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Policy Brief Moldova:

# **NAVIGATING COMPLICATIONS IN OPENING EU ACCESSION NEGOTIATIONS**

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LibMod Input Paper

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# INTRODUCTION

In Moldova, the process of European integration is characterised by an unwavering determination on the part of the Moldovan government to meet EU requirements, coupled with a reliable EU “open door” policy. The country enjoys a positive image in Brussels and European capitals. While the state is tackling the reforms on which accession negotiations are conditioned, certain areas for reform continue to pose challenges<sup>1</sup> that will require a more sustained and principled approach. At the fourth summit of the Germano-Franco-Romanian initiative “Moldova Support Platform”,<sup>2</sup> held in Chişinău on October 17, the EU and other European partners emphasised their unqualified support for Moldova. Between them, they pledged to provide financial support worth 148.7 million euros, 110 million in the form of loans, to finance infrastructure and energy projects starting next year.<sup>3</sup> Notably, the EU and European partner countries remain committed to providing financial resources for Moldova despite urgent crises in preparations in Ukraine against potential Russian attacks in the coming winter and the looming humanitarian crisis in the Gaza Strip.

On the diplomatic front, Moldova’s steadfast orientation towards the EU underscored by the country’s participation in the third meeting of the European Political Community in Spain in October.<sup>4</sup> In the same context, President of the European Commission, Ursula von der Leyen, visited Chişinău<sup>5</sup>, following an earlier visit by Josep Borrell, High Representative of the European Commission and Chief of EU Diplomacy, who visited Moldova on his way to Odesa in September.<sup>6</sup> During these visits, the EU officials reaffirmed their support for Moldova’s reform path and expressed solidarity with Moldova in its struggles with “spillover effects” of the Russian aggression against Ukraine.<sup>7</sup> The EU’s commitment to support Moldova’s reform agenda is in harmony with the Moldovan government’s political determination to fulfil the necessary conditions.

# STATUS QUO OF EU REFORMS AND IMPLEMENTATION OF THE 9 CONDITIONS

In the period from July 2022 through June 2023, Moldovan authorities made significant progress towards fulfilling the 9 conditions set out by the EU. Their efforts in this respect received positive evaluations from civil society organisations:<sup>8</sup> the second “shadow report”, published in June 2023 by three civil society organisations, used a five-point scale to depict the extent of implementation of individual conditions, with results ranging between 3.7 and 5 points. The lowest scores were assigned in the areas of “combatting corruption” and “deoligarchisation”, with progress in those areas assessed at 4 points. Areas in which reform efforts were assigned scores between 4 and 5 points included the following: justice reform, Venice Commission and OSCE/ODHR recommendations, fighting organised crime, public administration, cooperation with civil society, and the protection of human rights. Management of public financing was the only area in which implementation efforts received a perfect score of 5 out of 5 points.

At a meeting of the Governmental Commission for European Integration on October 5, the Government reorted that 3 out of the 9 conditions relating to elections, civil society, and human rights had been fully implemented.<sup>9</sup> There is also a need for well-prepared human resources, efficient planning, institutional capacity building, and operational contacts with the EU.

While the shadow report mentioned above focusses on reforms associated with the 9 EU conditions, the Government’s evaluation specifically focuses on progress made in implementing of the 60 measures outlined in its National Action Plan.<sup>10</sup> This plan, approved by the National Commission for European Integration on 4 August 2022,<sup>11</sup> is a sophisticated framework that establishes a variety of technical targets for the adoption of regulations and laws. However, evaluating progress on these measures entails a level of technicality in monitoring that is different from that involved in assessing the general trends in the reforms requested by the

EU. The 9 EU conditions are more specific and straightforward, making it easier to track progress and achievements in terms of deliverables.

A strict examination of the conditions put forth, in the form of “recommendations”, by the EU Commission in its Opinion of 17 June 2022, allows us to identify certain shortcomings in the process of their implementation:

## **1. The continuation of judicial reforms in Moldova involves addressing all remaining vacancies in the Superior Council of Magistracy (SCM).**

The key element of this reform is the vetting of judges and prosecutors, which is specifically required under of the EU condition relating to justice system reform. A Pre-vetting Commission evaluated the SCM candidates, who included both judges and laypersons. Less than 50% of the candidates were approved: only 18% of judge candidates (5 out of 28) and 25% of non-judge candidates (3 out of 21) passed the vetting process.<sup>12</sup> Of the 12 SCM seats available, only 9<sup>13</sup> were filled by parliamentary appointment after the pre-vetting was concluded. One of the newly appointed SCM members, Iulian Muntean, who had been positively evaluated by the Pre-vetting Committee and approved by the parliamentary majority (PAS),<sup>14</sup> subsequently resigned due to an ongoing corruption investigation involving bribes paid by students. This incident raised concerns about the credibility of the Pre-vetting Commission’s evaluations and the integrity of other candidates approved on the basis thereof.<sup>15</sup> Moreover, Vitalie Miron, one of the ruling party’s appointees to the Pre-vetting Commission, resigned, citing concerns that the Commission decisions were in conflict with the Supreme Court of Justice and Article 120 of the Constitution.<sup>16</sup> In addition to raising alarm about the future vetting procedures, the revelations about dysfunctionality of the Pre-vetting Commission also underscore a negative trend in justice reform.

