Moldova’s PreAccession Preparations: DE-OLIGARCHIZATION AND ANTI-CORRUPTION PURSUITS

by Denis Cenusa

LibMod Policy Brief
Introduction

In June 2022, the European Council granted Moldova EU candidate status, on the understanding that Moldova would have to fulfil nine conditions before accession negotiations could begin. Considerable weight is attached to these conditions, referred to as priorities by EU officials and recommendations by Moldovan diplomats, in connection with assessing Moldova’s progress towards the EU. In practical terms, the European Commission cannot recommend that the Council launch accession negotiations with Moldova until all nine have been met. However, the 2024 European elections may increase the pressure on the EU to adopt a political decision that can ignore technicalities and the meritocratic principle.

The nine conditions, which were formulated by the European Commission, address problems in the following policy areas: judicial reforms (2 conditions); anti-corruption; de-oligarchization; organized crime; human rights; civil society; public administration; and public procurement. During the second summit of the European Political Community, which was hosted by Moldova on 1 June of this year, European Parliament President Roberta Metsola suggested that Moldova and the EU should start accession negotiations as early as 2023. However, the European Commission is the body responsible for reporting on Moldova’s progress in implementing the conditions. The Commission is expected to present its preliminary conclusions on 22 June; the comprehensive country report will form part of the 2023 enlargement package expected in late October. The country report will evaluate Moldova’s progress and provide recommendations regarding the opening of negotiations or the need for further work on the nine conditions.

In August 2022, Moldova adopted an action plan comprising 60 specific actions aimed at ensuring compliance with the conditions set by the EU. The Moldovan government presented a progress report to the EU and the ambassadors of the EU member states in May 2023, but this report has not yet been made available to the public. Moldova’s National Commission for European Integration, established in April 2022, is charged with coordinating the action plan’s implementation at the national level. Notably, the conditions relating to “de-oligarchization” and “anti-corruption” carry strong political implications, as Moldova has been perceived as one of the most corrupt countries in Europe. Corruption played a pivotal role in the entrenchment of oligarchs within Moldova’s state institutions, particularly during the period from 2009 to 2014, which resulted in “state capture” conditions between 2015 and 2019. Given the current geopolitical landscape, both corruption and the influence of oligarchs pose significant risks to Moldova’s internal stability.

Consequently, the implementation of the EU’s conditions on de-oligarchization and anti-corruption can be seen as an investment in the country’s security, as well as a means of making progress towards opening accession negotiations.

3 Roberta Metsola: For us, Moldova’s place is in Europe, https://radiomoldova.md/p/13835/roberta-metsola-for-us-moldova-s-place-is-in-europe
4 Action Plan for the implementation of the steps proposed by the European Commission, August 2022, https://mfa.gov.md/sites/default/files/ja_-_en.pdf
5 The 2022 Corruption Perceptions Index ranked Moldova 91st out of 180 countries.

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De-oligarchization: only a “systemic” approach

Considerable importance is attributed to de-oligarchization among the nine conditions set by the EU for Moldova. This emphasis arises from the concerns surrounding the informal influence on Moldovan state institutions exerted by oligarchic actors over the past decade. The primary objective of de-oligarchization is to prevent the resurgence of oligarchic influence in politics. The EU has specifically requested actions to achieve de-oligarchization by targeting the “excessive influence of vested interests” in three key domains: the economy, political decision-making processes, and public life. The action plan devised by Moldova to fulfill the EU’s conditions includes ten specific actions\(^7\) aimed at implementing the de-oligarchization requirement. The primary objective identified in this respect was the adoption of comprehensive legislation addressing this issue, and the government set itself a June 2023 deadline for this. The plan also aims at strengthening the institutional capacity of the Central Electoral Commission for monitoring political party financing and that of the Audiovisual Coordinating Council (media regulator) for regulating media ownership transparently. Moreover, the action plan seeks to strengthen good governance within various sectors by revising legislation relating to mass media (Media Services Code), competition (Law No 183/2012 and Criminal Code), and state-owned enterprises. These measures are intended to foster a more accountable environment, promote fair competition and reduce the influence of oligarchs in Moldova’s socio-political and economic landscape.

