
It has only just begun: EU and anticorruption institutions in Moldova

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The Republic of Moldova recently signed the Association Agreement with the EU, closely followed by a detailed Association Agenda, which comes with concrete steps and conditionalities in the future dialogue between Chisinau and Brussels. The current paper discusses the most recent evolutions of the anticorruption institutions in Moldova, which owe a lot to EU's influence. We pay specific attention to the justice reforms chapters in the Agenda and we conclude with recommendations for the EU to continue to pay attention to corruption in Moldova, but address it in a more coherent manner.

BACKGROUND

Europe Day was celebrated on 10 May this year in Chisinau, Republic of Moldova. It had been postponed for diplomatic reasons, in order to avoid overlapping with the more traditional Victory Day on 9 May. Between the stalls promoting the national delicacies and the sounds of national music, debates emerged regarding EU integration by citizens who were given the rare opportunity to address questions to diplomats and other European representatives. Among the many questions, those relating to corruption featured more than most, one in particular relating to an incident in which a contract for the administration of the Chisinau airport was given to a small named company from Russia, for the duration of 49 years without a transparent procurement procedure. "Such an affair would not be possible after signing the Association Agreement with the EU", one European representative said, triggering the applause of the audience. "The EU will help us with the fight against corruption", a civic activist added, "as they managed to do in Romania, (with EU help) where they are convicting many officials". The Romanian example given was easy to grasp for many Moldovans who followed the Romanian debates around numerous high level corruption cases prosecuted by the special anticorruption bodies, established during the EU accession process.

STATE OF PLAY

The debate between citizens and officials was more than relevant, both in light of the high expectations the common Moldovan citizens hold with regard to the EU, and due to the frustration with local pro-EU politicians. It is difficult to tackle corruption in a poor society, with a weak state and an unstable democracy, but EU involvement may tip the balance in favour of reformists and anticorruption activists in the Moldovan society. In all fairness, important steps have already been taken in the last two years, even before the Association Agreement was signed. The EU paid attention to the issue and pressured the Chisinau government to reform the justice sector and strengthen new anticorruption bodies. The previous Center for Anticorruption and Economic Crimes created by the former communist president Vladimir Voronin was reshuffled with EU assistance. Now called the National



Anticorruption Center (NAC), its legal framework was redesigned to only target corruption cases. As part of the visa liberalisation conditionalities, a new institutional body was established in order to deal with officials' conflicts of interests and to verify the declarations of wealth the National Integrity Commission (NIC), replicating elements from the similar Romanian and Lithuanian institutions. A comprehensive anticorruption legal package was proposed last year by the young Justice Minister Oleg Efrim and it was narrowly adopted by the Parliament. The EU argument was crucial into passing all these changes. By taking an unprecedented step for in a non-accession country, the EU offered 60 million Euro in direct assistance for reforming the justice sector (and even surpassing the assistance provided for the Balkan accession countries, a welcome implementation of the "more for more" principle). This assistance allowed raising judges' salaries. In return, the autonomous governing body – the Supreme Council of Magistrates – allowed some of their peers to be prosecuted.

At the beginning of 2014 a judge was convicted for corruption, and is currently serving a jail sentence, which is a first for Moldova after the collapse of communism. Since 2010, one third of the entire number of judges, 140 to be precise, was replaced. This was rendered possible by a mix of incentives for early retirement and voluntary resignations, avoiding a new professionalism test, one in which many would have likely failed. In a region in which the balance between reforming the judicial system and brutal politicisation is fragile (see the recurrent scandals with judges' appointment in Serbia), this smooth and uncontroversial renewal of judges deserves credit. The EU interest for the issue made the local politicians appoint reformist technocrats in key positions, with a credible background in anticorruption NGOs: the General Prosecutor, the President of the National Integrity Commission, the Deputy Director of the National Anticorruption Center and the Justice Minister himself follow this pattern.

