

DEEPENING EU-MOLDOVAN RELATIONS

What, why and how?



EDITED BY
MICHAEL EMERSON AND DENIS CENUȘA

A Trilogy of Handbooks: Understanding the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine

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*One of a trilogy of Handbooks explaining the EU's Association
Agreements and DCFTAs with Georgia, Moldova and Ukraine*

Centre for European Policy Studies (CEPS), Brussels
Expert-Grup, Chişinău
Rowman & Littlefield International, London

Published by Rowman & Littlefield International, Ltd.
Unit A, Whitacre Mews, 26-34 Stannary Street, London SE11 4AB
www.rowmaninternational.com

Rowman & Littlefield International Ltd. is an affiliate of Rowman & Littlefield
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706, USA
With additional offices in Boulder, New York, Toronto (Canada), and Plymouth (UK)
www.rowman.com

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN: 978-1-78660-174-2 Paperback
978-1-78660-170-4 Hardback
978-1-78660-175-9 Ebook

 The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Printed in the United States of America

CONTENTS

List of Tables and Boxes	vi
Abbreviations	vii
Preface	ix
Summary	1
Part I. Political Principles, the Rule of Law and Foreign Policy	8
1. Political principles	9
2. Rule of law and movement of people	19
3. Foreign and security policy	26
Part II. Deep and Comprehensive Free Trade Area	30
4. Market access for goods	31
5. Trade remedies	40
6. Customs services	42
7. Technical standards for industrial goods	51
8. Food safety regulations	61
9. Services	69
10. Public procurement	79
11. Intellectual property rights	91
12. Competition policy	99
13. Statistics	106
Part III. Economic Cooperation	109
14. Macroeconomic context and financial assistance	110
15. Financial services	116
16. Transport	125
17. Energy	135
18. Environment	145
19. Digital sector	155
20. Consumer protection	164
21. Company law	170
22. Agriculture	176
23. Employment and social policy	183
24. Education, training and culture	190
25. Science and technology	194
26. EU agencies and programmes	197
27. Cross-border cooperation	202
28. Civil society	206
Part IV. Legal and Institutional Provisions	210
29. Dispute settlement	211
30. Institutional provisions	216

List of Tables and Boxes

Table 4.1 Moldovan products subject to annual duty-free TRQs for import into the EU	32
Table 4.2 Trade turnover between Moldova and the EU (\$ mn)	34
Table 4.3 Moldova's trade structure by country or region, 2013 and 2015	35
Table 4.4 Main EU imports from, and exports to, Moldova, 2015	36
Table 9.1 National treatment or MFN reservations to establishment	70
Table 9.2 Market access and national treatment reservations for cross-border services	72
Table 10.1 Thresholds for the application of public procurement rules	80
Table 10.2 Indicative time schedule for approximation of public procurement rules	83
Table 14.1 Main economic indicators of Moldova	112
Table 14.2 EU budgetary assistance to Moldova, by sector, 2014–20	114
Table 19.1 Aspects of ICT development in Moldova, Georgia, Ukraine and Romania	158
Table 21.1 Overview of EU company law directives for approximation	171
Table 25.1 Main thematic priorities of Horizon 2020	195
Box 8.1 Moldovan honey exports to the EU	64
Box 9.1 Summary of commitments and reservations of the EU and Moldova for services sectors	75
Box 11.1 Steps taken by Moldova in acceding to IPR conventions and organisations	96
Box 15.1 The 2014 bank fraud	121
Box 16.1 Investment funding in transport projects	132
Box 17.1 Energy issues related to Transnistria	141
Box 17.2 The Moldova–Romania gas pipeline and electricity grid connections	143
Box 18.1 Basic features of the Moldovan environment	148
Box 18.2 EBRD, EIB and EU-funded water and waste management in Chişinău	151
Box 22.1 Summary of EU agricultural policy laws referred to in the Agreement	177
Box 23.1 Relationship between EU employment and social directives and ILO conventions	185
Box 26.1 EU agencies open to Ukraine, Moldova and Georgia	197
Box 26.2 EU programmes open to Ukraine, Moldova and Georgia	198
Box 27.1 Regions of Moldova, Romania and Ukraine participating in cross-border cooperation	203
Box 27.2 Romania–Ukraine–Moldova cross-border projects, 2007–13	204

ABBREVIATIONS

AA	Association Agreement
ATM	Autonomous trade measures
ACAA	Agreement on Conformity and Assessment and Acceptance of Industrial Products
AEO	Authorised Economic Operator
ANRE	National Agency for Energy Regulation
ANSA	National Agency for Food Safety
ATP	Autonomous trade preferences
CAA	Common Aviation Agreement
CE	Conformité Européene
CEN	European Committee for Standardisation
CENELEC	European Committee for Electrotechnical Standardisation
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CJEU	Court of Justice of the European Union
COSME	Competitiveness of small and medium-sized enterprises
CRS	Computer reservation system
CSDP	Common Security and Defence Policy
DCFTA	Deep and Comprehensive Free Trade Area
DG	Directorate-General
DO	Designation of origin
DSM	Dispute settlement mechanism
EBRD	European Bank for Reconstruction and Development
ECtHR	European Court of Human Rights
EESC	European Economic and Social Committee
EIB	European Investment Bank
ETSI	European Telecommunications Standards Institute
EU	European Union
EUBAM	EU Border Assistance Mission
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade

GI	Geographical indication
GMO	Genetically modified organism
GOST	<i>Gosudarstvenny Standart</i> (State Standard)
GPA	Government Procurement Agreement
GSP	Generalised System of Preferences
ICT	Information and communication technology
ILO	International Labour Organization
IMF	International Monetary Fund
IPR	Intellectual property right
MAFI	Ministry of Agriculture and Food Industry
MFN	Most favoured nation
MOLDAC	National Institute of Metrology and the National Centre of Accreditation
NBM	National Bank of Moldova
NBS	National Bureau of Statistics
NCFM	National Commission for Financial Markets
NCIP	National Commission on Intellectual Property
NCTS	New Computerised Transit System
NGO	Non-governmental organisation
NIPS	National Intellectual Property Strategy
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
OSCE	Organization for Security and Cooperation in Europe
PEM	Pan-Euro-Mediterranean system of rules of origin
PLLC	Public limited liability company
SPS	Sanitary and phytosanitary (food safety) regulations
TBT	Technical barriers to trade (industrial product standards)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff rate quota
UNDP	United Nations Development Programme
VLAP	Visa Liberalisation Action Plan
WTO	World Trade Organization

PREFACE

This Handbook seeks to explain the contents of a long and complex legal treaty – the Association Agreement, which includes a Deep and Comprehensive Free Trade Area (DCFTA) – between the Republic of Moldova and the European Union (EU). Like most complex legal texts, it cannot be read like a book. Therefore, the purpose here is to make it possible for anyone to understand what each chapter of the Agreement means, in terms of both the nature of the commitments that the parties take on and the prospects for their implementation.

The Handbook has in mind a broad range of readers, including officials, parliamentarians, business leaders, lawyers, business consultants, think tanks, civil society organisations, university teachers, trainers, students and journalists.

The 30 chapters in this Handbook are mainly the same as those in the Agreement, but are not identical. Some chapters of lesser interest in the Agreement are not covered here, and there is some rearrangement of the various chapter headings.

The present Handbook is one of a trilogy that covers very similar but not identical agreements between the EU on the one hand, and Georgia, Moldova and Ukraine on the other. All three books are available electronically for free downloading in English and the respective languages of the three countries at www.3dcftas.eu.

There are some references in the Handbook to an Association *Agenda*, which is a document drawn up jointly by Moldova and the EU, reviewing progress in implementing the Association Agreement, and which usefully provides updating and some greater detail on various topics. The Agreement and Agenda are thus not to be confused. The official texts of both documents are also available in English and Romanian at www.3dcftas.eu.

A much shorter version of this book is being prepared with the aim of reaching a wider readership, including students. This version will also be available in print and online for free downloading in English, Romanian and Russian at www.3dcftas.eu.

The Handbook has been prepared by two teams of researchers and experts, from CEPS in Brussels and Expert-Grup in Chişinău. Established in 1983, CEPS is a leading think tank on European affairs, with a strong in-house research capacity and an extensive network of partner institutes throughout the world. Its mission is to produce sound policy research leading to constructive solutions to the challenges facing Europe.

The Expert-Grup is an independent think tank, specialising in economic and policy research. Its core activities are economic analysis, forecasts and policy research.

While much of the content of the Handbook is undoubtedly rather dry, we hope that the reader will appreciate the lighter touch in the artwork of Constantin Sunnerberg, which graces the book's cover and the introductory page of each chapter.

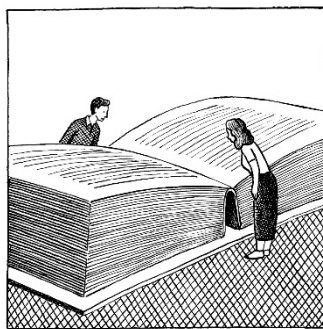
Finally, the authors are most grateful to the Swedish International Development Agency (Sida) for their support and funding for the project, and in particular to Mirja Peterson and Maria Liungman for their encouragement from the beginning.

The views expressed in this book are entirely those of the authors and should not be attributed to CEPS, Expert-Grup, Sida or the European Union.

SUMMARY

What?

The Association Agreement between the European Union (EU) and the Republic of Moldova is a comprehensive treaty establishing the relations between the parties and includes a long-term roadmap of reforms to be implemented by Moldova. The trade-related content aims to establish a Deep and Comprehensive Free Trade Area (DCFTA), and is one the most important parts of the overall Agreement.



The Agreement was signed in June 2014, and entered provisionally into force for much of its content in September 2014. Since then the Agreement has been ratified by the Moldovan and European Parliaments, and further by all 28 member states of the EU. As a result, the Agreement entered fully into force on 1 July 2016.

Why?

Of all the countries of the EU's eastern neighbours, Moldova is objectively the most European on several accounts, with a common history, language, culture and border with its direct neighbour, EU member state Romania. Many Moldovan citizens also have dual Moldovan-Romanian citizenship, and thus are citizens of the EU too. Reflecting these close ties, Moldova became the first of the six Eastern Partnership countries to secure visa-free travel with the EU.

The political and economic objectives of the Agreement are fundamental for the future of Moldova as an independent and secure European state, and can be simply defined.

The political purpose is to deepen the realisation of Moldova's 'European choice' and its relations with the EU. This means making a reality of fundamental European values, namely democracy, the rule of law and respect for human rights, and norms of the European security

order. Membership of the European Union is not directly pre-figured in the Agreement, but neither is it excluded, and its resolute implementation is the only path for securing Moldova's EU integration.

The economic purpose is to help modernise Moldova, by boosting trade with the EU and the world, and reforming domestic regulations in line with best European practice. Combined with an improving business climate and stronger institutions, Moldova has the potential to become a good location for foreign and domestic investment, producing exports to the EU and international markets.

How?

The Agreement amounts to a charter for Moldova's modernisation through alignment on EU norms and standards, which generally correspond to best international practice. Moldova does not have to 'reinvent the wheel' in many technically complex areas, where the choice of regulations and standards that differ from tested international practice would be highly costly and inefficient.

Since September 2015, the EU has almost completely opened its market for tariff-free imports from Moldova. This means the opening of new competitive opportunities for the Moldovan economy, while preserving the most vulnerable domestic sectors from a sudden competitive shock (Moldova will remove its tariffs on imports from the EU gradually, for different sectors over a period of up to ten years). Moldova's trade structure has already begun to diversify substantially in favour of EU markets, mitigating the losses from the trade embargo imposed by Russia. The technical requirements for access to the EU market are demanding and strict, but they are applied in a professionally fair manner, without (as elsewhere) geopolitical manipulation.

Financial assistance is available to help with technical support and investment where there are heavy adjustment costs, with grants from the EU, and loans or investment from the European financial institutions.¹

The Agreement, with its DCFTA, is no magic wand to cure Moldova's political system and economy of all its problems. However, its provisions do engage with a substantial part of Moldova's political and economic reform agenda. This normative alignment is far more

¹ Notably, these include the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).

than a technical matter, and goes to the heart of the urgent task of establishing sound, corruption-free governance.

* * * *

Part I. Political Principles, the Rule of Law and Foreign Policy

These chapters deal with the non-economic content of the Agreement. The commitments made, while of fundamental importance, are mostly qualitative in nature.

The crucial political objective in the Agreement is for Moldova's democratic institutions to assure respect for core European values. The Agreement provides for the detailed monitoring of democratic institutions, including the rule of law and human rights. Respect for democratic values is considered in the Agreement to be of such 'essential' importance that in the event of their grave violation the Agreement itself may be suspended.

The quality of democracy and the rule of law in Moldova are seriously damaged by the politicisation of the public institutions, and the EU has stressed the need for reform. In early 2016, there was a constitutional reform of the procedure for electing the president, albeit contested by the opposition. Judicial reform has been significantly delayed, anti-corruption institutions require consolidation and further action is needed to complete reform of the prosecution office.

Moldova's human rights record shows some improvement but significant problems remain, particularly in efforts to eliminate discrimination (for example against religious minorities, people with disabilities and the poor). The most problematic situation with respect to human rights, however, is in the Transnistrian region, as reflected in many judgments of the European Court of Human Rights.

Success in anti-corruption policy is universally considered to be a prerequisite for the overall success of the Association Agreement and Moldova's EU future. Important steps are still needed to ensure the full institutional and operational capacities of the National Anti-corruption Centre, National Integrity Commission and the General Prosecutor's Office.

The objective for Moldova to attain for its citizens visa-free access to the EU has been achieved. Moldovan citizens with biometric

passports can now travel freely to Schengen countries, with this access also applying to around 20% of the citizens of the Transnistrian region.

Moldova increasingly aligns with the EU on foreign and security policy issues, while continuing to carefully calibrate its position on Russia-related issues, such as the EU's sanctions. The most significant operational programme is the EU Border Assistance Mission, which facilitates practical cooperation across the borders of Moldova and Ukraine with the Transnistrian region, while contributing to the broader objective of settling the conflict.

Part II. Deep and Comprehensive Free Trade Area

These chapters are the hard core of the economic content of the Agreement, covering both tariff and non-tariff barriers to trade, with many legally binding obligations undertaken by both parties.

The elimination of tariffs is the classic basis for a free trade area. The DCFTA has established a free trade area for trade in goods since the start of the provisional application of the Agreement in September 2014. This liberalisation is a result of a continual process of trade facilitation between the EU and Moldova since 1998 (notably the Generalised System of Preferences (GSP) in 1998–2005, followed by the GSP plus in 2006–08 and then autonomous trade measures in 2008–14). It allows Moldova to prepare for full trade opening with the EU, while for the most sensitive sectors Moldova will eliminate its tariffs on imports for the EU over periods of five to ten years.

Although the benefits of the DCFTA can only be fully realised in the medium and long term, some positive results can already be seen in the trade in goods between Moldova and the EU after little more than a year. Moldova still needs to ensure a friendlier business climate, to eliminate technical barriers to trade and to comply with the food safety standards of the EU.

While Moldova has taken some important steps towards improving customs procedures in line with EU practices, the Customs Service still faces challenges, including deficient customs terminals, low trust and a high perception of corruption.

Adoption of European technical standards for industrial and agri-food products is vital for the modernisation and competitiveness of Moldovan industry. Moldova has advanced in approximating a limited number of EU directives to eliminate technical barriers to trade for industrial products, although the pace is slow. The application of European standards faces opposition from various stakeholders still

using GOST (former Soviet) standards. As regards food safety, Moldova is embarking on a comprehensive strategy for applying EU sanitary and phytosanitary regulations, which should take around two to four years to implement. This will in due course assure high health and safety standards for Moldovan consumers, as well as position Moldovan enterprises to export to the EU and other international markets. Institutional weaknesses of the key government agency (ANSA), particularly at the local level, constrain the growth of the agri-food sector.

A competitive and diversified service sector is of huge importance for Moldova's economy. The Agreement involves more liberalisation and fewer reservations on the Moldovan than the EU side. Moldova has made significant progress towards bringing its public procurement system into compliance with EU law and best international practice, yet further reforms are needed. In relation to intellectual property rights, the legal framework is consistent with international rules as well as those of the EU. Similarly, Moldova largely complies with the DCFTA requirements on competition policy. But in both cases, implementation remains problematic.

An agreement was also reached with the Transnistrian region for it to be partly covered by the DCFTA from January 2016, which could become a step in the direction of reunifying the country. Still, the agreement is rather fragile and its sustainability is uncertain since the region is following a very different geopolitical course.

Part III. Economic Cooperation

The chapters under this heading are numerous, and they range enormously in terms of the extent of legal obligations and their economic importance. This summary highlights a selection of the most important matters.

As regards the macroeconomic context, after the huge initial losses at the beginning of the post-Soviet transition it was not until 2000 that Moldova's economy began to recover. But then it was hit hard by the global economic crisis of 2009. In 2010, Moldova began to emerge from the crisis with renewed growth. In late 2014, however, a major bank fraud – incurring losses of 12% of GDP – coupled with drought and a difficult regional environment (economic crises in Ukraine and Russia, and slow economic growth in the EU) caused a further loss of GDP in 2015. Slow structural reforms and poor progress in improving

the business climate hold the economy back from making a robust recovery.

The EU has traditionally supplied significant technical and financial assistance to Moldova, including budget grants and major investment from the EIB and EBRD. In 2015, however, amid bank fraud and the slow pace of reforms, Moldova's development partners (including the EU) suspended financial assistance until the government showed clear evidence of reforms.

Until recently, Moldova's banking and financial market seemed, if underdeveloped, at least sound in its basic functions. Yet it was hit by the discovery of extensive bank fraud in 2014, resulting in the liquidation of three major banks. Nonetheless, the Agreement envisages a comprehensive approximation to EU regulatory norms, mostly within three years, although it is getting off to a slow start.

The DCFTA sets out the EU's detailed rules and regulations for most modes of transport (road, rail, inland waterways, sea and intermodal). Reforms in Moldova are advancing for road transport, but are slower for other modes. The EBRD, EIB and European Commission are funding investment in major aspects of the transport infrastructure.

The legal provisions of the Agreement and DCFTA in the energy sphere largely consist of commitments made under Moldova's accession to the Energy Community Treaty in 2010, including the EU's Third Energy Package. Compliance with these provisions is proceeding unevenly. The independence of Moldova's regulatory body on energy (ANRE) is judged inadequate by the Energy Community Secretariat. The Moldovan market for both gas and electricity is currently dominated by Russian companies (Gazprom and Inter RAOUES, respectively). Projects for diversification are being developed through network connections with Romania for both gas and electricity, but these will require large-scale European funding, which is not yet assured.

Moldova's environmental policy is being aligned with EU legislation, although insufficient financial and human resources cause difficulty and delay. Environmental investment projects are being funded by the EBRD, EIB and the European Commission.

The broad digital sector is growing rapidly and represents a vital part of economic reform and modernisation in Moldova. The Agreement provides for comprehensive alignment with EU regulatory practices within one to seven years, but progress here is rather slow. A large IT infrastructure of online public services has been developed, but

it lacks penetration at the level of local administration and among the rural population.

Moldova has considerable potential for agricultural development, including for exports to the EU. It has adopted an ambitious programme for replicating many technical elements of EU farm policy, and progress in implementing it will need to be monitored. There are substantial EU technical assistance and funding projects to support the process, with grants from the EU and capital from the EIB.

Moldova has developed an elaborate legislative and institutional framework for governing the labour market, which for the most part corresponds to EU standards and those of the International Labour Organization. More attention has to be paid to its practical application by improving the Labour Inspection service and reducing informal employment. Other domains for legislative approximation include company law and consumer policy.

Moldova's educational performance has not improved substantially in recent decades. Basic educational reforms are supported in the Association Agreement, notably for higher education through the 'Bologna process', and with concrete programmes like Erasmus+, which benefits a large number of Moldovan students.

There are extensive possibilities for Moldova's inclusion in the EU's agencies and programmes, with the potential to develop institutional capabilities and advance policy reforms. For example, in 2014 there was agreement on Moldova becoming a full participant in the EU's main research programme, Horizon 2020.

Moldova's borders with Romania and Ukraine create opportunities for business, social and cultural cross-border exchanges at the regional level. The EU contributes funding to cross-border cooperation initiatives. The EU also supports Moldovan civil society organisations as drivers of democratic change. There are no restrictions on the registration or activities of non-governmental associations.

Part IV. Legal and Institutional Provisions

A comprehensive and joint institutional framework, centred on the Association Council, will monitor the implementation of the Agreement and provide a platform for political dialogue. Implementation of the Agreement is supported by well-defined dispute settlement mechanisms.

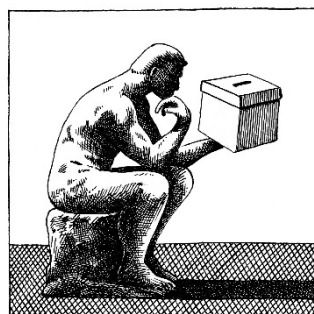
PART I.
POLITICAL PRINCIPLES, THE
RULE OF LAW AND FOREIGN
POLICY

1. POLITICAL PRINCIPLES

Provisions of the Agreement

The entire Association Agreement is premised on a common commitment to modern European democratic political values, recognising in the preamble that,

the common values on which the European Union is built - namely democracy, respect for human rights and fundamental freedoms, and the rule of law - lie also at the heart of political association and economic integration as envisaged in this Agreement.



These principles are repeated in Art. 2 and are declared “essential elements” of the Agreement. This links up to Art. 455, which states that in the case of violation of these principles the Agreement may be suspended. Political dialogue and cooperation on “domestic reform” should be conducted with respect for these same principles (Art. 6). This political dialogue is conducted through regular meetings at different ministerial and senior official levels.

On the substantive implementation of the basic principles, the jointly agreed Association Agenda text of 26 June 2014 is more explicit. Priority matters for action include institutional questions guaranteeing democracy, the judicial sector, and human rights and fundamental freedoms. These challenges are addressed in considerable detail in the Agenda.

Democratic institutions. The Association Agenda sees the strengthening of the institutions as essential to guaranteeing respect for democracy and the rule of law. There is a specific call for a comprehensive revision of the constitution to clarify the competences

of the president and to prevent potential conflict through institutional deadlocks. Furthermore, Moldova has committed itself to clarifying the appointment procedures and competences of the Constitutional Court, and to upgrading the legislation on party financing and advancing decentralisation.

Judicial sector. To ensure the impartiality of the judiciary, prosecution and law enforcement bodies, and their freedom from political interference and corruption, Moldova is expected to ensure the independent functioning of the National Anti-corruption Centre, review the appointment procedures of judges, strengthen the independence of the judiciary, establish zero tolerance of corruption for the legal profession, and reform legislation of the prosecutors, judges and lawyers. In a subsequent statement the EU stresses the urgent need for key reforms: “The reform of the judicial sector and the fight against corruption need real decisive action. It will be moreover crucial for the new government to act resolutely on the serious crisis in the banking sector.”²

Human rights and fundamental freedoms. In the Association Agenda, Moldova has committed itself to ensuring the rights of the most vulnerable groups and national minorities, implementing the Law on Ensuring Equality, and guaranteeing the effective implementation of the judgments of the European Court of Human Rights. In the latest EU–Moldova human rights dialogue, the EU “encouraged the Moldovan government to ratify the European Charter for Regional or Minority Languages as well as to adopt a national strategy dedicated to national minorities”.³

The Association Agenda addresses freedom of expression and focuses on the freedom and pluralism of media, and protection of journalist sources. It also envisages the protection of children’s rights and guarantees the implementation of legislation to prevent domestic violence. In an effort to improve gender equality, Moldova is expected to ensure equal treatment in social, economic and political life, and in decision-making.

² See http://eeas.europa.eu/statements-eeas/2015/150730_01_en.htm, 25 May 2015.

³ See http://eeas.europa.eu/statements-eeas/2015/150610_03_en.htm.

Implementation perspectives

The constitution. According to the constitution of 1994, Moldova is an independent, sovereign and indivisible state. The country must be governed according to the supreme values of the rule of law, democracy, human rights and fundamental freedoms, justice and political pluralism. Moldova has a parliamentary form of governance, with limited presidential powers. This is a result of the contested constitutional reform carried out through Law No. 1115-XIV of 5 July 2000, which ended the semi-presidential form of governance. The changes established that the president be elected by a large majority of the members of parliament (61 out of 101 votes or three-fifths of the total number of MPs); failure to elect a president requires new elections in the national assembly. In March 2016,⁴ the Constitutional Court declared the changes introduced in 2000 unconstitutional, so henceforth the president will be elected by the citizens. The presidential elections are set for 30 October 2016.

The Court has been criticised by the opposition for allegedly having exceeded its jurisdiction, issuing politicised decisions and accepting age restrictions on the candidates in the presidential race. Organised in the platform ‘Truth and Dignity’, some of the opposition has demanded further constitutional changes and called for a reduction in the number of members of parliament and for lifting MPs’ immunity. The platform collected 400,000 signatures, which is more than double the amount of signatures needed to trigger a referendum.

However, the Central Electoral Commission rejected the platform’s demand for a referendum on the grounds that the conditions laid down in Art. 141 of the constitution (over the number of signatures per administrative unit required) were not met. This decision by the Commission was contested by the opposition, and the Chişinău Court of Appeal annulled it, but the annulment was subsequently overturned by the Superior Court of Justice. Therefore, the original decision still stands.

The democratic institutions are generally perceived to be fragile because of the strong influence of oligarchic groups. The politicisation of the institutions (ministries, agencies, local public administrations,

⁴ See the Constitutional Court’s decision of 4 March 2016 (www.constcourt.md/libview.php?l=ro&idc=7&id=759&t=/Prezentare-generală/Serviciul-de-presă/Noutati/Curtea-Constitutionala-a-restabilit-dreptul-cetatenilor-de-a-si-alege-Presedintele).

etc.) is widespread. It covers various areas, but in particular the law enforcement, prosecution and anti-corruption institutions. This phenomenon has seriously undermined the rule of law and good governance, in particular after July 2009, when the institutions started to be partitioned in line with the political weight and interests of governing political parties.

Political parties. The political system is dominated by two types of political parties: those subordinated to local oligarchic groups and those suspected of being financed by external sources (Russia). To ensure a fairer and more competitive environment for political parties, the authorities passed Law No. 36 of 9 April 2015⁵ (on financing political parties), which introduces the possibility of financing political parties through individual contributions as well as public funds (up to 0.2% of the state budget revenues). Of the public funds, 50% should be provided proportionally to performance in parliamentary elections and 50% in relation to local elections. Allocations should be envisaged in the annual budget law, which also provides for the improvement of reporting on electoral campaign expenses and capping donations from individuals and business representatives. The law also prohibits the use of funds earned abroad, which affects the right of Moldovans abroad interested in funding political parties during the electoral campaigns. According to this law, about MDL 39 million was foreseen for political parties based on the results of national and local elections in 2014, but the effective transfer of this money depends on the adoption of the annual budget law.

Electoral processes. Although the electoral process is competitive, it is marred by irregularities that prevent it from being considered truly fair and free. Since the declaration of independence, Moldova has organised eight national elections: five regular elections and three early elections on account of the inability of parliament to elect the president. The OSCE reported that the latest early parliamentary elections of November 2014 were marred by irregularities. Among the main concerns, the OSCE underscored the following problems: deficiencies of the new electronic system for processing voters, political interference in the mass media and the exclusion of one party from the elections (Patria).⁶ The OSCE made

⁵ See <http://lex.justice.md/md/358046/>.

⁶ See OSCE, Statement of preliminary findings and conclusions (www.osce.org/odihr/elections/moldova/128476?download=true).

various remarks about the local elections of June 2015, notably regarding unbalanced media coverage, legal inconsistencies and the independence of the Central Electoral Commission.⁷

An inter-institutional working group was created to amend the Electoral Code, taking into account recommendations by OSCE and the Office for Democratic Institutions and Human Rights on the previous parliamentary elections. The Central Election Commission undertook to extend the online registration period for voters from abroad in order to increase the number of registered voters and improve the transparency of the process.⁸ A preliminary feasibility study conducted with financial support from Norway and Sweden pointed out that Moldova implements the preconditions for a gradual introduction of electronic votes.⁹ The introduction of a State Register of Voters in 2014 led to some improvements of the electoral lists,¹⁰ but more efforts are needed to eliminate the problem entirely.

The excessive use of government resources, vote-buying practices and disproportionate access to mass media constitute the main factors that distort the outcome of elections, combined with the effective powers of political parties supported by the oligarchic groups. Geopolitical factors continue to have a divisive effect on elections, with voters choosing between pro-Western and pro-Russian political parties.

Justice system. The Justice Sector Reform Strategy for the years 2011–16¹¹ has aimed at anti-corruption legislation and institutional reform, but its implementation lacks transparency and coherence, and deadlines have been missed.¹² Although the Ministry of Justice has

⁷ See OSCE, Final Report (www.osce.org/odihr/elections/moldova/178226).

⁸ *Idem*.

⁹ See the Central Electoral Commission, Press release, 31 May 2016 (<http://cec.md/index.php?pag=news&id=1042&rid=15553&l=ro>).

¹⁰ See the Central Electoral Commission, Press release, 24 May 2016 (<http://cec.md/index.php?pag=news&id=1042&rid=15359&l=ro>).

¹¹ See www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/PA_SRSJ_adoptatro.pdf.

¹² The national anti-corruption policy is impeded by the financial and operational weaknesses of the institutions, and their high degree of politicisation. More exactly, the Prosecutor's Office, the National Anti-corruption Centre and the National Integrity Commission belong to the power distribution system agreed between the political parties that formed the July

enough mechanisms for implementation of the strategy, the authorities established in 2015 the Centre for Reform of the Judicial System (CRSJ), seemingly to deviate from rather than implement the reforms prescribed by the strategy. The EU Delegation and civil society organisations have complained that the CRSJ¹³ has not ensured sufficient transparency and public consultation in preparing a series of draft laws. The main criticisms concern i) establishing specialised courts for examining corruption-related offences, instead of creating the mechanisms for the specialisation of judges in the existing courts; ii) restructuring the Superior Court of Justice by replacing 16 out of 33 career judges with representatives from academia, the legal profession and civil society; and iii) conferring to the Superior Council of Magistracy the right to check judges' assets, therefore overlapping the competences of the National Integrity Commission.

Draft amendments to the constitution are currently being prepared by the Ministry of Justice on the appointment of judges to the Supreme Court of Justice, and the role of the Superior Council of Magistracy.

So far, the EU has invested approximately €30 of 60 million intended for justice system reform. The remaining amount is dependent on the pace and quality of the reforms.

Reforming the Prosecutor's Office. The Justice Sector Reform Strategy led to a new Law on Prosecution adopted in February 2016, after numerous delays in 2015. The law refers to the functioning of the General Prosecutor's Office and of the Superior Council of Prosecutors, along with the appointment, transfer and promotion of prosecutors, and reduced layers of hierarchy. It also provides for the president to appoint the prosecutor general, upon the proposal of the Superior Council of Prosecutors, as opposed to the current appointment by the parliament. The prosecutor's mandate will now last for seven years instead of five. The law will enter into force on 1 August 2016, but in order to make it fully functional, secondary legislation and the law on specialised prosecutor offices need to be adopted. Also, amending the

2009 government. Some of these institutions (National Anti-corruption Centre and the Prosecutor's Office) have overlapping competences.

¹³ See <http://crjm.org/wp-content/uploads/2015/09/2015-09-29-Appeal-on-Jud-and-Corruption.pdf>.

constitution is necessary in terms of the conditions of election of the general prosecutor.¹⁴

Human rights. Moldova has adhered to the European Convention on Human Rights and Fundamental Freedoms and must implement the rulings of the European Court of Human Rights (ECtHR). Overall, the number of cases filed against Moldova in Strasbourg decreased to 1,011 in 2015, from 1,354 in 2013 and 1,105 in 2014.¹⁵ Moldova holds third place in terms of its number of applications per capita in 2015. By December 2015, the ECtHR had issued 316 rulings on Moldova,¹⁶ costing €17.5 million.¹⁷ Most violations refer to the right to fair trial, inhuman or degrading treatment, and the right to respect of private life.

The most common infringements refer to pre-trial procedures and conditions of detention, the prohibition of inhuman or degrading treatment and torture, and the lack of effective investigation. The Strasbourg Court also ruled on judgments linked to the violation of the freedom of expression, freedom of religion and the prohibition of discrimination. Up until January 2016, three judgments concerned the Transnistrian region and charged both Moldova and Russia with breaching the right to education, the right to life, the prohibition of inhuman or degrading treatment, and the right to liberty and security.¹⁸

Significant progress has been made in the enforcement of ECtHR judgments and fulfilment of the European Convention on Human Rights, however, and also in the activity of mediators to promote the inclusion of people with disabilities, and victims of torture and ill treatment. Although the authorities have undertaken measures to fight discrimination, this remains a serious problem regarding the poor, those who are HIV-positive or LGBT, Roma and women.

In 2015, the National Justice Institute organised activities focused on torture prevention, involving up to 100 people, including judges and

¹⁴ See the Declaration of the representatives of the Civil Society in the context of the 2nd reunion of the EU–Moldova Committee of Association, 16 May 2016 (<http://ipn.md/infoprjm/UserFiles/Image/PDF/DeclaratieSocietateCivilaComitetParlamentar.pdf>).

¹⁵ See Legal Resources Centre of Moldova, Infographic (<http://crjm.org/en/category/publications/>).

¹⁶ See ECtHR (www.echr.coe.int/Documents/Stats_violation_1959_2015_ENG.pdf).

¹⁷ Derived from the Legal Resources Centre, Moldova.

¹⁸ See www.echr.coe.int/Documents/CP_Republic_of_Moldova_ENG.pdf.

prosecutors. According to some experts, the National Mechanism for Preventing Torture is ineffective because the Ombudsman lacks institutional capacities. In early 2016, the Ombudsman started to draft a regulation for the functioning of the National Council for Torture Prevention.

A newly established Council on the Prevention and Elimination of Discrimination started examining cases in 2013. Although the Council is very active and has examined more than 200 cases, it is severely limited in its mandate. The legislation does not allow the Council to apply sanctions. Nor can the Council lodge complaints to the courts. This gives its decisions merely a declarative or prescriptive character. As a result, the implementation of the Council's recommendations is still quite weak.

According to a poll carried out by the Council together with local and Romanian NGOs in 2014,¹⁹ the Moldovans who suffer discrimination the most are the poor (31.9%), the elderly (28.8%) people with mental disabilities (25.7%) or physical disabilities (23.9%), and sexual minorities (19.9%).

There have been some attempts to improve the integration of people with disabilities. In 2015, the Ombudsman issued a proposal to align Law No. 60 of 30 March 2012 concerning social integration of people with disabilities with the UN Convention on the Rights of Persons with Disabilities. Important changes took place in May 2015, when the law amending the Electoral Code was passed, giving people with mental disabilities the right to vote. The Civil Code also requires changes by offering people with mental disabilities the right to take decisions by themselves. Overall, disabled people remain largely disadvantaged and poorly integrated into the labour market, facing difficulties in accessing public spaces (schools, hospitals, public administration, etc.), in particular in rural areas, and being limited in protecting their rights in the courts (e.g. people with a mental illness).²⁰

Open issues regarding Moldova's record are detailed in the Association Agenda and the 2016 progress report on its implementation. In particular, Moldova needs to implement the

¹⁹ See the report, "The phenomenon of discrimination in the Republic of Moldova: perception of citizens" (www.egalitate.md/media/files/files).

²⁰ See the "Report on preventing and combating the discrimination in Moldova 2015" (www.egalitate.md/media/files/Raport%20general%202015.pdf).

National Human Rights Strategy and Action Plan, fight discrimination and protect the rights of minorities.

Gender equality. With regard to gender equality, major changes will be implemented as a result of Law No. 180 of 15 May 2014, adopted in April 2016. The law introduces amendments to the Electoral Code, the Law on Government and the Parliament Regulation setting a minimum of 40% women represented on the electoral lists of political parties, the composition of the government and in the permanent bureau of the elected parliament. It also requires the amendment of advertising and mass media legislation, prohibiting sexist messages and images. In addition, it changes the legislation on healthcare protection, labour and detention, and improves women's conditions. All these provisions are in line with best practices promoted by the Council of Europe and the EU.

The Council of Europe's Convention on preventing and combating violence against women and domestic violence is not yet integrated into Moldovan legislation. Consultations regarding the adoption of a law allowing the signing of the Convention started in 2015 and continue in 2016. This should be followed by legislation to ratify the same Convention. During 2013–15, more than 20 specialised training courses were organised for approximately 1,000 employees of the Ministry of Internal Affairs on preventing and dealing with domestic violence. In addition, the National Justice Institute organised training courses on domestic violence for judges (more than 100 trainees in 2015).

Interethnic relations. Building on public consultations, in 2015 the Bureau for Interethnic Relations drafted a strategy aimed at strengthening interethnic relations in Moldova in the period 2016–20. The strategy is based on the recommendations of the OSCE High Commissioner on National Minorities, and comprises mechanisms for the integration of minorities into society, offering equal opportunities for active participation in public life. The integration of the Roma minority takes place under the Action Plan for supporting the Roma people of Moldova (2011–15). In 2015, the Bureau for Interethnic Relations started to draw up a new Action Plan for the Roma minority for 2016–20 and organised approximately 500 activities to promote tolerance.

Political principles at a glance

Democracy, respect for human rights and the rule of law are deemed “essential elements” of the Association Agreement, on which the Association Agenda text is more detailed.

Respect for democracy and rule of law in Moldova is seriously damaged by the politicisation of the institutions.

The opposition has asked for further constitutional reform since the procedure for the election of the president was revised by the Constitutional Court in early 2016.

Reform of the justice system has been significantly delayed with respect to the prosecutorial aspects.

Moldova’s human rights record is improving, but significant problems remain, in particular in efforts to eliminate all forms of discrimination (against women, minorities, the poor and the elderly).

The human rights situation in the Transnistrian region is problematic, with violations of the right to education, the prohibition of degrading treatment, and the right to liberty and security, as reflected in judgments of the European Court of Human Rights.

2. RULE OF LAW AND MOVEMENT OF PEOPLE



This chapter treats two sets of partly related issues: first, the fight against organised crime, corruption and terrorism; and second, border management and the movement of people, in particular the issue of visa-free travel between Moldova and the EU. Combating corruption remains the most pressing cross-sectoral issue of the Association Agreement.

The fight against crime, corruption and terrorism

According to independent sources, Moldova's record in the fight against corruption is poor. For instance, the Transparency International Perception Index for 2014 ranks Moldova in 103rd place out of a world total of 168 countries. Georgia and Ukraine came in at 48th and 130th place, respectively.

The anti-corruption efforts undertaken by the authorities in the period 2014–15 included the following measures:

In 2014–2015 531 criminal cases on corruption on 674 persons were submitted to the courts. Out of 674 persons 48% were from law enforcement agencies and justice sector, 20% from central and specialised public administration, 13% from local public administration, 9% from the medical sector, 6% from education and 4% from banking and fiscal sectors. In 2014–2015, 5 cases of corruption committed by ministers and deputy ministers were identified, 8 by heads and deputy heads of national agencies, 5 by heads and deputy heads of

autonomous public institutions and heads and deputy heads of departments within the public authorities, 24 by mayors, 17 by judges and 3 by prosecutors.²¹

According to an assessment of perceptions among professionals in the judicial sector, since 2011, corruption has increased significantly among lawyers (42%) and prosecutors (26%), and less among judges (5%). Corruption was found to be highest among lawyers, judges and prosecutors at the Courts of Appeal (30-54%), and lowest at the Superior Council of Magistracy (11-21%).²²

The biggest corruption scandals of the last few years have related to deep problems in the banking sector and the implication of offshore companies, questions about the integrity of judges and political corruption surrounding members of parliament.

Several chapters of the DCFTA have a direct bearing on the fight to reduce corruption, for example, on competition and public procurement policies. While the Agreement deals with corruption only in brief and declaratory terms, the Association Agenda document refers to the need to implement an anti-corruption strategy and improve the functioning of the National Anti-corruption Centre and the National Commission for Integrity.

The authorities have been implementing the National Anti-corruption Strategy for 2011-15, although this document has not been updated. The strategy's implementation is monitored by a group consisting of the National Anti-corruption Centre, the EU Delegation and representatives of international organisations and the donor community. There have been significant improvements in legislation, for example in the provisions concerning illicit enrichment and extended confiscation introduced to the Penal Code (Arts 330 and 106).

The key tool used by the National Anti-corruption Centre to prevent and combat corruption is the professional integrity test, regulated by Law No. 325 of 23 December 2013. This law was

²¹ See the "Progress Report of the National Anticorruption Centre in the period 2014-2015", February 2016 (www.cna.md/sites/default/files/statdata/nac_progress_report_2014-2015_english.pdf).

²² Derived from the Legal Resources Centre from Moldova, "Perceptions of judges, prosecutors and lawyers on justice reform and fight against corruption", December 2015.

circumvented by the Constitutional Court,²³ however, which declared several of its provisions unconstitutional. In order to bring the law into line, certain amendments were proposed, including the establishment of judicial control over the means used to perform the tests, thereby reducing their arbitrary application. Experts consider that these amendments can have a negative impact, in view of the corruption and political interference in the judicial sector.

As part of its anti-corruption actions, Moldovan authorities initiated the drafting of the Code of Ethics and Conduct for police officers in 2015. In this regard, Moldova received EU support through a project aimed at reforming the Ministry of the Interior and the Police and to fight corruption. The future code will take account of the provisions of the European Code of Ethics for police officers and the Code of Conduct of the Romanian police. The future code will apply to police and border police and will include provisions related to transparency, protection of personal data, relations with the public, anti-corruption and the use of force.

In 2015, anti-corruption prosecutors conducted training sessions for local public administrations, dedicated to the concept of ‘zero tolerance of corruption’. The National Integrity Commission is developing the information system ‘e-integrity’ with the support of the World Bank, and in cooperation with the National e-Governance Centre. The e-integrity online tool is used for the submission of assets and declarations of interest. The new legislation regulating the activity of the National Integrity Commission is in the final stage of legislative procedures. These amendments enhance the role of the National Integrity Commission and separate its contravention sanctioning competences from those of the Anti-corruption Centre. Overall, the authorities have prepared various amendments to the anti-corruption legislation. They refer to the delimitation of the prosecution mandates of the Anti-corruption Centre, the Ministry of Interior and the General Prosecutor’s Office. Political instability and interference have delayed all these amendments.

Anti-corruption activities are linked to the reform of the justice system under the Justice Sector Reform Strategy for 2011–16 and the Action Plan for its implementation. In late 2015, the authorities reported that 69% of the steps in the Action Plan had been undertaken,

²³ See the Decision of the Constitutional Court no. 7 of 16 April 2015 (<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=358415>).

using special Ministry of Justice methodology to monitor implementation of the strategy. Due to political interference, the Law on the Prosecutor, intended to increase the independence and efficiency of the Prosecutor's Office as part of the strategy, has been delayed.

In 2015, the agreement on operational and strategic cooperation, signed in December 2014 between Moldova and Europol, was ratified. The SIENA system for sharing information used in trans-border crime investigations between Moldova and Europol has been operating since April 2015. With the support of Europol, Moldova took part in two operations during 2015: one to combat the illicit trafficking of cars ('Hit 2-BLUE AMBER') and the other targeting human trafficking and illegal migration ('BLUE AMBER-SIROCCO').

Moldovan embassies benefit from Anti-terrorism Guidelines, enforced by the Ministry of Foreign Affairs and European Integration. The Moldovan authorities take part in the Counter-Terrorism Network under the Police Cooperation Convention for Southeast Europe, established in December 2014.

Movement of people and border management

The Agreement sets the stage for comprehensive dialogue and cooperation on legal and illegal migration, trafficking and smuggling of people, border management, asylum, return policies and movement of people.

The latter is dealt with only in summary terms in the Agreement itself, but the Visa Liberalisation Action Plan (VLAP) goes into much more detail. Moldova was required to fully implement the visa 'facilitation' and 'readmission' agreements and took gradual steps to qualify for visa 'liberalisation' (i.e. visa-free travel to the EU). To this end, Moldova implemented measures under four headings: i) document security, including biometric passports; ii) integrated border management, migration management and asylum; iii) public order and security; and iv) external relations and fundamental rights. The VLAP was applied in two phases: i) legislation and institutional arrangements, followed by ii) implementation.

Document security and biometric passports. According to the available data,²⁴ at the end of 2015, some 1,437,264 people were in possession of biometric passports. In addition, the number of those with biometric passports from the Transnistrian region had increased

²⁴ See the Centre for State Information Resources, REGISTRU.

since visa liberalisation to more than 97,639 (representing approximately 20% of the region's population). Biometric passports can be easily obtained across the country within short waiting periods, by application both in person and online (e-services). The price for a passport issued within 30 days is €39 (MDL 850), or €77 within 24 hours. In the first year of the visa-free regime with the EU, more than 400,000 Moldovans travelled to Schengen countries, avoiding expenditure on Schengen visas that in the preceding year cost travellers a total of €14 million.

The number of Moldovan citizens who have reclaimed Romanian citizenship (and therefore gained EU citizenship) was estimated to be more than 300,000 by 2014.²⁵ Unofficial figures indicate a higher number of more than 500,000 Moldovans with Romanian citizenship, many of whom have Romanian passports and/or IDs. The Romanian authorities do not provide any official statistics on these individuals.

