

SHADOW PROGRESS REPORT 2014-2016

SYNTHESIS AND RECOMMENDATIONS

Implementation of the EU-Moldova Association Agreement

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EXECUTIVE SUMMARY

The Association Agreement sets the fundamental legal framework that regulates the relationship between the Republic of Moldova (hereinafter Moldova) and the European Union. The EU-Moldova Association Agenda (2014-2016) was adopted in summer 2014. At the national level, the Government of Moldova developed and implemented in the period of 2014-2016 the National Action Plan for the Implementation of the Association Agreement (hereinafter referred to as NAPIAA). According to the Government Progress Report on the NAPIAA implementation, presented on January 25th, 2017, 73.73% of the planned activities were implemented. The Report of the Government also shows that the harmonization of the national legislation to the *acquis communautaire* was accomplished at a rate of 34%. On March 10, 2017 the European Commission published its first Report on the Implementation of the Association with Moldova, which states that a series of reforms were adopted in Moldova. However, additional efforts are needed, especially to consolidate the rule of law and improvement of the business environment.

In this context, this „Shadow” Progress Report on the EU – Moldova Association Agreement implementation was prepared. The report is a contribution to the effort of the Moldovan civil society to monitor the implementation of the Association Agreement. Thus, the report will provide an assessment of the measures undertaken by the Moldovan authorities to implement the Association Agreement during the 2014-2016, touching upon the benchmark elements. Subsequently, the authors present a quantitative and qualitative analysis of the registered results in the implementation of the **1784 measures** provided by the NAPIAA (pursuant to Titles II-VI of the Association Agreement).

DEVELOPMENTS IN THE DIALOGUE WITH THE EUROPEAN UNION

During 2014-2016, the relationship between Moldova and the European Union went through different stages of intensity. Year 2014 was probably the most successful one, our country being acknowledged at the European level as the „success story” of the Eastern Partnership. In 2015, a slow-down was registered in the process of the EU-Moldova Association Agreement implementation, due to permanent political crises. In summer of 2015, the European Commission suspended the direct budget support for Moldova due to lack of progress in the investigation of the banking fraud. Moreover, by the end of 2015, Moldova started being labelled both internally and abroad with the qualifier „captured state”, attaining a high level of political and economic instability.

Despite of all this, at the beginning of 2016, against the background of street protests to the manner in which the new Parliamentary majority was established, the new Government re-acknowledged its commitment towards the European integration and declared the implementation of the EU-Moldova Association Agreement as a key priority. At this point, regardless of a certain precaution on behalf of the EU, due to the reduced level of trust towards the political will in Chisinau, the dialogue with Moldova was reinvigorated through a pragmatic approach and a relative growth in the interaction intensity was registered. Thus, in the first half of 2016, the EU-Moldova relations were mainly guided by the accomplishment of the so-called Priority actions reforms Agenda. Another process in which the Moldovan authorities were involved until the end of 2016 was the development of a new NAPIAA (2017-2019), which was approved by the Government on the 28th of December 2016. Meanwhile, starting with the summer of 2016, the European External Action Service of the EU and the Moldovan MFAEI launched the process of development of a new Association Agenda.

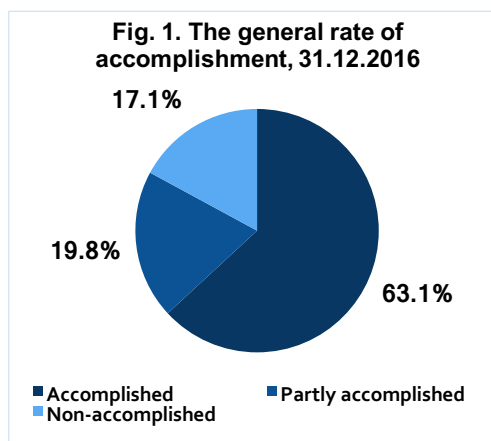
At the same time, at the end of 2016, the IMF Board of Directors’ decision was adopted to approve the USD 178 million worth macro-financial support programme to Moldova. On one hand, this development created certain preconditions for the stabilisation of the internal situation compared to 2015, and on the other hand, this consolidated the leverage of the development partners over the Moldovan Government in providing an internal agenda focused on the enforcement of the structural reforms, including those related to the Association Agreement. Consequently, on December 21 2016, the European Union resumed the direct budget support to Moldova, transferring a tranche of EUR 45.3 million to the Government of Moldova for the implementation of 4 direct budget support programmes, namely: economic support in the rural areas (ESRA), European neighbourhood program for agriculture and rural development (ENPARD), public finance policies’ reform and the reform in the area of vocational education and training. At the beginning of 2017, the European Commission announced the launch of a EUR 100 million macro-financial support programme to Moldova during 2017-2018, out of which EUR 40 million are offered as a grant.