However, this is not the whole story. The anticorruption institutions in Moldova suffer from systemic problems. Purposely or not, the decision makers created them weak, granted them unclear powers and underfund them.

In addition, political infighting within the pro-EU governing coalition took its toll on their credibility: during the 2012 crisis in Moldova, the National Anticorruption Center was transferred from the government to the parliament and then back to the executive. Of the persons prosecuted by the NAC, 90% are found guilty by the judges, but the sentences are too lenient and people are seldom sent to jail. Most of these cases target low and medium-level officials, which triggers accusations against the NAC of avoiding high level culprits. To its credit, the NAC recently started prosecuting several ministers, but none of the investigations has yet reached the final phase. In the ever changing political alliances of Moldovan politics, all cases led to accusations of political manipulation. Only a continual and solid track record of successfully prosecuted high level cases will decrease the general skepticism of the public towards such investigations.

The National Integrity Commission (NIC) is also affected by its institutional arrangements. It is a collective body, with four members and a President, all of whom appointed by the Parliament. The law makes no clear arrangements about sharing the responsibility and power between the members, leading to internal infighting between appointed members of the Commission, which undermines the efficiency of the institution and its public credibility. The Parliament was called upon to step in and arbitrate the conflict – a peculiar position given the fact that the NIC should control these very parliamentarians. More so, under the same law, NIC members could be easily removed by the Parliament, even without a grounded reasonable motivation. The legal framework needs urgent revision in order to clearly distribute responsibility between the president of the institution on one side and its members, on the other. Also, a legal buffer is necessary in order to ensure actual independence of this institution from the Parliament.

Although the NIC began its work, its budget and its human resources severely limit its capacity. Its annual budget is of only 200,000 Euro and its 26 staff members are supposed to control assets and incompatibilities of tens of thousands of officials. Even in the cases when NIC makes a complete investigation and reaches a collective decision, the final punishment is weak as the general Penal Code is outdated. For example, a former General Prosecutor of Moldova was fined for conflict of interest, with the maximum penalty provided by the law: 6,000 Lei (375 Euro).

Overall, there is a visible tendency of Moldovan politicians to comply with EU recommendation in a minimal manner in relation to anticorruption: they establish the new institutions, but endow them with insufficient resources; they select credible activists to run the institutions, but grant them unclear responsibilities; they allow the passing of new legislation, but leave it vague.

Although new institutions were created, there was and continues to be no overall strategy but rather incremental steps, aimed at fulfilling specific EU requirements. The institutional fragmentation is severe, allowing numerous blocking points and opportunities for vetoes. For instance, bribery cases are initiated by either the National

Anticorruption Center or by the Home Affairs Ministry, but at some point the case has to be overseen by a prosecutor from the Anticorruption Prosecutor Office – a special division under the General Prosecutor Office. Problematically, this means that the police and the prosecutor are required to work together under two different institutions, which leads to competition rather than collaboration. The two institutions tend to blame each other for the poor results.

To take another example: after making a decision, the NIC sends conflict of interests and incompatibilities cases to the NAC, which is supposed to implement the sanctions. Again, these two institutions tend to compete rather to collaborate. The journalists and NGO activists trying to monitor corruption cases complain of this institutional ping pong, resulting in the same blame game.

In addition, there is a widespread assumption that political oligarchs informally control these weak institutions. In some cases the distinction between politicians and businessmen is hard to make in Moldova, as political parties can be seen as the 'personal fiefdoms' of powerful individuals, especially those higher up in the ranking of the richest Moldovans. The personal conflict between former prime-minister Vlad Filat and former deputy speaker of the Parliament Vlad Plahotniuc started several government crises which undermined the efficiency of the pro-EU Coalition. Many people in Moldova tend to associate the EU itself with this coalition, which is increasingly frustrating to the European diplomats in Chisinau. Back in 2010 EU officials were encouraged to see that the governing coalition in Moldova was called the "Alliance for European Integration", but since then the sentiment has waned.

