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How the Association Agreement changed EU-Moldova relation

Where is Moldova in the AA/DCFTA implementation process and why

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Acronyms and abbreviations

AA – Association Agreement
CFSP – Common Foreign and Security Policy
CSDP – Common Security and Defense Policy
CIS – Commonwealth of Independent States
Council – Council of the European Union
DCFTA – Deep and Comprehensive Free Trade Agreement
EC – European Commission
ENI - European Neighborhood Instrument
ENP – European Neighborhood Policy
EP – European Parliament
EPRS – European Parliamentary Research Service
EU – European Union
EUBAM - European Union Border Assistance Mission
EUR – Euro (European Monetary Unit)
Euratom – European Atomic Energy Community
HRVP – High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission
IMF - International Monetary Fund
MEP – Member of the European Parliament
MFA - macro-financial assistance
MFAEI – Ministry of Foreign Affairs and European Integration
Moldova – Republic of Moldova
NBM – National Bank of Moldova
ODIHR – OSCE Office for Democratic Institutions and Human Rights
OSCE - Organization for Security and Co-operation in Europe
PAR - Public Administration Reform
PNAIAA – National Action Plan for the Implementation of the Association Agreement
SPS - sanitary and phytosanitary measures
TFEU – Treaty on the Functioning of the European Union
USA – United States of America
USD – United States Dollar
VAT - Value Added Tax
VC – Venice Commission

Abstract

This analytical study will assess the current EU-Moldova relationship, through the implementation of the AA/DCFTA. Using relevant criteria, the study will outline the major achievements during the implementation of the AA/DCFTA along with setbacks with a particular focus on the role of the Moldovan authorities and the extent to which they deviated from the commitment to pursue an 'European path'. In addition, the document also explores the role of the European Union in the Transnistrian settlement process. More specifically, the paper will explore whether there is a role for the EU as a mediator rather than observer, and the implications of the DCFTA in the breakaway region (where it is partially implemented).

The main findings of the study are:

- the implementation rate of the AA, in 2018 is rather low;
- although all the common EU-Moldova legal-technical bodies created by the AA meet regularly, the frequency of other than AA bodies meetings substantially decreased, namely those at the highest level;
- the main challenges Moldova faces are firstly internal, afterwards external;
- consecrating the 'European integration' clause into the Constitution would give little substance to the *de facto* integration with EU;
- the suspension of the President, although provided for in the Constitution, was undemocratic;
- there is an emergent need to foster implementation of all necessary reforms in compliance with DCFTA provisions;
- the Russian embargoes had a predictable and beneficial effect, and as a result the EU became the main trade partner of Moldova;
- despite difficulties, the exports show a sharp increase in trade of Transnistrian region with the EU; in the meantime, the exports with the Russian Federation is diminishing;
- the EU together with its Member States is the main donor of Moldova providing substantial financial assistance in line with confidence building measures within the Transnistrian conflict settlement.

Introduction

Over the years, relations between the EU and Moldova have developed in fits and starts. On 27 June 2014, Moldova has signed an Association Agreement with the EU. The Agreement entered into force, provisionally on 1 September 2014 and fully since 1 July 2016, following the ratification by all 31 signatories: Moldova, the EU, Euratom and the 28 EU Member States (MSs). The agreement is legally binding.

In 2009 ostensibly, pro-European parties came into power. Since then, at declaratory level, Moldova's political approach towards the EU is coherent¹ and 'aiming at increasing political convergence and effectiveness'². Nonetheless, at the implementation level there is not always coherence³ and consistency⁴. The current Moldova's political cooperation with the EU could be assessed as being in a 'slowed down'⁵, 'cooling down status'^{6,7}, even deterioration. Or seen more critically, as Cristian Dan Preda notes, 'an atypical situation, where the economic cooperation develops at accelerated pace, while the political dialogue degrades, to almost a total blockage'⁸.

Moldova has not yet a clear synergy of efforts of all the self-proclaimed pro-European political actors towards the EU rapprochement. There remain serious cleavages namely within the internal political forces. There is not yet a compromise regarding the accession to the EU, nor vis-à-vis the Transnistrian conflict (see the third part of this study).

Thus, consecrating the 'European integration' clause into the Constitution⁹, would give little substance to the *de facto* integration with the EU. One should not exclude that this kind of initiatives can aim at public attention's distortion. Moreover, depending on the exact wording, the 'Eurosceptic people'¹⁰ and some of their actions risk to become unconstitutional. There is, already, sufficient constitutional background that affirms Moldova's *Europeanité*: the Declaration of Sovereignty (1990) stating that Moldova „is directly involved in [...] the European structures” and the Declaration of Independence (1991) providing that Moldova „expresses its desire to establish political, economic, cultural relations in other areas of common interest with European countries”. In addition, the 'European integration' could not necessarily mean integration with the EU.

In this context, dialogue and negotiation are the first steps that can prevent many wrongdoings and solve many problems. Therefore, concerning the internal political intricacies, all the ostensibly pro-European political parties should not exclude, from the beginning, the negotiations. Or, the political

¹ Often reference to 'making the European integration irreversible', by all the Prime-Ministers since 2013.

² EU-Moldova Association Agreement, Art. 3.

³ Urszula Pallazs, EU Delegation to Moldova, interview, 12 October 2018.

⁴ EC and HRVP, *Association Implementation Report on the Republic of Moldova Joint Staff Working Document*, Brussels, 10.3.2017, p.2.

⁵ Daniela Morari, MFA EI, interview, 8 October 2018.

⁶ Urszula Pallazs, EU Delegation to Moldova, interview, 12 October 2018.

⁷ Moldpress, *Vicepremierul Iurie Leancă: Aproximarea de UE trebuie să continue, indiferent de situația de moment din relația Chișinău-Bruxelles*, <https://www.moldpres.md/news/2018/07/12/18006034>, 12 July 2018

⁸ Cristian Dan Preda, MEP, interview, 11 October 2018.

⁹ Parliament of the RM, *Press release: The draft of the Constitution of the Republic of Moldova with the European integration vector did not meet the required number of votes*, <http://parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/4675/Page/0/language/en-US/Default.aspx> 10 October 2018.

¹⁰ Despite the overexploited geopolitical cleavage, others than those who militate for Eurasian Economic Union integration.

dialogue with the EU is nothing else than the reflection of the internal political dialogue among the local actors and the EU will cooperate with the authorities of Moldova, irrespectively of their political affiliation, but also with the governmental opposition and the civil society.

At the same time, the research paper is examining the impact of signing the AA from the perspectives of trade-related issues, which represents a milestone in Moldova's path to develop a modern, competitive and sustainable economy. It is worth mentioning that implementation of DCFTA provisions requires many efforts, time and investment, whilst immediate tangible results toward improving the citizens' life standards might be felt not so quickly. This aspect is linked to the willingness of the Moldovan authorities to fulfill the commitments undertaken in line with the AA.

Another important finding of this study is related to the impressive progress registered by Moldova after the implementation of the DCFTA, e.g. the trade between Moldova and the EU grew by 8% in 2014, and by 18% in 2017. It can be noticed that as a result of concerted effort to reorient away from Russia, the EU has become the country's leading trade partner accounting for 66,84% in 2017, in comparison with CIS reaching 38,38% for the same period.

Further on, the research paper provides important data concerning the Transnistrian region, after DCFTA extended on the whole territory of Moldova in January 2016. Moreover, there are reflected main factors which contributed to engage the breakaway region in the new trade regime between Moldova and the EU, having a positive impact on the region's economy. Besides, the study is analyzing the role of the EU partner within the Transnistrian settlement conflict and brings the important grounds to raise the status from observer to mediator aiming to give a new impetus to the process.

The document is structured in three chapters. The first chapter analyses the development of relations between the EU and Moldova, starting with 2014, with a particular focus on the political dialogue and domestic reform. The second chapter examines the EU - Moldova trade relations, especially the implementation of the DCFTA. The last chapter emphasizes the Transnistrian conflict settlement and how the AA/DCFTA is applied in that region. The paper concludes with a number of policy recommendations which might contribute to further development of the EU-Moldova relationship.

The analytical study is focused on the 2014-2018 period, namely the period after the signature of the AA/DCFTA. The analysis does not envisage to blame a party or to praise another one, of the political spectrum of Moldova. As democracy implies, all of the political entities and a-political structures have their own role and should be critically assessed, regardless of affinities, in order to achieve better results in the democratization and the Europeanization of the country. Although there is a plethora of analysis that touch upon the AA/DCFTA implementation in Moldova, this paper tries to critically assess the EU-Moldova relationship and its prospects, from a different angle.

In relation to biography, both primary and secondary sources were used, such: as interviews with MEPs, governmental officials, internationally accredited institutions' officers; EU official data and reports, governmental documents; but also, public surveys conducted by pertinent local or international institutes.