Personal data protection is regulated by Law No. 133 of 8 July 2011. The National Centre for Personal Data Protection is responsible for monitoring and supervision. In 2014, the Centre performed 93 investigations in response to citizens' complaints. Out of 174 checks, 55 cases were ruled as legal infringements.²⁶ As a result of the legislative amendment scheduled to be finalised later in 2016, the competences and the capacities of the Centre will be increased.

Integrated border, migration management and asylum. In December 2015, the Border Police approved a plan of conduct in case of potential migration flows linked to the refugee crisis that hit Europe during 2015. The relevant Moldovan authorities participated in the project called 'Fighting irregular migration' during 2013–15 financed by the EU (€1.2 million), within the programme for supporting Moldova's implementation of the VLAP. A National Strategy concerning migration and asylum for 2011–20 is currently being implemented with the aim of ensuring a comprehensive management of migration and asylum processes and harmonisation with relevant international and European legislation, including a better regulation of migration flows. The strategy focuses on emigration and immigration, (re-)integration, asylum and stateless people, etc.

²⁵ See "Report 2014" by the Soros Foundation Romania (www.fundatia.ro/sites/default/files/ro_125_Raport%20Cetatenie.pdf).

²⁶ See the report of the National Centre for Personal Data Protection for 2014.

The National Justice Institute conducts regular seminars for judges and lawyers tackling issues such as human rights and the protection of immigrants. The Ministry of Information and Communications Technology collaborates with the Ministry of Internal Affairs with regard to the elaboration of new travel documents for refugees, beneficiaries of humanitarian assistance and stateless people.

Public order and security. The authorities have undertaken measures to increase the institutional and operational capacities of the Ministry of the Interior, at the central and local levels. These measures focus on operational and strategic planning, risk assessment, inter-institutional cooperation and digitisation of activities related to fighting criminality and ensuring public order, trans-border cooperation, etc. Cooperation agreements have been signed between the General Prosecutor's Office and Eurojust, the Ministry of Internal Affairs and Europol, the National Anti-corruption Centre and the European Anti-fraud Office (OLAF). Moreover, there are various bilateral agreements between Moldovan law enforcement and prosecution institutions and their EU member state counterparts.

As noted in chapter 3 on foreign and security policy, the EU Border Assistance Mission to Moldova and Ukraine (EUBAM) oversees the segment between the Moldovan separatist territory of Transnistria, which borders Ukraine to the north and Moldova to the south. In April 2015, EUBAM was involved in a common border surveillance operation, called 'Danubius', covering the Ukraine-Moldova common border and focusing on fighting illegal migration, drugs, weapons, smuggling of tobacco and alcoholic beverages and combating extremist groups acting to destabilise the situation at the border. EUBAM also participates in activities related to risk assessments of human trafficking and illegal migration, and is involved in the implementation of the National Integrated Border Management Strategy 2015-17.²⁷

Rule of law and movement of people at a glance

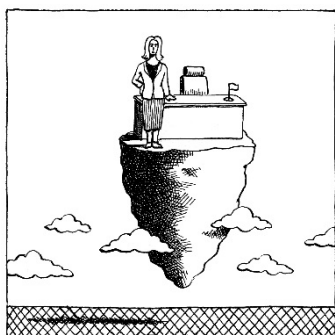
Success in anti-corruption policy is universally considered a prerequisite for the overall success of the Association Agreement and Moldova's economic future. Important steps should be taken to ensure the full institutional and operational capacities of the National Anti-corruption Centre, National Integrity Commission and General Prosecutor's Office.

²⁷ See EUBAM's Annual Report for 2015.

Moldova's aim of obtaining visa-free access for its citizens to the EU has been achieved. Moldovan citizens with biometric passports can now travel freely to Schengen countries, including approximately 20% of the citizens of the Transnistrian region.

Border management has been a matter of strategic significance for Moldova. The EU is introducing some specific programmes in this area, mainly contributing through the EU Border Assistance Mission.

3. FOREIGN AND SECURITY POLICY



The Association Agreement aims to facilitate the gradual alignment of Moldova's foreign, security and defence policies with those of the EU at bilateral, regional and multilateral levels. These include areas covered by the EU's Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).

The CFSP encompasses issues related to the strategic interests and objectives of the EU, the joint actions and common positions adopted by the Union and the procedures for implementing these actions and positions.

The CSDP may undertake a wide range of tasks, including humanitarian, conflict prevention and peacekeeping tasks, the deployment of combat forces in crisis management, disarmament operations and post-conflict stabilisation.

Conflict diplomacy. The parties aim to work together for the peaceful resolution of regional conflicts, and reaffirm their commitment to the international canons of sovereignty, territorial integrity and the inviolability of borders in accordance with the Charter of the United Nations and the Helsinki Final Act of 1975. The Association Agreement restates the need for a sustainable solution of the Transnistrian conflict within Moldova's territorial integrity and sovereignty, as well as the imperative of post-conflict rehabilitation.

Moldovan sensitivities. Moldova has consistently shown support for the EU's CFSP/CSDP, while shaping its own position on sensitive matters of foreign policy. In 2014, Moldova aligned its position on 63% of the CFSP declarations, yet the country maintains its opposition to the recognition of Kosovo's independence, bearing in

mind the unresolved Transnistrian issue. Moldova has abstained from approving the EU's economic sanctions targeting Russia (banks, energy companies and defence enterprises). It has also refrained from supporting the visa bans on Russian officials regarded as linked to the annexation of Crimea and the destabilisation of the eastern Donbas region of Ukraine. The Moldovan authorities did agree to join the travel bans and asset freeze sanctions against certain Ukrainian officials, however.

EU Border Assistance Mission (EUBAM). The EU is continuing EUBAM efforts in Moldova and Ukraine, launched in 2005. Its mandate was extended four times; the latest one runs until 30 November 2017. EUBAM provides assistance to Moldova and Ukraine in coping with security issues related to the movement of people and goods across the Transnistrian segment of the Moldovan–Ukrainian border. The mission supports the Moldovan Customs Service in implementing the trade provisions of the Agreement regarding the elimination of customs duties and taxes, customs and trade facilitation, administration of tariff quotas, legal approximation in the customs area, and issues related to rules of origin. The mission's activity includes combating illegal cross-border movements, with the broader aim also of contributing to the peaceful settlement of the Transnistrian conflict.

The mission is headquartered in Odessa (Ukraine), has an office in Moldova and five field offices – two on the Moldovan side of the joint border and three on the Ukrainian side. It plans to open an office at Chişinău airport.²⁸ With a biennial budget of €21 million (for 2013–15), EUBAM employs about 100 seconded staff members from EU member states and over 120 local staff from Moldova and Ukraine. EUBAM is an advisory and technical body that operates along the 1,222 km border (955 km of land and 267 km of river borders) between Moldova and Ukraine. Moldova's breakaway Transnistria region accounts for 453 km of the same border where EUBAM is also active.

EUBAM assists Moldovan–Ukrainian cooperation on issues such as border demarcation, joint border patrolling, and jointly operated border crossing points, rail traffic, trade facilitation and the common border assessment report. EUBAM will have observer status at the new jointly operated border-crossing point at Palanca (to be functional by 2017). EUBAM has carried out border control checks on trains, and an assessment of the regulations governing railway border-crossing

²⁸ See the EUBAM Activity Report for the period 1 December 2014 to 15 April 2015.

points. EUBAM facilitates the establishment of an automated exchange of border crossing data on people and vehicles that cross the Moldovan-Ukrainian border, including the Transnistrian segment. It provides recommendations to solve problems in the transport field (freight train movement, licence issuance and vehicle insurance requirements, and the registration of Transnistrian vehicles).

The mission participates in trilateral meetings together with Moldovan and Ukrainian authorities on the assessment of common border security. The highest risks at the border are considered to be the smuggling of cigarettes, alcohol and ethanol, while prevention of weapons, ammunition and explosives smuggling is a top priority. Together with the Swedish Police, EUBAM runs a project aimed at enhancing the operational capacities of the Bureau for Migration and Asylum on preventing and combating illegal migration and trafficking of human beings.

EUBAM contributes to the Transnistrian conflict settlement process through its participation in the '5+2' framework²⁹ with assistance on various aspects: advisory work regarding the free movement of people and goods across the Transnistrian region towards Ukraine; boosting the dialogue between Chişinău and Tiraspol on transport and customs, trade and law enforcement; helping to settle border problems; monitoring the respect of human rights and European border control standards.

As of 1 January 2016, the Transnistrian region joined the DCFTA free trade area (see chapter 4), and the EUBAM mission contributed to this positive development by helping to build up the technical aspects of border controls, as well as through broader confidence-building efforts.

Moldova in CSDP operations elsewhere. Under the terms of the Association Agreement, Moldova and the EU have committed themselves to enhancing their cooperation in crisis management. In particular, the Agreement encourages the improvement of Moldova's military capabilities, Moldova's greater participation in EU-led crisis management operations and, on a case-by-case basis, in training missions conducted under the CSDP. The EU-Moldova Association Agenda foresees negotiations on an agreement between the parties on security procedures for the CSDP-related exchange of classified information. This agreement is to complement the framework

²⁹ The '5' comprise Russia, the US, Ukraine, the EU and OSCE; the '2' comprise Chişinău and Tiraspol.

agreement for Moldova’s participation in EU crisis management operations of 1 July 2013. Currently, Moldova contributes to the EU Training Mission in Mali by providing human rights-related assistance, also to the EU Military Advisory Mission in the Central African Republic.

International Criminal Court. The Association Agreement reaffirms that the prosecution of the most serious crimes, such as genocide, war crimes and crimes against humanity, should take place at both the national and international levels. To this end, the Agreement promotes the implementation of the 1998 Rome Statute of the International Criminal Court, which Moldova ratified in 2010.

Weapons of mass destruction and disarmament. Moldova and the EU have agreed to advance the non-proliferation of weapons of mass destruction, through the ratification and implementation of the relevant international instruments. They have also agreed to advance their effective control and cooperation to combat the illegal arms trade (in line with Council Common Position 2008/944/CFSP of 8 December 2008) and to fight international terrorism (in line with, inter alia, the framework UN Security Resolution 1373 of 2001).

Foreign and security policy at a glance

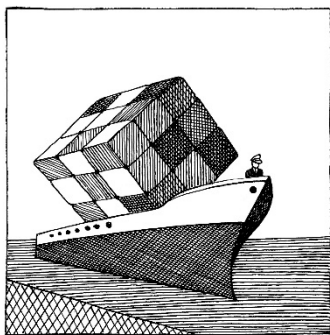
The Transnistrian conflict and the role of Russia have largely shaped the foreign and security aspects of EU–Moldova cooperation.

There is increasing alignment by Moldova with the EU on CFSP matters and cooperation in CSDP missions, but with careful calibration of its position on Russia-related issues, such as EU sanctions.

The most significant operational programme is the EU Border Assistance Mission, which facilitates practical cooperation over the borders of Moldova and Ukraine with the Transnistrian region, while contributing to the broader objective of settling the conflict.

PART II.
DEEP AND COMPREHENSIVE
FREE TRADE AREA

4. MARKET ACCESS FOR GOODS



Tariff liberalisation is the basic starting point for creating a free trade area. Since the start of the provisional application of the DCFTA on 1 September 2014, the EU has liberalised imports from Moldova for almost all goods, with only a limited number of exceptions in agricultural products. Liberalisation by Moldova is subject to transitional periods.

Provisions of the Agreement

Before analysing the provisions of the DCFTA, it should be noted that the EU unilaterally liberalised a part of its trade with Moldova as early as 2008 through **autonomous trade preferences (ATP)**. Initially these ATP only covered industrial goods, but after Russia's import ban on several Moldovan agricultural products, the EU amended its ATP in 2013 and 2014 to extend duty-free treatment to Moldovan wine and to grant duty-free quotas for apples, plums and table grapes. The ATP applied until 31 December 2015, in order to make it easier for business to adapt during the transition period between the autonomous preferences and the DCFTA.³⁰

The DCFTA has established a free trade area for trade in goods since the start of the provisional application of the EU–Moldova Association Agreement from 1 September 2014.

³⁰ See Regulation (EU) 1383/2014 amending Council Regulation (EC) 55/2008 introducing autonomous trade preferences for the Republic of Moldova.

For **industrial goods**, the DCFTA provides for asymmetric trade liberalisation: the EU will immediately and fully abolish import duties on all Moldovan industrial products, whereas Moldova will open its market for several products only after a transition period of three to five years. Moldova will gradually phase out its tariffs for certain types of plastics and related products, furniture and several textile products, such as carpets and clothing. This should give Moldovan exporters the time to prepare for competition from the EU.

For **agricultural products**, the parties will not fully liberalise trade. Although the EU will immediately liberalise access to its market for most Moldovan agricultural imports, it will still impose tariff rate quotas (TRQs) on a limited number of sensitive products (Table 4.1). The MFN customs duty will apply to imports exceeding the TRQs. Moreover, for the types of fruits and vegetables subject to entry prices in the EU (e.g. tomatoes, courgettes and peaches), Moldova will still have to pay an import duty, with the exemption of the *ad valorem* component of that import duty.

Table 4.1 Moldovan products subject to annual duty-free TRQs for import into the EU

Product description	Volume (tonnes)
Tomatoes, fresh or chilled	2,000
Garlic, fresh or chilled	220
Table grapes, fresh	10,000
Apples, fresh	40,000
Plums, fresh	10,000
Grape juice	500

For a large group of agricultural products, listed in Annex XV-C (including pig and poultry meat, and dairy products), the EU may apply an “anti-circumvention mechanism”. This defines for each category of products an average annual volume of imports (i.e. a “trigger level”). If imports from Moldova into the EU reach 70% of this trigger level in a given year, the EU must notify Moldova about the volume of imports of the products concerned. If 80% of the trigger volume is reached, Moldova is obliged to provide the EU with a sound justification of the increase of imports. Only when 100% of the trigger volume is reached may the EU temporarily suspend the preferential treatment of the products concerned for a period of six months.

Moldova will – unlike the EU – only liberalise most of its agricultural products after a transitional period over a maximum period of ten years (e.g. dairy products, meat products and wines). Moreover, Moldova will only partially liberalise trade for sensitive products such as pigment, poultry meat, processed meat products, sugar and sweeteners through TRQs.

The DCFTA also prohibits export duties and includes a standstill clause stating that neither party may increase any existing customs duty or adopt any new customs duty on goods originating in the territory of the other party. Quantitative restrictions on imports and exports are also prohibited by the DCFTA, except if allowed by the relevant WTO rules (i.e. Art. XI GATT).

Detailed **rules of origin** are laid down in Protocol I of the Association Agreement. These rules specify when a product is wholly obtained in the territory of one of the parties or when products have undergone “sufficient working or processing” in order to obtain the movement certificate ‘EUR 1’. An annex to the protocol defines four different criteria for sufficient processing for each product (i.e. tariff heading): i) a change of tariff heading (e.g. a screw will be originating in Moldova if it is made from imported materials of any other heading); ii) a minimum value added (e.g. for passenger cars, the value of all the non-originating materials used to manufacture the car may not exceed 40% of the total value of the product); iii) specific processing or working requirements or iv) a combination of the first three requirements. The DCFTA also allows bilateral cumulation, meaning that producers in the EU and Moldova can use materials and components originating in the other’s country as if they originated in their own country when seeking to qualify for preferential treatment. For example, when a Moldovan car producer imports intermediate parts from the EU to manufacture a car, those intermediate parts will be regarded as Moldovan and will not have to be taken into account in the calculation of the maximum threshold of the non-originating materials (i.e. 40%, as explained above).

In addition, Moldova has been able to accede to the Pan-Euro-Med Convention for diagonal cumulation (see further below).

Implications for Moldova

The first year of DCFTA implementation was marked by serious economic and political problems that affected domestic demand and business confidence, with consequences for trade and investment

activities. Moreover, these were underscored by adverse developments from Russia, which is also an important trading partner for Moldova. All these factors certainly distort the outcome of the first year of DCFTA implementation.

As a result, in the first year of DCFTA implementation, total exports of Moldova decreased by 16%, as shown in Table 4.2. The generally adverse economic conditions were aggravated by multiple Russian bans of goods from Moldova, the EU and Ukraine. Other Eastern Partnership countries, such as Belarus, also reduced their demand for imported goods as they encountered difficulties in selling their own production.

In these circumstances, the evolution of Moldovan exports to the EU could be considered satisfactory, decreasing only by 2.2% (see Table 4.2), which is significantly lower than the decrease in exports to other destinations. Moreover, exporters of agri-food, the area in which the DCFTA impact is expected to be the highest, increased by 10.8%. Thus, the elimination of tariff barriers had some significant and immediate positive effects on Moldovan exports to the EU.

Table 4.2 Trade turnover between Moldova and the EU (\$ mn)

Period	2008	2009	2010	2011	2012	2013	2014	2015
Total turnover	6,490	4,561	5,397	7,408	7,375	7,921	7,656	5,954
Turnover, EU	2,925	2,089	2,433	3,339	3,332	3,609	3,814	3,172
Growth (%)	24.0	-28.6	16.5	37.2	-0.2	8.3	5.7	-16.8
Share (%)	45.1	45.8	45.1	45.1	45.2	45.6	49.8	53.3
Total exports	1,591	1,283	1,541	2,217	2,162	2,428	2,340	1,967
Exports to the EU	820	667	729	1,083	1,013	1,137	1,246	1,218
Growth (%)	20.8	-18.6	9.2	48.6	-6.4	12.2	9.6	-2.2
Share (%)	51.5	52.0	47.3	48.9	46.9	46.8	53.3	61.9
Total imports	4,899	3,278	3,855	5,191	5,213	5,492	5,317	3,987
Imports from the EU	2,105	1,421	1,704	2,256	2,319	2,472	2,568	1,954
Growth (%)	25.2	-32.5	19.9	32.4	2.8	6.6	3.9	-23.9
Share (%)	43.0	43.4	44.2	43.5	44.5	45.0	48.3	49.0
Balance with the EU	-1,285	-754	-975	-1,173	-1,305	-1,335	-1,322	-736

The export of products subject to annual duty free TRQs increased immediately after the start of the DCFTA's implementation. For goods such as grapes, plums and barley, the increase was up to five times. However, the quotas are still far from being exhausted and the major barrier in this context is the non-compliance with EU sanitary and phytosanitary standards that would ensure access to the EU market for meat, eggs and dairy.

The geographical structure of Moldovan exports has changed, with the EU partners now the destination for 62% of the total (Table 4.3). While this change reflects an arithmetic result of both positive trends in relation to the EU and negative ones in relation to Russia, the overall strengthening of the EU's position as a destination for Moldovan exports is very important. Moldova needs predictable trade partners that follow the rules of international trade.

Table 4.3 Moldova's trade structure by country or region, 2013 and 2015

	2013				2015			
	Exports (\$ mn)	Exports (%)	Imports (\$ mn)	Imports (%)	Exports (\$ mn)	Exports (%)	Imports (\$ mn)	Imports (%)
EU	1,137	46.8	2,472	45.0	1,218	61.9	1,954	49.0
Russia	632	26.0	788	14.4	241	12.2	536	13.4
Other CIS	291	12.0	884	16.1	252	12.8	482	12.1
Other Europe	53	2.2	80	1.5	41	2.1	62	1.6
US	25	1.0	74	1.3	22	1.1	51	
China	7	0.3	479	8.7	9	0.4	366	9.2
Rest of world	0	11.7	1	13.0	0	9.4	1	13.4
Total	2,428	100.0	5,492	100.0	1,967	100.0	3,987	100.0

Meanwhile, among the goods imported from the Republic of Moldova by the EU are mainly textiles and textile articles, machinery and appliances, vegetable products and other foodstuffs and beverages (see Table 4.4).

Table 4.4 Main EU imports from, and exports to, Moldova, 2015

HS	Product	EU imports from Moldova		EU exports to Moldova	
		€ mn	% of total	€ mn	% of total
I-IV	Animal and food products	413	33.0	250	11.9
-- I	-- of which live animals, fish, dairy, eggs	9	0.7	56	2.7
-- II	-- of which fresh items (nuts, fruit, veg., cereals)	247	19.7	96	4.6
-- III	-- of which animal, vegetable fats, oils	56	4.5	3	0.2
-- IV	-- of which processed foodstuffs, beverages	101	8.1	95	4.5
V	Mineral products	11	0.9	374	17.9
	-- of which petroleum & related products	7	0.5	369	17.7
VI	Chemicals and allied products	8	0.7	218	10.4
	-- of which pharmaceuticals	1	0.0	90	4.3
VII	Plastics, rubber and related products	9	0.7	126	6.0
VIII	Raw hides, skins and saddlery	23	1.8	44	2.1
IX	Wood, charcoal, cork and related products	6	0.5	28	1.3
X	Paper, wood pulp, paper products	3	0.3	32	1.5
XI	Textiles and textile products	224	17.9	173	8.3
	-- of which clothing	177	14.2	31	1.5
XII	Footwear, headwear	53	4.3	11	0.5
XIII	Items of stone, glass, ceramics	26	2.1	37	1.8
XIV	Pearls, precious stones and metals, jewellery	0	0.0	2	0.1
XV	Base metals and articles thereof	129	10.3	131	6.3
	-- of which iron and steel products	104	8.3	23	1.1
XVI	Machinery and appliances	225	18.0	387	18.5
	-- of which machinery, nuclear reactors, boilers, etc.	14	1.1	188	9.0
	-- of which electrical, electronic equipment	211	16.9	199	9.5

XVII	Transport equipment	5	0.4	172	8.2
	-- of which automotive	4	0.3	171	8.2
XVIII	Scientific, precision, optical, photographic, musical instruments	16	1.3	42	2.0
XIX	Arms and ammunition	0	0.0	1	0.0
XX	Miscellaneous manufactured items	97	7.7	55	2.6
XXI	Works of art and antiques	0	0.0	0	0.0
XXII	Not classified	2	0.1	10	0.5
	Total	1,252	100	2,093	100

Source: WTO trade statistics.

Rules of origin. The Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM),³¹ established in 2012, provides for so-called ‘diagonal cumulation’ of value added for the purpose of establishing the origin of goods that can profit from free trade agreements (FTAs) with the EU. The PEM was originally signed by the EU together with all the Balkan countries and those of the European Free Trade Association, Turkey and southern Mediterranean countries that have concluded FTAs with the EU. The diagonal cumulation means that any value added in the chain of production of intermediate goods in any of the PEM countries may be added together to meet the EU’s rules of origin requirements.

Art. 5 of the PEM Convention provides the possibility for third countries to request accession, as long as they have a free trade agreement with the EU. In accordance with this provision, in June 2013 Moldova submitted a request for accession. In September 2015, after concluding all internal procedures, the PEM Convention entered into force for Moldova.

The PEM mechanism is of considerable economic interest for Moldova, since it opens the possibility of developing supply-chain linkages with nearby countries, including Turkey and the Balkans, which can benefit from diagonal cumulation, in addition to the possibilities for bilateral cumulation with Romania and other EU member states. This concerns especially future investment and new trade structures that can develop as a result of the DCFTA and PEM combined. Given the small size of the Moldovan economy and its proximity to the EU, Turkey and the Balkans, this overall system has a

³¹ See the Council Decision of 26 March 2012, OJ L 54/1, 26.2.2013.

very good fit with Moldova's interests. Moreover, Moldova ratified the free trade agreement with Turkey on 31 March 2016.

Discussions are currently underway with the Customs Subcommittee to replace the rules of origin set out in the DCFTA by the preferential rules appended to the PEM.

Transnistrian region. The EU is a crucial export market for Transnistrian exporters. The region has benefited from the asymmetric trade liberalisation that the EU has granted to Moldova since 2006 within various preferential trade regimes (GSP, GSP plus and ATP). The growth in the region's exports during 2005–14 consisted mostly of exports to the EU. During this period, the share of the EU in the region's total exports almost doubled: from 20% in 2005 to 33% in 2015. Meanwhile, the share of Russia in the region's total exports shrank from 40% in 2005 to only 8% in 2015.

Until 31 December 2015, the EU extended to the Transnistrian region the same regime of preferences (ATP) that it had granted to Moldova. But when this was replaced by the DCFTA for Moldova, the ATP regime for Transnistria also had to come to an end. For this reason, negotiations were engaged between Chişinău, Tiraspol and the European Commission over Transnistria's possible accession also to the DCFTA. Without this, the EU would cancel its trade preferences for Transnistria and apply its regular (MFN) import tariffs regime to goods originating from the Transnistrian region. This would severely hit Transnistrian exporters and undermine the already-shaky economic and social conditions in the region. While there had been fruitless conversations for some time between the parties over what to do when the DCFTA entered into force, an agreement was made at the last minute for Transnistria to join the DCFTA on 1 January 2016 under special conditions.

The formal decision of the EU–Moldova Association Council gives only very limited information on how it will be applied, notably that Title V of the Association Agreement (the DCFTA) will apply to the “entire territory” of the Republic of Moldova, meaning Transnistria included, and that its application will be reviewed after ten months, and thereafter once a year.³² Details of the agreement with Tiraspol are not publicly available. The main point for Transnistria is that EU tariffs are scrapped immediately as for the rest of Moldova. Conditions that Transnistria has to meet presumably include dismantlement of tariffs

³² See Decision 1/2015 of the EU–Republic of Moldova Association Council of 18 December 2015, OJ L 336/93, 23.12.2015.

on imports from the EU on the same schedule as for the rest of Moldova, and procedures for issuing certificates of origin, customs clearance, technical and sanitary and phytosanitary standards, competition policy, public procurement and fiscal policy. The review clauses underline the concerns of the EU and Chişinău that Tiraspol should deliver on its commitments.

Beyond these technicalities, the agreement for the DCFTA to be applied to the 'entire territory' of Moldova is of considerable political significance in relation to objectives for a progressive reunification of the country. At the same time it underlines the weakening of economic links of Transnistria with Russia.

Market access for goods at a glance

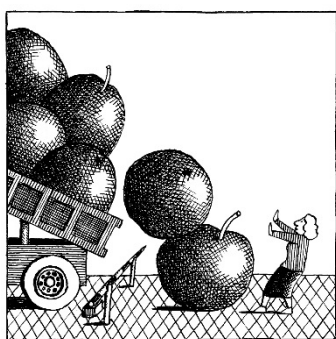
While the benefits of the DCFTA can only be fully realised in the medium and long-term, some positive results have already appeared for trade in goods between Moldova and the EU after one year.

Moldova still needs to ensure a friendlier business climate, eliminate technical barriers to trade and comply with the sanitary and phytosanitary standards of the EU.

Moldova also is now acceding to the Pan-Euro-Med Convention on rules of origin, bringing in the useful possibility of diagonal cumulation of value added.

Agreement was also reached with the Transnistrian region for it also to be covered by the DCFTA as of 1 January 2016, which is a valuable step in the direction of re-unifying the country.

5. TRADE REMEDIES



This chapter focuses on rules on ‘trade defence’ measures that the EU and Moldova can take against imports from the other party that cause or threaten to cause injury to the domestic industry, notably anti-dumping, anti-subsidy and safeguard measures. These DCFTA provisions essentially incorporate the relevant WTO rules.

Anti-dumping and countervailing measures.

The DCFTA provisions on anti-dumping and countervailing measures rely on Art. VI of GATT (1994), the WTO Anti-Dumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures. If a company exports a product at a price lower than the price it normally charges on its own home market, it is considered to be ‘dumping’ the product. The WTO agreement allows governments to act against dumping where there is a ‘material’ injury to the competing domestic industry. Before taking action, however, the government must be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared with the exporter’s home market price) and show that the dumping is causing injury or threatens to do so. The importing country may then impose a countervailing (provisional) duty to correct any damage to its industry.

The DCFTA adds specific features of the EU’s trade defence practice that go beyond the WTO agreements, such as the “public interest” and the “lesser duty” rules. The former implies that a party may decide not to impose anti-dumping or countervailing measures when it is not in the public interest to do so, for example when the interests of consumers or the employment situation would be

negatively affected. The lesser duty rule implies that the amount of a (provisional) anti-dumping duty shall not be higher than adequate to remove the injury in the domestic industry. This rule stresses the remedial rather than punitive character of the EU's approach to trade defence.

Safeguard measures. The DCFTA provides for both global safeguard measures and bilateral safeguard measures. The former relies on Art. XIX of GATT (1994) and the WTO Agreement on Safeguards. These rules regulate when and how WTO members may take a safeguard action (e.g. quantitative restrictions or duty increases higher than bound tariffs) to protect a specific domestic industry from an increase in imports of any product that is causing, or threatening to cause, serious injury to the industry. The key difference here, compared with the anti-dumping provisions, is that it does not require finding an 'unfair' practice by particular supplying enterprises or countries. Correspondingly, the safeguard action has to be applied to all WTO member states, and the country imposing these measures may have to pay compensation to other members whose trade is affected. This largely explains why anti-dumping measures are used much more often than safeguard measures.

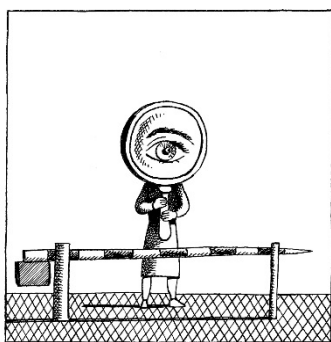
The bilateral safeguard measures allow the EU or Moldova to temporarily suspend DCFTA preferences in case their application would result in an unexpected and significant increase of imports causing economic damage to the domestic industry of the importing party. It is possible to either suspend the further tariff liberalisation or to reintroduce the MFN customs duty rate. The key differences with the global safeguard measures is that i) this procedure can only be used to protect the domestic industry from unexpected consequences of the DCFTA liberalisation, and thus only targets the goods from the other party (i.e. no MFN treatment) and ii) the duty may not exceed the MFN duty applied before the DCFTA.

Trade remedies at a glance

There are provisions for anti-dumping, anti-subsidy and safeguard measures to protect the importing economy from serious damage, or threats thereof, based on the relevant WTO rules.

Trade remedies are very rarely used in EU–Moldovan trade relations.

6. CUSTOMS SERVICES



For the DCFTA to work well there have to be high-quality customs services at the frontiers, with efficient facilitation of traffic to avoid delays and check smuggling and corruption in the long queues of heavy goods vehicles. This chapter of the DCFTA sets out key principles for customs legislation and procedures, in order to facilitate operational cooperation between the customs services of the EU and Moldova.

Provisions of the Agreement

This chapter is substantive and detailed in terms of its core principles, legislative commitments and numerous operational provisions.

Key principles for customs legislation and procedures. At a general level the EU and Moldova commit to ensure that their customs legislation and procedures are stable, transparent, non-discriminatory, applied effectively and prevent fraud. They aim at reducing and simplifying the data and documentation required by customs agencies.

At the legal or operationally precise level, the parties undertake the following commitments:

- Approximate Moldova's customs code to that of the EU, establish modern transit conditions and cooperation between customs services (see detail below).
- Apply relevant international instruments, including those developed by the World Customs Organization and the revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures.

- Apply a single administrative document for customs declarations.
- Provide for advance binding rulings on tariff classification and rules of origin.
- Adopt rules that ensure that any penalties imposed for the breach of customs regulation or procedural requirements are proportionate and non-discriminatory.
- Provide effective and transparent procedures guaranteeing the right of appeal against customs' and other agencies' administrative actions, rulings and decisions.
- With regard to fees and charges imposed by customs authorities, Moldova has to prohibit administrative fees from having an equivalent effect to import or export duties. Moreover, fees and charges have to be transparent and made publically available, and should not exceed the cost of the service provided by the customs authority.

Customs code. Annex XXVI states that Moldova has to approximate to the Community Customs Code laid down in Regulation (EEC) 2913/92 within three years of the entry into force of the Agreement. But because the Customs Code was considered outdated (it still relies on paper-based processes), it was replaced in October 2013 by the Union Customs Code (UCC, in Regulation (EU) 952/2013).³³ The new UCC will complete the progression to a paperless and electronic customs environment, and introduces several new procedures. The new UCC procedures will need to be transposed into the DCFTA by the Customs Subcommittee.

Moldova also has to implement the EU rules on the relief of customs duties within three years, enshrined in Regulation (EU) 1186/2009³⁴ and on actions against goods suspected of, or actually infringing certain intellectual property rights in Regulation (EC) 608/2013.³⁵

³³ See Regulation (EU) 952/2013 laying down the UCC. The regulation entered into force on 30 November 2013 and repealed Regulation (EC) 450/2008. The European Commission adopted the UCC's Delegated Act and Implementing Act in 2015, which allows the UCC to enter into force on 1 May 2016.

³⁴ See Council Regulation (EC) 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty.

³⁵ See Regulation (EU) 608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights.

Transit traffic. The EU and Moldova must ensure the progressive interconnectivity of their respective customs transit systems, with a view to Moldova participating in the common transit system set out in the Convention of 20 May 1987 on a Common Transit Procedure. This procedure is used for the movement of goods between the 28 EU member states, EFTA countries, Turkey (2012) and Macedonia (2015). Moldova already has observer status to the Convention and has to implement it within three years of entry into force of the Association Agreement. A crucial step to full membership will be Moldova's adoption of the Common Transit's New Computerised Transit System (NCTS), which enables an economic operator to submit common transit declarations electronically.³⁶ Moldova will also have to apply the relevant WTO provisions, such as Art. V of GATT, and adopt any future WTO measures for improving trade facilitation.³⁷

Customs cooperation. The EU and Moldova must strengthen their customs cooperation. They have to exchange information concerning customs legislation and procedures, cooperate on the automation of customs procedures, exchange relevant information, best practices and data, and cooperate in the planning and delivery of technical assistance, etc. The DCFTA establishes a procedure for "Mutual Administrative Assistance in Customs Matters", annexed in Protocol III to the Association Agreement. This establishes detailed procedures for information exchange over cases of suspected or actual fraud in relation to customs legislation. Customs authorities may also provide 'spontaneous assistance'.

The DCFTA also establishes a Customs Subcommittee that must monitor the implementation and administration of this customs and trade facilitation chapter, including the issues of customs cooperation, and the proper functioning of the Rules of Origin and Mutual Administrative Assistance in Customs Matters (Protocol III). Moldova

³⁶ For the accession procedure of EU neighbouring countries to the Convention on a common transit procedure, see European Commission, "Strategy to prepare certain neighbouring countries for accession to the 1987 EC-EFTA Conventions on a common transit procedure and the simplification of formalities in trade in goods", COM(2010) 0668.

³⁷ This means that Moldova will also have to apply the WTO Trade Facilitation Agreement that was adopted by WTO members in November 2014. The Trade Facilitation Agreement will enter into force once two-thirds of members have completed their domestic ratification process. The Agreement is already ratified by the EU, but not by Moldova.

will have to strengthen its relations with the business community by consulting regularly with trade representatives on legislative proposals and procedures related to customs and trade issues. All customs-related legislation has to be transparent and made publically available, as far as possible through electronic means and a consultation mechanism to debate proposals of new or amended customs legislation.

In addition to the DCFTA, the EU and Moldova have developed other instruments for customs cooperation, notably in the context of the Eastern Partnership. For example, in May 2012 the EU and Moldova adopted a “Strategic Framework for customs cooperation”.³⁸ This document identified various priority areas, most of which have been taken over in the DCFTA. One particular point of interest relates to *safe and fluid trade lanes* by achieving maximum trade facilitation for reliable business, with customs acting as a link in the supply chain. For example, the EU and Moldova aim to create fast lanes to move pre-approved eligible goods across the border quickly. Recognition of authorised economic operators (AEOs) could be part of this process. In the EU economic operators can apply for an AEO status to benefit from reduced controls and simplified customs procedures. The AEO status is granted to reliable operators who comply with security and safety standards.

Another important instrument in EU–Moldova customs cooperation is the 2005 European Union Border Mission (EUBAM) (see chapter 2 on foreign and security policy). The new EUBAM Phase (Phase 11) will call on EUBAM to assist with the implementation of the EU–Moldova and Ukraine DCFTAs. Specifically, EUBAM is assisting Moldova and Ukraine (especially the customs services) to create the legal framework, institutional infrastructure and administrative capacity to implement the DCFTA customs and trade facilitation rules. Much of this work is accomplished using the mission’s Trade Facilitation Working Group, set up in 2015 as a platform for cooperation between the relevant national government agencies, national business and key international development partners such as USAID, AmCham and the European Business Association. For example, in collaboration with the European Commission (DG-

³⁸ See http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/international_customs_agreements/geomoldukr/strategic_framework_mold.pdf.

TAXUD) and others, EUBAM assisted the Moldovan customs services to introduce reforms related to post-clearance control and audit as well as the AEO concept.³⁹

Finally, in 2013 the European Anti-Fraud Office (OLAF) and Moldova signed an Administrative Cooperation Agreement that sets out a framework for practical cooperation between OLAF and the Moldovan authorities on measures to prevent and detect cigarette smuggling, including information exchange and joint investigations.⁴⁰ This agreement will be crucial to tackling the illegal smuggling of cigarettes into the EU because these products mainly enter the EU via its Moldovan border, causing the loss of millions of euros to the state budgets of Ukraine and EU member states (the OLAF estimation is €10 billion a year). EUBAM is also working with OLAF because a large share of the illicit cigarettes comes from Transnistria, which is then moved to the EU via Moldova. For example, with the support of EUBAM, the Moldovan Security Service and General Prosecutor's Office raided and shut down in 2015 an illegal cigarette factory near Chişinău, which produced counterfeit brands of cigarettes for smuggling to the EU.

Implementation perspectives

Modernisation and simplification of the Customs Service. The Moldovan Action Plan for the Implementation of the Agreement⁴¹ includes several measures and actions to be undertaken by the Customs Service and other relevant authorities in order to improve, simplify and modernise the customs system. The harmonisation with international standards for the nomenclature of goods was realised with the adoption of Law No. 172 of 25 July 2014.⁴²

Moreover, the service has completed installation of the UN/UNCTAD Automated System for Customs Data (ASYCUDA), used to process customs declarations in line with the customs duties

³⁹ For the 2015 EUBAM report, see http://eubam.org/wp-content/uploads/2015/12/Report_2015_ENGL.pdf.

⁴⁰ See http://ec.europa.eu/anti_fraud/documents/international-cooperation/list_signed_acas_en.pdf.

⁴¹ See www.mfa.gov.md/img/docs/Sinteza-Raport-de-Implementare-a-Acordului-de-Asociere-RM-UE-Ianuarie-2016.pdf.

⁴² See <http://lex.justice.md/md/354306/>.

concessions applied by Moldova towards the EU. In addition, the Customs Code of 2000⁴³ and customs tariff legislation of 1997 were brought in line with EU practices and legislation (e.g. the combined nomenclature of goods, a ‘blue lane’ and protection of intellectual property rights). At the same time, a working group is coordinated by the Ministry of Finance to draw up a new customs code, which will transpose the provisions of the Unions Customs Code.

In order to improve the governance capacity of the Customs Service, the new law on customs services was drafted and sent to parliament in March 2016.⁴⁴ This draft law extends and unifies the provisions related to the Customs Service from the existing Law No. 1150-108/765 on customs services of 24 July 2002, and defines the organisation and core functions of the Customs Service.

Various measures were undertaken to simplify the customs rules for Moldovan exporters, in particular through the AEO⁴⁵ concept that has been applicable since 2014. Currently, 97 companies benefit from AEO status.⁴⁶ The Moldovan authorities are examining the possibility of signing a mutual recognition agreement with the EU on AEOs and have decided to implement the unilateral recognition of EU AEOs (Order of the Customs Service of 23 June 2015). The simplified procedures for AEOs from the EU have been applied as a pilot project at Leușeni customs post since July 2015 and their extension to other customs posts is currently being considered. Moreover, in a government decision of May 2015 the authorities reduced the number of obligatory acts for export/import to only three documents instead of nine, and three documents rather than eleven for imports.

The authorities also apply the mechanism of approved exporters to facilitate the export of ‘preferential origin’ from Moldova. The approved exporter certificate excludes the obligation to apply for the

⁴³ See the Customs Code no. 1149 of 20 July 2000 (<http://lex.justice.md/index.php?action=view&view=doc&id=319745>).

⁴⁴ The Draft Law on Customs Service was registered for examination in the parliament on 14 March 2016 (<http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3123/language/ro-RO/Default.aspx>).

⁴⁵ See http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aeo/index_en.htm.

⁴⁶ See www.mfa.gov.md/img/docs/Anexa5-Asociere-RM-UE-Ianuarie-2016.pdf.

EUR 1 movement certificate. The regulation for issuing and withdrawing the certificates of approved exporters was adopted in June 2015,⁴⁷ with three companies already benefiting from this type of certificate.

Another big step towards the simplification of customs procedures is the procedure for the electronic declaration for exports and imports (Government Decision No. 904 of 13 November 2013).⁴⁸ The submitted declarations are stocked afterwards in the ASYCUDA system, administered by the Customs Service. The share of electronic declarations for export amounted to 21% of the total in 2014, and almost tripled in 2015 (61%). The use of electronic declarations for imports is at an early stage (only 6% at the end of 2015).

The authorities implement the principle of facilitating lanes ('corridors') for quick customs clearance: the 'green lane' for free of customs clearance (76% in 2015); the 'yellow lane' with a checking of documents (13% in 2015); and the 'red lane' with physical and document checks (approximately 10% in 2015). Since July 2015, the authorities have operated a 'blue lane' in all customs posts, which allows companies to benefit from 'free of customs clearing' with no further post-customs clearance.

The protection of intellectual property rights (IPRs) is part of the authorities' current efforts. A regulation on the protection of IPRs by the customs office was drafted in 2015, reflecting the EU's IPR regulation (Regulation (EU) 608/2013). Together with the State Agency on Intellectual Property, the Customs Service undertakes measures for the implementation of the National Strategy on IPR 2020.

In October 2014, the EU developed a twinning project for the development of a 'one-stop shop' for the implementation of the NCTS. In March 2015, the European Commission approved this twinning project and then tried to find an EU member state to coordinate it.⁴⁹

The Customs Service and EUBAM work towards the better management of common Moldova-Ukraine borders. Discussions on resuming rail traffic for goods and passengers through the

⁴⁷ See <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=359284>.

⁴⁸ See <http://lex.justice.md/md/350292/>.

⁴⁹ See the Customs Service, March 2016 (www.customs.gov.md/ro/content/consolidarea-cooperarii-cu-ue-cadrul-sedintei-grupului-de-lucru-privind-implementarea).

Transnistrian region continued during 2015–16. Priorities include the establishment of a common control of Transnistrian companies at the Transnistrian segment of the Moldova–Ukraine border; enhancing the efficiency of information exchange between Ukraine and Moldova; and resuming transit through pre-conflict routes. The common operated customs posts by Ukraine and Moldova, benefiting from the technical support of EUBAM, totalled four customs posts in 2015 (Criva-Mamalîga, Larga-Kelmenți, Giurgiulești-Reni and Briceni-Rossoșani).

Anti-corruption measures. The anti-corruption measures undertaken by the customs authorities include the adoption of the Code of Ethics and Behaviour of the customs officer (Customs Service Order No. 323 of 12 August 2015). The Customs Service, and EUBAM, began drafting the Guide on the implementation of the Code of Ethics and Behaviour in 2015.

In 2014, the Customs Service adopted normative acts (Order No. 341 of 5 August 2014) concerning the register for denouncing improper influences on employees of the Customs Service. Also, integrity risk assessments started in 2014, with the participation of the National Anti-corruption Centre. The first Action Plan on the integrity of the Customs Service was adopted for 2015 and requires quarterly reports on integrity to be submitted to the Anti-corruption Centre. Representatives of the World Customs Organization visited Moldova in July 2015, as part of their efforts to increase the integrity of the Customs Service. Since 2013, the Call Centre of the Customs Service has operated an ‘anti-corruption’ hotline.

According to a study⁵⁰ published by Transparency International Moldova in 2013, which assessed the public perception of civil servants from 20 central public administration institutions concerning anti-corruption policies, the Customs Service received a positive evaluation. The institution was ranked 4th out of 20 institutions, following the Ministry of Economy, the National Anti-corruption Centre and the Ministry of Justice.

At the same time, according to other research conducted by Transparency International Moldova in 2015,⁵¹ the perception of

⁵⁰ See Transparency International Moldova, 2013 (www.transparency.md/ro/cefacem/publicatii/140-monitorizarea-politicilor-anticoruptie-in-autoritatile-publice-centrale-in-anul-2013).

⁵¹ See Transparency International Moldova, “Sociological research: Corruption in Moldova: perceptions and personal experiences of businessmen and households”, 2015.

corruption linked to the Customs Service increased during 2014–15. Bribes paid by businesspeople to Customs Service officials can apparently range between MDL 50 and 25,000. In the case of households, bribes are frequent and are said to reach MDL 9,000. Overall, research says that the volume of bribes paid to representatives of the Customs Service decreased in 2015 compared with 2014. Both households and business people show more appreciation for the professionalism of the public servants who work for the Customs Service than for other institutions (police officers, judges, prosecutors, etc.). But positive perceptions of the integrity of the Customs Service are still less than 30%.