At the same time, we should refer to the anti-European rhetoric of the new President of Moldova, who has been promoting since his election the idea of denunciation of the EU-Moldova Association Agreement. The promotion of such political statements by the President both inside and outside the country contradicts the national interests of Moldova, contributes to the deepening of the division within the Moldovan society and promotes a false agenda. Moreover, such statements divert the public attention from the real systemic problems of country, such as the politicising of the public institutions, systemic corruption, „rent-seeking” economy etc. It is thus worth mentioning that both the European Commission and the Government of Moldova have repeatedly acknowledged that the implementation of the Association Agreement remains to be the prior concern of both the EU and of Moldova.



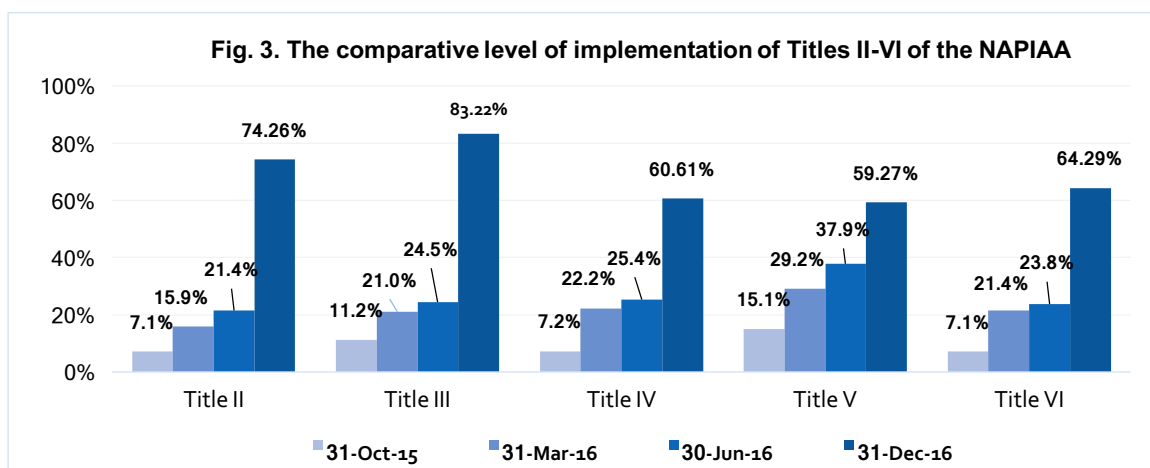
THE GENERAL RATE OF THE ASSOCIATION AGREEMENT IMPLEMENTATION – 63.1%

Out of evaluated 1784 measures from the NAPIAA (2014-2016), the authors of the Report concluded that **1126 measures were accomplished**. At the same time, 353 measures were partly accomplished and 305 were not accomplished during the reference period. Thus, **the general rate of accomplishment of the NAPIAA at the date of 31 December 2016 represents 63.1%**. Comparing this rate with the data from the last monitoring report by IPRE, which recorded a general rate of the NAPIAA accomplishment of 29.1% on June 30 2016, we conclude that in the 2-nd semester of 2016 the Government succeeded in almost doubling the implementation performance.



At the same time, the highest rate of accomplishment was recorded for Title III (Justice, Freedom and Security) and Title II (Political Dialogue and Reforms), 83.22% and 74.26% respectively. The implementation rate of the other Titles (IV-VI) varies between 60% and 64%, the lowest rate of accomplishment being registered for Title V (Trade aspects), which is mainly due to the delays related to the implementation of the relevant normative framework.