I. Development of relations between the EU and Moldova, starting with 2014. Political dialogue and domestic reform

On 27 June 2014, Moldova signed an Association Agreement with the EU. The Association Agreement (AA)/Deep and Comprehensive Free Trade Agreement (DCFTA) is the legal framework that regulates the relationship between the EU, Euratom and their Member States (MS) and Moldova. The AA/DCFTA (also signed by Georgia and Ukraine) has been described as ‘a truly innovative legal instrument in the EU's external relations, because of its comprehensiveness, complexity and conditionality’¹¹. It foresees core economic and governance reforms and sectorial cooperation in 28 areas.

While the above achievement is noteworthy, its implementation is challenged by a number of factors. On the one hand, the Moldovan political elite perpetuate what are essentially rent-seeking behaviours, seeking to increase their wealth at the states expense. On the other hand, the opposition is not yet a coherent force, as it lacks the tools and resources to change the *status quo*. At the same time, the evidence shows that those in power tend to politicize state institutions and appropriate public resources to impede the opposition. There are few grounds to believe that this is likely to radically change, namely considering the modification of the electoral system in 2017 (see the section on the *Electoral system*).

Discussing the challenges that Moldova is facing on its path to EU, all the interviewers mentioned Russia as a secondary challenge (such as Russian interference). Instead, it was noted that internal problems represent Moldova's biggest challenges which are incomparable with the external pressure. In this context, ‘neither the EU nor (perhaps even less so) Russia is able to substantially influence domestic developments when local actors resist change’¹².

At the same time, there is a lack of stronger commitment from both sides. Neither the EU does guarantee the accession, nor Moldova is ready to embrace the painful path and pace of the reformation. Although all the legal bodies created by the AA meet regularly¹³, the frequency of other than AA bodies meetings decreased, namely those at the highest level. It is to be noted that the Moldovan exponents were more present in Brussels, rather than vice-versa. The last and second official visit of the Commissioner for European Neighborhood Policy and Enlargement Negotiations took place on 26 September 2016.¹⁴

Moldova-EU cooperation in Common Foreign and Security Policy (CFSP) issues resides on the general terms of the Art.5 of the AA, while there is no explicit formalized agreement on *how* it should be implemented. Thus, both Moldova and the EU shall promote general convergence and intensify

¹¹ EPRS, *Association Agreements between the EU and Moldova, Georgia and Ukraine, European Implementation Assessment*, June 2018, p. 20.

¹² Laure Delcour, *You can lead a horse to water, but you can't make it drink': the EU's and Russia's intersecting conditionalities and domestic responses in Georgia and Moldova*, <https://www.tandfonline.com/doi/full/10.1080/23745118.2018.1441699?scroll=top&needAccess=true>, 26 Feb 2018.

¹³ As foreseen by the AA, in the Title VII: the Association Council, the Association Committee, the Parliamentary Association Committee, the Civil Society Platform.

¹⁴ EC, *Johannes Hahn visits the Republic of Moldova*, https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/2016/09/20160923_en, 23 September 2016.

cooperation in this field. As such, Moldova has cooperated well in CFSP matters, the 'EU noting in particular the high level of Moldova's alignment with EU's statements and declarations on international and regional issues'¹⁵. In addition, the EU commended Chisinau for incremental improvement of relations with Tiraspol (see part 3 of the study).

Similarly, there is not yet a framework agreement which explicitly define the EU-Moldova cooperation on Common Security and Defense Policy (CSDP) matters. But, although a Working Group designated to coordinate this cooperation was established by the Order of the Government of Republic of Moldova No. 80-d of 11 October 2010, a *Framework Agreement on the participation of Moldova in EU crisis management operations* was signed in 2012. After the establishment of the European Union Border Assistance Mission (EUBAM) to Moldova and Ukraine in 2005, EU-Moldova cooperation in this field increased in the last years. The most prominent steps being: the establishment of a CSDP Task Force since 2010 and the adoption by parliament of a new Law on the Participation of the Republic of Moldova in International Missions and Operations on 3 December 2015. Nonetheless, Moldova will have to invest more in education and training, creating and updating a national pool of experts in this area, and '[d]evelop a national mechanism providing requirements and procedures for the selection of personnel seconded to CSDP civilian missions'.¹⁶ It also plans to cooperate in countering hybrid threats.¹⁷

Following, the EU-Moldova relationship is assessed through the implementation of the AA/DCFTA. Namely, elements of *Good governance*, such as: *the fight against corruption, the media freedom and human rights protection, the change of the electoral system*, were analyzed. These served as criteria for assessing to what extent Moldova's declaratory commitment to Europeanization and democratization is practically pursued. Or, in other terms, how do the provisions of the AA are implemented in these areas? At the same time, another relevant criterion was examined, and namely the EU macro-financial assistance to Moldova. The financial assistance being a clear indicator of how the EU paid off Moldova's efforts or setbacks in implementing the AA. Importantly, all of these areas were chronologically and critically analyzed.

Good governance and domestic challenges to relations between the EU and Moldova

In this section, the definition of 'Good governance' will be seen as how the public institutions conduct public affairs and manage public resources. While 'Governance' being the process of decision-making and the process by which decisions are implemented (or not implemented). These definitions were taken from the United Nations Economic and Social Commission for Asia and the Pacific.

¹⁵ Council of the EU, *Joint press statement following the fourth Association Council meeting between the EU and the Republic of Moldova*, <https://www.consilium.europa.eu/en/press/press-releases/2018/05/03/joint-press-statement-following-the-fourth-association-council-meeting-between-the-eu-and-the-republic-of-moldova/>, 03 May 2018.

¹⁶ ***KANTOR Management Consultants Consortium, HiQSTEP project, *The consolidation of inter- institutional cooperation and communication mechanism on CSDP-related matters, case study: Republic of Moldova*, Public study report, March 2017, pp. 1-7.

¹⁷ Mihai Turcanu, *European Security Journal, EU - Moldova will cooperate in countering hybrid threats*, <https://www.esjnews.com/eu-moldova-csdp>, 27 February 2018.

Evidence of emergent good relations are found in the 2014-2016 Progress Report on the Implementation of the Republic of Moldova – European Union Association Agenda, which states that ‘[c]onsiderable efforts have been undertaken at country’s level for putting into practice the National Action Plan for the Implementation of the Association Agreement (PNAIAA) for 2014-2016 period’ and ‘[d]espite a long period of political instability and limited functionality of the Government, the political dialogue with the EU turned out to be quite intense’, being also created the Group for the European Action of the Republic of Moldova (GEARM)¹⁸.

EU’s revision to its European Neighborhood Policy (2015), which led to greater differentiation to reflect the diversity of its partners, has had a noteworthy impact on Moldova. This means that *more for more* principle could be applied, but similarly could the *less for less* principle. This meant that the EU reconsidered its approach towards Moldova in budgetary terms. The EU increased its financial support to Moldova when assessed and implemented the AA appropriately, and reduced or even put on hold the financial assistance when the EU assessed the opposite (see the section on the *Macro-financial assistance*).¹⁹

In the Association Implementation Report on Moldova for 2017, EU observed that the country regained certain political stability in 2016, after long massive anti-governmental protests in 2015. Then, in July 2016, government adopted the Public Administration Reform (PAR) Strategy. And, ‘[s]ome progress has been made on implementing the 2013-2020 Strategy for Development of Public Finance Management’²⁰ and a new Public Procurement law entered into force in 2016. These proved to be positive developments and meant legal approximation with the EU *acquis*. Yet, their implementation has still to be accelerated and to produce effects, this being also concluded by the Council of the EU, in February 2018.

The EU has been proactive in attempting to facilitate developments in Moldova. While in the Association Implementation Report on Moldova for 2018, the European Commission (EC) reaffirmed its commitment to strengthening political association and economic integration with Moldova, the EC regretted the electoral system was changed without consensus, pointing out some risks ‘e.g. influence taking at constituency level; high thresholds; vague criteria for the definition of constituencies’.²¹ Moreover, the Council in 2018 recalled that the revised Association Agenda for 2017–2019, setting out 13 key priorities for reform actions ‘should serve as practical guidance’ and expressed the imperativeness of ‘translating the adopted legislation and policies into concrete actions’.²²

¹⁸ GEARM is an informal ministerial mechanism, launched in January 2010 by Romania with France’s support. Its main purpose is to promote Moldova’s European integration on EU’s agenda. Last and 12th meeting of GEARM took place on 26 February 2018.

¹⁹ E.g. EEAS, *Moldova: EU cuts budget support programme for justice reforms*, https://eeas.europa.eu/delegations/moldova/33723/moldova-eu-cuts-budget-support-programme-justice-reforms_en, 11 October 2017.

²⁰ EC and HRVP, *Association Implementation Report on the Republic of Moldova Joint Staff Working Document*, Brussels, 10.3.2017, p.3.

