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THE EUROPEAN UNION'S ENGAGEMENT IN THE REFORM OF THE JUSTICE SECTOR IN MOLDOVA AND THE OLIGARCHIC EFFECT

CASE STUDY: THE REFORM OF THE PROSECUTION SERVICE

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Abstract

In the period of 2012-2014, Moldova was called a ‘success story’, and the country had the largest EU financial assistance per capita from EaP. However, the reforms have not led to structural changes; moreover, the situation was to that extent negative, that from the Moldovan bank system was stolen EUR 1 billion and the state was captured by a single oligarch. In this context, the present Master Thesis proposes to identify the factors that determined limited results of the European Union’s support for reforms in Moldova. For this purpose, the author takes as a study case one of the main reforms where the EU was involved – the reform of the justice sector.

Firstly, it analyzes the technical part of the EU’s engagement in the reform. Secondly, it researches the implementation of the prosecution service reform and pinpoints the main obstacles in the reform over the years. Further on, the author draws the spider web of the oligarchy over the nowadays Moldovan society and narrows it down to illustrate the influence of the oligarchs in the judiciary and prosecution service reform. The study concludes with a comprehensive analysis of the EU regional approach and individual approach to the oligarchic factor and ‘state capture’ in Moldova.

Based on the case study, the thesis identifies 3 main categories of reasons for the limitation of the results of the justice sector reform supported by the EU. The first one is the EU’s mistakes at the technical level. It did not make sure that the Justice Reform Strategy is designed in an effective way. Moreover, the EU was not strict enough with conditionality. The second reason is oligarchy’s opposition to the structural reforms, through various methods, such as delaying the reform, changing the draft laws before the final voting, appointment of persons loyal to the oligarch in key positions.

The third category of reasons is the EU’s misused approach towards the oligarchs from Moldova. Currently, the EU tries to be present in Moldova to avoid a switch of strategical vector and an overturn of reforms. For this purpose, the EU needs to have sufficient strong leverage on the Government, which translates into engagements with the Government in financial assistance programs and their support. Moldovan Government has implemented a road map of reforms agreed with the EU. In response, the EU defrosted the financial assistance and promised a new loan of EUR 100 million. Accordingly, the EU legitimizes an oligarchic regime in order to be present and to influence some reform processes, but, in the end, the EU’s efforts are not enough to stop the ‘state capture’ process that rises even more with the EU’s support.

The findings of the present master thesis can serve as a policy paper for the European Commission and will be a valuable academic contribution internationally, especially in Moldova, where, due to the full control of all spheres of the society, the ‘state capture’ and ‘oligarchy’ topics are almost a taboo.

Keywords

European Union, Moldova, Oligarchy, state capture, the reform of the justice sector

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List of Abbreviations

AA	Association Agreement
CEE	Central East Europe
CFSP	European Union Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CNROOND	The National Council for the Reform of Law Enforcement Bodies
CoE	Council of Europe
CSDP	European Union Common Security and Defence Policy
CSO	Civil Society Organizations
CVM	Cooperation and Verification Mechanism (Romania and Bulgaria)
DCFTA	Deep and Comprehensive Free Trade Area
DP	Democratic Party from Moldova
EaP	Eastern Partnership
ECF	Extended Credit Facility
EEAS	European External Action Service
EFF	Extended Fund Facility
ENI	European Neighborhood Instrument
ENP	European Neighborhood Policy
EU	European Union
EUBAM	The European Union Border Assistance Mission to Moldova and Ukraine
FRONTEX	The European Border and Coast Guard Agency
GDP	Gross Domestic Product
IEPR	Institute for European Policies and Reforms
IMF	International Monetary Fund
IPA	Instruments of Pre-accession assistance

JSRS	Justice Sector Reform Strategy
MFA	Macro-financial Budgetary Assistance
MP	Member of Parliament
NDA	National Anticorruption Directorate
NGO	Non-governmental Organization
NSA	Non-state Actor
ODA	Official Direct Assistance
OLAF	The European Anti-Fraud Office
PCA	Partnership and Cooperation Agreement
RM	Republic of Moldova
SIGMA	European Union Support for Improvement in Governance and Management
SSF	Single Support Framework
TAIEX	Technical Assistance and Information Exchange instrument of the European Commission
UN	United Nations
UNDP	United Nation Development Programme
UNTOC	United Nations Convention against Transnational Organized Crime
USA/US	United States of America
USAID	The United States Agency for International Development

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Chapter I. Introduction and discussion on the European Union's conditionality

1.1 Introduction

The relationship between Republic of Moldova (RM) and the European Union (EU) has been shaped by a set of bilateral and multilateral circumstances and agreements. On the bilateral level, relations started in 1994 with the concluding of the Cooperation and Partnership Agreement (PCA) that entered into force in 1998 with duration of 10 years. In the same bilateral framework (PCA), in 2005 was adopted the Action Plan RM-EU. In fact, this action plan was a new regional (multilateral) approach of the European Union in the context of adoption of the European Neighbourhood Policy in 2004. The Action Plan RM-UE had a period of 3 years and represented the most advanced and ambitious stage of the PCA. The Plan was meant to “significantly advance the approximation of Moldovan legislation to those of EU; move beyond cooperation to a significant degree of integration; increase financial support”.¹ It said that fulfillment of contained stipulation will prepare Moldova for a “new contractual relationship”.² Despite progress in the implementation of the Plan,³ “the major problem was the imperfect enforcement of the legislation adjusted to the Plan, chronic shortcomings in a number of very sensitive fields such as the judicial reform; human rights; freedom of the media, etc.”⁴

After a declared pro-European Government and a Parliamentary coalition that came to the power in 2009, the EU-Moldova relations recognized a new level. This time, the occasion for advancing relations was the bilateral favorable circumstances. In the early 2014, Moldova obtained visa free regime with the EU and in late 2014 was signed the Association Agreement (AA) with a deep and comprehensive free trade area. The type of AA signed with Moldova and Ukraine represents the most ambitious type of such documents ever signed by the EU with a third country. “This agreement aims to improve political and economic relations and gradually integrate Moldova into the EU's internal market. The free trade area provides for removing

¹ The European Union, the Republic of Moldova, *European Union - Republic of Moldova Action Plan*, adopted on 22.02.2005.

² *Ibid.*

³ European Commission, *Country Report on Moldova*, European Commission, Brussels, Belgium, 03.04.2008.

⁴ Igor Botan, et al, *EUROMONITOR. Implementation of reforms initiated accordingly to EU-Moldova Action Plan, Assessment of progress in October-December 2008*, Association for Participatory Democracy ADEPT and Independent Analytical Centre EXPERT-GRUP, Chisinau, Republic of Moldova, Issue 4 (13), 2008, p. 6.

customs tariffs and quotas and harmonizing laws and regulations with those in the EU in various trade sectors.”⁵ According to some experts, its full implementation will harmonize Moldovan legislation and standards to the EU in proportion of 70%, which would attract more foreign direct investments, economic growth and prosperity to the Moldovan people.⁶ Moreover, the EU membership perspective for Moldova was recognized by the European Parliament in its Report from 21.10.2014: Moldova “has a European perspective and may apply to become a member of the European Union provided it adheres to the principles of democracy, respects fundamental freedoms and minority rights, and ensures the rule of law”.⁷

The multilateral framework of the EU-Moldova cooperation is developed under the European Neighborhood Policy and its eastern regional dimension based on the Eastern Partnership Policy. From the financial assistance perspective, the relation between two entities was based on European Neighborhood and Partnership Instrument (2007-2013) and the European Neighborhood Instrument (2014-2020). Under these networks, the EU allocated to Moldova EUR 782 million in the period 2007-2015, making Moldova, in this way, the country with the highest amount of euro per inhabitant from the EU’s Eastern Neighborhood.⁸ Since 2012, Moldova has been characterized by the EU as a ‘success story’ and ‘front runner’: “Moldova's efforts to implement the European values makes it an important partner for the EU and a front-runner in the Eastern Partnership”⁹; “We have agreed that we need success stories, and Moldova is such a good story. They have been capable of offering concrete result-oriented progress over

⁵ European Court of Auditors, *Special report: EU assistance for strengthening the public administration in Moldova*, European Court of Auditors, Luxembourg, 01.09.2016, p. 7. Available at: <http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=37235> (consulted on 20.02.2017)

⁶ Iulian Groza, Mathias Jopp, Iurie Leanca, Iulian Rusu, Hans-Martin Sieg, *Assessing the state of European integration and potential for Transatlantic cooperation in the post-Soviet space: the case of Moldova*, Institut für Europäische Politik, Berlin, Germany, 02. 2017, p. 41.

⁷ European Parliament, Committee on Foreign Affairs, *Report containing a motion for a non-legislative resolution on the draft Council decision on the conclusion, on behalf of the European Union, of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part*, Brussels, Belgium, 21.10.2014, point S.2. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2014-0022+0+DOC+XML+V0//EN>, (consulted on 23.02.2017)

⁸ European Court of Auditors, op. cit., p. 8.

⁹ European Commission, *EU-Moldova: Challenges ahead of signing the Association Agreement*, European Commission, Brussels, Belgium, 24.04.2014. Available at: http://europa.eu/rapid/press-release_IP-14-478_en.htm (consulted on 25.04.2017)

a short period of time”, declared Stefan Fule, the European Commissioner for Enlargement and Neighbourhood Policy between 2010-2014.¹⁰

Moving on further to our topic, ‘*the EU engagement in the reform of the justice sector*’, the author is mentioning that the reform of the justice sector and of fighting corruption have been primarily important for the EU. The formal basis for this cooperation is within the Association Agreement, title III, ‘Freedom, Security and Justice’, art. 12. Rule of law:

“1. In their cooperation in the area of freedom, security and justice the Parties shall attach particular importance to the promotion of the rule of law, including the independence of the judiciary, access to justice, and the right to a fair trial; 2. The Parties will cooperate fully on the effective functioning of institutions in the areas of law enforcement and the administration of justice; 3. Respect for human rights and fundamental freedoms will guide all cooperation on freedom, security and justice.”¹¹

Nonetheless, the Association Agreement does not stipulate the precise changes and reforms Moldova has to make to correspond more to the EU standards in this field (an exception is the protection of personal data). Instead, the Association Agenda is that important roadmap document that gives more detailed features of the needed reforms, including in the justice sector. In accordance with the AA and the Association Agenda, the next, more practical step, was the adoption of the Justice Sector Reform Strategy 2011-2016 on November 25, 2011. The EU support for it has consisted mainly in direct budget support with an amount of EUR 51 million, technical assistance of the High Level Advice Mission and assistance “on the monitoring of the implementation of the justice sector reform strategy”.¹²

But, from a ‘success story’ within the period of 2012-2014, and from a country with the largest EU financial assistance per capita from EaP, reforms path in Moldova started to decline over

¹⁰ Commissioner Fule: *There is no wall for R. Moldova’s accession to the EU*, 29.10.2012. Available at: <http://www.nineoclock.ro/commissioner-fule-there-is-no-wall-for-r-moldova%E2%80%99s-accession-to-the-eu/> (consulted on 25.04.2017)

¹¹ The European Union, the Republic of Moldova *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part*, 30.08.2014, p. 11. Available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22014A0830\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22014A0830(01)) (Consulted on 14.02.2017)

¹² Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 24.

the years, instead of intensification. Already by the end of 2014, Moldova became the second problematic political and economic environment after Ukraine (in EaP), generated by ‘the theft of the century’ of a billion EUR and by limited changes on the ground. All this led to funds freezing from the EU in 2015.

The absence of the expected outcomes of the EU funded programs in Moldova was warned in 2016 by The European Court of Auditors. In its document “Moldova: only limited evidence of progress from EU support” it concludes: “the EU faces significant challenges in implementing assistance for Moldova. The combination of political and macroeconomic instability, weak governance and public administration significantly reduces the European Commission’s leverage to encourage reforms”¹³. The reform of the justice sector and fighting corruption went even worse. Even in 2014, when Moldova was a ‘success story’, there were serious problems: “Moldova made less progress than in previous years on deep and sustainable democracy..., corruption in the Moldovan judiciary remained a major concern and the reform of the Public Prosecutor’s office has stalled”¹⁴. Moreover, the state of the democratic reforms in Moldova reached a lower level when the former prime-minister of Moldova, Vlad Filat, was arrested and the political leadership in the country was taken, in an almost formal way, by the businessman Vladimir Plahotniuc. The majority of the experts on Moldova consider Vlad Plahotniuc as being an oligarch¹⁵ that has built a network and has ‘captured the state’¹⁶ Republic of Moldova.

Even though the trend in a lack of tangible reforms continued in 2015 and 2016 and the state was captured by an oligarch, the relation with the European Union has started to re-advance since late 2016. A new government led by a Democratic Party’s prime-minister has successfully implemented the EU-Moldova Priority Reform Action Roadmap, a document aimed to restore

¹³ European Court of Auditors, *Press Release, Special report: EU assistance for strengthening the public administration in Moldova*, Luxemburg, 01.09.2016. Available at: <http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=37235> (consulted on 28.02.2017)

¹⁴ European Commission, *Implementation of the European Neighbourhood Policy in the Republic of Moldova Progress in 2014 and recommendations for actions*, European Commission, Brussels, Belgium, 25.03.2015, p. 2.

¹⁵ Oligarchs: “small groups of people with economic power who use it to make significant claims on political power”; Stephen Fortescue, *Russia’s oil barons and metal magnates. Oligarchs and the state in transition*, Palgrave Macmillan, Basingstoke, United Kingdom, 2006, P. 3

¹⁶ State capture - a process of “shaping the formation of the basic rules of the game (laws, rules, decrees and regulations) through illicit and non-transparent private payment to public officials”; Joel S. Hellman, Geraint Jones, Daniel Kaufmann, *Seize the state, seize the day: State capture, corruption and influence in transition*, The World Bank, 2000, p. 2.

the financial assistance with the International Monetary Fund (IMF) and the EU.¹⁷ Therefore, on the 21st of December 2016, the UE defrosted the budgetary support amounted to EUR 45.3 million. On November 7, 2016 Moldova signed a memorandum with the IMF in an amount of USD 178.7 million,¹⁸ and it is on the way to receive from the EU a new macro-financial assistance in an amount of EUR 100 million.¹⁹

In accordance with the evaluation of the EU-Moldova relations in the last years, the present master thesis will answer the following research question: **Why has the European Union's support for reforms in Moldova delivered limited results?**

To find out why the results are poor, the paper uses the case study of the justice sector reform, and, namely, its main component, reform of the prosecution service in Moldova. This inductive method allows to scan properly a small, but crucial part of all EU's reform engagements in Moldova, avoiding, thus, the treatment of a wide topic in a general and speculative way. The reform of the justice sector has been a major reform priority for both the EU and Moldova. Moreover, it is one of the most politicized and controlled by oligarchic factors.

So, the thesis demonstrates what was wrong (in the EU's efforts to support the justice reform in Moldova) at the technical/conceptual level, as well as, at the political level. For the analysis of the technical level, there are used the documentary analysis method of the Justice Sector Reform Strategy 2011-2016, financial agreements between Moldova and the EU, reports, press releases, conditionality clause, etc.

The political aspect refers mainly to the oligarchic factor from Moldova, which is the main cause of the reforms stalling. In order to demonstrate that oligarchs have slowed down the

¹⁷ European Commission, *Cooperation and Verification Mechanism for Bulgaria and Romania*, European Commission, Brussels, Belgium. Available at: https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en (consulted on 06.03.2017).

¹⁸ International Monetary Fund, *Press Release. IMF Executive Board Approves US\$178.7 million Arrangements under the Extended Fund Facility and the Extended Credit Facility for the Republic of Moldova*, International Monetary Fund, Washington DC, USA, 07.11.2016. Available at: <http://www.imf.org/en/News/Articles/2016/11/07/PR16491-Republic-of-Moldova-IMF-Executive-Board-Approves-Arrangements-Under-EFF-ECF> (consulted on 06.03.2017).

¹⁹ European Commission, *Proposal for a Decision of the European Parliament and of the Council providing macro-financial assistance to the Republic of Moldova*, European Commission, Brussels, Belgium, 13.01.2017, pp. 4-5.

reform of the prosecution service, the author structures the argumentation process in two main parts:

- 1) It identifies what were the main obstacles in the reform of the prosecution service (Chapter II). This is done through the qualitative observation method. The observations of the author were strengthened by credible sources, such as national and international evaluation reports. Valuable information was obtained from high level officials and experts from the EU and Moldova, through mail and Skype interviews.

However, the main challenge of the present master thesis is to demonstrate that the barriers in the reform were made namely by the oligarchs. This is a very sensitive and even dangerous attempt that requires a serious judicial/criminal investigation, what nobody has done so far. But, because the paper is limited in its scope and available resources, the author will link the obstacles in the reform process with the oligarchic interest in an indirect way. Thus, the second main part of the argumentation is as follows:

- 2) It will demonstrate the influence of oligarchy in Moldova, the complexity of ‘state capture’, and the net that controls the justice sector. The problem of assessing the influence of oligarchs and the ‘state capture’ in Moldova is not only an issue of judiciary investigation but also an academic one. That is why the author will demonstrate the status of ‘state capture’ in Moldova by referring to the relevant literature, official documents, high level officials’ declarations, public sources or private interviews realized for this master thesis, etc.

The problem of assessing the ‘state capture’ is widely concerning the international academic community. Since 2000, when the World Bank published a comprehensive analysis which uses quantitative and qualitative methods to analyze ‘state capture’, no other similar indexes have been published. The majority of papers that assess this phenomenon are based on qualitative data and corruption perception ranks. Still, the phenomenon of ‘state capture’ is more complex than corruption and its assessment is limited by the lack of a quantitative and raw data based research.

The linkage of the poor reforms in Moldova with the issue of oligarchs and ‘state capture’ is also important because, while within the international literature these terms are almost synonyms with Moldova, in Moldova, these research areas are almost a taboo in the academic environment.²⁰ The issues are tangibly treated only by the expert community²¹ that has a more policy oriented approach and which does not cover a deep and comprehensive analysis of the phenomenon. Another reason is that, in Moldova, the concept of the ‘state capture’ is rather disregarded and it is associated with propagandistic political speech. This happens because, firstly, the term was fiercely and publicly used by a movement (that became later a political party) that is financed by the opponents of Vladimir Plahotniuc, who are also businessmen with controversial past. In the end, the low credibility and the high suspicions towards this movement/party reflect automatically the term ‘state capture’.

In order to fulfill the goal of the present research, the paper also tries to show what was the EU’s response to oligarchic attempts to undermine the reforms and how the EU has been dealing with oligarchic factor from Moldova.

The Master Thesis is structured in four Chapters. The first one contains the introduction and a theoretical overview of the concept of conditionality with a specific focus on the Eastern Partnership. The second Chapter starts with a review of the Official Direct Assistance to Moldova, and, further on, summaries the delivery of the EU’s programs over the 6 years. To answer why the EU assistance has had poor results, the chapter also evaluates the technical part of the EU’s engagement in the justice reform in Moldova and its drawbacks. The third chapter is more practical, because it contains a case study that analyzes the implementation of the prosecution service reform from Moldova. Moreover, it identifies the main barriers and delays in the reform process and tries to investigate the oligarchic implications, as well as, the responses from the EU. The last Chapter starts with a comprehensive exploration of the theoretical concept of ‘oligarchy’ and ‘state capture’. Afterwards, it characterizes the origins and evolution of oligarchy and ‘state capture’ in Moldova. Furthermore, the author draws the

²⁰ Interview with Mr. Vladislav Saran, researcher at The Institute of Legal and Political Research, Academy of Sciences of Moldova, Skype interview, 25.04.2017.

²¹ Expert - a professional in a narrow domain, involved in the policy making process, consultancy, advocacy or policy analysis. Usually their profile is situated between academics and practitioners, but they can be involved in both. In Moldova, the experts, usually work for NGO’s and think tanks and it is quite common that they come from civil service or even from high level positions such as ministers, MP’s, ambassadors, etc.

spider web of the oligarchy over the nowadays Moldovan society, and, narrows it down to pinpoint the influence of the oligarchs in the judiciary and prosecution service reform. Because the thesis is about the EU's involvement in the reforms in Moldova, the Chapter ends with a comprehensive analysis of the EU regional approach and individual approach to the oligarchic factor and 'state capture' in Moldova.

1.2 The theoretical aspect of the concept of conditionality

The conditionality instrument is used mainly by international organizations to “reward in exchange for compliances”.²² According to Schmitter, cited in a master thesis by Renko Wouters, conditionality is an instrument that rewards a state when it meets certain criteria: “the use of fulfilment of stipulated political obligations as a prerequisite for obtaining economic aid, debt relief, most-favoured nation treatment, access to subsidized credit, or membership in coveted regional or global organization”.²³ According to Geoffrey Pridham, “conditionality is one of the most resonant and deliberate efforts to determine the process's outcome through external pressure”.²⁴ The first time, conditionality was applied by the International Monetary Fund (IMF) in 1950's.²⁵ Conditionality is also the “core strategy of the EU to induce non-Member States to comply with its principles of legitimate statehood”.²⁶ Heather Grabbe finds five type of situations when the EU uses conditionality (or the functions of the conditionality policy): “gate-keeping: access to negotiations and further stages in the accession process; benchmarking and monitoring; models: provisions of legislative and institutional templates; money: aid and technical assistance; advice and twinning.”²⁷

Hughes, Sasse and Gordon, cited by Gateva identify *formal* and *informal* conditionality. Formal conditionality is “the publicly stated preconditions”, such as, the Copenhagen Criteria and the

²² Renko Wouters, *Conditionality versus membership perspective as an instrument of democratic change: Romania and Moldova. A comparative case study of approaches and policies*, College of Europe, Warsaw, 2012, p. 25.

²³ *Ibid.*

²⁴ Eli Gateva, *European Union Enlargement Conditionality*, Palgrave Macmillan, London, United Kingdom, 2015, p. 24.

²⁵ Rachel A. Epstein, Ulrich Sedelmeier, ‘Beyond conditionality: international institutions in post-communist Europe after enlargement’, in: R. A. Epstein, U. Sedelmeier, *International Influence Beyond Conditionality. Postcommunist Europe after EU enlargement*, Routledge, Abingdon, Great Britain, 2009, pp. 1,2.

²⁶ Frank Schimmelfenning, Stefan Engert, Heiko Knobel, ‘Cost, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey’, *Journal of Common Market Studies*, June 2003, p. 495.