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OVERVIEW OF THE OVERALL ASSESSMENT

The majority of activities accomplished during 2014-2016 were of a legislative nature. A series of reforms adopted during the reference period were implemented either with delays or partially. Moreover, certain enforcement activities accomplished by the authorities, especially at the end 2016 (new amendments or vicious implementation), were against the spirit of the newly adopted legislative framework. At the end of 2016, a quantitative progress of legislative nature in the area of political reforms, human rights, justice and anti-corruption was registered (Titles II and III). In the course of analysis of the enforcement activities framework in these sectors, a series of deficiencies were noticed.

In the context of the presidential elections held in autumn 2016, cases of political parties' and campaigns' financing through intermediaries, without tracing the final sources of financing were registered, which run the risk of originating from off-shore jurisdictions. There are delays in finalising the justice sector reform, the accomplishment of the Justice Sector Reform Strategy 2011-2016 being extended. Regardless of the fact that a new legal framework was promoted envisaging the reorganization of the judicial Courts, this law was modified six months after its implementation and its enforcement of certain provisions was postponed. The reform providing for the revision of the procedure of appointment of judges was not finalized. A series of cases during the reference period were noted, which prove existence of deficiencies in the process of selection and promotion of judges. Although a new law on prosecution was adopted, its transitory provisions significantly affected the general purpose of the law, namely in its part related to the procedures of appointment of the prosecutor general. Last but not the least, the legislative initiative launched at the end of 2016 on the legalisation of capital and fiscal amnesty set the preconditions for delayed enforcement of a set of laws in the area of integrity. Following the prompt reaction on behalf of the civil society and of the development partners that draft law was withdrawn by its authors at the end of February 2017.

In the area of external policy and security, the Republic of Moldova and the European Union continued the cooperation in the framework of the Agreement between the European Union and Moldova, establishing a framework for the participation of Moldova in European Union crisis management operations, delegating experts during the reference period in the framework of the EU Mission to Mali (starting with 2014) and in the



framework of the EU Military Advisory Mission to the Central African Republic EUMAM RCA (June 2015). Although there was considerable progress in negotiating the EU-Moldova Agreement on the security procedures for exchange of classified information, its signing is planned for 2017. Moldova aligned in the reference period to the majority of the EU Declarations and Conclusions open for undersigning (in 2015 the rate of alignment was 75%, and in 2016 - 71%).

The most relevant results related to **Title IV** are recorded in the area of public administration reform, the strategy in this area was adopted and its implementation launched in 2016. Additionally, in line with the commitments taken in relation to the support programme provided by the IMF, a series of urgent measures were initiated aiming to recover the banking sector. Nevertheless, there are still gaps persisting in the financial services' area (insurance sector mainly). A package of laws in the energy sector was also adopted, in line with the commitments taken in the framework of the Energy Community. The task for immediate future is to accelerate the implementation of the new legislation in the energy area. There is still need to promote the new energy law that should contribute to the institutional reform of the national energy regulator (ANRE).

As for the **Title V (DCFTA)**, although from the viewpoint of the national legislation harmonization some progress was registered, especially regarding the technical barriers to trade, the main challenge still lies with the adoption and implementation of the normative framework subordinated to the transposed legislation. On the other hand, we should note the growth of trade with the European Union (over 63% of the exports from Moldova are oriented towards the European Union and approximately 50% of imports are originating from the EU). Additionally, over 40% of European standards were transposed, but nevertheless there is a very modest progress registered in the practical capitalisation of the European standards by the business operators from Moldova. Starting with the 1st of January 2016 the DCFTA implementation was launched on the entire territory of the country, including the left bank. An important arrear that reduces the potential of the DCFTA capitalisation is the low level of accomplishment of the sanitary and phytosanitary measures, standardization and compliance evaluation.

As for **Title VI**, the most important accomplishment during the reference period is the adoption of the Penal Code amendments setting penalties for the fraudulent use of the EU funds or for any actions causing prejudice to the EU financial interests. Also, the Administrative Agreement between the National Anticorruption Centre (NAC) and OLAF regarding the operational cooperation and data exchange in the anti-fraud area was signed. At the end of 2016, the NAC was assigned by the Government as the national liaison point with OLAF. During 2014-2016 the European Union offered to Moldova an amount of EUR 310 million in the framework of bilateral financial support programs and EUR 62 million as investment grants through the Neighbourhood Investment Fund (NIF). However, in the light of the Report of the European Court of Auditors from September 2016, which highlighted a series of issues in the implementation of the EU funds in Moldova, the European Commission will most probably re-think the mechanism of direct budget support.

