clear, however, what specific legal provisions have to be breached in order for a foreign citizen to lose her/his right to stay in Moldova.

Such decisions are made by the MMD, which will also take over the competence to extend the period of the right to stay in Moldova from the ITD.

Recommendation: It should – as part of a law reform - be made clearer when immigration status is lost in the Migration Law. To lose a residence permit (immigration status) is a radical change of a person’s status and, from a law and order perspective, rules on such matters should be as clear as possible while at the same time being proportional to the breach of law committed.

5.9 Departure of foreigners from Moldova

No specific procedure applies before leaving the country (no de-registering takes place). In general, the relevant authorities check a person according to their mandate stipulated at that particular border crossing. The BGs check documents of the crossing persons and register the exits in the system.

5.10 Exit visa and de-registering

Holders of visas or of other permits do not have to de-register. The issuance of exit visas is applied only to foreigners who breach the regime of stay in the country. The notion of “de-registering” only applies to Moldovans leaving for permanent residence to other countries.

5.11 Expulsion and detention

If a foreign citizen commits offences, as defined in the Criminal Code or Code of Administrative Offences, or if s/he is a threat to the public order, s/he can be expelled from Moldova.

The legislation does not provide an exhaustive list of the offences that can form the basis for an expulsion. Due to this, and as far as any deliberate offences (criminal or administrative ones) can be considered as “causing prejudice to national security, public order, health or morals,” the MOI could be using any of these offences as grounds to request an expulsion order from the court for a foreigner who broke the law.

The MOI presents cases, which may have been received from other authorities (e.g. the BG), to the court. A decision on expulsion is made by the court and is carried out by the MOI.

The Government has approved a proposal for the establishment of detention centres (for deportation), and the further elaboration and implementation of these centres might have an impact on the procedure for expulsion.

Recommendation: The rules on expulsion (Article 32 in the Migration Law) should be made clearer and be more detailed as a part of a law reform.

5.12 Repatriation of Moldovan citizens

The number of Moldovans repatriating to Moldova from abroad was substantial in the first years after the collapse of former Soviet Union, but it has since declined significantly.

Taking into account the large number of Moldovans leaving Moldova today, it is natural, however, that some attention still be given to facilitate the situation for those Moldovans returning to their homeland after having stayed abroad. Most of the measures to that effect fall somewhat outside the scope of what can be considered strictly migration-related. However, certain aspects of the repatriation of Moldovan citizens are briefly mentioned below.

According to the Migration Law, repatriation status is granted to Moldovans, persons born in Moldova and persons who permanently resided in Moldova for a minimum of ten years, as well as to persons who have left the country for specific reasons (work, study, etc.) and who return with the intention to reside in Moldova permanently.

Such persons are to be granted a repatriation certificate, which is within the competence of the MMD. There are no further rules on this in the Migration Law.

In the draft National Action Plan, one of the future actions concerns the reintegration into the society of Moldovans returning from abroad. Repatriation and reintegration are also mentioned in the Policy Concept Paper.

5.13 Appeals system

According to Article 35 of the Migration Law, disputes arising in the process of applying the law are settled in the procedure specified in the current legislation. This means that any person who considers his/her right infringed by any decision of a state agency dealing with migration issues is entitled to address the issue to the district court of the residence district. Before addressing the issue to the court, the person should request that the agency involved in infringement solve the problem in a lawful manner (that is, either to cancel the decision, to recognize a right or to repair the damage caused by the wrong decision). If the petition is not solved in 30 days, or the solution is not satisfactory to the petitioner, s/he can appeal to the court. The tax for appeal is 18 Moldovan lei (about 1,3 USD). The court shall examine the case according to the existing civil procedure and in conformity with the law on administrative disputes. The first hearing should take place no later than ten days after the file's acceptance by the court.

The court decision can be appealed within 15 days after its declaration to the Court of Appeal. The appeal suspends the execution of the decision.

The court decision should be executed within 30 days from the date it became irrevocable.