²¹ EC and HRVP, *Association Implementation Report on Moldova Joint Staff Working Document*, 5 April 2018, pp. 2-3.

²² Council of EU, Joint press statement following the Fourth Association Council meeting between the EU and the Republic of Moldova, <https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2018/05/03/>, 3 May 2018.

According to the *National Action Plan for the Implementation of the Association Agreement* (PNAIAA) 2017-2019, for the 1st semester of 2018, it was implemented in proportion of 61,75%²³. However, an alternative evaluation by the Institute for European Policies and Reforms estimates the implementation rate of the PNAIAA II (2017-2019), in 1st semester 2018, at 41,2%²⁴. Furthermore, an European Parliamentary and Research Service report from June 2018, stated that general progress was rather quantitative and less qualitative.²⁵ Yet, the Ministry of Foreign Affairs and European Integration (MFAEI) challenged these reports arguing²⁶ that they are mostly based on data from the government's online platform *PlanPro* and not on primary sources, noting also the discrepancy in indicators and methodology used. Nevertheless, at quantitative level, confronting the data of the abovementioned reports and making their average, it is clear that there is a *low* implementation rate of the AA.

The main challenges Moldova faces have been well articulated: the European Parliament has noted a lack of political will to 'depoliticize' the state institutions; endemic corruption; lack of independence of the judiciary and law enforcement agencies and 'increasing backsliding in core values related to democratic standards'.²⁷ In February 2016, the Council stressed critical delays in the implementation of important reforms, calling for 'an accelerated implementation of the Association Agenda'²⁸ and criticized the 'excessive politicization of state institutions', while in 2018 the Council highlighted 'that it is crucial that the reforms started in 2016 are implemented' and expressed 'concern for cases of prosecution against some lawyers, judges and political opponents'²⁹.

These criticisms did not prevent a further deterioration in the Moldovan political space. In July 2018, Parliament adopted a controversial law on legalizing capital and fiscal amnesty, raising huge concerns³⁰ as it was 'creating strong propensity for tax evasion'.³¹ The recent suspension of the President although provided for in the Constitution, is undemocratic. Firstly, because the *interim* of the presidential function overpassed the *cohabitation*. Secondly, none of the conditions foreseen by the art. 91 of the Constitution was properly met. The President has been suspended for five times (each time for several hours), since his election in November 2016. Thus, what was meant to be used under

²³ Ministry of Foreign Affairs and European Integration, *RAPORTUL PRIVIND REALIZAREA PLANULUI NAȚIONAL DE ACȚIUNI PENTRU IMPLEMENTAREA ACORDULUI DE ASOCIERE RM-UE 2017-2019, Semestrul I 2018*, [EN: *REPORT ON THE IMPLEMENTATION OF THE NATIONAL ACTION PLAN FOR IMPLEMENTING THE RM-EU ASSOCIATION AGREEMENT 2017-2019, 1st Semester 2018*,] <http://www.mfa.gov.md/img/docs/Raport-Sem-I-2018-impl-PNAAA-2017-2019.pdf>, p. 3.

²⁴ IPRE, *3rd Shadow report - Implementation of the EU-Moldova Association Agreement* (I Sem. 2018), p.4.

²⁵ EPRS, *Association Agreements between the EU and Moldova, Georgia and Ukraine, European Implementation Assessment*, June 2018, p.55.

²⁶ Daniela Morari, MFAEI, interview, 8 October 2018.

²⁷ EP, *DRAFT REPORT on the implementation of the EU association agreement with Moldova* (2017/2281(INI)) Committee on Foreign Affairs, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-622.300+01+DOC+PDF+V0//EN&language=EN>, 19 July 2018, p.3.

²⁸ Council of the EU, *Council conclusions on the Republic of Moldova*, <https://www.consilium.europa.eu/en/press/press-releases/2016/02/15/fac-moldova-conclusions/>, 15 February 2016.

²⁹ Council of the EU, *Council conclusions on the Republic of Moldova*, <http://data.consilium.europa.eu/doc/document/ST-6280-2018-INIT/en/pdf>, 26 February 2018, p.5.

³⁰ Emerging Europe, *EU calls Moldovan tax amnesty 'hasty and non-transparent'*, <https://emerging-europe.com/news/eu-calls-moldovan-tax-amnesty-hasty-and-non-transparent/> July 30, 2018.

³¹ Expert-Grup, *Capital Amnesty in Moldova: Why it comes with substantial risks and should be watched closely*, <https://www.expert-grup.org/en/biblioteca/item/1658-amnistia-de-capital-in-moldova-ce-riscuri-aduce-si-de-ce-trebuie-privita-indeaproape>, 18 September 2018.

exceptional circumstances, is being used as a matter of course, his suspension being, the way it was used, an ‘innovation in the politico-constitutional practice’³².

In addition, the conclusions of the European Parliament’s (EP) Resolution on Moldova as of 5 July 2018, noting ‘the deterioration of the rule of law, of democratic standards, insufficient investigation of the 2014 banking fraud, and limited media pluralism’ were damning.³³ Similarly, the country’s backsliding in relation to democratic standards and rule of law, to which Moldova had subscribed through the signature of the AA, as well as the ‘unsatisfactory implementation of legislation’, were observed and criticized.

Yet, despite these setbacks and retrograde steps, the narrative emanating out of Chisinau has essentially been pro-European. Therefore, the paper will now delve deeper and explore specific aspects related to the implementation of the AA in Moldova, most particularly in relation to the fight against corruption, media freedom and human rights, the electoral system and macro-financial assistance.

Fight against corruption

According to art. 16 of the AA, Moldova and the EU shall cooperate on preventing and fighting ‘active and passive corruption, both in the private and public sector, including the abuse of functions and trading in influence’. However, a sort of reluctance of Moldova’s authorities in ‘ensuring effectiveness in the fight against corruption’ (art. 4 of the AA) could be assessed. Particularly, the notorious case of Illan Shor, accused of *active corruption* as defined by the Protocol IV of the AA, is indefinitely delayed. While the convicted of *passive corruption* Vlad Filat, on the same matter - the theft of USD 1billion, is already serving his sentence. This example of selective justice and insufficient anti-corruption and anti-money laundering efforts was broadly damned, ultimately by the EP on 14 November 2018.

The failure of the Justice Sector Reform Strategy for 2011-2015 means that the implementation of the National Strategy of Integrity and Anticorruption for 2017-2020 becomes even more important. All of this happen, because none of the reforms foreseen by the Strategy for 2011-2015 reached the goals set by the Supreme Court of Justice. Even though about 30% of judges were changed, the ‘core judges’ remained in the system, and they are still reluctant or even hostile to the reform from inside. The low financing (the judiciary system’s budget is less than 1% of the public budget); the lack of qualified staff; the current over-centralization of the competences to the Supreme Court of Justice (this impeding the lower courts to be fully independent in their decisions); the appointment and promotion of judges by the Superior Council of Magistracy based on unclear criteria and behind closed doors, resulting in an informal and unlawful hierarchy of judges; judges’ validation without a thorough analysis of the prosecutors’ decisions (e.g. the rate of admission of intercepts’ authorization is over 97%) - all of these meant a clear failure of the Strategy for 2011-2015. Moreover, all of these activities prove against the spirit of the AA, namely because those in charge of preventing and combating corruption and illicit activities perpetuate the corruption phenomenon, while resisting to the reform.

³² Cristian Dan Preda, MEP, interview, 11 October 2018.

³³ European Parliament resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău (2018/2783(RSP))

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0303&language=EN&ring=P8-RC-2018-0322>

As such, the implementation of the so-called ‘small reform in justice’ is required. Nonetheless, even though this ‘small reform’ aims at delivering on ‘urgent actions’³⁴ due to be realized before the end of 2018, the document does not clearly stipulate which are those urgent actions. Thus, it creates confusion and the possibility of diluting the urgent necessary steps in long term strategies. Thus, without clear identification of those actions, their monitoring and follow up cannot take place.

Therefore, the government seems to lag behind in reforming the judiciary, as it committed itself to, before the EU. According to Transparency International’s Corruption Perception Index, in 2015 Moldova ranked 102nd, while in 2017 it ranked 122nd out of 180 (i.e. the same position as Azerbaijan, Djibouti, Liberia). It is clear that steps ought to be taken to ensure the independence of the judicial power from the other two branches of power, in order to restore trust in the judicial system, which according to 2018 is sorely lacking (only between 16-18% of people surveyed)^{35 36}. Particular attention should be drawn to ensuring the public’s access to the court hearings, transparent selection and promotion of judges, avoid selective justice and delays. The government should accelerate and effectively proceed to the 2014 bank fraud investigations. Despite the promises, the government did not recover most of the funds (only EUR 50 million). Or, the investigation of this case, lagging behind, is one of the main concerns of the EU^{37 38} and other international structures.³⁹ These and other actions that breached the law, led for Moldova to be called a „captured state”^{40 41} infringing civil liberties and rights of its citizens.