²⁷ Heather Grabbe, ‘How does Europeanization affect CEE governance? Conditionality, diffusion and diversity’, *Journal of European Public Policy*, December, 2001, p. 1020.

acquis communautaire.²⁸ Informal conditionality is “pressure and recommendation applied by actors from the Commission”.²⁹ Schimmelfennig and Sedelmeier quoted also by Gateva, add to the types of the conditionality: *democratic* and *acquis*.³⁰ While trying to explain it, Pridham states that democratic conditionality is a type of conditionality that puts an accent on “democratic rules, procedures and values”.³¹

The concept of conditionality has evolved considerably during those seven waves of enlargement of the EU, and continues to change in the context of the ENP. In the first enlargement (UK, Ireland and Denmark), the membership condition was more a problem of candidates passing the referendum, than the necessity to adjust to the community’s norms and rules.³² At that time, the only condition was ‘European Identity’.³³ The second enlargement (Greece) was also dominated by political factors and less on conditionality. Even then, the Commission expressed serious concerns about the reforms needed and a “preparatory period”, the Council stated that “preparatory talks... should take place as soon as possible in a positive spirit”.³⁴ In the third accession, the Commission identified from the beginning “a number of challenges in the area of agriculture, fisheries, industry, social aspects, regional aspects and external relations” that had to be solved.³⁵ Also, then, the Commission proposed a clarification of “the term of accession, particularly with reference to the transitional measures” and the necessity of a full adoption of the *acquis*.³⁶ For the second and the third enlargement, in addition to the condition of having a ‘European Identity’, there was added in 1978 the condition, “respect for and maintenance of representative democracy and human rights”.³⁷ With the occasion of the fifth enlargement (Central-East Europe), the conditions for membership were re-adjusted by the Copenhagen European Council from 1993. It required that a candidate state should fulfill the following criteria:

²⁸ Eli Gateva, *op. cit.*, p. 25.

²⁹ *Ibid.*

³⁰ Renko Wouters, *op. cit.*, p. 25.

³¹ *Ibid.*, p. 24.

³² *Ibid.*, pp. 8-11.

³³ *Ibid.*, p. 19.

³⁴ *Ibid.*, pp. 11-13.

³⁵ *Ibid.*, p. 12.

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 19.

- “political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- economic criteria: a functioning market economy and the capacity to cope with competition and market forces;
- administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership.”³⁸

Therefore, the EU enlargement conditionality has evolved from the “first generation of economic conditionality to a second generation” of both, economic and political conditionality.³⁹ The first experience of the EU with the second generation conditionality were the Central East European countries and it represented the most successful conditionality of EU that succeeded in generating significant changes in the ten post-communist countries.⁴⁰

But the conditionality policy is not limited only to the accession process. It is evident in the Association Agreements (AA) (indifferent to the membership aspect or not) between the EU and external actors.⁴¹ One of the first experiences of the EU putting in conditionality in the case of an AA was in relation with South-Eastern Europe countries. In case of these countries, the AA was conditioned by democratic reforms, such as, rule of law, human rights, and protection of minorities.⁴²

For an interaction with an external actor, the EU has an “external incentives model” that was designed for the pre-accession phase. According to this model, described by Schimmelfenning and Sedemeier, conditionality is divided between positive and negative. In case of a positive conditionality, “the EU pays the reward if the target government complies with the conditions” and withdraws if the state fails to comply.⁴³ Negative conditionality takes the form of sanctions and they have a pecuniary character that permits the EU to freeze funds.⁴⁴

³⁸ European Council, *European Council in Copenhagen 21-22 June 1993. Conclusions of the Presidency*, European Council, Copenhagen, Denmark, p. 13.

³⁹ Eli Gateva, *op. cit.*, p. 23.

⁴⁰ Rachel A. Epstein, Ulrich Sedelmeier, *op. cit.*, p. 1,2.

⁴¹ Eli Gateva, *op. cit.*, p. 26.

⁴² Eli Gateva, *op. cit.*, p. 23, 26.

⁴³ Frank Schimmelfenning, Ulrich Sedelmeier, *The Politics of European Union Enlargement: Theoretical Approaches*, Routledge, Abingdon, Great Britain, 2005, p. 11.

⁴⁴ *Ibid.*

The concept and effect of the membership conditionality continued to evolve and to become ‘harsher’ after the Central-East Europe EU enlargement. Croatia was the last state in which “the start of negotiations indicates a commitment on both sides to conclude them successfully”. For other Western Balkan countries, that are candidates, or even part of the negotiation process, “the membership perspective is far more distant and less credible”. Now, in the EU, there is a debate about “whether the negotiations could only lead to membership”. For example, the French constitution was amended in 2005 and makes it the subject of referendum for any enlargement after Croatia.⁴⁵

1.3 Conditionality in the European Eastern Neighborhood

Another development of the membership conditionality from 2004 was that one applied for the ENP countries. Here, in the absence of the ‘golden carrot’, the EU turned out too weak in its power to use strong conditionality for structural reforms. In the absence of the membership perspective, the importance of the ENP was reduced by “eroding the expectations” for countries like Moldova, Georgia, Ukraine. For other members like Belarus and Armenia, this meant there were not enough “incentives and benefits” to challenge relations with Russia. The benefits offered by the ENP, such as market access and visa liberalization or facilitation are “often vastly outweighed by the domestic costs of the demanded reforms”, that is why the governments calculate the cost and benefits for the complying to conditionality.⁴⁶

The ENP conditionality is described by Sasse as a ‘conditionality-lite’ if it is compared with the enlargement policy. With the same institutional structure as for the enlargement process, the ENP is meant to promote reforms but only has weak incentives.⁴⁷ In an analysis from 2016, published by Routledge, Borzel and Lebanidze analyze how the EU has applied EU conditionality in the ENP policy. The paper puts the focus on the Eastern Partnership, but also, refers briefly to the Southern Neighborhood. The authors find that the EU failure to be a

⁴⁵ Rachel A. Epstein, Ulrich Sedelmeier, *op. cit.*, pp. 4-5.

⁴⁶ Hrant Kostanyan (ed.), *Assessing European Neighborhoods Policy*, Rowman & Littlefield International, London, 2017, pp. 18-19.

⁴⁷ Gwendolyn Sasse, ‘The European Neighbourhood Policy: Conditionality Policy revisited for the EU’s Eastern Neighbours’, *Europe-Asia Studies*, Vol. 60, no. 2, March, 2008, pp. 295-297.

transformative power in ENP countries is not only due to the lack of ‘the carrot’ (everything but institutions) but more due to “inconsistency in applying other forms of conditionality”.⁴⁸

In the context of the lack of a clear membership perspective (that is the most effective conditionality possible), the EU has to offer to the ENP countries other relevant incentives in order to enhance structural reforms, such as “visa liberalization, more access to the Internal Market, more financial aid, etc.” All these incentives were named by the authors, “neighborhood conditionality”.⁴⁹ The authors give some relevant examples that prove the success of the EU’s strong conditionality applied in the cases of Georgia and Ukraine, in early 2000’s, that created an appropriate environment for power change, and, later, for democratic changes. For example, in the Georgian ‘Rose Revolution’ from 2003, the EU delayed the disbursement of a new credit and the US reduced its financial aid, for a short time before elections. This created a budget crisis that played against the government. Later, for the elections from 2012, the EU and the US persuaded Saakashvili to keep the elections democratic and to allow a “formal transfer of power”.⁵⁰

In the Ukrainian case, the EU expressed its conditionality by not recognizing the Presidential elections of 2004 and recommending new elections. Moreover, NATO openly declared that they were not willing to “legitimize the existing government”.⁵¹ After the victory of Yanukovych in Ukraine, the EU used the conditionality approach through negotiations of AA to enforce crucial reforms such as in the justice sector, “including the release of Timoshenko”.⁵²

In Moldova, the EU froze financial assistance because of a bank corruption scandal (described later in the thesis), while in Armenia and Azerbaijan, the EU has not applied its democratic conditionality in a “consistent” manner. Whereas the state of democracy in Azerbaijan is widely

⁴⁸ Tanja A. Borzel, Bidzina Lebanidze, ‘The transformative power of Europe beyond enlargement: the EU’s performance in promoting democracy in its neighborhood’, *East European Politics*, Vol. 33, No. 1, 2017, pp. 17-18.

⁴⁹ Borzel, Lebanidze, *op. cit.*, p. 18.

⁵⁰ *Ibid.*, p. 19.

⁵¹ *Newline - December 9, 2004*, Radio Free Europe, 2014. Available at: <http://www.rferl.org/content/article/1143297.html> (consulted on 06.04.2-17)

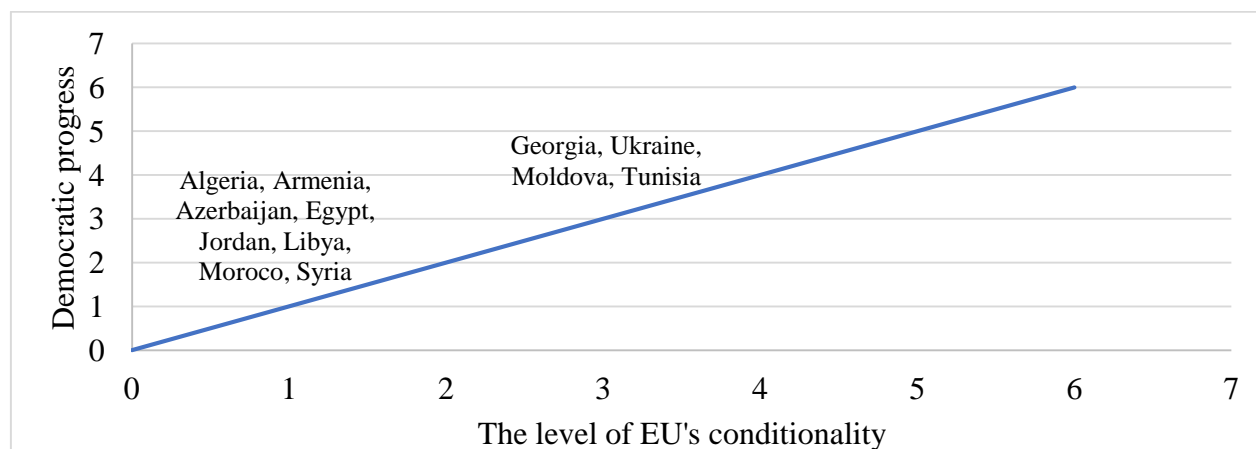
⁵² Borzel, Lebanidze, *op. cit.*, p. 19.

criticized, the EU “has intensified energy and trade bilateral relations” and only declaratory criticized the state of elections without any sanctions.⁵³

In the views of the authors cited above, the only Eastern Neighborhood country where the EU has applied negative conditionality is Belarus. The EU imposed a series of sanctions on the regime, but nevertheless, they “failed” to stop Lukashenko from building “the most oppressive regime”.⁵⁴ This happened because the sanctions did not refer to trade or investments. Moreover, the trade between two entities has increased since the introduction of sanctions. The prevailing of economic interests (energy) can be observed in the case of Azerbaijan too. The authors suggest that there is a “strong correlation” between application of the EU democratic conditionality and the result in democratic changes.⁵⁵

The graphic from below represents the correlation between the level of the EU involvement through democratic conditionality, and, the level of democratic changes in the ENP countries.

Graph 1. *The relation between EU's conditionality and democratic progress*



Source: *Author's elaborations.*

In countries like Georgia where the EU promoted more conditionality, the level of changes are also higher, but in, countries like Algeria, where the EU was not present through democratic conditionality, the changes are also minimal.

⁵³ *Ibid.*, p. 20.

⁵⁴ *Ibid.*, p. 20, 25.

⁵⁵ *Ibid.*

There can be observed that the EU has refrained from applying conditionality in the majority of the ENP countries. Searching for the reasons, the authors Borzel and Lebanidze identify “complexities of institutional governance of the ENP”, and, the divergence of the vision among member states “about how and when” to apply conditionality.⁵⁶

One of the main conclusions and reason is that the EU is more open to apply democratic conditionality when there is no a “democratic-stability” or, security dilemma.⁵⁷ But when it exists, it prevails above “uncertain democratic changes”.⁵⁸ Thus, in this way, the lack of sufficient conditionality for the majority of the ENP countries can be explained, especially for the Southern Neighborhood. Still, the threats that can originate from Eastern Europe are not in the top ten listed by the EU.⁵⁹ More about how the EU is dealing with semi-democratic or non-reformist governments will be discussed in Chapter III.

⁵⁶ Borzel, Lebanidze, *op. cit.*, pp. 22-23.

⁵⁷ *Ibid.*, p. 23.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, p. 24.

Chapter II. The effectiveness of the EU's support for the reform of the justice sector: instruments and conditionality

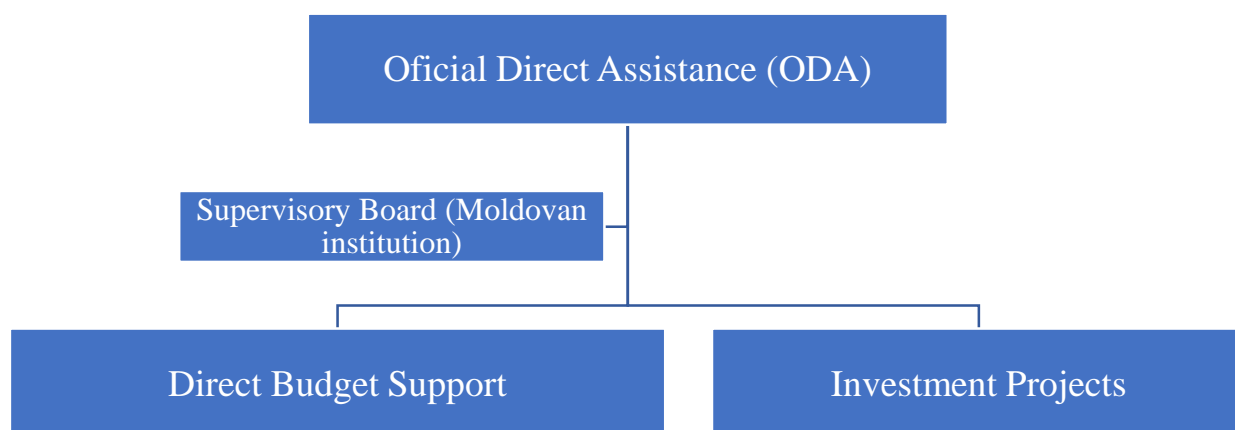
The Chapter starts with a review of the Official Direct Assistance to Moldova, and, further on, summaries the delivery of the EU's programs over the 6 years. To answer why the EU assistance has had poor results, the chapter also evaluates the technical part of the EU's engagement in the justice reform in Moldova and its drawbacks.

2.1 Overview of the Official Direct Assistance to Moldova

This chapter starts with a comprehensive overview of the Official Direct Assistance to Moldova. Then, it analyzes the effectiveness of the direct budget support for the justice sector reform, as well as, for the Justice Sector Reform Strategy 2011-2016. This part of the thesis undertakes an evaluation of the general progress of Moldova in the context of the European integration with a focus on the state of justice sector reform and, namely, the reform of Prosecution Service in Moldova. Also, the author investigates the EU's motivations to freeze the financial assistance to Moldova in 2015 and to defrost it later in 2016.

The funds arrive in Moldova through one of these two ways: Direct Budget Support and Investment Projects.

Graph 2. *The structure of the ODA to Moldova*

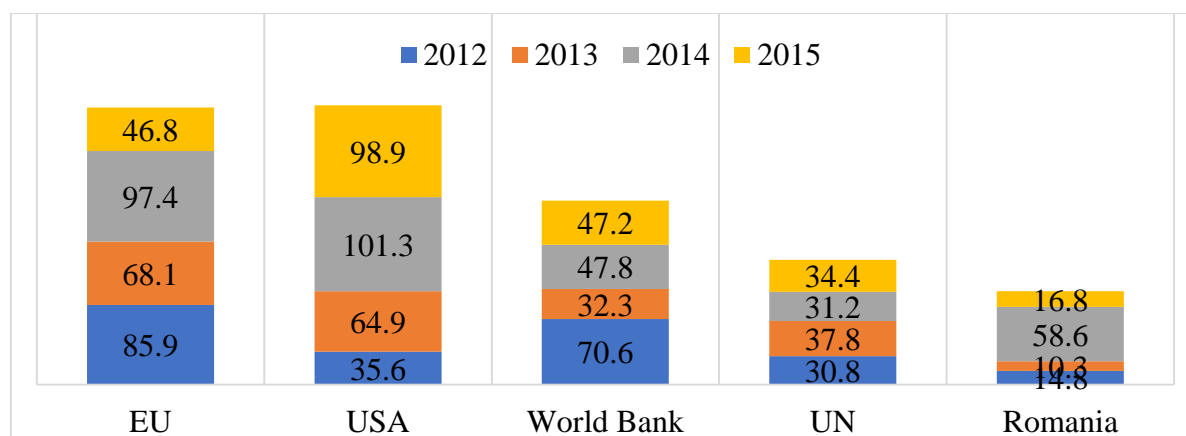


Source: *Author's elaborations.*

With reference to the Direct Budget Support mechanism, the donor or the creditor transfers money to the national treasury and the state authorities use the national systems of financing and procurement. As regards the EU, these programs are between EUR 40 million and EUR 60 million.⁶⁰ In an interview related to this master thesis, Cristina Avornic, as a representative of the Moldovan Embassy to the EU, revealed that EU is particularly concerned about the lack of efficient monitoring of the Direct Budget Support procedures.⁶¹ Regarding the large investment projects, the procurement systems of the creditor country (or organization) are used, therefore, they involve transaction costs and reduced power of control of the national institution where money arrives.⁶²

The latest official processed data on the Official Development Assistance (ODA) for Moldova are from 2015. In 2015, the ODA decreased by 26% in comparison to 2014.⁶³ During that year, the development partners of Moldova disbursed around EUR 330 million. Out of that amount, EUR 247 million were for the Government.⁶⁴ 57% of the money was given as a grant.⁶⁵

Graph 3. *The share per country and year of ODA to Moldova*



Source: *State Chancellery of Republic of Moldova.*⁶⁶

⁶⁰ State Chancellery of Republic of Moldova, *Cooperation for development. Annual report for 2015 on external assistance to Moldova*, State Chancellery of Republic of Moldova, July 2016, Chisinau, Moldova, pp. 15-16.

⁶¹ Interview with Ms. Cristina Avornic, First Secretary within the Mission of the Republic of Moldova to the European Union, mail interview, 14 April, 2017.

⁶² State Chancellery of Republic of Moldova, *Cooperation for development, op. cit.*, pp. 15-16.

⁶³ *Ibid.*, p. 7.

⁶⁴ *Ibid.*, p. 8.

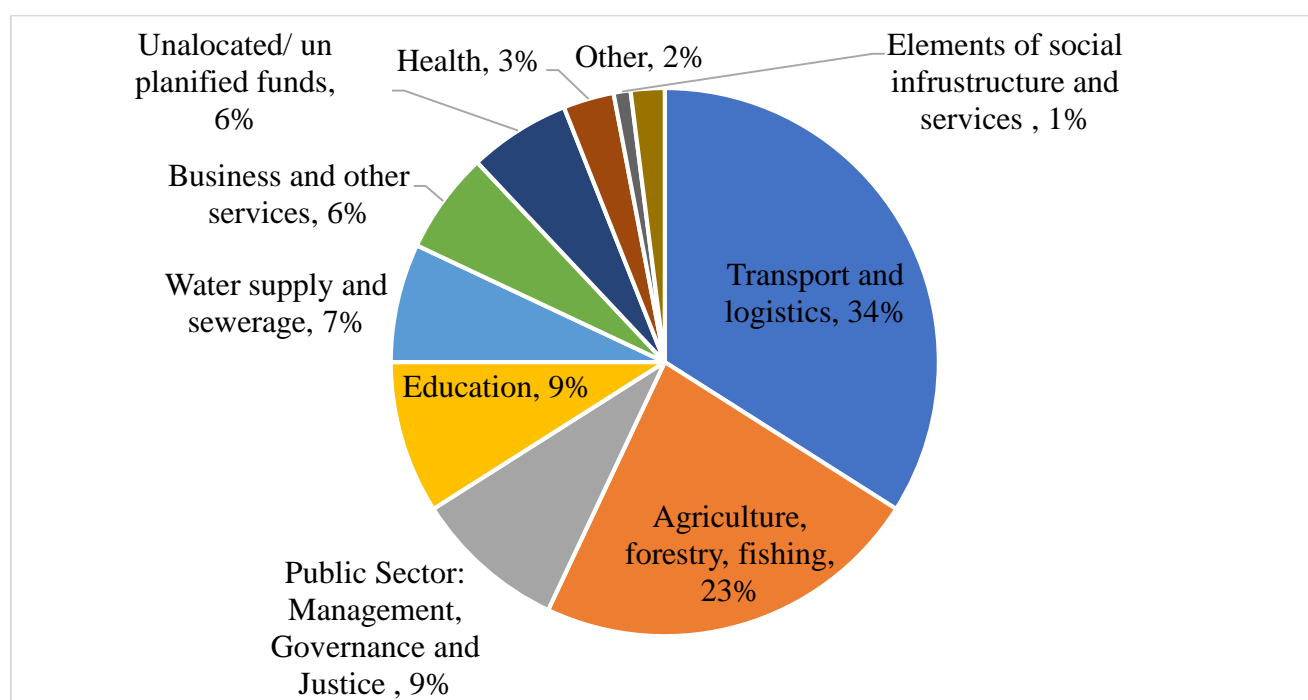
⁶⁵ *Ibid.*, p. 22.

⁶⁶ *Ibid.*, p. 20.

According to the chart presented below, in 2015 and 2014, the USA was the largest donor/creditor to Moldova; however, it could not exceed the EU's funds that were larger in the previous years. ODA to Moldova represents 7% of GDP and 16% of the national budget (2015). For example, if it is compared with the amount of remittances, the ODA is 3 times smaller.⁶⁷ This, firstly, shows how dependent the Moldovan economy is (GDP, budget) on remittances and ODA, and secondly, that the ODA is still not in an impressive amount.

In the chart below, it can be observed that the majority of the funds are distributed to transport and agriculture and for reforms into the public sector, such as, justice with only 9%.

Graph 4. *The share of ODA to Moldova by sector*



Source: *State Chancellery of Republic of Moldova*⁶⁸

The European Union

The EU has several instruments to provide assistance to Moldova: 1) The European Neighbourhood Instrument (ENI), which is the main one and which has been used since 2014; 2) Eastern Partnership Integration and Cooperation Program that applies the principle “more for

⁶⁷ *Ibid.*, p. 18.