## 2. Address the shortcomings identified by the OSCE/ODHR and the Venice Commission.

The Moldovan authorities have demonstrated a certain degree of willingness to cooperate productively with the Venice Commission in a number of contexts. In 2023 the Moldovan government requested follow-up opinions on a number of draft laws already adopted by Parliament that the Commission had already commented on once, with the aim of drawing attention to the extent to which the Commission's views had been taken into account. The Venice Commission acknowledged that most of its recommendations had been incorporated into the adopted laws, pointing specifically to certain critical aspects that are very nuanced with respect to the law governing vetting of the judges and prosecutors,<sup>17</sup> the law on the Intelligence and Security Service and the law on counterintelligence and intelligence.<sup>18</sup> Regarding draft legislation that would establish a specialised anti-corruption court, the Venice Commission recommended continuing efforts to vet judges, particularly those handling corruption cases, before embarking on the creation of an anti-corruption court.<sup>19</sup> The most significant concern<sup>20</sup> raised by the Venice Commission, in a joint opinion with the OSCE's ODIHR, relates to amendment of the Electoral Code following a decision by Moldova's Constitutional Court issued in June 2023 declaring the Şor Party unconstitutional. The amendment, adopted in July 2023, barred Şor party executives and elected officials from standing for election for a five year period. The Venice Commission and the ODIHR issued a joint opinion on the amendments, in which they called on Moldova to strike a balance between the aim of protecting the State's democratic order and national security and the need to protect individuals' electoral rights, while avoiding disproportionately undermining political pluralism. The very day after the Constitutional Court declared the relevant provisions unconstitutional in a ruling handed down on 3 October, the ruling party adopted with a new amendment that provides for the restriction of electoral rights on the basis of certain criteria, including reasonable suspicions and non-final court decisions (the amending legislation was approved (in absentia) by President

Maia Sandu in Grenada, where she was attending the summit of the European Political Community). Meanwhile, the Commission for Exceptional Situations issued a decision invoking derogations from the Election Code, with much the same effect as the amendment. There is some degree of conflict between the new provision and the Constitutional Court ruling concerning its predecessor. In view of these recent changes to the Electoral Code, which were adopted without public consultations, it is imperative that the Code undergo a follow-up review by the Venice Commission and the ODIHR carry out a follow-up review of the Electoral Code by. The last evaluation of the Code was in October 2022.<sup>21</sup>

## 3. Fighting corruption and increasing the take up of the recommendations from the National Anti-Corruption Centre in the legislative process.

The activity of the anti-corruption agencies was affected to some extent by the scandal about the fact that the SCM candidacy of Iulian Munteanu, an individual under investigation in ongoing corruption cases, was approved by the Pre-vetting Commission. The situation reignited the conflict between the Anti-Corruption Centre and the Anti-Corruption Prosecutor's Office, with each accusing the other of failing to raise red flags during Munteanu's vetting process. The Anti-Corruption Prosecutor Office's has initiated an investigation<sup>22</sup> against two officers of the National Anti-Corruption Centre - Iurie Gaţcan and Arcadie Rotaru<sup>23</sup>. Gaţcan was appointed to the Pre-Vetting Commission at the proposal of the ruling PAS party. Both Gaţcan and Rotaru allegedly failed to gather, analyse, and provide the Commission with the necessary information about Iulian Munteanu. Two weeks after the scandal broke, the head of the Anti-Corruption Centre, Iulian Rusu, who had been appointed to a 5 year term in February 2022, submitted his resignation request.<sup>24</sup>

## 4. De-oligarchisation.

The government followed the recommendation of the Venice Commission to adopt a "systemic approach" instead of a "personal approach" to de-oligarchisation. Accordingly, the draft law on de-oligarchisation prepared in 2022 was discarded and replaced with the

“Action Plan regarding some measures to limit excessive economic and political influence in public life (de-oligarchisation)”.<sup>25</sup> While the Venice Commission commended the adoption of this “systemic” and multi-agency approach, it also emphasised the importance of ensuring an effective competition policy, enhancing transparency in public procurement, and combating high-level corruption, among other measures.<sup>26</sup> The anti-oligarchic Action Plan covers nine areas (competition, electoral reforms, etc.) and involves cooperation among 26 state institutions. Key entities such as the State Chancellery, the Presidential Office, and the Ministry of Justice, are tasked with oversight and coordination of the implementation of this plan.

### 5. Fight against organised crime.

The government formulated and implemented the National program for the recovery of criminal assets for the 2023–2027 period. Furthermore, cooperation with international law enforcement agencies, such as Europol, Interpol, and Frontex, continued. Europol deployed officers to Moldova to support the early detection of criminal activities associated with Russia. In the area of smuggling, data released by Romania indicates that Moldova is the third greatest source of illegal cigarettes, although there has been a slight decrease in its share of the illegal cigarette market there.<sup>27</sup> In its sixth report under the visa supervision mechanism, published in October<sup>28</sup>, the European Commission emphasised the need for Moldova to continue its efforts to combat organised crime, including offenses related to transnational criminal activities arising from the Russian aggression against Ukraine.