Media freedom and human rights protection

The AA is based on common values which include respect for the democratic principles, human rights, fundamental freedoms, including the freedom assembly and expression. As such, ‘respect for human rights and fundamental freedoms will guide all EU-Moldova cooperation on freedom, security and justice’ according to the art. 12 of the AA, this being a cornerstone of the rule of law in the country.

³⁴ Ministry of Justice, ‘small reform in justice’, <http://www.justice.gov.md/pageview.php?l=ro&idc=715>, retrieved 14 October 2018.

³⁵ ***Increased Efficiency, Accountability and Transparency of Courts in Moldova (ATRECO), REZULTATELE SONDAJULUI PRIVIND OPINIA PUBLICĂ DESPRE SISTEMUL JUDECĂTORESC DIN MOLDOVA, [EN: RESULTS OF THE PUBLIC OPINION ON THE JUDICIAL SYSTEM IN MOLDOVA Program for Transparent Justice Increasing the Efficiency, Responsibility and Transparency of Judicial Courts in Moldova], https://crjm.org/wp-content/uploads/2018/02/Brosura_finala.compressed.pdf, p.8.

³⁶ Methodology: Sample type: Probabilistic stratified sample; Sample size: 216 people; Selection Criteria: Age: 18+ Years, they have been involved in the last two years with the judiciary, plus 1000 people that have not been involved with the judiciary; Geography: National Representative; Data collection: Face to face, (face-to-face interview, assisted by a computer); Collection period: 8 - 29 December 2017.

³⁷ Vasile Plamadeala, EU Delegation to Moldova, interview, 10 October 2018.

³⁸ European Parliament resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău (2018/2783(RSP)) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0303&language=EN&ring=P8-RC-2018-0322>

³⁹ Lilia Carasciuc, Executive Director at Transparency International Moldova, Interview, 9 October 2018.

⁴⁰ Transparency International – Moldova, ADEPT, IDIS „Viitorul” and the LRCM, „State Capture: the Case of the Republic of Moldova”, http://www.transparency.md/wp-content/uploads/2017/06/TI_Moldova_State_Capture.pdf, 16 June 2017.

⁴¹ Dionis Cenuşa, *Cum Moldova a devenit “stat capturat”?*, [How did Moldova become a “captured state”?], <http://www.ipn.md/ro/special/83596>, 2 May 2017.

An independent media, at the heart of a well-functioning democracy, is rather missing in Moldova. Freedom House in 2017 assessed Moldova's press freedom as 'partly free'⁴², scoring it at 56 out of 100⁴³, noting in February 2016 that while 'the broadcasting code was amended to limit the number of outlets, a single person could own to two', 'the amendment does not apply retroactively'.⁴⁴ This means that those owning 4 channels will be able to own them till their license expires, without being affected by this last amendment. At the same time, in 2018, Reporters Sans Frontières ranked Moldova 81st out of 180, a lower degree than it achieved in 2017, thereby highlighting the relative deterioration of press freedom in Moldova. It noted that 'editorial line of the leading media outlets correlates closely with the political and business interests of their owners'⁴⁵. Therefore, the risk of the monopolization of media by powerful interests still persists as a threat to citizens' right to information, despite it being enshrined in art. 34 of the Constitution.

Several actions raised concern human rights breaches. On 6 September 2018, the Security and Information Service undertook a complex operation to prevent threats to national security. In this context, 7 Turkish citizens who activated as teachers in Moldova, were expelled, while perceived as threat to national security and being suspected of ties with an Islamist group. They were detained without explaining the reasons for their detention and because they have been in Moldova for long time (some of them for 25 years), 'their expeditious and unannounced expulsion is not justified and betrays hidden political interests'⁴⁶. Another case worth mentioning is the abusive dispersal of the demonstrators for the Centenary March in Chisinau, which occurred on 1 September 2018. Toward midnight, the lights turned off in The Great National Assembly Square, and, according to Constantin Codreanu, member of the Romanian Parliament and organizer of the Centenary March, the demonstrators were summoned to leave the Square, through using of force or threatening with using of force, thus acting in a disproportionate manner. The case shows breaches of the freedom of assembly and expression, which lie at the heart of the EU-Moldova political association through the AA. At the same time, in the period 26-27 August 2018, when Moldova celebrates its Independence Day, another dispersal of demonstrators by the police occurred in the city center. In both cases, the intervention of the police and other law enforcement bodies were strongly criticized by 14 civil society organizations.⁴⁷ On the same day, the 'occupy Guguta' permanent civic protesters were intimidated and their goods were removed by the police.

⁴² Freedom House, *Moldova profile- Freedom of the Press 2017*, <https://freedomhouse.org/report/freedom-press/2017/moldova>, retrieved 23 September 2018.

⁴³ 0=Most Free, 100=Least Free.

⁴⁴ A New Audiovisual Code was adopted on 26 July 2018, in the 2nd and final reading and is supposed to enter into force on 1 January 2019. Although the Council of Europe, the OSCE, the EU were consulted, the adopted text was not published yet (except the project on „Audiovisual Media Services Code of the Republic of Moldova”, accessible at <http://www.parlament.md/LinkClick.aspx?fileticket=GYtJHV78pIc%3D&tabid=90&language=ro-RO>). Sensitive provisions about propaganda were analyzed, however it is not clear, yet, whether the New Audiovisual Code establishes rules to avoid local propaganda, not only international one, namely coming from Russia, but foremost disinformation targeting EU and the real benefits of the AA/DCFTA for Moldova's citizens.

⁴⁵ Reporters Without Borders, *Moldova – Media as weapons, country profile in the 2018 World Press Freedom Index*, <https://rsf.org/en/moldova>, retrieved 23 September 2018.

⁴⁶ ***Promo-LEX Association, *Statement about the way seven Turkish citizens have been detained and have to be expelled from the Republic of Moldova*, 6 September 2018, <https://promolex.md/13092-declaratie-expulzarea-persoanelor-in-turcia-reprezinta-un-pericolul-iminent-pentru-viata-si-securitatea-persoanelor/?lang=en>.

⁴⁷ TVR Moldova, *14 ONG-uri solicită autorităților o analiză complexă a celor mai recente manifestații publice [14 NGOs ask the authorities for a comprehensive analysis of the latest public demonstrations]*, 4 September 2018.

On the positive side, though, a new National Gender Equality Strategy and the Action Plan on the consolidation of interethnic relations were adopted in 2017, being welcomed by the EU.

Finally, a captivating practice could be observed, seen by many as aiming at distorting the public attention from real problems that the country faces, through festivals. A plethora of festivals⁴⁸ have been organized, both by public authorities and private entities, during the last 4 years, disproportionately more than in previous years, with elements that remind about ‘Potemkin village’⁴⁹.

Change of the electoral system

Although not explicitly provided for in the AA, about which electoral system Moldova shall have, democracy and the rule of law are core principles, in light of art. 2 and 455. Therefore, these principles require a multi-party electoral and representative system- core value, not only of the EU, but also of the Council of Europe (of which Moldova is member) and any change should envisage to strengthen democracy.

An example of retrograde step undertaken by the electoral authorities, and one which undermined its relations with the EU, was the decision taken on 20 July 2017 by the Parliament to change the electoral system, from a proportional to a mixed parallel electoral system, in the face of criticism of civil society organizations, political parties and international bodies.⁵⁰ The immediate reaction of the EU was that any change should ‘be based on a broad consensus amongst political forces, and follow a genuine consultation of civil society and recommendations of the international partners’ and stressed its alignment with the Venice Commission (VC) and ODIHR assessment of the new electoral code. The VC and the ODIHR were overt in their criticism, stating that ‘such a fundamental change, while a sovereign prerogative of the country, is not advisable at this time’, recommending instead to revise the legislation ‘regarding political parties and electoral campaign finance’^{51 52}. This was also a reference to murky nature of campaign financing.

On one hand, the VC delegation’s visit to Moldova did not find meaningful consultation and broad consensus among key stakeholders. Thus, the change could potentially have, according to VC and ODIHR ‘a negative effect at the constituency level, where independent majoritarian candidates may develop links with or be influenced by businesspeople or other actors who follow their own separate interests’. Plus, no comprehensive criteria were defined for establishing constituencies in Transnistrian region and for the diaspora. Furthermore, the new electoral code does not necessarily enhance women representation in the Parliament. In addition, although the delimitation of single-member

<http://tvrmdova.md/actualitate/14-ong-uri-solicita-autoritatilor-o-analiza-complexa-a-celor-mai-recente-manifestatii-publice/>

⁴⁸ E.g. Festival of plum, apple, towel, ‘pătlăgica’.

⁴⁹ The projection of a fictive image of the reality, aiming at deceiving others into thinking that a situation is better than it really is.