Overall, the major outstanding challenges in the customs field concern the poor conditions of customs terminals,⁵² the high perception of corruption and limited transparency related to the investigation of corruption cases. In addition are low trust in the customs service among business and the ‘militarised’ nature of the Customs Service (e.g. organised in military-style grades).⁵³

Customs services at a glance

The DCFTA includes measures to ensure fast, transparent and efficient customs services.

Moldova has adopted certain measures to facilitate its customs procedures in line with EU practices (a new combined nomenclature of goods, a ‘blue lane’, IPR protection, etc.).

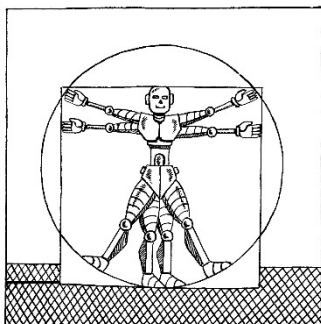
But the Customs Service faces various challenges, such as deficient customs terminals, low levels of trust and a widespread perception of corruption, which improved slightly in 2015 but is still unsatisfactory.

Efforts to improve the system include reducing the number of permissive acts required for exports, implementing the authorised economic operator (AEO) concept, electronic customs declarations, preparing for the New Computerised Transit System and introducing measures to fight corruption.

⁵² See *Fiscal Monitor* (www.communicate.md/index.php?task=articles&action=view&article_id=9393).

⁵³ The draft law on customs service was proposed in 2016 (www.realitatea.md/noua-lege-cu-privire-la-serviciul-vamal--inregistrata-la-parlament--iata-ce-prevede-proiectul--doc-_36061.html).

7. TECHNICAL STANDARDS FOR INDUSTRIAL GOODS



As the customs tariffs will almost fully disappear between the EU and Moldova, non-tariff barriers such as technical standards for goods will become the main obstacle to trade (conventionally called technical barriers to trade or TBTs). In order to tackle these technical barriers, Moldova will adopt the relevant EU legislation, standards and procedures. This will be a long and complex operation, but one fundamental for modernising and making its industry internationally competitive.

Provisions of the Agreement

Basic features of the European system. While the system is highly complex and has been changing over time, its basic features can be simply described. There is a two-level system:

- In the first level, there are a limited number of EU harmonisation laws, of which a few 'horizontal' regulations or directives cover the general methodology and institutional framework, and around 30 directives cover broad sectoral product groups, such as machinery. For the product groups the directives outline the 'essential requirements' related to health and safety that products have to meet before they can be placed on the EU market.

- The second level consists of a very large number (around 5,000)⁵⁴ of product-specific ‘harmonised standards’, which provide the technical means to comply with the essential health and safety requirements defined in the sectoral product directives. These standards are produced at the request of the European Commission by one of the three technical organisations (CENELEC for electrical products, ETSI for telecommunications equipment and CEN for the largest number of other products).⁵⁵ When the Commission is satisfied with the proposed standards, it publishes them in the EU’s *Official Journal*, so they then have official status as ‘harmonised’, which are presumed to meet the essential requirements of the applicable directive.

An overview of the harmonised standards, grouped by the existing sectoral product directives, can be found on the website of the European Commission.⁵⁶ For example, for the very important category of machinery, the applicable directive defining the health and safety requirements is listed, followed by several hundred harmonised standards for specific products or components.

The qualitative difference between the directives and standards is that while the former are binding laws, the harmonised standards, although having official recognition, are voluntary for manufacturers that choose to use them, or they can set their own specifications. In the latter case, however, the manufacturer has still to prove *conformity* with the relevant directive, which will usually be a more costly procedure than adopting the harmonised European standards that give automatic conformity with the relevant directive.

When placing a product on the EU market covered by the EU’s harmonisation legislation, the manufacturer has to draw up and sign an EU Declaration of Conformity in which the manufacturer ensures and declares that the products concerned satisfy the essential requirements of the relevant product directive and that the relevant

⁵⁴ Author’s own calculation based on data in the 2014 annual reports of the three European standardisation organisations (www.cenelec.eu/Pages/default.aspx and <http://www.etsi.org/>).

⁵⁵ CEN refers to the European Committee for Standardisation, CENELEC to the European Committee for Electrotechnical Standardisation and ETSI to the European Telecommunications Standards Institute.

⁵⁶ See European Commission, *Harmonised Standards Index* (http://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/index_en.htm).

conformity assessment procedures have been fulfilled. By drawing up the EU Declaration of Conformity, the manufacturers assume responsibility for the compliance of the product. Only then may the manufacturer affix the *Conformité Européene* (CE) marking to the product. Products bearing the CE marking are presumed to be in compliance with the applicable EU legislation and benefit from free circulation in the EU internal market.

Horizontal directives. Important horizontal EU legislation to which Moldova must approximate consists of two legal acts of 2008 known as the ‘New Legislative Framework’, namely Decision 768/2008/EC on a common framework for the marketing of products and Regulation (EC) 765/2008 on the requirements for accreditation and market surveillance. The former sets out a common framework of general principles and reference provisions for the marketing of products. It establishes criteria for EU sectoral legislation by providing the definitions of fundamental concepts (e.g. “placing a product on the market” and “harmonised standards”). It also defines the obligations for manufacturers, importers and distributors and sets out several modules of conformity-assessment procedures, which are explained further below together with the accreditation requirements.

In addition, Moldova has to approximate Directive 2001/95/EC on general product safety. This directive imposes general safety requirements on any product put on the market and defines the criteria that must be met before a product is considered safe. Moldova has to ensure that producers comply with these rules and monitor product compliance with the applicable EU requirements. It will have to identify products that pose a serious risk to health and safety, and prohibit such products from the market. In addition, it has to put in place a system of liability for defective products in line with the relevant EU rules.⁵⁷

Sectoral directives. According to Annex XVI of the Agreement, Moldova has to approximate to 20 sectoral directives, covering a wide range of products such as machinery, lifts, the safety of toys, medical devices and simple pressure vessels. This task is complicated by the fact that these directives are currently being updated in the light of the New Legislative Framework, in particular the EU’s Decision 768/2008/EC

⁵⁷ See Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

on a common framework for the marketing of products, which aims to improve market surveillance and boost the quality of conformity assessments (see below on conformity rules and procedures).⁵⁸ Moldova is obliged to follow these legislative developments.⁵⁹ These sectoral directives define for each product group the ‘essential’ health and safety requirements and the specific conformity assessment procedures to be followed (also explained below). The timetable in Annex XVI is very ambitious as it states that most of these directives have to be approximated by 2014 or 2015. But this timetable is flexible, because the Agreement allows Moldova to develop a new schedule for the implementation of these directives when it has missed the initial deadlines. Moreover, Moldova has to report annually to the EU on the progress made in implementing these directories.

An important difference with the Georgia and Ukraine DCFTAs is that Moldova also has committed itself to approximate a long list of

⁵⁸ In order to bring product harmonisation legislation into line with the provisions of Decision 768/2008/EC on common framework for the marketing of products, the EU adopted on 26 February 2014 – thus after the Agreement was negotiated – an Alignment Package consisting of eight directives:

- Low voltage Directive, 2014/35/EU
- Electromagnetic compatibility Directive, 2014/30/EU
- ATEX Directive, 2014/34/EU
- Lifts Directive, 2014/33/EU
- Simple pressure vessels Directive, 2014/29/EU
- Measuring instruments Directive, 2014/32/EU
- Non-automatic weighing instruments Directive, 2014/31/EU
- Civil explosives Directive 2014/28/EU.

In addition, legislation aligned on Decision 768/2008/EC has also been adopted for the following products:

- pyrotechnic articles (Directive 2013/29/EU)
- toy safety (Directive 2009/48/EU)
- restriction of hazardous substances in electrical and electronic equipment (Directive 2011/65/EU)
- recreational craft (Directive 2013/53/EU)
- radio equipment (Directive 2014/53/EU)
- pressure equipment (Directive 2014/68/EU).

Aligning proposals are pending further products:

- medical devices
- gas appliances
- cableways
- personal protective equipment.

⁵⁹ See Footnote 1 to Annex XVI.

sectoral EU legislation (around 80 EU directives or regulations) covering products that do not require CE marking (e.g. cosmetic products, motor vehicles, chemicals and pharmaceuticals). For placing these products on the EU market, specific rules and procedures apply.

European standards. The Agreement requires Moldova to adopt the body of European standards, which includes, in addition to the 5,000 harmonised standards, the 25,000 European standards (i.e. all the standards developed by CEN, CENELEC or ETSI). Clearly, this will be a huge challenge for Moldova. Because the Agreement does not provide for a timetable for transposing the standards, Moldova will have to prioritise its transposition efforts. Moldova is also required to repeal any conflicting national standards, including conflicting GOST standards.⁶⁰

Moldova has to ensure that its relevant national bodies participate fully in the European and international organisations for standardisation and conformity assessment, including accreditation. In particular Moldova is obliged to progressively fulfil the membership conditions for the European standardisation organisations (CEN, CENELEC and ETSI).

Conformity and surveillance procedures. The Agreement envisages wide-ranging cooperation between the two parties in the fields of market surveillance and conformity assessment procedures. Moreover, the parties have to promote cooperation between their respective organisations, public or private, responsible for these matters.

As noted above, Moldova has to approximate Decision 768/2008/EC on a common framework for the marketing of products. This Decision establishes a highly complex set of differentiated models (called “modules” in the text) for conformity assessment procedures. The sectoral directives covering the different product groups identify which module of conformity assessment is required. For certain groups of products that present a high risk to the public interest (e.g. pressure vessels, lifts and certain machine tools), a conformity assessment by a third party is required before placing the product on the market. These third parties are laboratories, inspection and certification bodies, which are known generally as conformity assessment bodies, or more formally as Notified Bodies. When implementing this decision, Moldova will have to guarantee that its Notified Bodies offer all

⁶⁰ GOST stands for *Gosudarstvenny Standart* (State Standard), as used in the USSR and post-Soviet states.

guarantees of independence, objectivity, impartiality, confidentiality and professional integrity. For various low-risk products the manufacturer can prepare the declaration of conformity.

Moldova also has to approximate Regulation (EC) 765/2008, which lays down rules on the requirements for accreditation of conformity assessment bodies and for market surveillance of products to ensure that products placed on the EU market fulfil the specific health and safety requirements defined in the sectoral EU legislation. This regulation includes detailed rules on how a national *accreditation* body (i.e. the body that evaluates whether a conformity assessment body meets the specific requirements) should be organised. There has to be a single national accreditation body, operating with impartiality and objectivity, and on a non-profit basis.

Moldova will have to establish and maintain *surveillance* authorities that monitor and control whether products placed on its market meet the EU health and safety requirements. These market authorities must perform checks on the characteristics of products through documentary, physical and laboratory checks. The surveillance authorities must have the competence to withdraw products from the market that present a serious risk. However, a decision to withdraw products from the market has to be proportionate, communicated to the relevant economic operators and must state the exact grounds on which it is based. Moreover, in such a case, Moldova will have to notify the Commission of such a decision and also notify it to Rapid Alert System for dangerous non-food products (RAPEX).

The Agreement aims to conclude an Agreement on Conformity and Assessment and Acceptance of Industrial Products (ACAA). ACAAs are a specific type of mutual recognition agreement envisaged by the EU for any country of the eastern or southern parts of the European Neighbourhood Policy and the Western Balkan countries. By concluding an ACAA, the parties agree that industrial products listed in the annexes of an ACAA, fulfilling the requirements for being lawfully placed on the market of one party, may be placed on the market of the other party without additional testing and conformity-assessment procedures. Still, before concluding an ACAA, Moldova would first have to fully implement its obligations related to the EU's directives, including the harmonised standards and accreditation and conformity assessment institutions, described above. These reforms will be closely monitored by the EU institutions. An ACAA would consist of a framework agreement, providing for the recognition of

equivalence of the conformity assessment, verification and accreditation procedures, and one or more annexes setting out the products covered.

Relations with third countries. Moldovan producers are entirely free to manufacture for export to third-country markets, such as Russia, according to those countries' own technical standards. On the import side the question is more complex. Once the sectoral EU directives are implemented, imports, including those from Russia, will have to meet the essential health and safety requirements of those directives before they can be placed on the Moldovan market. These products do not have to be produced on the basis of the EU harmonised standards per se, which are voluntary. Yet only products from third countries that follow the EU's harmonised standards will have the 'presumption of conformity' to be placed on the Moldovan (and EU) market.

Implementation perspectives

Legislative approximation. The 2014–16 National Action Plan for the implementation of the Association Agreement and DCFTA contains various actions, both legal and technical, covering TBT provisions.⁶¹ In terms of legal approximation, the Ministry of Economy delivers notifications to the European Commission concerning drafted legal acts and informs the Association Committee of the progress achieved in the implementation of Annex XVI.

The authorities continue to transpose the core horizontal EU legislation. According to the National Action Plan, so far only two out of six horizontal EU laws have been transposed: Directive 85/347/EEC concerning liability for defective products and Directive 2009/3/EC relating to units of measurement. The rest of the horizontal EU legislation is in the process of approximation,⁶² at different stages of the legislative process.⁶³

⁶¹ See <https://monitorizare.gov.md/reports/Raport%20PNAAA.html>.

⁶² See Regulation (EC) 765/2008 on accreditation and market surveillance relating to the marketing of products, Decision 768/2008/EC on a common framework for the marketing of products, Directive 2001/95/EC on general product safety, Regulation (EU) 1025/2012 on European standardisation.

⁶³ Notably, these are i) Regulation (EC) 765/2008 on requirements for accreditation and market surveillance relating to the marketing of products – Revision of the Law No. 235 of 1 December 2011 on accreditation and conformity assessment activities; ii) Decision 768/2008/EC on a common

The transposition of the sectoral EU legislation shows modest results, with about 13 directives entirely or partially implemented (on measuring equipment, energy equipment safety, construction materials quality, industrial machines, medical equipment, non-autonomous weighting apparatus, pyrotechnic, packaging and package waste, cosmetics composition control, road traffic safety, etc.). More than 30 directives are in the process of approval at different stages of the legislative process.

Adoption of standards. To date, some 10,200 (43%) out of 23,500 European standards (CEN/CENELEC) have become Moldovan national standards, including the harmonised standards of which almost all have been transposed (97%). The number of the withdrawn conflicting standards (including GOST) remains small. Around 1,000 GOST standards were withdrawn in 2014, and there are plans to cancel approximately 2,000 more. The national standardisation body set up seven technical committees to identify the contradictory standards that should be repealed. Overall, approximately 60% of the existing 27,700 national standards still represent the former CIS standards (GOST).

Institutions. The reform of the institutions responsible for coordinating policies of standardisation, metrology and accreditation started in 2012⁶⁴ and continued during 2013.⁶⁵ The reform included the adoption of normative acts leading to the creation of new institutions and the reorganisation of the old ones. Consequently, three autonomous institutions were set up: the National Institute of Standardisation, the National Institute of Metrology and the National Centre of Accreditation (MOLDAC). The institutions collaborate with the Ministry of Economy, which monitors their activities and which is the only central authority responsible for the coordination of the quality infrastructure. The approximation process covering the accreditation and surveillance activities of MOLDAC has been initiated, but it will take time to complete. At present, MOLDAC's accreditation capacities

framework for the marketing of products - Revision of the Law No. 647-XIII of 17 November 1995 on metrology; iii) Directive 2001/95/EC on general product safety - Revision of the Law No. 422-XVI of 22 December 2006 on general safety of goods; and iv) Regulation (EU) 1025/2012 on European standardisation - Revision of the Law No. 590-XIII of 22 September 1995 on standardisation.

⁶⁴ See Governmental Decision no. 996 of 27 December 2012 concerning the measures for reforming the quality infrastructure.

⁶⁵ See Governmental Decision no. 77 of 25 January 2013 concerning the reorganisation of the state enterprise, the Centre of Accreditation in Products Conformity Assessment.

are being assessed by the European accreditation body, while the conformity assessment bodies (testing, calibration and medical, as well as certification bodies, etc.) are able to perform their work in line with European and international standards.

The National Institute of Standardisation participates in the activities of the European standardisation organisations, with the status of an affiliated member of CEN and CENELEC and observer status at ETSI. It participates in the activities of the technical committees of CEN. Currently, the institution carries out actions to reach the full-membership criteria, such as ensuring transparency, openness and consensus-based decisions.⁶⁶ The requirements to pay membership fees and a lack of expertise and relevant human resources are among the main factors that may hold back the Moldovan authorities from advancing their status within these organisations. In addition, Moldova has to transpose at least 80%⁶⁷ of the existing European standards⁶⁸ necessary to reach the eligibility criteria.

In the field of metrology, the Moldovan body has established cooperation with European specialised bodies, such as the European Legal Metrology (WELMEC) and the European Association of National Metrology (EURAMET).

MOLDAC has been an affiliated member of the European Cooperation for Accreditation since 2011. Recently, MOLDAC has been under rigorous scrutiny on whether it can join the European cooperation for Accreditation's Multilateral Agreement (EA MLA).⁶⁹ In this agreement among the national accreditation bodies in Europe, the signatories recognise and accept the equivalence of the accreditation systems operated by the participating members and also the reliability of the conformity assessment results by the members. By joining this agreement, MOLDAC ensures that its conformity assessment is overall accepted in EU.

⁶⁶ The National Standardisation Institute aims at increasing the level of transparency through publishing the National Programme for Standardisation and organising open discussions with relevant stakeholders on conflicting standards proposed for cancellation.

⁶⁷ See the Guide on membership criteria of CEN and CENELEC, Edition 3, 2013-07 (ftp://ftp.cencenelec.eu/EN/EuropeanStandardization/Guides/20_CENCLCGuide20.pdf).

⁶⁸ CEN/CENELEC have adopted about 25,000 standards.

⁶⁹ For more on the EA MLA, see www.european-accreditation.org/the-mla.

Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The first steps towards opening negotiations on an ACAA have been taken, but the process seems to be complicated and demanding. The Moldovan side took actions focused on developing and strengthening some elements of the conformity assessment system,⁷⁰ but it lacks a comprehensive strategy to restructure the entire system. The amendment of legislation and its approximation to horizontal EU legislation in the field, as a precondition for an ACAA, is ongoing. The accreditation body has so far only passed the pre-assessment procedure in its attempt to join the EA MLA.

The followings challenges are the main ones for ensuring the implementation of the TBT provisions of the Agreement and DCFTA:

- poor technical endowment of the testing and certification bodies;
- inadequate financial resources for companies to effectively implement the transposed European standards;
- resistance, even of an ideological character, towards the application of European standards among different relevant stakeholders accustomed to working in line with GOST standards; and
- lack of effective enforcement mechanisms, especially for food production.

Technical standards for industrial goods at a glance

Adoption of European technical standards for industrial products is vital for the modernisation and competitiveness of Moldovan industry.

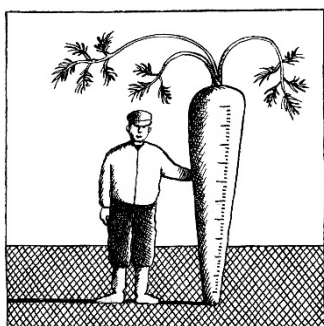
Moldova is advancing in approximating a limited number of horizontal EU directives. The pace of the approximation is slow with respect to sectoral EU directives.

The enforcement of legislation implementing European standards is low.

Transposition of European standards requires withdrawing conflicting GOST standards, but this encounters opposition from various certifying laboratories and enterprises using GOST standards.

⁷⁰ See Government Order no. 103 of 5 June 2015 on working group to draft the multiannual procurement plan for purchasing the necessary equipment for the testing laboratories.

8. FOOD SAFETY REGULATIONS



The chapter on sanitary and phytosanitary measures (SPS) basically concerns the food safety standards required to facilitate trade in agricultural and food commodities and plants, while safeguarding human, animal and plant life or health (Art. 181). The key mechanism consists of approximating Moldovan legislation to EU legislation. The Agreement also aims to reach a common understanding on animal welfare standards.

Provisions of the Agreement

Approximation. The Agreement does not specify the list of laws to be approximated, but leaves that to be done within three months after the Agreement enters into force. The products to be covered are listed (in Annex XVII-A), including live animals and animal products. The list was worked out in the course of 2015 and jointly adopted by Moldova and the EU at a meeting of the SPS Subcommittee on 1 June 2016.

Equivalence. To recognise the equivalence of measures or groups of measures taken by Moldova with those of the EU, for sectors or subsectors and for commodities or groups of commodities, specific rules are established. The process is to be launched by the exporting party based on the “objective demonstration of equivalence”, and the “objective assessment of this demonstration” by the importing party. This process should be interactive. It is then the responsibility of the importing party to determine equivalence or not, or to withdraw or suspend equivalence, based on internationally recognised standards or proper scientific evidence. The importing party may conduct verifications for which detailed rules apply. With equivalence

recognition comes the reduction of physical checks at frontiers and simplified procedures.

The EU conducts regular audits to ensure conformity, for example the audit conducted in 2014 on the egg sector (see further below).

Trade conditions. Once the approximation has been fully undertaken, the import conditions for the products or sectors in question will apply to the whole territory of Moldova as the exporting country (Art. 186). Enterprises wishing to export to the EU, however, still need to obtain certification from the competent authority of Moldova, which has to guarantee that the establishment meets relevant health requirements of the EU and has the power to suspend the establishment's listing in case of non-compliance.

Pests and animal diseases. There are detailed provisions for handling problems of animal or plant diseases and pests. The animal and fish diseases are listed in Annex XVIII-A. In the case of pests, each party must establish and communicate the lists of regulated pests. Procedures are established to recognise the pest-free status of given regions for the purpose of trade. Procedures are established for notification of risks to public, animal or plant health through diseases.

Safeguard measures. Where the importing country needs to take measures to control a serious health hazard or risk, it may take provisional restrictive measures affecting imports, but these have to be suitable or proportional in order to minimise the disruption of trade.

SPS Subcommittee of the Association Council. This subcommittee is in charge of the implementation review of the SPS chapter, and may inter alia decide upon modifications to the Annexes. Decisions will be taken on the basis of consensus of the parties.

Pre-existing import arrangements. The EU maintains a comprehensive system for the regulation of imports of agri-food products from third countries to assure their compliance with its SPS requirements, notably under Regulation (EC) 854/2004 on rules for the organisation of controls of products of animal origin.

This regulation first sets the rules for the approval within the EU itself of establishments (i.e. slaughterhouses or food processing factories), and goes on to require officially designated, competent authorities to carry out or organise controls to verify compliance with SPS requirements. The regulation also establishes comparable rules for approving establishments in third countries for the purpose of exporting to the EU market. These arrangements are currently being

used by Moldova, and will remain in force while the provisions of the Agreement are being implemented.

Total SPS compliance across the entire territory of Moldova is an ambitious objective, and the system will take quite a few years to become effectively applied throughout the agri-food sector. In the meantime, the procedures exist for those enterprises willing and able to comply to be certified for export to the EU. This is an important element of effective flexibility in the Agreement, and can help avoid excessive costs of compliance.

In addition, there are certain EU provisions to exempt small-scale production from various SPS requirements (Regulation (EC) 853/2004 on hygiene rules). For example, hygiene rules do not apply to production for private domestic consumption, or small quantities supplied to local retail establishments and markets. Moldova remains free to apply similar exemptions for local markets.

Implementation perspectives

Current status quo. The National Agency for Food Safety (ANSA) is the administrative authority, subordinated to the government (executive), even though the policies in the field are adopted by the Ministry of Agriculture and Food Industry (MAFI). The two institutions signed a bilateral agreement on collaboration in April 2016, which emphasises that ANSA is responsible for implementing relevant SPS actions, and also to provide MAFI with data tracking the progress in the field. The agency has regulatory and control competences on food safety and veterinary standards, animal husbandry, plant protection and phytosanitary quarantine, control of seeds, quality primary products, food products and animal feed. It can restrict the import and marketing of goods (fertilisers, pharmaceuticals for veterinary use, agri-food and genetically modified organisms), if they contradict national standards and requirements. Moreover, the agency supervises the export of agri-food goods to local markets through its units at the customs offices.

The director of the agency is appointed by the government. There are approximately 1,400 staff positions (at central headquarters, territorial units and investigation points at customs sites). The agency issues three categories of acts: phytosanitary and quarantine permissive acts (of which there are 13), safety acts (11) and sanitary–veterinary acts (14). The documents released by the agency also include acts required to export to countries in the CIS.

Two units within ANSA are in charge of inspections. One unit deals with sanitary and veterinary supervision, which includes animal welfare, disease eradication, animal identification and monitoring. The other unit deals with supervision of marketing, distribution and consumption of food products, of both animal and vegetal origins. At the local level, ANSA has territorial units in 34 districts (*raioane*), including Chişinău, Balţi and Gagauzia (in total, 37 territorial units).

To date, Moldovan enterprises have been authorised to export three products of animal origin to the EU: honey, caviar and egg flour.

Box 8.1 Moldovan honey exports to the EU

Some 13 companies from Moldova exported honey to the European market in 2015. Only a few companies are both producers and exporters (e.g. Visapina-Impex and Vladovlad). The rest perform only export activities. Currently, Moldovan honey is exported in bulk, being later processed in the importing countries. This means that the final honey products are not labelled as 'Moldovan' on the EU market. The largest quantities of honey were shipped to Germany (254 tonnes), Italy (254 tonnes), France (126 tonnes) and Romania (141 tonnes).

Among the priorities in the SPS field are the diversification of the exports of animal origin products and the improvement of the laboratory infrastructure. The SPS legislation for the period 2016–17 includes measures to make Moldovan companies eligible for exporting class B eggs and poultry, and the EU's assessments have now started for both products. The following products foresee transitional periods for trade liberalisation with the EU: pasta, pepper, corn (three years); cheeses, vegetables (tomato, cucumbers, etc.), fruits (cherries, nectarines, raspberries, wines, juices, jams) and bakery products (five years); and milk, meat and fresh cherries (ten years).

Implementation. The list of EU laws for SPS to be approximated is not fixed in the Agreement, but scheduled to be decided within three months of its entry into force. In 2015, the Moldovan authorities elaborated this list with the aid of a screening done with European experts under a TAIEX project, and presented it to the European Commission for consultation. In March 2016, the list was published for public consultation in Moldova.⁷¹ The official amendment of the

⁷¹ See <http://particip.gov.md/proiectview.php?l=ro&idd=2978>.

Agreement (Annex XXIV-B) to bring this into effect took place in the context of the SPS Subcommittee held in Brussels, on 1 June 2016.

The agreed list of SPS legislation covers 235 EU directives and regulations. The largest share relates to veterinary requirements (78 directives) and rules for safety of agri-food products (48 directives), with fewer in the following areas: access to the market of agri-food, animal feed and animal origin sub-products (27); general framework legislation (10); specific rules for animal feed (10); genetically modified organisms (10); medical goods for veterinary purposes (6).

The periods of approximation agreed for SPS legislation constitute up to five years until 2020. The bulk of the legislation is scheduled for two-year periods of approximation (for 68 directives), three-year periods (52 directives) and four-year periods (57 directives) starting from 2016. The Moldovan authorities are expected to transpose 37 EU directives in 2016, with only a minor number (eight) left for 2020.

During 2015–16, the executive adopted and examined numerous decisions and proposals for draft laws. The most relevant are the following ones:

- a draft law on control of compliance with quality requirements for fresh fruit and vegetables (Regulation (EC) 1234/2007);
- a draft law on the classification of carcasses of cattle, pigs and sheep (Regulation (EC) 1249/2008);
- requirements for the quality evaluation of milk and meat products;
- a technical concept for the automatic informational system for a Moldovan wine register;
- a draft regulation concerning a ‘one-stop shop’ for the issuance of permits for exporting products of animal origin;
- an automatic informational system for a phytosanitary register on plant protection and phytosanitary quarantine; and
- a draft law aimed at establishing the Rapid Alert System for Food and Feed (RASFF) in line with Regulation (EC) 178/2002.

MAFI’s competences were completed by transposing Regulation (EC) 882/2004 on official controls to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

ANSA personnel are involved in capacity-building activities (ad-hoc training sessions) with a focus on food safety and agri-food composition, veterinary residues, food and feed contaminant

surveillance, disease investigations (swine fever and rabies) and contingency planning. For instance, in 2015, representatives of ANSA participated in a twinning project on food safety rules and standards for products of plant origin.

In 2015, with the support of the World Bank, inspection points for ANSA started to be incorporated in the customs point in Tudora and Criva. New inspection points are foreseen for customs points on the border with Romania, at Giurgiulești and Leușeni.

Development and equipment of laboratories. The national laboratory infrastructure is underdeveloped and insufficient. Overall, there are 16 laboratories accredited at the national level, which comprise both central and territorial laboratories. Some six laboratories are accredited to issue testing reports for goods exported to Russia, and eight laboratories can issue phytosanitary certificates required for exporting to the EU.

The Moldovan authorities are currently implementing a project for the creation and operation of a laboratory for determining pesticide residues in plants, soil and production of non-animal origin. Support comes from EU member states (Romania) and other countries (Norway and Israel). A bio-molecular laboratory for detecting GMOs was opened in May 2016, with the support of Israel's Agency for International Development Cooperation.

The EU has offered laboratory kits for investigating bird diseases like avian influenza and the Newcastle Disease. The beneficiary of these kits is the Republican Veterinary Diagnostic Centre (IP CRDV), whose staff participated as well in training organised by a Romanian institute on diagnostic methods in rabies, rabies vaccination and detection of salmonella, etc. This centre is still testing animal-origin food products (meat, fish, milk and honey) on the basis of GOST standards,⁷² while the relevant European standards or technical regulations are not yet used. At the same time, the Centre uses international standards (ISO) for testing the presence of microbiological diseases.

Procedures for developing the Automatic Informational System (LIMS) for the management of veterinary, sanitary and food-safety laboratories were initiated in 2014. Also, the authorities have been

⁷² A set of technical standards is maintained by the Euro-Asian Council for Standardisation, Metrology and Certification (EASC), which is a regional standards organisation operating under the auspices of the CIS.

developing another Informational System for the State Register for Animals since 2014.

One of the first audits by the EU – conducted by DG Sanco (Health and Consumers) of the European Commission – for products of animal origin (class B eggs) took place in 2014. However, the report emphasises that the ANSA is not able to deliver the level of assurance required for exporting class B eggs to the EU. It identifies the following problems: ineffective surveillance, deficient internal reporting and audit systems, insufficient training of the personnel of the territorial units and lack of diagnostic resources within laboratories to detect the avian influenza and the Newcastle Disease viruses.⁷³

Challenges. The major outstanding challenges in the SPS field concern the activities of ANSA. The agency requires serious institutional capacity building in its staffing and laboratories. These requirements are quite far-reaching, including enhancing professionalism and conducting targeted training sessions, with a focus on territorial units and laboratories; modernising existing laboratories; applying international and/or European standards and technical regulations by laboratories;⁷⁴ ensuring effective administrative/management capacities of ANSA and sufficient financial resources; and improving the monitoring and auditing of the activities of ANSA’s territorial units. The export of goods of animal origin is hampered by the poor infrastructure that is installed in laboratories and their lack of international accreditation.

ANSA faces frequent accusations of involvement in corruption related to the illegal issuing of phytosanitary certificates for goods exported from Moldova (e.g. the export of Polish apples to the Russian market as Moldovan goods), and illegal export schemes involving the Transnistrian region.

⁷³ See DG Sanco, European Commission, Final Report of an Audit carried out in the Republic of Moldova from 25 November to 3 December 2014 in order to evaluate the animal health controls in place for class B eggs intended for export to the European Union (audit number 2014-7351).

⁷⁴ This refers in particular to ISO/IEC 17025:2005, specifying the general requirements for the competence to carry out tests and/or calibrations, including sampling.

Food safety regulations at a glance

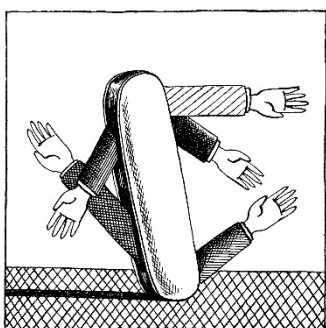
Moldova must adopt a comprehensive strategy for applying EU SPS regulations in its agri-food sectors, which is programmed to take two to four years to implement.

This will in due course assure high health and safety standards for Moldovan consumers, as well as position Moldovan enterprises to export to the EU and other international markets.

Institutional weaknesses of the key government agency (ANSA), in particular at the local level, corruption cases (phytosanitary certificates) and the poor infrastructure of laboratories are serious constraints on the growth of the agri-food sector.

So far, Moldova has been able to export to the EU only three categories of goods of animal origin: caviar, honey and egg flour.

9. SERVICES



The development of a modern and competitive services sector is of great importance for the modernisation of the Moldovan economy. In this regard, the DCFTA provides for a comprehensive liberalisation of establishment and trade in services, subject however to extensive reservations – more by the EU than Moldova.

Provisions of the Agreement

The provisions of the Agreement are organised under three headings: i) establishment, ii) cross-border supply of services and iii) temporary presence of natural persons for business purposes.

Establishment. This entails the right of either enterprises ('legal persons'), or individuals ('natural persons') to pursue business in the country of the other party. Enterprises may create or acquire branches or representative offices. Individuals may pursue their business through self-employment or set up undertakings that they control.

The Agreement provides for national treatment and MFN treatment for establishment. This means that the EU and Moldova must grant as regards the 'established' enterprises treatment no less favourable than that accorded to its own enterprises, or those of any third country, whichever is better.

For several economic activities, however, both the EU and Moldova have reservations that restrict national treatment or MFN treatment. These reservations are laid down in the annexes to the Agreement (Annex XXVII-A and E) and essentially replicate the

parties' reservations under the GATS (General Agreement on Trade in Services). Moldova has fewer reservations than the EU and its member states (see Table 9.1). Moldova's liberal approach is mainly due to the fact that the country has only a few reservations at the level of the WTO (i.e. in its Schedule of Specific Commitments on Trade in Services).⁷⁵ It is important to note that these reservations in the DCFTA are listed in a *negative list*. This means that the EU and Moldova will open up all services sectors (i.e. the default position), except for those sectors listed where reservations apply (as detailed in the annexes). That approach guarantees automatic coverage for new services not listed as exceptions.

Table 9.1 National treatment or MFN reservations to establishment

	EU party reservations		Moldova reservations
	<i>EU-wide reservations</i>	<i>Member state-specific reservations*</i>	Moldova
Horizontal reservations	2	31	2
Sectoral reservations	30	98	10
Total	161		12

* The number of member state-specific reservations stands for the number of reservations that are being applied by different EU member states.

The list of EU reservations is complicated because it includes both EU-wide and member state-specific reservations. With regard to horizontal reservations (i.e. reservations applying to all sectors or subsectors), important EU-wide reservations reflect concerns, for example, that economic activities regarded as public utilities may be subject to public monopolies. Several member state-specific reservations also exist for real estate purchases. Numerous EU-wide or member state-specific reservations remain in the areas of agriculture and hunting, fishing, energy mining, professional services, financial services, transport services, etc.

The Agreement also includes a standstill clause that forbids, subject to the reservations in the Annex, the EU and Moldova from adopting new discriminatory regulations as regards the establishment

⁷⁵ See <http://i-tip.wto.org/services/SearchResultGats.aspx>, for an overview of Moldova's reservations under the GATS.

of legal persons of the other party by comparison with their own legal persons. A soft commitment is included to further negotiate investment protection provisions and a mechanism for investor–state dispute settlement.

Cross-border supply of services. The DCFTA section on cross-border supply of services covers the supply of a service i) from the territory of a party into the territory of the other party (GATS Mode 1) and ii) in the territory of a party to a service consumer of the other party (GATS Mode 2). Yet it does not apply to audio-visual services, national maritime cabotage or domestic and international air transport services.⁷⁶ The EU and Moldova have to grant market access and national treatment to services and service suppliers of the other party. In contrast to the section on establishment, however, the section on cross-border supply of services works with a *positive list*. This means that the EU and Moldova only make market access and national treatment commitments in those service sectors listed in the Annex.

In the sectors where market-access commitments are undertaken, the EU and Moldova are prohibited from limiting the following aspects:

- i) the number of service suppliers (e.g. by quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test);
- ii) the total value of service transactions or assets in the form of quotas or the requirement of an economic needs test; and
- iii) the total number of service operations or the total quantity of services output by quotas or through the requirement of an economic needs test.

The sectors or subsectors liberalised, including the applicable market access and national treatment reservations, are listed in great detail in Annex XXVII-B (EU and its member states) and XXVII-F (Moldova). Still, the liberalisation is – similar to establishment – rather asymmetrical: whereas Moldova only has a limited number of reservations for unbound service sectors in its list, the EU has numerous reservations (Table 9.2). Again, this is mainly due to Moldova’s liberal approach in the GATS.

⁷⁶ The conditions of mutual market access in air transport are covered by the bilateral Common Aviation Agreement (explained in chapter 16).

Table 9.2 Market access and national treatment reservations for cross-border services*

	EU**		Moldova	
	Mode 1	Mode 2	Mode 1	Mode 2
Business services	79	22	1	2
Communication services	2	2	1	0
Construction and engineering services	0	0	0	0
Distribution services	12	4	0	0
Educational services	15	8	0	0
Environmental services	8	1	0	0
Financial services	33	11	0	0
Health services and social services	3	1	0	0
Tourism and travel-related services	4	0	0	0
Recreational, cultural and sporting services	5	8	1	1
Transport services	26	12	0	0
Other transport services	2	2	-	-
Energy services	7	1	-	-
Other services	5	0	-	-
Total	201	72	3	3

* EU-wide and member state-specific reservations are grouped together. The number of member state-specific reservations represents the number of reservations that are being applied by different EU member states.

** EU-wide reservations or member state-specific reservations.

Temporary presence of natural persons for business purposes.

This section covers measures of the parties concerning the entry into and temporary stay in their territory of categories of natural persons for business purposes (GATS mode 4), such as key personnel (i.e. senior personnel responsible for the setting-up or operation of an establishment), graduate trainees, business sellers or independent professionals (i.e. those engaged in the supply of a service and established as self-employed for such purposes).

With regard to key personnel and graduate trainees, both the EU and Moldova have to allow entrepreneurs of the other party to employ in their establishment natural persons of that other party, provided that

such employees are key personnel or graduate trainees. The temporary entry and temporary stay of key personnel and graduate trainees will be for a period of no longer than three years for intra-corporate transferees, 90 days in any 12-month period for business visitors for establishment purposes and one year for graduate trainees. Each party will also allow the entry and temporary stay of business sellers of the other party for a period of no longer than 90 days in any 12-month period. However, for these three categories (i.e. key personnel, graduate trainees and business sellers), the EU and its member states will apply reservations (177 in total) such as the requirement of an economic needs test, residency requirements and nationality conditions. Moldova has again – in line with its GATS commitments – taken a much more liberal approach, with only 7 reservations (6 in the area of legal services and 1 in the area of services provided by midwives, nurses and paramedical personnel).⁷⁷

The DCFTA also liberalises services provided by contractual service suppliers in specific sectors. Each party has to allow the supply of services into their territory by contractual service suppliers of the other party. Nevertheless, this liberalisation is subject to several conditions and reservations. Among the most important conditions, for example, is the requirement that the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, who has obtained a service contract not exceeding 12 months. Moreover, they must possess at least three years of professional experience in the relevant sector and must have a university degree or a qualification demonstrating knowledge of an equivalent level and relevant professional qualifications. The reservations (mostly residency requirements or economic needs tests) are listed in the annexes.⁷⁸ The EU party has again more reservations than Moldova. Whereas the EU has 73 reservations in 18 sectors, Moldova only has 7 reservations (again mainly in the area of legal services).⁷⁹ Similar or identical conditions and reservations also apply

⁷⁷ For the lists of reservations on key personnel, graduate trainees and business sellers, see Annex XXVII-G (Moldova) and Annex XXVII-C (EU and EU member states).

⁷⁸ See the EU's reservations in Annex XXVII-D and Moldova's reservation in Annex XXVII-H.

⁷⁹ Authors' own calculations in which EU-wide and member state-specific reservations are grouped together.

to sectors for which the parties have liberalised the supply of services by independent professionals.⁸⁰

Regulatory framework and internal market treatment. The EU and Moldova also aim to tackle regulatory barriers to trade in those services sections where they have made specific commitments. For example, the DCFTA defines some basic rules for licensing (i.e. the process through which a service supplier or investor is required to obtain a licence from a competent authority before being allowed to supply a service). The DCFTA requires that licensing and licensing procedures proceed in a clear, transparent and pre-established manner, and that it is proportionate to a legitimate public-policy objective. Moreover, judicial, arbitral or administrative tribunals or procedures have to be established to review licensing decisions. These rules also apply to qualification requirements (i.e. requirements relating to the competence of a natural person to supply a certain service). The Agreement also envisages the mutual recognition of necessary qualifications and/or professional experience that natural persons must possess to provide a specific service. The EU and Moldova are obliged to encourage their relevant professional bodies to provide the Trade Committee with recommendations on mutual recognition of requirements, qualifications, licences and other regulations.

In four services sectors, i.e. i) postal and courier services, ii) electronic communications, iii) financial services and iv) international maritime transport, the DCFTA includes specific rules and procedures on regulatory cooperation. Moldova has committed to approximate the EU's key legislation in these four services sectors (included in Annex XXVIII). Although the Agreement does not strictly oblige Moldova to approximate the EU legislation, it states that "each Party recognises the importance of the gradual approximation of the Republic of Moldova's existing and future legislation to the list of the Union *acquis* set out in Annex XXVIII".⁸¹ The DCFTA links implementation of these approximation commitments with further market access.⁸² The Trade Committee can decide to review and modify the annexes with reservations in these four sectors if Moldova implements the relevant

⁸⁰ These are the sectors for the EU: i) legal services, ii) architectural services, iii) engineering services, iv) computer services, v) management consulting services and vi) translation services.

⁸¹ See Arts 230, 240, 249 and 253.

⁸² See for example Art. 213.

EU legislation. The potential scope of further liberalisation is not specified in the Agreement, but the Ukraine DCFTA gives some guidance. In the corresponding chapter of the Ukraine agreement, the Trade Committee may decide to grant the reciprocal ‘internal market treatment’ with respect to these four services sectors.⁸³ In practice, this means that for these specific sectors, the reservations of the EU and Ukraine to market access and national treatment, listed in the corresponding annexes, will be lifted.⁸⁴

These sectors are discussed in further detail in their respective chapters.

Box 9.1 Summary of commitments and reservations of the EU and Moldova for services sectors

EU

Reservations on establishment: *substantial horizontal and sectoral reservations*

Commitments on liberalisation of the cross-border supply of services: *large degree of liberalisation, but with extensive reservations*

Commitments on contractual services and independent professionals: *extensive reservations*

Moldova

Reservations on establishment: *large degree of liberalisation with few reservations*

Commitments on liberalisation of the cross-border supply of services: *almost full liberalisation*

Commitments on contractual services and independent professionals: *almost full liberalisation*

⁸³ See Art. 4 Annex XVII EU-Ukraine Association Agreement.

⁸⁴ See Annex XVI-A, point 1(3) and Annex XVI-B point 7 EU-Ukraine Association Agreement.

Implementation perspectives

Opportunities through services liberalisation. Over the past ten years, Moldova's economy has gone through significant structural changes. The services sector has been the largest contributor to economic growth, with a share that now represents approximately 60% of GDP. Moreover, in the context of liberalisation under the DCFTA, it is anticipated that this sector could create new opportunities for Moldova by expanding its output of services in sectors where it has a comparative advantage, thus creating jobs, contributing more to GDP and generating foreign exchange.

New investors from the EU should contribute to a higher diversification of services and also improve the know-how in the services sectors. Imports of services into Moldova can improve economic performance by bringing greater competition to some sectors, and better skills and technologies.

Regulatory challenges for services liberalisation. The prospects for liberalising Moldova's services are quite varied owing to the complexity and comprehensiveness of the sector. One of the challenges of services liberalisation arises from the fact that there remain many barriers represented by domestic regulations inherited from the past. Addressing market access and national treatment barriers will not lead to an automatic expansion of this sector unless domestic regulations are also reformed.

One serious constraint for the development of the services sector lies in the legal framework for the establishment and operation of subsidiaries and branches of EU legal entities in Moldova. There are contradictions in the current Moldovan legislation, which obstruct EU entities from opening representative offices, even if technically it was permissible from the first day of Moldova's accession to the WTO. The current legislation needs to be revised, in the first place by amending the framework law in this area, namely the Civil Code of Moldova, by introducing definitions that are in accordance with the DCFTA, and then to make necessary amendments to the specific regulatory framework. The relevant authorities have agreed to do this.

Telecommunications and postal services. The communications sector in Moldova has been almost the only one with limitations for establishment. But the opening up of the electronic communications market has now begun with the gradual alignment of the Moldovan legal and regulatory framework with EU legislation. Legislative harmonisation has been carried out on the basis of EU directives on

access and interconnection (2002/19/EC), authorisation of networks and services (2002/20/EC), regulatory framework (2002/21/EC) and universal service (2002/22/EC). Still, delays in the adoption of implementing regulations continue to cause enforcement lags in some areas. Liberalisation of this sector in Moldova should improve the efficiency of companies and the country as a whole, and also provide significant new opportunities for exports of new services.