⁶⁸ *Ibid.*, p. 22.

more”.⁶⁹ Under the European Neighborhood Instrument, the EU is committed to support Moldova alone, with EUR 335-410 million during the budgeting period 2014-2017.⁷⁰

For the period 2014-2020, the EU will provide to 16 ENP countries EUR 15,4 billion.⁷¹ One would say that this amount is insignificant in comparison with the Instrument of Pre-accession assistance (IPA) for 6 small Balkan states that are provided EUR 11,5 billion (2007-2013).⁷²

When it comes to the ways of providing these funds, in almost all ENP countries, the EU provides the money through the type of programming documents Single Support Framework (SSF), a direct budgetary support instrument. This document is concluded together with the beneficiary country on specific important reforms for that country. For Moldova, the SSF for 2014-2017 has the “aim to support the Republic of Moldova's ambitious reform agenda to consolidate the rule of law, promote the diversification of its economy and bring itself closer to the EU”.⁷³ The indicative bilateral allocation represents between EUR 335 million and EUR 410 million.⁷⁴

The EU assistance priorities to Moldova are the following (2014-2017):

- Support of the implementation of the Association Agenda;
- Support for implementation of relevant Sector Strategies;
- National Development Strategy ‘Moldova 2020’;
- Support for implementation of the programmes: public administration reform, agriculture and rural development, police reform and border management.⁷⁵

⁶⁹ Interview with Mrs. Cristina Avornic, *op. cit.*

⁷⁰ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, pp. 18-19.

⁷¹ European Union External Action, *Financing the ENP. Financial Cooperation Reference Documents*, 18 August, 2015, Brussels, Belgium. Available at: https://eeas.europa.eu/headquarters/headquarters-homepage_en/8410/Financing%20the%20ENP (consulted on 10.04.2017)

⁷² European Commission, “Overview - Instrument for Pre-accession Assistance”, European Commission. Available at: https://ec.europa.eu/neighbourhood-enlargement/instruments/overview_en (consulted on 10.03.2017).

⁷³ The European Union, the Republic of Moldova, *Memorandum of understanding between the Republic of Moldova and the European Union regarding the Single Support Framework for EU support to the Republic of Moldova (2014-2017)*, signed on 29.01.2015, Republic of Moldova, Chisinau.

⁷⁴ *Ibid.*

⁷⁵ Delegation of the European Union to the Republic of Moldova, *EU Projects with the Republic of Moldova*, Delegation of the European Union to the Republic of Moldova, Chisinau, Moldova, 12 May 2016. Available at: https://eeas.europa.eu/delegations/moldova/1539/eu-projects-republic-moldova_en (consulted on 10.04.2017)

Single Support Framework finances the following specific areas:

Table 1. *Share of funds per programmes from Single Support Framework EU-Moldova for 2014-2017.*

Sector of Intervention	Indicative amount as % of total	Indicative Timeline
Public administration reform	30%	2014-2017
Agriculture and rural development	30%	2014- 2017
Police reform and border management	20%	2015-2017
Complementary support: - Capacity development and institution building - Civil society	15% 5%	2014- 2017

Source: *Memorandum of understanding between the Republic of Moldova and the European Union.* ⁷⁶

In order to illustrate the projects that the EU supports in Moldova and the amount of money for each of them, this thesis presents below another table that draws the 6 programmes supported through direct budget support method ongoing in 2015. One can easily observe the large attention that the EU pays for the Justice sector reform, for which it gives EUR 58 million for 4 years.

Table 2. *The projects financed in Moldova by the EU through direct budget support in 2015*

No.	Contract Year	The programme	Year of signature	End date	Amount of money planned (mill. Euro)	Amount of money disbursed (mill. Euro)
1	2013	Justice reform	2013	2017	58	28,2
2	2014	Visa liberalization	2014	2018	20	5,8
3	2014	Energy sector reform	2014	2015	10	0
4	2014	Vocational area education and training reform	2014	2017	25	0
5	2013	Economic support in the rural area	2012	2014	14	13
6	2014	Public finance policies reform	2014	2019	33	8
7	2014	The implementation of DCFTA	2014	2018	25	8

⁷⁶ *Memorandum of understanding between the Republic of Moldova and the European Union, op. cit.*

8	2015	Economic support in the rural area (extended)	2014	2016	12	0
9	2015	European neighborhood program for agriculture and rural development.	2015	2020	53	0

Source: *State Chancellery of Republic of Moldova*⁷⁷

The author of this paper underlines that now there are no data available on the results of the implementation of these projects. One can reasonably assume that out of 8 projects that were still ongoing in 2015, when the assistance was frozen, the EU defrosted the allocation of money in December 2016 only for 4 projects (no: 4, 6, 8, 9 from the table above).⁷⁸

The EU is also present in Moldova through the Institutional Capacity Building Program. Its main component is the Twinning programs to support implementation of Association Agreement. Moldova is also eligible for the Technical Assistance and Information Exchange instrument of the European Commission (TAIEX) and EU Support for Improvement in Governance and Management (SIGMA) programmes. Another EU project is the EU High Level Policy Advisory Mission that unfortunately focuses more on strategic and conceptual advising than on expertise of normative acts or technical advising; its necessity is discussed in this master thesis as well.⁷⁹ Overall, in the period of 2007-2017, the EU offered financial assistance to Moldova amounting to EUR 782 million.⁸⁰

The United States of America

The US assistance to Moldova is provided through 2 main ways: The Millennium Challenge Corporation and The United States Agency for International Development (USAID).

In 2010, through Millennium Challenge Corporation, the USA engaged to support Moldova with USD 262 million (a 5 years Programme). The sectors on which the Programme focused were agriculture and roads rehabilitation. It had two projects: 1) Transition to High-Value

⁷⁷ State Chancellery of Republic of Moldova, *Cooperation for development. op. cit.*, p. 24.

⁷⁸ *Ibid.*

⁷⁹ Interview with Mrs. Cristina Avornic, *op. cit.*

⁸⁰ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 22.

Agriculture project (USD 101.70 million), 2) Road Rehabilitation project (USD 132.80 million.)⁸¹ Through USAID, in 2015 there were conducted the following programmes:

1. The pylon on Economic Growth - USD 59 million
2. The pylon Good and Democratic Governance - USD 36 million
3. Other - USD 19 million ⁸²

In the last years, the US assistance to Moldova has decreased because the US has re-oriented its attention to Central Asia and the Near East.⁸³ Overall, the author of this thesis notices that the USA focuses more on huge infrastructure reforms and on important irreversible reforms for the economy. For example, if a road is constructed in a proper way, it will not be affected, if the Government becomes controlled by an oligarch. Moreover, it will be an important asset in attracting foreign investments, in increasing productivity, in improving the quality of life, etc. One can notice a problem similar to the one of the EU projects – there is no public evaluation of the projects' results.

As the paper has discussed above, the principal EU funding instrument to Moldova is the sector budget support (SBS). It should be mentioned that it counted for 74% of the bilateral aid for the years 2007-2015. This means that the money is transferred directly to the beneficiary country's budget, if the conditions agreed in the contract, known as “conditionality”, are fulfilled.⁸⁴ The political control upon the authority who manages the foreign financial assistance has been disputed since 2009. Initially, it was managed by Ministry of Economy, but after this ministry was politically distributed to the Democratic Party, former prim-minister Vlad Filat (that was the leader of Liberal Democratic Party as well) has replaced it under the authority of the State Chancellery, led by “his close associate”, Victor Bodiu.⁸⁵

⁸¹ Aid Management Platform, *The Millennium Challenge Corporation (MCC)*. Available at: <http://amp.gov.md/portal/node/35?language=en> (consulted on 10.04.2017)

⁸² State Chancellery of Republic of Moldova, *op. cit.*, p. 28.

⁸³ Aid Management Platform, *The United States Agency for International Development (USAID)*, Available at: <http://amp.gov.md/portal/node/34?language=en> (consulted on 10.04.2017)

⁸⁴ European Court of Auditors, *Special report.*, *op. cit.*, p. 8.

⁸⁵ Theodor Tudoroiu, ‘Democracy and state capture in Moldova’, *Democratization*, 2015, p. 662.

The changing power of EU's funds and programmes

According to Nizhnikau, the EU paradigm of promoting changes through its foreign assistance is mostly a top-down one. This means the EU provides “rules and assistance programs in exchange for the target states’ adoption of EU-provided solution”.⁸⁶ However, this paradigm neglects the specific of society and institutions from ex-Soviet countries “which are in many instances characterized by direct or indirect ‘state capture’”.⁸⁷ Without taking enough into consideration the local specifics, the effect would not be a good one because the “persistence of domestic institution and manipulation” will compromise the reform process.⁸⁸ In Evans’s view, “imposing new sets of formal rules without simultaneously reshaping the distribution of power that underlies prior institutional arrangements is a dubious strategy from the perspective of political economy.”⁸⁹ So, EU has to look beyond the formal institutional arrangements and calculate carefully its strategy and how it will influence the core functionality of the system.

Nizhnikau also classifies EU strategies for promoting institutional changes in two categories: outcome-oriented and process-oriented. The outcome-oriented is the rigid one that undertakes the “adoption and implementation of pre-selected rules and state target capacity building” and institutional changes that are assets by fulfilling a checklist compliance.⁹⁰ This approach is related to EU’s “prioritization of capacity building of state institutions”.⁹¹ But according to the author, this gives corrupted governments more capacities “to use the state institutions to their advantage” and to capture the state further on.⁹²

The process-oriented strategy is flexible in adapting to the local needs and to change implementation and monitoring mechanisms, etc. It has a “joint rule-making that takes into account local knowledge to find better institutional solutions”.⁹³ But, for this joint rule-making, EU empowers and engages more non-state actors to be involved and shape the decision making

⁸⁶ Ryhor Nizhnikau, ‘Promoting reforms in Moldova’, *Problems of Post-Communism*, 2017, p. 107.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Peter Evans, ‘Development as institutional change: The pitfalls of mono-cropping and potential of deliberation’, *Studies in Comparative International Development*, 2004, p. 34.

⁹⁰ Ryhor Nizhnikau, *op. cit.*, p. 108.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*, pp. 108-109.

in a more democratic and representative exercise. This non-state actors are “NGO’s, religious and business associations, influential groups and business”.⁹⁴

2.2 The effectiveness of the EU’s instruments for supporting the justice sector in Moldova

The effectiveness of the EU funds and, in general, of their engagement to promote structural reforms in Moldova has been analyzed recently by many EU institutions and experts. This part of the chapter focuses more on analyzing the EU programmes related to the reform of the justice sector.

The absence of the expected outcomes of the EU funded programs in Moldova is demonstrated and criticized by The European Court of Auditors published in 2016. In its press release entitled “Moldova: only limited evidence of progress from EU support”, the Member of the European Court of Auditors, Hans Gustaf Wessberg says: “The EU faces significant challenges in implementing assistance for Moldova. The combination of political and macroeconomic instability, weak governance and public administration significantly reduces the European Commission’s leverage to encourage reform”⁹⁵. Through the main weak point developed by the full report, it is stressed the lack of clear reasons to apply in Moldova’s case the principle “more for more”, that added to the EU’s support for Moldova EUR 93 million for the period 2012-2014.⁹⁶ The ENP report for 2013 evaluates the first part of the year as: “its deepest political crisis in years; an institutional meltdown; lasting harm to the credibility of Moldova’s democratic institutions.”⁹⁷ This clearly is not progress.

Referring to implementation of the Justice Sector Reform Strategy 2011-2016, the report says that while the ENP progress report on 2015 finds “some overall progress in implementing the justice sector reform strategy”, international indicators present a different picture of the reforms’

⁹⁴ *Ibid.*

⁹⁵ European Court of Auditors, *Press Release. Special report, op. cit.*

⁹⁶ European Court of Auditors, *op. cit.*, p. 19.

⁹⁷ European Commission, *Joint Staff Working Document. Implementation of the European Neighbourhood Policy in the Republic of Moldova. Progress in 2013 and recommendations for action accompanying the document Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Neighbourhood at the Crossroads: Implementation of the European Neighbourhood Policy in 2013*, European Commission, Brussels, Belgium, 27.03.2014, p. 2, 5.

effect in Moldova.⁹⁸ The table below evaluates corruption perception in Moldova in 2016 with 30 points on a 1 to 100 scale, where 1 is the highest corruption level perceived. It can be observed how the situation has worsened since 2014.⁹⁹ Moldova is ranked 123rd out of 176 countries and got only 30 points out of 100, while the less corrupted country of the world has a score of 90.

Table 3. *The evolution of Moldova's score in the Global Competitiveness Report*

2016 Rank	Country	2016 Score	2015 Score	2014 Score	2013 Score	2012 Score	Region
123	Moldova	30	33	35	35	36	Europe and Central Asia

Source: *The Global Competitiveness Report 2015–2016.*¹⁰⁰

The table below shows that judiciary independence in Moldova in 2016 was evaluated with 134 points, on a scale from 1 to 140, where 140 represents the least independent judiciary system.¹⁰¹

Table 4. *Data on Moldova from the Global Competitiveness Index 2015-2016*

Indicator	Value	Rank (1-independent, 140 – heavily influenced)
Irregular payment and bribes	3.0	113
Judicial Independence	2.1	134
Favoritism in decision of government officials	2.6	131

Source: *Global Competitiveness Index 2015-2016.*¹⁰²

The Commission argues that two budget support sectors have recent programmes under implementation. That is why their final results cannot be measured yet.¹⁰³ The table below

⁹⁸ European Court of Auditors, *op. cit.*, p. 20.

⁹⁹ Transparent International, *Corruption Perception Index 2016*, Transparent International. Available at: http://www.transparency.org/news/feature/corruption_perceptions_index_2016 (consulted on 29.02.2017)

¹⁰⁰ Klaus Schwab, *The Global Competitiveness Report 2015–2016*, World Economic Forum, Geneva, Switzerland, p. 261.

¹⁰¹ *Ibid.*, p. 261.

¹⁰² Klaus Schwab, *op. cit.*, p. 261.

¹⁰³ European Court of Auditors, *op. cit.*, p. 48.

illustrates additional weak points considered by the EU Court of Auditors) and the related responses of the Commission:

Table 5. *The main critics made by the EU Court of Auditors on funds' effectiveness in Moldova and the related answers from the Commission*

Criticism made by the EU Court of Auditors	Responses of the Commission
The Commission has not responded quickly enough to the risks regarding the EU funds.	The Commission recognizes that the response could have been more rapid, but there should be taken into consideration “actual unfolding of events”. ¹⁰⁴ This leads to the opinion that the Commission’s actions were influenced by the political factor.
The Programmes were insufficiently in line with other Moldovan development strategies supported by the EU. Moreover, “the justice SBS does not directly contribute to implementing the national reform strategy.” ¹⁰⁵ Therefore, there is no strict correlation between the action undertaken under the JSRS and the Sector Budget Support.” ¹⁰⁶	In the Commission’s view, “in substance” SBS was in line with the strategy, but it went “beyond the sometimes narrow scope of certain national strategies” ¹⁰⁷ . The content of strategy was influenced by a “constantly adjustment to the pressing needs dictated by an ambitious association agenda and a challenging geopolitical environment.” ¹⁰⁸
The effect of the Programmes was limited because “the Commission did not make full use of its ability to set preconditions for	The Commission was stringent; the evidence is that, currently, “all disbursements are on

¹⁰⁴ *Ibid.*, p. 48.

¹⁰⁵ *Ibid.*, p. 14.

¹⁰⁶ *Ibid.*, p. 14.

¹⁰⁷ *Ibid.*, p. 48.

¹⁰⁸ *Ibid.*, p. 48.

disbursement, where it had to be more stringent”. ¹⁰⁹	hold, pending fulfillment of all general conditions”. ¹¹⁰
“No comprehensive assessment” of important criteria, such as effectiveness, the impact on achievement program objectives, absorption capacity. ¹¹¹	There was not found a specific answer from the Commission on this aspect

Source: *European Court of Auditors, Special report on Moldova.*¹¹²

Moreover, recently, the Court of Auditors of Moldova presented an evaluation report about the efficiency of using the money destined for implementation of the Strategy. Using the most significant 89 actions analyzed (from a total of 489), there were found „the real premises for a nonconformity and inefficient use of a 135,9 mill lei, that represents 41,5% of the money that served as a subject for audit”.¹¹³

In order to understand the peculiarities of the conditions of the EU financial support for the implementation of the Justice Sector Reform Strategy 2011-2016, this paper analyzes the provisions of the document ‘Financing Agreement. Special conditions. Support for Justice Sector Reforms’. While analyzing this document, one can notice that the main instruments for monitoring the money spending and Strategy implementation are in a relatively significant way left in the hands of the Moldovan authorities, for example, “to check regularly that the operations financed with the EU funds have been properly implemented” and to take appropriate measures/remedies.¹¹⁴ If it does not take proper actions, “the Commission may adopt itself such measures including the recovery of the EU finding by any means”.¹¹⁵ The Ministry of Justice is

¹⁰⁹ European Court of Auditors, *op. cit.*, p. 32.

¹¹⁰ *Ibid.*, p. 48.

¹¹¹ *Ibid.*, p. 15.

¹¹² *Ibid.*, pp. 5-48.

¹¹³ Andrei Lutenco, *How does justice reform work on paper and in reality*, 30.12.2016. Available at: <http://sic.md/carul-inaintea-boilor-cum-are-loc-reforma-justitiei-pe-hartie-si-in-realitate/#fn:2> (consulted on 06.01.2017).

¹¹⁴ The European Union- The Republic of Moldova, *Financing Agreement. Special conditions. Support for Justice Sector Reforms*, The European Union- The Republic of Moldova, 14.06.2013, art. 19, pp.7-8.

¹¹⁵ *Ibid.*

responsible for the “technical and financial monitoring or implementation”.¹¹⁶ The overall fulfillment of the conditions for the next disbursement are monitored by a Steering Committee, led by the Minister of Justice, which contains, as well, EU representatives.¹¹⁷ The Steering Committee assures that the Government sends to the EU all the necessary documents for the Programme implementation, such as: “Bank statements relevant to the transfer; Statements of expenditures; Reports on budget execution; Laws, government decrees related to the implementation of the Programme; Reports and agreements with the IMF, World Bank, UN, Council of Europe, etc.; Government and other donor policy documents and reports relevant to the Programme”¹¹⁸

Also, art. 20 gives more details about what happens in case the Moldovan authorities do not take proper actions: OLAF and the European Court of Auditors may conduct on-the-spot checks or, if necessary, a full audit.¹¹⁹ Through criteria for the next disbursement, the most relevant for our topic are: “Sector policies and reforms- *satisfactory progress* in the implementation of justice Sector Reform Strategy; Stable macro-economic framework; *Judiciary efficiency* through functional and procedural changes; Issues of independence and accountability in investigation and prosecution activities; *Issues of corruption* and professional integrity.”¹²⁰

The potential ‘satisfactory progress’ can be an example of insufficient stringency in assessing the condition for disbursement, criticized by the Court of Auditors analyzed above. It should be underlined that, among the conditions of suspension of the financing agreement (art. 23), political factors are also taken into consideration: “the Commission may suspend the Financing Agreement if the Beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.”¹²¹

Expert Anita Sobják also tries to answer why budget support has not been working well in Moldova. According to her, there has been a failure in reference to the implementation stage of the reforms. Besides the lack of political will, “the incompleteness” of the reform is caused by:

¹¹⁶ The European Union- The Republic of Moldova, *Financing Agreement, op. cit.*, Annex I.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, art. 20.1, p. 8.

¹²⁰ *Ibid.*, Annex I.

¹²¹ *Ibid.*, p. 9.

inadequate conditions from the EU side that are “too broad, too ambitious or too numerous”;¹²² too large costs; poor capacities of national administration and “untimely launched technical assistance”; improper monitoring mechanisms.¹²³ That is why, in the opinion of the experts of the Institute for European Policies and Reforms, the EU “will most probably re-think the mechanism of direct support”.¹²⁴

In a Skype interview, an expert¹²⁵ who undertakes consultancy for the European Union, especially on issues related to the ENP, said that for the Eastern Partnership there are three main way/practices for allocating the funds:

1. Direct budgetary support, where the EU tries to monitor how the money is spent;
2. EU contracts UNDP for managing the whole Programme. This practice is used because the EU does not have enough personnel to undertake project management (however, the EU wants to diversify currently);
3. Announcement of huge tenders for large projects (several EUR million), for which states, big organizations, consortiums, etc., apply. In fact, this practice is usually carried out by consultancy firms from Brussels, which know how to write projects. In the end, out of the total amount of money through these intermediaries, the designated final beneficiaries get only 70% or less. This is not the exact goal of the Commission.

The cited expert suggests that beneficial or not, the direct budget support remains the best option for EU at this moment that needs to be improved.

In 2015, an analysis on ‘Justice Sector Future Reform Policy Instruments and Framework in Moldova’ was written. The paper underlines weak points of the Justice Sector Reform Strategy.

According to the author of this analysis, in 2011, Moldova has adopted a Strategy with a “sector wide approach”, meaning that it was quite ‘comprehensive’, covering several very important

¹²²Anita Sobják (ed.), *Anti – corruption in Moldova and Ukraine. A V4 Handbook of Best Practices*, The Polish Institute of International Affairs, Warsaw, Poland, June 2015, p. 42.

¹²³ *Ibid.*

¹²⁴ Iulian Groza, Iulian Rusu, Mariana Platon, Adrian Ermurachi, *Shadow progress report 2014-2016. Implementation of the EU-Moldova Association Agreement*, Institute for European Policies and Reforms, Chisinau, Moldova, 24.03.2017, p. 5. Available at: <http://ipre.md/2017/03/24/5175/?lang=en> (consulted on 09.04.2017).

¹²⁵ Interview with an expert which is doing consultancy for EU institutions (he wanted to preserve his anonymity), Skype interview, 20.03.2017.

aspects of the law-enforcement sector, such as: “judiciary, anti-corruption, human rights and penitentiary”.¹²⁶ This was assessed by the Council of Europe as an “ambitious strategy”, and by the expert Marina Matic Boskovic, the author of the analysis, as an “ambitious activity plan, ambitious deadlines, lack of coherence in activities among pillars, improper identification of responsible institution and improper initial cost estimation.”¹²⁷ All these were fuelled by a relative “short consultation process” that also affected the quality of the document.¹²⁸ The sector wide approach is welcomed for countries in the accession process (that have available more funds). Even that, the last experience with Western Balkans shows serious challenges of this approach, such as: “capacities of government institutions to implement and manage this process; lack of adequate capacity to ensure accountability; executive capacity to negotiate with other stakeholders; political risk due to change of administration; delays to implementation of priority activities, etc.”¹²⁹ There is a strong need for prioritization of objectives and a focus on fewer, but more realistic goals. “The broader a program is, the more critical the identification of institutional responsibilities becomes.”¹³⁰ According to the interviews made for the analysis cited above, it was observed that “the operation of working groups was too formal, only occasionally there were held discussions on the matter of the activities”.¹³¹ Another conceptual issue is that some members of the working groups that were evaluating the progress were representatives of the institution subject to the reform. Moreover, they have to vote the fulfillment of the strategy’s activities of their institution.¹³² This is a similar observation, as made by the EU Court of Auditors, cited above.

An important observation made by the author of the thesis and also by the expert Boskovic is on the system of measurement of the indicators in both, financial agreement and the Strategy. It can be observed that the contract analyzed above (‘Financing Agreement. Special conditions. Support for Justice Sector Reforms’) contains rather technical performance indicators. For example, measuring of the indicator “mechanism for consultation and cooperation with

¹²⁶ Marina Matic Boskovic, *Justice Sector Future Reform Policy Instruments and Framework in Moldova*, Altair Asesores, Madrid, Spain, December 2015.