⁵⁰ Parliament of the RM, *Modificarea sistemului electoral* [the change of the electoral system],

<http://www.parlament.md/Actualitate/Modificareasistemului electoral/tabid/254/language/en-US/Default.aspx>, retrieved 29 September 2018.

⁵¹ Venice Commission and OSCE/ODIHR, Republic of Moldova joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the parliament),

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)012-e), Strasbourg / Warsaw, 19 June 2017, CDL-AD(2017)012, p.5.

⁵² *Ibidem.*, p.6.

constituencies could improve minorities representation in the Parliament, it presents challenges as it could dilute or exclude the minority representation. Thus, ‘the more an electoral system is proportional, the greater the chances minorities have to be represented in the elected bodies and majoritarian systems are often seen as not appropriate’⁵³.

On the other hand, Andrian Candu, Moldova’s Parliament speaker reaction was that the VC has no right to impose Moldova an electoral system⁵⁴ and the fact that it was voted by a constitutional majority (with 71 votes out of 101 seats) shows consensus.

At the same time, the EU was unsatisfied by the fact that the winners in electoral constituencies would be established based on one round of elections – as the latest (14 November 2018) EP resolution on Moldova stipulates. In the joint statement of 4 July 2017 made by the EP, the Council and the EC, the EU institutions expressed their strong concerns regarding the change of the electoral system and a political pre-condition was attached to the decision to provide macro-financial assistance (MFA) to Moldova. That pre-condition ‘effective democratic mechanisms, including a multi-party parliamentary system and the rule of law and [] respect for human rights’⁵⁵ was assessed by the EU as unfulfilled. As a consequence, to the change of the electoral system and the annulment of the early mayoral elections in Chisinau (held on 3 June 2018), the EU suspended the MFA worth EUR 100 million for the period 2017-2018.

Finally, following the fourth Association Council meeting between the EU and Moldova, on 4 May 2018, the Council expressed regret that the new electoral law did not address some of the key recommendations of the VC and the ODIHR.⁵⁶ Therefore, this created a sort of ‘political distancing’ between the EU and Moldova. Despite this, the EU continued to support Moldova through sectorial budget and the MFA remained in force, but put on hold. This means that any decision on future MFA disbursement will only be taken after the Parliamentary elections (24 February 2019), on the condition that they will be assessed by specialized international bodies as free and fair. Furthermore, no new planning on budgetary support for Moldova is foreseen, and the current financial assistance is coming from old programs and is focused on specific projects.⁵⁷

⁵³ *Idem*, p. 13.

⁵⁴ <https://www.ziarulnational.md/andrian-candu-comisia-de-la-venetia-nu-are-dreptul-sa-impuna-un-sistem-electoral-il-decide-cetateanul/>

⁵⁵ EP, European Parliament legislative resolution of 4 July 2017 on the proposal for a decision of the European Parliament and of the Council providing macro-financial assistance to the Republic of Moldova, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0283&language=EN#title3>, 4 July 2017.

⁵⁶ Council of the European Union, *Joint press statement following the fourth Association Council meeting between the EU and the Republic of Moldova*, <https://www.consilium.europa.eu/en/press/press-releases/2018/05/03/joint-press-statement-following-the-fourth-association-council-meeting-between-the-eu-and-the-republic-of-moldova/>, 3 May 2018,

⁵⁷ Urszula Pallazs, EU Delegation to Moldova, interview, 12 October 2018.

Macro-financial assistance

At the heart of the relationship between Moldova and the EU has been the financial assistance provided by the latter. While it would be too simplistic to say it is the driver of relations, there is little doubt that the EU expects to see change in return for the finance provided, and Moldova needs the financial support in order to implement that change. For 2014-2020, the total EU assistance to Moldova, through the European Neighborhood Instrument (ENI), including budgetary support, technical assistance and policy advice, is estimated at EUR 610-746 million⁵⁸, contingent upon progress with reforms.⁵⁹ We may affirm that things started well. Following the Council's conclusions as of February 2016, the EU and Moldovan authorities agreed on a Roadmap for Priority Reforms with the aim of re-launching key structural reforms. Despite some concerns from the part of the EU, progress on implementation was noteworthy leading to in January 2017, when the EC offered EUR 100 million assistance to Moldova⁶⁰, thus answering Moldova's official request for it. This amount was foreseen along with the disbursement of funds frozen since 2015, following the theft of USD 1 billion.⁶¹ Since 2015, needless to say, the EU financial assistance is conditional on continued reforms.^{62 63}

In addition, the EU financial support is complemented by: individual Member States' support (particularly Romania), International Monetary Fund, World Bank, European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB) and United Nations Development Programme (UNDP). In this context, some financial assistance to Moldova could be subject to common criteria from two or more donors⁶⁴. Such a case was concluded on November 2017 in a Memorandum of Understanding on macro-financial assistance between the EU and Moldova, only after a positive evaluation of the country by IMF.

The annulment of Chisinau mayoral elections held on 3 June 2018, in a non-transparent way, triggered again the freezing of the EU financial assistance. In this specific context, a critic resolution of the EP was adopted⁶⁵ on 5 July 2018, damning the annulment of elections, which were won by the opposition candidate, Andrei Nastase. Several protests followed in Chisinau, however, they could not reverse the

⁵⁸ *** COMMISSION STAFF WORKING DOCUMENT, *Ex-ante evaluation statement Accompanying the document Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL providing macro-financial assistance to the Republic of Moldova*, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2017:12:FIN>, retrieved 1 October 2018.

⁵⁹ AA, Article 415.

⁶⁰ *** *Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL providing macro-financial assistance to the Republic of Moldova*, COM/2017/014 final - 2017/07 (COD), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017PC0014>, 13 September 2017.

⁶¹ The banking fraud happened after the AA/DCFTA was signed (27 June 2014) and provisionally applied (1 September 2014).

⁶² EEAS, *EU-Moldova relations, Factsheet*, https://eeas.europa.eu/headquarters/headquarters-homepage_en/4011/EU-Moldova%20relations,%20Factsheet, Bruxelles, 02 May 2018.

⁶³ Council of the EU, *Conclusions on Moldova*, <https://www.consilium.europa.eu/en/press/press-releases/2018/02/26/moldova-council-adopts-conclusions/>, 26 February 2018.

⁶⁴ For example, in 2016, the EU's budgetary support was disbursed only after an agreement was reached by Moldovan authorities with the IMF, following the fulfillment of certain preconditions, such as progress on public finance management.

⁶⁵ EP, *European Parliament resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău* (2018/2783(RSP)), accessible at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0303&language=EN&ring=P8-RC-2018-0322>

Court's decision and the Supreme Court of Justice maintained the cancellation, while the judicial process has taken place behind closed doors. This fact confirms again the non-transparency in the judicial system.

Consequently, the EU funding is currently frozen apart from the sectorial projects. The EU is still financing sectorial projects, closely monitoring and evaluating their implementation, while the MFA disbursement will be considered only after the parliamentary elections of 24 February 2019. In other words, the future of MFA and other programs depend on how free and fair the Parliamentary elections will be conducted.

In the end, not only the funding was frozen, but the EU-Moldova political dialogue *per se* is in a 'cooling down status'. As a reaction, the Governmental coalition declared a new strategy called '*Pro-Moldova*', aimed at the development of the country, the so called 'fourth way'⁶⁶ in an attempt to overpass the 'deadlock' with the EU. Following, government reoriented its agenda and focused more on bilateral cooperation with several non-EU countries, some of which known for being more authoritarian countries (e.g. Belarus, Turkey, Egypt). The 'fourth way', however, could deviate into isolationism on international arena and Moldova cannot afford this luxe, considering its pecuniary economy and living standards (see the second chapter of this study on *Benefits and difficulties of DCFTA implementation in Moldova*). It is necessary to observe the conduction of elections in the context of mixed electoral system, but foremost what will their result be, on this depending the future of the EU-Moldova relations.

⁶⁶ First way-the EU, second way- the Eurasian Union, third way-the reunification with Romania, the forth way- Pro Moldova. ***Democratic Party of Moldova, press communiqué, 21 October 2018, accessible at <http://www.pdm.md/ro/comunicat-de-presa/discursul-presedintelui-pdm-vlad-plahotniuc-rostit-in-cadrul-adunarii-nationale-pdm-pentru-moldova/>

II. Benefits and difficulties of DCFTA implementation in Moldova

The implementation of the AA is directly connected to the creation of a Deep and Comprehensive Free Trade Agreement (DCFTA) between Moldova and the EU. In simple terms, the EU is offering Moldova the immense benefits of being in an FTA with the EU, in return for profound reform. While the cost benefit is clear, it has to be noted that the costs which accrue to Moldova, in short terms, are significant, even though the benefits are only likely to accrue in the medium to long term.

This point is important to Moldova, as while having a lower-middle-income economy⁶⁷, it remains one of the poorest countries in Europe.⁶⁸ Yet, despite the known costs that would be incurred, they were deemed worthwhile as European integration, it was hoped, would lock the Moldovan government into an ambitious reform process, which would create modern and functional domestic institutions, as well as improved political and economic relations with the European community.