The most recent development in this area is the draft law on postal services, which provides further de-monopolisation of the postal sector. According to this draft law the state monopoly will remain only for services related to letters with a weight limit of up to 350 grams, as required by EU postal Directive 97/67/EC and in line with Moldova's GATS commitments. Furthermore, it is expected that Moldova will progressively reduce and then abolish other reserved areas for the postal monopoly, in line with the provisions of Directive 2002/39/EC and Directive 2008/6/EC, within the timeframes foreseen by the Agreement.

Temporary presence of natural persons for business purposes.

The liberalisation of GATS Mode 4 services can bring benefits for Moldova by facilitating work in the EU by different service providers (nurses, teachers and domestic workers, as well as more skilled ones, such as medical doctors, architects and engineers), resulting in remittances of income, which is the largest source of external capital in Moldova. The country will also benefit from the enhanced skills and resources of returning migrants. However, as mentioned above, the EU will apply several reservations, such as the requirement of an economic needs test, residency requirements and nationality conditions. On the other hand, there is a high probability that skilled individuals are more likely to emigrate, thus raising concerns about a 'brain drain'. As for establishment, it is necessary to transpose definitions and conditions of temporary stay into national legislation. Amendments to national legislation on labour migration were proposed (to Law No. 200 of 16 July 2010 on the regime for foreigners, and Law No. 180 of 10 July 2018). The progress in this area, although significant, is not sufficient. The immediate goal must be to review immigration policy in order to facilitate the integration of foreign workers on the local labour market and remove discriminatory practices. Current Moldovan legislation on the entry and temporary stay of key personnel, graduate trainees and business sellers is being examined in order to identify the necessary amendments, going beyond those measures required by the DCFTA.

Moldova's services sector at a glance

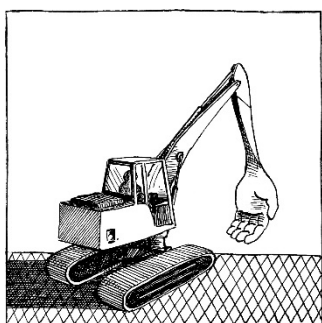
The services sector has become increasingly important for Moldova's economy and now accounts for around 60% of the country's GDP.

The DCFTA requirements can lead to a more open, transparent and better functioning services market in Moldova.

However, domestic regulations, such as the Civil Code, still obstruct EU companies from establishing themselves in Moldova, and limited progress has been made to comply with the DCFTA requirements.

The liberalisation of the temporary presence of natural persons for business purposes can lead to increased remittances, but the EU applies several reservations in this area.

10. PUBLIC PROCUREMENT



Public procurement is of great economic importance in both the EU and Moldova. It accounts for around 18% of GDP in the EU and offers an enormous potential market for Moldovan companies. The DCFTA provides for the gradual and reciprocal liberalisation of the parties' public procurement markets under the strict condition that Moldova implements the EU's key public procurement rules. Moldova has to ensure that public purchases of goods, works and services are transparent and fair, guarantee sound competition, tackle corruption and ensure that public authorities get the best value for their taxpayers' money.

Provisions of the Agreement

In the DCFTA chapter on public procurement, the EU and Moldova envisage mutual access to their respective public procurement markets on the basis of the principle of national treatment at national, regional and local levels for public contracts and concessions in the traditional sectors as well as in the utilities sector. It covers any state, regional or local authority, including public undertakings in the field of utilities such as state-owned enterprises and private undertakings operating on the basis of special and exclusive rights. Defence procurement, however, is not covered by the DCFTA.

The DCFTA procurement rules only apply to contracts above certain value thresholds listed in Annex XXIX-A of the Agreement (see Table 10.1). Nevertheless, these thresholds will have to be adapted by the Trade Committee at the moment of entry into force of this

Agreement to reflect the thresholds then in place under the relevant EU directives.⁸⁵

Table 10.1 Thresholds for the application of public procurement rules

Public procurement rule	Threshold
a. Public supply and service contracts awarded by central government authorities	€130,000
b. Public supply and public service contracts not covered by point a	€200,000
c. Public works contracts and concessions	€5,000,000
d. Works contracts in the utilities sector	€5,000,000
e. Supply and service contracts in the utilities sector	€400,000

The DCFTA includes provisions relating to i) institutional reforms and the award of procurement contracts, ii) Moldova's approximation to the EU's public procurement law and iii) market access.

Institutional reform. Moldova has to establish and maintain an appropriate institutional framework necessary for the proper functioning of its public procurement system. It has to designate a central executive body responsible for economic policy tasked with guaranteeing a coherent policy in all areas related to public procurement, including implementation of this chapter. In addition, Moldova has to establish an impartial and independent body that will review decisions taken by contracting authorities or entities during the award of contracts.

Award of contracts. The DCFTA also defines "basic standards regulating the award of contracts", which are derived directly from EU public procurement law and include the principles of non-discrimination, equal treatment, transparency and proportionality. Moldova has to comply with these basic standards no later than nine months from the entry into force of this Agreement. This set of rules lays down key publication requirements. Moldova has to ensure that all intended procurements are properly published and made public in order to enable the market to be opened up to competition and to allow

⁸⁵ See Commission Regulation (EU) 1336/2013 of 13 December 2013 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC in respect of the application thresholds for the procedures for the awards of contract.

any interested economic operator to have access to information regarding the intended procurement prior to the award of the contract. There has to be a non-discriminatory description of the subject matter of the contract, equal access for all economic operators and appropriate time limits. Contracting entities may not impose conditions that directly or indirectly discriminate against the economic operators of the other party, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity. Contracts must be awarded in a transparent manner to the applicant who has submitted the economically most advantageous offer or the offer with the lowest price, based on tender criteria. The final decisions are to be communicated to all applicants and upon request of an unsuccessful applicant, reasons must be provided in sufficient detail to allow a review of the decision.

Legislative approximation. Moldova is obliged to approximate to Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17 on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (i.e. utilities). Yet, these two directives do not have to be implemented in their entirety or at once. Annex XXIX-B divides these two directives into mandatory elements and elements that fall outside the scope of legislative approximation.

Directive 2004/18 seeks to ensure an open market for public procurement as well as the fair application of the rules for the award of public works, supplies and services contracts. It aims to ensure that the contracting process is fair and open to bidders from anywhere in the EU. This directive covers most public contracts other than for utilities, telecommunications and service concessions. It obliges the contracting authorities to treat economic operators equally, non-discriminatory and in a transparent way. It provides for four types of contract procedures: i) *open* (i.e. any party may submit a bid), ii) *restricted* (the contracting authority decides which parties to invite to submit a bid), iii) *negotiated* (the contracting authorities directly negotiate the terms of a contract), and iv) *competitive dialogue* (for very complex contracts the contracting authority may discuss requirements and solutions with candidates admitted to a procedure, before the candidates submit their final tender).

With regard to transparency, this directive requires the publication of notices on all EU public contracts in the EU's *Official*

Journal and in the TED database, which is the public procurement database of the EU.⁸⁶ All publications must contain identical information so as not to favour any bidder, such as the deadlines for the bids, the language(s) of the bid, the award criteria and their relative weighting. Most of this directive's provisions are labelled in Annex XXIX-B as "mandatory" and therefore need to be implemented by Moldova.

Directive 2004/17 applies to supply, works and services contracts in the energy, water, transport and postal services sectors. Similar to Directive 2004/18, this directive provides rules on the procedures for the awarding of public procurement contracts (i.e. an open, restricted and negotiated procedure), rules on publication and transparency, contract award criteria and the conditions for participation. Again, most of the relevant provisions of this directive are identified in Annex XXIX-B of the Agreement as mandatory. Finally, Moldova also has to approximate to the EU's remedies directives (covering the utilities and public sector). These directives require that decisions taken by contracting authorities or contracting entities be reviewed effectively and as quickly as possible where such decisions have infringed EU public procurement law.⁸⁷

Market access. This is clearly linked to Moldova's progress in approximating to EU public procurement rules and institutional reforms. Annex XXIX-B includes an "indicative time schedule" for institutional reform, legislative approximation and market access. This time schedule foresees five phases for Moldova to implement EU public procurement directives, and the specific market access that Moldova and the EU will grant to each other (Table 10.2). The market access provided in each phase means that the EU will grant access to contract award procedures to Moldovan companies – whether they are established or not in the EU – pursuant to EU public procurement rules under treatment no less favourable than that accorded to EU companies, and vice versa. This schedule also indicates that the EU and Moldova will open their respective procurement markets gradually and simultaneously. Contrary to other DCFTA chapters (e.g. on trade in goods), the EU will not grant access to – a section of – its procurement market before Moldova offers the same market access to the EU.

⁸⁶ See <http://ted.europa.eu/TED/main/HomePage.do>.

⁸⁷ See Directive 89/665/EEC and Directive 92/13/EEC as amended by Directive 2007/66/EC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

Moreover, each phase will be evaluated by the Trade Committee and the reciprocal granting of market access will only take place after a positive assessment by this committee, which will take into account the quality of Moldova’s legislation as well as its practical implementation. The Trade Committee will only proceed to the evaluation of a next phase once the measures to implement the previous phase have been carried out and approved.

Prior to the beginning of legislative approximation, Moldova has to submit to the Trade Committee a ‘comprehensive roadmap’ for the implementation of this procurement chapter, covering all reforms in terms of legislative approximation and institutional capacity-building. This roadmap has to comply with the five phases of the indicative schedule of Annex XXIX-B (see Table 10.2). Following a favourable opinion by the Trade Committee, this roadmap will be considered the reference document for the implementation of this chapter.

Table 10.2 Indicative time schedule for approximation of public procurement rules

Phase	Action	Indicative time schedule*	Market access granted to the EU by Moldova	Market access granted to Moldova by the EU
1	Implementation of the “basic standards”, the institutional reforms and the public procurement roadmap	9 months	Supplies for central government authorities	Supplies for central government authorities
2	Implementation of the basic elements of Directive 2004/18/EC and of Directive 89/665/EEC	3 years	Supplies for state, regional and local authorities and bodies governed by public law	Supplies for state, regional and local authorities and bodies governed by public law
3	Implementation of the basic elements of Directive 2004/17 EC and of Directive 92/13/EEC	4 years	Supplies for all contracting entities in the utilities sector	Supplies for all contracting entities

4	Implementation of other elements of Directive 2004/18 EC	6 years	Service and works contracts and concessions for all contracting authorities	Service and works contracts and concessions for all contracting authorities
5	Implementation of other elements of Directive 2004/17/EC	8 years	Service and works contracts for all contracting entities in the utilities sector	Service and works contracts for all contracting entities in the utilities sector

* That is, from the entry into force of the DCFTA.

The EU public procurement directives included in the DCFTA meanwhile have been replaced in the EU by a new legislative package. In 2011 the Commission proposed the revision of Directives 2004/17/EC and 2004/18/EC as well as the adoption of a directive on concession contracts. This legislative package was adopted in February 2014 and the member states had until April 2016 to transpose the new rules into their national law.⁸⁸ These new public procurement rules aim to simplify the EU procurement regime, introduce more flexibility, establish better access to EU procurement markets for SMEs and ensure that greater consideration is given to social and environmental criteria. Once the DCFTA enters into force, it will be crucial that Annex XXIX-B is updated to take into account these new EU procurement directives. Moreover, these new public procurement rules should also be covered in Moldova's public procurement roadmap.

Implementation perspectives

Development of public procurement during the post-Soviet period. Since independence the public procurement system and legislation of the Republic of Moldova have been continuously developing. The system has known three distinct periods: modernisation of the legal

⁸⁸ See Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC; see also Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC; and also Directive 2014/23/EU on the award of concession contracts.

framework, digitalisation of public procurement and approximation to the EU's public procurement law.

Operational responsibility for policy development is delegated to statutory agencies, namely the National Agency for Government Procurement, which was replaced by the Agency for Material Resources, and the entity on Public Procurement and Humanitarian Aid, which was replaced by the currently operational Public Procurement Agency.

The Agency was established by Government Decision No. 747 of 24 November 2009, which regulates the organisational structure and the competences of the Agency. The Agency represents a specialised administrative authority with functions of coordination, monitoring, evaluation and control of fulfilment by the contracting authorities of the public procurement procedures, including the award of public contracts. The Agency has supervisory competences and is not seen as a policy driver in the area of public procurement. The responsibility for harmonising public procurement legislation lies with the Ministry of Finance.

The economic importance of government procurement in Moldova has continued to grow over the last few years. Total public contracts increased from MDL 4,523 million (around €220 million) in 2009 to MDL 10,839 million (around €500 million) in 2014, and constitutes up to 10% of GDP.⁸⁹

Legal framework. The first Law on Procurement of Goods, Works and Services for Public Needs (No. 1166-XIII) was adopted in 1997 and provided a reasonably sound basis for public procurement. Shortly after the enactment of the law, the government established the first entity responsible for public procurement – the National Agency for Government Procurement. However, the problems of weak institutional capacity, a high degree of centralisation and insufficient enforcement of the law regarding public procurement hindered the development in this area.

Later on, in order to address these problems, but also to approximate the EU standards, parliament adopted Law No. 96-XVI on Public Procurement of April 2009. The new law changed the conduct of public procurement through decentralisation of the procurement procedures. While the law on public procurement was generally

⁸⁹ See Expert-Grup, "Public Procurements in Moldova: Problems and Solutions", June 2014 (<http://expert-grup.org/en/biblioteca/item/969-achizitii-publice-moldova/969-achizitii-publice-moldova>).

developed in line with the relevant EU directive, a number of additional specific concepts were incorporated into it. The law provided measures to ensure integrity in public procurement processes, namely:

- a national procurement system based on principles of transparency, competition and objective criteria in decision-making;
- establishment of the conditions for participation, selection and award criteria, and tendering rules;
- sufficient timeframes for potential suppliers to prepare and submit their tenders and using by default an open tender procedure;
- transparent publication of all procurement decisions and invitations to tender;
- procedures, rules and regulations for review of the procurement process, including appeal;
- selection of personnel responsible for procurement, including screening procedures covering conflicts of interest; and
- development of new electronic procedures applied to the public procurement process.

Moreover, it should be noted that the Law on Public Procurement of 2009 defined the principles for regulating public procurement relations. It clearly defines the types of public procurement, the rules and procedures for awarding public procurement contracts and the ways of solving disputes, focusing on the rights and obligations of the parties participating in public procurement procedures. But the law of 2009 did not introduce all the provisions of EU Directive 2004/18/EC, explained above. The law introduced provisions on domestic preference, an electronic procedure (e-procurement), short deadlines for tender submission and a complaints procedure. In July 2015, the parliament adopted a revised Law on Public Procurement (the Law on Public Procurement No. 131), which was one of the prerequisites for the accession of the country to the WTO Agreement on Government Procurement.

Digitising public procurement (e-procurement). During 2013–14, the full implementation of a modern e-procurement system (the State Information Automated System for Public Procurement Register or SIA) was pursued, following the launch of the first stage in 2012. A clear regulatory framework has been approved with the adoption of the

regulation on using the electronic auction. This implements EU standards and facilitates the analysis of the prices for the offers. Broadly, the electronic auction is designed to increase the transparency of public procurement and requires the operators to properly register in the electronic system.⁹⁰ The e-procurement portal was further developed and new functionalities added, such as the announcement of intended procurement activities, the availability of electronic bidding documents, the automated public procurement bulletin and generation of an electronic bid template for economic operators. Standard procurement documents and guidance notes are being developed by the Ministry of Finance and the Moldovan government.

Currently, all 16 ministries and 133 additional contracting agencies are using the e-procurement system in a pilot scheme. In 2014, 2,704 electronic procurement procedures were carried out through SIA by contracting authorities, which resulted in 3,809 concluded contracts amounting to MDL 3,757 million (approximately €180 million) in procurement value. The system has undergone several evaluations, by both foreign evaluators and representatives of the central government. Business outreach, training and study tours have been organised. Overall, the e-procurement portal provides more easily available procurement information and collects data for statistical and auditing use, which in turn ensures greater transparency in public procurement procedures.

Approximation process and related reforms. The Public Procurement Agency, together with twinning project partners, have developed a revised Law on Public Procurement to replace that of 2007, which came into force in May 2016. It ensures full transposition of Directive 2004/18/EC, thus ensuring transparency, comprehensiveness and competition in accordance with EU standards. The law also transposes Directive 2007/66/EC, which provides for rules aiming at clear and effective procedures by seeking redress where bidders consider that contracts were unfairly awarded. In particular, it establishes an appeals body (Agency for Solving Complaints). However, this agency is not independent, since it is an administrative authority subordinated to the Ministry of Finance according to Art. 1(3) of the law. This issue has been pointed out in a 2015 SIGMA

⁹⁰ See the Public procurement regulation on using the electronic auction approved by Government Decision No. 774 dated 4 October 2013.

assessment⁹¹ as well as in Transparency International surveys.⁹² These provisions will be modified in the first months after the entry into force of the law.

Under the revised law, public contracts are awarded without any discrimination against foreign suppliers.

As opposed to the previous law,⁹³ the new law establishes more detailed rules on information regarding bidders and sets out a detailed list of specific requirements regarding tender announcements and tender-related documents. Public authorities initiating public procurement operations are now required to submit tender-related documents to the Public Procurement Agency, which will review such documents prior to publication of the announcement regarding the tender. Additionally, under the new law, each public authority must institute specialised internal working groups for public procurement procedures. Civil society representatives are entitled to participate in such groups and are granted a consultative vote. Moreover, the new legal framework sets out more stringent requirements regarding the level of reasoning that public authorities have to provide for any decisions adopted as part of the public procurement procedure, and sets out deadlines for challenging the decisions and actions of public authorities (within ten or five days, depending on the circumstances).

Thus, the revised law aims to ensure that the contracting process is fair and open to bidders and is fully in line with the requirements of EU directives. New rules on an appeal procedure have been established, with the Agency for Solving Complaints now entitled to settle complaints filed against contracting authorities. However, so far no progress has been noted on the establishment and operation of this agency due to political instability and limited budgetary financial resources.

In addition, various secondary laws were approved during 2013–15, such as regulations on using the competitive dialogue procedure (Government Decision No. 804 of 10 October 2013). In addition are those on negotiation procedures (Government Decision

⁹¹ SIGMA refers to Support for Improvement in Governance and Management, a joint initiative of the OECD and the European Union. One of its main activities in Moldova is to support the Ministry of Finance and the Public Procurement Agency on developing the legal framework for the public procurement system.

⁹² See Transparency International Moldova, July 2014 (www.transparency.org/whatwedo/nisarticle/moldova_2014).

⁹³ See Law No. 96-XVI of 13 April 2015 on Public Procurement.

No. 794 of 8 October 2013), a dynamic system (Government Decision No. 766 of 26 September 2013) and electronic auction (approved by Government Decision No. 774 of 4 October 2013). There is also a draft law amending and supplementing the Code of Administrative Offences (Government Decision No. 181 of 13 March 2013). In 2013, a draft governmental decision to approve standard documentation for public procurement of consultancy services was drawn up and is now at the stage of being approved by the Ministry of Finance. A regulation regarding the award of public procurement contracts using limited procedures was postponed pending the entry into force of the new Law on Public Procurement.⁹⁴ All these normative acts were generally developed based on EU Directive 2004/18/EC, with the aim of harmonising the national regulatory framework on public procurement with that of the EU.

The government has also shown its commitment to opening its procurement markets to international competition. Moldova submitted a formal request to join the WTO Government Procurement Agreement (GPA) in November 2009 and renewed its request in 2013. Since 2014, Moldova has accelerated its negotiations to accede to the GPA by gradually expanding its market access offer, and fully engaging in legal reforms to bring its legislation in line with the GPA rules. As a result, in September 2015 the WTO Committee on Government Procurement approved the terms of Moldova's accession. It gave Moldova six months, until mid-March 2016, to submit its instrument of accession. Moldova missed this deadline as the parliament was not able to ratify it, but the Committee extended the deadline.

Challenges for Moldova's system. Although prior to the beginning of legislative approximation, Moldova should have submitted to the Trade Committee a 'comprehensive roadmap' for the implementation of the public procurement chapter, this had not happened by the end of April 2016. Thus, there are serious delays in improving the public procurement system. Among the most important is the lack of progress on establishing the National Agency for Solving Complaints.

⁹⁴ See Law No. 131 on Public Procurement of 3 July 2015.

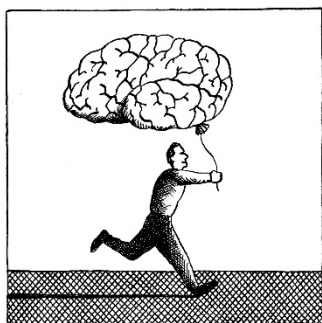
Public procurement at a glance

Moldova has already taken significant steps to bring its public procurement system into compliance with EU law and best international practice, with a revised law adopted in 2015. Legal, institutional and procedural changes have been made.

Further reforms remain to be undertaken for approximation to EU norms in accordance with the DCFTA.

The main problems are to ensure the transparency of public procurement, availability of information from public institutions and the real independence of the procedures for settling complaints.

11. INTELLECTUAL PROPERTY RIGHTS



The protection of intellectual property is important for promoting innovation and creativity in our knowledge-based economies, and for developing employment and improving competitiveness. The DCFTA requires Moldova to modernise its system on intellectual property rights (IPRs). Reform will contribute to a stable legal environment to protect IPRs, which is crucial to attracting foreign investment.

Provisions of the Agreement

The DCFTA chapter on IPRs seeks to facilitate the production and commercialisation of innovative products while guaranteeing an adequate level of protection and the enforcement of intellectual property rights. It complements Moldova's obligations under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This WTO agreement establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. The DCFTA confirms these WTO rules and goes beyond them in several areas. This has important implications for Moldova, as in principle it has to extend these 'TRIPS-plus provisions' to all WTO members in accordance with the TRIPS' MFN clause (Art. 4 TRIPS).

Contrary to other DCFTA chapters, the section on IPRs does not oblige Moldova to approximate a selection of the EU's IPR legislation annexed to the Agreement. However, the main text of the DCFTA is

very detailed, and its provisions reflect – or sometimes copy – several principles and procedures of the EU’s IPR legislation. The DCFTA lays down rules on copyrights, trademark, geographical indications (GIs) and designs, including detailed enforcement provisions.

Copyrights. The parties must comply with several international conventions and agreements (e.g. the Rome Convention for the Protection of Performers, producers of Phonograms and Broadcasting Organisations, the Berne Convention for the Protection of Literary and Artistic Works and the Copyright Treaty of the World Intellectual Property Organisation (WIPO)). With regard to the duration of authors’ rights, the DCFTA states that the rights of an author of a literary or artistic work have to be protected for 70 years after his/her death. The Agreement also covers broadcasting and communication to the public, the protection of technological measures and rights of management information and release rights. A provision on cooperation on collective management of rights goes beyond the TRIPS agreement but only envisages (i.e. a soft commitment) that the parties’ ‘collecting societies’⁹⁵ conclude agreements with each other in order to promote the availability of works, as well as to ensure the mutual transfer of royalties for the use of such works.

Trademarks. The DCFTA mainly requires accession to, and implementation of, such international agreements as the WIPO Trademark Law Treaty, the Protocol relating to the Madrid Agreement concerning the International Registration of Marks and the Singapore Treaty on the Law of Trademarks. Moreover, Moldova must establish a fair and transparent system for the registration of trademarks in which any refusal by the relevant trademark administration is communicated to the applicant in writing and duly reasoned. Moldova also has to provide a publicly available electronic database of trademark applications and registrations.

Geographical indications (GIs). The text of the Agreement recognises that Moldova’s IPR legislation (e.g. Law No. 66-XVI on the Protection of Geographical Indications, Designations of Origin, and Traditional Specialties Guaranteed) already meets the required conditions with regard to registration and control of GIs, and therefore does not require further legislative approximation to the EU *acquis*. The

⁹⁵ More specifically, these are authorities established under national IPR law that represent the holders of a certain IPR, and who have the responsibility to administer the IPRs of its members, such as collecting societies responsible for collection of copyright royalties for musicians.

annexes contain an elaborate list of geographical indications of agricultural products, foodstuffs and types of wines and spirit drinks of both parties (for the EU, e.g. prosciutto di Parma, Champagne and Feta cheese), which will be protected against any direct or indirect commercial use or misuse of a protected name for comparable products. This list was largely taken over from a bilateral agreement between the EU and Moldova, concluded in 2013, which is now replaced by the DCFTA.⁹⁶ A specific subcommittee on GIs will monitor the implementation of these provisions and report to the Trade Committee. Furthermore, this committee can also expand the list of protected GIs. Negotiations are underway to include new Moldovan products to the list of protected GIs.

Designs and patents. Moldova also has to provide for the protection of independently created designs that are new and have individual character. The protection will be provided by registration and will confer upon the holder the exclusive right to use the design and to prevent third parties without his/her consent from using, making or offering it, putting it on the market, importing or exporting it. The duration of protection available will be 25 years from the date of filing the application for registration. Specific rules are provided for patents for medicinal and plant products. For example, the provisions on pharmaceutical data protection, which go beyond the TRIPS agreement, require that Moldova implement a comprehensive system to guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.

Enforcement of IPRs. The Agreement has a strong section on the enforcement of IPRs. These commitments go beyond the TRIPS Agreement, but the complementary measures and remedies in the DCFTA have to be fair and equitable and should not result in additional barriers to trade. The section on civil measures and procedures, which is largely based on the EU's IPR Enforcement Directive,⁹⁷ includes detailed procedural provisions on the judicial enforcement of IPRs (e.g. on transparency, procedural fairness, the right to information, measures for preserving evidence and publication of judicial

⁹⁶ See the Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs, OJ L 10/3, 15.1.2013. See also Art. 456(3) of the Association Agreement.

⁹⁷ See Directive 2004/48 EC on the enforcement of intellectual property rights.

decisions). Judicial authorities must have the competence to recall products from the market if they infringe an intellectual property right or to order the destruction of those goods. Moreover, judicial authorities must be able to issue an injunction and penalty payments or pecuniary compensation payments against the infringer, with the aim of terminating the infringement. Provisions on the liability of intermediary service providers (e.g. online service providers) are also envisaged.⁹⁸ These are copied from the EU's e-Commerce Directive⁹⁹ and provide for a 'safe haven' regime, under which certain types of intermediary service providers are exempted from liability for IPR infringements, under certain conditions.

Implementation perspectives

The institutional framework. After gaining independence, it was necessary to create an institution with legal competences in the field of IPRs. This was done in November 1991 by a presidential decree, which established the State Agency for Copyright (ADA) to ensure the protection and legal interests of authors of literary, scientific and artistic works.

Subsequently, in May 1992 another presidential decree established the State Agency on the Protection of Industrial Property (AGEPI) under the Ministry of Economy and Finance. In 1995, AGEPI obtained the status of a state enterprise subordinated to the government. In September 2004, a merger of ADA and AGEPI as the State Agency on Intellectual Property was approved (while the AGEPI acronym continues). Ten years later, in July 2014, the parliament adopted a Law on the AGEPI, changing the agency from a state institution into a public institution, while remaining subordinated to the government. This contributed to strengthening its institutional capacity, through regulating its legal status, principles and directions of activity.

The legislative framework. Over time a series of laws in the field of legal protection of intellectual property was approved. This process started in the mid-1990s with laws on trademarks and appellations of

⁹⁸ These provisions are not included in the DCFTA chapter on establishment, trade in services and electronic commerce (Arts. 256-260).

⁹⁹ See Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market (the directive on electronic commerce).

origin, patents, protection of plant varieties, protection of industrial designs and copyright and related rights.¹⁰⁰

In 2008, due to the development of the national IPR system and the tendency to bring the system closer to European standards, a series of amended or supplementary laws in line with new trends was adopted. Namely, these are the protection of trademarks (No. 38-XVI), plant varieties (No. 39-XVI), inventions (No. 50-XVI), and geographical indications, appellations of origin and traditional specialties (No. 66-XVI). In July 2010, Law No. 139 on copyright and related rights was adopted.

The National Commission on Intellectual Property is an advisory body under the government established to coordinate and ensure interaction between ministries and other central administrative authorities, as well as holders of intellectual property rights. In May 2012, the National Commission adopted a new National Intellectual Property Strategy (NIPS) until 2020, which the government followed up in August 2015 by approving a NIPS Action Plan for the period 2015–17. Given the complex and multifunctional nature of intellectual property and its involvement in all areas of economic, scientific, cultural and social life of the country, the structure of the plan sets out the responsible authorities and the actions necessary to achieve the objectives, deadlines and expected results of implementation, etc.

Accession to international conventions and agreements. Between 1993 and 2014 Moldova engaged in a comprehensive programme of accession to international conventions and agreements concerning IPRs, as listed in Box 11.1, thus ensuring Moldova's integration into the international and European intellectual space. This culminated in 2014 with the signature of the DCFTA with the EU.

¹⁰⁰ These were Law No. 588-XIII of September 1995 on Trademarks and Appellations of Origin; Law No. 461-XIII of May 1995 on Patents; Law No. 915-XIII of July 1996 on the Protection of Plant Varieties; Law No. 991-XIII of October 1996 on the Protection of Industrial Designs; and Law No. 293-XIII of November 1994 on Copyright and related rights.

Box 11.1 Steps taken by Moldova in acceding to IPR conventions and organisations

1993

- Convention establishing the World Intellectual Property Organization
- Paris Convention for the Protection of Industrial Property
- Agreement on Measures concerning the Protection of Industrial Property
- Establishment of the Interstate Council on Industrial Property Protection
- Hague Agreement concerning the International Registration of Industrial Designs
- Nairobi Treaty on the Protection of the Olympic Symbols
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

1995

- Convention for the Protection of the Rights of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961)
- Convention for the Protection of Literary and Artistic Works (Berne, 1886)
- Trademark Law Treaty (Geneva)
- Eurasian Patent Convention (Moscow)
- Cooperation Agreement with the European Patent Office (EPO)

1996

- Eurasian Patent Convention

1997

- International Convention for the Protection of New Varieties of Plants
- International Union for the Protection of New Varieties of Plants

2000

- Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

2001

- Accedes to the World Trade Organization and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

2014

- Signature of the DCFTA with the EU (Title V, Chapter 9 on IPRs)

Outstanding challenges. Despite these important national and international initiatives there is limited cooperation with international holders of intellectual property rights, mainly due to the small size of Moldova’s market, and consequently the limited risks for IPR holders.

There is also the problem of low enforcement of intellectual property protection, the source of which is the limited knowledge about IPR systems among judges and a lack of interest on the part of IPR holders. Other challenges for Moldova’s IPR system are insufficient intellectual, creative and innovative activity, a high level of piracy and counterfeiting, and poor involvement of the holders of IPRs in protection actions. There is a very low utilisation of IPR potential by small and medium-sized enterprises, a large number of unfair competition cases and submission of ill-intended IPR registration applications. In addition is the insufficient level of culture in the IPR field and a lack of transparency within the organisations regarding the collective management of copyright and related rights.

Regarding enforcement, the key EU law for approximation is Directive 2004/48/EC on the enforcement of intellectual property rights. New Moldovan laws are designed to bring current legislation into line with these provisions. In particular, emphasis is placed on creating a system of counteraction in cases of infringement of rights. Law No. 115 of 23 June 2011 thus made amendments to the Contravention Code, the Criminal Code and the Code of Criminal Procedure, which govern the liability for infringement of intellectual property rights and introduce the rights enforcement mechanism.

Although some progress has been made to bring the promotion and protection of intellectual property rights closer to European practice, the authorities still need to do more on the following issues:

- Improve the strategic and operational coordination between the various institutions responsible for the protection of intellectual property rights. Rationalise the overlapping competence areas of several authorities, namely the Customs Service, the Prosecutor’s Office, the Ministry of Internal Affairs, the Ministry of Information Technology and Communications, Ministry of Foreign Affairs, the Ministry of Health and the Ministry of Culture. Advance IPR training programmes for the staff of these institutions.
- Enhance the qualification of judges in the IPR area, by continuing training programmes for judges with the participation of

international consultants and study visits to the EU in order to assimilate good practice.

- Develop a strategy to identify local products that could obtain intellectual property titles, which would also include training and support (technical and financial) activities for producers, and actions to promote those products in the EU and other markets.

Intellection property rights at a glance

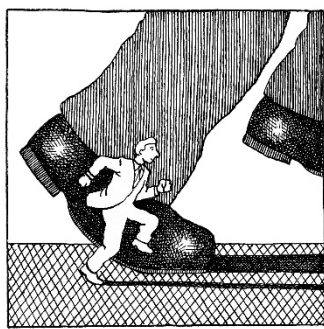
The main IPR objective is to ensure a level of protection similar to that in the EU, including effective means of enforcement.

Currently, the legal framework on intellectual property is consistent with both international rules and those of the EU. However, the harmonisation of legislation must be continued to follow changes at the international and EU levels.

The legal framework is being amended, as laid out in the National Intellectual Property Strategy (NIPS) 2012–20 and the NIPS Action Plan.

While the legal framework is fairly advanced, the primary task ahead is its implementation.

12. COMPETITION POLICY



An effective competition policy, controlling monopolistic behaviour by companies and trade-distorting subsidies by the government, is essential for the sound functioning of a modern economy. It leads to a level playing field for economic operators, lower prices for consumers, better quality and wider choice, while reducing the scope for corruption.

Provisions of the Agreement

Antitrust and mergers. Moldova is obliged to maintain comprehensive competition laws that effectively address anti-competitive cartels, mergers and the abuse of dominant position by enterprises. These competition laws should be enforced by an appropriately equipped independent authority in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and the rights of defence. Moreover, they should also apply to state monopolies, state enterprises and enterprises entrusted with exclusive rights in so far as the application of these competition rules do not obstruct the particular tasks of public interest assigned to these enterprises. The EU–Moldova DCFTA also envisages cooperation and coordination between the competition authority of the EU (i.e. the European Commission) and Moldova (i.e. the Competition Council) to enhance effective competition law enforcement. For example, the competition authorities may cooperate in enforcement activities or exchange non-confidential information.

State aid. The DCFTA provisions on state aid apply to all goods and services liberalised by the Agreement, except agriculture and

fisheries. Largely inspired by the EU, notably Art. 107(1) of the Treaty on the Functioning of the European Union (TFEU), is this general DCFTA provision:

State aid granted by the Union or the Republic of Moldova, or through the resources of one of the Parties, in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and services and which affects trade between the Parties, shall be incompatible with this Agreement.

However, the DCFTA does not provide further definitions or guidelines clarifying this principle. Nevertheless, the Agreement requires will that within five years from the date of entry into force of the DCFTA, state aid be assessed on the basis of the criteria arising from the application of the competition rules applicable in the EU.

EU competition rules will for example be useful to determine when state aid ‘affects’ trade between Moldova and the EU and will therefore be covered by the DCFTA. In the EU, state aid granted per member state to a single undertaking that does not exceed €200,000 over a period of three fiscal years falls outside the scope of EU state aid control, because it is deemed to have no impact on competition and trade in the EU internal market.¹⁰¹ Moreover, EU state aid rules allow certain types of government interventions to achieve a number of policy objectives. The TFEU lists the types of state aid that “shall” or “may be considered to be” compatible with the Agreement. For example, various social aids and disaster relief “shall” be considered compatible and various regional economic development aids “may” be compatible. In the Block Exemption Regulation, the European Commission specifies the categories of aid and the conditions under which aid measures can benefit from such an exemption, thus exempting them from the requirement of prior notification and Commission approval.¹⁰²

¹⁰¹ See Regulation (EU) 1407/2013 of 18 December 2013 on the application of Arts 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid.

¹⁰² For the most recent version of the EU Block Exemption Regulation, see Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Arts 107 and 108 of the Treaty.

In order to promote and strengthen transparency in the area of state aid, every two years the EU and Moldova will report to each other on their state aid activities and review the implementation of this DCFTA chapter.

Institutional aspects. The Agreement is largely silent on how Moldova's competition policy should be administered. But in the area of state aid, the DCFTA explicitly obliges Moldova to establish an independent authority that will have the power to authorise state aid schemes, as well as the power to order the recovery of state aid that has been unlawfully granted. Here there is a crucial political issue, going beyond the question of formal institutional organisation – namely how the system works in practice.

The EU's own experience in this regard has some strong messages. In many member states the government and/or parliament make the top-level appointments for fixed terms for medium-term periods (five or six of years), but the appointees cannot be dismissed at the discretion of the government or parliament. Most importantly, individual case decisions of these bodies are sovereign, and are not subject to approval of the government. Such considerations are crucial in Moldova, given the prevalence until now of endemic corruption and the political leverage of leading entrepreneurs.

The overall conclusions for Moldova are that i) the top-level appointments to the Competition Council should be for fixed periods of several years and should be protected from politically motivated dismissals by transparent and strict procedures that guarantee the right of defence; and ii) the case decisions of the Competition Council should be made independently of the government or parliament.

Implementation perspectives

Competition policy during the post-Soviet period. The first competition law framework of Moldova was adopted in 2000 (Law on Competition Protection No. 1103 of 30 June 2000). The law focused on preventing, reducing and repressing the monopoly and unfair competition, which also included uncompetitive agreements and abuse of dominant position. Yet the law was not entirely in compliance with international standards, as it prohibited monopolies, along with the abuse of dominant positions, and was oriented towards controlling the market of goods and price formation. The responsible authority was the National Agency for Competition Protection, which had general supervision competences, but was not empowered to carry out

investigations on abuses or infringements of the competition legislation.

In 2012, in order to approximate to European practices, Moldova's competition policy legislation was revised with the adoption of Competition Law No. 183, and the Law on State Aid No. 139, together with additional regulations (six on competition law and 12 on state aid). The Competition Council was created through restructuring the National Agency for Competition Protection. The Competition Council has a wide range of powers: decision, regulation, prohibition, intervention and inspection, along with adoption of sanctions related to the areas of competition, state aid and advertising. Its main attributions refer to the prevention of anti-competitive practices, removal of competition infringements and the promotion and improvement of the competition culture.¹⁰³ Any piece of legislation that can affect the competition environment should receive prior approval by the Council.

The Competition Council is run by the Administrative Council, which represents a collegial decision-making body comprising five members. All members of the Administrative Council, including the president, are appointed through parliament's decision, at the proposal of the speaker of the parliament. Their mandates last for five years, with the possibility to be extended for one more mandate. They can be dismissed by the parliament, after a proposal by the speaker or by a third of the MPs, if they breach relevant competition legislation or if they are sentenced for committing offences. The members of the Administrative Council should be qualified and independent and they can only be detained or arrested by the General Prosecutor's Office.

The Administrative Council takes decisions on the basis of the majority of votes of those present. There are four types of acts adopted by the Administrative Council: decisions, regulations, prescriptions and rulings. Decisions can include the identification of the violation, but also the sanctions applied. Regulations concern the initiation of the investigations, while the prescriptions define the measures to be taken to stop the breach of the law. The rulings are the only acts that can adopt, modify or cancel the legislative framework related to the Council's activity and organisation. These acts can be challenged in court during a 30-day period following their adoption.

¹⁰³ For more information, see the website of Moldova's Competition Council (www.competition.md/).

There are cases when the Competition Council can authorise an economic concentration or state aid by issuing a permissive document. To this end, the companies should notify the Council and provide the documentation that justifies the reason for the concentration, the estimated turnover, etc. Mergers should be communicated to the Council before being implemented. This refers to cases when the turnover of the companies in Moldova in the previous year reached MDL 25 million (around €1.1 million) or the individual turnover of the company was less than MDL 10 million (around €457,000).

In 2015, the highest numbers of new violations were registered in the following fields: abuse of dominant position (19) and (in)actions of public authorities that restrict or distort competition (12). Fewer instances were reported in cases of anti-competitive agreements (3), mergers (1), unfair competition (9) and violations related to advertising (1).¹⁰⁴

The sanctions applied by the Competition Council are successfully challenged in court due to weak reasoning of the cases, insufficient investigative potential and/or inadequate capacities of defence possessed by the Council.

The majority of the cases initiated by the Council are based on complaints (78.6% in 2014), with fewer cases launched as a result of the Council's own initiative (21.4% in 2014). Overall, the Competition Council and its predecessor (the National Agency for Competition Protection) adopted 135 decisions during 2011–14. The number diminished from 52 in 2011 to 18 in 2014.¹⁰⁵ A large number of investigations initiated by the Council take longer than two years, while according to the best practices this should not be more than 18 months. Some 31 out of 51 investigations on pending infringement cases, reported at the end of 2014, exceeded two years (61%).¹⁰⁶

DCFTA implementation: Progress and challenges. As explained above, the DCFTA gives to the relevant authorities in Moldova a considerable degree of discretion on how to define and operate its competition policy.

¹⁰⁴ See Competition Council, "Report of activity 2014" (www.competition.md/public/files/uploads/rapoarte_anuale/28%2005%202015%20Raport_activitate_Cons%20Concur_last.pdf).

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

Since 2012, with the support of the EU and its member states, the efforts of the Moldovan authorities have been oriented towards strengthening the enforcement and effective implementation of the Competition Law, including capacity building in the Competition Council. Particular attention has been devoted to enhancing transparency on state aid rules through setting up the Informational Autonomous System “State Aid Register” (SIRASM).

Although the Competition Law is in line with the EU’s key competition principles, it contains several significant shortcomings. For example, the Competition Law is unclear when it comes to the applicability of the leniency policy. This policy is determined by the Criminal Code (Art. 246) that lays out various penalties for anti-competitive practices, including up to three years in prison. A proper leniency policy should be an effective tool for the Competition Council itself, leading to incentives for the dissolution of existing cartels. The EU leniency system is a useful point of reference. In the EU, the Commission has developed a detailed leniency policy, which defines the information that a company involved in a cartel needs to provide to benefit from full or partial immunity from fines.¹⁰⁷

The Court of Audits’ report assessing the activity and the public funds of the Competition Council, issued in March 2015,¹⁰⁸ underlines various shortcomings:

- lack of prioritisation of the cases that should be investigated, which disperses the human resources across investigations that have a small impact on the market and consumers;
- lack of efficient methods for identification of the cartel agreements;
- deficiencies in the planning of investigations, and the lack of an efficient mechanism to monitor the implementation of the Council’s decisions; and
- deficient strategic planning of financial and human resources, with high costs for maintaining the apparatus.

¹⁰⁷ See the Commission Notice on Immunity from fines and reduction of fines in cartel cases (2006/C 298/11). Also the member states’ competition authorities coordinate their leniency programmes, in cooperation with the European Commission (http://ec.europa.eu/competition/ecn/mlp_revised_2012_en.pdf).

¹⁰⁸ See the Court of Audits, “Report on Competition Council’s performance”, March 2015 (www.ccrm.md/hotarireview.php?idh=742&l=ro).

To this list of desirable improvements there is also the need to strengthen the institutional capacities of the Competition Council and the transparency of its decisions, with clearer tracking data published online. In addition, there are certain needs to improve competition legislation for making the Council more effective in controlling cartel agreements.

Competition policy at a glance

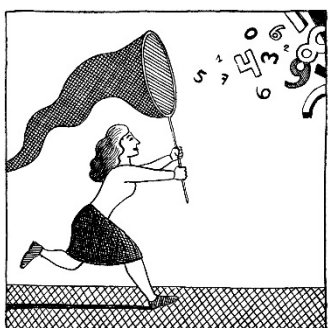
Moldova largely complies with the DCFTA competition requirements, but the implementation of the new competition-related legislation remains problematic.

The Competition Agency is independent and has investigative and decision-making powers, but the institution needs to improve its financial and human resources management.

The Competition Council should prioritise the economic sectors where intervention is greatly needed and improve its investigative and monitoring capabilities.

The legal framework should be improved in order to explore more efficiently the cartel agreements and other anti-competition practices, e.g. by a clear leniency policy.

13. STATISTICS



A modern and internationally comparable statistics system is indispensable for informed policy-making and for supplying the business sector and civil society with tools for their work. All the post-Soviet states have had to face the same challenges of radical reform of their statistical systems. These reforms involve fundamental changes, notably the move from systems that essentially served the needs of the

state to systems that serve the private sector and society as a whole, and more technically a greater use of sampling methods rather than exhaustive data collection.

Provisions of the Agreement

The EU has engaged all six Eastern Partnership states and the Central Asian states in extensive cooperation programmes to assist this long and complex process. Many of the projects listed below are 'group activities' for the whole Eastern Partnership and, in some cases, also with the Central Asian states.

For Ukraine, Moldova and Georgia this is enhanced by collaboration and by the explicit commitments made in the Association Agreements to align their statistical systems with that of the EU: Eurostat, which sets out a huge number of legal regulations in the Statistical Requirements Compendium. This is a highly ambitious programme. The time horizon for compliance with EU regulations is not specified, however, but experience from the accession of the new member states of the EU would indicate that this is a long-term process. For a realistic perspective, it took around 15 years for other new EU

members to complete the transition, with much more support from the EU than Ukraine, Moldova or Georgia will be receiving.

The cooperation between Eurostat and the partner states takes the following structure:

- seminars on statistical strategies, once a year for three days;
- training courses on current issues and recent developments in statistical systems, about five to six times over a two-year cycle;
- collection of selected data series, about 300 in number (i.e. a selection of key series, though fewer than what the EU member states comply with), in which the partner states submit data in accordance with Eurostat questionnaires, allowing Eurostat to publish comparable data series; and
- in-depth assessment of the statistical systems of Moldova.¹⁰⁹

Implementation perspectives

The national legislation on statistics is based on Law No. 412 of 9 December 2004. Overall, the law is in line with the UN Fundamental Principles of Official Statistics and the European Statistics Code of Practice. The National Bureau of Statistics (NBS) produces economic, social and demographic statistics, with dissemination on a website in both Romanian and Russian, and certain information in English.