Regardless of the fact that the Association Agreement does not contain a clear prospective for EU accession, it provides for an important potential to prepare Moldova for such a scenario, following the objective of political association and economic integration with the European Union. The more the country will advance in its implementation, the closer it will come to the point of no return in the transformation of the Moldovan society, business environment and political class.

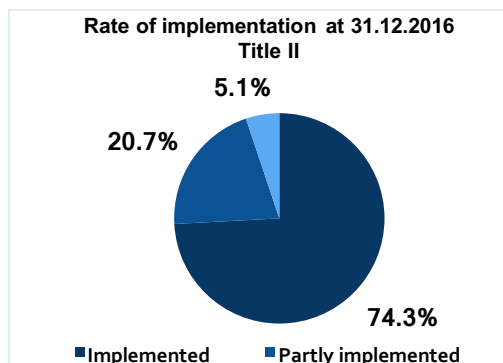


1.1. POLITICAL DIALOGUE AND REFORMS, COOPERATION IN THE AREA OF FOREIGN POLICY AND SECURITY (TITLE II)

QUANTITATIVE PROGRESS EVALUATION

For Title II of the NAPIAA a total number of **136 implementation measures** were provided for the years 2014-2016, out of which **101 measures were implemented**, 28 measures were partly implemented and 7 measures remained not implemented.

After the analysis of the developments in the reference period, we concluded that the total implementation rate of Title II is **74.3%**, whilst **5.1% of the measures are not implemented**.



| | Total | Accomplished | Partly implemented | Not implemented |
|--|-------|--------------|--------------------|-----------------|
| NAPIAA 2014 - 2016 | 136 | 101 | 28 | 7 |
| To be implemented by 31.12.2016 | 136 | 101 | 28 | 7 |

CONCLUSIONS (TITLE II)

1. The financing of political parties and of electoral candidates is not adequate, the financing mechanism from the state budget requires significant review to comply with the GRECO and OSCE/ODIHR recommendations.
2. The appointment and promotion of judges was not improved, the draft amendments to the Constitution risks being cancelled if not approved by the end of April 2017 by the Parliament in two readings. The procedure of appointment of judges for one term based on objective criteria, merit and in a transparent selection manner is still lacking.
3. The reform of the prosecutors' offices was partially implemented, whilst in some instances it was implemented in a vicious manner. The General Prosecutor selected by the Supreme Council of Prosecutors was admitted to the selection procedure although the members of the Council were in a subordination relation with the same person holding the position of ad interim General Prosecutor. The members of the Supreme Council of Prosecutors took over an enhanced mandate based on the new law, although elected based on the old law, which provided for less competences. Although created as a specialised prosecutors' office to fight high level corruption, the Anticorruption Prosecutors' Office still manages criminal prosecution of low level corruption cases, which are within the competences of the National Anticorruption Centre.
4. The reform of the Constitutional Court was not finalised. The requirements to the reform mentioned in the NAPIAA are not observed in the draft amendment of the Constitution, including do not ensure a transparent, merit-based selection of the judges in the Constitutional Court, within a competitive contest, and do not clarify the status of the current judges on their possibility or restriction to run for another term as members of the Constitutional Court after the entry into force of the amendments to the Constitution. The draft amendment to the Constitution must be approved until the end of 2017. Otherwise, it risks redundancy as provided by the Constitution.
5. The reform of the institutional framework responsible for the fight against corruption and review of integrity was not finalised. The National Integrity Agency is not yet functional, whilst the implementation of the integrity review mechanism shall be possible only after the Integrity Council of the Agency will elect the Director and vice-Director of the Agency. The selection process of the members of the Integrity Council within the Agency was cumbersome, the decisions of selection committee within the Ministry of Justice being challenged by some contestants. The workload of the Anticorruption Prosecutors' Office is still largely comprised of low level corruption cases.
6. The Integrity Law was not approved by the Parliament in two readings, the framework provisions of the draft law on the identification of effective beneficiaries, exclusion of the transactions with off-shore jurisdictions, promotion of integrity in the public and private sector are still not applicable.
7. Although the draft Law on the approval of the National Integrity and Anticorruption Strategy for years 2017-2020 was registered within the Parliament at the end of March 2017, its approval still remains an unfinished activity.
8. The National Human Rights Action Plan for 2011-2014 did not reach its objectives with respect to the activities specifically included in the NAPIAA.



