

Position Paper

What are the progresses recorded per three
essential conditions for the inception of EU-
Moldova
Negotiations:
Justice, Anticorruption, De-oligarchisation

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Context

On November 8th 2023, the European Commission presented the enlargement package, assessing the progresses achieved by a number of countries¹, including the Republic of Moldova, which acquired the status of candidate country together with Ukraine in 2022. In this context, the EU suggested inception of accession negotiations with both countries, setting a range of conditionalities containing essential requirements to be fulfilled. For the Republic of Moldova these are related to the areas of justice, fight against corruption and the de-oligarchisation, considerable progress being required per all of these. Fulfilment of these conditions is a pre-condition for the inception of the accession negotiations with the EU, and the European Commission announced they should report the progress attained by March 2024.²

9 conditionalities for the attribution of the candidate country status to the Republic of Moldova in 2022 ³	Status
1. justice reform	in progress
2. electoral framework	fulfilled
3. fighting against corruption	in progress
4. de-oligarchisation and diminution of the private interests' influence	in progress
5. fighting against organised crime and money laundering	fulfilled
6. improvement of public services, public administration reform	fulfilled
7. public finance management	fulfilled
8. civil society engagement in the decision-making	fulfilled
9. Human rights.	fulfilled

This position paper analyses the progress versus the remaining outstanding measures. The presented data reflect the situation until 1 March 2024.

Three “essential preconditions” for the inception of the EU-Moldova negotiations

#1 Justice reform
Moldova must ensure a transparent and merit-based process for appointments in the main bodies of self-governance in the judiciary [Superior Council of Magistracy] ⁴ and in the prosecution area [Superior Council of Prosecutors], including for the appointment of a new Prosecutor General . ⁵

Superior Council of Magistracy

The new structure of the Superior Council of Magistracy (SCM), as of April 2023, currently includes 10 out of 12 members as stipulated by law: four judges from the level one courts of law, one judge representing the Appellate Courts, from the previous SCM competence and five non-judges' members. The new SCM members were selected after the pre-vetting procedures' phase, in a transparent and merit-based manner: the judges were selected during the General Assembly of Judges (GAJ), and the non-judge members were selected through a public contest launched by the Parliament⁶. The SCM still requires two more judge members, one from the

¹The Report will refer to ten countries: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia, Turkey, Republic of Moldova, Ukraine and Georgia.

² https://ec.europa.eu/commission/presscorner/detail/en/IP_23_5633.

³ For a detailed analysis of these 9 conditionalities and the level of attainment thereof, please check the joint report by Expert-Grup, IPRE and LGCM: <https://9pasi.euromonitor.md/ro>.

⁴ Note by the author (n.a.).

⁵ Excerpt from the Report of the European commission, „Republic of Moldova 2023 report” SWD (2023) 698 final, available online at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_698%20Moldova%20report.pdf.

⁶ Pre-Vetting, in relation to the activity of the Evaluation Commission, represents a process of verifying the integrity of judges and prosecutors applying for functions in the Superior Council of Magistracy (SCM) and the Superior Council of Prosecutors (SCP) - by a body consisting of national and international experts that are not part of the Moldovan judicial system and that must analyze and determine whether the candidates had a conduct

Appellate Court and one from the Supreme Court of Justice (SCJ), to be appointed by GAJ and one non-judge member appointed by the Parliament. During the reunion held on 1 March 2024, GAJ selected the judge Aliona Miron⁷, who also passed the Pre-vetting Commission re-evaluation as member of SCM.

Thus, one more last member must be designated on behalf of the Appellate Courts to ensure a full compeance of the SCM. However, even in the current compeance, the SCM is already functional and representative, having the quorum also for major decisions related to the career of judges (such as the re-confirmation in the function or the re-appointment, requiring 2/3 of votes). For example, in October 2023, the SCM implemented major transformations of the judiciary, including the transfer of 17 judges to Chisinau for either personal or professional reasons, and it redistributed staffing positions from the SCJ towards other courts of law. Also in October 2023, the SCM accepted the applications for the reconfirmation of four judges in their positions. In November 2023, the new compeance of SCM successfully organised the first contest for the appointment of judges according to the new law on selection, with a total number of 80 candidates applying for 15 vacant positions, using a weighted system of evaluation.