In recent years, the NBS has undergone significant internal organisational changes to increase the efficiency of data collection, processing, analysis and dissemination. Current efforts to amend the law aim to increase the professional independence of the general director of the NBS, in line with the European Statistics Code of Good Practice.¹¹⁰

Since September 2014, when the provisional implementation of the Agreement started, the authorities have undertaken a range of measures targeting compliance with EU best practices on statistics, concerning work accidents, the energy and environment sectors, and Millennium Development Goals, in particular. Work has started on a

¹⁰⁹ See Eurostat, "Adapted Global Assessment of the National Statistical System of Moldova Final Version", April 2013 (http://ec.europa.eu/eurostat/documents/52535/52745/AGA_Report_Moldova_final_02072013.pdf/69a083cd-15cc-4f14-9ab7-0cb312460fc2).

¹¹⁰ See http://ec.europa.eu/eurostat/documents/52535/52745/835697_AGA_Report_GE_FINAL+18+04+2013.pdf/0fd16014-6fcd-4ace-9444-49dce7cfff9b.

methodology for collecting innovation statistics. With EU support a project on improved regional statistics started in November 2014.

For the near future, the authorities plan on the following achievements: approval of the regulations on statistical reports concerning air transportation, calculation of the consumer prices index according to the harmonised EU standard, processing of the 2014 population census and analysing the methodology for calculating the gross regional product.

The NBS enjoys significant donor support from the EU, Sida, the UN System and other development partners. In July 2015, the Sector Aid Coordination Council was established to improve the coordination of donor support.

There remain the following major challenges:

- addressing several weaknesses in the coverage and delivery of statistics, namely delays in getting the results from the 2014 census, including data covering the Transnistrian region;
- adopting a uniform territorial breakdown for statistics in line with the EU NUTS Regulation and responding to the needs of regional policies;
- overcoming several institutional problems, including poor coordination of the statistical system between the NBS and other institutions, the imbalance between the small headquarters versus many small regional units of the NBS and the need to enhance the role of the Statistics Council; and
- lack of strategic planning for the post-2014 period concerning the implementation of European requirements on statistics, including the budget estimates and the external assistance necessary for the planned actions.

Moldovan statistics at a glance

The legislation on statistics broadly reflects international and European standards, but its implementation in practice is proceeding slowly.

The National Bureau of Statistics faces challenges related to financial constraints and dependence on external assistance, and weak institutional and IT capacities.

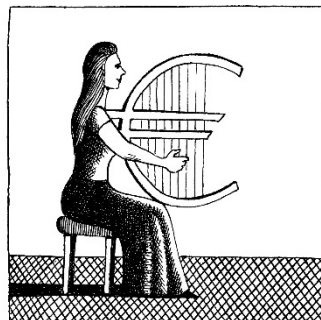
Data are insufficient on migration and the resident population, the environment, business and regional statistics, as well for the Transnistrian region in particular.

PART III.
ECONOMIC COOPERATION

14. MACROECONOMIC CONTEXT AND FINANCIAL ASSISTANCE

Macroeconomic context

After the collapse of the Soviet Union and independence, Moldova suffered one of the deepest and longest economic declines among the transition countries. Despite economic growth after 2000, Moldova's GDP per capita is still one of the lowest among the Eastern European countries and those of the CIS. A structural change in the economy took place, eliminating the stereotype of Moldova as an agricultural country.



While Moldova still relies more than other European countries on agriculture, its share of GDP declined from about 30% in 1995 to the lowest point of 8.5% in 2009, and has not exceeded 13% since then. Moldova has been transitioning into a service-based economy, with its share of GDP rising from 34.7% in 1995 to 55.2% in 2014. But these are mainly low value-added services.

The rebound of economic growth was primarily due to household consumption, which increased from 55% of GDP in 1995 to as much as 95% of GDP in 2011-12. This also boosted indirect tax receipts, which reached over 40% of total budget revenues. Thus, until the global economic crisis that began in 2008, the public deficit was reducing and even a budgetary surplus was registered in 2005-06. Yet the economic crisis led to big increases in the budget deficit, reaching a high point of 6.5% of GDP in 2009.

The increased internal consumption did not lead to increased employment, however, as Moldova was registering a rise in

joblessness. The employment rate dropped from 54.8% in 2000 to 40.3% of the population (over age 15) in 2015, and in 15 years Moldova lost 311,000 jobs. Migration came as a reaction of the population to the inability of the domestic economy to provide jobs and competitive wages. Over time it became a defining feature of Moldovan life, with foreign remittances becoming the main income source for many households. In 2007, such remittances reached the highest level of 34% of GDP, although by 2015 their share had declined to 23.6%.

For a few years, domestic and foreign investment also contributed largely to GDP growth. Foreign direct investment (FDI) increased notably between 2004 and 2008, when the GDP share of FDI flows reached 12%, with lower levels of 2-4% afterwards. In 2015, the FDI stock per capita was \$996, less than in most CIS countries.

From the beginning of the transition, Moldova was exposed to high annual inflation of over 10%, and only the global economic crisis led to its deceleration. In 2010, the central bank adopted an inflation-targeting strategy, and managed to keep inflation within the target of 5% (+/-1%) for several years, until 2015 when it reached a double-digit rate again (13.6%).

Since 2006, the CIS region has ceased to be the most important destination for Moldovan exports, with exports to the EU rising to a higher share. This evolution has been a natural consequence of the intensification of EU-Moldovan relations and of the increasing trade preferences offered by the EU. This has been complemented by the effort of national producers to diversify trade partners in order to survive losses caused by frequent bans on the imports from Moldova by Russia. However, because of the inability of Moldovan producers to respond to the increased opportunities in EU markets and worsened trade relations with Russia, the trade deficit reached the huge level of 54.6% of GDP in 2008, which decreased somewhat to 31.1% in 2015.¹¹¹ The current account of the balance of payments was only kept to moderate levels due to the high level of remittances.

While 2010 could have been a turning point for the Moldovan economy, as it overcame the economic crisis with renewed growth, and a new 'pro-European' government was set up, what followed was not good. During these last few years, corruption has been a dominant

¹¹¹ These figures solely reflect trade in goods.

theme in public perceptions and debate,¹¹² which together with legal shortcomings and weak institutions culminated in a major bank fraud in late 2014. Three banks that constituted about 35% of Moldova's banking system assets became insolvent due to fraudulent loans that led to losses amounting to 16% of GDP.¹¹³ This eroded public trust in the entire banking system, highlighted flaws in corporate governance and supervision of the banking system, contributed to a major devaluation of the national currency and stained Moldova's external image. Financial relations with important development partners were put on stand-by.

Finally, 2015 was a very difficult year with the banking crisis, an increasing budget deficit and worsening relations with the development partners, a reduction of exports and remittances, double-digit inflation, low business confidence and foreign investment, and unfavourable weather conditions. Above all, owing to political instability and delays in the reform agenda, Moldova was unprepared for these shocks and the economy steered onto a negative path.

Table 14.1 Main economic indicators of Moldova

	2009	2010	2011	2012	2013	2014	2015
GDP growth (%)	-6.0	7.1	6.8	-0.7	9.4	4.6	-0.5
Inflation, annual average (%)	0.0	7.4	7.7	4.6	4.6	5.1	9.7
Budget deficit (% GDP)	-6.4	-2.5	-2.4	-2.2	-1.8	-1.7	-2.2
External debt (% GDP)	80.2	82.3	77.0	82.2	83.6	82.5	97.9
Current account (% GDP)	-8.2	-7.7	-11.2	-6.8	-5.0	-3.7	-5.7

Sources: EBRD, NBS and NBM.

Provisions of the Agreement and financial assistance from the EU

The text of the Association Agreement on macroeconomic cooperation is short and simple. It foresees regular dialogue on macroeconomic policy. Moldova will aim at gradually approximating its economic and financial regulations to those of the EU, while ensuring sound

¹¹² See Transparency International's Corruption Perception Index and World Economic Forum Competitiveness Report Ethics and Corruption Score.

¹¹³ Losses from loans and future interest accounted for 16% of GDP, according to the Kroll Final Report prepared for the National Bank of Moldova, April 2015 (http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf).

macroeconomic policies (Art. 24), but there are no timetables or precise references to EU legislation.

Surprisingly the text of the Agreement is silent on the significant financial cooperation between Moldova and the EU and the European financial institutions, notably macro-financial loan and grant funding from the European Commission, further grant funding from the EU budget and investment funding from the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD). From a strictly legal standpoint, these activities do not derive their basis from the Agreement, but they are important in complementing and helping fund implementation of the Agreement.

The main macro-financial assistance from the EU to Moldova so far has been a €90 million grant programme decided in 2010, and executed in three tranches in 2010 and 2012. The programme was triggered by the serious negative consequences for Moldova of the 2008–09 global financial crisis. It was subject to conditions on reforms to public financial management, public debt management, the financial sector and central bank governance, as well as convergence on EU practice for public procurement. This particular programme of course predates the DCFTA, but illustrates one important instrument at the disposal of the EU, which is nonetheless available only in exceptional circumstances.

Regular grants from the EU budget are programmed for the period 2014–17 for an amount in the range of €335–410 million, to support Moldova’s reform agenda through financial and technical cooperation.¹¹⁴ The indicative allocation for the 2014–20 period is €610–746 million with supplementary allocations dependent on progress towards a “deep and sustainable democracy” and implementation of agreed reform objectives. The targeted allocations for this funding are shown in Table 14.2.

¹¹⁴ See the Memorandum of Understanding between the European Commission and Moldova, “Single Support Framework for EU support to the Republic of Moldova (2014-2017)”.

Table 14.2 EU budgetary assistance to Moldova, by sector, 2014–20

Sector of intervention	Indicative amount (% of total)
Public administration reform	30
Agriculture and rural development	30
Police reform and border management	20
Capacity development and institution-building	15
Civil society	5

In addition, the EU budget funds the Neighbourhood Investment Facility, which usually co-funds investment projects with the EIB, EBRD and selected financial institutions of the EU member states. The Facility grants funding to ease the financial conditions for investment necessary to support the DCFTA, and to exploit new trade opportunities. For example in 2015, the Facility granted €2 million to leverage a €75 million loan from the EIB to upgrade Moldova's winemaking sector. Another €4.5 million grant was to leverage €22 million of loans from the EBRD for sustainable energy-efficiency projects, including a biogas plant.

The EIB is a major investor in Moldova, having extended a total of €372 million in loans and investment so far. A major project initiated in 2014 comprises a €120 million loan for the Fruit Garden of Moldova, which will finance projects of a large number of micro, small and medium-sized enterprises in the horticultural sector.

The EBRD has become an even bigger investor in Moldova, having made financial contributions so far amounting to €1 billion to 110 projects. The largest shares of this investment have been in infrastructure and in the energy sector. The EBRD is also focusing on projects to help Moldova develop value-added exports, especially in the manufacturing and agri-business sectors, given not only the new opportunities, but also the need for enhanced competitiveness in the DCFTA context.

As noted earlier, the Moldovan banking sector was hit in 2014–15 by a major fraud, endangering the economy's financial stability. Three major banks – Banca de Economii, Banca Sociala and Unibank – engaged in opaque transfers of up to \$1 billion, which forced the central bank to provide emergency loans amounting to as much as 12% of GDP, while the prime minister announced the intention to liquidate these three banks. By mid-June 2015, the share of non-performing loans

of total loans of the three banks under special administration increased to approximately 60%, compared with around 10% for the remainder of the banking sector.

Macroeconomic context and financial assistance at a glance

Moldova's economy began to recover only in 2000 after the huge initial losses at the beginning of the post-Soviet transition.

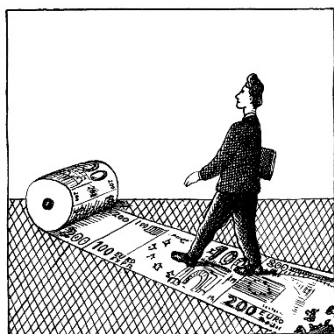
But it was then hit hard by the global economic crisis of 2008–09.

In 2010, Moldova began to recover from the crisis with renewed growth and a new 'pro-European' government. Yet slow reforms, pervasive corruption and poor progress in improving the business climate have held back the economy.

Then in late 2014, a major bank fraud, incurring losses of 16% of GDP, aggravated the already-precarious economic situation, such that in 2015 the economy went back into recession.

The EU is supplying significant financial assistance to Moldova, including budget grants and major investment from the EIB and EBRD.

15. FINANCIAL SERVICES



The Agreement envisages a comprehensive adoption by Moldova of the European system for regulating banks, insurance and securities markets with adoption, at least in the long run, of the entire EU legislative complex of laws. The objective is for the financial markets to be safe and efficient for consumers and systemically sound for the economy, and for the industry to

have open access to European markets in order to secure its competitiveness and modernisation.

Provisions of the Agreement

General provisions. The Agreement commits Moldova to gradually make its financial market regulations compatible with those of the EU for banking, insurance, securities and asset management. A large number of EU laws – 39 directives and regulations plus a recommendation (listed in Annex XXVIII-A) – will be approximated with implementation delays mostly of three years. Yet there is a much more limited number of core regulations of systemic importance, and many of the others are technical implementing provisions for the core regulations.

National treatment. In general, the Agreement provides for national treatment for establishment and the cross-border supply of services, meaning that each party will grant to the other party's operators treatment no less favourable than for its own. This is in line with standard WTO/GATS principles, under which, however, national treatment only applies once a service provider has legally entered the market. In addition, there are detailed provisions facilitating the

“temporary presence” of key personnel and suppliers of services. Still, there are still numerous specific reservations by individual EU member states (listed in Annex XXVII-B), many of which may be of small significance, but nonetheless complicate and limit the openness of the market.

Market access. In relation to establishment, the Agreement does not contain specific provisions on market access. In relation to the cross-border supply of services, under Art. 210, the parties’ market access commitments are inscribed in Annexes XXVII-B and XXVII-F to the Agreement. Market access commitments follow a positive list approach, as under the GATS.

International standards. At the same time, Art. 243 of the Agreement calls for Moldova “to make its best endeavours” to apply, inter alia, the following internationally agreed standards:

- Core Principles for Banking Supervision under Basel rules,
- International Association of Insurance Supervisors’ Insurance Core Principles,
- International Organisation of Securities Commissions’ Objectives and Principles of Securities Regulation,
- OECD Agreement on exchange of information on tax matters,
- G20 Statement on transparency and exchange of information for tax purposes, and
- Financial Action Task Force’s Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing.

Banks - Capital requirements. The global financial crisis, with the collapse or near-collapse of major banks of systemic importance, has led to radical strengthening of the capital reserve requirements of banking systems. Below are the key EU laws in the Agreement, and as subsequently revised:

- Directive 2006/49/EC of 2006 on the capital adequacy of investment firms and credit institutions, which has been replaced by the 2013 Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms; and
- the related Directive 2006/48/EC of 2006 on the business of credit institutions, replaced by Directive 2013/36/EU of 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

These texts transpose into EU law the latest global standards on bank capital adequacy, commonly known as the Basel regulatory

norms.¹¹⁵ The new texts are a combination of *directives*, which give some leeway to member states on how to implement the provisions, and *regulations*, which in EU law are directly applicable, and in this case specify precisely the various harmonisation requirements.¹¹⁶ While the basic minimum capital requirement of 8% of equity capital is unchanged (as in Basel I and the 2006 directives), the definition of capital has been tightened and further categories of reserve requirements have been introduced, giving essentially the following regime (under Basel III and the new 2013 laws):

- a minimum capital reserve requirement of 8%, plus...
- a capital conservation buffer of 2.5%,
- a countercyclical capital buffer of 0 to 2.5%,
- a capital buffer in systemically important institutions of 0 to 3.5%, and
- a systemic risk buffer of 0 to 3 to 5%.

As a result, depending on the specifics of individual banks, the requirements could effectively be doubled, although small to medium-sized banks can be largely exempt from the additional requirements. These capital reserve requirements are subject to extremely complex methodologies of definition and calculation, which take up the bulk of the texts in question. There are also new requirements with respect to liquidity to cover stress conditions.

Accounting rules. Four accounting directives are cited (in Annex XXVIII-2), which provide very detailed technicalities.

Insurance. The key law for regulating the insurance industry is Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance, also known as ‘Solvency II’, which is a fundamental text detailing rules for the conduct of the industry, its supervision and solvency. Moldova should comply with this directive within seven years. Implementation of Solvency II is understood to be a big challenge for Moldova, which will take a considerable time to be

¹¹⁵ Basel I was the first internationally agreed set of banking regulations negotiated and produced the Bank for International Settlements (located in Basel), while Basel III is the most recent version, which takes into account the need for changes in the light of the 2009 financial crisis. While these norms are international, the EU legislates to make them strictly operational and binding.

¹¹⁶ For a detailed analysis of the new laws, see Karel Lannoo (ed.), *The Great Financial Plumbing: From Northern Rock to Banking Union*, Brussels and London: CEPS and Rowman & Littlefield International, 2016.

realised. Some more specific laws are cited, for example for motor vehicle liability.

Securities (MiFID). The EU has established a comprehensive regulatory regime for investor transactions by stock markets, other trading systems and investment firms, with a single authorisation for investment firms to do business anywhere in the EU. The key law is Directive 2004/39/EC for markets in financial instruments (MiFID), supplemented by implementing Directive 2006/73/EC, with which Moldova should comply within seven years.

Investment funds (UCITS). The basic law of the EU for investment funds was revised in 2009 in the wake of the Madoff scandal of 2008, and this text on the regulation of collective investment in transferable securities (UCITS) is cited in Annex XXVIII-A. The market in question has grown to a substantial size in the EU. But this text has undergone a further important revision (2014/91/EU), and therefore raises the question of updating the provisions of the Agreement.

Financial derivatives. The EU has introduced complex rules to regulate financial derivatives in a regulation on over-the-counter (OTC) derivatives, central counterparties and trade repositories, also called 'EMIR' (Regulation (EU) 648/2012). This was a major development, enabling the EU to deliver the G20 commitments on OTC derivatives agreed at the Pittsburgh summit in September 2009. The regulation ensures that information on all European derivative transactions will be reported to trade repositories and be accessible to supervisory authorities.

Implementation perspectives

Present structure and state of Moldavian financial markets. Moldova's financial market is still underdeveloped, with a shallow non-bank segment, which hampers the domestic economy's growth. Banks continue to dominate the financial system. Financial intermediation, as reflected in the ratio of the bank-dominated overall credit portfolio to GDP, was some 37.4% in 2014, slightly up from 37.1% in 2009. International development partners remain an important source of concessional funding for domestic credit expansion. Total financial-sector assets represent 78.6% of GDP, with banks accounting for 93% of total assets. Most other financial sector assets are evenly split between the insurance and microfinance segments (approximately 3.5% each).

Banking. The National Bank of Moldova (NBM) was established in 1991, and is an autonomous legal entity, responsible only to the

country's parliament. The NBM regulates and supervises banking practices throughout the country, and defines national monetary management and exchange policies. The NBM issues licences to commercial banks, payment services providers, the foreign exchange bureau, foreign exchange offices and the foreign exchange bureaus of hotels. The licensing requirements for banks include minimum thresholds for tier-one capital and risk-weighted capital adequacy; the respective thresholds were raised to MDL 200 million at the end of December 2012 (from MDL 100 million in 2008) and 16% at the end of July 2012 (from 12%).

At the end of October 2015, there were 11 banks in Moldova, including four subsidiaries of foreign banks and financial groups, and the remaining seven had some foreign participation. No representative offices of foreign banks were present. Back in 2012, the Moldovan state was participating in the capital of two banks, Banca de Economii and EuroCreditBank with a share of 56.1% and 21.0%, respectively. However, by the end of 2015, the first bank had been liquidated, while the equity participation in the second one had been sold. The three largest banks (Moldova Agroindbank, Victoriabank and Moldindconbank) accounted for 77% of total bank assets.

The Association Agreement brings new rules in the area of capital regulation, with Moldova now committed to transpose within three years the provisions of the EU's Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions.

At the same time, the current prudential framework for banks is largely in line with Basel I, which is less sophisticated than those set out in the second and third generations of the Basel rules. Efforts to implement Basel II and III are underway, with the aid of a twinning project launched in June 2015, to be finalised in 2017. From January 2012, all licensed banks have been required to comply with the financial reporting standards developed by the European Committee for Banking Supervision. From April 2014, their consolidated annual reports must be based on the international financial reporting standards.

Despite these steps taken to strengthen bank regulation and supervision during the last period, the IMF has reiterated concerns about significant risks to systemic financial stability. The IMF's assessment flagged weaknesses in the existing prudential and crisis management frameworks, as well as poor bank governance and the fragile condition of some large banks. The accuracy of reported bank performance indicators has also been questioned. Concerns over

transparency and governance have also prompted the EBRD to reduce its financing of the Moldovan banking segment from over €40 million in 2010 to about €10 million in 2014.

Moldova had until recently maintained a quite sound basic banking system. But in 2014, a huge financial fraud gravely damaged its reputation at sizeable cost to the economy (discussed in Box 15.1).

Box 15.1 The 2014 bank fraud

While the Moldavian banking system proved to be quite stable in the first two decades of the country's independence, facing up to regional and global financial crises adequately, in 2014 it was hit hard by a series of dubious 'mega-transactions'. At the end of the year three systemically important banks, accounting for 35% of the assets of the entire banking system, were becoming insolvent as a result of the dramatic degradation of their financial situation. The banks were placed under special administration. In November and December 2014, the NBM opened emergency credit lines for these three banks, amounting to MDL 9,434 million (€500 million) to maintain the stability of the financial system, followed by another loan of over MDL 5 billion (€250 million) in March 2015. These credits were granted at preferential interest rates and guaranteed by the state with maturities extended for an undetermined period.

When these loans were not repaid, it was decided to liquidate all three banks. It is still unclear who will reimburse the loans extended by the NBM. Intensive investigations were launched in 2015, without revealing who was responsible for the fraud. The first phase of the investigation has revealed that there had been a series of financial transactions engineered to fraudulently extract cash from the three banks.

The macroeconomic effects of the crisis became evident. In 2015 the national currency depreciated by 25%, inflation reached the two-digit level (12%), the volume of new loans fell by 50% and the economy contracted by about 1%.

The crisis can be considered a real failure of banking supervision, with violation of the basic principles of corporate governance. The IMF submitted a set of preconditions related to the banking sector that must be realised if Moldova wants to sign a new loan agreement with this institution.

In conclusion, the main factors that caused the crisis were legal and institutional gaps, political interference, superficial surveillance and poor governance. Together, they demonstrate the urgent need for broad reforms in the bank supervisory system that would lead to the strengthening of the entire financial sector.

Non-bank savings and credit institutions. The National Commission for Financial Markets (NCFM) regulates and supervises most non-bank financial services segments, the securities market, the insurance market, non-state pension funds and credit history bureaus. The NCFM was established in August 2007, as the successor of several agencies. A draft law aimed at establishing a common regulatory and supervisory framework for non-banking financial activities, including microcredit and financial leasing, is awaiting adoption. As of the end of 2014, the non-banking institutions under NCFM supervision comprised 240 savings and credit associations, and 107 microfinance organisations. The latter organisations accounted for 85.2% of non-bank lending assets.

Regarding harmonisation with EU directives in the non-bank savings and credit institutions sector, within three years of the entry into force of the Association Agreement Moldova must implement the provisions of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions. The savings and credit associations of the Republic of Moldova may be exempt from the scope of that directive.

Securities market. Moldova's capital market is still embryonic, with trading taking place only in shares and bonds. Trading mechanisms for derivatives and government securities (secondary market) are yet to be developed. The trading mechanism for government securities is in the process of implementation. Deals related to the privatisation process has accounted for the bulk of transactions, around 60%. As from January 2015, there are two licensed stock exchanges in Moldova. Their combined turnover and market capitalisation in 2014 were MDL 708.6 million and MDL 3,992 million, respectively (€38 and €216 million). Foreign investment accounted for 56.6% of trade volumes between 2010 and 2014.

In principle, foreign companies and individuals receive national treatment in securities markets. There are no restrictions on foreign portfolio investment in Moldova. Investment firms from the EU can operate as 'accepted persons' on the Moldovan market without the licence issued by the NCFM.

In terms of the regulatory framework, in recent years Moldova has taken steps to align its legislation governing primary and secondary capital market activities with that of the EU. A new Capital Market Law, in force since September 2013, transposed some of the relevant EU directives, including those for markets in financial instruments Directive (2004/39/EC) and the transparency for listed

companies Directive (2004/109/EC). The NCFM is currently in the process of approving secondary legislation, which would regulate, inter alia, investment companies, undertakings for collective placements, the investors' compensation fund, public offers, takeover bids and capital market infrastructure.

Insurance. In October 2015, the Moldovan insurance market comprised 15 insurance companies, 13 of which specialised in non-life insurance, 1 in life insurance, 1 in composite insurance and numerous insurance brokers and agents as legal persons. In 2014, gross premiums written amounted to MDL 1,205 million (€65 million), up from MDL 817 million in 2009 (€50 million), the main element being motor vehicle insurance. Market concentration remains high, with the five largest insurance companies accounting for some 72.5% of gross premiums written in 2014.

Legal approximation of the EU's Solvency II Directive, on the business of insurance and reinsurance, is envisaged within seven years of the entry into force of the Agreement. This substantial time delay reflects the fact that Solvency II requires a risk-based approach for calculating solvency capital requirements for insurance undertakings, which will be difficult for the insurance market of Moldova without prior enhanced market capitalisation. Provisions of the directives relating to motor vehicle liability, insurance mediation and supervision retirement shall be implemented within three years of the entry into force of this Agreement.

Reform and approximation prospects and priorities. The financial sector is one of the key areas of cooperation under the Association Agreement for promoting the market economy, even if the European Union does not offer to Moldova comprehensive market opening in financial services immediately or unconditionally. The process of legislative approximation is the precondition for market opening by the EU. As mentioned above, however, only the banking sector of the financial market of Moldova is rather developed. Therefore, adopting international standards in the areas with limited or almost no development would be very difficult, but achieving these objectives is necessary for building a functional market economy in due course.

From the five EU acts that had to be transposed into national legislation by 1 September 2015, only two have advanced. Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and Regulation (EC) 1781/2006 on information about the payer accompanying

transfers of funds were partially transposed into national law by measures of the NCFM and NBM.

Currently, there are no strategic planning documents for the 27 directives and regulations set out in Annex XXVIII-A of the Association Agreement, for which the deadline implementation is three years from the entry into force of the Association Agreement. This will lead to delays in the entire process of the financial legislation approximation. The only document at the national level is the National Implementation Plan of the EU–Moldova Association Agreement (approved by Government Decision No. 808 of 7 October 2014 and reviewed in October 2015), but it covers all the areas of the Agreement and does not specify directly the financial part.

The delays in the approximation have been caused by recurring political crises in the country, alongside the huge bank fraud. All these factors led the EU and other international partners to suspend fresh financial assistance to Moldova. In recent months (spring 2016), several meetings took place between IMF and EU representatives and Moldovan officials on unblocking the external financial support. These discussions focused on assessing recent economic developments and the policies adopted by the authorities to maintain macroeconomic stability and improve financial sector governance, and led to a new memorandum with the IMF. Also, it should be noted that the financing from the EU depends on progress in relation to the IMF. In these conditions, the outlook remains challenging. The discussions with main donors will continue over the coming months, giving the authorities time to flesh out their policy proposals in greater detail.

Financial services at a glance

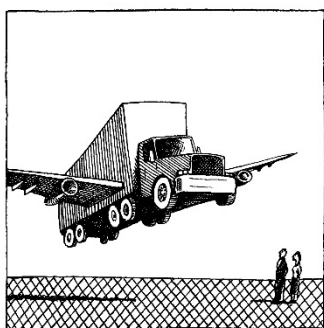
Until recently, Moldova's banking and financial market system was, while underdeveloped, sound in its basic functions.

At the starting point for implementation of the Agreement, however, the financial sector was hit by a huge bank fraud uncovered in 2014, resulting in the liquidation of three major banks.

Nonetheless, the Agreement foresees a comprehensive approximation on EU regulatory norms, mostly within three years. But this is getting off to a slow start.

Much of the EU legislation is complex and it will require a long and sustained effort to implement, but there are sound reasons to embark upon adopting this international best practice without delay.

16. TRANSPORT



Transport has been a key sector for the internal market since the early days of the European integration process. As a result, the EU has a well-established body of law and policies in this field. The DCFTA aims to expand and strengthen Moldova's transport cooperation with the EU and thus to promote efficient, safe and secure transport operations as well as greater interoperability of transport systems. This will be fundamental for helping Moldova's industries to integrate into the European supply chain and to boost contact between people.

Provisions of the Agreement

The DCFTA provides for a progressive liberalisation of transport in road, rail, inland waterways and intermodal, with approximation of many EU standards (Annexes X and XXVIII-D). For air transport, these rules are laid down in the 2012 EU-Moldova Common Aviation Agreement (CAA). Of all the transport modes, road and air are of special importance for links with the EU.

Road transport. This transport mode is the economically most vibrant in EU-Moldovan relations and will thus require the most attention. Goods and passenger transport companies, operators and drivers from Moldova are expected to comply in full with the EU's *acquis* if they wish to engage in 'trucking' in the EU. The case of road haulage transport is complicated by the fact that access to the EU's market is subject to detailed quota provisions and permits issued at the level of the member states, which fear that their markets will be overrun

by cheap Moldovan truckers.¹¹⁷ Under the DCFTA, eight member states have issued reservations to the full liberalisation of the road transport sector with Moldova.

Nevertheless, Moldova has agreed to approximate its legislation to the EU's road transport *acquis* within strict timetables. For instance, immediate priority should be given to EU rules on driving licences,¹¹⁸ to be implemented upon the entry into force of the Agreement. For the implementation of the conditions to pursue the occupation of road transport operator¹¹⁹ and the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers,¹²⁰ a two-year period has been agreed. Differentiated timetables exist for speed limitation devices¹²¹ (within one year for international carriers, eight years for national carriers), as well as inland transport of dangerous goods (as of the entry into force of the DCFTA for international carriers and within eight years for national carriers).¹²² This ambitious regime puts the onus on the Moldovan legislature to approximate domestic rules and standards to those of the EU, and introduce the necessary monitoring, inspection and enforcement mechanisms to assure proper implementation of the EU directives and regulations. Arguably, this is a costly affair, which needs sufficient financial support from the EU.

Air transport. For all practical purposes, the DCFTA refers to the 2012 CAA, which aims to progressively liberalise air transport between the EU and Moldova, "adapted to their reciprocal commercial needs and the conditions of mutual market access".¹²³ Removal of all market

¹¹⁷ According to standing case law of the Court of Justice of the European Union, these bilateral agreements have to be in conformity with the existing EU transport *acquis*. See the judgments in Cases C-466-9/98, C-471-2/98 and C-475-6/98, *Commission v. United Kingdom, Denmark, Sweden, Finland, Belgium, Luxembourg, Austria, Germany*, 5 November 2002.

¹¹⁸ See Directive 91/439/EEC.

¹¹⁹ See Regulation (EC) 1071/2009. Residency is required for the transport manager.

¹²⁰ See Directive 2003/59/EC.

¹²¹ See Directive 92/6/EEC.

¹²² See Directive 2008/68/EC.

¹²³ A report prepared for the Commission in 2011 by consultants estimated that the economic benefit of such an agreement at around €17 million p.a. (mainly due to lower airfares, increased air travel and the associated economic activity).

access restrictions between the EU and Moldova should attract new entrants to the market and create opportunities to operate for underserved airports.

The CAA promotes regulatory cooperation and harmonisation of regulations and approaches based on EU legislation in the field of aviation safety, aviation security, air traffic management, computer reservation systems (CRS) and the environment (measures listed in Annex III), as well as non-discrimination and the creation of a “level playing field for economic operators”. The CAA foresees the gradual transition of Moldova to the full application of the EU’s air transport law (Annex II). The transitional arrangements provide that the implementation and application by Moldova of all the laws indicated in Annex III are subject to an evaluation by the European Commission and validation by a separate decision of the EU-Moldova Joint Committee. Such an evaluation is to be conducted two years after the entry into force of the Agreement.¹²⁴

Yet, the CAA does not confer complete internal market access to Moldovan carriers: they only obtain the right to fly between Moldova and an EU destination, either directly or via an intermediate point in the neighbourhood, in the European Common Aviation Area or in Iceland, Liechtenstein or Switzerland (Annex II). That excludes Moldovan carriers from operating flights within EU member states (cabotage) and flights between two EU member states unconnected to a flight to or from Moldova.

Moreover, the DCFTA excludes national and MFN treatment for domestic and international air transport services, whether scheduled or non-scheduled, with a number of exceptions: i) aircraft repair and maintenance services, during which an aircraft is withdrawn from

The analysis also showed that airfares on popular routes are likely to drop significantly as a result of increased competition. The Agreement would additionally help resolve issues in “doing business” for EU carriers. See COM(2012) 20 final, 27 January 2012.

¹²⁴ Until that moment, the right for the air carriers of both parties to exercise ‘5th freedom rights’ other than those already granted by bilateral agreements between Moldova and the EU member states is excluded. The fifth freedom allows an airline to carry passengers from one’s own country to a second country, and from that country to a third country (and so on). Fifth-freedom traffic rights are intended to enhance the economic viability of an airline’s long-haul routes, but tend to be viewed by local airlines and governments as potentially unfair competition.

service; ii) the selling and marketing of air transport services; iii) CRS services; iv) ground-handling services; and v) airport operation services (Arts 204-205 of the DCFTA). The reservations mentioned in the DCFTA have to be regularly reviewed by the Association Council's subcommittee dealing with transport in order to progressively liberalise the establishment conditions. This ought to resolve the legal inconsistencies between the DCFTA and the CAA.¹²⁵

Railway transport. The DCFTA aims to reform the rail transport sector and gradually liberalise the freight and passenger rail market, but to realise these goals longer timeframes will be required than the four-year timetables mentioned in the DCFTA to implement the 11 EU regulations and directives listed in Annex X, in particular those regarding technical and safety conditions.

Inland waterway transport. The DCFTA imposes no national or MFN-treatment obligations on the EU with respect to national cabotage transport. Measures based upon existing or future agreements on access to inland waterways (including following the Rhine-Main-Danube link) do, however, reserve limited traffic rights for Moldovan operators. As with other transport modes, the priorities for approximation concern the conditions for market access, i.e. qualifications for operators, a central register, harmonised information services, safety standards for vessels and the establishment of a network of logistics centres, all to be implemented within an ambitious timetable of three years, except for transport of dangerous goods (immediately) and technical requirements of vessels (five years).

International maritime transport. The DCFTA prescribes a regime of "unrestricted access to cargoes on a commercial basis, freedom to provide international maritime services, as well as national treatment in the framework of the provision of such services" and

¹²⁵ In the same vein, Arts 204-205 relate to the freedom of establishment and not to the cross-border provision of services. As these services are typically provided through establishment, one could argue that the DCFTA regime will prevail in practice. In some cases, however, services are provided without establishment (e.g. self-handling), which will mean that the applicable rules will have to be derived from the CAA. Similarly, the DCFTA lists two EU-wide reservations on establishment in the area of air transport services, one relating to the rental of aircraft with crew, the other with respect to CRS (Annex XVI-A). The relevant provision on CRS in the CAA (Art. 13) refers to access to the market, without detailing whether this is through or without establishment. That may indeed create a conflict, in which case one could either argue that the specialised (i.e. the CAA) or the later agreement (i.e. DCFTA) takes precedence.

contains a number of standstill clauses to prevent the parties to the Agreement from introducing measures constituting (disguised) restrictions or having discriminatory effects. The right of establishment for service suppliers is excluded for national maritime cabotage. The DCFTA does not create national or MFN treatment obligations for the EU for the establishment of a registered company for the purpose of operating a fleet under the national flag of Moldova.

Implementation perspectives

Integration of Moldova's transport network into the Pan-European Corridors and the Transport Corridor Europe-Caucasus-Asia (TRACECA) is important because of the routes passing through its territory. The DCFTA recognises the significance of rehabilitating and extending the internationally important road links crossing the territory of Moldova, starting with the M3 Chişinău-Giurgiuleşti and M14 Brest-Briceni-Tiraspol-Odessa, as well as upgrading and modernising the rail connections with the neighbouring countries used for international and transit traffic (Annex IX).

The transport sector accounted for 4.9% of Moldova's GDP in 2014, which corresponds to a stable share of the economy for several years already. It accounted for 3.9% of the employed population, 94% of which were engaged in land transportation: road (66.9%) and rail (27.3%). A noteworthy peculiarity of the sector is the high share of informality, particularly in road transportation, where 24.1% of the employed population had an informal job in 2014.

Road modalities are the most crucial for the country, accounting for 95.7% of passengers and 85.9% of goods transportation in 2014. It is followed by rail, with only 3.4% of passengers and 13.5% of goods transported. Aviation is used mainly by people, accounting for 0.8% of passenger transport, whereas there is an insignificant share of airfreight. The marginal importance of inland waterway transport has increased since the opening in 2006 of the Giurgiuleşti harbour and accounted for 0.61% of goods and 0.13% of passengers transported.

The prominence of the transport sector for EU-Moldovan relations derives from Moldova's immediate proximity to the EU. Transportation issues are not confined only to bilateral relations, as Moldova is also a link between the EU and CIS countries crossed by internationally significant rail and road routes. The importance of Moldova-EU transport connections for bilateral relations is given by high trade flows between the two sides, as the EU is Moldova's top

trade partner for both exports and imports (53.3% and 48.3%, respectively, in 2014). Passenger transportation is also notable given the increasing number of tourists travelling to the EU, especially after the introduction of the visa-free regime in 2014.

Road transport. Moldova has a reorganised National Road Transport Agency that monitors and ensures the implementation of national and international regulations.¹²⁶ While many reforms stagnated in 2015, the most substantial progress in the approximation of laws has occurred in the road transportation field. The new Road Transport Code¹²⁷ approved in July 2014 partly implements the requirements of several EU directives and regulations. The Association Agreement aims to consolidate the road infrastructure by encouraging cooperation with different development partners, the quality assurance of investment in infrastructure and wider implementation of concepts like public-private partnerships and road taxes. Currently, 360 km of road are being repaired using loans from the EBRD and EIB.

Progress has been much slower in implementing commitments in other transport sectors, where the legal framework is very weak and changes require considerable technical and financial assistance, as indeed the creation of regulatory bodies.¹²⁸

Air transport. International air transport, in particular for passengers, is a growth sector, but on a European scale the Moldovan market will always remain small. Apart from Air Moldova, which has a fleet of six passenger planes, 19 international companies operate flights to Chişinău, mainly from the EU.

Moldova has assumed commitments under the CAA, but the legal approximation and implementation processes have slowed down due to the passage of Civil Aviation Authority from the Ministry of Transport and Road Infrastructure (MTRI) to the prime minister's office in 2013.¹²⁹ Another important issue, which has not been seriously addressed until now, is the conflict of interest between the MTRI and Air Moldova Company, as it is difficult to ensure protection of the rights and interests of passengers when the MTRI is simultaneously the

¹²⁶ For more on the National Agency for Automobiles created in 2008, see <http://lex.justice.md/md/327760/>.

¹²⁷ See the Road Transportation Code (<http://lex.justice.md/md/354404/>).

¹²⁸ For rail transport, more details are available at http://eeas.europa.eu/delegations/moldova/documents/press_corner/20141114_en.pdf.

¹²⁹ See www.caa.md/rom/news/item127/.

founder of Air Moldova and the market regulator for air transport services.

The gradual transition of Moldova to the full application of the legislation referred to in Part C of Annex III of the Agreement (aviation safety) – and thus access to the EU market – is also subject to assessments to be carried out by the European Commission in cooperation with the competent authorities of Moldova. When Moldova has fully implemented that legislation, the Joint Committee will determine the precise status and conditions for its participation in the European Aviation Safety Agency beyond the current observer status, which is already assisting the country to prepare for the full implementation of the EU's air safety *acquis*.¹³⁰

Railway transport. Moldova's entire 1,200 km rail network is single track and not electrified. It borders Romania's railway network in the west and Ukraine's in the east. Because of the break-of-gauge to the west, rail transport is directed eastward, mainly to Odessa. There are two passenger trains per day from Chişinău to Iasi (minimum five hours) and Bucharest (minimum 21 hours). Substantial investment has been made in building new railway lines since 2003, with the goal of connecting Chişinău to southern Moldova and eventually to the Giurgiuleşti oil terminal, but rail cargo will remain minimal until all segments of the line have been constructed. Lower airfares trump the economic rationale of investing in an upgraded rail infrastructure for passenger travel.

Inland waterway transport. Shipping is possible on the lower Prut and Nistru rivers, but it plays only a modest role in the country's transportation system, also because parts of the Nistru are under the control of the separatist Transnistrian authorities.

International maritime transport. Moldova has one small oil terminal on the Danube at Giurgiuleşti (Cahul) that can handle small seagoing vessels. The harbour was opened in 2006 and occupies the entire Moldovan stretch of the river (less than 600 metres). Apart from the adoption and implementation of rules for the qualification of seafarers, safety standards for passenger and cargo ships, and legal acts

¹³⁰ During the transition phase, the number of aircraft in the register of Moldova that do not have a type of certificate issued in accordance with the relevant EU legislation cannot exceed 53 by 1 January 2017, and thereafter cannot exceed 36 by 31 December 2022, after which date all such aircraft will have been completely phased-out.

on the liability of carriers of passengers by sea in the event of accidents, the DCFTA requires Moldova to harmonise its legislation on, inter alia, ship inspection and port state control.¹³¹ In reality, the commitments on approximation will have to be implemented with flexibility in the approach.

The real challenge in Moldova's approximation effort, however, is to ensure that the new legislation is properly implemented and enforced. Two recent cases recall that the transport sector is prone to high levels of corruption and a deficient justice system in Moldova. The first case has led to the suspension of Moldova from the Green Card Insurance System, meaning that Moldovan insurance companies will not be able to issue International Motor Insurance Certificates.¹³² The second case has led to the blocking of the financial resources of State Enterprise MoldATSA, which is responsible for instructing planes that fly over Moldovan air space, in a special account in Belgium.¹³³

Box 16.1 Investment funding in transport projects

Complementing regulatory reforms in the transport sector, the EBRD, EIB and European Commission are collaborating in funding investment in infrastructure, often through co-financing arrangements. The EBRD has invested substantial funds in Moldovan roads, public transport in Chişinău, Chişinău airport and the Giurgiuleşti port. A recent project has rehabilitated the country's highways, with a loan of €150 million and a supporting grant from the European Commission. A public transport project led by the EIB has seen the supply of 100 new electric trolley buses for Chişinău. A new project is for restructuring the Moldovan railway costing €101 million, with loans from the EIB and EBRD and grants from the European Commission. This will supply new locomotives and rehabilitate infrastructure.

¹³¹ A major issue is that the Moldovan fleet is still on the blacklist of the Paris MoU on Port State Control. With the support of the EU, necessary changes to legislation and operational practice have been identified.

¹³² Due to dubious transactions with money from the accounts of the National Bureau of Motor Insurers in February 2015 and the inability to submit a financial guarantee in the amount of €4.25 million for International Motor Insurance Certificates set by Council Offices of Brussels in May 2015, the General Assembly of the Council of Bureaus of the Green Card decided to suspend Moldova's international Green Card system.

¹³³ This followed a decision of the Brussels Court at the request of the Ukrainian Company Komstroy, the legal successor of Energoalians, which has filed a legal dispute against Moldova.

Territorial application. A critical limitation in the application of the Association Agreement in the transport sector concerns Transnistria. Currently, Moldova does not have control over the roads in the Transnistrian region that are part of important international links and cannot therefore rehabilitate them or monitor the transit of goods and passengers. In practice, illegal control at the Transnistrian segment of the border violates the right to free movement and requires additional formalities and payments. Moldova cannot ensure that Transnistria will conform to international treaty obligations. Important work is being done by the EU Border Assistance Mission to Moldova and Ukraine. In November 2015, two new cross-border cooperation agreements were signed between Moldova and Ukraine.¹³⁴ The first establishes joint control at the Pervomaisc–Kuchurhan border crossing point, which would allow both excisable and non-excisable goods for import, export and transit through the Transnistrian region to move through this point. It might promote the re-establishment of international transport corridors across the Transnistrian region (intended to form part of the TRACECA network). The second agreement, on the automated exchange of border crossing data across the Moldova–Ukraine border, will enhance security through increasing transparency about the movement of vehicles and goods over the border.

Transport policy at a glance

The DCFTA sets out the EU’s detailed rules and regulations for most modes of transport (road, rail, inland waterways, sea and intermodal), typically governing the qualifications of transport operators, the technical safety of vehicles and vessels, and the activities of inspection bodies.

Air transport is covered by the 2012 EU–Moldova Common Aviation Agreement, which aims at opening up the air transport market to low-cost competition while respecting high safety standards.

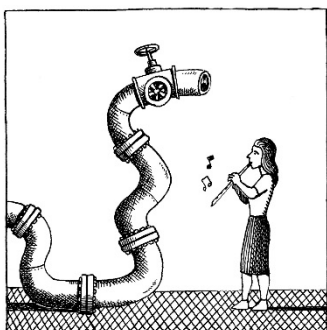
The ongoing reforms in Moldova are more dynamic for the road transportation sector, and slower for rail, air and marine transportation.

