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A fight against corruption in Moldova: what's wrong and what can be done?

POLICY BRIEF

Executive summary

Although Moldova has a long history of anticorruption reforms, the 2014 banking fraud revealed that they were partial and rather unsustainable, which translated into weak and politically dependent national anticorruption mechanisms. According to the last opinion survey, corruption remains one of the top five issues for the population¹. Faced with domestic political and social instability and driven by external pressure, the Moldovan Parliament enacted a number of important anticorruption measures in 2016-2017 aiming to strengthen the capacity and independence of the anticorruption agencies. Most of these measures Moldova are part of the Association Agenda for 2017-2019, and more recently were included in list of conditions under the Memorandum of Understanding on EU macro-financial assistance. However, the quality of reforms implementation remains a serious problem, bringing marginal effects in reducing corruption. The slowed pace of reforms derived from the unpredictability in the legislative process, including long delays in adopting anticorruption-related laws, along with last-minute changes to the draft laws. Additionally, defectiveness of the anti-corruption reforms derives from legislature's attempts to sabotage the reforms through different controversial initiatives, delayed selection of leadership of the National Integrity Authority, excessive competences granted to the National Anticorruption Office, and insufficient staffing and financing of the Anticorruption Prosecution Office. The present brief analyzes the main anticorruption measures undertaken by authorities during 2017 and presents the main issues threatening their proper implementation.

¹Institute for Public Policies, Public Opinion Barometer, November 2017: www.bop.ipp.md.



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How the anticorruption reforms were translated into reality

A) Addressing high-level corruption.

A successful fight against corruption is impossible without an efficient investigation of high-profile corruption cases. Following the successful example of Romanian National Anticorruption Directorate, Moldova embarked upon prosecutorial reform in 2016. The key idea of the reform was in transferring the exclusive competences of fighting the high-level corruption from the National Anticorruption Center (NAC), perceived as politically dependent, to Anticorruption Prosecution Office (APO). The new Law on prosecution service of 2016 provides the APO with its own budget, premises, core and auxiliary staff, which back its independence. However, the head of the APO is subordinate to the General Prosecutor, and the latest appointment of the Anti-corruption Prosecutor deviated from a merit-based process.

Initiated more than one year ago, the prosecutor reform did not result in a better functioning institution. It lacks core and auxiliary staff, with 40 prosecutors against the 50 planned and 19 investigation and police officers against the 30 planned. Moreover, the institution keeps dealing with petty corruption cases, conducted also by the NAC, and their presentation in courts, producing additional workload (see Table 1). This distracts the attention of the anticorruption prosecutors from high-level corruption cases, which are complex and difficult to investigate. According to the General Prosecution's report for 2017, despite several high-level corruption cases, the biggest share of cases prosecuted by APO refer to low-ranking officials.

Table 1. Workload of the APO

	2017	2016	
Cases launched by APO	Overdue cases at the beginning of the year	484	112
	Launched criminal prosecution	453	268
Cases transferred from other agencies	296	446	
Total cases under management of APO	1233	826	
High-level corruption cases ²	34		
Petty corruption cases	230		
Prosecutors	40	32	
Cases per anticorruption prosecutor	30.8	25.8	
	Overdue cases at the end of the year	594	484

Source: General Prosecutor's Office³

The low salary for the auxiliary staff, and some contradictory legal provisions regarding the salary of core personnel, reduce the attractiveness of these positions for potential applicants. The nonexistence of a special fund for carrying out important investigative measures additionally complicates the activity of the APO. The shortage of personnel and financing has a significant negative impact not only on efficiency, but also on transparency of the APO's activities. This may explain why the criminal investigations related to the banking fraud, transferred from the NAC to APO, have lasted so long.

² According to the Head of the APO, as high-level corruption cases are considered cases dealing with MPs, ministers, judges, prosecutors and when the amount of crime starts from 5,000 conventional units, an interview with Viorel Morari, <https://anticoruptie.md/en/news/new-head-of-the-anticorruption-prosecutors-office-promises-a-series-of-investigations-and-new-changes-if-i-fail-i-will-resign>.

³ The 2017 Activity Report of the General Prosecutor's Office, http://www.procuratura.md/file/2018-03-12_Raportul%20Procurorului%20General%202017.pdf, pp. 28-29.