¹²⁷ Marina Matic Boskovic, *op. cit.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

CSO/NSA and donors is functional”, is „minutes of the meeting”.¹³³ Other similar types of measuring the indicators are “amendments adopted”, or “the law was adopted”, that, as well, do not measure the real impact of the reform.¹³⁴ The activities from Strategy do not have a proper “system of indicators” for evaluation of implementation of the “expected results at the outcome and impact levels”.¹³⁵ The strategy is not designed to “measure outcome of the implemented activity”.¹³⁶ For example, the activity ‘*amendments to law*’ has the indicator such as ‘*law adopted*’, but it does not allow to evaluate the quality of the change and the caused impact.¹³⁷ According to a joint EU Analysis from 2016, the main challenge of the justice sector is that the implementation phase and adoption is “not a measure of success in this sector”.¹³⁸ The minister of Justice recognized that „speaking about achievements means fulfillment of the Action Plan indicators”, but it does not mean automatically efficient implementation because the indicator was not that.¹³⁹ He also underlines that many changes cannot be seen in practice because they have been adopted recently.¹⁴⁰

The expert Boskovic underlines the strong necessity for a long term program to support regular alternative reports of the Strategy. There were some evaluation reports made by NGOs in the sector (“alternative reporting to the Annual report prepared by the Ministry of Justice”), but only at ad hoc support from donors.¹⁴¹

According to the expert, the Ministry of Justice felt that there was not enough openness for reform from certain institutions: “the Judiciary and Prosecution are closed clubs looking after their own interests”.¹⁴² Dionis Cenusa, expert at the Moldovan think-tank “Expert-Group”, said in a private interview for this thesis that the main weakness of the EU’s engagement in promoting the justice reform is the lack of ownership from Moldova’s side. “The reform is a two ways street, which means that unilaterally the EU cannot change anything if the Moldovan

¹³³ The European Union- The Republic of Moldova, *Financing Agreement, op. cit.*, Annex I.

¹³⁴ Andrei Lutenco, *op. cit.*

¹³⁵ Marina Matic Boskovic, *op. cit.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ European Commission, et al., *European Union Joint Analysis. Programming in the RM until 2020*, September 2016, p. 37.

¹³⁹ Andrei Lutenco, *op. cit.*

¹⁴⁰ *Ibid.*

¹⁴¹ Marina Matic Boskovic, *op. cit.*

¹⁴² *Ibid.*

side shows no real commitment.”¹⁴³ The authors Groza, Jopp, Leanca, Rusu, and Sieg state that the EU’s mistake was that it has not requested “stable and periodic intermediary results in exchange for the undertaken financial commitments”.¹⁴⁴ They also consider that the EU did not use its conditionality to promote sound reforms. For example, the support for the Prosecution Office reform “has not been conditioned on a sound, “all from the top” approach to reforms”.¹⁴⁵

2.3 EU’s conditionality policy towards the reform of the justice sector in Moldova

In its public statement, the EU delegation to Moldova announced on the 8th of July 2015 that it was freezing its budget support for RM on the following grounds:

1. “macro-financial stability, as well as respect of budgetary oversight and transparency principles” mainly based on the recent, at that time, theft of a billion of euro¹⁴⁶ that requests an agreement with IMF¹⁴⁷ that is the only institution capable to provide guaranties on this topic.¹⁴⁸
2. Also, in an interview, Pirkka Tapiola, Head of the EU delegation in Moldova added the reason of lack of reforms: no adoption of the law on Prosecutor’s Office and on National Commission of Integrity, no tangible results of diminishing corruption in the judiciary system, though the judges’ salaries were raised considerably, etc.¹⁴⁹

The freezing of funds represents a red signal for the parts in a contract; this means that all the remedies were exhausted and there are serious dangers for the funds. Although this was almost

¹⁴³ Interview with Mr. Dionis Cenusă, expert at the Independent Analytical Center Expert-Group, mail interview, 30.03.2017.

¹⁴⁴ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 25.

¹⁴⁵ *Ibid.*

¹⁴⁶ European Court of Auditors, *op. cit.*, p. 13. Extract: “In November 2014, three Moldovan banks were placed under special administration by the National Bank, after having issued loans worth 1 billion US dollars. These transactions had no sound economic rationale, and resulted in such a significant deterioration in the banks’ balance sheets that they were no longer viable as going concerns. Massive public liabilities accrued from this incident and the estimated cost for saving the banks amounts to at least 13 % of Moldova’s GDP”.

¹⁴⁷ *Ibid.*, Extract: “Moldova’s last IMF programme expired in 2013. The last programme review had not been completed due to disagreements on fiscal and financial sector policies. The World Bank suspended its budget support of 45 million US dollars in April 2014 because it considered that risks for public funds stemming from the banking sector were too substantial to make any transfers to Moldova’s state budget.”.

¹⁴⁸ European Commission, EU Delegation to Chisinau, *Press release*, European Commission, 08.07.2015, Chisinau, Republic of Moldova.

¹⁴⁹ Anastasia Nani, Pirkka Tapiola, Head of EU Delegation in Chisinau: “There is no real political will to reform the Justice sector”, Anticoruptie.md, 16.07.2015. Available at: <https://anticoruptie.md/ro/interviuri/pirkka-tapiola-seful-delegatiei-ue-la-chisinau-nu-exista-vointa-politica-reala-de-a-reforma-sectorul-justitiei> (consulted on 18.03.2017).

a shock for the authorities and society, there were several signs that the situation was going in that direction. The report issued by the Ministry of Justice in 2015 was warning that “the next disbursement is under risk”.¹⁵⁰ The reason for that served the information from the UE Delegation that those indicators evaluated as ‘unfulfilled’ (during the May-June 2014) would be re-evaluated.¹⁵¹ Because of lack of structural changes, some experts were talking about the possibility that the EU would cease the funding.¹⁵²

2016: Restart of the relationship between Moldova and EU

After its appointment at the beginning of 2016, the new government declared a priority to rebuild trust between the EU and Moldova. As a result, both parties agreed upon a “Moldova’s Priority Reform Action Roadmap” based on the European Union Foreign Affairs Council Conclusions from the 15th of February 2016 and the EU-Moldova Association Council conclusions.¹⁵³ “These reforms are necessary to ensure stability, restore cooperation with IMF and other development partners and implement the EU-Moldova Association Agreement”.¹⁵⁴ Indeed, this was an ambitious roadmap, with important reform elements in all sectors that were pending until that time. Iulian Groza, former deputy minister of Foreign Affairs and currently director of the Institute for European Policies and Reforms, in his position expressed in a private interview for this thesis, said that the roadmap Moldova-EU was a clear example when the EU used the conditionality- financial assistance in exchange of reforms. But, if the EU had a sharper approach not to collaborate with a Government controlled by one oligarch, it would not have the possibility to influence and to promote reforms on the ground.

Iulian Groza, thinks that the EU tries through the IMF to held the Government more responsible and to leverage it to do reforms. Yes, this is not enough, but the EU understands that now it

¹⁵⁰ Ministry of Justice of Moldova, *The annual report of implementation of the justice sector reform strategy for the years 2011-2016. Reporting period January-December 2014*, Ministry of Justice, Chisinau, Republic of Moldova, p. 36.

¹⁵¹ *Ibid.*

¹⁵² Mariana Colun, *Who is afraid of the reform of the Prosecutor's Office*, Anticoruptie.md, 07.11.2015. Available at: <https://anticoruptie.md/ro/stiri/legea-cu-privire-la-procuratura-va-ajunge-pe-ordinea-de-zi-a-parlamentului-cine-voteaza> (consulted on 12.02.2017).

¹⁵³ *Moldova’s Priority Reform Action Roadmap – Key measures until 31 July 2016*, DCFTA EU-Moldova. Available at: <http://dcfta.md/eng/moldova-s-priority-reform-action-roadmap-key-measures-until-31-july-2016> (consulted on 12.02.2017).

¹⁵⁴ *Ibid.*

cannot invoke stronger conditionality, because this can deteriorate the relations and let Moldova to deviate from the European integration path, even though it is moving very slowly. It elaborated a minimum conditionality list and linked them to the IMF that the Moldovan Government needs so much.¹⁵⁵

In an private interview for the present paper, Richard Rodolphe, Desk officer Republic of Moldova at EEAS stressed the same idea: “While some progress has to be noted, further efforts are needed to enhance transparency and impartiality in the selection of judges and prosecutors, safeguard the external and internal independence of judges when deciding on cases and improve the reasoning of decisions issued by the Supreme Council of Magistracy.”¹⁵⁶

Expert-Group, a well known think-tank from Chisinau, evaluated that by the end of July 2016, there were only 51% of activities from the Road map completed, while 35% were achieved with deficiency. Nevertheless, later, the Commission appreciates the implementation of the Roadmap as a “substantial progress”.¹⁵⁷ Moreover, the Moldovan Government drafted a new National Action Plan for the Implementation of the Association Agreement (2017-2019). It was approved by the Government in December 2016.¹⁵⁸

On November 7, 2016, the IMF and the Government of Moldova agreed on a three-years arrangements in the Extended Fund Facility (EFF) and the Extended Credit Facility (ECF). The amount is about USD 178.7 million, representing 75 percent of the Republic of Moldova’s quota.¹⁵⁹ Therefore, on the 21st of December 2016, the UE defrost the budgetary support amounted to EUR 45.3 million for 4 projects: economic support in the rural area, European neighborhood program for agriculture and rural development, public finance policies reform,

¹⁵⁵ Interview with Mr. Iulian Groza, director of the Institute for European Policies and Reforms, former deputy Minister of Foreign Affairs, Skype interview, 20.03.2017.

¹⁵⁶ Interview with Mr. Richard Rodolphe, Desk officer for the Republic of Moldova, European External Action Service, European Commission, mail interview, 20.04.2017.

¹⁵⁷ *Uncertain impact of reforms implemented by the Government under the Priority Reform Action Roadmap*, Independent Analytical Center Expert-Group, 03.08.2016. Available at: <http://www.expert-grup.org/en/activitate/comunicate-de-presa/item/1306-impact-incert-reforme-implementate-guvern-foaia-deparcurs/1306-impact-incert-reforme-implementate-guvern-foaiade-parcurs> (consulted on 06.03.2017); European Commission, *Cooperation and Verification Mechanism for Bulgaria and Romania*, *op. cit.*

¹⁵⁸ Groza, Rusu, Platon, Ermurachi, *op. cit.*, p. 1.

¹⁵⁹ International Monetary Fund, *Press Release*, *op. cit.*

vocational area education and training reform.¹⁶⁰ It says that Moldova has fulfilled the necessary conditions for disbursement: “made significant progress in the implementation of stability-oriented macro-economic policy”, still it was a “partial a payment of € 45,3 million out of € 50 million (eligible) that reflects a partial achievement on the Specific Conditions”.¹⁶¹ One can observe that the budgetary direct support for implementation of the Justice Sector Reform Strategy has not been prolonged. According to Iulian Groza, the reason is that the EU has not finished the evaluation rapport and also because Moldova has not drafted a new strategy for the Justice Sector Reform.¹⁶² The fact that the necessary conditions were not fulfilled can be deduced from the EU’s Association Implementation Report, where it is written that the programmes were resumed based on the fulfillment of the conditions.¹⁶³

Recently, the Commission has proposed to the Parliament and the Council a proposal for a new macro-financial budgetary assistance to Moldova (MFA) of an amount of EUR 100 million (EUR 40 million as a grant and EUR 60 million as a loan). The argumentation of the Commission presents Moldova in a quite positive light: “There has been substantial progress with the implementation of the Roadmap for Priority Reforms that was agreed between the EU and Moldova at the Foreign Conclusions of 15 February 2016.... Moldova is deemed to meet the political preconditions for the granting of MFA to third countries, notably in terms of respect for democracy, human rights and the rule of law...”.¹⁶⁴ This is again a budgetary support operation. However, the fund/loan concerns more the macroeconomic stability and less certain reforms, such as the justice one. The proposal says also that macro-financial assistance “can increase the effectiveness of the actions financed in Moldova under other, more narrowly-focused EU financial instruments”.¹⁶⁵ After it was voted by the Council, evidence appeared that the EU will be stricter with the conditionality: “a precondition would be that the Republic of

¹⁶⁰ European Commission, Delegation of the European Union to the Republic of Moldova, *The EU is resuming budget support assistance to the Republic of Moldova*, Delegation of the European Union to the Republic of Moldova, Chisinau, Moldova, 23.12.2016. Available at: https://eeas.europa.eu/delegations/moldova/18141/eu-resuming-budget-support-assistance-republic-moldova_en (consulted on 06.03.2017).

¹⁶¹ *Ibid.*

¹⁶² Interview with Mr. Iulian Groza, *op. cit.*

¹⁶³ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, *Joint staff working document. Association Implementation Report on the Republic of Moldova*, European Commission, Brussels, Belgium, 10.03.2017, p. 12.

¹⁶⁴ European Commission, *Proposal for a Decision of the European Parliament and of the Council*, *op. cit.*, pp. 4-5.

¹⁶⁵ *Ibid.*, pp. 6-7.

Moldova respects effective democratic mechanisms, including a multi-party parliamentary system.”¹⁶⁶ For Groza, this is a clear sign from the EU that it will provide money in exchange for a condition: no change of the electoral system (to an uninominal one) in Moldova, an idea that is intensively promoted by the Democratic Party and Vladimir Plahotniuc.

At the moment of writing this thesis, the residual external financial needs of Moldova are USD 442 million/EUR 402 million over the period 2016-2018.¹⁶⁷

What should the EU change in its support of the reform of the justice sector in Moldova?

Iulian Groza suggests that the EU has to be involved in a long-term and permanent monitoring and control mechanism, similar to that in Romania and Bulgaria. The Cooperation and Verification Mechanism for Bulgaria and Romania is a mechanism meant to “assist the two countries to remedy shortcomings” in the justice and anticorruption sector.¹⁶⁸ The mechanism has remained in place after accession, too: “The Commission's assessments and formal reports are based on careful analysis and monitoring, drawing on a continuous dialogue between the Bulgarian and Romanian authorities and the Commission services.”¹⁶⁹ Of course, because these countries were members of EU, there existed several important financial mechanisms that created the effective conditions for the changes. The example of Albania is relevant as well. EURALIUS is a project in which the top EU experts are working full time to support and assist the main law enforcement institutions from Albania “to bring their performance closer to EU standards”.¹⁷⁰ According to Groza, these ideas would not be something difficult for the EU from the technical/financial point of view, but the main barrier is that the EU does not want to be associated with the oligarchic Government. The EU should “ensure the sustainability of projects by more systematically assessing the capacity and political commitment of public authorities to sustain outcomes”.¹⁷¹ The Court of Auditors also suggests

¹⁶⁶ Council of the European Union, *Press Release. Republic of Moldova: Council agrees to €100 million financial assistance*, Council of the European Union, Brussels, Belgium, 12.04.2017. Available at: <https://goo.gl/V9q7Wj> (consulted on 17.04.2017).

¹⁶⁷ European Commission, *Proposal for a Decision of the European Parliament and of the Council*, *op. cit.*, p. 3.

¹⁶⁸ European Commission, *Cooperation and Verification Mechanism for Bulgaria and Romania*, *op. cit.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *What we do*, EURALIUS - Consolidation of the Justice System in Albania. Available at: <http://www.euralius.eu/index.php/en/about-us/what-we-do> (consulted on 06.03.2017).

¹⁷¹ European Court of Auditors, *Press Release*, *op. cit.*

that the EU should get more involved and should even “coordinate projects and Sector Budget Support programmes”.¹⁷²

In a report written by some experts of Institute for European Policies and Reforms (IEPR) (and others) published by Institut für Europäische Politik from Berlin, it is recommended that “Western partners should therefore be ready to move from criticizing the deficient fulfillment of standards to putting forward concrete and elaborated legal proposals.”¹⁷³ As an example is given the 2015-2016 Peer Review Mission of the EU on Moldovan rule of law institutions that is a direct implication from the EU to analyze and propose clear and detailed recommendations. The experts suggest that the EU should have an approach of a teacher who shows what and how the reforms should be done. The group of experts, among which is the former prime-minister of Moldova - Iurie Leanca, concludes that the EU should concentrate more on the creation and consolidation of *agents of change* and on “key game-changer reforms”; with this, they mean structural reforms of institutions that will continue long-term reforms when the EU project is finished.¹⁷⁴ The relevant example can be the Romanian National Anticorruption Directorate (NDA) that is a strong and independent institution that fights against high level corruption.¹⁷⁵

If the authors suggest to the EU to be more concrete in providing solutions, they also try to respect this principle by giving some specific recommendations on how the EU should involve in supporting reforms (particularly, in the rule of law sector):

- To coordinate and oversee the existing projects and direct budget support (as the EU Court of Auditors recommends) meaning that Commission will not only control how Moldovan authorities manage the program, but will do it by itself. Does the EU have enough human resources to do this?!
- To provide guidance directly to “highest judicial institutions”
- To train judges
- To monitor permanently the “high-level corruption cases”

¹⁷² *Ibid.*

¹⁷³ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 42.

¹⁷⁴ *Ibid.*, p. 43.

¹⁷⁵ *Ibid.*

- To “participate in the selection and vetting process of the judges and prosecutors dealing with high-level corruption cases.”¹⁷⁶

In the same interview with the expert that works for the Commission, he expressed that the EU should be more involved in the boards of projects funded through budgetary support programmes, i.e. to put pressure on the governments in punishing those people that cook the books from the EU fund and OLAF, to be permanently involved in verifications.¹⁷⁷

¹⁷⁶ *Ibid.*, pp. 47-48.

¹⁷⁷ Interview with an expert which is doing consultancy for EU institutions, *op. cit.*

Chapter III. The evaluation of the reform of the prosecution service in Moldova and the main obstacles

The chapter evaluates the implementation of the Justice Sector Reform Strategy and the evolution of its implementation and results over the years. Moreover, the author points out the main obstacles in the reform of the prosecution service that have delayed or have damaged the effect of the reform, and tries, as well, to investigate the oligarchic implications, as well as, the responses from the EU.

3.1 The evaluation of the reform of the justice sector and prosecution service

The EU support for the justice sector reform in Moldova consisted mainly of the direct budget support with an amount of EUR 51 million and also of technical assistance of the High Level Advice Mission and assistance “on the monitoring of the implementation of the justice sector reform strategy”.¹⁷⁸

Even though the reform of the Justice Sector was a cornerstone in combating corruption invoked by the new political establishment from Moldova since 2009, a first real step was the adoption of a Justice Sector Reform Strategy only in November 25, 2011. The Action Plan was adopted on February 16, 2012. Due to the Moldovan authorities’ delay, the first technical assistance project from the EU came only in the spring of 2013.¹⁷⁹ But, according to Vladislav Gribincea, director of the Legal Resource Center from Moldova, it was a delay from the EU too, because from the date of adopting the Action Plan of the strategy until the first disbursement passed almost 1.5 years.¹⁸⁰

The implementation of the strategy was supposed to be fulfilled until 2016, but it was prolonged until the 31st of December 2017. The Action Plan estimates costs of around EUR 125 million. The limited budget resources did not allow to fully implement the actions for the year 2012. The main financial coverage of the Strategy had to come from the EU- EUR 60 million, out of which, EUR 58,2 million were as a direct support for the budget. The first two installments

¹⁷⁸ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 24.

¹⁷⁹ Ion Guzun, Sorina Macrinici, *Reform of justice in the Republic of Moldova: progress and impediments*, Foreign Policy Association, Chisinau, Republic of Moldova, April 2016, p. 2.

¹⁸⁰ Interview with Mr. Vladislav Gribincea, director of the Legal Resource Center from Moldova, mail interview, 08.03.2017.

(EUR 28,2 million in total) were transferred, while the third transfer, which was planned for the second semester of 2015 (amount of EUR 15 million), was suspended because the expected requirement was not fulfilled - the reform of the Prosecutor's office, which was one of the most important reform.¹⁸¹ The first disbursement of EUR 15 million took place on the 13th of November 2013. The second tranche transferred in September 2014 was reduced by EUR 1.8 million because of several reasons, including the lack of progress in the reform of the Prosecution service (in the end it was only EUR 13.2 million).¹⁸²

In a policy paper written in 2013, expert Alexandru Cocirta evaluates the reform of the Prosecution service as being only a declared intention that prevents the progress of the whole justice reform.¹⁸³ A similar evaluation is given by the Country Progress Report (ENP) for 2013: "considerable efforts have been made to reform the justice sector, although the General Prosecutor's Office is yet to undergo serious reform."¹⁸⁴

A monitoring report issued by two national NGOs says that all 7 actions from the Pylon no. II 'Penal Justice' (related to Prosecution service) of the Justice Sector Reform Strategy 2011-2016, planned for the first semester of 2013, were not fulfilled.¹⁸⁵ The ratio of implementing the Strategy was in 2012 of 56% and in 2013 of 60%. The main issue was the lack of adoption of several important laws for implementing the reform of the Prosecution service and National Commission of Integrity. The Constitution was not modified in this sense and the law on Prosecution service was not adopted.¹⁸⁶

¹⁸¹ Andrei Lutenco, *op. cit.*

¹⁸² Ministry of Justice of Moldova, *Annual Report on the Implementation of the Reform Strategy of the Justice Sector for 2011-2016. Reporting period January - December 2015*, Ministry of Justice of Moldova, Chisinau, Moldova, p. 26.

¹⁸³ Alexandru Cocirta, *Reform of the Prosecutor's Office of the Republic of Moldova. Objectives, activities, results*, Foreign Policy Association, Chisinau, Republic of Moldova, 2013, p. 4.

¹⁸⁴ European Commission, *Implementation of the European Neighbourhood Policy in Republic of Moldova Progress in 2012 and recommendations for action*, European Commission, Brussels, Belgium, 20.3.2013, p. 6.

¹⁸⁵ Alexandru Postica, Olesia Stamate, Pavel Postica, *Quarterly report no. 1 to monitor the implementation of the Reform Strategy in the Justice Sector*, Association PROMO-LEX, Association for Efficient and Responsible Governance (AGER), Chisinau, Republic of Moldova, 2013, pp. 22-27.

¹⁸⁶ Igor Botan, Denis Cenusa, et al, *EUROMONITOR Report – The first Achievements and Difficulties in Implementing the EU-Moldova Association Agreement. Period of implementation July 2014 and July 2015*, Association for Participatory Democracy ADEPT, Independent Analytical Center Expert-Group, September 2015, p. 13.