The EBRD, EIB and European Commission are funding investment in major transport infrastructure, complementing regulatory reforms.

¹³⁴ See http://eeas.europa.eu/delegations/moldova/documents/press_corner/25_abm_press_release_en.pdf.

A limiting factor in implementation follows from a lack of control by Chişinău over the roads and illegal border controls across the Transnistrian region.

17. ENERGY



The reform and modernisation of Moldova's energy sector is a challenge of the highest priority, for both economic and geopolitical reasons. The Association Agreement's provisions are relevant for the necessary policy reforms to the energy sector. The regulatory reforms will be complemented by major investment to link power networks to those of the EU, via Romania.

Provisions of the Agreement

The Agreement contains two separate chapters on energy: one under the DCFTA heading concerns trade-related issues, and the second concerns broader cooperation on energy policy. Both chapters include references to the Energy Community Treaty to which Moldova acceded as a full member in 2010.

*Energy Community Treaty.*¹³⁵ The contents of this Treaty thus pre-date the Agreement, but are carried over into it. The purpose of the Treaty is to provide for the application of much of the EU's energy and environmental law in neighbouring non-member states. Because the intentions and content of the Treaty are entirely consistent and overlap with the Association Agreement, the latter includes references to the Treaty and, in particular, states in Art. 278 that in the event of conflict between the two texts, the Treaty will have legal precedence. For present purposes, therefore, the content of the two texts can be taken as

¹³⁵ For detailed analyses, see the Secretariat of the Energy Community, "2015 Annual Implementation Report of the Acquis under the Treaty Establishing the Energy Community", 8 October 2015, and previous reports.

parts of the same political project, even if there are legal distinctions between the two.

The blocks of EU law that feature in the Treaty cover the following aspects:

- electricity and gas, with rules for internal markets, access to networks, cross-border exchanges and security measures;
- renewable energy promotion;
- energy-efficiency measures;
- oil, with a provision for maintaining minimum stocks; and
- the environment (see also chapter 18).

Among these provisions, of particular importance are the rules for electricity and gas networks in the so-called ‘unbundling’ directives¹³⁶ of the Third Energy Package. These require that transmission operators, such as electricity transmission line and gas pipeline companies, are separated from producers or suppliers of energy, and assure freedom of access to these transmission infrastructure for all suppliers or producers of energy. These ‘unbundling’ provisions are crucial to the de-monopolisation of Moldova’s energy markets.

Trade-related requirements of the DCFTA. The DCFTA chapter on ‘trade-related’ energy applies basic free trade provisions to the electricity, crude oil and natural gas sectors. Customs duties and quantitative restrictions on the import and export of energy goods are generally prohibited. Energy prices for the supply of gas and electricity to industrial consumers must be determined solely by market prices. This chapter includes provisions on cooperating on infrastructure, establishing an independent regulatory authority, and on exploring and producing hydrocarbons.

Regarding the transit of energy goods, the DCFTA incorporates elements of Art. V GATT 1994 and of Art. 7 of the 1994 Energy Charter

¹³⁶ See Directive 2009/72/EC for common rules for the internal market for electricity, replacing Directive 2003/54/EC; see also Directive 2009/73/EC concerning common rules for the internal market in natural gas, repealing Directive 2003/55/EC. The Agreement in its Annex VIII refers to the two repealed directives, while the Energy Community Treaty is more up-to-date, and in any case its provisions have legal precedence.

Treaty,¹³⁷ both of which assure the freedom of transit. Furthermore, under Art. 351 of the Agreement the EU and Moldova must ensure that transmission system operators minimise the risk of accidental interruption or stoppage of transit and transport. But a party must not be held responsible for an interruption of supply over which it has no control (e.g. interruptions caused by Russian actions).

Broader provisions on energy cooperation. This chapter envisages cooperation in general terms over virtually the whole landscape of energy policy issues, including policy strategies, crisis mechanisms, infrastructure modernisation, the enhancement of energy security, energy efficiency and savings, and support for renewable energies. Annex VIII of the Agreement lists numerous EU laws and the timetables for Moldova's 'gradual approximation', including the main provisions of the Energy Community Treaty.

Technical requirements for energy-using products. The Agreement also sets out in Annex VIII two framework directives for energy-using products. The first defines the eco-design requirements of energy-using products, such as household electrical appliances, to be implemented within three years of entry into force of the Agreement.¹³⁸ The second concerns the labelling of similar household appliances regarding their energy consumption, to be implemented within two years.¹³⁹ These regulations specify the technical conditions for the CE conformity mark, which allows products to be sold on the EU market. Following full implementation of the directives, all household appliances produced in Moldova will thus bear the CE conformity mark and can be sold on the European market.

¹³⁷ The Energy Charter Treaty of 1994 is not to be confused with the Energy Community Treaty of 2005. The Energy Charter was an early attempt to establish a wider international energy legal order for the post-Soviet era, including the EU, Russia and all other former Soviet Union states, and a number of non-European states. But Russia never ratified this treaty, and the enterprise has had only a limited effect, although its transit provisions are legally and operationally significant.

¹³⁸ See Directive 2005/32/EC in the Agreement, updated by Regulation (EC) 278/2009.

¹³⁹ See Directive 92/75/EEC in the Agreement, updated by Directive 2010/30/EU.

Implementation perspectives

Regulation of gas and electricity markets. Moldova has taken steps towards compliance with EU energy market legislation as part of the commitments under the Energy Community (Law No. 117 of 23 December 2009). Furthermore, in 2011 Moldova agreed, politically, to transpose the Third Internal Market Package (Third Package), which, inter alia, requires establishment of a single, independent authority to regulate the energy market. The Association Agreement refers explicitly to Directive 2003/54/EC on the internal market in electricity and Directive 2003/55/EC on the internal market in natural gas regarding the attributions of the regulatory authorities for electricity and natural gas (Art. 353) as guarantors of the efficient functioning of the energy market. These directives are reflected in the national legislation adopted in December 2009 and further amended in 2014.

The responsible regulatory authority is the National Agency for Energy Regulation (ANRE), which in principle takes binding decisions autonomously and independently. Events in 2015 showed how these qualities are challenged politically, however, notably regarding the increases in gas and electricity tariffs that were warranted by the costs of imports. This concerned the decision to increase prices for final consumers by 30-37% for electricity and by 15.6% for natural gas, taken by ANRE on 18 July 2015. The decision was supported, in particular, by the Spanish-owned Gas Natural Fenosa and the Gazprom-controlled MoldovaGaz, but opposed by the political opposition, independent experts and the public. On 3 September 2015, ANRE decided, contrary to the law but amid enormous public protest, to suspend the increase in tariffs for 60 days while external audits were conducted. These audits confirmed the necessity to increase prices. IMF representatives said previously that the prices should be revised, since otherwise the companies providing electricity could go bankrupt and damage the financial stability of the sector. Despite continuing protests, ANRE then confirmed the price increases for electricity, and to a lesser extent for natural gas, in line with the proposal of July 2015.

In January 2016, ANRE reduced the tariffs for natural gas by 10.9%, as a result of the reduced price for Russian natural gas and a review of the calculation methodology for tariffs.¹⁴⁰ In April 2016,

¹⁴⁰ See ANRE, 26 January 2016 (<http://anre.md/ro/content/anre-mic%C8%99orat-tarifele-la-gazele-naturale-livrate-consumatorilor>).

ANRE revised its previous decision and cut electricity prices by 11% for final consumers. The regulator justified its decision by the lower prices for imported electricity (by 27%). In both cases, however, prices were cut following pressure from mass anti-government protests. With regard to ANRE's independence in taking decisions,¹⁴¹ the Secretariat of the Energy Community calls for changes in the law and regulatory practices in order to better comply with the Third Package, expanding the competences of ANRE and enhancing its independence and autonomy: "Interventions in ANRE's autonomous decision-making must be stopped."¹⁴² In spring 2016, the Moldovan authorities requested assistance from the Energy Community Secretariat, with a view to assessing the institutional capacities of ANRE. The request met with a positive response from the Secretariat.

Gas. Moldova's gas market is fully monopolised (import supply, cross-border and national transmission, and distribution) under the vertically integrated joint-stock company MoldovaGAZ (50% of shares belong to Gazprom, 36.6% to the Moldovan state, and 13.4% to the authorities in Transnistria). The status quo does not therefore comply with the Third Energy Package. Full implementation of transmission and distribution unbundling is also lacking, meaning that MoldovaGAZ violates even the provisions of the Second Energy Package. Procedures for the authorisation of new infrastructure in the case of foreign investment are ambiguous. Also absent is the necessary secondary legislation on access to the transmission network, and the reorganisation of MoldovaGAZ in line with the unbundling principle.

Amendments to the 2009 Natural Gas law adopted in July 2014 postponed the unbundling of the transmission system operators until 1 January 2020. This is deemed by the Secretariat of the Energy Community to be so serious that "[i]f Moldova will not adopt a Third Package compliant law in the next few months, the Secretariat will start infringement proceedings".¹⁴³

A new law on natural gas on 27 May 2016, proposes changes in line with the Third Package, defining the organisation and functioning of the natural gas market, access to the market, criteria and procedures for the licensing of transportation, distribution, delivery and stocking

¹⁴¹ See ANRE, 12 March 2016 (<http://anre.md/ro/content/anre-actualizat-tarifele-pentru-serviciile-de-distributie-%C8%9Bie-%C8%99i-de-furnizare-energiei-electrice>).

¹⁴² Secretariat, op. cit., p. 139.

¹⁴³ Secretariat, op. cit., p. 137.

of natural gas. It also envisages granting consumers the possibility to choose their gas suppliers, and the possibility of negotiable prices. The law entitles ANRE to apply financial sanctions against the enterprises dealing with natural gas in the case of a breach of rules, and also to notify the Competition Council in cases of competition distortions.

Electricity. Moldova is largely dependent on electricity supplies from the Cuciurgan power plant in the Transnistrian region. Supplies from Ukraine have been of some significance, but were curtailed in 2014 because of the conflict there. The market will thus remain a captive one for Cuciurgan unless Ukrainian supplies are resumed and/or connections with the Romanian grid become effective.

An important achievement is that the electricity sector was unbundled, with three distribution companies legally separate from the transmission company. While measures have been taken to increase compliance with the Second Energy Package, a deadline of 1 January 2015 for full compliance with the Third Package was missed. However, in 2014–15 the authorities prepared a draft law boosting competition in the electricity market by giving consumers the right to choose suppliers, and opening the market to new participants such as renewable energy producers. The law was adopted in May 2016. According to the law, ANRE has the competence to issue licences for the operation of the electricity market, the construction and exploitation of power lines, and for closed distribution systems. ANRE has the competence to monitor and sanction all stakeholders active on the electricity market, besides the owners of the licences. It can also create the conditions for Moldova to join the European Network of Transmission System Operators for Electricity (ENTSO-E), which works on the completion of the European internal energy market in electricity and on facilitating larger cross-border trade.

Transnistrian connections. For both gas and electricity supplies the present infrastructure, corporate structures and supply arrangements are closely connected to facilities in the Transnistrian region, which Chişinău does not control. Yet these structural facts have to be taken into account in assessing the challenges of framing Moldovan regulatory policies (see Box 17.1).

Box 17.1 Energy issues related to Transnistria

The energy status quo of Moldova depends on gas and electricity supplies from or via Transnistria, which involves a highly complex set of corporate relationships involving Moldovan, Transnistrian and Russian interests.

Moldova's electricity consumption relies heavily on the Cuciurgan gas-fired thermal power plant in Transnistria (Cuciurgan–Moldavskaya GRES with 2,520 MW installed capacity), which, since 2005, has been 100% owned by Inter RAOUES, the Russian international energy-trading company. Normally, supplies from Cuciurgan constitute about 80% of overall Moldovan demand. Yet imports from Cuciurgan increased in November 2014, when Ukraine restricted the export of electricity to Moldova due to the shortcomings in coal-fired power production in the Donbas region.

The Cuciurgan power plant is largely fuelled by natural gas, which it purchases from a Transnistrian company, Tiraspoltransgaz, which in turn purchases it from a Moldovan company, MoldovaGAZ, and which in turn is controlled by the Russian Gazprom (50%), with 35.6% of shares belonging to the Moldovan government and 13.4% to the Transnistrian region (the Property Administrative Committee of the Transnistrian region).

In 2015, the system seems to have become yet more complicated, when the Moldovan state company Energocom (a buyer of electricity for national consumption) signed a contract with an intermediary company Energokapital (owned by two companies, one in Transnistria and the other offshore), instead of buying it directly from Cuciurgan–Moldavskaya GRES. This non-transparent scheme is highly criticised both in Moldova and in the Transnistrian region, but Energokapital continues to operate without any restrictions. In 2016 Energocom signed a new contract with Energokapital for electricity for the period April 2016 to March 2017, while rejecting a lower-price offer from the Ukrainian company DTEK Energo. In addition, Energokapital has initiated a court case against Energocom for allegedly unpaid debts for delivered electricity (\$15 million), an accusation denied by the Moldovan state company.

This situation leaves open a major issue of indebtedness. The current debt of MoldovaGAZ to Gazprom amounts to \$4.8 billion, of which almost all (90%) is accounted for by non-payment for gas supplies by Tiraspoltransgaz. This latter debt has accumulated on account of Transnistria's own power consumption and gas consumed by the Cuciurgan power station. It is believed that at least a substantial share of the profit from non-payment by Tiraspoltransgaz is transferred into the budget of the Transnistrian authorities, although transparent data on this is not available.

It would follow that the bulk of the debt is in reality owed by Transnistria to Gazprom, which is 100% owned by the Russian state.

Finally, Inter RAOUES has reported that it is investing in adjusting the Cuciurgan power plant to EU requirements regarding the coordination of electricity distribution (UCTE), and has already agreed with the state-owned operator Moldoelectrica, which manages the electro-energetic sector, to boost the connection of Cuciurgan to Romania's grid up to 400 MWt.

Oil. Moldova is entirely dependent on oil imports. Its commodity reserve law is not in compliance with Directive 2009/119/EC on the maintenance of oil stocks and emergency procedures, requiring, inter alia, a minimum of 90 days of import supplies, and the Energy Community Secretariat considers it time to establish emergency stocks and the requisite procedures.

Renewables. Moldova has established an ambitious voluntary target of 20% for a renewable energy share in gross final energy consumption by 2020, as set out in the government's '2030 Energy Strategy of Moldova' of 2013. The Secretariat of the Energy Community considers that Moldova could be on track to achieve the binding 17% target required by Directive 2009/28/EC for the promotion of renewable energy sources, but not the 20% target, which seems overambitious.¹⁴⁴ It is further judged that Moldova's current law is full of gaps in terms of compliance with the directive, with defective remuneration schemes for feed-in tariffs for renewable sources, notably for bio-fuels, where Moldova should have considerable potential. However, subsidies for switching from gas to efficient biomass boilers have increased since 2014, from €1,000 to €1,300 per unit of equipment. A new draft law on the promotion of energy from renewable sources would improve the situation, assuring guaranteed access to the grid.

Energy efficiency. The energy efficiency law of 2010 established the required primary legislation and there have been useful developments in the institutional framework with an Energy Efficiency Agency and an Energy Efficiency Fund. Secondary legislation has followed with the law on the energy performance of buildings, and the law on the labelling of energy-related products (in July 2014 and March 2014). Moldova only partially complies with the Directive on Energy Labelling (2010/30/EU) and the Directive on the Energy Performance

¹⁴⁴ Secretariat, op. cit., p. 143.

of Buildings (2010/31/EU), however. Additional efforts are required for the implementation of measures with regard to key elements of an effective policy, including the reduction of energy losses in power and heat generation, transmission and distribution, the promotion of the market of Energy Services Companies, and the development of the regulatory market for energy labelling and eco-design.

Energy infrastructure investment projects. The Agreement provides for support, in general terms, from the EU for investment in energy infrastructure. For such projects the EU budget can contribute limited amounts of grant assistance, but this will normally be complemented by much larger amounts of loan or capital funding from the EIB and the EBRD. There are two important projects underway or planned, for gas pipeline and electricity grid linkages with Romania, both of which were the subject of a Memorandum of Understanding between Romania and Moldova signed on 21 May 2015 (Box 17.2). The Secretariat of the Energy Community states that unless legislation is passed to implement the Second and Third Energy Packages, no real supply diversification will be legally possible, even for the planned link to Romania.¹⁴⁵

Box 17.2 The Moldova-Romania gas pipeline and electricity grid connections

Two major projects are currently under development for gas pipeline and electricity grid linkages between Moldova and Romania, which fit into the EU's broad strategic objective of enhancing the diversification and security of energy supplies.

The main project in energy cooperation between the EU and Moldova is a gas pipeline link at the border towns of Iasi in Romania and Ungheni in Moldova. The pipeline is 43.2 km long, with a capacity of 1.5 billion cubic metres, was completed in August 2014, costing €26 million, with an EU contribution of €7 million. Its capacity was more than enough to cover Moldova's consumption of 1 billion cubic metres in 2014, but for the time being it is restricted to supplying a small frontier region. OMV Petrom delivers gas from Romania based on a one-year contract signed with Moldovan state-owned company Energocom, with only 1 million cubic metres contracted for deliveries of 2015, for which deliveries began in March. Initially, the price for natural gas imported from Romania was about \$277 per thousand cubic metres at the beginning of 2015.

¹⁴⁵ Secretariat, op. cit., p. 137.

In light of falling oil prices, the price for gas delivered from Russia decreased to \$200–215 in the last quarter of 2015, while prices for gas from Romania remained unchanged. (The contract price for the supply of Romanian gas is fixed, whereas the price formula of Russian gas is linked to global oil prices.)

For there to be an effective contribution to the diversification of gas and energy supplies the pipeline would have to be extended to Chişinău. For this a memorandum of cooperation with Romania was signed in May 2015 to extend the pipeline to Chişinău, whose area absorbs one-third of national gas consumption. Its finalisation is planned for 2018. This extension will cost over €80 million, of which the EU might cover around €10 million, with most of the remainder to come from the EBRD and EIB. The extended pipeline would also ensure stability of supply and greater sustainability and quality of the energy infrastructure for Moldova, as well as enhanced cross-border cooperation between Romania and Moldova.

In addition, an interconnection to the Romanian electricity grid at Iasaccea (Romania)–Vulcanesti (Moldova) is being constructed, and a further extension to Chişinău is planned. This interconnection will allow for reduced dependence on the Cuciurgan power plant in Transnistria, and thus a diversification of sources of imported electricity and lowered prices resulting from enhanced competition.

Energy policy at a glance

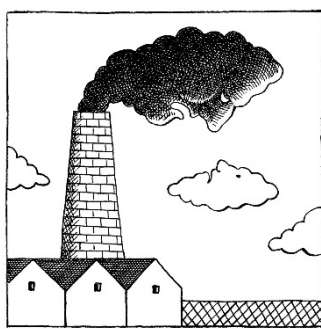
The Moldovan market for gas and electricity is currently dominated by Gazprom, directly for gas and indirectly through a gas-fired power plant in Transnistria, which supplies most of Moldova's electricity.

Plans and projects for diversification are developed for network connections with Romania for gas and electricity, but these will require large-scale investment from European sources, which is not yet assured.

The legal provisions of the Agreement and DCFTA in the energy sphere largely consist of commitments made under Moldova's accession to the Energy Community in 2010, including the Third Energy Package. Compliance with these provisions proceeds unevenly, with serious delays for the unbundling of the gas sector in particular, and other shortcomings.

The effective independence of Moldova's energy regulatory institution (ANRE) from political intervention is judged inadequate by the Energy Community Secretariat, which calls for major changes in order to comply with the provisions of the Third Energy Package.

18. ENVIRONMENT



The environment chapter of the Agreement is very ambitious and commits Moldova to cooperation over the whole landscape of environmental policy issues. Given Moldova's starting point, implementation will be a long and difficult process, but will ultimately mean a radical improvement in environmental quality and the modernisation of the economy.

Provisions of the Agreement

Moldova agrees to undertake a gradual approximation of its legislation to that of the EU within time periods of two to ten years, in accordance with Annex XI of the Agreement on the environment, which lists 25 directives, and Annex XII on climate change with four directives. This covers the majority of EU environment law and policy, from environmental governance methods to air and water quality, waste management, industrial pollution and hazards, nature protection, chemicals and climate change.

Environmental governance. The centrepiece is the Environmental Impact Assessment Directive, introduced in 1985 and amended several times (in 1997, 2003, 2011 and 2014 – the key text is Directive 2011/92/EC). This requires that a long list of major project types (such as refineries, metallurgical smelters, major transport infrastructure and dams) do not receive the go-ahead before the publication of an assessment of their impact on humans, fauna and flora, soil, water, air, climate and the landscape.

Major pollutants and dangerous substances. The centrepiece here is the Industrial Emissions Directive (2010/75/EU), which revises

and modernises seven previous directives, simplifying existing legislation and cutting unnecessary administrative costs. The directive covers all industries liable to produce harmful emissions: energy, metals, minerals, chemicals, pulp and paper, large-scale pork and poultry production, waste management industries, etc. It sets out the main principles for the licensing and control of such installations, specifying limit values for noxious substances. It requires the application of best available techniques.

To counter air pollution the Ambient Air Quality Framework Directive (2008/50/EC) and four 'daughter' directives lay down limits for specific pollutants.¹⁴⁶ The parties are obliged to enforce standards of air quality within the prescribed limits. Where ambient air exceeds any limit value or target value in a given zone or agglomeration, the authorities are to ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value. Procedures exist for exemptions or for the postponement of deadlines where limit values cannot be respected because of site-specific dispersion characteristics, adverse climatic conditions or transboundary factors.

A further key law is the Water Framework Directive (2000/60/EC), subject to several subsequent amendments, which has established a framework for the protection of inland surface waters, ground waters and coastal waters. Its objective has been to achieve a good status for all waters by 2015. The approach is based heavily on river basins, for which member states must prepare detailed management programmes. The parties should ensure that the pricing of water encourages consumers to use resources efficiently.

Legislation by the EU for the prevention and control of catastrophic industrial accidents was triggered by the major accident at a chemicals factory in the Italian town of Seveso in 1976. The resulting 'Seveso Directive' (96/82/EC) was later amended in view of the lessons learned from accidents such as those at Bhopal, Toulouse and Enschede (2012/18/EU). The directive now applies to more than 10,000 industrial establishments in the EU where dangerous substances are used or stored in large quantities, mainly in the chemical, petrochemical, logistics and metal refining sectors. The directive has contributed to reducing the incidence of major accidents, and is widely considered a

¹⁴⁶ These are notably i) sulphur dioxide, nitrogen dioxide and oxides of nitrogen, and lead; ii) carbon monoxide and benzene; iii) ozone and iv) polyaromatic hydrocarbons, arsenic, nickel, cadmium and mercury.

benchmark for industrial accident policy and a role model for legislation in many countries worldwide.

According to the hierarchy of waste management techniques, landfilling is the least preferable option and should be limited to the necessary minimum, in accordance with the Landfill Directive (1999/31/EC). Where waste needs to be landfilled, it must be sent to landfills that comply with the requirements of the directive. The objective is to prevent or reduce negative environmental effects as far as possible, in particular on surface water, groundwater, soil and air, and on human health. The directive requires a system of operating permits for landfill sites. Existing landfill sites may not continue to operate unless they are brought into compliance with the provisions of the directive. Moldova has a seven-year timeframe for implementation.

Natural habitat. Nature protection is subject to two directives for natural habitats and sanctuaries for wild birds (92/43/EC and 2009/147/EC). These directives establish principles and procedures for the designation of special protection zones, and would be helpful references for the work of Moldovan NGOs in this domain.

Climate change. The central element of EU policy in this area is the Emissions Trading System Directive (2003/87/EC, updated in 2009/29/EC), with Moldova due to establish a compatible system within eight years. This requires establishing a system of relevant installations, a national development plan for the distribution of allowances and a system for these to be traded domestically. Further regulations governing fluorinated greenhouse gases and substances depleting the ozone layer, such as hydrofluorocarbons, are to be implemented within four and five years, respectively. Several provisions regarding the quality assessment of the consumed fuels, including the establishment of a system with data on fuels quality, are to be implemented within five years.

Implementation perspectives

Environmental governance. The Ministry of Environment is the core institution responsible for drafting texts and coordination regarding environment-related policies, with the aid of several agencies.¹⁴⁷ The

¹⁴⁷ More specifically, these are the Waters of Moldova Agency; the forestry-focused ‘Moldsilva’ Agency; Ecological Inspectorate, State Agency for Land Relations and Cadastre; State Hydro-meteorological Service; Geology and Mineral Resources Agency; Ecology and Geography Institute; National Agency for Regulation of Nuclear and Radiological Activities; and the Fishery Service.

Ministry of Agriculture is in charge of policies to ensure the rational utilisation of land resources and the promotion of ecological agriculture.

The national environmental legislation has been continuously developed since 1991, and is currently based on four primary laws: the Land Code (December 1991), the Water Code (June 1993), the Forestry Code (June 1996), and the Subsoil Code (February 2009). Moldova has acceded to the most important international climate and environmental legal frameworks.¹⁴⁸

There is a considerable strategic policy framework. The most fundamental is the Environment Strategy and Action Plan for 2014–23 (April 2014), which reflects the priorities of the Agreement. Other recent elements are the Waste Management Strategy 2013–27 (April 2013), the Strategy on adaptation to climate change 2020 (December 2014), and the Biodiversity Strategy for 2015–20 (May 2015).¹⁴⁹ The principle of environmental protection was introduced into further strategic policy frameworks, such as the National Strategy for Agriculture and Rural Development for 2014–20, the tourism development strategy ‘Tourism 2020’ and the National Strategy for Management of State Borders for 2015–17.

Box 18.1 Basic features of the Moldovan environment

Water resources. The strategic aquatic sources are the Dniester and Prut rivers. Water from the Dniester covers 83% of the country’s consumption needs. The waters of the Dniester and Prut rivers correspond to the categories of quality – II (clean) and III (average polluted), respectively. The main pollutants are elements of nitrogen, phenols, copper compounds and oil products.

¹⁴⁸ Namely, these are the Cartagena Protocol on Biodiversity (2002), the protocol on emissions of persistent organic pollutants of 1979 (2002), the Kyoto Protocol (2003), the Rotterdam Convention on pesticides and industrial chemicals (2004), the Amendment to the Montreal Protocol on substances destroying the ozone layer (2005), and the recent amendments to the Kyoto Protocol and Basel Convention on the control and transboundary movements of hazardous waste.

¹⁴⁹ Additional strategic measures are the National Programme on the establishment of the national ecological network for 2011–18 (August 2001) and the National Plan for extension of forest vegetation for 2014–18 (February 2014).

Soil and forestry. The territory of Moldova consists mainly of highly productive soil ('chernozem' or black earth). However, the land is used inefficiently, which leads to soil degradation and pollution (40% of agricultural lands are considered to be degraded).

Air quality in Moldova is moderate. The main sources of pollution are combustion units (electricity power stations and boiler houses) and transportation (auto, rail, air and fluvial). The volume of greenhouse gas emissions has been shrinking substantially, falling to one-third of 1990 levels (43.2 megatons of CO₂ in 1990 and 13.2 megatons in 2010), due to the drop in industrial production after the end of the USSR, and in the consumption of fossil fuels (coal and oil fuel) in favour of natural gas as the main fuel for primary energy production.

Waste. The major sources of waste production are mining and livestock, including household waste. Of the amount of pesticides accumulated during Soviet times, substantial amounts have been evacuated abroad and destroyed using external assistance.

Natural areas. The total natural areas under state protection constitute only 5.5% of national territory and include 312 landmarks. Among the most numerous landmarks protected by the state are natural hydrological and botanical objects, rare flora and fauna, natural reservations, and landscape reservations. In 2013, the authorities passed a law establishing the first national park: National Park Orhei.

A Working Group of the Ministry of Environment started in 2015 and has been charged with drafting a concept for institutional reform, including the establishment of an Environment Agency for the implementation of the environment policies.

The Environmental Impact Assessment Directive (2011/92/EC) became applicable in January 2015 as part of Law No. 86 of 29 May 2014. A guideline including practical information on how to perform environmental impact assessments was drafted and proposed for adoption. The new law was applied to the project for extending the Iasi-Ungheni gas pipeline to Chişinău. A law on public access to environmental information was drafted (Directive 2003/4/EC). The new law on natural gases adopted in May 2016 requires the fulfilment of the environment protection rules, in particular in the case of pipelines for transporting natural gas.

The Ministry of Environment cooperates with the European Environment Agency with a view to drafting the technical concept for the National Integrated Environmental Information System, and

boosting the capacities of the ministry. The authorities initiated the process for the establishment of the National Register on emissions and pollutants transfer, with publicly available information.

The National Institute for Standardization has adopted 127 European and international standards on the environment, while withdrawing 220 GOST standards in 2014. To raise public awareness the authorities drafted an optional course on 'Ecological Education' for schools and high schools, which will later be promoted as an obligatory course.

Major pollutants and dangerous substances. A major step towards managing air quality was taken with the drafting of the Atmospheric Air Protection Strategy reflecting the provisions of Directive 2008/50/CE on ambient air quality and cleaner air for Europe. The strategy will establish a register of pollutant sources for the enterprises with polluting activity.

As part of the measures to implement the Rotterdam Convention on pesticides and industrial chemicals, the authorities drafted a law and regulations on the use of chemicals, and the export and import of dangerous chemicals (transposing Regulation (EC) 689/2008). This will be followed by a law to transpose the EU's main law for regulating chemicals, the REACH Regulation ((EC) 1907/2006). The drafting of the law to transpose the Seveso Directive (96/82/EC) on the control of major accident hazards involving dangerous substances was initiated. The drafting of a regulation implementing the provisions of Directive 1999/32/EC on the decrease of sulphur content in certain liquid fuels was completed and awaits adoption. A law on waste was drafted, approximating Directive 2008/98/EC on waste.

Water quality. The provisions of the water-related directives are envisaged in the Law on Waters of 23 December 2011, which entered into force in 2013 and was amended in April 2014. This law approximates Directive 2000/60/EC (Water Framework), Directive 2007/60/EC on the assessment and management of flood risks, Directive 91/271/EEC on urban wastewater treatment and Directive 91/676/EEC regarding the protection of waters against pollution caused by nitrates from agricultural sources. Moreover, this law introduces two other directives that are absent in Annex XI of the Agreement, namely Directive 2006/7/EC concerning the management of bathing water quality, and Directive 2008/105/EC on environmental quality standards in the field of water policy.

Box 18.2 EBRD, EIB and EU-funded water and waste management in Chişinău

A major joint project of the EBRD, EIB and European Commission to modernise the water and waste management infrastructure of Chişinău received the green light in February 2014. The EBRD and EIB will both supply €24 million worth of loans to the city's water utility, Apa Canal Chişinău, while the Commission had already funded a feasibility study with a €3 million grant, and will follow this up with a further €11 million investment grant. The project will improve the quality of drinking water, reduce leaks and enhance wastewater treatment.

Water Framework Directive. Action Plans for the administration of the two national watershed districts, the Dniester River, and Prut-Danube and the Black Sea, have been drafted and opened for consultation with the public. The watershed districts are administered by two committees with consultative attributions, comprising representatives of central and local authorities, consumers' associations, civil society and the scientific community. To improve the protection of water resources, the authorities modernised the monitoring system for the Dniester River by establishing and equipping 14 automatic hydrological stations, with the support of the World Bank and the (US) Millennium Challenge Corporation. In addition, the regulation regarding the organisation and functioning of a one-stop shop for the environmental authorisation of the special use of waters was amended (government decision of 20 November 2015), by extending it to cover water use in hydraulic structures and the commercial exploitation of beaches and recreational areas. The functioning of the watershed districts also corresponds to the provisions of the Directive 91/676/EEC regarding the protection of waters from pollution caused by nitrates from agricultural sources.

Flood risks. A project leading to a feasibility study to assess the risk of floods started in 2014, with the support of European Investment Bank. The project envisages drawing up maps of regions vulnerable to flooding and establishing the Operational Monitoring and Management System of the Dniester and Prut rivers.

Urban wastewater treatment. Directive (91/271/EEC) is partially reflected in the regulation on requirements for the gathering, treatment and discharge of wastewater (government decision of 25 November 2013), and the regulation on conditions for discharge of wastewater from water bodies (government decision of 9 October 2013,

amended in October 2014). Expertise related to the directive's implementation was shared by experts from Romania and the Czech Republic through technical assistance from the EU (TAIEX). This included a preliminary assessment report on the situation regarding wastewater collection and treatment, drafted by the Moldovan authorities together with the Czech experts in 2015.

Drinking water quality. A regulation (conforming to Directive 98/83/EC) regarding water for consumption was drafted and examined by the National Coordination Committee concerning the Water and Health Protocol,¹⁵⁰ and ratified by Moldova in July 2005. With Swiss support, the authorities conducted a project on the implementation of the protocol, with activities including training for water operators, promoting the adoption of relevant standards and developing partnerships between institutions (between the Ministry of Health and the Ministry of Environment).

Initiatives to increase the production of sustainable energy and cut emissions took place under the 'Energy and Biomass' project, financed by the EU and implemented by United Nations Development Programme, which helped to install modern heating systems based on biomass in 160 institutions in 127 localities.

Natural habitats. An important breakthrough regarding biodiversity is the Strategy on Biodiversity and the Action Plan¹⁵¹ that foresees a budget of €1.7 million (MDL 38.6 million), 20% of which will be covered by external assistance. The strategy has the following goals: to ensure a corresponding legal framework for the conservation of biodiversity; to build up an efficient institutional framework; to extend the natural areas under state protection and establish a national ecology network; and to ensure measures on biodiversity security. Moreover, the conservation of natural habitats and of wild fauna and flora to preserve biodiversity is planned in adjustments to legislation that reflect the provisions of Directive 92/43/EEC.

Genetically modified organisms (GMOs). Currently, the regulatory measures on GMOs are ensured by Law No. 755-XV of 21 December 2001 on biological security. According to the Action Plan of the Strategy on Biodiversity for 2015–20, the draft law on GMOs (of 2015) is scheduled to be approved in 2016. The draft law partly

¹⁵⁰ See the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992.

¹⁵¹ The Biodiversity Strategy was adopted by Governmental Decision No. 274 of 18 May 2015.

transposes the provisions of Directive 2001/18/EC on the release into the environment of genetically modified organisms, and the provisions of the Cartagena Protocol on Biosafety of January 2000 to the Convention on Biological Diversity. The draft law foresees the establishment of standardised procedures for assessing the impact of GMOs on environmental and human health, monitoring activities, mandatory labelling and packaging of the products containing GMOs, establishment of the infrastructure to perform analyses (laboratories), etc.

Climate change. The framework for the climate-related policies is represented by the Strategy on adaptation to climate change until 2020 and the related Action Plan, adopted with a budget of MLD 2.7 billion.¹⁵² The strategy reflects the provisions of the Association Agreement, and includes measures to increase the country's capacity to adjust and react to the negative effects of climate change (e.g. droughts and floods). In addition, a Low Emissions Development Strategy is currently being drafted that aims to cut emissions levels in 2020 by 25% compared with 1990. The draft strategy will be adjusted in line with the provisions of the global agreement on climate change, adopted in Paris in December 2015.

Major challenges. Current environmental policies face various shortcomings, including a scarcity of human and financial resources, inefficient bureaucracy, and corrupt practices in managing public properties, including land and forests (with dubious procedures for renting land in forests). Overall, there is a substandard administration of water, forestry and soil resources, and poor waste management. There is also limited public awareness about environmental issues among the young population, and ultimately, governmental instability is impeding environmental and climate change reforms. A particular issue to be addressed is the deficient management of water resources of the river Dniester, for which more efficient and inclusive cooperation is necessary between Ukraine and Moldova.

¹⁵² See Governmental Decision No. 1009 of 10 December 2014.

Environmental policy at a glance

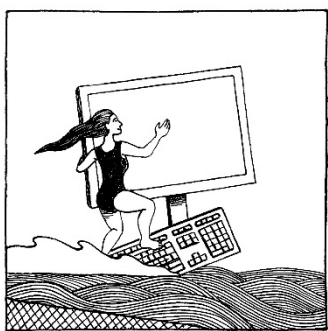
Moldova's environmental legislation is extensive, and the newly drafted strategic framework focuses on all aspects covered in the Association Agreement (biodiversity, waste management, water supply and sanitation, forestry, climate change, etc.).

Substantial reforms have been introduced at the institutional level, involving the Ministry of Environment, but also other ministries and public bodies responsible for transport, health, education, energy and standardisation, among others.

Moldova's codes and laws are being aligned with European legislation, although political instability and insufficient financial and human resources cause difficulty and delay.

Environmental investment projects are being funded by the EBRD, EIB and European Commission.

19. DIGITAL SECTOR



This section deals with a family of chapters and subchapters in the Association Agreement on related topics, notably electronic communications and postal services, information society and audio-visual policy. Overall, this 'digital' sector inescapably becomes a strategic dimension to the challenge of creating a modern and internationally competitive economy.

Provisions of the Agreement

Electronic communications. There is a set of complex provisions in Arts 231 to 240 of the Agreement regarding electronic communications. They establish the ground rules for a competitive and well-governed sector and they address the regulatory authority, principles for authorisation of licences to service providers, the rights of access to interconnections with other service providers and the principles for governing the allocation of scarce resources, such as radio frequencies. Annex XXVIII-B lists the existing EU legislation with which Moldova is expected to comply 'gradually' within one to three years. It includes a selection of key directives adopted in 2002 and amended in 2009:

- Framework Directive 2002/21/EC (as amended by Directive 2009/140/EC) on electronic communication networks, which defines the products covered and the need for independent administrative capacity of the national regulator;
- Directive 2002/20/EC (also as amended by Directive 2009/140/EC) on the authorisation of licences for operators in the sector;

- Directive 2002/19/EC (also as amended by Directive 2009/140/EC) on the requirements that operators with significant market power must assure open access to network facilities and non-discriminating interconnection charges; and
- Universal Service Directive 2002/22/EC (as amended by Directive 2009/136/EC), which requires respect for the interests and rights of users, such as ‘number portability’ between operators.

Postal and courier services. The regulatory rules aim at preventing anti-competitive practices in this sector, regulating licensing provisions for universal service providers and ensuring the independence of the regulatory body. Several directives are specified in Annex XXVIII-C on regulation of the internal market for postal services. Courier services in the EU are increasingly subject to criticism for their high costs, and action in this regard is planned.

Information society. The objective here is to ensure the widespread availability of information and communication technologies (ICT), with quality services and affordable prices. The text emphasises the “exchange of information on best practices”. Moldova is expected to approximate the e-Commerce Directive (2000/31/EC) within three years and a framework law on electronic signatures (Directive 1999/93/EC) within one year.

Audio-visual services. Ground rules for the regulation of television broadcasting are laid down in the Audio-visual Media Services Directives (2007/65/EC and 2010/13/EU). Moldova will implement these provisions within two years.

Digital single market. The broad digital domain includes electronic communications, information society and audio-visual markets. These sectors have witnessed the fastest rate of technological change and development of any sector of the economy. That means that the stock of EU laws and regulations in this field, as represented in Annex XXVIII-B of the Agreement, is also subject to fast change. The European Commission has set out the directions of further developments in a comprehensive manner in its 2015 policy paper on a “Digital Single Market for Europe”.¹⁵³ It outlines the agenda for action under three broad headings: i) better online access for consumers and businesses, ii) creating the right regulatory conditions for advanced digital networks, and iii) building the digital economy through

¹⁵³ See European Commission, Communication COM(2015) 192 final of 6 May 2015.

investment, interoperability and standardisation. Sixteen specific action points are highlighted and several of them will see amendments to the laws cited in the Agreement for approximation. These include reform of the directives on electronic communications, copyright regimes, consumer protection, courier services, audio-visual services and a Priority ICT Standards Plan.

Implementation perspectives

The growing digital sector. The ICT sector plays an important role in Moldova's economy and overall state governance. In 2015, the contribution of ICT to the country's GDP was 7% (MDL 7 billion), while monthly salaries in the IT sector are many times higher than the average (in the range of €800-1,500, compared with around €160). The indicators of ICT penetration and access show that mobile telephony covers 99% of the territory, fixed telephony 33.8%, fixed Internet broadband 11.7% and mobile Internet (modems/cards) 4.7%. Around 35% of households have Internet connections with broadband.

According to the ICT Development Index included in the report on "Measuring the Information Society 2015", Moldova is ranked in 66th place out of 167 countries.¹⁵⁴ Selected data presented in Table 19.1 shows Moldova's IT connectivity to be comparable with that of Ukraine and Georgia, but lower than in neighbouring Romania.

¹⁵⁴ See International Telecommunication Union, "Measuring the Information Society", Geneva, 2015. The report covers the following aspects: fixed-telephone subscriptions per 100 inhabitants, mobile-cellular telephone subscriptions per 100 inhabitants, international Internet bandwidth (bit/s) per Internet user, share of households with a computer, share of households with Internet access, share of individuals using the Internet, fixed-broadband subscriptions per 100 inhabitants, active mobile-broadband subscriptions per 100 inhabitants, the adult literacy rate, the secondary gross enrolment ratio and tertiary gross enrolment ratio.

Table 19.1 Aspects of ICT development in Moldova, Georgia, Ukraine and Romania

	Fixed-telephone subscriptions per 100 inhabitants		Mobile-cellular subscriptions per 100 inhabitants		Share of households with a computer (%)		Share of households with access to the Internet (%)	
	2010	2014	2010	2014	2010	2014	2010	2014
Moldova	32.5	35.2	71.4	108.0	37.0	52.4	34.7	47.5
Georgia	25.3	25.4	90.6	124.9	18.2	45.8	16.6	41.0
Ukraine	28.1	24.6	117.1	144.1	25.2	52.4	22.2	43.0
Romania	20.6	21.3	111.4	105.9	47.9	63.8	42.2	60.5

Source: International Telecommunications Union.

The Ministry of Information Technology and Communication elaborates and coordinates ICT policies. The e-Government Centre (established in August 2010) is responsible for strategic planning, management and implementation of ICT, acting on behalf of the State Chancellery. The National Regulatory Agency for Electronic Communications and Information Technology of the Republic of Moldova (ANRCETI) is the regulator in this field. The Agency was reorganised in 2008, when the new Law on Electronic Communications entered into force.

Although on the whole the ICT market is subject to fair competition, the state-owned Moldtelecom has a monopoly in fixed telephony and ADSL Internet services. Overall, the Internet connection technologies (cable, FTTB, dial-up, Wi-Fi and mobile Internet) are provided by both private companies and Moldtelecom. The dominant provider of Internet services in the Transnistrian region is Interdnestrcom, with no services delivered there by the Moldovan providers.

Moldova started to implement e-transformation policies in 2011, with a view to using ICT to improve public sector governance. This initiative aims at digitalising paper-based documentation (e.g. on civil status), paperless government, an e-procurement system and a management platform for delivering the results produced by sectoral services (MDelivery).

In 2011, Moldova joined the Open Government Partnership (OGP), a multilateral initiative of governments and civil society in 69 countries supporting the principles of promoting transparency,

empowering the public, ensuring accountability, and embracing technology and innovation. Moldova's first OGP Action Plan for the period 2012–13, drafted by the government through the e-Government Centre together with representatives of civil society, was approved by a government decision in April 2012. The first assessment of efforts to implement the OGP Action Plan conducted by civil society¹⁵⁵ showed slow progress, with 52% of the OGP Action Plan having been implemented, but a satisfactory rate of compliance (70%) was reported on commitments to efficient and transparent management of public resources. Less progress was achieved on ensuring participatory decision-making by the public (47%) and on the quality of public service delivery (40%). The OGP Action Plan for 2014–15 focused on further digitalising public services. A new Action Plan for 2016–18 is due in July 2016. Important progress has been reported in opening the government datasets. In April 2011, the 'open data' platform was launched.¹⁵⁶ The public can freely access 886 sets of data, published by 48 public authorities. Over a million datasets had been downloaded by December 2015.¹⁵⁷ These data cover public health, delinquency reports, licences, etc. Moldova holds an impressive 22nd place out of 122 countries according to the Global Open Data Index of 2015.¹⁵⁸

Currently, the framework for public policies to develop ICT is outlined in the Digital Moldova 2020 strategy adopted by a government decision in October 2013. The strategy has the following major goals: improving connectivity and access to IT, promoting new IT content and services, increasing IT literacy to boost innovation, and promoting greater IT use by local government and the public.

The first steps in addressing cyber security consisted of adopting a Cyber Security National Plan in November 2015. This includes such aspects as safe data processing, stocking and access; the security and integrity of electronic communication services and networks; prevention and combat of information crimes; capacity building for rapid reaction; and capacity building for cyber defence.

¹⁵⁵ See the report by Petru Culeac, "Evaluation Report of Moldova Open Government Action Plan Implementation 2012–2013", Association for Participatory Democracy, Chişinău, 2014.

¹⁵⁶ More specifically, see the platform at www.date.gov.md.

¹⁵⁷ Derived from the Barometer of online services assimilation through the e-Transformation Agenda, e-Government Centre of Moldova, December 2015.