The pivot towards the EU would also lead Moldova away from a trajectory which it had held since the collapse of the Soviet Union – a heavy economic and political dependence on Russia, which in turn had contributed to the preservation of pre-existing dysfunctional institutions and had bedeviled Moldova. Another important point to mention here is that beyond the many attempts of Chisinau to confront corruption and improve local business environment, it has to also deal with the realities of Moldova as a split country, and the Transnistrian region⁶⁹ is a demonstration of it.

The significance of signing the AA/DCFTA

Moldova has been in the process of re-orienting its ties towards the EU for some time already. In March 2012 negotiations between Moldova and the EU started on the creation of a DCFTA, as an integral part of the AA. By signing the AA, the Moldovan authorities committed themselves ‘to achieve gradual economic integration in the EU internal market, through a DCFTA.’⁷⁰

The DCFTA offers privileged access of goods and services to the EU market, conditional upon the implementation of reforms and the convergence with the EU standards and business regulations. The

⁶⁷ United Nations, *World Economic Situation and Prospects*, https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/WESP2018_Full_Web-1.pdf, New York, 2018. p.144.

⁶⁸ Note: Moldova is considered that made a significant progress in reducing poverty and promoting inclusive growth since the early 2000s. Its economy registered an expand by an average of 5% annually, specifically, driven by consumption and remittances. According to the recent data provided by the National Statistical Bureau the leading economic activities among the Moldovan employed population are driven by the following sectors: services - 44,2%, agriculture – 40%, industry- 10,9 % and construction – 4,9%.

⁶⁹ Note: The separatist region of Transnistria - a narrow strip of land between the Dniester/Nistru River and the Ukrainian border, broke away from Moldova after a military confrontation in March 1992. The international community does not recognize its self-declared statehood, and the de-facto administration, which is in a tense relationship with Moldova, is economically, politically and militarily supported by Russia. Currently, in the region are stationed illegally about 1200-1500 Russian troops, as remnants of the 14th Soviet Army. In addition, there are around 300-400 Russian “peacekeepers” under the 1992 ceasefire agreement signed between Chisinau and Moscow.

⁷⁰ AA, *Preamble*, p.6.

net result of this, it is hoped, would be a more efficient and competitive Moldovan economy. More specifically, it is hoped that a DCFTA⁷¹ would contribute to:

- reduction of import and export tariff duties (with certain negotiated exclusions and transition periods, mostly related to agricultural products) and the adoption of the rules of origin practices along the lines of the pan-Euro-Mediterranean Convention;
- reduction in non-tariff barriers (NTBs), including food safety, sanitary and phytosanitary (SPS) measures, technical standards for industrial products, and an approximation to the EU law on national treatment, public procurement, services and customs administration (this is the ‘deep’ part of the DCFTA);
- approximation to the EU standards in national treatment and market access for goods, trade remedies, SPS and technical barriers to trade (TBTs), customs and trade facilitation, trade in services, intellectual property, electronic commerce, capital movement, public procurement, anti-trust and competition, energy issues, transparency, sustainable development, dispute settlement and mediation (this is the ‘comprehensive’ part of the DCFTA).

In terms of implementation, the two parties agreed to a free trade area over a transitional period of a maximum of 10 years, starting from the entry into force of the AA (1 July 2016). In other words, this means a gradual liberalization of trade for selected category products, which are considered sensitive for Moldovan economy (e.g. meats, dairy products, vegetables, fruits and berries, cereals, wines, textile products, plastic articles, as well as imposed tariff rate quotas on certain meat products, dairy products and sugars⁷²). Such a transitional period would allow Moldova to introduce the necessary reforms and adopt the EU standardization, in order to increase the competitiveness of domestic industry before opening its market, without restrictions, to the EU products.

As a result of signing the AA, there was concerted effort to reorient away from Russia. The trade between the EU and Moldova grew by 8% in 2014, in particular, owing to a growth in Moldovan exports to the EU, which reached about EUR 3.5 billion. In turn, the EU exports to Moldova grew only by 3% or EUR 75 million, reaching EUR 2.35 billion in 2014.⁷³

Therefore, it was no surprise when the signing of the AA triggered a hostile reaction on the part of Russia, including what leaders in Chisinau believed to be politically-motivated embargos on Moldovan wine, meat, vegetables and fruits.

These embargoes had a predictable and beneficial effect, as they forced Moldovan authorities to seek out new trade partners and external markets, with a specific focus on improving the quality standards of local products, despite the challenges presented by gaps in the legal framework, divergent sanitary and phytosanitary standards, as well as the risk taking by entrepreneurs, particularly in the agriculture sector.

⁷¹ Amat Adarov, Peter Havlic, „Benefits and costs of DCFTA: Evaluation of the impact on Georgia, Moldova and Ukraine”, *Joint working paper by the Vienna Institute for International Economic Studies and Bertelsmann Stiftung*, 2016.

⁷² EEAS, Delegation of the European Union to Moldova, *Deep and Comprehensive Free Trade Area, Argumentaire*, http://eeas.europa.eu/archives/delegations/moldova/documents/eu_moldova/argumentaire_en.pdf, December 2014, retrieved on 30 September 2018.

⁷³ EEAS, Delegation of the European Union to Moldova, *Republic of Moldova and the EU trade*, http://eeas.europa.eu/archives/delegations/moldova/eu_moldova/trade_relation/index_en.htm, 12 September 2016, retrieved on 29 September 2018.

Though, the implementation of substantial reforms required by the EU in the fields of technical regulations, sanitary and phytosanitary measures, intellectual property rights protection and competition rules are designed to increase the competitiveness and sustainability of Moldovan goods and services along with important foreign trade competitors, namely, from the European Union area and beyond.

Overall, it can be seen that the implementation of the DCFTA has been very positive, as trade between Moldova and the EU increased in 2017 by 18% (to EUR 4 billion). In addition, the EU has become Moldova's primary trading partner accounting for over 55% of total trade and biggest investor in the country. According to the data provided by the national Statistical databank, the leading trade partner is represented by the EU member states, respectively, in 2017 – 66,84 %, and with CIS countries, for the same period – 38,38 %.⁷⁴

However, adopting the EU standards takes time, effort, and sizable investment, whose positive consequences are not necessarily felt very quickly, whilst the costs of modernization and adaptation to producers can be immense.

It is clear that the implementation of the DCFTA has contributed to the growth and diversification of Moldova's economy, despite the challenges, thereby debunking the 'myths of the destructive impact of the EU trade liberalization in DCFTA'.⁷⁵ The comparative figures speak from themselves: in 2017 the exports of agricultural products to the EU market increased by USD 235 million, counterbalancing the loss of USD 53 million incurred on the CIS market".⁷⁶

These success have provided a new impetus to DCFTA implementation, particularly in the implementation of sanitary and phytosanitary measures, improving market conditions in the field of energy, public procurement, and access to finance for small and medium-sized enterprises⁷⁷.

Challenges of DCFTA for the Transnistrian region

Importantly, the new trade regime between Moldova and the EU also includes the breakaway of Transnistrian region, which is mindful of the support received from the Russian administration. The Transnistrian region representatives were invited as observers to attend the DCFTA negotiations,⁷⁸ thereby, providing them with the opportunity to address issues of concerns related directly to the region's economy. From the outset, unrecognized Tiraspol⁷⁹ regime railed against the DCFTA,

⁷⁴*** Statistical databank, *External trade by group of countries, 1997-2017*, Year 2017, http://statbank.statistica.md/pxweb/pxweb/en/40%20Statistica%20economica/40%20Statistica%20economica_21%20EXT_EXT010_serii%20anuale/EXT010100.px/table/tableViewLayout1/?rxid=b2ff27d7-0b96-43c9-934b-42e1a2a9a774, retrieved on 27 September 2018.

⁷⁵Expert Group, *State of the country report 2018*, https://www.expert-group.org/media/k2/attachments/State_of_the_Country_Report_2018.pdf, Chisinau 2018, p.3.

⁷⁶ *Ibidem*.

⁷⁷ Council of the EU, *Joint press statement following the fourth Association Council meeting between the EU and the Republic of Moldova*, <https://www.consilium.europa.eu/en/press/press-releases/2018/05/03/joint-press-statement-following-the-fourth-association-council-meeting-between-the-eu-and-the-republic-of-moldova/>, 03 May 2018.

⁷⁸ Interview, Moldovan official, anonym, October 2018.

⁷⁹ Note: Tiraspol is the second largest city in Moldova, as well as the capital of the unrecognized Pridnestrovian Moldavian Republic/PMR - Transnistria.

highlighting its negative impact on the region's economy and the confidence building process between Chisinau and Tiraspol. The aim of this reaction appears to have been the postponement of the implementation of the new trade regime, and most important, Transnistrian region to avoid becoming dependent on Moldovan authorities.