9. The draft amendments to enhance recognition of legal capacity of persons with disabilities was not approved by the Parliament. The draft amendments as they are currently registered in the Parliament are criticised by some representatives of the civil society.
10. Although the necessary analysis on the opportunity to ratify the Optional Protocol to the International Covenant on economic, social and cultural rights were finalised, the ratification process is unduly delayed. Some central public authorities erroneously perceive the aims and principles of activity of the Committee created based on the Optional Protocol.
11. The efforts to promote mediation as an alternative dispute resolution mechanism did not reach their goals as the authorities proposed new legislation which is contrary to the aims of mediation one year after the initial legislation on mediation was approved.
12. The Council for the Prevention and elimination of Discrimination and promotion of Equality was not strengthened with adjustment and amendments to the national legislative framework to exercise its mandate more efficiently.

RECOMMENDATIONS (TITLE II)

1. Ensure the implementation of an efficient Parliamentary control mechanism with the participation of the civil society, aiming at the enforcement of the key laws and reforms adopted;
2. **Political Parties.** Additional revision is required for the political parties' means of financing to avoid the incomplete or unsatisfactory enforcement of the restrictions related to the sources of financing. Among the measures proposed the following should be mentioned:
 - a. Significant reduction of the financing thresholds from the legal and natural persons in the form of donations for political parties;
 - b. Exclusion of financing of the political parties by the legal or natural persons who benefited from the award of public procurement contracts;
 - c. Imposition of the requirement to provide the origin of funds; including the requirement that the funds should belong to the donor personally, no borrowed or otherwise obtained funds should be accepted from the donors;
 - d. Effective control of the political parties' assets, periodic auditing of the assets used by the political parties in the framework and outside of the electoral campaigns;
 - e. Revision of the political parties' financing mechanism from the state budget, clarifying the status of electoral blocks and of independent candidates as beneficiaries of support funds for political activity from the state budget;
3. **Judicial system reform:**
 - a. Promotion of amendments to the supplementary guarantees for the judges, their appointment and their career, the functions and the composition of the HCM (High Council of Magistracy). The implementation measures subsequent to the amendments to the Constitution shall include:
 - b. Promotion and approval of amendments to the legislative framework on the appointment and career of judges, the functions and the composition of the HCM, financial and administrative independence;
 - c. Ensure a transparent and merit-based competition for the appointment of the HCM members that are not elected by the General Assembly of the Judges;
 - d. Promotion of the judicial inspection as an efficient mechanism for oversight of judges' activity;
 - e. Update and integration of the e-justice solutions (automated case management information system) and promotion of the use of the qualified electronic signature;
4. **Prosecution offices' reform:**
 - a. Ensure a transparent, merit-based and objective selection process of the SCP (Supreme Council of Prosecution) members representing the civil society;
 - b. Consolidate the functions of the prosecutors' inspection as the institution responsible for the oversight of prosecutors' activity;
 - c. Reduce the number of cases managed by the Anticorruption Prosecutors' Office by redirecting them to the criminal prosecution bodies and prosecutors from the territorial offices (excluding the petty corruption cases from the competence of the Anticorruption Prosecutors' Office).
5. Harmonisation of the structure of the Constitution amendments' proposals that are promoted in different areas, in order to ensure equal standards and similar requirements versus the subjects regulated by the new provisions. The modifications of the Constitution proposed in relation to the HCM and judges, SCP and the prosecution offices, the Ombudsman, Constitutional Court, as well as other initiatives to amend the Constitution require a similar and harmonised approach.
6. **Reform of the Constitutional Court.** Clarify the provisions of the draft amendment of the Constitution on the reform of the Constitutional Court in the following aspects:
 - a. The procedure of appointment of candidates on behalf of the Parliament, Government, HCM and Presidency must be merit-based, transparent, with clear criteria – similar requirements as the ones for the judges in the judicial system;
 - b. Clarify the conditions of the current members of the Constitutional Court's participation in the selection process of candidates after the expiry of their mandates, in the context of the proposal uttered by the project for a single 9-year mandate for the members of the Constitutional Court.
7. **Institutional framework in the area of integrity and fight against corruption.** The activity of the institutions responsible for the anticorruption area can be improved through:



- a. Redistribution of competences on criminal prosecution of corruption cases, by transferring all the petty corruption cases to the territorial criminal investigation and prosecution bodies, preserving the high level corruption cases with the specialised Anticorruption Prosecution Office;
 - b. Enforcement of the provisions of the Law on the National Integrity Authority, including through the designation and appointment of the Director and deputy-Director of the NIA, staff employment (integrity inspectors), implementation of tools which allow statement of assets and interests through on-line platforms, randomised selection of cases for review by the integrity officers, negotiation, conclusion and implementation of Cooperation Agreements between the NIA and similar authorities from the EU Member States;
 - c. Interconnection and interoperability of the databases belonging to the authorities responsible for the area of integrity and anticorruption with the databases belonging to the authorities responsible for the financial means, real estate, registered movable assets, securities, shares in enterprises and other assets' components of the public officials, subject to the mandatory statement of assets;
 - d. Promotion, adoption and enforcement of the provisions from the Law on Integrity, especially the ones related to the identification of the effective beneficiaries, control over the transactions with the involvement of entities originating from off-shore jurisdictions.
8. **National Anticorruption Strategy.** Promotion, adoption and enforcement of the National Integrity and Anticorruption Strategy for 2017-2020. Active involvement of the civil society in the process of monitoring of the implementation of the Strategy through the developed Draft Action Plan.
 9. Strengthen cooperation among the Anticorruption Prosecution Office, the NIA and the authorities of the EU Member States to implement legal provisions related to the verification of assets and interests;
 10. **NHRAP 2017-2020.** Implementation of the remaining actions from the National Action Plan for Human Rights 2011-2014. Adoption of a new NHRAP 2017-2020.
 11. **Mediation.** Revision of the judicial mediation concept that was recently proposed through the legislative initiatives of the Ministry of Justice, so that mediation should become mandatory and should be performed by professional mediators, in line with the provisions of the Law on mediation.
 12. **Recognition of the legal capacity of the persons with disabilities.** Revision of the draft law taking into account the existing standards of legal capacity for persons with disabilities.
 13. Promoting the ratification of the Optional protocol to the International Pact on the Economic, Social and Cultural Rights.
 14. **The Council for the Prevention and Elimination of Discrimination and Ensuring Equality.** The activity and the functions of the Council should be improved through:
 - a. Adjustment of the legislative framework on the competences of the Council, of the Ombudsman and of the judicial courts;
 - b. Revision of the legislative framework related to the equality and non-discrimination, promoting harmonised non-discrimination criteria, compensatory instruments for acts of discrimination, access to data and evidence to prove discrimination, including the burden of proof in cases of discrimination, as well as other relevant areas of the Council's activity;
 15. Establishment of a Parliamentary oversight mechanism to enforce the ECHR rulings issued against Moldova;
 16. Revision of the national legislation aiming at the adequate access to public information on behalf of the public authorities/state enterprises, as well as clarification of the provisions of the Law on personal data protection aiming at the exclusion of any abuse on behalf of the public authorities with a view to limit access to public information.
 17. Signing and enforcement in 2017 of the **Agreement on security procedures for the exchange of classified information**;
 18. Consolidation of the national **capacities for the prevention and management of crises and risks to the national security.** Creation of a situational Centre for the prevention and management of crises (SITCEN);
 19. Development in 2017, with the involvement of all national stakeholders (Parliament, Government, Presidency, civil society, etc.), of a **Strategy on the reintegration of the Republic of Moldova** which should include short-, medium- and long-term measures.
 20. **Clarification / consolidation of the mandates** of the Moldovan officials in the process of the country's reintegration and in the Transnistria conflict settlement process.
 21. Implementation of the integrated border management program at the Moldovan - Ukrainian border. **Extension of the joint control over the Moldovan - Ukrainian border**, including the entire Transnistria segment of the border;
 22. Extension of the EU-Moldova cooperation in the **EU missions in the framework of the EU Common Security and Defence Policy**;
 23. **Extension of the EUBAM mandate** for a new period (2017-2019).