The ENP Country Progress Report for 2014 evaluates the progress made by the Moldovan authorities as “implementing some important parts of the benchmarks laid down in the action plan” (for the Strategy), but overall the “corruption and the stalled reform of the public prosecution service remained major concerns”.¹⁸⁷ The General Prosecutor’s Office remains characterized by “low penalties, impunity, lack of autonomy, capacity and independent decision-making”.¹⁸⁸ The annual report regarding the implementation of the Strategy for January-December 2015, considers as reasons for poor results, the political instability and changes of several governments in a short period. Based on the recommendation of The National Council for the Reform of Law Enforcement Bodies (CNROOND), no reform was fully implemented in 2015, reports the Ministry of Justice.¹⁸⁹

A civil society evaluation report has recently stated that “in 2016 were liquidated several outstanding from the last years”.¹⁹⁰ In July 2016, the Parliament adopted the necessary legislation for applying the new law on Prosecution service. Also, the modification of the Constitution (requested by the law on prosecution service) has arrived (respecting the concept of the reform) in Parliament.¹⁹¹

The EU joint analysis published in September 2016 raises concerns that, even after the Parliament voted important amendments related to the Prosecution service, “stakeholders are not yet confident that these laws and amendments will be properly implemented and even if they are, it is unclear whether they will deliver a positive result.”¹⁹² The same report continues to design a quite negative appreciation of the state of the justice reform in Moldova. The reform of the justice sector “is seriously delayed”; there are “weak institutional capacities” for the key bodies in the justice sector.¹⁹³ The system is damaged by the lack of “equal and transparent

¹⁸⁷ European Commission, *Implementation of the European Neighbourhood Policy in the Republic of Moldova. Progress in 2014*, op. cit., p. 2.

¹⁸⁸ *Ibid.*

¹⁸⁹ Ministry of Justice of Moldova, *Annual Report on the Implementation of the Reform Strategy of the Justice Sector for 2011-2016*, op. cit., p. 3.

¹⁹⁰ *Monitoring report on the implementation of the Priority Reform Action Roadmap. Reporting period March-August 2016*, Association for Participatory Democracy DEPT, “Expert-Group”, Legal Resources Centre from Moldova, Chisinau, Republic of Moldova, pp. 37-38.

¹⁹¹ *Ibid.*

¹⁹² European Commission, et al., *European Union Joint Analysis*, op. cit., p. 38.

¹⁹³ *Ibid.*, p. 38.

system for recruitment of judges”.¹⁹⁴ Serious concerns about “prevalence of the rule of law” are raised by “sometimes far-fetched interpretations of the Constitution by the Constitutional Court”.¹⁹⁵ There is also underlined the “high profile cases of alleged selective justice”.¹⁹⁶ Similar functional problems of the “independency of the law enforcement agencies” were discussed at the European Council meeting from February 2016.¹⁹⁷

One of the most recent evaluations of the implementation of the Action Plan of the Association Agreement 2014-2016 is the one provided by the think-tank Institute for European Policies and Reforms. In its ‘Shadow progress report’, it concludes that up until now (2014-2016) the AA agenda for 2014-2016 was implemented in a proportion of 63%. According to the experts of this institute, this is a significant progress in comparison with the last report from June 2016 which concluded that AA agenda was implemented only in the proportion of 30%. “In the 2nd semester of 2016, the Government succeeded in almost doubling the implementation performance.”¹⁹⁸ The report finds that the Government made the most significant progress namely in the Title III, ‘Freedom, Security and Justice’. According to the report, 83% of the actions were fulfilled. The percentage of the actions fulfilled is still not an indicator of the real qualitative changes that take or will take place on the ground, even though the speed of the government is impressive. The report continues to draw the following conclusions: the optimization of the Courts are made in the sense of merging of offices but not of the number of judges; the powers of the chairmen and vice-chairmen to intervene in the “system of random distribution of cases” can compromise the spirit of the reform; the draft law named Big Brother that provides a “special investigative measures” can affect “the rights of privacy of citizens for the public interest”; the Justice Sector Reform Strategy requires “a full revision of the rate of implementation and a new planning document”.¹⁹⁹ Even though the report does not evaluate how relevant these drawbacks are for the whole reform, there are some clues in their description

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ Council of the European Union, Council conclusions on the Republic of Moldova, Brussels, Belgium, 15.02.2016, point no. 7. Available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-moldova-conclusions/> (consulted on 20.02.2017).

¹⁹⁸ Groza, Rusu, Platon, Ermurachi, *op. cit.*, p. 4.

¹⁹⁹ *Ibid.*, p. 9.

that persuades the author of this thesis to classify them as ‘important’ one, that can affect the spirit of the justice sector reform.

Freedom House Democracy score for Moldova in 2017 went down from 4.89 to 4.93 (where 1 represents the best result). The ‘Judicial Framework and Independence’ sector worsened from 4.75 in the last 3 years to 5.0 (out of maximum 7). According to the report, it is “due to intimidation of judges who are not in line with the political agenda, lack of reforms to ensure integrity in the appointment of judges, and the politicized decision of the Constitutional Court that preempted a popular mobilization in favor of direct presidential elections.”.²⁰⁰

The last Association Implementation Report from the EU only ascertains some facts without deep evaluation: “a reform of the judicial map was adopted in 2016, which reduces the number of Courts (what results until now?); a new version of the Integrated Case Management System is currently being developed to eliminate manipulation of cases (what results does it have?); law on the Prosecution Service entered into force in line with Venice Commission recommendations (is it under implementation?)”²⁰¹

The analysis ‘Assessing the state of European integration and potential for Transatlantic cooperation in the post-Soviet space: the case of Moldova’ cites some governmental officials who said that even though the Justice Sector Reform Strategy was implemented in a proportion of 75%, “some of the key aspects of the justice sector reform are still pending, and effectiveness and efficiency is considered limited”.²⁰²

3.2 The main obstacles in the reform of the prosecution service – political and oligarchic interests

One of the most relevant elements and the largest area of the Strategy was the reform of the Prosecutor’s Office. The reform of the Prosecution service is aimed to make this service more autonomous in front of both political and internal control. It focuses on offering more power to the Superior Council of Prosecutors, in contrast with the general prosecutor, more efficient

²⁰⁰ Victor Gotisan, *Nations in Transit Ratings and Averaged Scores 2017*, Freedom House. Available at: <https://freedomhouse.org/report/nations-transit/2017/moldova> (consulted on 03.03.2017).

²⁰¹ European Commission, *Association Implementation Report on the Republic of Moldova*, *op. cit.*, p. 5.

²⁰² Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 19.

disciplining procedures, etc.²⁰³ On the 3rd of June 2014, the Parliament voted the Conception of reforming the Prosecutor's Office²⁰⁴. On May 23, 2015 the Parliament voted the new law of the Prosecutor's Office in the first reading without major modifications. The law draft was improved and approved by the Venetian Commission in 2015. In this way, the draft had to be voted in the second reading in the Summer of 2015, but it passed the Parliament only on February 25, 2016. The law was promulgated in March 2016 and entered into force on 01.08.2016. Before the adoption, the draft was positively advised by Venice Commission and publicly consulted.²⁰⁵ As it can be observed, the drafting and voting of the law on prosecution service was a long and delayed process that took in total 3.5 years.

The long period of 3.5 years in a priority reform indicates that the reform had a strong opposition and a series of obstacles in its path that, in the view of this paper, were led by a strong political interest and oligarchic factor with the scope to delay as much as possible the structural changes. Numerous voices were reporting about political interferences in the reform of the Prosecution service. One of them was, namely, the General Prosecutor, Corneliu Gurin who asserted: "The political pressure is the most stringent factor affecting the activity of the Prosecution service".²⁰⁶ And indeed, the General Prosecutor's Office was always at stake between political forces. Strong evidence is the fact that this institution has been the object for political bargaining while forming all governmental coalition since 2009.²⁰⁷ Another example of strong leverage of the General Prosecutor's Office with politics was the appointment of the General Prosecutor, Corneliu Gurin on 18.04.2013. Within one month, he was appointed, revoked and reinstated by the Constitutional Court.²⁰⁸

²⁰³ Leonid Litra, *Nations in Transit Ratings and Averaged Scores 2016*, Freedom House. Available at: <https://freedomhouse.org/report/nations-transit/2016/moldova> (consulted on 03.03.2017).

²⁰⁴ The Parliament of the Republic of Moldova, *Law no. 122 for approval of the Prosecutor's Reform Concept, The Parliament of the Republic of Moldova*, Chisinau, Republic of Moldova, 03.07.2014. Available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354695> (consulted on 03.03.2017).

²⁰⁵ *Monitoring report on the implementation of the Priority Reform Action Roadmap*, op. cit., pp. 37-38.

²⁰⁶ *Press conference held by General Prosecutor, Corneliu Gurin*, Privesc.eu, 21.05.2013. Available at: <http://privesc.eu/Arhiva/16757/Conferinta-de-presa-sustinuta-de-Procurorul-General--Corneliu-Gurin> (consulted on 20.02.2017).

²⁰⁷ According to Annex no. 1 of the Agreement on the Establishment and Functioning of the Alliance for European Integration signed on 30.12.2010, the General Prosecutor's Office was assigned to the Democratic Party of Moldova. *The AIE2 agreement, the mine that abolished the Alliance! How Shared Functions*, Unimedia, 14.02.2013. Available at: <http://unimedia.info/stiri/doc-acordul-aie2--mina-care-a-desfiintat-aliantacum-s-au-partajat-functiile-57321.html> (consulted on 20.02.2017).

²⁰⁸ Alexandru Cocirta, op. cit., p. 4.

Leonid Litra revealed that the several years delay of adoption of the law on the prosecution service was, according to the 2016 House of Freedom's report, also "due exclusively to political reasons, as the prosecutor's office has become one of the main tools to exert control over the political landscape."²⁰⁹ In May 2016, the head of the EU Delegation in Moldova, Pirkka Tapiola declared that there were concerns from the society and external partners that there was an "internal resistance" to the reform of the prosecution service. He also said that this was a milestone in the whole reform of the judiciary system.²¹⁰ In the remaining part, the chapter will draw attention to the hindrances which over the last 2 years impacted the quality and the advancement of the reform.

One of the least inspired attempts of the system to diminish the reform of the justice sector was the proposal of the president of the Justice Supreme Court of 17 legislative drafts aimed to 'accelerate' the reform of the justice sector. In fact, according to a group of the most credible NGOs in this sphere, these proposals could overturn the spirit of the reform as it was planned by the Strategy. The expert Vladislav Gribincea, director of one of the leading NGOs from Moldova - Legal Resource Center, said "the speed of promoting these drafts was inexplicable (with final debates within only 1 month after the proposal of the drafts); some of them were contradictory to the Strategy or even dangerous for the whole judicial system and reform."²¹¹

Another attempt to delay and damage the reform represented the endeavor to significantly change the law on Prosecution service 2 days before the final vote in Parliament. It started when the majority of deputies in Parliament was not ready to vote the draft in the second reading in the form in which it was elaborated by the national and international experts. The main reasons were that the draft needed some modifications (e.g. relating to the appointment of the General Prosecutor).²¹² In fact, these were no pertinent and objective reasons. The modification proposal came quite soon from Sergiu Sirbu, a deputy from the Democratic Party, who controls the majority in the Parliament and Government, and later, in order to wipe the traces, the same

²⁰⁹ Leonid Litra, *op. cit.*

²¹⁰ Olga Cebanu, Pirkka Tapiola: "There are concerns that justice reform will be compromised from inside", 24.05.2016. Available at: <http://www.bizlaw.md/2016/05/24/pirkka-tapiola-exista-ingrijorari-ca-reforma-justitiei-va-fi-compromisa-din-interior/> (consulted on 20.02.2017).

²¹¹ Svetlana Corobceanu, *Civil society criticizes judges' initiatives*, 22.06.2015. Available at: <http://www.jc.md/societatea-civila-critica-initiativele-judecatorilor/> (consulted on 20.02.2017).

²¹² Mariana Colun, *op. cit.*

amendments were proposed by an unknown deputy, what is actually against the procedures.²¹³ At least, this was the information publicly presented. The same expert Vlad Gribincea who was leading the group of the experts that elaborated the project of the reform said that the amendments to the law affect the spirit of the reform: “We proposed a creation of a specialized prosecutor office, after the Romanian example, to deal with special and relevant cases, but the modifications make the competences unclear and in the end the new institution will be agglomerated with all type of cases and we will repeat the example of Anticorruption Prosecutor’s Office and Anticorruption Center.”²¹⁴ Also, the amendments stated that 6 Prosecution offices from Chisinau would merge when the judiciary map is optimized. However, “who knows if it would be optimized” the experts in the field were questioning.²¹⁵

This is a peculiarity of doing reforms by a government controlled by oligarchs, i.e. to delay, to make reforms only half-way and, thus to have a justification in front of the donors that the reforms are somehow going, though, in fact, there are basically no changes, because it represents a perfect environment for the oligarchs to control the whole system. Lately, in a private interview for this master thesis, Gribincea said that he did not think that it was the involvement of the oligarchic factor, but the interests of the community of the prosecutors referring to the structure of the Prosecutor’s Office.²¹⁶

After a series of debates in the Parliament and probably after some political pressure, the amendments were canceled and the law was voted as it was proposed by the experts. Gribincea also declared that the EU delegation to Moldova was involved intensively in the process of adopting this law, in addition to the diplomatic missions of some EU countries in Chisinau. An EU official recognized in an private interview for the present Master Thesis that EU uses every bilateral meeting with Moldova “to enquire about the lack of independence of the judiciary and law enforcement agencies. On these occasions, the EU recalled that the judiciary has to be free from political interference.”²¹⁷ Still, according to the Minister of Justice, Vladimir Cebotari, doubling of competences of the newly created Anticorruption Prosecutor’s Office and National

²¹³ Anastasia Nani, *Reform of the Prosecutor's Office, overwhelmed by amendments consulted with the Prosecutor General*, 23.02.2006. Available at: <https://anticoruptie.md/ro/stiri/reforma-procuraturii-data-pestecap-de-amendamente-consultate-cu-procurorul-general> (consulted on 20.02.2017).

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ Interview with Mr. Vladislav Gribincea, *op. cit.*

²¹⁷ Interview with an EU official that wanted to preserve its anonymity, 13.03.2017.

Center for Integrity with the early reformed National Anticorruption Center is a serious concern.²¹⁸ And this is another factor that will affect the functionality of the reformed prosecution office.

According to an analysis published by the Institut für Europäische Politik from Berlin, the new law on Prosecution service has some important drawbacks. It has not clarified “the competences of the special prosecutor offices: anticorruption and anti-organized crime”; this was left to be specified in another additional document.²¹⁹ Also, namely this new law allowed the members of the Supreme Council of Prosecutors appointed under the old law to propose the candidate for General Prosecutor, “which is a serious liability in a system that is said to be exposed to reforms. In other words, the final piece of legislation was drafted so badly that it allows these and other avoidance schemes”.²²⁰

The most significant change in this reform is that the General Prosecutor is released from the political control being named by the president. According to the new law, the Prosecutor General is elected for a term of 7 years. In December 2016, a new Prosecutor General was elected. The sub-chapter will show below that, in the end, some procedures were violated and that a new General Prosecutor was elected, that according to a part of the CSOs, is controllable by the political factor. If this turns to be true, then the whole prosecutor sector reform will be compromised for the next 7 years, and, with that, the entire justice system reform and anticorruption campaign from Moldova. The current master thesis will show in the 3rd Chapter that this is the case.

On December 7th, in accordance with the new law, the Superior Council of Prosecutors appointed Eduard Harujen as a winner of the competition for the position of General Prosecutor. Transparency International Moldova and other 12 credible NGOs from Moldova signed then a public letter concerning the violations of the procedures regarding the appointment of the official candidate. One of the first violations was the very short period from the official appointment by the Superior Council of Prosecutors and the official assignment by the President of Moldova (less than 24 hours). This did not allow any time for the public debates, for a sufficient investigation of his integrity by both civil society and state agencies. The document also warns about insufficient verifications of incomes statement and compatibility with his

²¹⁸ Anastasia Nani, *op. cit.*

²¹⁹ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 25.

²²⁰ *Ibid.*

properties (“even though the press released material confirming that Mr. Harunjen has an impressive house, which could not be built from the salary of a prosecutor”).²²¹ Also, previously, a warning by The Disciplinary Board of Superior Council of Prosecutors was given to Harunjen for a case in which Harunjen and other prosecutors were responsible for destroying a criminal case concerning a death, linked with tragic events from April 2009, called as well Twitter Revolution.²²² Nevertheless, the decision was canceled in September 2010 and in 2016 Harunjen denied having had any links with that case.²²³ Moreover, Harunjen was, at that time, in the position of interim General Prosecutor and 6 out of 12 members of the Superior Council of Prosecutors that appointed him were, de jure, hierarchically subordinated to the General Prosecutor, which is contrary to the new law.²²⁴

The main opposition force from Moldova added that Harunjen could not be admitted in the competition because he was a member of the Superior Council of Prosecutors (the body that appointed him as an interim General Prosecutor) and therefore, the eligibility conditions were violated.²²⁵ Expert Vladislav Gribincea cited above, in the same private interview declared that the “majority of the procedures were respected, but every rule can be compromised by malicious people”.²²⁶ He added that the oligarchic factor from Moldova could not leave this important appointment without implications because the other two previous General Prosecutors were appointed by the Democratic Party. As it was described above, the EU has not criticized this appointment and classified it as being “in accordance with the amended constitution”.²²⁷

Another aspect that is considered by the author as a hindrance in the reform of the prosecution service concerns the laws related to the Prosecution Office. According to one independent

²²¹ *Statement: Civil Society Agents Condemn the Incapacity of the Prosecutor General*, Transparency International Moldova, 09.12.2016. Available at: <http://www.transparency.md/index.php/2016/12/09/declaratie-reprezentantii-societatii-civile-condamna-modul-in-care-a-fost-investit-procurorul-general/> (consulted on 20.02.2017).

²²² Author’s notes: On April 6th 2009, after the Parliamentary elections were won by the Communist party for the 3rd mandate, massive protests started in Chisinau. The peaceful manifestation degenerated on April 7th into destruction of the Parliament and Presidency’ buildings. These were the latest in random arrests, the beating of hundreds of young people, maltreatment in the police commissariats, injustice and human right violations. Several people died after this.

²²³ *Statement: Civil Society Agents Condemn the Incapacity of the Prosecutor General*, op. cit.

²²⁴ Andrei Lutenco, op. cit.

²²⁵ *Maia Sandu notifies the Constitutional Court on the appointment of Eduard Harunjen as the General Prosecutor*, 09.12.2016. Available at: <http://radiochisinau.md/maia-sandu-sesizeaza-curtea-constitutionala-privind-numirea-lui-eduard-harunjen-in-functia-de-procuror-general---42507.html> (consulted on 29.02.2017).

²²⁶ Interview with Mr. Vladislav Gribincea, op. cit.

²²⁷ European Commission, *Association Implementation Report on the Republic of Moldova*, op. cit., p. 5.

expertise report about the draft of the laws package related to the Prosecutor's Office reform, registered in the Parliament on the 31st of May 2016, it has several significant drawbacks. The main goal of the project is to specify the powers of the prosecutor in exercise. "The independence of prosecutors during the process of investigation is the premise of a fair criminal trial at the prosecution stage. Independence of the prosecutor in a criminal trial is the biggest stake in the Prosecutor office reform."²²⁸ But, according to the draft, „the hierarchically superior prosecutor may ask the prosecutor to revise the case at any time of the investigation process and to retain it for an undetermined period. Also it can totally or partially cancel or amend the process but does not bear the responsibility of the final decision.”²²⁹ The author considers that „it is certain that the goal of making the prosecutor of the case independent was not reached.”²³⁰ Moreover, he underlined a necessity of the ample public debates on that draft. In the end, the act was adopted by the Parliament on the 4th July 2016, without any relevant changes proposed by the independent expertise cited above, after only 1 month and 4 days, while the expert recommended “ample public debates”²³¹. Vladislav Gribincea asserts that the recommendations made by that expertise were rather “minor” and they “were not to convincing”.²³²

Another permanent hindrance in the reform is that almost all initiatives related to reformation of the judiciary sector and to anticorruption were contested at the Constitutional Court, even though all of them had passed the expertise of the Council of Europe or Venice Commission.²³³ And it was a declaration from the Minister of Justice. Some of the appeals were promoted by prosecutor community and some by oligarchs (such as liquidation of commercial courts).²³⁴

²²⁸ *Expert Report on the draft Law on amending and completing the legislative acts related to the reform of the Prosecutor's Office*, Center for the Analysis and Prevention of Corruption, 06.07.2016. Available at: <http://www.capc.md/ro/expertise/avize/nr-686.html> (consulted on 29.01.2017).

²²⁹ *Ibid.*

²³⁰ *Ibid.*

²³¹ The Parliament of the Republic of Moldova, *Draft legislative acts. Act adopted on 01.07.2016*, The Parliament of the Republic of Moldova, Chisinau, Moldova. Available at: <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3263/language/en-US/Default.aspx> (consulted on 07.03.2017).

²³² Interview with Mr. Vladislav Gribincea, *op. cit.*

²³³ Ministry of Justice of Moldova, *Annual Report on the Implementation of the Reform Strategy of the Justice Sector for 2011-2016*, *op. cit.*, p. 50.

²³⁴ Interview with Mr. Vladislav Gribincea, *op. cit.*

As the Master Thesis is intended to be as well a policy paper, the author refers below to several ideas that will improve the EU's impact in the justice sector reform.

Sergiu Panainte and Alina Inayeh suggest that after AA, the EU has to focus now on “less technical and more political aspects”.²³⁵ The same authors recommend even to “include Moldova in a program of Cooperation and Verification Mechanism (CVM)” that will monitor Moldova closer in its reforms.²³⁶ Iulian Groza draws attention to the EU JUST mission that was discussed in 2014, but which was not agreed on and thinks this can be proper measure. It meant “much more than counseling or advice from expert missions, but rather an institutionalized involvement of EU officials in justice delivery and reform”.²³⁷ Even if it was not agreed, the first (incipient) part of the idea was realised - a peer review mission to assess and identify “the key aspects which require action”.²³⁸ The next steps which were not completed were “to implement the best agreed practices in the justice sector and support, mentor and consult the Moldovan investigation officers, prosecutors and judges in best enforcing the justice sector legislation”.²³⁹ The concept stated a periodic monitoring mission of the reforms and actions agreed.

²³⁵ Sergiu Panainte, Alina Inayeh, *The EU and Moldova: How to Liberate a Captured State*, The German Marshall Fund of the United States, 16.06.2015. Available at: <http://www.gmfus.org/blog/2015/06/16/eu-and-moldova-how-liberate-captured-state> (consulted on 07.03.2017).

²³⁶ *Ibid.*

²³⁷ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 19.