### 6. Public administration reform.

The Government adopted the Public Administration Reform Strategy for the 2023–2030 period. This strategy concentrates on civil service management, the institutional framework, strategic planning, reducing bureaucracy, and advancing electronic services<sup>29</sup>. A significant feature of the strategy is the potential for “voluntary amalgamation”<sup>30</sup> of territories around highly populated localities, subject to the principle of territorial continuity, ensuring that merged

territories are not separated by more than 25 km. The implementation of the strategy relies on both the public budget and external financing, raising concerns about limitations and unpredictability in achieving specific goals.

### 7. Public financial management.

Various regulations and strategies have been adopted to address issues such as low-value public procurement tenders and the enhancement of good governance. Notably, in August, the Government approved the National Program for the Development of the Public Procurement System for the 2023–2026 period.<sup>31</sup> This program aims at reengineering the electronic public procurement system, in order to improve the efficiency and transparency of the procurement processes, among other objectives.

### 8. Civil society in the decision-making process.

The government has actively engaged with civil society organisations in favour of EU membership, involving them in consultation processes through platforms like the National Council of European Integration and the National Security Council. However, this inclusive approach has extended to organisations representing different geopolitical viewpoints, primarily due to concerns regarding Russia’s hybrid presence. President Maia Sandu’s decision to exclude representatives from the Gagauz autonomy from the National Council for European Integration in September is a notable example of this exclusionary stance.<sup>32</sup>

### 9. Human rights.

Policies geared towards strengthening gender equality and supporting the rights of national minorities have been adopted. However, rights related to media access and electoral participation have been restricted in certain cases, with reference to concerns about potential Russian hybrid interference.

## THE RUSSIAN FACTOR

Moldova's relations with Russia remain tense (expulsion of Russian diplomats,<sup>33</sup> journalists,<sup>34</sup> etc.) against the background Russian aggression against Ukraine and the hybrid influence exerted on Moldova through political actors operating with questionable financial resources.

To counter these hybrid threats, Moldovan authorities had implemented controversial restrictions on the electoral rights of individuals associated with the Şor Party, which the Constitutional Court had declared unconstitutional in June. The leadership of the Şor Party came under widening sanctions from the West<sup>35</sup> due to what are perceived as close ties between them with Moscow. In October, the Government intends to adopt legislation that would enable the Moldovan authorities to apply internationally imposed sanctions against persons from Moldovan or another country,<sup>36</sup>

raising concerns about the right to effective judicial remedy. In the energy sector, Moldova has made efforts to diversify its gas supply sources,<sup>37</sup> to enhance energy security by reducing its reliance on Russian sources, although natural gas from Russia is still purchased to power electricity generation in the Transnistrian region. Additionally, national media legislation has been amended in an effort to combat disinformation, which is recognised as a threat to national security.<sup>38</sup> The government has also launched a new Center for Strategic Communication and Combating Disinformation.<sup>39</sup> This entity has raised concerns among the opposition that could potential be used for censorship purposes. Lastly, the authorities have introduced the draft National Security Strategy, in which Russia and corruption, are identified as the main sources of national insecurity for the first time.<sup>40</sup>

## CONCLUSIONS AND RECOMMENDATIONS

From a technical perspective, the Moldovan government has largely implemented the 9 EU conditions through the adoption of the necessary legislation and procedures. However, these efforts have been marred by certain incidents in which legal changes were introduced in a non-transparent manner and the ongoing tensions between anti-corruption agencies, as well as by other questionable practices. These challenges still have the potential to cast a shadow on discussions relating to the opening of accession negotiations and on the negotiations themselves, should they begin. Addressing these shortcomings through the use of strict conditionalities must be a top priority for the EU in the next stages of accession negotiations with Moldova if these are opened by the end of 2023.

Nonetheless, Moldova, even if not fully prepared, should commence the accession negotiations alongside Ukraine and Georgia in view of the geopolitical and geostrategic context. Drawing lessons from Moldova's current approach to complying with EU conditionality, the EU should adopt a more critical approach, emphasizing support for qualitative (quality over quantity and speed) reforms designed and implemented in line with the principles of good governance. This should involve active engagement with critical voices from the opposition and the wider public (including businesses and local public administrations), as well as cooperation with traditional partners within the civil society spectrum.

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The Moldovan expert, Denis Cenuşa, analyses in his policy brief that the Republic of Moldova has made progress in implementing the 9 priorities of the EU Commission, but also points out the obstacles and shortcomings, especially in the area of the judiciary and the fight against corruption. Nevertheless, he recommends that, given the geopolitical and strategic reasons, the EU should start accession negotiations with Ukraine and Moldova as well as with Georgia in December 2023.

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