B) The anti-corruption strategy for 2017-2020: another delay

The 2017-2020 National Integrity and Anti-Corruption Strategy and the Action Plan, adopted in March 2017⁴ include a number of concrete and definite measures, most of the legislative work being planned for 2017-2018. Although some progress was registered, overall the action plan is being implemented with delay, especially when important documents, laws or significant amendments are concerned, such as the adoption of: 9 sectoral anti-corruption plans, the whistleblowers protection law, the national normative framework on parliamentary ethics and conduct etc. Some of these actions are directly related to the integrity of the electoral process, e.g. the regulation of political or social foundations, which becomes of high importance considering the forthcoming 2018 parliamentary elections. The media and national observers have repeatedly warned about the widespread practice of political parties using charity foundations founded by politicians or their close relatives for pre-electoral promotional activities. The existing outdated legislation on sponsorship and philanthropy allows the political parties to pump huge amounts of money to these foundations without reporting them to the Central Electoral Commission. The Government and Parliament has not even started to develop the amendments to improve the legislation, although the adopted laws were due by the end of 2017. There is a similar situation with regards to the Whistleblowers Protection Law, which should have been approved in the middle of 2017, but has entered the Parliament only at the end of March 2018.

C) Cases of selective prosecution and justice

To achieve positive results in fighting against corruption, the measures undertaken by the relevant institutions must have a holistic approach and exclude political targeting of political opponents. In Moldova's case, the activity of both the prosecution service and courts in most of recent high-profile corruption-related cases, raised questions. Additional to the close-doors hearings in high-profile cases, the lawyers of the accused parties, that happen to oppose to the Democratic Party, have reported numerous illegalities and procedural violations. These reports include deviations from procedure like the removal of lawyers, manipulation of the random assignment of files, the censoring of judgment by removing the allegation made by the defendants etc. Moreover, the lawyers claim that the prosecution service undertakes actions of intimidation and persecution.

At the same time, the convictions issued to the Democratic Party's associates are more lenient. This can be noticed in the cases of mayors Chirtoaca and Shor, and the minister Chirinciuc, and the deputy minister Triboi. In the first case, the mayor of Chisinau, Dorin Chirtoaca, suspected of traffic of influence for building paid parking places in Chişinău, was initially put under house arrest and then suspended from office until the final court decision. Unlike Chirtoaca's case, the mayor of Orhei, Ilan Shor, was not suspended from his position regardless an initial sentence of seven years and six months of imprisonment for money laundering and embezzlement.⁵ Also, he was not prohibited from occupying functions in the banking sector.

In the second case, the former Minister of Transport and Roads Infrastructure, Iurie Chirinciuc, was convicted in 2017 for abuse of power and traffic of influence to one year and four months imprisonment in a semi-closed penitentiary, with the conditional suspension of execution of one-year imprisonment with a fine of MDL 35,000 and deprivation of

⁴Parliament Decision no.56 as of 30.03.2017 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=370789>.

⁵According to the Kroll report no.1, the amount of embezzled funds from the three Moldovan banks BEM, BS and UN (Banca de Economii, Banca Sociala and UniBank) through fraudulent loans (plus interest) reached 18 billion MDL (\$1 billion) or 13% of Moldova GDP, <https://www.expert-grup.org/en/biblioteca/item/1125-descifrare-kroll>.

the right to hold public office for five years⁶. On the contrary, the former Deputy Minister of Economy, Valeriu Triboi, was also sentenced in 2017 for abuse of power. This implied a fine of 750 conventional units (MDL 37,500) and in no way affected his right to hold public office, ignoring the prosecutor's request to interdict holding a public office for eight years.

It is noteworthy that the case against Chirtoaca and Chirinciuc, who have high positions in the Liberal Party, started after the Liberals announced the refusal to support the PDM's initiative to change the electoral system. Later on, after the Liberal party withdrew from the ruling coalition, it accused PDM and PSRM of political pressing, qualifying the above-mentioned cases as political persecution. Similar accusations of political pressing and harassment from the law-enforcement bodies come from the representatives of the local public administration, who do not belong to PDM or PSRM. This situation signals that prosecution and justice systems can be subject to political interference.

D) Strengthening the domestic anti-money laundering (AML) framework

The Russian "Laundromat" case raised serious concerns about the quality of the national anti-money laundering legal framework, and the integrity and independence of the public institutions and justice system. By signing the Association Agreement, Moldova committed to harmonize domestic legislation with the AML Directive EU 2015/849 one year after the AA entry into force (the AA fully came into force on July 1, 2016)⁷. After a 9-month delay and an unpredictable and less transparent consultative process, Parliament adopted the new Law on the Prevention of Money Laundering and Combating Terrorist Financing (AML/CTF) on December 22, 2017⁸. Although the final version of the draft transposed various provisions of the EU Directive on money laundering and of the recommendations of the Financial Action Task Force (FATF), the law also contains a number of shortcomings that may significantly hinder the implementation of the AML/CTF framework and the quality of the secondary legislation.