We may thus conclude the conditionality set by the European Commission in this regard has been fulfilled.

Superior Council of Prosecutors

The Superior Council of Prosecutors (SCP) consists of 10 members. On 22 December 2023, the General Assembly of Prosecutors (GAP) resumed its activity after a break since August 2023, in order to select five candidates for the SCP. Regardless of the contestations related to the pre-vetting process, GAP took place with the participation of more than 500 prosecutors. Based on the votes, five new members were selected as new members of the Council (career prosecutors), and Dumitru Obada was elected as President of SCP⁸. At 28 February 2024, the SCP compeance was supplemented with one more member, appointed by the Government, representative of civil society that passed the pre-vetting⁹. Starting with 1 March 2024, the SCP is totally functional and in full compeance. The SCP in the new compeance with a six-year mandate will be responsible for the assurance of the prosecution system administration, including the election of a new Prosecutor General.

We may thus conclude the conditionality set by the European Commission in this regard has been fulfilled.

The Supreme Court of Justice

The Supreme Court of Justice (SCJ) is currently in a transition process, with only three judges from the previous compeance remaining in function. To ensure an uninterrupted activity of the SCJ, the SCM arranged for a temporary transfer of judges from other courts of law, thus getting to a total number of 11 active judges (three from the old compeance and 8 transferred temporarily from other courts of law)¹⁰. In the time interval January - February 2024, the Vetting Commission evaluated at least 11 candidates for the vacant positions in the SCJ. The first promotion reports of the Commission included the candidates Aliona Miron, Viorica Puica and Sergiu Brigai, the last decision of the SCM being issued on 27 February 2024. According to the Law on SCJ,¹¹ within maximum two weeks since the first three candidates passed the evaluation, the SCM must carry out the competition for the positions of judges.

compatible with the professional ethics throughout their activity, whether they did adopt any arbitrary rulings, whether they did admit any conflict of interests, whether they duly declared their assets and whether it corresponds to their revenues. For more information: <https://vetting.md/informatii-generale/>.

⁷ https://vetting.md/wp-content/uploads/2023/12/Decizie-Re-evaluare_A.Miron_.pdf.

⁸ <https://www.csp.md/index.php/dumitru-obada-fost-ales-calitate-de-presedinte-al-consiliului-superior-al-procurorilor>.

⁹ Mihail Sorbala, <https://vetting.md/audierea-publica-a-lui-mihail-sorbala>.

¹⁰ <https://www.csj.md/index.php/despre-curtea-suprema-de-justitie/judecatorii-curtii-supreme-de-justitie>.

¹¹ Parliament, Law no. 65/2023, article 21 (final and transitory provisions), para. (5).

It is highly improbable that the SCJ will have these 11 new judges in place until the end of the reporting period. A realistic prognosis for the appointment of eight new judges would be no earlier than April or May 2024, depending on the celerity of the extraordinary evaluation process. As for the status on 29 February 2023, the Commission has reports “in preparation” regarding at least 26 candidates¹².

We may consider that this conditionality imposed by the European Commission in this regard is partially fulfilled.

Appointment of a new Prosecutor General

The Prosecutor General was close to being designated. At 22 February 2023, the Superior Council of Prosecutors (SCP) organised interviews for this position¹³. Octavian Iachimovschi, the current deputy anticorruption prosecutor, acquired the highest score of 8.53, overcoming the other three candidates: Igor Demciucin with 8.19, Ion Munteanu with 8.16 and Andrei Coca with 4.72.¹⁴ The SCP reconvened on 26 February and, subsequently, on 28 February 2024 to validate the results of the competition. On 28 February 2024, the SCP withdrew its decision regarding the results of the interviews from the selection process for the position of Prosecutor General.¹⁵ The controversy started after it turned out that one of the SCP members allegedly under evaluated one of the candidates, which might have impacted the final outcome of the selection. Even though the respective SCP member invoked a technical error, this seems to be less credible.¹⁶