\(^7\) Action Plan for the implementation of the steps proposed by the European Commission in the Opinion on the Republic of Moldova’s application for membership of the European Union, August 2022, https://mfa.gov.md/sites/default/files/pa_-_en.pdf


\(^9\) According to the National House of Social Insurance of the Republic of Moldova, the national average monthly wage forecast for 2023 is 11,700 Moldovan lei, or 612 euros. Thus 50,000 times the average monthly wage would come to 585 million Moldovan lei or 30.6 million euros. https://cnas.gov.md/libview.php?f=ro&dc=360&idc=6116&t=Mass-media/Noutati/Aprobarea-cuantumului-salariului-mediului-lunar-pe-economie-prognozat-pentru-anul-2023
in politics or to exercise undue influence. A 15-member National Committee for De-oligarchization, established under the proposed legislation, would take decisions regarding the register.

Consultations were held during the development of the de-oligarchization bill, although only a limited number of NGOs were invited to participate in the initial consultations. More specific actions related to de-oligarchization include the following measures carried out by the Moldovan authorities: a) the establishment of a special unit in the Central Electoral Commission charged with verifying the financing of political parties; b) a new obligation for the media to submit annual activity reports to the Audiovisual Coordinating Council, which may penalize the media service providers if they do not submit the reports on time; c) the mandates of both the media regulator and the Competition Council with respect to controlling the transparency of ownership were strengthened; and d) the adoption of a new strategic document for 2022-2030 aimed at improving corporate governance in state-owned enterprises (SOEs) and joint-stock companies.

The draft bill on de-oligarchization was submitted to the Venice Commission with a request for an evaluation thereof in February of 2022. In its interim opinion on the draft law, the Commission acknowledged certain improvements in the draft law compared to similar legislation of other states, specifically referencing Ukraine’s current law and Georgia’s draft bill. The Commission expressed a preference for a systemic and multi-sectorial approach that incorporates preventive measures in a variety of areas prone to oligarchic influence rather than a purely “personal” approach that designates individuals as “oligarchs” on the basis of criteria like wealth and media ownership. The Commission also raised concerns that the personal approach may pose risks to human rights and the rule of law unless strong procedural guarantees are in place to prevent potential abuses.

Judging by the Venice Commission’s recommendations, it can be deduced that Moldovan authorities have opted for a mixed approach, combining the bill on de-oligarchization (personal approach) with an action plan to counter oligarchic influence in a systemic way (systemic approach). Thus, in addition to the draft bill, the Moldovan authorities developed a comprehensive “plan of measures” to counter oligarchic influence (national action plan for de-oligarchization), which it also presented to the Venice Commission. Overall, this document, which defines 17 actions to be carried out by May 2024, received a positive assessment from the Venice Commission. Monitoring and reporting on the future progress of the implementation of these measures will take place through a unified mechanism involving the State Chancellery, Presidential Office, and the Ministry of Justice. The monitoring process will encompass nine specific areas: grand corruption cases, competition, the electoral field, media, state ownership, public-private partnerships, public procurement, the circulation and origin of funds, and critical infrastructure. The results of this monitoring will be reported biannually within the framework of the National Commission for European Integration, providing transparency and accountability regarding the progress made in each area.

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IPRE, Expert-Group, CRJM, Shadow Report nr. 1 on the Action Plan for the implementation of the steps proposed by the European Commission in its Opinion on Moldova’s EU membership application, April 2023, https://www.expert-grup.org/media/k2/attachments/EUMoldovaCandidateCheck_Nr._1_13.04.2023_EN_final_rev_compressed.pdf
According to the Moldovan civil society organizations that monitor the government’s progress on de-oligarchization, the main shortcomings in the efforts thus far relate to the planned legislation amending the law on public-private partnerships (PPP). The purpose of this legislation was to implement good practices identified by the Organization for Economic Co-operation and Development (OECD). The latter also refers to the merit-based selection and the remuneration principle of the members of the board of the SOEs.