²³⁸ *Ibid.*

²³⁹ *Ibid.*

Chapter IV. ‘Captured state’ and oligarchy – the main obstacles for reforms’ path

The last Chapter starts with a comprehensive exploration of the theoretical concept of ‘oligarchy’ and ‘state capture’. Afterwards, it characterizes the origins and evolution of oligarchy and ‘state capture’ in Moldova. Furthermore, the author draws the spider web of the oligarchy over the nowadays Moldovan society, and, narrows it down to pinpoint the influence of the oligarchs in the judiciary and prosecution service reform. Because the thesis is about the EU’s involvement in the reforms in Moldova, the Chapter and thesis ends with a comprehensive analysis of the EU regional approach and individual approach to the oligarchic factor and ‘state capture’ in Moldova.

4.1 A theoretical overview of the ‘oligarchy’ and ‘state capture’ concepts

The concept of oligarchy and ‘state capture’ are treated in the literature in a range of distinct approaches. They differ from the year when they were analyzed, the region, the profile that they focus on, etc. This part of the chapter makes a comprehensive overview of different approaches referring to the relevant literature. Today’s research of ‘state capture’ and oligarchic phenomenon is based on the transitional economic theory. Another, less used theory, is that based on habits and an historical approach.²⁴⁰

The term ‘oligarchy’ is defined for the first time in the *Politics* written by Aristotle. He identifies typologies of government derived from correct and incorrect interpretation of the Constitution. In his description, oligarchy appears as a deviation of the ‘few rulers’ type of government.²⁴¹

Table 6. Possible configurations derived from types of government ruling

	Correct	Deviant
One Ruler	Kingship	Tyranny
Few Rulers	Aristocracy	<u>Oligarchy</u>
Many rulers	Polity	Democracy ²⁴²

Source: *Stanford Encyclopedia of Philosophy*.²⁴³

²⁴⁰ Anna Klimina, ‘Toward and evolutionary-institutionalist concept of state capture: The relevance of Kaleckian analysis of non-equilibrium dynamics’, *Journal of economic issues*, 2009, p. 373.

²⁴¹ Stanford Encyclopedia of Philosophy, *Aristotle's Political Theory*, 1 July 1998. Available at: <https://plato.stanford.edu/entries/aristotle-politics/> (consulted on 22.04.2017).

²⁴² In this work, Aristotle has another interpretation of democracy- rule of all people meaning of poor people while polity is the rule of the middle class.

²⁴³ Stanford Encyclopedia of Philosophy, *op. cit.*

In a similar approach, according to Stephen Fortescue, “oligarchies are small groups of people with economic power who use it to make significant claims on political power”, and their proper environment is during the “rapid and challenging changes”.²⁴⁴ On the other side, in the view of Robert Michels, the formation of oligarchy is an “organic necessity” of all democratic systems where there exists electors and elected (state, political parties, organizations, etc.).²⁴⁵ The power of those elected is much bigger than the power of electors. That is why, he becomes almost skeptical towards the possibility of an entity to be a fully democratic one.²⁴⁶

‘State capture’ can be of 2 types: indirect and direct. On the one hand, indirect ‘state capture’ is exercised by the private sector in order to obtain rent-seeking. While on the other hand, in direct ‘state capture’ the capturer, becomes a regulator.²⁴⁷ Direct capture is associated by Tudoroiu with “political capture”. It happens when “public officials abuse [...] their authority to shape institutions and laws to their own private financial interest”.²⁴⁸ According to the author cited above, in Moldova, after 2009, a shift from indirect to direct (political) ‘state capture’ occurred.²⁴⁹

The oligarchy motif can be identified in the economic theory. Adam Smith warns in his work, *Invisible Hand*, that governments “should never promote a gathering of merchants of the same trade” because the profits are always greater in a noncompetitive environment, and they will try to achieve this.²⁵⁰ He speaks of two hands: one is the efficiency from private business and another consists in the power of the state to discipline competition and prevent monopoly and oligopoly. In the transition phase, the role of fair competition and regulation often is underestimated in comparison with efforts to privatize and “create capitalism” (in the chapter following will present some relevant examples when it was the case).²⁵¹ Furthermore, great economic thinkers, such as, Marshal and Robinson, cited by Havrylyshyn, underline that

²⁴⁴ Stephen Fortescue, *op. cit.*, p. 3.

²⁴⁵ Robert Michels, *Political parties: A sociological study of the organizational tendencies of modern democracy*, Collier Books, New York, 1962, p. 365.

²⁴⁶ *Ibid.*

²⁴⁷ Mark N. Wexler, ‘Which fox in what henhouse and when? Conjectures on regulatory capture’, *Business and Society Review*, 2011, p. 284.

²⁴⁸ Theodor Tudoroiu, *op. cit.*, p. 657.

²⁴⁹ *Ibid.*

²⁵⁰ Adam Smith quoted by Oleh Havrylyshyn, in: *Divergent paths in post-communist transformation. Capitalism for All or capitalism for the Few*, Palgrave Macmillan, Basingstoke, United Kingdom, 2006, p. 199.

²⁵¹ *Ibid.*

monopolists and oligopolists will influence the governments to prevent competition. Oleh Havrylyshyn says that oligarchism is largely present also in the western highly competitive and post-industrialized countries. From the economic point of view, post-Soviet oligarchies are very similar (in behavior) with that from USA. Moreover, Mark Twain in his work *The gilded Age and Thorsten Veblen in Vested Interests* described the 19th century's 'robber barons' from the US as the "financial giants with the resources and connections to influence government decision in their favor".²⁵² Still, those from countries in transition (namely post-Soviet area) differ a lot from other oligarchs in the US. There, robber barons accumulated their initial wealth from "entrepreneurial value-added activity" while post-Soviet oligarchs from "bargaining prices for preexisting state assets in privatization", etc.²⁵³ In this sense, post-Soviet oligarchy differs also from those from Korea, Latin America.²⁵⁴ Rajan and Zingales argue that prior to the formation of an oligarchic group, the US developed a middle class of entrepreneurs as well as law enforcement institutions and on that basis there was fighting against exaggerated monopolism.²⁵⁵ Havrylyshyn continues the idea and states that another difference consists in the degree of power of influence. Unlike their 'big-capitalist' counterparts from western countries, oligarchs from CIS have the power "to influence not only economic measures affecting them directly, but also the general direction of the economic policy and even the outcome of elections".²⁵⁶ Namely this, in the opinion of the author, cited above, is called 'state capture'.²⁵⁷

Anna Klimina in her paper of captured transition tries to explain oligarchism and the 'state capture' through the Velbenian concept of habits. According to Velben, habits are "cumulative manifestations of past experiences".²⁵⁸ So, oligarchs have appeared in the post-Soviet space (except the Baltics) because there existed habits formed from Soviet times when "prevailed an economic culture of informality and non-transparency".²⁵⁹ Klimina develops her idea stating

²⁵² Oleh Havrylyshyn, *op. cit.*, p. 200.

²⁵³ Oleh Havrylyshyn, *op. cit.*, p. 199.

²⁵⁴ *Ibid.*

²⁵⁵ Raghuram G. Rajan, Luigi Zingales, *Saving capitalism from capitalists: Unleashing the power of financial markets to create wealth and spread opportunity*, Crown Business, 2003. p. 10.

²⁵⁶ Oleh Havrylyshyn, *op. cit.*, p. 202.

²⁵⁷ *Ibid.*

²⁵⁸ Anna Klimina, 'Velbenian concept of habit and its relevance to the analysis of captured transition', *Journal of Economic Issues*, 2008, pp. 548-551.

²⁵⁹ *Ibid.*

that in socialism “personalized connections and accumulative relational capital played a vital role”.²⁶⁰ The market adjustment and lobbyism were unrecognized, but the shadow (informal bargaining) agreements between state institutions and economy management were in place. After the fall of the system, all these habits, including the tendency to steal from the state, have been released from the shadows and have developed intensively.²⁶¹

A similar approach is described as neoclassical institutionalism by the same author (Klimina) in other paper. According to neoclassical institutionalism, the causes of oligarchy and ‘state capture’ come from a “country’s history of non-democratic government”.²⁶² Also, according to neoclassicism, the “competitive market system, exogenously implanted and supported, will eventually create a social environment capable of countering ‘state capture’ and removing institutional imperfections”.²⁶³ However, Klimina argues that this supposition failed to be proven in practice in the case of former Soviet countries (except the Baltics) and it has not “combated rent-seeking”.²⁶⁴ Rent-seeking is an economic term describing a company that is earning its profit without producing more or better outcomes. According to Tudoroiu, the concept of ‘state capture’ derives from the term ‘regulatory capture’ that is related to George Stigler’s demand theory of ‘rent-seeking’. “Regulatory capture represents the process by which regulatory agencies come to be controlled by the industry they were charged with regulating.”²⁶⁵

Havrylyshyn explains why the term of oligarchy is applied for CIS countries and is almost absent in Central Europe. According to him, in countries from CIS, the economic transition started with a high and sudden rise of economic rights and opportunities, while the real market changes, such as consolidation of market regulation institutions, progressive laws, stimulation of small enterprises, etc., came much later. This was the perfect environment for individuals close to the political establishment to earn a lot of capital through the rent-seeking.

Accumulating capital, these new businessmen were those who benefited later from the large scale privatization. In such way, they seized the state before it developed rule of law functional

²⁶⁰ Anna Klimina, ‘Velbenian concept’, *op. cit.*, pp. 548-549.

²⁶¹ *Ibid.*

²⁶² Anna Klimina, ‘Toward and evolutionary-institutionalist concept of state capture’, *op. cit.*, p. 373.

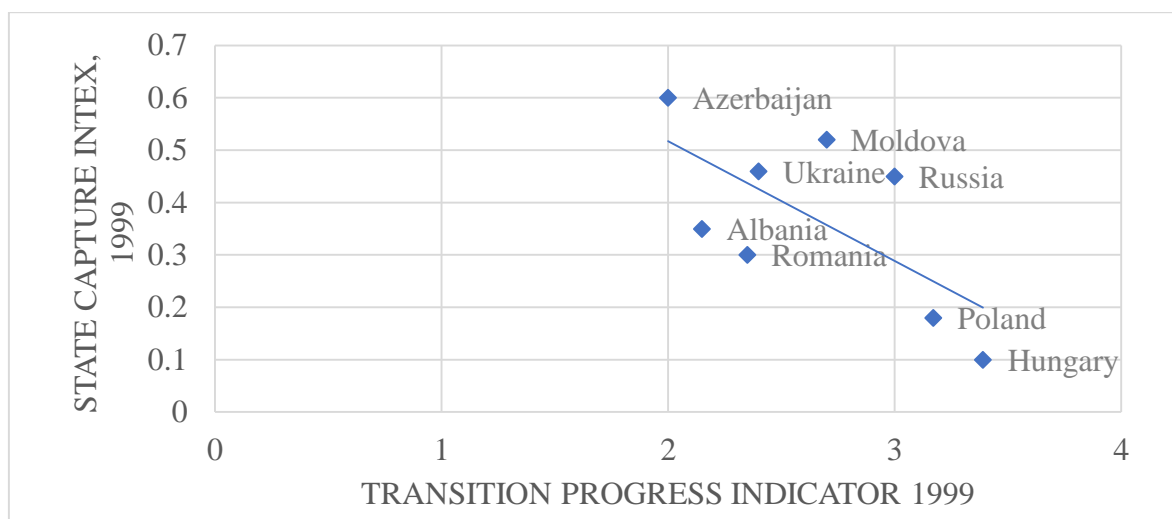
²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ Theodor Tudoroiu, *op. cit.*, p. 657.

institutions, efficient market regulation, etc. In the case of Central European countries the market's new opportunities started to grow at the same intensity with the market regulation control. Even though in the first five years, rent-seeking was growing faster than market institutions aimed to assure a competitive environment (even sharper than in CIS countries), after five years, this malicious phenomenon started to be diminished by growing powerful market institutions. That is why when the privatization of large assets started, market regulation and rule of law was at the necessary level to prevent the concentration of the wealth in the hands of a few people, and, therefore, the rise of real oligarchs.²⁶⁶ In the graph presented below, there can be observed a rather direct correlation between delayed reforms and 'state capture'

Graph 5. The line of 'state capture' and the position of CIS and CEE according to their 'state capture' index and transition progress indicator in the year 1999



Source: Oleh Havrylyshyn, *Divergent paths in post-communist transformation*.²⁶⁷

Another explanation comes from Soviet times when in Soviet republics party nomenclatura was more powerful than in socialist republics, including "the Soviet-era mafia".²⁶⁸ Here is added the incredible strive with which the Baltics and Central European states wanted to return to their European identity. To this was added the European integration process that pushed the states to implement reforms. The case of Bulgaria demonstrates that 'state capture' can be reversible if

²⁶⁶ Oleh Havrylyshyn, *op. cit.*, pp. 182-185, 191.

²⁶⁷ *Ibid.*, p. 194.

²⁶⁸ *Ibid.*, p. 186.

there are taken measures until oligarchs (that captured the state) consolidate their forces. In the elections from 1997, in Bulgaria came a “highly reformist government”.²⁶⁹ So, there can be observed that the clear EU membership perspective plays a more important role. (even though indirect one).²⁷⁰

Havrylyshyn identifies 4 main origins where oligarchs come from: high level Soviet nomenclatura; young nomenclatura leaders, still in Komsomol at the end of 80's; new entrepreneurs that have some reliable links with the Soviet nomenclatura; “underground Soviet economy and mafia network of traders”.²⁷¹

The term of ‘state capture’ was academically developed in a policy research paper published by World Bank in 2000. The authors define the term ‘state capture’ as a process of “shaping the formation of the basic rules of the game (laws, rules, decrees and regulations) through illicit and non-transparent private payment to public officials”.²⁷² The research analyses ‘state capture’ exercised from a purely business entities side. However, the authors underline in the footnotes that “firms/businesses are not the only organizations that can capture the state”.²⁷³ In the paper, there are three types of interactions between business and state. The first type is administrative corruption. It means influence (from the firms) related to the administrative implementation of the laws/rules in its temporal advantage. It remains closely related to the classical sense of corruption or even to small corruption. The second one, more related to our subject, is named ‘state capture’, and, it occurs namely when big firms, through illicit and non-transparent substantial bribes, “influence the formation of laws, rules and regulations of the state institution”.²⁷⁴ The third type is called ‘influence the state’, and it has the same result as from the ‘state capture’, but without illicit and non-transparent payment to officials. However, the authors tend to treat the last one as something less damaging for the state. The ‘capture state’

²⁶⁹ *Ibid.*, pp. 196-198.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*, p. 187.

²⁷² Joel S. Hellman, Geraint Jones, Daniel Kaufmann, *Seize the state, seize the day: State capture, corruption and influence in transition*, The World Bank, 2000, p. 2.

²⁷³ *Ibid.*, p. 2.

²⁷⁴ *Ibid.*, pp. 5-6.

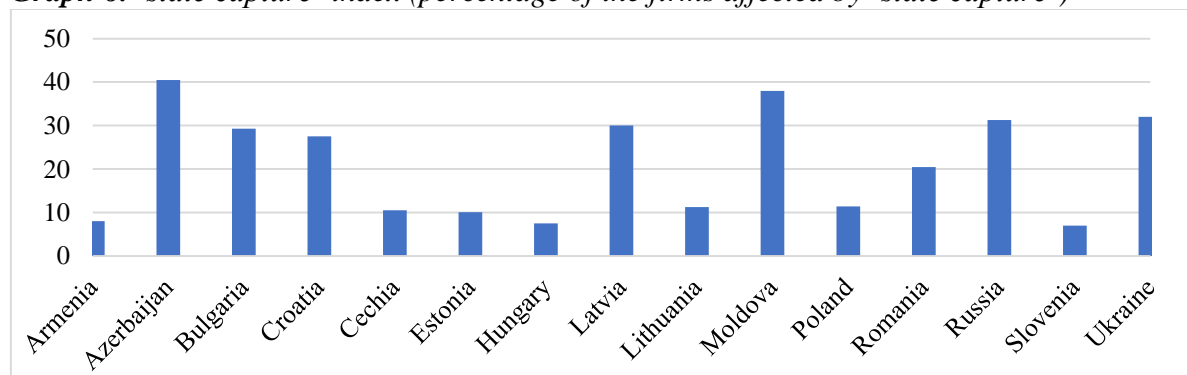
and ‘influence the state’ are in fact “alternative strategies of interacting with the state”, they do not overlap.²⁷⁵

The methodology of evaluation of the ‘state capture’ was done through interviews with businessmen where they were asked whether certain domains influence their business. These “types of activities” refers to the main institutions for the democratic process:

- “The sale of Parliamentary votes on laws to private interests;
- The sale of Presidential decrees to promote interests;
- Central Bank mishandling of funds;
- The sale of court decisions in criminal and commercial cases;
- Illicit contribution paid by private interests to political parties and election campaigns.”²⁷⁶

The World Bank policy analysis from 2000 has evaluated, as well, the level of ‘state capture’ in Moldova as the second highest from a top of 22 transition countries. Moldova (37 points) is better off only in comparison with Azerbaijan (41), but worse than Ukraine (32) and even than Russia (32). Countries like Kyrgyzstan (29) and Belarus (8) have a lower level of ‘state capture’ because the state remained still very powerful, even an authoritarian one.²⁷⁷

Graph 6. ‘state capture’ index (percentage of the firms affected by ‘state capture’)



Source: *Anti-corruption in transition. World Bank, 2000.*²⁷⁸

²⁷⁵ *Ibid.*, p. 6, 11.

²⁷⁶ *Ibid.*, p. 10.

²⁷⁷ *Ibid.*, p. 9.

²⁷⁸ Sanjay Pradhan, *Anticorruption in transition. A contribution to the Policy Debate*, The World Bank, Washington, USA, 2000, p. 16.

The authors evaluate that the ‘state capture’ as being more harmful when it is exercised by a “powerful monopoly” than when there are more firms that compete to influence the state.²⁷⁹

A similar analysis provided also by the World Bank and written by a group of experts led by Sanjay Pradhan, concludes that ‘state capture’ does not automatically come as a result of high levels of corruption and there can exist situations when administrative corruption is relatively low in comparison with other countries, but ‘state capture’ is higher and vice versa. There are many developmental, economic and political factors that determine these variations of combination and correlation of corruption-’state capture’. “In countries where national wealth is highly concentrated in a few key productive assets, there are significant risks that powerful interests will capture state institutions.”²⁸⁰

4.2 Oligarchy and ‘state capture’ in Moldova: control over the society (politics, justice sector)

Corneliu Ciurea, a well-known political scientist from Moldova, thinks that Moldova is an “arheomodel” of a combination of traditional and modern elements.²⁸¹ The traditional element drives from Soviet Union ‘informal practices’. This has its roots even further, to the “pre-Soviet patrimonial elements of the Moldovan society such as cumatrism (cronyism), family ties and undervaluation of the legal system”.²⁸² The traditional explains the reason behind ‘wild capitalism’ (mafia) existing in 1990s. In fact, the system was it was possible because it was founded upon informal practices originated from the Soviet times, or, even older. According to this idea, the main spheres of the society operate according to other rules than those stipulated in the law.²⁸³

Moldovan oligarchs are seen as emerging class of former “bandits” from the end of the 1980s - beginning of 1990s who “took over” the real power in the state. The author says that this still is “often considered to be a positive fact”, in comparison with the former Soviet system. But this is seen positively only as a transition process that had to move to the democratic control of the

²⁷⁹ *Ibid.*, p. 8.

²⁸⁰ Sanjay Pradhan, *op. cit.*, pp. 19-20.

²⁸¹ Cornel Ciurea, ‘Political risks in Moldova. A barrier to international investment?’, in: J. Leitner, H. Meissner (ed.), *State Capture, Political Risks and International Business. Case from Black Sea Region Countries*, Routledge, New York, USA, 2017, p. 120.

²⁸² *Ibid.*, pp. 121-122.

²⁸³ *Ibid.*

state.²⁸⁴ However, the current oligarchy from Moldova has, in fact, its roots in the early 2000's and differs from the former 90's 'nomenclatura', controlled in Moldova by former presidents Snegur and Lucinski.²⁸⁵ Here, the author's description contradicts with that provided by the World Bank. Ciurea says these 'nomenclatura' "were controlling business and extracting political rents",²⁸⁶ while in the description of the 'state capture' made by World Bank, the politicians were those who allowed themselves to be influenced and bribed by powerful companies. Nevertheless, at least one thing is clear, 'nomenclatura' was benefiting from interaction with business, but was not doing business themselves.

The author cited above refers to the new generation of politicians (Vlad Filat, Vlad Plahotniuc, Veaceslav Platon, Viorel Topa, Victor Topa, Valeriu Strelet, etc) as the oligarchs that "managed to make big fortunes, very frequently in a non-transparent way".²⁸⁷ These are the people described previously that benefited from the economic transition in the early 1990s. In fact, they mixed the two elements previously separated: politics and business.²⁸⁸ What is more negative is that the "tycoons" have partially adapted to the democratic rules, legalized some of their 'behind scenes' businesses.²⁸⁹

There is a legitimate question whether today's oligarchs from Moldova are real oligarchs and how they differ from those from Ukraine and Russia. One difference is that Moldova does not have "raw-materials, large scale industry or large domestic markets".²⁹⁰ However, they are oligarchs because they have developed a large network to gain wealth. Ciurea identifies three kinds of such sources. The first is the control over important markets, such as, food industry, IT technologies, pharmaceuticals, scrap-metal, advertising and the energy sector (petroleum products, etc.). The second one goes further 'behind the scenes' and refers to phantom companies, smuggling, money laundering, etc. The third one is the state budget. The instruments available for the Moldovan oligarchs make them "more fluid and difficult to pinpoint" than Ukrainians who own huge assets (Ukrtrnafta, Zaporozhstal).²⁹¹ Nevertheless, even for Moldova,

²⁸⁴ *Ibid.*, p. 120.

²⁸⁵ *Ibid.*, p. 122.

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ Separated, but, which were strongly influencing each other.

²⁸⁹ Cornel Ciurea, *op. cit.*, p. 122.

²⁹⁰ *Ibid.*, p. 123.