Scoring points offered by the SCP											
The candidates	Sergiu Caraman	Veronica Mihailov-Moraru	Aliona Nesterov	Dumitru Obada	Eduard Panea	Elena Rosior	Olesea Virlan	Andrei Cebotari	Svetlana Balmus	Rodica Ciobanu	Medium
Coca Andrei	4.83	5.16	x	6.16	4.66	5.3	3.3	4.66	3.3	5.16	4.73
Demciucin Igor	8	7.83	x	8.5	8.33	7.8	9.3	7.83	8.16	8	8.19
Iachimovschi Octavian	9	8.33	x	9.33	8.16	7.6	7.1	9.33	8.83	9.16	8.54
Munteanu Ion	8.5	9.16	x	9.5	8.83	8.5	3.5*	7.33	9	9.16	8.16

Excerpt, scoring points: <https://csp.md/index.php/comunicat-de-presa-20>.

The contest organised met the transparency requirements. The announcement of the contest, the materials about the candidates and their CVs and letters of intent were available to the public and the interviews of the candidates were published online. Taking into account the underrating allegations, it is obvious that the “merit-based” requirement for the contest failed to be fulfilled.

The annulment of the results of the contest for the position of Prosecutor General is regrettable and represents a throwback in the process of the European integration of the Republic of Moldova. The annulment seems to have been a hasty decision because there could have been identified other steps to address the errors and defects invoked. Appointment of the prosecutor general seems to be impossible in the following two months considering that besides the difficulty of organising a new contest the winner of it shall also have to pass the vetting process. Considering the activity of the Pre-vetting Commission, an evaluation lasts 4.2 months on average¹⁷. Even though the evaluation of the Prosecutor General takes place as a priority, the attainment of this objective is improbable. However, to ensure some advancement in the process of the nomination of the Prosecutor General until the end of March it is important that the SCP announces a new contest after the revision

¹² <https://vettingmd.eu/ro/candidate>.

¹³ https://www.youtube.com/watch?v=hYCXXKPEP_U&ab_channel=ConsiliulSuperioralProcurorilor.

¹⁴ <https://csp.md/index.php/rezultatele-interviului-cadrul-concursului-de-selectie-candidatilor-la-functia-de-procuror-general>.

¹⁵ <https://csp.md/index.php/repere-din-cadrul-sedintei-consiliului-superior-al-procurorilor-din-28-februarie-2024>

¹⁶ <https://www.csp.md/pozitia-membrului-procuror-al-csp-olesea-irilan-privind-concursul-la-functia-de-procuror-general>

¹⁷ Dr. Tilman Hoppe, „International Integrity vetting of public officials” available online: <https://uncaccoalition.org/international-integrity-vetting/>.

of the Regulation of the contest to prevent the potential future errors in the process of the appreciation of candidates, including via the application of the *median score*, as it was recommended by the representatives of the civil society¹⁸.

The conditionality set by the European Commission in this regard is unfulfilled.

#3 Fighting against corruption
Moldova should make sure that the anticorruption institutions operate in a clear organisational structure and with adequate resources. In the upcoming period of time, Moldova should primarily accomplish the following: adopt a new national integrity and anticorruption strategy for 2024 as well as its implementation action plan; finalize the reform of the anticorruption institutional framework , with an emphasis on the institutional capacity strengthening thereof .

National integrity and anticorruption strategy

At the end of December 2023, the Parliament of the Republic of Moldova approved the national integrity and anticorruption programme for 2024–2028¹⁹, accompanied by the Action Plan for the implementation thereof. The purpose of the document is the consolidation of the national efforts in the fighting against corruption and promotion of integrity in the public sector and in the judiciary, in the context of the European integration of the Republic of Moldova.

The program sets the objectives and actions necessary for the prevention and fighting against corruption, aligned to the international standards and priorities of the European Union, including the UN Convention against corruption and the EU-Moldova Association Agenda. The program also aims at getting aligned to the Sustainable Development Goals (SDGs), especially those related to the promotion of peaceful societies, justice for everyone and gender equality. The action plan contains specific measures for the consolidation of institutional integrity, participatory engagement in the development and implementation of public policies, and monitoring of the progress attained in this regard. The responsibility for the monitoring and evaluation of implementation thereof is attributed to the National Anticorruption Centre (NAC).