Unexpectedly, on 3rd May, the Moldovan authorities informed the Venice Commission that the decision had been taken to abandon the bill on de-oligarchization and to pursue the systemic approach to combat oligarchic influence. The Moldovan authorities pointed out that this decision was taken after consultations at the national level, despite the fact that the systemic approach is the one recommended by the Venice Commission in the interim opinion that criticized the de-oligarchization draft bill. The decision was made public about a week before the EU Commission was slated to give an oral presentation of its assessment of the implementation of the nine EU conditions. The Venice Commission “welcomed” the decision to drop the draft bill, which signals a preference for a “systemic approach”, which should reduce the risks of politicization and procedural abuse. However, the Venice Commission proposed the addition of additional measures to the action plan aimed at the following: 1) alignment with EU regulations on anti-competitive behavior and consolidating the enforcement powers to break up existing monopolies; 2) effective exclusion of fraudulent companies from public procurement; 3) addressing high-level corruption, including by increasing the capacities and (political) independence of anti-corruption agencies; 4) the introduction of rules governing interaction between parliamentarians and third parties seeking to influence the legislative process; 5) extension of the scope of the rule on transparency of media ownership to include all media actors; 6) the adoption of a multipronged approach to identify oligarchic structures and limit their influence; and 7) strengthening supervision of compliance with party financing regulations and the promotion of the political participation by candidates and political parties not linked to the oligarchs in a non-selective manner, among other measures.

The further implementation of the recommendations of the Venice Commission on the de-oligarchization action plan and those of Moldovan civil society organizations with respect to the de-oligarchization condition will contribute positively to the implementation of one of the nine EU conditions.

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14 Idem.
15 European Commission, Opinion on the Republic of Moldova’s application for membership of the European Union, July 2022
16 Action Plan for the implementation of the steps proposed by the European Commission in the Opinion on the Republic of Moldova’s application for membership of the European Union, August 2022
Anti-corruption: reforms in the shadow of inter-institutional rivalry

Taking decisive action to fight corruption constitutes another condition that Moldova has to meet before the launch of the accession negotiations with the EU. Among the steps expected from Moldova are pro-active anti-corruption efforts, including the establishment of a credible track record of investigations, prosecutions and convictions. The EU has also requested that Moldova increase the take up of the recommendations from the National Anticorruption Centre concerning draft legislation, which the NAC reviews to identify corruption risks. The Moldovan authorities have committed to carrying out nine actions in the area of anti-corruption. These include the following: adoption of the mechanism of trial “in absentia”; to provide for the clear division of powers and responsibilities between the anti-corruption agencies to fight the high-level corruption; the strengthening of capacities for the investigation of criminal cases (Criminal Procedure Code and Law on Special Investigative Activity); improvement of the legislation on whistleblowers to increase reporting of illegal activities; increase of the efficiency of the performance of the anti-corruption agencies; ensuring that the expertise of National Anticorruption Centre (NAC) is taken into account prior to the adoption of any normative act.

By early June 2023, the authorities had successfully implemented several measures. One notable accomplishment is the adoption (July 2022) of legislation on sentencing “in absentia”. Leveraging the new legal modifications, the Chișinău Court of Appeals was able to sentence fugitive businessman Ilan Șor to 15 years of imprisonment for facilitating the bank fraud between 2012 and 2014 and order the confiscation of assets worth 5 billion Moldovan lei (250 million euros). The judgement is not yet definitive as Sør’s lawyers can still lodge an appeal with the Supreme Court of Justice. March 2023 saw the launch of a legislative process aimed at providing for the clear division of powers and responsibilities between the National Anticorruption Center and the Anticorruption Prosecutor’s Office, as well as improving criminal investigation activities and bringing whistleblower provisions into line with those of EU Directive 2019/1937. While the NAC’s anti-corruption expertise was applied to 94% of the 528 bills passed by the Government in 2022, as compared to 64% in 2021, compared to, there is no evidence that the NAC’s recommendations were actually taken into account. There have been some indications of improved performance by anti-corruption agencies, as evidenced by some indications.