Up to the present, experiences with appeals have been very limited and the MMD has not been in a position to conclude that the system works satisfactorily.

Recommendation: The Migration Law ought to contain clear rules on appeal procedures. Currently, it only contains the very vaguely worded provision in Article 35.

Recommendation: As part of a law reform, the authorities should consider whether the present appeals system is satisfactory. It could be argued that the rights of the applicants would be better protected if there were a specific appeals board to handle such cases, as is the case in the asylum field.

5.15 Emigration

5.15.1 Work

The fact that the number of Moldovans leaving Moldova has reached enormous proportions is a main concern of the Moldovan authorities and is reflected in the emphasis that has been placed on this subject in meetings between MMD officials and the experts. It is also reflected in the Concept Paper, the Law on Migration and the Government Decision of 7 August 2003.

It is acknowledged that this problem is not primarily of a legal nature. All citizens of Moldova have the right to move freely and the legal restrictions on emigration are few.

In order to try to control the emigration for work purposes, the MMD has set up a Directorate for Labour Migration and Foreign Relations which is to carry out the tasks on emigration. Those tasks are described in the Government Decision of 7 August 2003.

Among these tasks, the MMD shall take up negotiations with relevant partners in other countries with an aim to conclude deals that can ensure the rights of Moldovan workers in those countries. The MMD would also like to make agreements for quotas of Moldovan workers in specific countries.³⁷

The MMD has created a database-system in which Moldovans wanting to go abroad for work can be registered. The database is consulted when employers in other countries announce positions open for Moldovans. So far, this model has led to very few actual contracts between foreign employers and Moldovan workers.

De-registration of Moldovans leaving for permanent residence abroad is done by the ITD.

Moldovan and foreign citizens who reside in Moldova and wish to leave for permanent residence abroad need to present the local ITD office with a number of documents, including:

- A completed special request questionnaire;
- An authorized acceptance declaration from the parents who remain in Moldova for the departing minors;
- An authorized acceptance declaration from the former spouses who remain in Moldova, certifying the clearance of the leaving persons from any legal obligations towards any remaining minors or dependant persons, or a court decision in this regard;
- An authorized acceptance declaration of the children aged between 12 and 18 years for leaving with a parent for permanent residence abroad;
- Legal custody documents for legally incapable persons who leave for residence abroad.

Persons who leave for permanent residence abroad present, at the moment of receiving the passports and exit visas (a special stamp in the passport), their local IDs or residence permits with the de-registration stamp from their place of residence, a certificate from the last working place or educational institution on dismissal and clearance from any duty, as well as a certificate from the State Fiscal Service on clearance from any fiscal liabilities.

Recommendation: Even though there is understanding of the Moldovan Governments priorities for labour emigration, the value of the database and the system set up within the MMD in its present form can be questioned, since it seems to be an extensive use of resources that could perhaps be used otherwise. Nonetheless, the features of such a possible procedure should of course be integrated into the Migration Information System and relevant databases.

³⁷ As part of the agreements between Italy and Moldova in November 2003 (see chapter two), a quota for 2004 of 700 Moldovan workers has been agreed upon.

5.16 Counter-Trafficking

The Moldovan Government has adopted the recommendations of the Stability Pact (of which Moldova is a member), urging for a National Action Plan to Combat Trafficking and the setting up of a National Committee with sub-working groups to reflect the different approaches to fighting this phenomenon. In 2002, the Moldovan government convened the first meeting of the National Committee, and the three working groups on prevention, prosecution and protection subsequently met on a more or less regular basis. Since August 2003, international pressure on the Government to stop trafficking from Moldova resulted in the Government holding weekly meetings of the National Committee and the creation of a fourth sub-working group on Child Trafficking which will meet officially in early 2004.