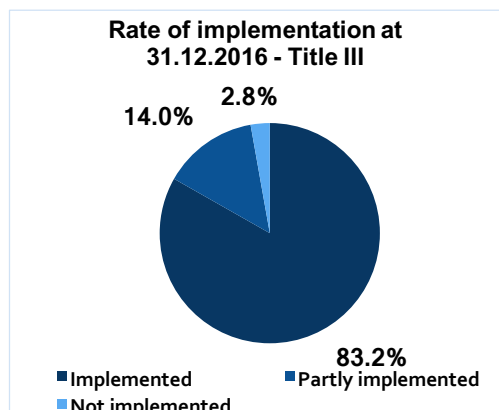
1.2. FREEDOM, SECURITY AND JUSTICE (TITLE III)

QUANTITATIVE PROGRESS EVALUATION

Title III of the NAPIAA provides for a total number of **143 implementation measures** for the period 2014-2016, out of which **119 measures were implemented, including one measure with a continuous term of implementation.**

At the same time, **20 measures were only partly implemented**, whilst 4 measures remain not implemented.

Thus, the conclusion is that the total rate of accomplishment of the measures stipulated in Title III of the NAPIAA at the end of the reference period represents **83.2%**, while **2.8% of the measures were not accomplished.**



| Table 3. | Total | Implemented | Partly implemented | Not implemented |
|--|-------|-------------|--------------------|-----------------|
| NAPIAA 2014 - 2016 | 143 | 119 | 20 | 4 |
| To be implemented by 31.12.2016 | 142 | 118 | 20 | 4 |
| Continuous | 1 | 1 | - | - |

CONCLUSIONS (TITLE III)

1. The Law on the reorganisation of courts does not resolve the optimisation of courts via the number of judges who are active in each court, but only regulates the merging of offices. This does not allow a complex implementation of the reform and does not comply with the objective and the progress indicators of the Justice Sector Reform Strategy.
2. The merging of courts does not allow the cumulative implementation of the requirements of proximity of courts for citizens, specialisation of judges, random distribution of cases and their review in a reasonable time. This impossibility does not apply to the merged district courts located in Chisinau.
3. There is no active mechanism of improved access to justice, via redirection of cases of low complexity to mediators and concentration on complex cases, including those which may increase in number as an efficient anticorruption policy is implemented with investigation of high level corruption cases, money laundering, tax evasion or organised crime.
4. Review of the functions of chairmen and vice-chairmen of courts generated the contrary to the pursued aim of the reform – they can interfere, as the law allows, in the system of random distribution of cases, which may imply also the distribution of cases to the same person (chairmen of the court).
5. The amendments approved to protect personal data are more of a technical nature, rather than substance, with the exception of some clarifications for the cases of investigations initiated by the Money Laundering Prevention Service.
6. The provisions in the Big Brother draft law of similar special investigative measures for more serious crimes such as cybercrimes and those against private life and the crimes against copyright breaches the right of privacy of citizens for the public interest
7. The draft which transposes the EU Directive 2015/849 exposes attorneys, notaries, other regulated professions, the list of which is not clearly defined in the draft law to the risk of breaching their duty to ensure confidentiality when they are bound by obligations to comply with the right to defence, which is a fundamental right.
8. The burden to evaluate the risks of money laundering which is imposed on reporting entities which have different reporting capacities. On one hand, the financial institutions have considerable resources to ensure reporting. On the other, the newly included entities may confront difficulties in the reporting process.