It is important to note, that Tiraspol already enjoyed a favored status in relation to the EU and Moldova trade regime. The legal framework of trade cooperation between Chisinau and Brussels, had been conducted under the Generalized Scheme of Preferences Plus (GSP+) of 2006 and the Autonomous Trade Preferences (ATP) scheme of 2008. Furthermore, the Transnistrian region benefited from asymmetric trade with the EU by registering its companies with the Chamber of Commerce and Industry of Moldova, situated in Chisinau, thereby making them eligible for export certificates to access the EU market. In present, there are registered around 2500 economic agents⁸⁰ based in Transnistrian region, which means they are enabled to participation in the FTA with the EU market.

Nevertheless, Tiraspol's efforts to secure a separate bilateral agreement with Brussels failed. Instead, the EU approved Moldova's proposal to extend the ATP for the Transnistrian region economic agents until the end of 2015.⁸¹ However, the DCFTA was extended to the breakaway region on 1 January 2016. This fact was officially confirmed by the decision from 18 December 2015 of the EU - Moldova Association Council, highlighting that the provisions of the AA, including trade aspect (DCFTA) are going to apply on entire territory of Moldova.⁸² In other words, the abovementioned decision confirms that the ATP applied for Transnistrian region companies have been cancelled instead, the DCFTA extended to the unrecognized republic.

On the other side, the official Moldovan sources specify that the breakaway region's trade with the EU is an asymmetric one, meaning that once a year, this provision is re-examined by the Association Council and the DCFTA's functioning on the territory of the region is extended by one year.⁸³ In the end, there is no official data to specify under which exact conditions the region is allowing to benefit the DCFTA.

Regarding the political framework, Moscow accepted the inclusion of the Transnistrian region into the DCFTA, a decision very convenient for Russian administration, because of particular reasons. Firstly, the US and the EU sanctions against Russia over Ukrainian crisis and in response to illegal annexation of Crimea, followed by the Russian ruble devaluation. Subsequently, that increased Moscow's financial costs aimed to backing up the separatist regions in post-Soviet countries. At the same time, Kremlin was looking to coerce the ruling authorities of the Transnistrian region to manage efficiently money coming from Russia, which usually ended in the hands of Sheriff company, holding the monopoly in the region.⁸⁴

⁸⁰ Anders Aslund, Timothy Fairbank, *op.cit.*

⁸¹ Stanislav Secieru, *Transnistria Zig-zagging towards a DCFTA*, Policy paper, https://www.pism.pl/files/?id_plik=21295, January 2016, retrieved on 1 October 2018.

⁸² Official Journal of the European Union, *Decision no 1/2015 of the EU-Republic of Moldova Association council of 18 December 2015*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22015D2445>, retrieved on 2nd October 2018.

⁸³ AA/DCFTA in the Republic of Moldova, *The Free Trade Agreement on the left bank of the Nistru River: with small steps towards economic integration*, <http://dcfta.md/the-free-trade-agreement-on-the-left-bank-of-the-nistru-river-with-small-steps-towards-economic-integration>, retrieved on 8 December 2018.

⁸⁴ European Parliamentary Research Service, *Association Agreements between the EU and Moldova, Georgia and Ukraine. European Implementation Assessment*. Brussels, June 2018, p.91

Tiraspol has to go through a long path to ensure full compliance with sanitary, veterinary and phytosanitary regulations of the EU. Although, a particular attention concerns the impact of removing import tariffs on the EU goods. This is a tremendous challenge for Transnistrian region, because of the lack of a modern tax system according to international standards. Hence, it was recommended to separatist authorities to introduce Value Added Tax (VAT) in order to diversify the revenue sources and avoid loss in the budget.⁸⁵

In this regard, a project of customs code had been drafted, which is largely based on the conditions and requirements formulated by the EU in line with AA regulations, aimed to facilitate trade with the breakaway region.⁸⁶ Although, the decision of VAT introduction in the Transnistrian region new fiscal code would undermine the interests of Sheriff company, which holds monopoly, including on the imported goods, making the tax system issue more complicated to put into practice.⁸⁷

Despite many barriers currently in place, there were registered an important growth. According to region's data statistics, the main exports partners of the region are Moldova (30%), Ukraine (18,3%), Romania (16,2%), Germany (5,7%), Italy (6,1%) and Russia (10,5%).⁸⁸ Even though the Transnistrian region official statistics are not always accurate, the numbers show a sharp increase in trade with the EU, while the exports with the Russian Federation is diminishing. Moreover, breakaway region registered a significant increase of export of metal products in the first eight months of 2018, especially to Romania, which consisted of 96.11%, as well as Poland, which amounted 95.72%, in comparison with Ukraine reaching 46.63%.⁸⁹

The implementation of AA/DCFTA by Moldova in fact represents an opportunity for Transnistrian region to develop its economic potential in compliance with the EU and international standards, as well this might contribute to enhance cooperation between Chisinau and Tiraspol with a future perspective to advance more in settlement of conflict process.

⁸⁵ Ricardo Giucci, Jorg Radeke, *Trade liberalization in Transnistria. Fiscal impact of a reduction in import tariffs and proposals for alternative revenue sources*. Berlin, May 2015, p.9

⁸⁶ Radu Benea, *Economia transnistreană: stabilizare sau monopolizare?* [Transnistrian economy: stabilization or monopolization?], REL/RFE, <https://www.europalibera.org/a/dialoguri-transnistrene/28956765.html>, 1 January 2018.

⁸⁷ European Parliamentary Research Service, *op.cit.*

⁸⁸ *** *Торгово-промышленная палата Приднестровья, 2017 год в цифрах*, [Chamber of Commerce and Industry of Transnistria, 2017 in numbers], <http://tiraspol.ru/confirmed/2017-goda-v-tsifrah-okonchatelnyie-dannye/>, retrieved on 26 September 2018.

⁸⁹ AA/DCFTA in the Republic of Moldova, *op.cit.*

III. Role of the European Union within the Transnistrian settlement process

Through its European Neighborhood Policy (2004), and even more following the signing of the AA in 2014, the EU became an important political actor within the Transnistrian settlement process. In 2005, the so-called “3+2” format (which included as mediators: OSCE, Russian Federation and Ukraine; and as parts of the conflict: Chisinau and Tiraspol) evolved into *the Permanent Conference on Political Issues in the Framework of the Negotiation Process for the Transnistrian Settlement in the “5+2” format*, where have been included the EU and the USA as observers.

It is very important to mention, that presenting Chisinau and Tiraspol as parts of the conflict is Moscow’s narrative, this being confirmed by the 1991 cease-fire agreement, which was concluded between Moldova and Russia⁹⁰. Furthermore, experts are advocating that Transnistrian conflict represents a Russian proxy conflict.⁹¹ This is one of the reasons why Moldova considers the protracted conflict on its territory is actually between Chisinau and Moscow, and not with Tiraspol. Losing the opportunity to set out in the beginning the proper format of the negotiations, Moldova can still have a chance to re-consider other options related to the conflict settlement.

In 2010, Moldova proposed changing the status of the EU and the USA from observers to mediators, strongly supported by former EU Special Representative to Chisinau, Mr. Kalman Mizsei.⁹² The EU is playing a key-role in fostering the dialogue between Chisinau and Tiraspol by supporting ‘joint initiatives involving local authorities, civil society organizations and other stakeholders from both sides.’⁹³ Moreover, the EU has become more engaged in the process since 2005, when EUBAM was launched, with the purpose of supporting Moldova’s and Ukraine’s efforts to effectively manage their common border and measures contributing to the settlement of the Transnistrian conflict.⁹⁴

Taking these into consideration, there are several grounds in favor of the EU as a mediator within this conflict settlement process, in particular:

- the Transnistrian conflict is, following the 2007 enlargement, close to the European Union’s eastward border;
- regional conflicts represent a key threat to the EU community;⁹⁵
- the existence of EUBAM which was designed to enhance regional security and promote border control, customs and trade norms and practices that meet EU standards;⁹⁶

⁹⁰ Agreement on the Principles for a Peaceful Settlement of the Armed Conflict in the Dniester Region of the Republic of Moldova, signed by the Republic of Moldova and Russian Federation, Moscow, 21 July 1991.

⁹¹ Victoria Bucataru, Dumitru Minzarari, *Soluționarea conflictului transnistrean la cel de-al 25-lea an de impas: Cauze, obstacole și soluții posibile. [Transnistrian settlement conflict in the 25th year of deadlock: Causes, obstacles and possible solutions.]* Chisinau, March 2018, p.20

⁹² Kalman Mizsei, *UE speră în reluarea negocierilor de reglementare a chestiunii transnistrene după Summit-ul OSCE de la Astana, [EU hopes to resume talks on regulating the Transnistrian issue after the Astana OSCE Summit]* REL/RFE, <https://www.europalibera.org/a/2189956.html>, 14 October 2010.