²⁹¹ *Ibid.*

Ciurea identifies two types of oligarchs: those that put politics above business (“who are the real oligarchs”) and those that have more business ambitions than political one.²⁹²

The author states overtly who are the most influential oligarchs in Moldova: Anatol Stati, the owner of the biggest oil company from Moldova; Vladimir Plahotniuc, the president of the Democratic Party of Moldova and businessman; Ilan Shor, the owner of a duty-free branch and stakeholder of Moldova’s important banks; Veaceslav Platon, banking sector; Oleg Voronin, construction firms, and the banking sector. Ciurea says that according to other sources, former prime-minister Vlad Filat, who currently is in prison for taking bribes, is also in the list of oligarchs.²⁹³ Following the two category division described above, Ilan Shor, Veaceslav Platon and Anatol Stati are in the second category (more business interests than political). On the other hand, Vlad Plahotniuc, Vlad Filat and Oleg-Vladimir Voronin are in the first category, characterized by Ciurea as ‘true oligarchs’. They formerly divided the influence over the state into three “economic influence centers”.²⁹⁴ Plahotniuc’s business, for example, depends now on how well will he “control the judicial system and state resources”.²⁹⁵

To better understand why Moldova is considered a ‘captured state’ let us have a look at one relevant example renowned over the world - the theft of approximately 1 billion dollars from the Moldovan banking system, and, in the end, from the Moldovan National Bank reserves. It perhaps would not be something extraordinary, if \$1 billion had not represented about 1/8 of the country’s GDP.²⁹⁶ This started when 3 banks: Banca de Economii (state owned), Banca Sociala and Unibank granted “multi-million dollar loans” to companies associated with former prime-minister Vlad Filat, Ilan Shor (a Moldovan-Russian businessman) and Vlad Plahotniuc. Moreover, the huge loans were arranged from the beginning to be ‘unpayable’. Later, as it was impossible for the debt to be returned, the banks “began to rapidly lose financial liquidity”, that is why, they were rescued by the National Bank of Moldova and bailed-out.²⁹⁷ This means that

²⁹² *Ibid.*

²⁹³ *Ibid.*

²⁹⁴ *Ibid.*, p. 124.

²⁹⁵ *Ibid.*

²⁹⁶ The World Bank, *Country page of Moldova*. The World Bank. Available at: <http://data.worldbank.org/country/moldova> (consulted on 03.04.2017)

²⁹⁷ Kamil Calus, *A captured state? Moldova’s uncertain prospects for modernization*, Centre for Eastern Studies, Warsaw, Poland, 22.04.2015, p. 4.

a big part of the loans were returned from the national currency reserves. “This practice would have not been possible without the involvement of the coalition leaders.”²⁹⁸

One of the main high-level declarations which used the term “‘state capture’” in the case of Moldova was by Thorbjorn Jagland, of the Secretary-General of the Council of Europe, in his editorial “Bring Moldova Back From the Brink”. In that article, he added that “corruption remains endemic and the state is still in the hands of oligarchs” and suggested that oligarchs control the main law enforcement institutions.²⁹⁹

The term was also used by another official representing an important development partner of Moldova, the USA. Ambassador James Pettit said: “all from this country (Moldova) know the concept of ‘captured state’. This concept refers to the fact that there exist important sectors which are under the control of several persons”.³⁰⁰ Even further, he referred to a political party that “controls everything”.³⁰¹ According to him, the oligarchs “impede the progress in the fight against corruption and other reforms” that would affect their interests.³⁰²

The former Commissioner for Enlargement, Stefan Fule, referred indirectly to the ‘captured state’ saying about Moldova that this is “a kind of ‘privatization’ by oligarchs and political parties of the democratic institutions”.³⁰³ While he was still in the official position, he stated publicly in 2013, when the oligarchic forces from Moldova voted several controversial laws, that “this follows a worrying new pattern of decision-making in Moldova, reflected also in other recent legislative moves, where the institutions of the state have been used in the interest of a few.”³⁰⁴

²⁹⁸ *Ibid.*

²⁹⁹ Thorbjorn Jagland, *Bring Moldova back from the brink*, The New York Times, 10.08.2015. Available at: https://www.nytimes.com/2015/08/11/opinion/bring-moldova-back-from-the-brink.html?_r=2, (consulted on 10.02.2017).

³⁰⁰ *US Ambassador: Moldova – a CAPTURED state; Important sectors are found under control of several people*, Jurnal.md, 06.10.2015. Available at: <http://www.jurnal.md/en/politic/2015/10/6/us-ambassador-moldova-a-captured-state-important-sectors-are-found-under-control-of-several-people/> (consulted on 20.02.2017).

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ Charles Recknagel, *Explainer: What Can Moldova's Crisis Teach The EU?*, Radio Free Europe, 22.11.2015. Available at: <http://www.rferl.org/a/moldova-crisis-eu-lessons-explainer/27380231.html> (consulted on 08.02.2017).

³⁰⁴ Martin Banks, *Two Senior European Figures Have Issued a Warning to Moldova That it Risks Damaging Its EU*, EU- Ukraine Business Council, 8.05.2013. Available at: <http://www.prnewswire.com/news-releases/two->

The phenomenon of ‘captured state’ is not new for Moldova, previously, it was just “more discrete” during the ruling of the Communist Party (2001-2009) or characterized by a more balanced oligarchy (2009-2015).³⁰⁵ What is happening now is “on a scale unseen so far in Moldova’s history since 1991”.³⁰⁶ In the opinion of Iulian Groza and others, the process of oligarhization of Moldova has been accelerated namely by a so called ‘democratization’ of the system after 2009’s Twitter Revolution. Since then, for every government formation “it has been common for the parties to divide control of state institutions between them, including the nominally independent judiciary”.³⁰⁷ The “party formula” has been used for appointment of the “major public offices” positions and other posts that usually do not depend to the change of government components, such as: the Head of the Central Tax Office, the Governor of the National Bank of Moldova, the General Prosecutor, and the head of the Central Electoral Committee.³⁰⁸ The most renowned are the distribution between Liberal Democrats (tax, custom authorities) and Democrats (law enforcement institutions, Prosecutor General). However, year by year, the Democratic Party has become more powerful, extending its control over other parties.³⁰⁹ In addition, if before the power was distributed between 2-3 parties, after the arrest of Filat, that was a counter-balance for the Plahotniuc, all they moved to be controlled by one party and by one man.³¹⁰ According to Theodor Tudoroiu, Plahotniuc has his “protégés” in the Supreme Court of Justice, the Anti-corruption National Center, the Information and Security Service, the National Bank, the Financial Market National Commission and the General Prosecutor’s Office.³¹¹

This person is considered to be one of the richest businessmen in Moldova. He has been moving permanently from a shadow influence of the states institutions to a more open and formal one. On 24 December, 2016, he became president of the Democratic Party (previously vice-

[senior-european-figures-have-issued-a-warning-to-moldova-that-it-risks-damaging-its-eu-accession-ambitions-206555701.html](http://www.ipn.md/en/integrare-europeana/206555701.html) (consulted on 19.02.2017).

³⁰⁵ Dionis Cenusă, *Captured state” and “useful oligarchs” in proximity of EU: Moldova, Georgia and Ukraine*, Info Prim-Neo, 17.10.2016. Available at: <http://www.ipn.md/en/integrare-europeana/79645> (consulted on 19.02.2017).

³⁰⁶ Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony*, Centre for Eastern Studies, Warsaw, Poland, 07.04.2016, p. 1-2.

³⁰⁷ Charles Recknagel, *op. cit.*

³⁰⁸ Kamil Calus, *A captured state?*, *op. cit.*, p. 3.

³⁰⁹ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 31.

³¹⁰ *US Ambassador: Moldova – a CAPTURED state*, *op. cit.*

³¹¹ Theodor Tudoroiu, *op. cit.*, p. 662.

president). This party's Parliamentary faction has grown from 19 MPs, after the elections (2014), to 40 MPs in 2017. He also controls the Communist Party and the Liberal Party³¹². He even is supposed to have blackmailed the family of the president of the Republic of Moldova, Nicolae Timofti, who complained privately about this to ambassadors of Western countries to Chisinau.³¹³ The same analysis published by the Institut für Europäische Politik says that this control is made with the support of "criminal prosecutions threats".³¹⁴ According to Kamil Calus from the Center for Eastern Studies, Plahotniuc's control upon the system is based on four pillars: "1. the group of Plahotniuc's close aides, 2. business and financial power 3. Control of the administration of justice; 4. control of the greater part of the Moldovan press."³¹⁵

The oligarchic interest in controlling the Prosecutor's Office

Narrowing the scope of research further, in the following paragraphs, the paper will discuss the implication of Plahotniuc in the Justice reform and the reform of the prosecution service. Before, the paper has already described the traditional distribution of influence spheres in the governmental coalition and the specific interest of Democratic Party from Moldova over the judiciary system. Now, according to the analyst of the James-Town Center, Vladimir Socor, the General Prosecutor's Office is "the most important lever of control over the country" of Plahotniuc.³¹⁶ The Prosecution Office is used to "fabricate criminal evidence to influence the behavior of state officials, politicians and businessmen", that is why it is "essential" to be strongly controlled.³¹⁷

Plahotniuc's 'main arm' has been the judiciary system through which he has combined a 'carrot and stick' approach. People that subordinates to him "will receive financial benefits or promises of immunity from the judiciary, and fiscal inspections, etc.," but those who oppose "will have to face court proceedings, based on either real or fabricated evidence".³¹⁸ "It is presumed that

³¹² Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony*, op. cit., pp. 1-2; Dionis Cenusă, *Captured state* and "useful oligarchs" in proximity of EU, op. cit.

³¹³ Vladimir Socor, *Moldovan Legislative Changes to Reinforce the State Capture*, Eurasia Daily Monitor, 16.12.2016. Available at: <https://jamestown.org/program/moldovan-legislative-changes-reinforce-state-capture/> (consulted on 19.02.2017).

³¹⁴ Groza, Jopp, Leanca, Rusu, Sieg, op. cit., p. 31.

³¹⁵ Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony*, op. cit., pp. 3-4.

³¹⁶ Vladimir Socor, op. cit.

³¹⁷ *Ibid.*

³¹⁸ Kamil Calus, *A captured state?*, op. cit., p. 4.

Plahotniuc's influence extends to nearly the entire of the justice system. The former General Prosecutor is said to be a close associate of his."³¹⁹ Plahotniuc succeeded "to bring about the arrest of his main political competitor", former prime-minister, Vlad Filat.³²⁰ This would not have been possible without an arranged decision of the Constitutional Court that declared the candidature of Vlad Filat for prime-minister incompatible.³²¹

There are several important sources that see the recently appointed Prosecutor General as being controlled by Plahotniuc.³²² Harujen has been for many years loyal to Plahotniuc and has occupied key positions as the "Chief Anti-Corruption Prosecutor and was part of the team that Plahotniuc placed at the top of the Prosecutor-General's institution in 2013." In such a way, "the struggle against corruption has thus been postponed by seven years".³²³

In a public letter signed by some credible activists from Moldova, there was a warning about "the rapid appointment, lack of transparency and public scrutiny" that were arranged to "keep this institution under Plahotniuc's personal control" which means a lack of fighting corruption at the higher levels.³²⁴

The attitude of the oligarchic regimes towards reforms

The main characteristic of the oligarchy (especially applicable to persons such as Plahotniuc) is that they are not interested in the structural reforms of the country, or the real integration and implementation of the EU Association Agreement.³²⁵ Neither they are efficient in fighting corruption that means to "separate state functions from oligarchs' interests", to unveil conflict of interests and increase transparency,³²⁶ "challenge their business activities", etc.³²⁷ Any

³¹⁹ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 31.

³²⁰ *Ibid.*

³²¹ Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony*, *op. cit.*, p. 1-2.

³²² Charles Recknagel, *op. cit.*; Vladimir Socor, *op. cit.*; Kamil Calus, *A captured state?*, *op. cit.*, p. 4.

³²³ Vladimir Socor, *op. cit.*

³²⁴ Dumitru Alaiba, *Moldova state of affairs at the end of 2016, declaration signed by civil society activists*, Alaiba's Blog, 21.12.2016. Available at: <https://alaiba.wordpress.com/2016/12/21/moldova-state-of-affairs-at-the-end-of-2016-declaration-signed-by-civil-society-activists/> (consulted on 19.02.2017).

³²⁵ Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony*, *op. cit.*, p. 1.

³²⁶ *Oligarchs stand in the way of Moldovan's corruption fight*, World Politics Review, 24.11.2015. Available at: <http://www.worldpoliticsreview.com/trend-lines/17300/oligarchs-stand-in-the-way-of-moldova-s-corruption-fight> (consulted on 19.02.2017).

³²⁷ Dionis Cenusă, *op. cit.*; Kamil Calus, *A captured state?*, *op. cit.*, p. 1.

changes to the current state of art would be tantamount to limiting their influence in politics and economy, which would challenge their business activities.

One can notice then that there are classical methods of overt dominance that you see characteristically in authoritarian regimes. According to Dionis Cenusă, the Government that is controlled by Democratic Party and Vlad Plahotniuc is not ready to depoliticize institutions like the Prosecutor General's Office and the National Anticorruption Center.³²⁸ "Privatization of authorities can create a bigger impediment for transformation than an authoritarian system."³²⁹ That is why getting rid of the 'captured state' can be harder than to end the authoritarian regime. Hence, until the West changes its new approach to focus on geopolitical stability rather than on transformation it is necessary for Moldova to have "a self-defeating strategy".³³⁰

4.3 The approach of the European Union towards oligarchs and 'state capture'

The specifics of politics from Eastern Europe (Moldova, Georgia, Ukraine) in the last years have been characterized by the pro-European oligarchic regimes, owning the most influential parties.³³¹ Sometimes, and if they wish, these parties/regimes can "mobilize the state institutions" and undertake significant changes.³³² This is done in order to show their capacities to the EU and gain trust and recognition from the EU side that will be the main element for claiming legitimacy. One example can serve the EU-Moldova 'roadmap' (March-July 2016) of reforms for defrosting the EU funds to Moldova. In this case, Plahotniuc tried to show to development partners that "he is a useful oligarch".³³³ The same mobilization of the government had been done to start the negotiations and to agree upon a new memorandum with the IMF.³³⁴ Or the speed of passing important laws by Parliament that for many years were delayed (it can be observed in the last period).³³⁵

³²⁸ Dionis Cenusă, *op. cit.*

³²⁹ Groza, Jopp, Leanca, Rusu, Sieg, *op. cit.*, p. 38.

³³⁰ *Ibid.*

³³¹ Charles Recknagel, *op. cit.*

³³² Dionis Cenusă, *op. cit.*

³³³ *Ibid.*

³³⁴ Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony, op. cit.*, p. 8.

³³⁵ *Ibid.*, p. 9.

He even arrested the two main accused person for the theft of the billion dollars (in fact his opponents) to show that he differs from other ‘destructive oligarchs’.³³⁶ In the opinion of Cenusă, this capacity of mobilisation is the reason why the oligarchs from Eastern Europe are “legitimate for a dialogue with the foreign partners, including the EU.”³³⁷ Therefore, Kalus considers that it can lead to a consolidation of a “soft, nominally pro-European authoritarianism”³³⁸ or a “pro-western autocracies of the Middle East”³³⁹ where state institutions will serve only as the legitimacy to a real power in the state, but, in fact, the power is in the hands of Plahotniuc and this can already be observed. In this situation, the chances for pro-European changes in Moldova and a genuine implementation of the Association Agreement will be rather distant. Of course, in this case, European integration is kept only to legitimate the government and maintain collaboration with the EU and receive funds.³⁴⁰

In 2016, Vlad Plahotniuc paid a visit to Washington where he met high level officials from the US like Victoria Nuland, the Assistant Secretary of State for European and Eurasian Affairs at the United States Department of State. Plahotniuc received the guaranties on the political support from the US. In fact, the US has chosen to support political stability and a clear pro-European course even “at the expense of the real reforms” and to keep Moldova out of Russian influence.³⁴¹ From the US perspective, Plahotniuc is the least worst solution for the moment and it will be supported until he is convenient and until there appears a real pro-European and pro-reform alternative.³⁴² Plahotniuc promised then that he has the capacities to maintain Moldova on a pro-European path and it was indirectly understood “that the acceptance of Plahotniuc’s informal rule was a part of this bargain.”³⁴³

³³⁶ Dionis Cenusă, *op. cit.*

³³⁷ *Ibid.*

³³⁸ Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony*, *op. cit.*, p. 9.

³³⁹ Piotr Oleksy, *Moldova. Values and geopolitics*, New Eastern Europe, 17.05.2017. Available at: <http://neweasterneurope.eu/articles-and-commentary/1996-moldova-values-and-geopolitics> (consulted on 19.02.2017).

³⁴⁰ Kamil Calus, *Moldova: from oligarchic pluralism to Plahotniuc's hegemony*, *op. cit.*, p. 9.

³⁴¹ Kamil Calus, *Plahotniuc in the USA: legitimizing the Moldovan oligarch*, Center for Eastern Studies, 11.05.2016. Available at: <https://www.osw.waw.pl/en/publikacje/analyses/2016-05-11/plahotniuc-usa-legitimising-moldovan-oligarch> (consulted on 19.02.2017); Piotr Oleksy, *op. cit.*

³⁴² *Ibid.*

³⁴³ Vladimir Socor, *op. cit.*

Piotr Oleksy, from political journal New Eastern Europe, says that in Moldova you can see the big difference between EU's and US's politics towards Moldova. Washington has a geopolitical approach to keep Moldova in a "pro-western course" while the EU is more concerned about processes of doing reforms in accordance with EU values.³⁴⁴ Oleksy brings the examples of suspended assistance from the EU side and even a possible high-level political influence and support for the President of Moldova not to appoint a "Plahotniuc-controlled government".³⁴⁵ However, since 2016, the EU's approach has slightly changed. Also, there cannot be found any recent official declaration of EU or documents about 'state capture' or about dominance of the oligarchs in Moldova.

On the opposite side, recently, the Commission has proposed to the Parliament and the Council a proposal for a new macro-financial budgetary assistance to Moldova (MFA) in amount of EURO 100 million. The argumentation of the Commission presents Moldova in a quite positive light: "There has been substantial progress with the implementation of the Roadmap for Priority Reforms. Moldova is deemed to meet the political preconditions for the granting of MFA to third countries, notably in terms of respect for democracy, human rights and the rule of law...".³⁴⁶ This description is the opposite to what the EU institution presented, for instance, last year, in 2016: The European Council has "concerns about the lack of independence of the judiciary and law enforcement agencies."³⁴⁷ Many other documents released by international organizations, trusted NGOs discussed in the previous chapters, expressed their concerns about a lack of structural reforms, insufficient reforms in the justice sector, shrinking of mass-media independence, etc. All these, directly or indirectly, lead to the term 'captured state' and a state controlled by one party and one oligarch, discussed and demonstrated above. Civil society from Moldova has a very negative position in situation nowadays in Moldova. The EU plays a dangerous card supporting local oligarchs that can lose its credibility as a promoter of values.³⁴⁸

Stefan Fule, the former European Commissioner for Enlargement and Neighborhood Policy recognized that there was a fault of EU to assume that "authoritarian regimes were a guarantee

³⁴⁴ Piotr Oleksy, *op. cit.*

³⁴⁵ *Ibid.*

³⁴⁶ European Commission, *Proposal for a decision of the European Parliament and the, op. cit.*, p. 5-9.

³⁴⁷ Council of European Union, *Council conclusions on the Republic of Moldova, op. cit.*, point no. 7.

³⁴⁸ Piotr Oleksy, *op. cit.*

of stability in the region” and that “short-termism” solutions for the security made the long-term stability even difficult to build.³⁴⁹ Even though this is related to the southern region, it is quite valid for some Eastern Neighbors like Moldova, where the EU is in a progressive dialog and even support the government that is controlled by one politician-oligarch. It is not the first time the EU has turned a blind eye to some democratic deviations in order to avoid a bigger negative transformation, especially when the country is engaged in some structural reforms. Borzel and Lebanidze argue that it was the case of Georgia and the “questionable” presidential elections from 2008.³⁵⁰ However, all these resent changes in practice in the EU’s approach of its general official transformative and democratization objective as a Global Actor, have been formally adopted by reviewing of the ENP in 2015.

Professor Erwan Lannon suggests paying attention to the Council’s conclusions from 2014 on the four priorities of the ENP: Differentiation; Focus; Flexibility; Ownership and Visibility. Focus means that EU has to prioritize its partnerships with neighbors on the following aspects: “security sector reform, conflict prevention, counter-terrorism, anti-radicalization, irregular migration, human trafficking and smuggling”.³⁵¹ This will change the 2011 approach when the scope was to ‘deeper political association and economic integration’ (Mediterranean dimension). But it still remains in force for governments with the political will to do so.³⁵² Flexibility means that the EU’s conditionality will be more adapted to the bilateral level. Differentiation means that there “will no longer be a single set of progress reports on all countries simultaneously and the EU will develop a new style of assessment, focusing on meeting the goals agreed with partners”³⁵³. Therefore, for “those partners who prefer to focus on a more limited number of strategic priorities, the reporting framework will be adjusted”.³⁵⁴ Even that it is declared to be addressed to the Southern partners, the new approach of ‘security first’ is adopted for the EaP under a softer form – ‘stability first’, but still, it will have the same

³⁴⁹ Stefan Fule, *Speech on the recent events in North Africa*, Committee on Foreign Affairs, European Parliament, Brussels, Belgium. Available at: http://europa.eu/rapid/press-release_SPEECH-11-130_de.htm (consulted on 19.02.2017).

³⁵⁰ Borzel, Lebanidze, *op. cit.*, p. 25.

³⁵¹ Erwan Lannon, ‘The 2015 review of the European neighbourhood policy and the future of Euro-Mediterranean relationship’, *Dis Politika – Foreign Policy*, Vol. 42, Issue 2, Ankara, Turkey, 2015, pp. 69-83.

³⁵² *Ibid.*

³⁵³ The European Commission and High Representative, *Joint Communication on the Review of the European Neighbourhood Policy*, The European Commission, Brussels, 18.11.2015, p. 5.

³⁵⁴ *Ibid.*

consequences. For Moldova, it is the worst approach that EU can have because it encourages stability, that, in case of today's situation in the country, means poverty, corruption and 'state capture'. But, isn't it just a ticking time-bomb that will affect the EU more than a pro-democratic change in Moldova, even with the risk of a geopolitical deviation towards Russia? Unfortunately, the argument that Moldova can change its trajectory is used to justify the EU's new approach.

Balázs Jarábik, a non-resident scholar at the Carnegie Endowment for International Peace, said that the EU is preoccupied "not to 'lose' Moldova to Russia" giving indirect permission to "the growing 'state capture' by Moldova's oligarchs".³⁵⁵ Moreover, in an analysis published by the Open Society, the author suggests that the West, especially the US, was more in favor of a Plahotniuc Government, and therefore, more stable one than a pro-reforms Government with Ion Sturza³⁵⁶ as a prime-minister.³⁵⁷

The tendencies from the last months (the beginning of 2017) are that the Democratic Party and pro-Russian party led by president Igor Dodon are in a permanent soft-battle presented to the public as a West-East battle aimed to obtain more support from the EU that already proved that it is more concerned about security and stability in Eastern Europe.³⁵⁸ "There are well-grounded suspicions that these groupings (especially the Party of Socialists) are connected to Plahotniuc."³⁵⁹ "It is beyond doubt that the functioning of the system of oligarchy, which emerged in Moldova in recent years, suits Russia."³⁶⁰

In a skype interview with the former deputy Minister of Foreign Affairs, Iulian Groza, and director of the Institute for European Policy and Reforms, said that up until 2014, the EU had an 'integrationist approach' towards Moldova, but in 2015 it deflated. Then, the EU started to treat the situation more pragmatically - who can now assure the stability and security in

³⁵⁵ *Oligarchs stand in the way of Moldovan's corruption fight*, World Politics Review, *op. cit.*

³⁵⁶ Prime-minister of Moldova in the period 1998-1999, known as the chief of one of the most reformist governments Moldova ever has had. He also was in advanced negotiation with EU to include Moldova in the Stabilization and Association Process for Balkan countries.