¹⁵⁸ See the Global Open Data Index, 2015 (<http://index.okfn.org/place/>).

The authorities are continuing to take action to digitalise public services, with significant progress on issues like e-licensing, e-reporting, mobile signature and online payment for public services. The number of electronic services is steadily growing, with 112 services available on a public services portal (www.servicii.gov.md). The authorities are working to fight corruption through electronic public services, diminishing contacts with public servants and reducing the costs of public service delivery. Paying for public services became easier when the government implemented its electronic payment system.¹⁵⁹ The same applies to issuing criminal records, paying police fines, apostils, obtaining licences for economic activities, electronic signatures, e-visas, etc. (in total 18 services by April 2016). Moreover, the public can access and comment on draft laws and governmental decisions before their approval using a participation portal (www.particip.gov.md). The authorities launched a portal in April 2011 giving access to about 900 sets of open government data (on public health, education, activity licences, the labour market, public budget, etc.), delivered by 48 public institutions (date.gov.md).

The education system has increased its focus on IT with adoption of the agenda on e-transformation by the authorities. Various initiatives aimed at increasing IT educational capacity and enhancing youth interest in IT involve the state, business stakeholders, the non-governmental sector and the donor community. In September 2014, the authorities launched a master's study programme on 'Innovation Management and Technological Transfer', as part of the EU TEMPUS TecNet Technological Transfer Network. The study involves universities from Moldova and certain EU member states (Italy, Portugal and Slovakia). USAID and the Swedish International Development Cooperation Agency funded a programme to establish the ICT Excellence Centre, Tekwill, in 2015, designed as an inter-university platform for promoting innovation and entrepreneurship. In addition, businesses support digital education, for instance through the Orange Foundation, which launched a digital laboratory involving three colleges with IT specialisations in 2015.

Software piracy, however, is a major problem for the digital sector, and is widespread among Moldovan consumers – the country being ranked 103rd out of 143 countries.¹⁶⁰ This phenomenon affects the

¹⁵⁹ The electronic payment system is Mpay (www.mpay.gov.md).

¹⁶⁰ See World Economic Forum, "Global Information Technology Report 2015", Geneva, 2015.

production of local software as well. The limited competitiveness of local software products stemming from the focus on IT goods with low added value is another issue. It reflects a lack of interest in developing finished and more sophisticated products.

A new draft law aimed at fighting child pornography and terrorism, approved by the executive in March 2016, has been criticised by civil society, IT businesses and EU stakeholders (the European Parliament Delegation to Moldova).¹⁶¹ There are concerns that the draft law is disproportionate and that it may allow censorship and prosecutors' access to private data, with the possibility of restricting the activities of IT operators.

Approximating EU legislation

Electronic communications. The transposition of the directives listed in Annex XXVIII-B of the Agreement takes place mainly through amendment of the 2007 Law on Electronic Communication. The government initiated public consultations in March 2016 on a new draft law. The draft law reflects the provisions of key directives noted at the beginning of this chapter (2002/21/EC, 2009/140/EC, 2002/20/EC and 2002/19/EC, along with 2002/22/EC on access to and interconnection of electronic communications networks and associated facilities). Moreover, the draft law further transposes aspects of Directives 2002/58/EC on personal data and the protection of privacy, 2002/77/EC on competition in the markets for electronic communication networks and 676/2002/EC on the radio spectrum.

These amendments to the law were positively assessed by an EU expert mission, organised through a TAIEX programme in November 2015. The experts recommended enhancing the focus on respect of consumers' rights and on ensuring high-quality services in the field. At the time of writing, however, the draft law had not yet been adopted.

Some aspects of Framework Directive 2002/21/EC were transposed into Law No. 28 of 10 March 2016¹⁶² concerning shared utilisation of public networks of electronic communication and

¹⁶¹ See "Big Brother law of Moldova: Government wants free hand to block content and access private information", 31 March 2016 (www.moldova.org/en/big-brother-moldova-government-wants-access-private-information-permit-block-content/).

¹⁶² See Law No. 28 of 10 March 2016 (<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=364218>).

provisions to develop them. Any type of legal restriction applied by the public authorities to limit access to property or physical infrastructure related to electronic communications is prohibited, except in the case of emergencies. Furthermore, it ensures that the construction and rehabilitation of urban projects comprise special infrastructure for electronic communications. These provisions aim at strengthening information society, by enhancing the independence and administrative capacities of the national regulator and increasing personal data protection. The ANRCETI has the responsibility of drafting an action plan for 2016 to implement this legislation.

Postal and courier services. Directive 97/67/EC on common rules for developing the internal market of Community postal services and improving the quality of service is the only one currently being transposed into Moldovan legislation. The new Law on Postal Communication (No. 36 of 17 March 2016) amended the 1995 law. The universal service is provided by the state enterprise, Poșta Moldovei. The law also contains provisions defining the quality standards (on regularity and reliability). It ensures the gradual liberalisation of the postal services market. Yet, the state will preserve its monopoly on postal services for items weighing up to 350 grams. The fees for public postal services are based on the methodology approved by the ANRCETI.

Information society. The authorities are continuing their efforts to implement Digital Moldova 2020, in particular the actions to improve connectivity and access to IT. In this regard, the draft law on access to property and associated infrastructure for the shared use of public networks of electronic communication is to be defined and adopted.

The National Programme on Universal Service, transposing the Universal Service Directive 2002/22/EC, is being elaborated. Its objectives are to provide consumers with access to good quality electronic communications at affordable prices. The authorities are continually working to make the Single National Service for emergency calls fully functional. The Law on Service (No. 112) was originally drafted in 2011, but was not approved by the legislature until July 2014. Its implementation requires about €5 million, covered by the public budget and external assistance. The authorities estimated that the service should be functional in 2018. Meanwhile, the digitalisation of television is taking place through a programme on the transition from analogue terrestrial television to digital terrestrial approved by the government decision of 22 April 2015.

Audio-visual services. The authorities initiated the transposition of the Audio-visual Media Services Directive (2010/13/EU) by amending the Audio-visual Code of 27 July 2006. The amendments were defined by the Ministry of Finance and Ministry of Justice, after consultation with the public. The Coordinating Council of the Audio-visual submitted a request to join the European Audio-visual Observatory, but it was cancelled due to budget austerity measures applied in 2015.

There are also plans to transpose two other directives listed in Annex XXVIII-C, namely 2008/6/EC on an internal market for Community postal services and 2002/39/EC on the further opening of postal services to competition. The Agreement provides a timetable of five and seven years respectively for their transposition.

The digital sector faces the following major challenges:

- insufficient application of ICT tools by local public administrations;
- low levels of digital literacy among the public, which hinder the spread of electronic public services, particularly in the regions; and
- a high incidence of software piracy, which hinders the development of the IT sector, including local software production.

Digital sector at a glance

This broad sector is growing rapidly and represents a vital part of the economic reform and modernisation process in Moldova.

A large IT infrastructure of online public services has been developed, but it lacks penetration at the level of local administrations and the rural population.

Both authorities and business, with the support of international donors, are developing initiatives focused on digital education and innovation.

The Agreement provides for a comprehensive alignment on EU regulatory practices within one to seven years, but progress here is rather slow.

20. CONSUMER PROTECTION



EU legislation is intended to ensure a high and consistent level of protection of the health and safety of consumers by means of strict common safety rules and standards for products and services circulating within the internal market. Specific consumer protection legislation, the subject of this chapter, concerns broad principles and horizontal measures for enforcement.

Most of the substantive conditions for the safety of individual foods, industrial products and services are defined in the sectoral legislation of the EU's internal market, and are discussed in other chapters.

Provisions of the Agreement

The Agreement lays down a number of general commitments on consumer protection, notably that the parties "shall cooperate in order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection" (Art. 38). This requires, *inter alia*, exchanging information on consumer protection systems; providing expertise on legislative and technical capacity to enforce legislation, along with market surveillance systems; improving the information provided to consumers; and encouraging the development of independent consumer associations.

It also requires that Moldova approximate its legislation to that of the EU, as set out in Annex IV to the Agreement, while avoiding barriers to trade. Generally speaking, Moldova has committed to implementation timeframes of between two and four years.

Product safety is a key objective of consumer policy. Within two years Moldova is expected to have transposed into its legal order the provisions of the main acts in this field, i.e. the General Product Safety Directive 2001/95/EC and Directive 87/357/EEC. Certain products whose composition, manufacture or use may pose a risk to consumers are subject to more specific provisions.

Moldova should also transpose the Unfair Commercial Practices Directive 2005/29/EC, and Directive 98/6/EC on the indication of prices of products offered to consumers.

To protect consumers from unfair contract terms Directive 93/13/EEC has to be incorporated, as well as, inter alia, Directive 97/7/EC on the protection of consumers in respect of distance contracts. Other EU legal acts to be approximated concern doorstep selling, package holidays and consumer credit.

In 2013, the European Commission adopted a Product Safety and Market Surveillance Package that aims to further improve product safety, in particular through enhanced product identification and traceability. At the same time, the Commission adopted measures to reinforce the safety of the food chain. Regarding the safety of cosmetic products, new rules entered into force in mid-2013.

To enforce consumer rules in 2013 the EU adopted new legislation on Alternative Dispute Resolution (Directive 2013/11/EU) and Online Dispute Resolution (Regulation (EU) 524/2013), providing for fast, low-cost and out-of-court procedures for consumers seeking redress, which will also soon become available throughout the EU.

Implementation perspectives

Developments in Moldova's consumer protection. Market surveillance and consumer protection is a complex policy field that advanced considerably when the consumer-related rules and principles were established in Law No. 105-XV of 13 March 2003. Significant institutional reorganisation took place when the Agency for Consumer Protection was established in 2012. The Agency took over from earlier institutional arrangements that had been initiated in 1992, soon after independence.

The Agency for Consumer Protection is the main body responsible for monitoring goods entering the market and services delivered to consumers, their compliance with national legislation, and the protection of the health and the security of the consumers. The Agency is a public institution subordinated to the Ministry of Economy.

Apart from the 2003 law, the rights of consumers are established in other organic and secondary legislation. The legal acts that implicitly invoke consumer rights are a 1994 law on petitioning and a 2000 law on access to information. Other sectoral legislation refers to consumer protection and market surveillance concerning food safety, technical conformity regarding industrial goods and the reliability of services delivered to consumers.

The Agency's competences are quite broad and include supervisory, monitoring/inspection, advisory and communication aspects, namely: i) organisation of market surveillance, covering all steps from production to selling, as well as delivery services; ii) oversight of the metrology measurements and equipment used by the producers; iii) monitoring the fulfilment of the conditions for trading activities; iv) efforts aimed at protecting consumers' economic interests (about 2.9 million consumers¹⁶³ and 30,000 trade enterprises);¹⁶⁴ and v) communication and education of consumers about their rights.

The Agency develops partnerships with local consumers' associations (NGOs) and international organisations. A list of 11 NGOs working in the field of consumer protection is presented on the webpage of the Agency,¹⁶⁵ not all of which are active, however.¹⁶⁶ On contacting several of these NGOs, some described their cooperation with the Agency as good; others saw it as insufficient.

The measures undertaken by the Agency to ensure the security of goods and services available on the market mainly relate to technical regulations, metrological requirements and the contractual obligations of service providers. No monitoring activities can be carried out by the Agency to check how agri-food producers implement the sanitary-hygienic and sanitary-veterinary rules, which is the responsibility of other government agencies (see chapter 8). The Agency is, however,

¹⁶³ See the Strategy for Consumer Protection 2013–20 (<http://lex.justice.md/md/348894/>).

¹⁶⁴ See the report by the Agency on Consumer protection 2015 (<http://consumator.gov.md/libview.php?l=ro&idc=136&id=1285&t=/Transparenta/Rapoarte/Raport-cu-privire-la-rezultatele-contrualelor-tematice-inopinate-efectuate-de-Agentia-pentru-Protectia-Consumatorilor-in-baza-Ordinului-nr37-din-08062015>).

¹⁶⁵ See www.consumator.gov.md/pageview.php?l=ro&idc=149.

¹⁶⁶ Strategy for Consumer Protection 2013–20, op. cit.

entitled to sample the goods introduced onto the market, including industrial food products, in the accredited laboratories.

The Agency's director and deputy director can apply sanctions to companies that violate consumer rights (related, e.g. to price transparency, quality and safety of goods or services). It can demand the remedy or replacement of goods, or restitution of the value of the goods or services,¹⁶⁷ and can shut down improper economic activities. The Agency can also request actions to remedy abuses and improper economic activities.

The Strategy for Consumer Protection 2013–20, approved by government decision in July 2013,¹⁶⁸ represents the current framework of policies regarding consumer protection and market surveillance. The main objectives pursued by the strategy are i) diminishing the risks of transactions of dangerous goods and services and their access to the market; ii) empowering consumers' decision-making through education and information; iii) improving the procedures for claiming consumers' rights (by extra/judiciary measures) and recovery of damages.

In 2015, the Agency reported 5,746 consultations with businesses, about 50% of them taking place during monitoring activities.¹⁶⁹ Numerous petitions (1,199) submitted by consumers were addressed. The Agency participated in legal trials supporting consumers in 165 cases, most of which could not be resolved amicably.¹⁷⁰ The Agency increasingly focuses on consultations rather than checks, the number of which is being cut by at least a half.

Implementation of the Agreement. Overall, the Association Agreement envisages the implementation of 16 EU directives during the next four years, with 6 directives having already been transposed by Moldovan authorities. According to the national report on the implementation of the Agreement for 2014–16, the authorities have initiated the process of legal approximation to the EU *acquis*. In this regard, Law No. 422 of 12 December 2006 on the general security of goods was adjusted to ensure the creation of a mechanism guaranteeing general requirements for goods safety on the internal market (Directive

¹⁶⁷ See <http://consumator.gov.md/pageview.php?l=ro&idc=54>.

¹⁶⁸ See the strategy at <http://lex.justice.md/md/348894/>.

¹⁶⁹ See the Annual Report of activity of the Agency for Consumer Protection 2015.

¹⁷⁰ *Ibid.*

2001/95/EC on general product safety). A draft law amending the standards for consumer protection in the field of tourism was adopted on the first reading in parliament (Directive 90/314/EEC on package travel, package holidays and package tours). In addition, Law No. 157 of 18 July 2014 on conclusion of the long distance contracts on consumer financial services was adopted (Directives 97/7/EC and 2002/65/EC).

Some directives were implemented before the signature of the Agreement, notably directives on abusive provisions in contracts signed by consumers, on unfair business-to-consumer commercial practices in the internal market and on credit agreements for consumers.

The main problems related to the effective implementation of market surveillance and consumer protection, and thus requiring attention, are summarised below:

- lack of institutional capacity (human and financial resources);
- little use of a risk assessment approach;
- limited communication and cooperation among the oversight authorities;
- insufficient proactive measures, mainly on the part of the Agency for Consumer Protection, to prevent violation of consumer rights;
- poorly equipped laboratories to test the safety of food and industrial goods;
- lack of progress in negotiating partnerships with international organisations like the Product Safety Forum of Europe (PROSAFE) and the International Consumer Protection and Enforcement Network (ICPEN);
- insufficient public support to ensure conformity in informal trade activities;
- passivity of consumers in claiming their rights due to lack of knowledge and information coupled with inadequate communication tools used by the Agency;
- the small number of non-governmental associations specialised in consumer protection, with little cooperation between them and the Agency; and
- the high cost of judicial procedures related to consumer rights.¹⁷¹

¹⁷¹ Strategy for Consumer Protection 2013–20, op. cit.

Consumer protection at a glance

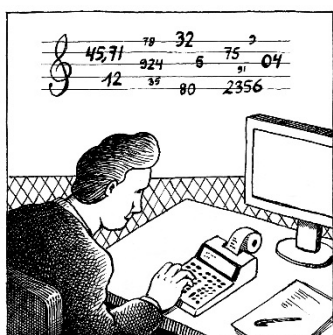
Policies covering consumer protection and market surveillance are in place. The authorities are shifting the emphasis from checks and inspections to consultations and education.

The Agency for Consumer Protection is the key institution, with extensive competences that include market surveillance, monitoring procedures, the termination of improper economic activities, company sanctions and communication efforts.

The approximation process is proceeding smoothly. But the capacities of the main institutions are limited, as are their financial resources, thus raising questions about effective implementation.

Irregularities in the field are numerous and consumer rights are frequently neglected. Consumers continue to be rather passive stakeholders.

21. COMPANY LAW



To further support Moldova's transition to a fully functioning market economy and to create a stable environment for investment and trade, the Agreement has a brief chapter on company law, corporate governance, accounting and auditing.¹⁷² There will be a regular dialogue on existing systems and new developments, with Moldova undertaking to approximate a selection of EU laws and international standards

included in Annex XXVIII.

Company law. In this area, Moldova aims at improving the protection of shareholders, creditors and other stakeholders by undertaking to approximate a list of EU company law directives.

An important directive to be implemented within two years (2009/101/EC) requires public limited liability companies (PLLCs) to disclose basic information and documents relating to their statutes, balance sheets and profit and loss accounts for each financial year. They must also disclose the appointment of those individuals authorised to represent the company in dealings with third parties, winding-up or liquidation of the company, etc. All this information has to be recorded in a file opened in a central register, commercial register or companies register. This directive also includes rules on the nullity of companies, requiring a court judgment.

A second important directive, also to be implemented within two years, is Directive 77/91/EEC on the formation of a PLLC and the maintenance and alteration of its capital (later replaced by Directive

¹⁷² See Title VI, chapter 6.

2012/30/EU). This requires that the statutes of a PLLC include information on the objectives of the company, the amount of capital, rules governing the appointment of members responsible for managing the company and the duration of the company. The directive sets the minimum capital requirement for EU PLLCs at €25,000. This directive also regulates the distribution of dividends, the issuance and acquisition of shares, and modification of capital. It furthermore limits the possibility for a PLLC to acquire its own shares.

In addition, Annex XXVIII includes several other directives to be implemented within two to four years, for example concerning the rules for the conduct of mergers and takeovers after the entry into force of the Agreement (Table 21.1)

Table 21.1 Overview of EU company law directives for approximation

EU directive	Substance
Directive 78/855/EEC concerning mergers of PLLCs (replaced by Directive 2011/35/EU)	Deals with mergers between PLLCs in a single EU country
Directive 82/891/EEC concerning the division of PLLCs, as amended by Directive 2007/63/EC and 2009/109/EC	Deals with the division of PLLCs in a single EU country
Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a member state by certain types of companies governed by the laws of another state	Introduces disclosure requirements for foreign branches of companies
Directive 2009/102/EC on single-member PLLCs	Provides a framework for setting up a single-member company (in which all shares are held by a single shareholder)
Directive 2004/25/EC on takeover bids	Establishes minimum guidelines for the conduct of takeover bids involving the securities of companies, where all or some of those securities are admitted to trading on a regulated market

Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies	Establishes rules to help exercise shareholders' rights at general meetings of companies that have their registered office in an EU country and are listed on an official stock exchange
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Source: EU Official Journal.

Accounting and auditing. Moldova has committed to approximate Directive 78/660/EEC on the annual accounts of certain types of companies and Directive 83/349/EEC on consolidated accounts. These two directives have subsequently been replaced by Directive 2013/34/EU, which significantly simplifies and reduces the administrative burdens for companies and is intended to lead to greater EU cross-border comparability of accounts. Moldova has also agreed to approximate Regulation (EC) 1606/2002 on the application of international accounting standards. This directive requires EU companies to prepare their accounts in accordance with international accounting standards/international financial reporting standards. These standards are issued by the International Accounting Standards Board. Finally, Moldova has to implement Directive 2006/43/EC, which lays down the conditions for the approval and registration of individuals who carry out statutory audits, along with the rules on independence, objectivity and professional ethics applying to such individuals, and the framework for their public oversight. This directive was amended in April 2014 by Directive 2014/56/EU strengthening the independence of statutory auditors and audit supervision, and making the audit reports more informative.

Corporate governance. The EU and Moldova agreed to cooperate on further development of corporate governance policy in line with international standards (i.e. the OECD Principles on Corporate Governance), as well as gradual approximation of EU legislation listed in Annex XXVIII. This Annex includes two European Commission Recommendations (2004/913/EC and 2005/162/EC) on the remuneration of directors, and the role of non-executive directors and supervisory boards, completed after the financial crisis by Recommendation 2009/385/EC. The texts on remuneration policy include guidelines on the balance between fixed and variable remuneration, the latter conditional on performance criteria. Termination payments ('golden parachutes') should also be subject to quantified limitations and should not be paid in the event of failure.

Each listed company should publish a statement on its remuneration policy on these issues.

Implementation perspectives

Moldova's current legal framework for company law, corporate governance and accounting is weak and the implementation of the DCFTA requirements, as identified above, will be a huge challenge. This is illustrated by Moldova's relatively low position in the World Bank Group's Doing Business ranking for 2016,¹⁷³ which notably shows poor performance in protecting minority investors, enforcing contracts and resolving insolvency.

The need to modernise Moldova's legal framework in this area became dramatically clear when a major bank fraud was revealed in late 2014, as detailed in chapter 15.¹⁷⁴ This was possible due to several factors, including poor administration of three banks, obscure changes in the ownership structure of the banks and violation of the basic principles of corporate governance.¹⁷⁵ The magnitude of the scandal has attracted the attention of many internal stakeholders, but also international partners of Moldova. Because of the systemic importance of the banking sector, improving the corporate governance of banks is a priority. However, the political instability in 2015, coupled with the resignation of the National Bank of Moldova's governor in September and the inability to select another candidate until March 2016 have made progress very slow in this area.

Company law and corporate governance. An important development related to company law is approval of the Corporate Governance Code by the National Commission for Financial Markets in January 2016. While the previous Corporate Governance Code had only recommendation status, the new code has the status of a policy document, and therefore should be implemented by all joint stock companies. Also, in 2015 several acts (regarding securities and

¹⁷³ See World Bank Group, "Doing Business 2016", data for Moldova, Washington, D.C. (www.doingbusiness.org/data/exploreeconomies/moldova).

¹⁷⁴ Losses from fraudulent loans accounted for 12% of GDP, while losses from fraudulent loans and future interest accounted for 16% of GDP according to the "Final Report" prepared by Kroll for the National Bank of Moldova, London (http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf).

¹⁷⁵ See "Decoding the Kroll Report", Expert-Grup, Chişinău, 2015.

collective investment institutions of securities) entered into force, subordinated to the legislation on the capital market.

According to the National Harmonisation Plan for 2015,¹⁷⁶ three laws had to be amended in 2015 in order to comply with EU directives on company law: i) on joint stock companies, ii) on state registration of legal entities and entrepreneurs, and iii) on limited liability companies. Yet only the one on joint stock companies was amended,¹⁷⁷ in order to comply with the provisions of Directive 77/91/EEC on the formation of a PLLC and the maintenance and alteration of capital (see above). Moreover, not all the provisions of the directive were properly applied. Thus, compliance with EU legislation will be further analysed.

The amended legislation on state registration of legal entities and individual entrepreneurs was approved by the government in October 2015 and submitted for examination to the parliament. It seeks to transpose the provisions of Directive 89/666/EEC regarding the disclosure requirements in respect of branches governed by the law of another state (see above), and adds provisions on the State Registration Chamber.

Meanwhile, in October 2015 a working group started to develop a roadmap for the actions necessary to transpose the EU *acquis* listed in Annex XXVIII.¹⁷⁸

Accounting and auditing. According to the National Action Plan¹⁷⁹ the drafting of a new law on accounting and a new law on auditing according to EU directives is planned for the last quarter of 2016. At present, with the support of the World Bank, the actions for transposing the two EU directives listed in the DCFTA regarding accounting (2013/34/EU) and auditing (2006/43/EU) (both discussed

¹⁷⁶ The National Harmonisation Plan was approved by Government Decision No. 16 of 26 February 2015 (<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=357187c>).

¹⁷⁷ See Law No. 106 of 28 May 2015 amending the Law No. 1134 of 2 April 1997 on joint stock companies (<http://lex.justice.md/md/359348/>).

¹⁷⁸ Note the Order of the Ministry of Economy No. 152 of 2 October 2015 “On establishment of the Working Group for the fulfilment of commitments stemming from Art. 30, Chapter 3, Title IV and Annex II of the Agreement establishing the Deep and Comprehensive Free Trade Area, part of the Association Agreement between the EU-Moldova”.

¹⁷⁹ The National Action Plan was approved by Government Decision No. 808 of 7 October 2014 (<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354939>).

above) have been identified and the consultants selected to assist in preparing the new laws.

Outstanding challenges. Overall, the reform of corporate governance is seen as highly important for advancing the modernisation of the Moldovan economy. While recent events in the banking sector have dramatically highlighted the costs of shortcomings in this area, the problems are not confined to this sector. The agenda for reform in line with EU standards is appreciated, and some advances are being made, but overall the needed legislative measures are falling behind schedule.

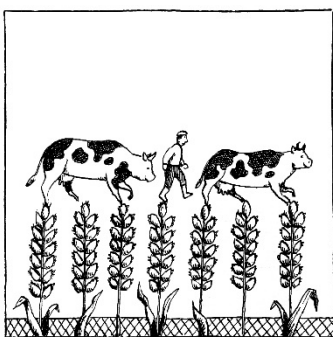
Company law at a glance

The Association Agreement does not impose strict obligations on Moldova in the area of company law, corporate governance or accounting, but provides a framework of EU legislation that Moldova has undertaken to implement.

Recent developments point to significant problems in corporate governance in Moldova, which have proved to be especially costly in the banking system.

Reforms in line with EU legislation in the broad area of company law should improve Moldova's business climate, creating a transparent environment for enterprises, with an appropriate level of protection of company shareholders and creditors. But currently, there are delays in drafting the required legislation.

22. AGRICULTURE



Agriculture is a very important sector for the Moldovan economy, with large potential for increasing the quality and volumes of its production and exports to the EU. The country has undertaken ambitious commitments to align its farm policies on those of the EU.

Provisions of the Agreement

According to the Agreement, “the Parties shall cooperate to promote agricultural and rural policies, in particular through progressive convergence of policies and legislation”. It goes on to list general objectives, such as improving competitiveness, exchanging best practices, and promoting modern and sustainable agricultural production (Arts. 67-68).

More precisely, Art. 70 further specifies that Moldova will approximate its legislation to that of the EU through the list of regulations and directives set out in Annex VII, as summarised in Box 22.1. Each regulation has stipulated a timeframe for implementation, mostly of four or five years.

There is room for debate about whether Moldova, keen to advance its EU integration, has made too many commitments too fast. Monitoring activities will inform policy-makers on this point in due course. In around two years, the authorities will conduct a stocktaking exercise, which might show whether the timetables in Annex VII warrant recalibration. In any case, the Association Council is empowered to make amendments as necessary.

Box 22.1 Summary of EU agricultural policy laws referred to in the Agreement

Quality policy. Seven regulations set the rules for protecting geographical indications and traditional specialities.

Organic farming. Three regulations set the rules for organic production and the labelling of organic products.

Marketing standards for plants and derived products, fruit and vegetables. There are a total of 24 regulations and directives, which mostly set out the technical standards for marketing specific commodities. For example, Regulation (EEC) 66/402 on the marketing of cereal seeds requires that products released on the market belong to officially certified varieties.

Marketing standards for live animals and animal products. As above, twelve regulations and directives primarily set technical standards for marketing specific commodities, as well as for the common organisation of markets. For instance, Regulation (EC) 543/2008 on marketing standards for poultry meat defines the characteristics of different cuts of meat and their names.

The objectives of the Agreement are supported by substantial EU financial and technical assistance to the farm sector. In 2016, the Moldovan authorities ratified the bilateral agreement with the European Commission for receiving €64 million to support agricultural policy under the European Neighbourhood Programme for Agricultural and Rural Development (ENPARD). The programme is to run from 2015 to 2018, but had not started by the time of writing. Of this, €54 million is in the form of budget support. Such support comes with conditions for the government to execute several programmes for investment: on modernising agriculture, agri-food and food chains and complying with EU food safety and quality requirements; on enhancing education as well as extending research and services to rural areas; and on improving access to capital, input and output markets for farmers; and on rural development. In addition, €11 million is to be allocated to technical assistance projects, for example to promote civil society organisations and local authorities in implementing agricultural policies that favour gender equality and are oriented towards empowering women.

The European Investment Bank (EIB) has major investment initiatives in Moldova, among which are a €120 million project called the 'Fruit Garden of Moldova'. This project consists of a global loan to

be executed through accredited banks to support the entire horticultural value chain, for individual growers and for participants both up- and downstream. It aims at ensuring the long-term viability of a strategically important sector of the economy. The project addresses quality and financial issues and is structured for developing existing facilities together with building new capacities.

Another EIB project has allocated €75 million to modernise the winery sector (the Wine Sector Restructuring Programme, *'Filière du Vin'*), with implementation over the period 2012–19. This project focuses on the development of wines with protected designation of origin (DO) or geographical indication (GI) (or both). More broadly, the objective is to restructure the wine industry, improve quality and diversify export markets. So far, 17 Moldovan producers have benefited from loans.¹⁸⁰

The Polish government has also engaged in an important project for credit financing in agriculture for €100 million.

Developments in Moldovan agriculture and policies

Moldova has important resources of arable land and remains a rural country, with 58% of the population living in rural areas. Agriculture is accordingly of great significance for the development of rural communities and for the country as a whole. While the share of agriculture in GDP fell drastically from 30% during the 1990s to 12% in 2011, it remains the highest in south-eastern and Eastern Europe. The agricultural sector accounted for 36% of employment in 2015 (466,100 people), down from 50% in 2000.¹⁸¹ The diminishing number of workers in agriculture results from both migration and the attractions of other sectors of the economy, especially the services sector. The added value per agricultural worker in Moldova ranks lower than other countries in the region, averaging about \$2,000 per head in 2010, which is extremely low compared with new EU member states.

The bulk of agricultural production (90%) is vegetal (cereals, grapes, vegetables and fruits) and of animal origin (pork, poultry and milk). Cereal production has increased rapidly, by almost 40% since 2000.

¹⁸⁰ Principally, these are Asconi LLC, JSC Cricova, Vinaria Zimbreni and Vinaria din Vale.

¹⁸¹ Derived from the National Bureau of Statistics, according to data from 2016.

Trade in agri-food goods. The major trade partners for agri-food products are the EU and CIS countries. However, the share of trade with CIS countries has dropped in recent years, mainly because of Russia's tariff and non-tariff barriers for wines and other agri-food products (especially since 2013) and because of general economic difficulties in Ukraine and Russia since 2014.

In the first year of DCFTA implementation (September 2014 to September 2015), agri-food exports to the EU grew by 10.8%,¹⁸² with notable increases for sunflower seeds, soybeans, honey, dried fruits, grapes, soybean oils, jams and ethyl alcohol. The biggest drop occurred in exports of fruit juices, as a result of Russia's agri-food sanctions against EU countries that are normally importers of Moldovan agri-food goods (e.g. Poland).

The EU maintains extensive tariff rate quotas under the DCFTA (i.e. limited quantities for tariff-free access to the EU market). Nevertheless, in 2014 these quotas were not fully used for the most part. The quotas were only fully filled for grapes, wheat and corn. Over 50% of the respective quotas were filled by barley, processed cereals and processed sugar, and less than 50% by garlic, apples, plums, cigarettes and sweet corn. The quotas for agri-food of animal origin (pork, poultry, dairy products, shelled eggs, etc.) were completely unused owing to their inability to meet the SPS requirements for Moldovan exports.

The unused quotas also partly reflect the increased supply balances in the EU as a result of Russia's sanctions. But the main problems lie in the lack of skills and experience of exporting to the very demanding EU market. Overall, the agri-food exports from Moldova have a low added value because they mainly consist of unprocessed goods.

Wine is Moldova's most successfully exported agri-food product. With around 200 wineries, Moldova is among the top ten countries in the world for wine production and exports, with 102 million litres of exports in 2014.¹⁸³ However, since the introduction of Russian sanctions in 2006, wine exporters have faced difficult times, with dramatic falls of exports to Russia. At the same time, this has led to a costly but ultimately healthy process of diversifying external markets. After Russia again applied sanctions to Moldovan wines in

¹⁸² See Ana Popa, "DCFTA between Moldova and EU after one year", Policy Brief, Expert-Grup, Chişinău, December 2015.

¹⁸³ Derived from Comtrade.

2013, the EU fully opened its market. Over 2014–15, Russia gradually began to reopen its market, but exclusively for wine producers from the Gagauzian autonomy and the Transnistrian region.

Agri-food products showing rapid growth in exports include honey and walnuts. Exports of honey grew from 403 tons in 2000 to 2,696 tons in 2014.¹⁸⁴ Walnut cultures expanded from 4,000 hectares to 11,000 hectares over the same period, with exports increasing from 187 tons in 2000 to 1,340 tons in 2014.¹⁸⁵ These two products and cereals face little or no export market constraints due to SPS requirements.

Institutional framework and policies. The leading institutions responsible for implementing agricultural and rural development policies are the Ministry of Agriculture and Food Industry (MAFI), the Ministry of Economy and the Ministry of Regional Development and Construction, along with a number of agencies.

The strategic policy framework is represented by the National Strategy on Agriculture and Rural Development for 2014–20, approved in June 2014, together with an Action Plan adopted a year later. The major goals are increasing the competitiveness of the agri-food sector, ensuring sustainable management of natural resources in agriculture and improving living standards in rural areas.¹⁸⁶ Related policies concern food safety, services in rural areas and regional development, SMEs, energy, transport and logistics, IT and tourism. Particular attention is devoted to digitising the agricultural sector, with an ‘e-agriculture’ strategy, aimed at improving IT infrastructure for public services in this domain.

The strategy involves efforts to build capacity in the planning and assessing activities of the line ministries (in particular the MAFI). Improving the subsidy mechanisms administered by the Interventions and Agriculture Payments Agency is a key priority. Numerous initiatives seek to strengthen agriculture-related professional qualifications, including viticulture educational programmes. Specific measures were introduced to consolidate the national GI and DO frameworks. For addressing climate change issues, the authorities drafted a programme for conservation in agriculture for 2015–20, with a view to informing farmers about proper soil conservation. A similar goal is envisaged by a World Bank programme, while Sweden supports

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ See the National Strategy on Agriculture and Rural Development, 2014–20.

a project on agro-technical methods for organic crop production. The authorities have implemented the Rural Extension Services Network, which is designed to provide services in the regions through 35 providers. The development of the strategy was a prerequisite for 2015–18 ENPARD programme referred to above.

There is a positive trend in the approximation of EU legislation. The procedures for legal amendments have been initiated concerning the following EU regulations:

- Regulation (EC) 510/2006 on the protection of GI and DO for agricultural products and foodstuffs;
- Regulation (EC) 1216/2007 on agricultural products and foodstuffs as traditional specialities guaranteed;
- Regulation (EC) 834/2007 on organic production and labelling of organic products and the implementation of Regulations (EC) 889/2008 and 1235/2008;
- Regulation (EC) 1295/2008 on the importation of hops from third countries;
- Regulation (EC) 1580/2007 on the fruit and vegetables sector;
- Regulation (EC) 1760/2000 on bovine animal identification and the labelling of beef and beef products and implementing Regulations (EC) 1825/2000 and (EC) 566/2008;
- Regulation (EC) 273/2008 on quality evaluation of milk and milk products; and
- Directive 1999/105/EC on the marketing of forest reproductive material.

Partial transposition has already taken place on two aspects:

- Regulation (EC) 1234/2007 on the common organisation of agricultural markets (referred to as the Single CMO Regulation); and
- Directive 66/401/EEC on the marketing of fodder plant seed.

No specific actions have yet been taken in several other areas:

- Regulation (EC) 1249/2008 on classification of beef, pig and sheep carcasses and the reporting of prices thereof;
- Regulation (EC) 445/2007 on standards for spreadable fats and on protection of designations used in the marketing of milk and milk products; or
- Regulation (EC) 543/2008 on marketing standards for poultry.

Overall, it is too early to assess the implementation of these legislative actions. Legislation is of course a necessary first step, but the harder part comes with the practical tasks of implementation.

Challenges. There are structural difficulties hampering the creation and functioning of agricultural producer groups, with an outdated agricultural education system, isolated extension services and weak agricultural research. The limited availability of banking loans also complicates the situation for farmers, with insufficient supply of long-term loans (the majority of investment loans are for three years) and high interest rates (15–20% per year).

The agricultural sector lacks supply-chain coordination and post-harvest infrastructure. Also problematic is the dependence on imported agro-chemicals, seeds and fuels. Finally yet importantly, there are deficiencies related to transparent and fair access to the mechanism for agricultural subsidies, which over the period 2010–15 accounted for about €100 million.

There is a high degree of vulnerability to fluctuations in climatic conditions (droughts, soil erosion, landslides, hail, frost and floods). These challenges are heightened by restricted access to irrigation systems and low take-up of modern technologies (plants resistant to droughts, anti-hail systems, meteorological risk assessments, etc.).

Agricultural policy at a glance

Moldova has considerable potential for agricultural development, including for exports to the EU.

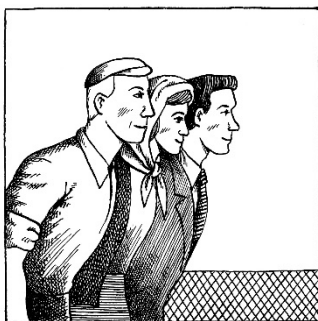
Major problems include low adaptability to climatic fluctuations, deficiencies in the organisation of agricultural producers, products with low added value and poor access to finance.

Agricultural policy reform is largely defined in the National Strategy on Agriculture and Rural Development for 2014–20.

Moldova has adopted an ambitious programme for replicating many technical elements of EU farm policy, and progress in implementation will need to be monitored.

There are substantial EU technical assistance and funding projects to assist the process, with grants from the EU budget and capital from the European Investment Bank.

23. EMPLOYMENT AND SOCIAL POLICY



The Association Agreement seeks to promote cooperation over a large part of EU labour law and related conditions of work, much of which is closely related to the content of the ILO conventions that Moldova has already ratified.

Provisions of the Agreement

The EU labour-related legislation to be transposed is divided into three main categories: labour law, anti-discrimination and gender equality, and health and safety at work, and the numerous relevant directives are listed in Annex III.

The labour law category includes eight EU directives for gradual approximation to legislation. Among others, these directives cover such issues as employers' information and consulting obligations, part-time work, fixed-duration employment, collective redundancies and organisation of working time. All these directives should be transposed into national legislation within three to four years.

The anti-discrimination and gender equality category includes six EU directives for approximation. The main fields of regulation are equal treatment between people in employment and occupation and access to and supply of goods and services. The period of approximation for these directives is planned to be three to four years.

Health and safety at work is the largest category, containing a body of 25 directives for legislative approximation. Issues covered in these directives are minimum safety and health requirements for the use of work equipment at temporary or mobile construction sites, the

protection of workers from risks related to asbestos at work and many other provisions. The timeframe for legislative adjustment is three to ten years, with most directives requiring seven to ten years for approximation.

Implementation perspectives

Moldova's labour market presents a contradictory picture. On the one hand, unemployment is at its lowest historical level, at 4-5%. On the other hand, the employment rate is only about 39%, which is the lowest in the region, and reflects the significant number of Moldovan workers who have emigrated in search of work. The official number of emigrant workers is about 350,000, approximately two-thirds of them working in Russia. Another feature of the local labour market is the high level of informal employment, estimated at 32% of total employment, which presents a huge challenge to authorities to implement the 'Decent Jobs' agenda of the ILO.

Moldova has developed an elaborate legislative and institutional framework that governs all labour-related issues, which comprise both national and international layers. From the institutional viewpoint, this realm is regulated by the Ministry of Labour, Social Protection and Family, with some agencies subordinated to it for specific issues. The main agencies are Labour Inspection, responsible for monitoring the implementation of labour standards, and the National Agency for Labour Employment in charge of implementing active labour market policies.

Moldova has ratified all eight 'fundamental' and all four 'governance' core conventions of the ILO. Furthermore, Moldova has ratified 30 of 177 technical conventions of the ILO, and has the goal of pursuing the ratification process in accordance with the objectives of the Agreement.¹⁸⁷ There is a close relationship between the ILO conventions and EU labour market law, as Box 23.1 explains in detail.

¹⁸⁷ See www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102695.

Box 23.1 Relationship between EU employment and social directives and ILO conventions

“There is an interplay between EU labour law, the European Social Charter and ILO Conventions: EU law, in particular the Charter of Fundamental Rights, takes into account the European Social Charter and ILO Conventions and in turn influences the evolving content and monitoring of the latter instruments.

All EU Member States are also members of the ILO. The EU is committed to promoting the ILO’s ‘Decent Work’ agenda to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen social dialogue on work-related issues.

All EU countries have ratified the core labour standards – that is, the fundamental ILO Conventions on freedom of association, collective bargaining, forced and child labour, equal remuneration and the elimination of discrimination. EU countries have also ratified the ILO ‘Governance Conventions’ on labour inspection, employment policy and tripartite consultations, as well as a considerable number of other ILO Conventions.

While ILO standards cover a wider range of areas than those in which the EU is competent to legislate, and EU law often goes beyond the minimum provisions of ILO Conventions, the principles that underlie the action of both organisations are similar. There is much common ground in the content of EU directives and ILO Conventions, with EU law reinforcing ILO standards. Directives on issues such as working time and young workers (see chapter 3) explicitly seek to take into account relevant ILO standards.

The protection, realization and enforcement of core labour standards as well as the promotion of the ratification and effective application of other up-to-date ILO Conventions underpinning the Decent Work Agenda, are part of a growing number of bilateral agreements between EU and third countries, such as the new generation of EU free trade agreements. The follow-up mechanisms of these agreements include monitoring mechanisms involving social partners.”

Source: Extracted from “Labour law and working conditions”, Social Europe Guide, Volume 6, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, February 2014. For a detailed analysis, see “Analysis – in the light of the European Union acquis – of ILO up to date Conventions”, European Commission Directorate-General for Employment, Social Affairs and Inclusion, June 2013.

General labour law. Employment policy is mainly regulated by eight laws.¹⁸⁸ The backbone of the regulatory framework is the Labour Code approved in 2003, which is far removed from the former code of the Soviet period. This code significantly improved the legislative environment of the labour market. Nevertheless, not all the aspects of Soviet legislation were repealed. Also, despite many adjustments in the last decade, there are still some discrepancies between the economic reality and legislative provisions of the code. Business associations are seeking many amendments to boost the flexibility of the labour market, notably concerning fixed-term employment contracts, trial periods, the termination of employment contracts, work in shifts, subcontracting staff, and the review of arrangements to compensate for supplementary hours.¹⁸⁹

Of the eight EU directives on labour law to be transposed in national legislation, six are expected to be implemented in 2015–16. Draft changes to the Labour Code were prepared in 2015 to implement Directive 91/533/EEC on the employer’s obligation to inform employees of the contract conditions, and Directive 1999/70/EC on fixed-term work, but their adoption was postponed due to the political crisis. For 2016, there are plans to amend the code in accordance with other four other directives: i) Directive 97/81/EC concerning the Framework Agreement on part-time work, ii) Directive 91/383/EEC on the safety and health for fixed-duration employment or temporary employment relationships, iii) Directive 2001/23/EC relating to the safeguarding of employees’ rights in the event of transfers of undertakings, and iv) Directive 2002/14/EC on establishing a general framework for informing and consulting employees. The remaining two, Directive 98/59/EC on collective redundancies and Directive 2003/88/EC on certain aspects of the organisation of working time, will be transposed in 2017–18.

Anti-discrimination and gender equality issues. These are governed by legislation promulgated in 2006 and 2012 on ensuring

¹⁸⁸ More specifically, these are the Labour Code, the Law on Employment and Social Protection of Persons Seeking Work, the Wages Law, the Law on the Setting and Review of Minimum Wage, the Law on the Wage System in the Public Sector, the Law on Labour Force Migration and the Law on Labour Inspection.

¹⁸⁹ See www.amcham.md/userfiles/file/Recomandarile_En_print.pdf.

equal opportunities for women and men.¹⁹⁰ These laws already include most provisions of the two directives mentioned in the Agreement, namely Directive 2000/43/EC on equal treatment between people irrespective of racial or ethnic origin, and Directive 2000/78/EC on equal treatment in employment and occupation. Also, in 2015 a set of amendments was prepared to transpose another two directives, namely Directive 2006/54/EC on the principle of equal opportunities and treatment in matters of employment and occupation, and Directive 2004/113/EC on the principle of equal treatment in access to and supply of goods and services. As in the case of other amendments drafted in the second half of 2015, their final adoption was postponed due the lack of a functional government. The remaining two directives – Directive 92/85/EEC on improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, and Directive 79/7/EEC on the progressive implementation of the principle of equal treatment in matters of social security – are due to be transposed in 2016. Overall, in this field Moldova will finish the approximation process sooner than the specified period in the Agreement. But a major challenge remains in promoting practical measures to combat any measures of discrimination in employment.

Health and safety at work. This is regulated by two main laws, one of 2008 on occupational safety and health, and another of 1999 on insurance for work and accidents and occupational diseases. There are also many normative acts adopted by government decisions that implement the provisions of these laws in different sectors of the economy.