Still, successive crises and turf wars between Plahotniuc and Filat led to a situation in which both of them are now outside the government and the Parliament. This created space for a more technocratic government led by Iurie Leanca to take the helm in 2012 and to continue the Association Agreement negotiations. Unfortunately, their mandate is drawing to close and the November 2014 elections will set the context for a potential oligarch come-back. The elections could be won by either the Communist Party, which would lead to colder relations with the EU, or the parties led by Filat and Plahotniuc. Neither part is enthusiastic about having strong and credible anticorruption institutions. The EU should follow two successive goals: a) to at least protect the current achievements and b) promote the improvement of the institutional and legal framework. This will not be easy in a small country caught in a geopolitical turmoil. Still, corruption undermines in the long term, any chance to change Moldova. It should stay on the EU supported reforms agenda.

PROSPECTS

The Association Agreement signed in late June is accompanied by an Association Agenda. It proposes a list of priorities for joint work in 2014-2016 in order to enhance the implementation of the Agreement. The justice and human rights chapters of the Agenda sets up ambitious targets for anticorruption, recommending the Moldovan Government introduce the following measures:

- a) ensuring the full functioning and independence of the National Anticorruption Center, including the appointment and dismissal of its director and deputy-directors through an open, transparent and merit-based procedure clearly provided by the law, and in regards to its oversight and accountability in operations;
- b) work towards furthering the independence of the justice sector institutions so that they are not subject to political or any other form of pressure from the administration, the Government or the Parliament;
- c) implement the new system of disciplinary responsibility for judges, ensuring their responsibility towards the society;
- d) strengthening the capacity of the National Commission for Integrity; strengthen coordination and information exchange between the authorities responsible for the fight against corruption, including by establishing clear working arrangements between the National Anticorruption Center and the National Commission for Integrity.

The attention paid by the Association Agenda on improving the track record of anticorruption institutions and the collaboration between them is welcome as it's encouraging the institutional stability for the near future. However, on a medium term, EU should also encourage:

- a) a merger between the National Anticorruption Center and the Anticorruption Prosecutor Office, in order to bring the investigators and prosecutors under the same umbrella. The creation of the new body should avoid the dilemma of 'whether it should be controlled by the Parliament or the Government?' which sunk previous

reform attempts. Some EU experts believe in the myth of parliamentary control as a mean to avoid polarization of the anticorruption institutions. In fact is a recipe for both politicisation and inefficiency. There is no example in Eastern Europe of such an institution performing well under Parliamentary supervision. The Parliaments themselves are products of the same corrupt political practices so putting them in charge means creating multiple veto players interested in politicisation and inefficiency. An efficient and accountable institution should be headed by a management appointed on merits and controlled only by the magistrates self-governing body and for limited circumstances only.

- b) a revision of the legal framework of the National Integrity Commission in order to clearly empower and make accountable the management of the institution. The institution should be allowed to implement the sanctions it decides. The World Bank, the Romanian and Finish Governments provided supporting grants for this newly created institution, the EU should also channel parts of its funding dedicated to the judicial reform towards the NIC. It was the EU who asked for its creation after all.
- c) a review of the penal and administrative laws to allow truly deterrent sanctions for corruption.

As a general approach, EU should encourage the Moldovan authorities to apply a coherent vision for these institutions and to avoid fragmentation which currently reduce their efficiency.

Moldova is a case study for the potential transformative power of the EU in its vicinity. With no real membership perspective but bold in its pursuit of an EU future, Moldova is the most advanced in the association process among the Eastern Partnership countries. It is not easy for the local elite to support institutions which at the end of the day could threatened their fortunes and even freedom. The anticorruption constituency is currently weak in Moldova but it exists. The EU has an essential role in tipping the balance to empower the reformists in the Moldovan society: media, NGOs, technocrats and selected politicians.

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