The number of cases forwarded to courts has increased, although the percentages of cases actually brought before court remained below the levels seen in 2021. On the other hand, the authorities have substantially increased the amounts of fines and asset confiscations: in 2022, the total value from fines and confiscations amounted to 23.4 million Moldovan lei (approximately 1.2 million euros), a figure nearly three times the previous year’s total (8.24 million Moldovan lei, approximately 431,000 euros).

The primary deficiencies in Moldova’s implementation of measures to fulfil the anti-corruption condition revolve around the challenges encountered in bringing trials related to corruption cases to a successful close. These are due to systemic hurdles within the judiciary system, which have their origins in the previously low degree of functionality of the Superior Council of Magistracy, problems with the quality vetting process for judges, and resistance to the vetting process within the judiciary sector. Additionally, a significant problem arises from the existence of a
certain degree of rivalry between the two anti-corruption agencies, the NAC and the Anticorruption Prosecutor’s Office. These two agencies are competing for an exclusive mandate to combat high-level corruption. This inter-institutional rivalry hit a high point this past May, when NAC Director Iulian Rusu, called upon Parliament to summon the Chief of the Anticorruption Prosecutor’s Office, Veronica Drăgălin, to a hearing on her institution’s performance in combating high-level corruption cases. A plausible scenario is the merger of the two anti-corruption agencies into a single institution. Such a reorganization would partly contradict EU conditions requiring the anti-corruption expertise of the NAC to be taken into account. It is imperative to carry out an ex-ante evaluation of the risks and benefits that the merger could generate. Progress towards meeting the anti-corruption condition hinges on two crucial factors: the pace of judiciary reform and the depersonalization of cooperation between anti-corruption agencies. It is vital to prioritize the strengthening and fine-tuning of efforts to combat big corruption, as these have far-reaching implications for enhancing the effectiveness of state institutions and the political decision-making process. Moreover, progress in this area will also have positive implications for the de-oligarchization endeavors.

Conclusions

Moldova is close to meeting the EU requirements associated with the de-oligarchization and anti-corruption conditions. However, special emphasis should be placed on complying with the Venice Commission’s recommendations concerning the de-oligarchization action plan, which needs to be expanded and updated. It is also essential to resolving the friction concerning the roles of the anticorruption agencies in fighting high-level corruption through the allocation of clearly delineated powers and responsibilities to each. The effectiveness of anti-corruption efforts is inherently intertwined both with institutional investigative capacities and with the general ability of the judicial system, and more specifically, of the courts, to function properly. Therefore, attention must be directed to improving both of these aspects in order to guarantee a comprehensive approach to fighting corruption, with a complementary impact in the area of de-oligarchization. By successfully addressing these two aspects, Moldova will have implemented two of the nine conditions set out by the EU, bringing the country considerably closer to a decision to launch accession negotiations.

19 For instance, by the end of 2022, the Anti-Corruption Prosecutor’s Office has proactively initiated 88% of the criminal cases linked to corruption compared to 2021 (65 out of a total of 74 cases), and the percentage of cases investigated that were sent to courts was 54% (of 308) in 2022 compared to 38% (of 482) in 2021. However, in absolute terms, the numbers of cases sent to trial decreased (167 cases in 2022 vs. 181 in 2021). Similarly, the number of court rulings handed down in corruption cases remained below the level of 2021 (173 cases in 2022 vs 178 in 2021). IPRE, Expert-Group, CRJM, Shadow Report nr. 1 on the Action Plan for the implementation of the steps proposed by the European Commission in its Opinion on Moldova’s EU membership application, April 2023.