We may thus conclude the conditionality set by the European Commission in this regard has been fulfilled.

Finalisation of the anticorruption institutional framework reform - Anticorruption Prosecution Office and the National Anticorruption Centre

At 24 November 2023, the Parliament adopted a law²⁰ for the modification of the Penal Procedure Code, aiming at the consolidation of capacities of the Anticorruption Prosecution Office (APO) for the detection, investigation and penal investigation of grand corruption. This legislative reform, supported by 60 members of the Parliament, is a follow-up of a law adopted in summer the same year, that clarifies the distinction in the competences of the APO and NAC related to the grand corruption cases' investigations.

The modifications are enforceable as of 1 March 2024 and provide the APO with the prerogative of leading the penal investigation for a large spectrum of corruption-related offences perpetrated by high-level officials, including embezzlement, money laundering, illegal financing of political parties and lodging of false or incomplete asset declarations. The anticorruption prosecutors will have the authority to investigate the crimes committed by high-level officials, appointed in their positions through constitutional procedures or appointed by state authorities, such as for example the crimes that involve amounts or values exceeding the established thresholds of 10.000 conventional units (approximately 500.000 MDL) or damages higher than 100.000 conventional units (5 million MDL). In the context of

¹⁸ https://crjm.org/wp-content/uploads/2024/01/2024-01-16-Apel_retragerea-proiectului-491_2023.pdf

¹⁹ <https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/6791/language/ro-RO/Default.aspx>.

²⁰ <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/6725/language/ro-RO/Default.aspx>.

the recent functional separation between APO and NAC as well as for the assurance of the efficient functioning of the APO, there is a plan for supplementing the vacant positions within the APO and the endowment thereof with the necessary technical equipment. Therefore, in the timeframe 1-31 March 2024, the cases investigated by APO or by NAC that will no longer fit into their area of competence according to the new provisions, will be transferred to the Prosecutor General for a decision on their further re-allocation.

We may thus conclude the conditionality set by the European Commission in this regard has been fulfilled.

Institutional capacity building: Anticorruption Prosecution Office

The staffing scheme of the Anticorruption Prosecution Office (APO) of the Republic of Moldova was recently supplemented by 45 units of personnel, pursuant to the adoption of a draft Parliamentary Decision on 1 February 2024, voted by 58 members of the Parliament. The increase in number of employees from 144 to 198 will not affect the number of the anticorruption prosecutors that will remain unchanged, however it will allow hiring of a bigger number of prosecuting officers, investigative officers and senior specialists. This law aims at the increase in the institutional capacities of the Anticorruption Prosecution Office for a more efficient management of corruption prevention and combating measures. The extent to which the vacant position will turn being “supplemented”, accounts for an implementation challenge.

We may thus conclude the conditionality set by the European Commission in this regard has been fulfilled.

Institutional capacity building: National Anticorruption Centre

At the beginning of January, the Parliament initiated the modification of the legal framework related to the activity of the National Anticorruption Centre.²¹ Although it is mainly about a draft for modification of the legislation, actually the entire law on NAC will be subject to a substantial revision. The draft also relates to the social guarantees of the NAC employees but it generally provides for a larger spectrum of institutional capacity-building measures. The draft is currently at the stage of consultations and collection of opinions.

We may appreciate the conditionality expressed by the European Commission in this regard as partially fulfilled.

#4 De-oligarchisation

Moldova should proceed with the updating and implementation of the **action plan for the de-oligarchisation**, including via relevant regulations such as those related to **cash payments and financial flows**. The coordination in place must allow for a **timely revision and completion of the plan as it may be necessary**.

The action plan for the de-oligarchisation

At the beginning of 2023, the Republic of Moldova launched an ambitious action plan for de-oligarchisation, developed in compliance with the recommendations of the Venice Commission²² and subsequently updated for the improvement of the fighting against corruption efficiency. In May 2023, the plan was revised to include new actions and more accurate operational indicators, the number of intervention areas being increased from 7 to 10.²³ These modifications were agreed with the European Commission on 7 December 2023.