The main concerns raised by independent AML experts⁹ are related to the following issues:

- The definition of "money laundering" does not comply with the EU Directive 2015/849. The definition used was taken from the Penal Code and comprises activities that cannot be classified as money laundering, thus posing a risk of overregulation, and abusive and arbitrary use of the law against the business environment.
- A wide range of risks related to predicate offences for money laundering, such as the offences regarding participating in organized crimes (human and drug trafficking, organized begging etc.) and offences regarding corruption (public acquisitions and privatizations) are not included.
- The AML avoids addressing the weakness and corruptibility of public institutions and the justice system, revealed by the Russian "Laundromat" case.
- Regulations for organizing a centralized database of effective beneficiaries, available to the reporting entities, are not in place. This creates additional impediments for economic agents and leaves room for abuses from state authorities.

⁶ CRJM Newsletter no.14, April-June 2017, <https://crjm.org/wp-content/uploads/2017/08/Newsletter-14-EN.pdf>.

⁷ Moldova-EU Association Agreement, Annex XXVIII-A. Rules applicable to the financial sector, http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=uriserv%3AOJ.L_.2014.260.01.0004.01.ENG.

⁸ Law no. 308/2017, <http://lex.justice.md/md/374388/>.

⁹ Policy note "Key vulnerabilities of the AML mechanism in Moldova" by Sergiu Gaibu, April 2018, Chisinau.

- Unlike FATF recommendations and the EU Directive on money laundering, the AML is not applying the risk-based approach (RBA) in order to ensure that AML/CFT measures are commensurate with the risks identified. The law does not provide specific reporting requirements tailored to reporting entities, their capacities and the associated risks.

Besides the above-mentioned deficiencies, the new AML detached the Office for Prevention and Fight against Money Laundering (OPFML) out of NAC control, aiming to create a central specialized, autonomous and independent public authority. In order to ensure its independence, the new institution will have its own budget and will regulate the selection of its personnel. However, unlike the law on the NAC, the AML excluded the pre-employment polygraph testing for the new personnel. At the same time, the transitional provisions of the AML provide for the simple transfer of the former personnel of OPFML to the new institution. Similarly, the Government reinstalled the director of OPFML Vasile Sarco for a new 5-year term, despite the legal provision allowing the Government to select the management through a competitive, merit-based process. Considering the weakness and high vulnerability to corruption of the state institutions that showed up in the Russian “Laundromat”, such a relaxed approach to the selection of the OPFML management and employees may minimize the positive outcome in the field.

C) Setting up the National Integrity Commission and the new mechanism for submission and verification of asset declarations

The assets and income verification was proven to be an important tool in preventing corruption once it is applied by an independent verification body, with clear and sufficient competences and capacities to perform its duties effectively. Establishing a national integrity system lacked domestic political willingness, but started to materialize due to external conditionality from IMF and the EU. As a result, a new package of laws on integrity was adopted. Strengthening the asset verification mechanism and safeguarding the independence of the verification body, the National Integrity Authority (NIA), were an important part of the reform. The implementation of NIA reform remains slow, while the institution fails to perform its main duty - verification of assets and interest declaration. This caused a prolonged selection of the NIA’s leadership, finally appointed in December 2017, and delays in hiring integrity inspectors, responsible for verification of asset declarations.

Successful implementation of the integrity reforms can be affected by the following challenges:

- *The insufficient funding of NIA.* The reformed institution will have a staff of 76 employees, which will require additional financial resources for both payroll and the supplementation of the institution’s material and technical base, including the renting of a new office. The level of remuneration of NIA employees remains crucial to attract qualified persons and reduce their vulnerability to corruption. The confusing provisions regarding the wages of integrity inspectors currently regulated by two different laws¹⁰ could generate additional problems.
- *Insufficient qualification of NIA staff for the verification, ascertainment and sanctioning activity.* The current legal framework establishes new procedures for verifying, ascertaining and sanctioning conflicts of interest and unjustified wealth. Not all integrity inspectors to be

¹⁰ Law No. 48 of 22.03.2012 on the civil servants pay system, which contains regulations on the remuneration of civil servants with special status within ANI, such as integrity inspectors (art.3). The other law no. 355-XVI of 23.12.2005 on the salary system in the budgetary sector expressly stipulates the salary of integrity inspectors (Article 82).

employed will have the experience and perhaps the knowledge required to successfully complete these activities. Inspectors will also have to learn how to operate with the E-integrity system for verification of asset and interest declarations. Similarly, the judges that will examine the files for confiscation of unjustified wealth will also have to be trained how to apply the new legislation.