Moldova has made considerable progress in transposing the health and safety standards into national legislation. Directive 89/391/EEC on improvements in the safety and health of workers at work was already included in the law on occupational safety and health. Another six directives stipulated in the Agreement were implemented in national legislation by government decisions in the years preceding the final adoption of the Agreement.¹⁹¹ Also, the

¹⁹⁰ See Law No. 5-XVI of 9 February 2006 on ensuring the equal opportunities for women and men and Law No. 121 of 25 May 2012 on equality.

¹⁹¹ More specifically, the following directives were implemented:

- Directive 89/654/EEC on the minimum safety and health requirements for the workplace was transposed by GD No. 353 of 5 May 2010;

National Action Plan envisages implementing three further directives in the period 2015–16, namely Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment and Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (vibration). In addition is Directive 90/269/EEC on the minimum health and safety requirements for the manual handling of loads where there is a particular risk of back injury to workers.

Overall assessment. Despite progress in the approximation process, there are still some important issues to be addressed in the field of health and safety at work. One of these is the ratification of ILO Convention 161 on Occupational Safety and Health. This convention, which requires the creation of occupational and health services at the enterprise level, mostly with the preventive functions, was suggested to the national authorities by the ILO, but is still only under consideration.¹⁹²

Another important issue concerns occupational safety and health statistics. This kind of data is collected on the basis of sample surveys, yet only from companies with more than 20 employees. A significant number of companies below this threshold are not included in the

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- Directive 2009/104/EC on the minimum safety and health requirements for the use of work equipment by workers at work was transposed by GD No. 603 of 11 August 2011;
 - Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites was transposed by GD No. 80 of 9 February 2012;
 - Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work was transposed by GD No. 244 of 8 April 2013;
 - Directive 92/58/EEC on the minimum requirements for the provision of safety and/or health signs at work was transposed by GD No. 918 of 18 November 2013; and
 - Directive 2003/10/EC on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (noise) was transposed by GD No. 362 of 27 May 2014.

¹⁹² See www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_208206.pdf.

survey, and as a result the real situation on health and safety standards compliance is not fully revealed.¹⁹³

Finally, there are some major problems in implementing legislation across the whole range of labour laws. These are two-fold. The first is the high level of informal employment, as already mentioned. The sheer number and persistence of this kind of employment hinders the process of implementing labour legislation in this area of the economy.

The second is the recent amendments to the law on the Labour Inspection service, which was stripped of its capacity to conduct unexpected checks. These amendments were intended to improve the business climate. Unfortunately, they have triggered a precipitous fall in the number of undiscovered infringements and in the reporting of informal employment. The repeal of these changes and efforts to strengthen the capacity of the Inspection service are required.

Employment and social policy at a glance

Moldova has developed an elaborate legislative and institutional framework that governs all labour market issues, which for the most part corresponds to the standards of the EU and the International Labour Organization.

Transposition of a large share of EU directives on employment, social policy and equal opportunity has already occurred or is planned for 2016. This should strengthen the quality of Moldovan legislation.

There is keen interest of the part of the business sector in adapting labour legislation to the realities of Moldova's economy and in making it more flexible.

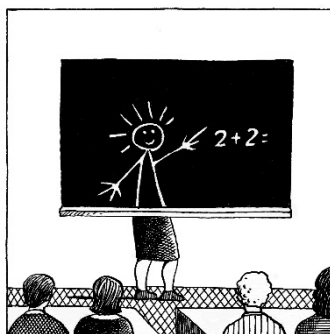
More attention has to be paid to the implementation of laws and regulations, through improving the Labour Inspection service and gradually reducing informal employment in the economy.

¹⁹³ Idem.

24. EDUCATION, TRAINING AND CULTURE

Education, training and youth

The Association Agreement sets out certain goals for the education system, notably its reform, modernisation and convergence with the Bologna process in the field of higher education, which includes enhancing the quality and relevance of higher education. The Association Agenda details some substantial instruments for undertaking the reforms.



In the World Economic Forum's human capital index, Moldova was ranked at 71 out of 127 countries, last among European countries. The UNDP's education index is equally unfavourable, in which Moldova was ranked at 114 out of 187 countries. According to the time series of this UNDP index, there has not been a substantial improvement in Moldova's performance since 1980. These low rankings imply a lack of human capital for any major recovery in Moldova's economic performance.

Moldova joined the Bologna process back in 2005, leading to the adoption of the three-cycle higher education system (with bachelor, masters and doctoral qualifications), which is an important step towards matching European standards. In 2008, the first group of around 31,000 graduates finished their studies at universities in accordance with the Bologna process for the first cycle (bachelors). In the same year, the second cycle (masters) of two-year courses following Bologna principles was launched. These programmes have developed further, such that in 2015–16, 18 public and 11 private higher-education

institutions¹⁹⁴ enrolled 81,669 students in accordance with the Bologna system (62,809 for bachelor studies, 14,272 for masters studies and 734 for doctorates). These numbers have somewhat declined, however, for demographic reasons. The Bologna process for doctoral studies is under development, with a few pilot doctoral programmes at two higher education institutions. The most popular studies for both bachelor and master's studies are Social Sciences, Economics, Law, Engineering, Technologies and Architecture; less popular are Agriculture, Healthcare and Services.

Other changes in the education field supported through the Bologna process envisage the implementation of the European Credit Transfer System, which facilitates the participation of students in European academic mobility programmes. The government's Decision No. 56 of 27 January 2014 on academic mobility for bachelor, masters and doctoral studies ensures the recognition of qualifications (diplomas) in the EU and other countries participating in the Bologna programme. During a meeting of the Bologna Follow-up Board in January 2016, the Ministry of Education restated its commitment to developing the quality assurance framework (on the basis of the National Agency for Quality), and to making further adjustments to the national qualifications framework. The EU supports the adjustment of Moldova's vocational training to the needs of the labour market, as well as linguistic diversity, language learning and professional life-long learning as drivers for job creation and growth.

The EU also supports Moldova's educational reforms and modernisation through capacity building, and mobility and exchanges of both teachers and students. Moldova's Academy of Public Administration, the State University of Tiraspol, the Technical University of Moldova and Moldova State University are among consortia that have been awarded joint capacity-building projects in 2015, with a budget of over €3 million. The projects focus on enhancing the competitiveness and employability of students, modernising libraries and creating an e-network to promote innovative e-teaching in continuing professional education.

The EU's largest contributions are made through the Erasmus+ programme. Erasmus+ has a total budget for the EU plus third countries of €14.7 billion for the period 2014–20. Thanks to Erasmus, in the period 2004–14 around 1,000 students and academics from Moldova benefited from mobility projects through scholarships,

¹⁹⁴ See the List of higher education institutions, Ministry of Education.

teaching, training activities and study visits, and these numbers are expected to grow in coming years. Apart from that, the EU offers financial assistance for the renovation of the infrastructure of several schools in the Transnistrian region through the programme on Support Confidence Building Measures implemented by the UNDP.

Romanian is the sole state language of Moldova, but Russian is used by a minority of around 10-15% of the population. Studies in the Russian language for primary and secondary education, together with other national minority languages, are ensured by the state in regions populated by minorities and where a “sufficient demand” exists.¹⁹⁵ Studies in Russian in higher education institutions (at the bachelor, masters and doctoral levels) are also available.¹⁹⁶ The Ministry of Education earmarked about half a million MDL in 2016 for improving the teaching of the Romanian language to minorities.

Overall, diplomas issued by the universities and other higher education institutions from the Transnistrian region are recognised throughout Moldova for job applications. As for enrolment in studies, a complementary year and bachelor’s exams are requested from those who hold diplomas issued by Transnistrian institutions¹⁹⁷ for accreditation of BA studies on the right bank of the Dniester River. The full recognition of the documents issued by the Transnistrian institutions is an issue under discussion in the negotiations on Transnistrian conflict settlement. Some tensions were revealed in May 2016 when the Gagauzia autonomy adopted a separate Law on Education, which, according to Moldova’s Ministry of Education, contradicts national education legislation by considerably diminishing the role of central authorities and reducing the autonomy of universities there.¹⁹⁸

¹⁹⁵ See Art. 10, Education Code of Moldova of 17 July 2014.

¹⁹⁶ See Art. 20, Law No. 3465-XI on the functioning of the languages spoken on the territory of Moldova of 1 September 1989.

¹⁹⁷ See p. 17, Plan-framework for higher education (BA, MA and Ph.D.) of 22 October 2015.

¹⁹⁸ See the Ministry of Education, Press release of 5 May 2016 (www.edu.gov.md/ro/content/proiectul-de-lege-educatiei-din-uta-gagauzia-contravine-codului-educatiei).

Culture

Cultural cooperation between Moldova and the EU is based on exchanges and the mobility of arts and artists. In particular, Moldova participates fully in the EU's Creative Europe programme for cultural and creative sectors, signing an agreement to this effect with the European Commission in March 2015. Participation in this programme aims to connect cultural and creative organisations from Moldova with partners from all over Europe, opening access to funds for cultural cooperation projects, literary translation schemes, cultural networks and platforms.

The EU and Moldova also pledge to cooperate in the framework of UNESCO and the Council of Europe, to sustain cultural diversity, preserve and valorise cultural and historical heritage.

Concrete cultural cooperation projects are being implemented with the EU's eastern neighbours under the 'Culture Programme II' launched in September 2015. The programme has a budget of €4.95 million and has two components: EU support for capacity building and the inclusion of culture on the political agenda; and joint EU and Council of Europe support for six to twelve historic towns for developing urban strategies for rehabilitation of heritage.¹⁹⁹

Education, training and culture at a glance

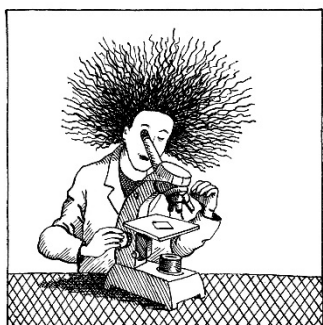
Moldova's human capital endowment is rather low and educational performance has not improved substantially in the last three decades.

Basic educational reforms are supported in the Association Agreement, notably for higher education through the Bologna process and European Higher Education Area, and with concrete programmes such as Erasmus+, which benefits large numbers of Moldovan students.

Moldova has joined the EU's culture programme with a new agreement signed on 18 March 2015.

¹⁹⁹ See http://eeas.europa.eu/delegations/georgia/documents/news/2015/20150918_01_en.pdf.

25. SCIENCE AND TECHNOLOGY



The Association Agreement sets out wide-ranging objectives for cooperation in the area of science and technology, aimed at strengthening research capacities and human potential and at sharing scientific knowledge. The Agreement encourages the EU and Moldova to implement joint projects, conduct training courses and increase the mobility of programmes and scientists through exchanges for

Moldovan researchers. It also intends to facilitate the involvement of Moldovan institutions in the European Research Area.

While the terms of the Agreement are mostly general, it has already been followed up by an important complementary Memorandum of Understanding signed in August 2014 for Moldova's full participation as an associate country in the Horizon 2020 Framework Programme for Research and Innovation for the period 2014–20. Moldova's associate status in Horizon 2020 provides similar rights as those of an EU member state, including a seat in the governing structures of the fund. The membership comes with a price tag, proportional to its GDP; however, it is alleviated through substantial rebates.

The Horizon 2020 programme is the centrepiece of the EU's scientific and research activity, endowed with very substantial funds (€80 billion) for the period 2014–20. The areas eligible for project funding by Horizon 2020 cover both natural and social sciences (Table 25.1).

Table 25.1 Main thematic priorities of Horizon 2020

Excellent science	Industrial leadership	Societal challenges
European Research Council (ERC) Future and Emerging Technologies Marie Skłodowska-Curie actions career development Research infrastructure (including e-infrastructure)	Leadership in enabling and industrial technologies (LEITs): nanotechnologies, materials, biotechnology, manufacturing, ICT and space Access to risk finance Innovation in SMEs	Health and demographic change Food security, sustainable agriculture and marine research Energy, transport and climate action Europe in a changing world; protecting freedom and security

Moldova participated in the predecessor of Horizon 2020, the Framework Programme 7 (FP7) for Research and Development, between January 2012 and 2014. Through this cooperation, Moldova received €3.75 million of total funding (compared with its financial contribution of €1.4 million).

The following projects were among those securing financial support from FP7:

- ICT R&D policy dialogue between Eastern Europe and Central Asia;
- evaluation of the demographic trends in CIS countries (HITT-CIS);
- High-Performance Computing Infrastructure in South-East Europe;
- consolidation of human potential and technological infrastructure;
- product quality (NUTRILAB); and
- water-related research (WaterWorks2014).

As part of efforts to strengthen scientific research cooperation, the Moldovan Office for Science and Technology was created in October 2012. The office is located in Brussels and is coordinated by the Academy of Sciences of Moldova through its auxiliary public institution, the Centre of International Projects. The Centre is the host organisation for the Moldovan FP7/H2020 National Contact Points Network. To encourage greater participation in Horizon 2020, Moldova

plans to reorganise the H2020 National Contact Network, and set up training programmes in proposal preparation and project administration.

The Academy of Sciences has launched several programmes to foster the participation of R&D institutions and the non-governmental sector in Horizon 2020. These include the programme on the Connection of the Moldovan Centers of Excellence to the EU Research Infrastructure, which seeks to connect the Moldovan research centres to the thematic Pan-European Research Infrastructure, such as ESFRI (European Scientific Forum for Research Infrastructure), ERICs (European Research Infrastructure Consortia) and ETPs (European Technology Platforms). Another programme on increasing participation in Horizon 2020 through the mobility of researchers will provide mini-grants to support the participation of Moldovan researchers in the Horizon 2020 networks. To encourage the participants who submitted eligible proposals to H2020, the Academy launched the European BONUS Programme.

The official page of Horizon 2020 for Moldova has a database of 18 research institutions from Moldova (universities, state agencies and laboratories). Moldovan researchers interested in finding research-related jobs and services in European research centres can access the platform EURAXESS - Researchers in Motion.

It is necessary to improve the institutional capacity of the Academy of Sciences, as well as to improve the skills of the research institutions in project preparation and coordination.

Science and technology at a glance

In accordance with the Association Agreement, it was agreed in 2014 that Moldova would become a full participant in the EU's main research programme, Horizon 2020.

Moldova has strengths in the IT field and its current research projects cover various areas (e.g. demography and product quality).

The major challenge for Moldova is to strengthen the institutional capacities of its research community (in proposal preparation, submission, project administration, etc.), given the tough competition from other countries participating in Horizon 2020.

26. EU AGENCIES AND PROGRAMMES



The EU has as many as 46 'agencies', which are semi-autonomous and specialised bodies funded and overseen by the EU, with the objective of supporting the functioning of EU policies. There are also around 45 'programmes', most of which (but not all) are funded and administered as integral parts of the EU institutions (mostly but not all in the European Commission). Of these, a considerable number are open to participation by Moldova as a partner under the Association Agreement, notably the 20 agencies and 19 programmes listed in Boxes 26.1 and 26.2, which highlight those with which Moldova already has ongoing cooperation at different levels (e.g. projects, seminars and study visits).

*Box 26.1 EU agencies open to Ukraine, Moldova and Georgia**

European Agency for Safety and Health at Work (EU-OSHA)

European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

European Asylum Support Office (EASO)

European Aviation Safety Agency (EASA)

European Centre for Disease Prevention and Control (ECDC)

European Chemicals Agency (ECHA)

European Defence Agency (EDA)

European Environment Agency (EEA)

European Fisheries Control Agency (EFCA)

European Food Safety Authority (EFSA)

European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)

European GNSS Agency (GSA)

European Institute for Gender Equality (EIGE)

European Maritime Safety Agency (EMSA)

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

European Network and Information Security Agency (ENISA)

European Police College (CEPOL)

European Police Office (Europol)

European Union Institute for Security Studies (EUISS)

The European Union's Judicial Cooperation Unit (Eurojust)

* Bold text denotes agencies with which Moldova already has ongoing cooperation.

*Box 26.2 EU programmes open to Ukraine, Moldova and Georgia**

Asylum, Migration and Integration Fund

Copernicus, European Earth Observation Programme

Competitiveness of Enterprises and SMEs (COSME)

Creative Europe, Programme for the cultural and creative sectors

Customs 2020

Erasmus+

European Maritime and Fisheries Fund

European Statistical Programme

European Territorial Cooperation

Fiscalis 2020 (tax administration support)

Galileo and EGNOS Programmes, global satellite navigation system

Health for Growth

Hercule III Anti-fraud Programme

Horizon 2020

Internal Security Fund

Life Programme, Environment and climate change

Pericles 2020, programme for the protection of the euro against counterfeiting

SESAR JU on modernisation of air traffic management

European Union Civil Protection Mechanism

* Bold text denotes programmes with which Moldova already has ongoing cooperation.

Such participation offers a useful means of in-depth integration of professional experts and administrative organisations with EU counterparts, and aids reform processes.

Membership of an agency requires negotiation of a specific international agreement, and a decision on the financial contribution of the partner. Participation in a programme is carried out on the basis of a protocol or specific Memorandum of Understanding stating the details of participation. The participation of Moldova in these EU agencies and programmes is subject to regular dialogue and review.

Membership of the agencies and inclusion in programmes gives full access to the infrastructure and governing bodies, but also involves costs. To ease the financial burdens on Moldova, the EU can negotiate temporary rebates. Moldova is also able to pay up to 50% of membership fees from EU aid funds. The process of participating in various programmes, such as in research projects under Horizon 2020, can be extremely competitive, but Moldovan institutes will normally be joining consortia and counterparts in EU member states in these initiatives.

Moldova has concluded cooperation agreements or working arrangements with agencies concerned with judicial cooperation (Eurojust), police cooperation (Europol) and border management (FRONTEX), and has signed a letter of intent with the European Environment Agency. Moldova is also negotiating working arrangements with the agency concerned with aviation security (EASA).

In terms of programmes, the Moldovan authorities have completed the legislative procedures for joining Horizon 2020 for research and innovation (2014–20).²⁰⁰ The responsible contact points are under the lead of the Moldovan Academy of Sciences. According to the Ministry of Foreign Affairs and European Integration, over 130 projects were submitted to the programme, involving 180 participants from Moldova. Of this number, 15 were successful; the competition for Horizon 2020 projects is tough for all participants.²⁰¹

²⁰⁰ The agreement on participation in Horizon 2020 was ratified through Law No. 142 of 17 July 2014.

²⁰¹ See the Ministry of Foreign Affairs and European Integration (www.mfa.gov.md/participarea-programele-ue/).

Moldova became the first country from the Eastern Partnership to join the programme on competitiveness for small and medium-sized enterprises (COSME 2020).²⁰²

Moldova has also joined the Creative Europe programme²⁰³ aimed at supporting the cultural and creative sectors for which the Ministry of Culture is responsible. In this context, the Creative Europe Desk was established in Chişinău, in order to conduct training courses, seminars and consultations related to culture.²⁰⁴

Since 2015, Moldova has participated in the Erasmus+ programme 2014–20, which creates opportunities for cooperation in education, training, youth and sport, coordinated by the National Erasmus+ Office in Moldova.²⁰⁵ Moreover, Moldovan educational institutions are now eligible for Credit Mobility (KA1) and Capacity Building (KA2). In the context of KA1, Moldovan participants became eligible for mobility projects organised by 24 universities from 13 countries. For the academic year of 2015–16, 400 mobility applications from Moldova were accepted and three capacity-building projects for Moldovan universities, worth €3 million, were approved by the European Commission under KA2. Various projects involving universities, schools and teachers from Moldova are implemented through the Jean Monnet Programme, TEMPUS and e-twinning (the Community for Schools in Europe).²⁰⁶

An agreement on participation in the (multiannual) Third EU Action Programme on Health for economic development is under negotiation.²⁰⁷

²⁰² The Agreement for participation in COSME was ratified through Law No. 21 of 27 February 2015.

²⁰³ The Agreement for participation in Creative Europe was ratified through Law No. 60 of 9 April 2015.

²⁰⁴ See the Ministry of Foreign Affairs and European Integration.

²⁰⁵ See www.erasmusplus.md/en/article/about-programme.

²⁰⁶ See the Ministry of Foreign Affairs and European Integration.

²⁰⁷ Horizon 2020 and Erasmus+ are dealt with in more detail in the chapters on science and education, respectively.

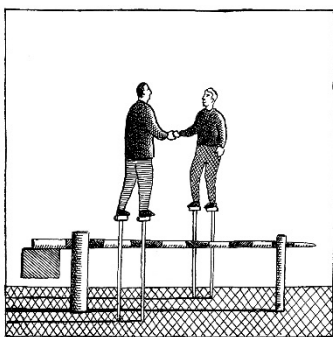
EU agencies and programmes at a glance

There are extensive possibilities for inclusion in EU agencies and programmes, with the potential to develop institutional capabilities and advance policy reforms.

Moldova is taking up a considerable number of these possibilities, which relate to important aspects of the country's modernisation and integration with Europe, for example on health and safety standards, policing and justice, research, education and culture.

The EU offers financial assistance to contribute to the costs of participation.

27. CROSS-BORDER COOPERATION



Moldova's borders with Romania and Ukraine offer important opportunities for enhanced cooperation at the regional level. The Association Agreement calls for cross-border cooperation in general terms, and in specific sectors such as transport, energy, education, tourism and health. The EU offers substantial funding for projects, notably through land border programmes between regions in Moldova, Romania and

Ukraine, which have three rather general priority areas: increasing competitiveness, facing environmental challenges and people-to-people cooperation.

Since 2007, the EU has spent over €1 billion on 15 cross-border and regional cooperation programmes in its eastern and southern neighbourhoods.

The links between the border regions of Moldova and Romania are naturally of great significance, given the commonalities of language, culture and history between the two countries. In 2009, the two countries signed an agreement on local border traffic based on Regulation (EC) 1931/2006 on local border traffic at the external land borders of EU member states. The agreement offers advantages to Moldovan citizens residing within 50 km of the Romanian–Moldovan border: they are entitled to apply for permits, which have the same duration as the passport and which allow them to visit the border area of Romania for up to 15 days at a time. Cross-border movements have become even easier since then, however, thanks to the scrapping in 2014 of short-term visa requirements for Moldovan citizens visiting Romania and the rest of the Schengen area.

The regions eligible for cross-border cooperation projects and programmes vary, which can lead to the involvement of either Moldova and Romania or Ukraine separately, or regions from all three countries together. For Moldova, however, given its small territorial size, the entire country is covered. Both public stakeholders and civil society organisations are eligible to submit applications. Eligible regions of Romania and Ukraine are indicated in Box 27.1.

Box 27.1 Regions of Moldova, Romania and Ukraine participating in cross-border cooperation

Moldova: Entire country

Romania: Counties of Suceava, Botosani, Iasi, Vaslui, Galati and Tulcea

Ukraine: Oblasts of Odessa, Vinnytsya and Chernivtsi

Moldova, together with Romania, is included in the Land Border Programmes of the European Neighbourhood Policy, with a programme for 2014–20 able to direct €81 million to projects.²⁰⁸ This follows the Romania–Ukraine–Moldova programme for 2007–13. The new programme envisages four thematic objectives: i) supporting education, R&D and innovation; ii) promoting local culture; iii) improving access to the regions and developing cross-border transportation; and iv) addressing common security and safety issues (access to health services, prevention of natural or man-made disasters, fighting organised crime and corruption). These thematic objectives were defined by interviewing local stakeholders from both Romanian and Moldovan regions.

Specific projects concern cross-border trade, gas and electricity network connections, cooperation over emergencies and river basin environments (see Box 27.2 for details). In addition, the EU funds the Border Assistance Mission (EUBAM) on the Transnistrian frontiers with both Ukraine and Moldova (see chapter 2).

As part of the Eastern Partnership Territorial Cooperation Programmes (EaPTC), a Moldova–Ukraine Programme was approved in October 2014, with a budget of €3 million. It seeks to promote

²⁰⁸ See the Joint Operational Programme Romania–Republic of Moldova 2014–20.

cooperation between border regions as well as social and economic development.

Another important programme entailing cross-border cooperation, which includes Moldova, is the Black Sea Basin Programme for 2014–20 covering regions of the EU member states bordering the Black Sea (Bulgaria and Romania), as well as some regions of Turkey and Russia, along with Ukraine, Moldova, Georgia and Azerbaijan. The programme's goal is to support sustainable growth and joint environmental protection in the Black Sea region (e.g. through the joint reduction of marine litter).

Box 27.2 Romania–Ukraine–Moldova cross-border projects, 2007–13

- Improvement of cross-border cooperation petroleum and food products (Romania and Moldova, €3 million)
- Improvement of the response capacity of Mobile Emergency Service for Resuscitation and Extrication (SMURD) through a joint integrated system for efficient monitoring and disaster consequences mitigation in common border regions (Romania, Moldova and Ukraine, €6 million)
- Pipeline interconnection between the natural gas transmission systems of Romania and Moldova on the Iași (Romania)–Ungheni (Moldova) border (€7 million)
- Inventory, Assessment and Remediation of Anthropogenic Sources of Pollution in the Lower Danube Region (Ukraine, Romania and Moldova, €5 million)
- Feasibility Study on Synchronous Interconnection of Ukrainian and Moldovan Power Systems to the Continental ENTSO-E European Power System (Romania, Moldova and Ukraine, €6 million)
- Prevention and protection against floods in the upper Siret and Prut River Basins, through the implementation of a modern monitoring system with automatic stations - EAST AVERT (Romania, Moldova and Ukraine, €8 million).

Source: Romania–Ukraine–Republic of Moldova Cross-border Cooperation (www.ro-ua-md.net/).

Moldova also participates in the Danube Transnational Programme, with a €5 million budget earmarked for Moldova from the overall budget of €263 million allocated to the entire region for the

period 2014–20. This programme aims to ensure a better governed, more connected and responsible Danube River Basin through energy, environmental and cultural projects.

Cross-border cooperation at a glance

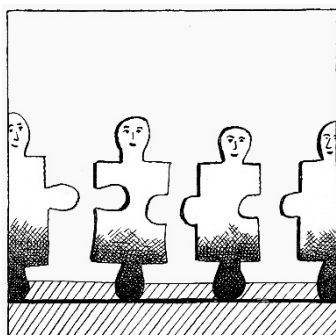
Moldova's borders with Romania and Ukraine create opportunities for business, social and cultural cross-border exchanges at the regional level.

The EU contributes substantial funding to such cross-border cooperation initiatives.

The Moldovan–Romanian border is of special significance because of the linguistic, cultural and historical commonalities between the two countries.

Concrete projects include those enhancing regional emergency services, river management, and energy and transport connections.

28. CIVIL SOCIETY



Moldova's civil society has engaged in active policy dialogue with the authorities, especially since the 2009 parliamentary elections. There are now more than 7,400 registered NGOs in Moldova, but only a quarter of them have been active in the last three years. These NGOs cover issues such as education, development, democracy and human rights, social services, youth and culture. Among them, the most

active are think tanks and associations working in areas related to democracy, electoral behaviour, human rights and social assistance. There are no legal restrictions for citizens from the Transnistrian region to register a NGO, but those from the right bank cannot do the same in the Transnistrian region. A limited number of NGOs function as a watchdog, monitoring reform in Moldova and pressuring the government on progress. Overall, however, civil society still lacks the resources and capacities to become a strong driver of change.

Moldova's NGOs are united at the national level under the umbrella of the National Council of NGOs, which includes 117 members covering various areas. Since 1997, there has been an NGO Forum that meets intermittently (the last meeting was held in June 2013), bringing together representatives of the public, private and non-governmental sectors, including the donor community. In addition, there are mechanisms to include NGOs in the decision-making process, such as the National Participatory Council at the government level, where groups are organised according to specific policies. Yet frequent political crises have seriously undermined the role of the National Participatory Council and led to the temporary suspension of its activities in 2015.

After 2009, many civil society representatives joined political parties or became public servants. They were replaced by a new generation of experts who have been taking leading roles in various areas (the economy, justice, human rights, etc.). The current trend is a reverse flow from the public sector back to NGOs and business. According to public polls, support for civil society among citizens is strengthening, and is much higher than for political parties.

The EU has long supported Moldovan civil society, which for the period 2014–17 will receive 5% of the EU's financial support to Moldova. The formal frameworks of cooperation between Moldova's civil society and the EU consist of three parallel but overlapping platforms. These are the multilateral Civil Society Forum of the Eastern Partnership, the bilateral Civil Society Platform established under the Association Agreement and the DCFTA-related Advisory Group. The procedures for submitting projects to the EU are generally considered to be too bureaucratic and difficult, however.

(Multilateral) Civil Society Forum of the Eastern Partnership.

One of the major avenues for the EU to engage Moldova's civil society has been the multilateral Civil Society Forum, established before the Association Agreement was signed in 2009. The Forum brings together members of civil society from all six countries with individual country platforms included in the Eastern Partnership. In 2014, the Moldovan National Platform consisted of 40 registered organisations. Platform members actively participate in all working groups and subgroups of the Civil Society Forum. However, the procedures for submitting projects to the EU are largely considered very bureaucratic and difficult.

(Bilateral) Civil Society Platform of the Association Agreement.

The Civil Society Platform was established under Art. 442(2) of the Agreement, and the initiative has created some confusion with the Moldovan National Platform in the Civil Society Forum. The Agreement states that the Platform

shall be a forum to meet and exchange views for, and consist of, representatives of Civil Society on the side of the EU, including Members of the European Economic and Social Committee (EESC), and representatives of civil society on the side of the Republic of Moldova (Art. 442 (2)).

Although the Agreement envisages that civil society would make up the platforms, the EESC pushed for a tripartite (unions, employers and government) structure. Civil society organisations, especially those working on human rights and democracy issues,

argued for the need to go well beyond the EESC's conception of social dialogue. Criticism of the civil society organisations eventually led to a platform of nine members, with three members each from civil society, trade unions and employers. The first platform representatives were elected for a two-year mandate. The first meeting with European counterparts in the EESC took place on 10 May 2016, and was attended by representatives from civil society, trade unions and employers. The main issues discussed at the meeting were progress in judicial reform and the situation in the banking sector.

Advisory Group of the DCFTA. Moldovan civil society also participates in the monitoring of the DCFTA through an Advisory Group. The European Commission's Directorate-General for Trade has adopted the general practice of consulting with civil society organisations over its free trade agreements. The Advisory Group includes NGOs and representatives of employers and trade unions. They are expected to meet once a year in a Joint Civil Society Dialogue Forum to discuss issues related to sustainable development. Although the Agreement encourages an exchange of views on the implementation of the DCFTA, the technical knowledge on the part of the civil society organisations is rather low on such matters. The involvement of civil society organisations in EU-financed projects (TAIEX and twinning) for state institutions would contribute to building the capacity of civil society in particular areas (services, energy and intellectual property rights).

Overall, the dialogue between authorities and civil society lacks trust, and is fragmented by frequent political instability. The biggest challenges for Moldovan civil society itself are the scarcity of human resources in specific areas (such as social assistance and e-governance) and its high degree of dependence on external assistance, which raises questions about their credibility as 'consumers of grants'. To improve the sustainability of civil society organisations, changes to the law of 1996 on non-governmental associations and the Fiscal Code were made in 2014, allowing certain fiscal concessions in relation to NGOs and religious associations. But the amendments to the law had not been put into practice by May 2016.

Civil society at a glance

Civil society in Moldova has been active in advocating democracy, human rights and social protection since the country's independence, but the number of active NGOs is small.

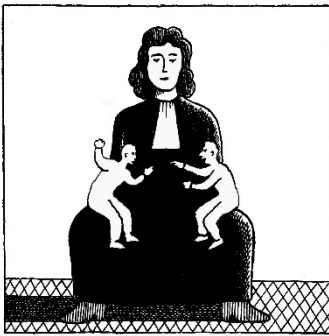
There are no restrictions on the registration or activities of non-governmental organisations as long as they comply with the national legislation.

The EU supports Moldovan civil society organisations as drivers of democratic change in the country and as watchdogs of the government's activities.

Unfortunately, the EU's structured cooperation with Moldovan civil society entails several overlapping platforms, which creates some confusion and hinders efficiency.

PART IV.
LEGAL AND INSTITUTIONAL
PROVISIONS

29. DISPUTE SETTLEMENT



The Agreement has two different dispute settlement mechanisms (DSM), one that covers disputes related to the Agreement in general but excluding the DCFTA, and another more detailed one that covers the DCFTA itself.

The general dispute settlement mechanism

This mechanism is defined in quite simple terms in Arts 454 and 455 of the Agreement. It concerns disputes over the interpretation, application or implementation of the non-DCFTA parts of the Agreement. It is based on a traditional ‘diplomatic’ approach, in which the Association Council has the key role.

A party can initiate this DSM by sending a formal request to the other party and the Association Council. The parties will then try to resolve the dispute by entering into ‘good faith’ consultation within the Association Council or other relevant bodies (i.e. the Association Committee, or a specific subcommittee). The Association Council can eventually settle the dispute, after a consultation period, by way of a binding decision. Because the Association Council takes decisions “by agreement”,²⁰⁹ both the EU and Moldova would need to approve the decision to resolve the dispute.

As long as the dispute is not resolved, it must be discussed at every meeting of the Association Council. If an agreement cannot be reached in the Association Council within three months, the complaining party is allowed to take “appropriate measures”, such as

²⁰⁹ See Art. 438(3), EU–Moldova Association Agreement.

the suspension of parts of the Agreement, but not of the DCFTA (except in the special case of violations of the “essential elements” of the Agreement – see below). When selecting appropriate measures, priority must be given to those that least disturb the functioning of the Agreement.²¹⁰

The “essential elements” clause. As in other Association Agreements concluded by the EU, the EU–Moldova Agreement includes a suspension clause (in Art. 455(3)) relating to “essential elements” of the Agreement (defined in Art. 2). This refers to “[r]espect for democratic principles, human rights and fundamental freedoms” as defined in several international agreements and conventions, and countering the proliferation of weapons of mass destruction.

In the event of violation of these fundamental principles, the complaining party can immediately suspend the Agreement, including rights and obligations under the DCFTA.

In practice, the EU very rarely uses these suspension clauses. If a reaction by the EU is required to address a specific human rights situation on the territory of the partner country, the EU prefers to act through diplomatic means (e.g. in the Association Council or annual summit meetings) or by using limited restrictive measures, such as arms embargoes, asset freezes or visa bans. The total suspension or termination of an Agreement is viewed as the ‘nuclear’ option – best not used.

The DCFTA dispute settlement mechanism

Arbitration. For disputes concerning the interpretation and application of DCFTA provisions, a separate and more sophisticated DSM is laid down in a long and detailed chapter (Arts 380–406) of the DCFTA. The mechanism is largely inspired by the WTO Dispute Settlement Understanding. If there is a dispute regarding the interpretation and application of DCFTA provisions, the parties shall first seek to come to an agreement through consultations.

If these consultations fail, the complaining party may request the establishment of an arbitration panel to rule on the dispute. The panel

²¹⁰ The requirement of a three-month consultation period and the condition that the measures may not include the suspension of any DCFTA rights or obligations do not apply in the case of violation of the essential elements referred to in Art. 2 of the Association Agreement (and further explained below).

must comprise three arbitrators chosen by the parties. The arbitrators must be independent, serve in their individual capacity, not take instructions from any government and comply with a Code of Conduct annexed to the Agreement. One party cannot block the establishment of an arbitration panel, because if the parties cannot agree on the composition of the panel, the panellists will be drawn by lot from a permanent list of arbitrators.²¹¹

The arbitration panel rulings are binding and each party must take the necessary measures to comply with them. If the party to whom the complaint was addressed fails to comply without offering at least temporary compensation, the other party is entitled to suspend obligations arising from the DCFTA at a level equivalent to the violation (e.g. by re-imposing the tariff on specific products). Again, in practice the EU very rarely relies on the DSM in its free trade agreements to resolve a trade dispute. It prefers to use diplomatic means (e.g. by discussing this in bilateral meetings, such as the Association Council or in unilateral statements) or in some cases, the WTO Dispute Settlement Understanding.

This DCFTA DSM is without prejudice to possible dispute settlement under the WTO. However, the parties are not allowed to pursue dispute settlement under both systems at the same time.

The DCFTA DSM includes several specific features. First, some elements of the DCFTA are excluded from this DCFTA DSM, such as parts of the chapter on trade remedies,²¹² and the provisions on antitrust and mergers.²¹³ Second, as regards energy disputes, the DCFTA DSM allows for quicker procedures if one party considers that dispute settlement is urgent because of an interruption to the transport of gas, oil or electricity, or a threat to their supply. This procedure should allow the parties to react swiftly to potential future energy disputes. Third, there is a procedure that obliges the arbitration panel to ask the Court of Justice of the European Union (CJEU) for a binding preliminary ruling when there is a dispute concerning the interpretation and application of EU law (i.e. EU legislation annexed to

²¹¹ The Trade Committee has to establish a list of 15 experts who are willing and able to serve as arbitrators. Each of the parties has to propose five individuals and the two parties must also select five individuals who are not nationals of either party to act as chairpersons of the arbitration panel.

²¹² See Art. 158(3) and 161(3) EU-Moldova Association Agreement.

²¹³ See Art. 338 EU-Moldova Association Agreement.

the Agreement).²¹⁴ This procedure seeks to ensure a uniform interpretation and application of the Agreements annexed EU legislation, without jeopardising the exclusive jurisdiction of the CJEU to interpret EU law.

Mediation. A separate lighter mechanism is included (in Annex XXXII) for ‘mediation’ rather than ‘arbitration’, which the parties can use to tackle market access problems, including non-tariff measures. This mechanism functions through the appointment of a single mediator who can advise and propose a non-binding solution within 60 days. The aim of the mediation is not to review the legality of a measure, but to find a quick and effective solution to market access problems without recourse to litigation. If the solution is agreed by the two parties it will be adopted as a decision of the Trade Committee. This mediation mechanism does not exclude the possibility, if a solution is not agreed, to have recourse to the dispute settlement mechanism with arbitration.

Transparency. In addition, the DCFTA includes a chapter on transparency (in Arts 355 to 362). Moldova has to establish “an effective and predictable regulatory environment for economic operators and efficient procedures, taking due account of the requirements of legal certainty and proportionality”. For example, laws, regulations, judicial decisions and administrative rulings that have an impact on the Agreement (i.e. measures of general application) must be published and communicated properly and in a timely manner. A contact point has to be established that responds to enquiries from interested people regarding such measures of general application (proposed or in to force). This chapter includes rules on administrative and ‘review and appeal’ procedures. According to the latter, each party must establish or maintain impartial and independent courts, or other independent tribunals or procedures, for the purpose of the prompt review, and where warranted, the correction of administrative actions in areas covered by the DCFTA.

²¹⁴ See Art. 403 of the EU-Moldova Association Agreement.

Dispute settlement, mediation and transparency at a glance

There are two basic mechanisms for dispute settlement: a 'general' one applicable to all parts of the Agreement except the DCFTA, and a second one applicable to the DCFTA itself.

The general mechanism relies on the two parties finding a mutually agreed solution in the Association Council, failing which the aggrieved party may take 'appropriate measures'.

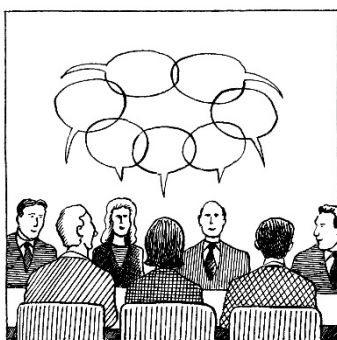
For DCFTA-related disputes there is a more elaborate system that provides two alternative tracks: either binding arbitration or softer mediation for consensual solutions.

There is also provision for the special case of violation of the 'essential elements' of the Agreement (i.e. basic political principles), which can lead to the suspension of the entire Agreement.

In practice, these procedures are rarely used because the EU prefers the diplomatic approach to resolving disputes.

The DCFTA rules on transparency oblige Moldova to establish and maintain a transparent and predictable legal environment in which to do business.

30. INSTITUTIONAL PROVISIONS



The EU-Moldova Association Agreement has largely been applied in a provisional form since 1 September 2014 and it entered fully into force on 1 July 2016. The institutional arrangements for reviewing and controlling the implementation of the Agreement are well developed.

Ratification and provisional application. After the Association Agreement was signed on 27 June 2014,

several procedural steps were required before it could enter into force. Not only had the European Parliament to give its consent (which it did on 13 November 2014), the ratification of all the 28 EU member states was also required because the Association Agreement is a ‘mixed agreement’ (i.e. it includes provisions falling under the competences of EU member states). To avoid ratification delays, the EU and Moldova agreed to apply large parts of the Agreement provisionally from 1 September 2014, namely most provisions that fall within the EU’s competences, such as almost the entire DCFTA and many chapters on general principles, political dialogue, the rule of law and numerous items of sectoral cooperation. Once all the EU member states, the EU itself and Moldova ratified the Agreement, it entered into force on 1 July 2016.

Institutional framework. The Agreement establishes a comprehensive institutional framework, which will play a crucial role in the monitoring and implementation process.

The key institution is the Association Council, composed of members of the EU Council and Commission on the one hand, and members of the government of Moldova, on the other. The Association

Council must meet at least once a year at ministerial level, and is the core institution to monitor the application and implementation of the Agreement. It must also examine any other major issues in the relationship between the two parties. For example, the latest Association Council meeting on 14 March 2016 discussed, inter alia, Moldova's progress in implementing the Agreement, the political crisis in the country and the peaceful settlement of the Transnistrian conflict.²¹⁵

The Association Council can take "binding" decisions where provided for by the Agreement. This means that the EU (and its member states) and Moldova are obliged to implement these decisions. It can also adopt non-binding recommendations. Both decisions and recommendations are taken by consensus between the parties.

The Association Council is assisted by an Association Committee, composed of representatives of the parties at senior official level, which in turn is assisted by specific subcommittees. The Association Council adopted rules of procedure for itself and the Association Committee²¹⁶ and established subcommittees on freedom, security and justice, and on economic and sectoral cooperation.²¹⁷ The Agreement already established a Trade Committee to address all issues related to the DCFTA,²¹⁸ complemented by several subcommittees (e.g. on SPS, customs, and trade and sustainable development).

Finally, the Agreement established a Parliamentary Association Committee, consisting of Members of the European Parliament and the parliament of Moldova, which has met twice, most recently in Chişinău in May 2016. The Agreement also envisages a Civil Society Platform that had the first meeting with the EESC in Brussels on 10 May 2016 (see chapter 28).

Dynamic approximation. These joint institutions also play a crucial role in the process of Moldova's (dynamic) approximation of EU legislation (i.e. the continuous updating of the list of EU directives or

²¹⁵ See the Joint Press Release following the second Association Council meeting between the European Union and the Republic of Moldova, 14 March 2016.

²¹⁶ See Decision 1/2014 of the Association Council adopting its Rules of Procedure and those of the Association Committee.

²¹⁷ See Decision 2/2014 of the Association Council adopting on the establishment of two subcommittees.

²¹⁸ See Art. 438(4) EU-Moldova Association Agreement.

regulations in the many annexes to the Agreement in light of relevant legislative developments in the EU itself). As indicated in previous chapters, numerous EU acts listed in the annexes of the Agreement have already been replaced or amended in the EU; thus, the Agreement allows the Association Council to update or amend the annexes, “including to take into account the evolution of EU law”.²¹⁹ However, because the Association Council decides by consensus, both the EU and Moldova need to agree on the updating of the annexes and several chapters of the DCFTA include specific provisions to update the annexed EU legislation (e.g. on SPS, services and public procurement). The Association Council has delegated to the Trade Committee the competence to amend or update the DCFTA annexes related to export duties, safeguard measures on passenger cars, technical barriers to trade, customs and trade facilitation, services and public procurement.²²⁰

While the Association Council has broad powers to amend the annexes, it cannot change the main body of the Agreement, since, being a Treaty, this would once again require the complex procedures of ratification according to the internal procedures of the EU and Moldova.

Institutional provisions at a glance

The Association Agreement has largely been provisionally applied from 1 September 2014 and it fully entered into force on 1 July 2016.

A comprehensive joint institutional framework will monitor the implementation of the Agreement and provides a platform for political dialogue.

The Association Council has a broad competence to amend the annexes of the Agreement, but not the main body of the Agreement.

²¹⁹ See Art. 436(3) and 449 EU-Moldova Association Agreement.

²²⁰ See Decision 3/2014 of the Association Council on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration.

The signing of the Association Agreement and DCFTA between Moldova and the European Union in 2014 was a strategic political act to deepen the realisation of Moldova's 'European choice'. Of all the EU's eastern neighbours, Moldova is objectively the most European on several accounts, including sharing a common history, language, culture and border with its direct neighbour and now EU member state Romania. This signifies highly positive foundations for making a success of the Agreement, notwithstanding the major political and economic challenges that contemporary Moldova faces.

The purpose of this Handbook is to make the legal content of the Association Agreement clearly comprehensible. It covers all the significant political and economic chapters of the Agreement, and in each case explains the meaning of the commitments made by Moldova and the challenges posed by their implementation.

A unique reference source for this historic act, this Handbook is intended for professional readers, namely officials, parliamentarians, diplomats, business leaders, lawyers, consultants, think tanks, civil society organisations, university teachers, trainers, students and journalists.

The work has been carried out by two teams of researchers from leading independent think tanks, CEPS in Brussels and the Expert-Grup in Chişinău, with the support of the Swedish International Development Agency (Sida). It is one of a trilogy of Handbooks, with the other two volumes examining similar Association Agreements made by the EU with Ukraine and Georgia.

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