The plan includes specific measures for public procurement, privatisation and management of public property, harmonisation of the legislation to the EU directives, detection, investigation and prosecution of grand corruption, including the assurance of a framework that would enable the illicit assets’ recovery. At 1 March 2024, the authorities reported approximately 71% of the objectives from the plan having been attained and the remaining ones are in progress. As a monitoring mechanism, also for the updating of the plan, a working group

²¹ <https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/6807/language/ro-RO/Default.aspx>

²² <https://www.venice.coe.int/webforms/documents/?opinion=1125&year=all>.

²³ https://particip.gov.md/ro/download_attachment/20958.

was created via the order of the Prime-minister of the Republic of Moldova. The Government representatives that are part of this working group take part in the implementation of the plan, also organising monthly meetings to monitor the progress and to report the achievements to the relevant governmental entities and to the European Commission.

Taking into account the fact that March 2024 is the deadline for the majority of the measures from the action plan, we may appreciate the respective conditionality set forth by the European Commission in this regard as being partially fulfilled.

Cash payments and financial flows

At 29 February 2024, the Parliament adopted in the final reading a new legislative framework regarding the cash payments, aiming at the consolidation of the financial transparency and the combating of illegal activities²⁴. The law sets specific limits for cash transactions. According to the current draft, the procurement of real estate in cash may not exceed the value of 100 medium wages per economy, which is approximately 1.37 million MDL in 2024, while the cash limit for vehicles' procurement is set at the volume of 50 medium wages, or circa 685 thousand MDL. Whenever the amount of transactions exceeds these limits, the payment must be performed electronically, although an advance payment in cash of up to 200 thousand MDL will still be allowed. To address the challenges encountered by the banks in the verification of the legality of funds, there is a need for a mechanism for the clients to submit self-declarations. This measure refers to the distribution of the verification responsibility among the state institutions and the financial ones. Also the commission for cash withdrawal for real estate transactions or for buying vehicles will be limited to maximum 0.1% of the total amount, which is a considerable discount compared to the previously applicable fee of approximately 1%.

The implementation of the new legislative provisions for the limitation of cash-based transactions and the implementation of measures for the verification of the financial sources may entail a series of challenges and risks. First, there is a risk that these measures might generate a significant administrative burden both for the banks and for the other types of financial institutions, that will have to adjust their internal systems and procedures to achieve compliance with the new regulatory provisions. Another risks is related to the possibility that the strict regulations of cash-based transactions might encourage emergence of a nonofficial finance sector of the "below-the-counter" transactions, as means of circumventing the new limitations. This might undermine the anti money-laundering efforts and might have as a contrary effect the intensification of illegal activities that the legislation aims at preventing. Moreover, the introduction of the requirement for a self-declaration for the verification of the legality of the funds might not be sufficiently efficient for the prevention of entry of money generated via illegal activities in the financial system.

During the plenary session of the Parliament of 29 February 2023, it seems like the decision was taken that this law should be in force as of the 1 January 2025.

We may thus conclude the conditionality set by the European Commission in this regard has been partially fulfilled.

Conclusion

The Republic of Moldova registered significant progress in the fulfilment of the essential pre-conditions set forth by the European Union for the inception of the accession negotiations. The justice reform, the fight against corruption and the finalisation of the reform of the anticorruption institutional framework have been fulfilled to a great extent, some of the conditions being fully implemented, while some are only partially fulfilled. The issue of the new Prosecutor General appointment is still pending, which causes a considerable regress in the process of our country's European integration.

²⁴ <https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/6735/language/ro-RO/Default.aspx>.

In the area of fighting against corruption, the Republic of Moldova adopted strategies and laws for the consolidation of integrity in the public sector and in the judiciary, as well as for the strengthening of the institutional capacities of the Anticorruption Prosecution Office. Implementation of these measures reflects an alignment to the international standards and priorities of the European Union.

The progress related to the national action plan for the de-oligarchisation, together with the efforts for the limiting of the cash-based transactions and financial flows is also indicative of a sustainable commitment, even though the full implementation of these measures remains to be a challenge. It is crucial that the Moldovan authorities should continue the reform efforts and tackle the areas in which the progress is still incomplete, to accelerate the European integration process.