Beginning in the late 1990s, international donors began providing specialized assistance targeting victims of trafficking from Moldova and providing much needed expertise also in the field of legislation. Before 2001, there was no domestic legislation capable of dealing with trafficking crimes either for perpetrators or victims. As a response to the lack of a specific anti-trafficking law, an amendment to the Criminal Code titled “Illegal Trafficking in Human Beings (113-1)” was passed in 2000 and entered into a retroactive enforcement a year later in August 2001. Domestic institutions from the MIA, the Ministry of Justice, the General Prosecutor’s Office (GPO), the Ministry of Labour, the Ministry of Security, and the Ministry of the Economy drafted the law. This initial attempt to outlaw trafficking using a specific provision was adopted on the principle that “any law is better than no law”, and subsequent analyses by international experts were quick to assess its limitations.

Until recently, State efforts to intervene in the Counter-Trafficking (CT) sphere were limited to discussions at trainings held by international organizations or NGOs. Most officials were still simply confusing trafficking with prostitution and were reluctant to receive support from NGOs, which they still viewed with suspicion. The newest CT tools reflect international priorities and provide the executive, legislative, and judicial branches with modern and refined trainings and mechanisms to further combat trafficking. International organizations including IOM have held regular training sessions with the GPO, MIA and the BGs. A CT unit has been set up under the MIA and a CT manual for the law enforcement agencies was developed. Counter-Trafficking is now included in the curricula of the Police Academy; trainings are underway for lawyers and judges with the intention of developing curricula for this target group.

The combined efforts of the State, international, and non-governmental parties were realized en masse in 2002-2003. By cooperating with partners and adopting laws in accordance with revised standards for improving institutional and legal structures, the State now owns and is consolidating mechanisms for meeting its obligations to protect victims and punish criminals. New CT responses reflect international standards including the acceptance (but not ratification) of the UN Trafficking Protocol and its definition of “trafficking in human beings”. The new Criminal Code was adopted in April 2002 and entered into force on 12 June 2003. Since 2002, 52 people have been convicted of trafficking-related offences, 24 of which were prosecuted under the new criminal code.

It is clear that the root cause of trafficking in human beings remains the lack of economic development, unemployment and the high level of corruption. The Government has indicated that fighting corruption is a State priority, as is economic development.

Surveys undertaken based on prevention and reintegration projects indicate that people have no idea where to go for information on migration. They are ignorant of employment conditions abroad; the real costs of visas, travel and document requirements; registration requirements; migrants' rights; and the risks of trafficking and smuggling in persons.

Recommendation: *Complementing the variety of Counter Trafficking efforts being conducted in Moldova, the creation of an Information Centre, would ensure that potential migrants and the general public in Moldova have better access to information on migration-related issues. A migration information centre can provide outreach to the potential migrant community by offering counsel on legal migration options, increasing awareness levels, and reviewing the risks associated with irregular migration.*

List of abbreviations

BG:	The Department of Border Guards of Moldova
CIS:	Commonwealth of Independent States
ITD:	The Information and Technology Department of Moldova
MFA:	The Ministry of Foreign Affairs of Moldova
MMD:	The Migration Department of Moldova
MOI:	The Ministry of Interior of Moldova
M.S.S.R.:	Moldovan Soviet Socialist Republic
SIDA:	Swedish International Development Cooperation Agency
SSIFM:	The Service of Combating Illegal Stay and Migration of Aliens (under the MOI)
TACIS:	Technical Assistance to Commonwealth of Independent States (EU Programme)
UNHCR:	United Nations High Commissioner for Refugees

List of appendixes

- First Assessment Trip, August 1-4, 2003
- Second Assessment Trip, September 1-4, 2003
- Third Assessment Trip, October 20–24, 2003
- Study visit to Denmark and Sweden, 10–15 November 2003
- Law of the Republic of Moldova on Migration
- Decision of the Government of the Republic of Moldova on the Migration Department no. 970 of 07.08.2003
- National Action Plan in the field of migration and asylum
- MMD Organigram
- List of the Diplomatic Missions of the Republic of Moldova
- List of Visa