³⁵⁷ Maria Levcenco, *Vlad Plahotniuc: Moldova's man in the shadows*, Open Democracy, 25.02.2015.

³⁵⁸ Liliana Barbarosie, *A small diplomatic war with Russia?*, 09.03.2017. Available at: <http://www.europalibera.org/a/28360438.html> (consulted on 20.03.2017).

³⁵⁹ Kamil Calus, *A captured state?*, *op. cit.*, p. 9.

³⁶⁰ *Ibid.*

Moldova? Even though it was an oligarch, he has been represented as the “the lesser evil”.³⁶¹ Groza draws attention to the EU and US, saying that in this way the reforms in Moldova will go forward only until it will be allowed by the oligarchs.³⁶² But Nizhnikau argues that the lack of progress of Moldova is “partly due to EU strategies to reform Moldova that continue to empower the entrenched gatekeepers and contribute to the maintenance of the institutional status quo.”³⁶³ The evidences of the change in approach has already appeared in EU’ documents on Moldova. The last Association Implementation Report from the EU appears in the opinion of the author of this paper quite neutral or even one that lacks the element of evaluation of the state of reforms and implementation of the AA in Moldova. For the first time, in a document of this type, can be found that in the context of reviewed ENP, “the EU and its neighbors have an overall objective of stabilization”.³⁶⁴ By way of comparison with a similar report published in 2015, the EU said: “The agreement (AA/DCFTA) committed Moldova to developing democratic institutions and to upholding human rights in accordance with European Union rules and standards”.³⁶⁵ So, no integration, structural and democratic reforms, but ‘stabilization’. The report continues to show that it is adapted to the new reviews and lessons learned by the EU: “a new reporting system to develop a new style of assessment that focuses specially on meeting the goals agreed with partners”.³⁶⁶ Practically an identical formulation as in the ENP Review cited above.

The report evaluates the main challenges from Moldova: “exclusive politicization of state institutions, systemic corruption, lack of judicial independence, insufficient investigation into the banking fraud”.³⁶⁷ This is the most critical and precise evaluation from this short report (only 13 pages). Assessing the point 3. *Freedom, security and justice* from AA, it continues with the message that Moldova has to “enhance transparency and impartiality in the selection of judges and prosecutors”, but it definitely lacks criticism, and, a clear attitude towards the lack of the results in Moldova.³⁶⁸ To return to the language used in the 2015 report, there can be observed

³⁶¹ Interview with Mr. Iulian Groza, *op. cit.*

³⁶² *Ibid.*

³⁶³ Ryhor Nizhnikau, ‘Promoting reforms in Moldova’, *Problems of Post-Communism*, 2017, p. 110.

³⁶⁴ European Commission, *Association Implementation Report on the Republic of Moldova*, *op. cit.*, p. 2.

³⁶⁵ *Ibid*, p. 5.

³⁶⁶ *Ibid*, p. 2.

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid*, p. 5.

a clearer formulation: “Moldova made less progress than in previous years on deep and sustainable democracy..., corruption in the Moldovan judiciary remained a major concern and the reform of the Public Prosecutor’s office has stalled.”³⁶⁹

In an interview conducted for this master thesis, an expert that is doing consultancy for the EU institutions offered more insights about the EU’s policy toward Moldova and its support for today's government (that is controlled by one oligarch). The expert wanted to preserve their anonymity. According to them, from the EU perspective (that differs from the perspective of Moldovans towards the problem discussed), when compared with other neighboring countries Moldova is not the only close partner with an oligarchic regime. As an example can serve Ukraine and even candidate states such as Montenegro and Macedonia.³⁷⁰

In this case, the EU has two options:

- 1) To suspend the financial assistance and to restrict relations because the EU should not support semi-democratic regimes. In such case it loses the partnership links, and, therefore, the certain influence in its neighbor countries. This is contrary to the ENP that is one of the most important instrument of the EU Common Foreign and Security Policy and The EU Common Security and Defence Policy (CSDP).
- 2) To support this country with projects, some financial assistance in order to have some leverage and conditionality to enhance at least the minimal reforms and maintain the democratic state.³⁷¹

The answer is clear. It is better to support, to involve a country in an engagement, and, then, to use soft conditionality to convince to do reforms, than reject it (because of lack of reforms) and let the things become worse.

Moldova faced a similar situation during the Voronin regime. Even without structural reforms, Moldova was considered the third or the fourth most open country from the ENP. In fact, expert says the strategy of the EU is the ‘shadow reformation’ of a country. It means that the EU, aware

³⁶⁹ European Commission, *Implementation of the European Neighbourhood Policy in the Republic of Moldova Progress in 2014*, op. cit., p. 2.

³⁷⁰ Interview with an expert which is doing consultancy for EU institutions (he wanted to preserve his anonymity), Skype interview, 20.03.2017.

³⁷¹ *Ibid.*

that there would not be any structural reforms from an oligarchic government and invests in technical reforms that are the first stage and prepare the ground for structural reforms when an open and pro-reform (pro-EU) government comes. Again, during the communist period, in Moldova there were some such examples: EUBAM mission that helped later for the visa liberalization. The expert argues that now it is a similar context. The EU tries to support technical reforms in the justice sector. These changes will be good ground for a government with a true political will. This investment goes toward new buildings, training of judges, adoption of new laws, computer systems, etc.³⁷² The person interviewed thinks that there is necessarily stricter conditionality. For that, the EU needs more levers and instruments. This comes with more involvement from the EU side: offering financial assistance, trade, political documents and diplomacy, etc. Only in this case the EU can ask the Moldovan authorities for reforms, what they cannot ask from other countries like Belarus, for example. So, this is a temporary state of engaging in a mutual interconnection until a real pro-reform government comes. This balance, of course, cannot be perfect and it is easy to be criticized. Moreover, it is risky because it is probable that for the year 2016, all of the EU's efforts and assistance to Moldova will fail to deliver changes in proportion to 50% or more. It is like in business, the EU risks this EURO 100 mill but, it is better than doing nothing at all. The EU mistake until 2015 was that they had all leverage to impose more conditionality and this potential was not used to the maximum.

Furthermore, this 'contract with the devil' requires that the EU does not react negatively to a series of violations, because it creates precedents, and, then, the EU risks spoiling the relationship and the certain openness from the government to collaborate.³⁷³ That is how we can explain the lack of reaction from the EU to certain events when the oligarchic factor has influenced the appointment of a new Prosecutor General. Moreover, in the same private mail interview with Mr. Rodolphe was asked 'how can be seen this apparent openness from the EU side towards the Government of Moldova? Does the EU's approach entail indirect support from the EU towards the oligarchic regime in Chisinau?'. In his answer, he avoided to say the words oligarchy or 'state capture': "As highlighted in its Association implementation report on the Republic of Moldova published in March 2017 and covering the period since November 2014,

³⁷² *Ibid.*

³⁷³ *Ibid.*

the EU has stressed that *consolidation of economic interests in the hands of fewer people is ongoing and that this creates interference risks for public policy.*³⁷⁴

Also, there should not be ignored at all the geopolitical factor and the behavior of Russia in the region, that is absolutely different from 2009-2014 period.

The expert also confirmed the change of approach from the EU side that comes from the Southern partners, but influence EaP as well. After the failure of promotion of democratic transformations in countries from the ENP, since 2011 have faced with revolutions, the EU has understood how important it is to keep the security dimension strong. A kind of ‘realpolitik’. This also has influenced the approach of the EU, including Eastern Partnership countries. But the slight change in approach has been influenced, also, by namely the countries’ trajectories. For example, in Georgia, the rule of Saakashvili was considered centralized political power that had not promoted enough democratic liberties, but who, instead, reformed institutions, built good governance and undertook state building. These are durable changes that are more difficult to overturn by other governments. Today, it can be seen that Ivanashvily (actual ruler) has not destroyed the most important reforms from Saakashvili’s period. In opposition, in Moldova and Ukraine, the countries that put greater importance on democratic values and less on state building, the reforms were overturned almost overnight. However, it should be made clear, nobody in the EU is thinking seriously that Plahotniuc can be compared to Saakashvili.³⁷⁵

There is also the financial component of the fact that EU is supporting the government from Chisinau even being aware that it is an oligarchic one. In the same Skype interview, the expert, that is doing consultancy for the EU especially on issues related to the ENP, said that in the European Commission there is a common rule to spend all the money allocated for a program, project, etc., otherwise it returns to Member States and it is not in the interest of the Commission to do so. The EU has EURO 335 million for Eastern Partnership for the 2014-2017 period, and it has only 3 countries where you can spend the most part of this money: Georgia, Ukraine and Moldova (because they are on the European integration path). This is one more reason why Moldova is maintained on the line.

³⁷⁴ Interview with Mr. Richard Rodolphe, *op. cit.*

³⁷⁵ Interview with an expert which is doing consultancy for EU institutions, *op. cit.*

Still, the EU has other options to keep a country on the European direction while also ousting a malicious oligarch. An EU diplomat suggested that oligarchs have their main “Achilles hill”, their business activity in the Western countries, “financial traces remain, always”.³⁷⁶ Plahotniuc had a certain link with Interpol that was very rapidly vanished by his layers.

³⁷⁶ Maria Levenco, *op. cit.*

Conclusions and Policy recommendations

Despite the fact that Moldova was a ‘success story’ with the largest EU financial assistance per capita from the EaP, the medium-term results of the EU’s engagement in the reforms have been limited and it has not prevented the country from being captured by oligarchs. Therefore, the pertinent question arises - ‘why has the EU’s support for reforms in Moldova delivered limited results?’ Based on the case study, this thesis found that the limitation of the results of the justice sector reform supported by the EU has three main categories:

a) Reasons at the technical level – the EU’s inefficiency to provide assistance.

These are related to the instruments, programs and strategies through which the EU offered support. The EU did not make sure that the Justice Reform Strategy was designed in an effective way. It was too broad, too ambitious, too numerous conditions, inadequate institutional framework, small estimated budget, poor system of indicators’ measurement, too much freedom for the Moldovan authorities to self-assess the implementation of the strategy, etc. Moreover, the EU was not strict enough with conditionality for disbursement of funds (satisfactory implementation is not enough) and it did not use enough political conditionality when the Government was relatively open to it.

b) Local political context reasons - oligarchy’s opposition to the structural reforms.

The example of the reform of the justice sector and the prosecution service, shows what instruments the oligarchy has developed: delaying of reforms (the adoption of the Justice Sector Reform Strategy, the law of the prosecution service, Constitutional changes, etc.); contestation at the Constitutional Court of each dangerous for the system law, appointment, candidature (even candidature for prime-minister); changing of the essence of the reform at the last minute, or adopting in an inappropriate way additional laws and regulations that put in practice the main law/reform; appointment of the political controlled person in the key positions.

c) Strategic failure – the EU’s misused approach towards the oligarchs from Moldova.

The ENP Review from 2015 shifted the EU to a “security/stability first” approach to its neighbors. Additional to that, is the antagonist EU-Russia relations context. Therefore, since 2016 the EU has changed its approach towards Moldova. The EU tries to be present in Moldova to avoid a switch of strategic vector, as well as, the worsening of the democratic state. For this, the EU needs to have sufficient strong leverage on the Government, that translates into engagements with the Government in financial assistance programs, the reform road maps, etc. It also implies that the EU keeps a blind eye on the ‘state capture’ in Moldova. However, the EU tries, at least, to avoid a contribution to the ‘state capture’, investing (or at least has this willingness) into long term reforms, that will prepare the ground for a new true reformist political force.

Indeed, one could say that the EU’s approach works. Since 2016, the EU and the Moldovan Government have concluded a roadmap of priority reforms as conditionality for financial support. According to the EU, it was successfully fulfilled: in 2016 there were adopted some relevant laws for the justice sector that were pending for years; the implementation of the AA advanced unprecedentedly from 30% in June 2016 to 63% in March 2017, with the largest progress (83%) in the title ‘Freedom, Security and Justice’. In response, the EU has unfrozen financial assistance and it is going to provide a new loan of €100 million.

However, there is a large discrepancy in the EU’s approach and the reality. The Moldovan state is becoming increasingly captured, meaning that the oligarch Vladimir Plahotniuc is extending his net over the whole society, through literally ‘purchasing’ people or threatening them with the criminal trials. While the EU appreciates the efforts of the Government, the majority of the monitoring and assessing reports and papers (non-state one), including those of the EU until March 2016, are showing a continued worsening of the democracy in Moldova, especially in the justice sector.

To explain that, this Master Thesis has identified the chameleon nature of ‘state capture’ in Moldova and its instruments to combine both, a pro-European/open Government, and, ‘state capture’. It has the ability to fulfill successfully the ambitious reform roadmaps in a short time, and, at the same time, keep the system fully controlled and to prevent structural reforms.

For example, the EU literally pushed (through all its informal political pressure) the adoption of a new law of the prosecution service in compliance with the recommendations of the Commission of Venice, while it was delayed by oligarchic interests for a long period. However, the oligarchy that captured the state found other modalities to damage the reform. The new Prosecutor General elected is the pawn of the oligarchy, the element that will compromise the reform for the next 7 years. Another example can serve the additional laws for functioning of the Prosecution service that were adopted with necessary gaps so as not to allow the independency of the prosecutors.

So, the EU legitimizes an oligarchic regime in order to be present and to influence some reform processes, but in the end, the EU's efforts are not enough to stop the 'state capture' process that has increased even with the EU's support. Moldova can be compared with a bus that drives towards the wrong destination; the EU pays an expensive ticket to get on this bus in order to influence its speed and direction, but, ultimately, the EU remains only a passenger, while the driver remains an oligarch that captured the bus.

Recommendations

- The general recommendation is that the EU should be present in Moldova, but it has to be stricter and more involved in all phases of the programs'/projects' implementation, in order to assure the implementation, express its veto and consistently push conditionality.
- The EU should be more involved more in the boards of its direct budget support programs and other projects. In some cases, the EU should be involved in their coordination. Another option for the EU (or a complementary one) is to advocate for more involvement from non-state actors in the phases described above. This participation should be a powerful one, with capacity to veto the disbursement, if there are serious concerns.
- The EU should focus on fewer but sound conditionality, including political ones. For example, an independent Prosecutor General or the conditionality being discussed today – the loan from the EU in exchange for keeping the proportional system of voting in the Parliament.

- In its efforts, the EU should focus on creating strong institutions that will be an ‘agent for changes’ and will generate game changer reforms (like the National Anticorruption Directorate of from Romania).
- The EU should be directly involved in supervising, monitoring, and adjusting the reforms of the justice sector. It should have a ‘teacher’ approach, who does not offer only offers conceptual advising (e.g. today’s EU advisory mission). One option can be the example of the Cooperation and Verification Mechanism for Romania and Bulgaria, or, from non-EU countries, the example of the EURALIUS project from Albania. The EU should be present in the selection of the judges and prosecutors for sounding corruption trials. OLAF has to permanently monitor and verify European funds spending, not only in the emergency situations. The author suggests that the EU should continue the project EU JUST (planned from 2014) for assisting and consulting the Moldovan investigation officers, judges, prosecutors.
- Still, the EU has to put a larger focus on civil society in Moldova that has weakened in the latest period of ‘state capture’. A strong civil society is needed to monitor and to be more involved in the policy-making process. For example, the thesis advises the EU to support the creation of several permanent non-state platforms/mechanisms of parallel monitoring of the Government’s reforms implementation. This will give more leverage to the civil society to influence events.
- The oligarch Vladimir Plahotniuc has actual or former business ties in many EU countries, and he can be pressed more intensely by the EU in this way.

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ANNEXES

ANNEX I. The map of the Republic of Moldova³⁷⁷



³⁷⁷ Moldova maps, Worldatlas. Available at: <http://www.worldatlas.com/webimage/countrys/europe/moldova/mdmaps.htm#page> (consulted on 01.05.2017)

ANNEX II. Title III from the Association Agreement EU-Moldova related to the reform of the justice sector.³⁷⁸

TITLE III

JUSTICE, FREEDOM AND SECURITY

Article 12

Rule of law

1. In their cooperation in the area of freedom, security and justice the Parties shall attach particular importance to the promotion of the rule of law, including the independence of the judiciary, access to justice, and the right to a fair trial.
2. The Parties will cooperate fully on the effective functioning of institutions in the areas of law enforcement and the administration of justice.
3. The respect for human rights and fundamental freedoms will guide all cooperation on freedom, security and justice.

Article 13

Protection of personal data

1. The Parties agree to cooperate in order to ensure a high level of protection of personal data in accordance with the European Union, Council of Europe (CoE) and international legal instruments and standards.
2. Any processing of personal data shall be subject to the legal provisions referred to in Annex I to this Agreement. The transfer of personal data between the Parties shall only take place if such transfer is necessary for the implementation, by the competent authorities of the Parties, of this or other agreements concluded between the Parties.

Article 14

Cooperation on migration, asylum and border management

1. The Parties reaffirm the importance of a joint management of migration flows between their territories and shall strengthen the existing comprehensive dialogue on all migration-related issues, including legal migration, international protection, illegal migration, smuggling and trafficking in human beings.
2. Cooperation will be based on a specific needs assessment, conducted in mutual consultation between the Parties, and be implemented in accordance with their relevant legislation in force. It will in particular, focus on:
 - (a) the root causes and the consequences of migration;
 - (b) the development and implementation of national legislation and practices as regards international protection, with a view to satisfying the provisions of the Geneva Convention of 1951 on the status of refugees and of the Protocol of 1967 and other relevant international instruments, and to ensuring the respect of the principle of "non-refoulement";
 - (c) the admission rules and rights and status of persons admitted, fair treatment and integration of lawfully residing non-nationals, education and training and measures against racism and xenophobia;
 - (d) the establishment of an effective and preventive policy against illegal immigration, smuggling of migrants and trafficking in human beings including the issue of how to combat networks of smugglers and traffickers and how to protect the victims of such trafficking;
 - (e) the promotion and facilitation of the return of illegal migrants; and
 - (f) in the area of border management and document security, on issues of organisation, training, best practices and other operational measures as well as strengthening cooperation between the European Agency for the Management of Operational Cooperation at the External Borders of the Member

³⁷⁸ The European Union, the Republic of Moldova, *Association Agreement*, *op. cit.*, pp. 13-17.

States of the European Union (FRONTEX) and the Border Guard Service of the Republic of Moldova.

1. Cooperation may also facilitate circular migration for the benefit of development.

Article 15

Movement of persons

1. The Parties will ensure the full implementation of:

(a) the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation, which entered into force on 1 January 2008, and

(b) the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, which entered into force on 1 January 2008 as amended on 27 June 2012.

2. The Parties shall also endeavour to enhance mobility of citizens and shall take gradual steps towards the shared objective of a visa-free regime in due course, provided that the conditions for well-managed and secure mobility, set out in the Action Plan on Visa Liberalisation, are in place.

Article 16

Preventing and combating organised crime, corruption and other illegal activities

1. The Parties shall cooperate on preventing and combating all forms of criminal and illegal activities, organised or otherwise, including those of transnational character, such as:

(a) smuggling and trafficking in human beings;

(b) smuggling and trafficking in goods, including in small arms and illicit drugs;

(c) illegal economic and financial activities such as counterfeiting, fiscal fraud and public procurement fraud;

(d) fraud, as referred to in Title VI (Financial Assistance, and Anti-Fraud and Control Provisions) of this Agreement, in projects funded by international donors;

(e) active and passive corruption, both in the private and public sector, including as regards the abuse of functions and influence;

(f) forging documents and submitting false statements; and

(g) cyber crime.

2. The Parties shall enhance bilateral, regional and international cooperation among law enforcement bodies including strengthening cooperation between Europol and the relevant authorities of the Republic of Moldova. The Parties are committed to implementing effectively the relevant international standards, and in particular those enshrined in the UN Convention against Transnational Organised Crime (UNTOC) of 2000 and its three Protocols, the UN Convention against Corruption of 2003 and Council of Europe relevant instruments on preventing and combating corruption.

Article 17

Tackling illicit drugs

1. Within their respective powers and competencies, the Parties shall cooperate to ensure a balanced and integrated approach towards drug issues. Drug policies and actions shall be aimed at reinforcing structures for tackling illicit drugs, reducing the supply of, trafficking in and the demand for illicit drugs, coping with the health and social consequences of drug abuse as well as at a more effective prevention of diversion of chemical precursors used for the illicit manufacture of narcotic drugs and psychotropic substances.

2 The Parties shall agree on the necessary methods of cooperation to attain these objectives. Actions shall be based on commonly agreed principles along the lines of the relevant international conventions, the EU Drug Strategy (2013-20), the Political Declaration and the Special Declaration

on the guiding principles of drug demand reduction, approved by the Twentieth United Nations General Assembly Session on Drugs in June 1998.

Article 18

Money laundering and terrorism financing

1. The Parties shall cooperate in order to prevent the use of their financial and relevant non-financial systems to launder the proceeds of criminal activities, as well as for the purpose of terrorism financing. This cooperation extends to the recovery of assets or funds derived from the proceeds of crime.

2. Cooperation in this area shall allow exchanges of relevant information within the framework of respective legislations and the adoption of appropriate standards to combat money laundering and financing of terrorism equivalent to those adopted by relevant international bodies active in this area, such as the Financial Action Task Force on Money Laundering (FATF).

Article 19

Combating terrorism

The Parties agree to cooperate in the prevention and suppression of acts of terrorism in full respect for the rule of law, international human rights, refugee and humanitarian law and in accordance with the UN Global Counter-Terrorism Strategy of 2006 as well as their respective laws and regulations. They shall do so, in particular in the framework of the full implementation of Resolution no. 1267, 1373, 1540 and 1904 of the UN Security Council and other relevant UN instruments, and applicable international conventions and instruments:

(a) by exchanging information on terrorist groups and their support networks in accordance with international and national law;

(b) by exchanging views on terrorism trends and on means and methods of combating terrorism including in technical areas and training, and by exchanging experiences in respect of terrorism prevention; and

(c) by sharing best practices in the area of protection of human rights in the fight against terrorism.

Article 20

Legal cooperation

1. The Parties agree to develop judicial cooperation in civil and commercial matters as regards the negotiation, ratification and implementation of multilateral conventions on civil judicial cooperation and, in particular, the Conventions of the Hague Conference on Private International Law in the field of international legal cooperation and litigation as well as the protection of children.

2. As regards judicial cooperation in criminal matters, the Parties will seek to enhance cooperation on mutual legal assistance. This would include, where appropriate, accession to, and implementation of, the relevant international instruments of the UN and the CoE and closer cooperation with Eurojust.