⁹³ EEAS, *EU-Moldova relations, factsheet, loc.cit.*

⁹⁴ *Ibidem.*

⁹⁵ EEAS, *European Security Strategy - A Secure Europe in a Better World*, <https://europa.eu/globalstrategy/en/european-security-strategy-secure-europe-better-world>, Brussels, 12 December 2013.

⁹⁶ EEAS, *European Union Border Assistance Mission to Moldova and Ukraine (EUBAM)* <http://eubam.org/who-we-are/>, retrieved on 20 September 2018.

- specific statements regarding the Transnistrian issue are included in the EU – Moldova AA, where the parties reiterate their commitment to identify a sustainable solution ‘in full respect of the sovereignty and territorial integrity of the Republic of Moldova, as well as to facilitating jointly post-conflict rehabilitation’;⁹⁷
- as the Transnistrian region joined the DCFTA in January 2016, more than 60% of regional products are exported to the EU market;
- due to EUBAM assistance, in July 2017 a ‘joint Ukraine-Moldova customs and border controls for the international border crossing point at Kuchurgan, at the Transnistrian section frontier’ was created;⁹⁸
- EU is the main donor of Moldova providing substantial financial assistance through different programs in line with confidence building measures;
- EU was one of the members of the Geneva talks (alongside the US, Ukraine and Russia), also, the EU member states (France and Germany) are part of the Normandy Format within the Ukrainian conflict. Therefore, like in the case of Ukraine, the EU could take a greater role in Moldova’s case aiming to internationalize the protracted conflict and to establish the right format of negotiations (Chisinau and Moscow being recognized as a true parts of the conflict).

The proposal has, however, failed to gain traction owing to the objections of Moscow and Tiraspol. This has not discouraged the EU from undertaking further initiatives, for example, by involving Transnistrian region entrepreneurs to benefit from the free trade regime between Moldova and the EU, demonstrating that Brussels is ready ‘to examine different options for resolving emerging issues’⁹⁹, though always sticking to the line that Transnistrian region is part of Moldova.¹⁰⁰ Needless to say, this stance is not widely supported by the Tiraspol administration as it stands to obtain independence, afterwards joining the Russian Federation. Despite the fact that Moscow has not officially recognized the independence of the region, it gives the idea that Russia is more interested to maintain the status-quo and bring Moldova back to its influence through a pro-Russian government.

Having the EU back support, it must take into consideration the idea to raise the status from observer to mediator into the talks of negotiations, shifting the current “5+2” format and adjusting to the changing political context. Communication must be a priority for the parties, including for the EU, in terms of delivering information about the programs and projects of confidence building aiming to exclude the interpretation and biased critics from Moldovan public opinion. This recommendation is valid for Moldovan authorities. As transparent and opened policy approach will be implemented by Chisinau, as much will increase the accountability and trust in front of the civil society, citizens and development partners, encouraging consultations with them on important issues.

⁹⁷ AA, *Preamble*.

⁹⁸ EC and HRVP, *Association Implementation Report on Moldova Joint Staff Working Document*, 3 April 2018, p.6.

⁹⁹ Anatoliy Dirun, political analyst and director of the think-tank - School of political studies from Tiraspol, interview, October 2018.

¹⁰⁰ *Ibidem*.

Conclusions

The findings of this study reflect a contrasted image of the implementation of the AA. Undeniably, several positive developments could be observed, such as;

- the Public Administration Reform;
- the financial and economic sector stabilization;
- the adoption of the New Audiovisual Code and other important laws and projects.

However, increasing shortcomings and backslides in implementing the adopted legislation could be analyzed as well, such as lack of political will to implement *de bona fide* the AA and the reforms it entails; the fight against corruption did not provide yet the expected results residing from the strategies; the excessive politicization of state institutions; the lack of synergy between all the ostensibly pro-EU parties; the concrescence of economic and political power. Considerable steps have been made in legal approximation with the EU. Nonetheless, areas of freedom, security and justice of the AA are discrepantly lagging behind, especially at the implementation phase.

Internal problems represent Moldova's biggest challenges, which are incomparable with the external pressure. Therefore, several domestic challenges, that hindered the relations with the EU, were identified. The risk of the monopolization of media by powerful interests still persists as a threat to citizens' right to information. Several actions raised concerns of human rights breaches (e.g. the expulsion of 7 Turkish citizens). Clear steps ought to be taken to ensure the independence of the judicial power from the other two branches of power, in order to restore trust in the judicial system. There has been attested an insufficient investigation of the 2014 banking fraud. The change of the electoral system took place without reaching meaningful consultation and a broad consensus among all political parties and civil society. And, the new electoral code could pose some risks, such as influence taking at constituency level.

No official EU document makes any reference to an eventual accession of Moldova to the EU. Therefore, EU-Moldova relations remain, *grosso modo*, as defined by the art. 218 (6.i) TFEU, to which the EU-Moldova AA is circumscribed. The implementation rate of the AA, by Moldova, is rather low. Although, all the legal bodies created by the AA meet regularly, the frequency of other than AA bodies meetings substantially decreased, namely those at the highest level.

The EU has been proactive in attempting to facilitate developments in Moldova, especially through technical assistance and financial support. The EU increased its financial support to Moldova when assessed that it implemented the AA appropriately and reduced or even put on hold the financial assistance, when the EU assessed the opposite. Several steps on reforming the state institutions and mechanisms were rather guided by the need to comply with external pressure requirements (e.g. political conditionality for new disbursement of financial assistance), than steered by an internal will to act and reform. This was also the case for some provisions of the AA, namely because the agreement is legally binding for the signatories.

Moldova's economy was boosted by the DCFTA, offering many privileges to access the EU market in compliance with the AA provisions. Nevertheless, it must acknowledge that adopting the EU standards requires time, sizable effort and investment, whose positive results would not feel immediately. Although, the costs of modernization and adaptation to producers will increase their competitiveness and sustainability along with important foreign trade competitors. Pertinent measures could bring

closer Chisinau and Tiraspol, as the Transnistrian region joined the DCFTA too. Furthermore, they should continue to suggest similar and more impactful actions in this regard, as the EU market is more attractive than the Russian one from economic point of view.

The confidence building programs supported by the EU are the main mechanism of the European partner to get involved and be a part of the Transnistrian settlement conflict process. However, there are many other options to be considered, in particular, by the Moldovan government in order to shift the current format of negotiations and enhance the EU's role thereat. From this perspective, Chisinau has to make use of all capacities and tools aimed to achieve a peaceful and viable solution for the protracted conflict.

Recommendations

- Moldova's public authorities shall revitalize, without delay, the political dialogue with the EU, especially at the highest level;
- European integration must be the guideline of the country's development. EU's technical and financial assistance are vital for Moldova and should be duly capitalized. The country does not have a better integrationist alternative;
- authorities shall avoid superficiality and mimicking in the implementation of reforms of the AA/DCFTA. A passage from theoretical legal approximation to effective and efficient implementation of those laws and norms is required. Also, an increasing of the implementation rate of the AA/DCFTA shall be ensured;
- Moldovan authorities must foster the implementation of reforms in trade-related areas in compliance with AA provisions, as to enhance competitiveness and sustainability of the Moldovan economy, and finally to increase life standards of Moldovan citizens;
- appropriate institutions must ensure the public opinion with information materials/analysis about the results achieved in line with DCFTA provisions, the main challenges faced up by the state institutions and connected stakeholders. In addition, it has to provide access and transparency to information regarding the implementation of DCFTA in the Transnistrian region;
- Moldovan government has to engage more the Transnistrian region in the DCFTA, by increasing cooperation and developing partnerships between business community from both parties using the EU financial programs;
- a deep and proper reform of the judicial system is imperative. Particular attention should be drawn to ensuring the public's access to the court hearings, transparent selection and promotion of judges, avoid selective justice and delays;
- investing in institutional capacity would be required, as there is lack of resources and know-how in many public institutions, which impede many reforms to reach their initial goals;
- EU shall continue supporting the civil society in Moldova, in order to closely monitor public authorities and the evolution of the country, especially during the next electoral campaign. Also, more efforts shall be made to strengthening EU's visibility in the country;
- the idea to change the Transnistrian settlement format of negotiations towards enhancing the EU's role in this process, has to be firmly promoted by Chisinau at all levels and formats of interaction with the international community. The EU having the experience as mediator within the Ukrainian conflict might give a new impetus and framework to further settlement of the Transnistrian dispute;
- while it was declared that European integration is the main priority of Moldova, a window of opportunity – the Romanian presidency of the Council in 2019- shall be wisely considered and capitalized by Moldova's government. Moldova should send diplomats and experts to participate at as many as possible events organized by the Council and lobby for the European cause of Moldova, especially in Brussels, Bucharest and at the Sibiu Summit.

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