- *Lack of real government support for the NIA and the new mechanism for submission and verification of asset declarations.* Since the launch of the reform, the authorities withheld to contribute to the effectiveness of ANI, either through political pressure (interference of Parliament in the process of selecting the NIA's leadership) or through promotion of controversial legislative amendments. The last legislative initiative that raises serious concerns about its negative impact on NIA's activity is the introduction of an integrity certificate as a mandatory condition to run for an elected or appointed public office¹¹. The integrity certificates are to be issued by the NIA, based on its databases of public officials sanctioned for violating the legislation on declaration of assets and conflicts of interest, and suspended from holding public office, proven by final court decisions. This aspect, as part of the bill on changing the electoral system, promoted by the Democratic Party, received a negative assessment from the Venice Commission as being unclear and leaving room for arbitrary exclusion of candidates from the electoral race¹². The proposed integrity certificate mechanism has some major flaws. Firstly, this initiative does not cover the candidates who did not work in the public sector, but supposedly have some integrity problems. Secondly, the NIA was not functional and could not verify the asset declarations for 2016 and 2017. This means that NIA will mostly issue blank integrity certificates for the 2018 parliamentary elections.
- Moreover, this initiative would generate a huge workload for the integrity inspectors, who will have to precede a great number of applications for issuing the integrity certificates within a limited time of a 15-day term, especially on the eve of elections. This additional workload will be undertaken in the detriment of the main task of integrity inspectors - the verification of asset and interest declarations which amount to 65.000. Given that the electoral period for the parliamentary elections is going to start in September 2018, w the integrity inspectors are expected to launch their activity in May 2018 at the earliest. Therefore, there is a high chance that the NIA will fail to perform an effective verification of the assets declarations for 2018.

Conclusion and recommendations

During 2016-2017 Moldovan authorities registered some progress in adopting an adequate legislative framework aiming at preventing and fighting corruption. Nevertheless, its proper enforcement is a matter of political will. The last minute changes to the adopted laws, along with the subsequent controversial legislative initiatives, aimed to weaken the anti-corruption mechanisms taken during 2016-2017, proving the lack of the governmental support for a genuine fight against corruption.

The anti-corruption strategy for 2107-2020 is being implemented with delay, especially when important legislative measures are concerned. The prosecutorial reform did not reach its original goal; the Anticorruption Prosecution Office failed to focus solely on high-level corruption. The share of petty corruption cases continues to outnumber the investigation of high-profile cases. The insufficient staffing and funding of the APO has also

¹¹ Draft law no. 46, registered in Parliament on 07.02.2018, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4073/language/ro-RO/Default.aspx>.

¹² Pct. 70, Joint opinion of the Venice Commission on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament), adopted on June 15, 2017, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)012-e).

negatively impacted its activity.

The manner in which the high-profile cases are judged and the persecution of undesirable lawyers and representatives of public administration affiliated to political groups other than the ruling party raises serious question about the independence of the prosecution and justice systems. The recently adopted Anti-money Laundering Law contains a number of shortcomings that may significantly hinder the implementation of the AML/CTF framework and the quality of the secondary legislation.

The delayed selection of the leadership of the National Integrity Authority has created an institutional void, leaving the assets declarations for 2015 and 2016 unverified. The new legislative initiative of the Democratic Party to introduce the integrity certificate for all candidates running for an appointed or elected public office is going to perpetuate this situation, by creating a huge additional workload for the NIA, distracting it from the verification of public officials' assets and conflicts of interests.

Recommendations:

We recommend the EU:

- 🔍 **Continue to apply targeted conditionality, linked with concrete qualitative results in fighting and preventing corruption.**
- 🔍 **Closely monitor the hearings in high-profile cases, implementation of the anticorruption measures and the activity of the NIA and APO and react promptly to all abuses or deviations;**
- 🔍 **Offer twinning support for the Anticorruption Prosecution Office and the National Integrity Authority with the best EU practices;**
- 🔍 **Provide support for the development/empowerment of agents of change (civil society, media, professional associations, youth etc.) for combating corruption in Moldova;**

The Moldovan Government should

- 🔍 **Allocate all financial and material resources required for the efficient functioning of the Anticorruption Prosecution Office and the National Integrity Authority;**
- 🔍 **Ensure that Anticorruption Prosecution Office is adequately staffed, both with prosecutors and auxiliary staff, such as criminal investigators, police officers, and experts;**
- 🔍 **Amend the Criminal Procedure Code and remove from the competence of the Anticorruption Prosecution Office concerning petty corruption cases.**
- 🔍 **Guarantee a fair trial for everyone, regardless the political affiliation and ensure that the independence and freedom of the lawyers, prosecutors and judges are respected;**
- 🔍 **Remove the gaps in the already adopted Anti-money Laundering Law and ensure a transparent and wide consultative process in developing and approving the secondary legislation.**