RECOMMENDATIONS (TITLE III)

1. **Implementation of the Justice Sector Reform Strategy (JSRS).** Being a document for of planning of reforms in the justice sector, the JSRS demands a full revision of the rate of implementation; working on a new planning document is also required. The following is recommended for an efficient planning document:



- a. Implementation progress evaluation. Provided that the JSRS was financed from the EU funds through direct budget support, an evaluation by the EU of the JSRS implementation efficiency would be relevant.
 - b. Clarify the performance indicators for the next planning document. This is a complex, yet absolutely necessary exercise in order to ensure an assessment based on a set of measurable indicators, which will allow concluding to what extent the new planning document will be implemented.
 - c. Set the importance rate of the proposed activities to quantify the implementation progress. The issue with the current JSRS is that it sets equal importance rates for all the measures – both for the opportunity studies and for the policy papers (laws, regulations approved).
 - d. The next planning document should rather be focused on the enforcement of the policy papers adopted under the current JSRS, and on the establishment of revision mechanisms for the policy papers based on certain instruments of data collection and assessment of best practices and impediments in the implementation process.
- 2. Optimisation of the judicial courts:**
- a. Revision of Law no. 76 of 21.04.2016, by setting the criteria for the merger of Courts, including the ones related to the efficiency and workload of the judges in each Court, proximity of the new Courts to the litigants and random case distribution.
 - b. In the small judicial Courts, which only include 3-4 judges, it is not possible to implement the specialisation of judges, random case distribution and proximity to the litigants. In such cases the priority criteria will be mainly taken into consideration, such as the random case distribution and proximity.
 - c. The statistical data that will be used in this process must be verified to ensure their accuracy through different methods of cross-verification; there is also a need to analyse the case files that will be directed to mediation or other alternative settlement options.
- 3. Revision of the functions of chairmen and deputy-chairmen of judicial Courts**
- a. The competences offered to the chairmen of the judicial Courts require substantial revision to reduce the spectrum of competences that do not directly relate to justice administration but are rather linked with the administrative matters.
 - b. Provided that the random case distribution system represents an important instrument of human factor exclusion and, combined with the other ones, may help exclude the possibilities of case distribution by the Chairmen of Courts, the organisational tasks must be shifted to the Courts' manager/administrator, who is not a judge and does not have a status of magistrate.
 - c. The current subordination to the Court's president should be shifted to the HCM.
- 4. Prevention and fight against organised crime, corruption and other illegal activities:**
- a. **Dissuasive sanctions for acts of corruption:** The draft law requires a complex revision in order to ensure the minimal quality requirements with respect to a bill, including the avoidance of regulatory overlapping, especially bearing in mind the fact that already new legislative initiatives were launched, which overlap with the provisions from the analysed draft law.
 - b. **Prevention and fight against cybercrime:** The draft law requires substantial revision to exclude the instruments which are disproportionate to the pursued goals and which can be easily used to violate citizens' right to privacy. Among the proposed solutions are the exclusion of copyright from the area of special investigative measures, reduction of the available instruments for the offences against the person's honour and dignity, adjustment of mechanisms proposed for the other two types of analysed offences.
- 5. Prevention and fight against money-laundering and financing of terrorism:**
- a. The draft requires revision of the tasks established for the new reporting entities which are, at the same time, service providers, so as to ensure the observance of fundamental rights. The relation between the client and the service provider must be clarified from the point of view of professional duties set in other legislative acts;
 - b. Certain terms, such as 'other self-employed persons' require more clarity and predictability from the regulatory perspective;
 - c. The precaution obligations for the reporting entities require revision to ensure a duty proportionate to the benefits it may provide for the general goal of prevention and fight against money-laundering.



1.3. ECONOMIC COOPERATION AND SECTORAL COOPERATION (TITLE IV)

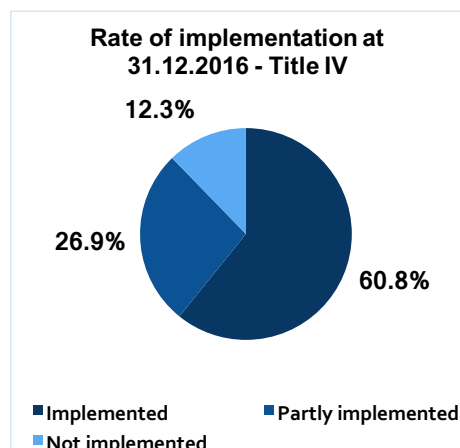
QUANTITATIVE PROGRESS ASSESSMENT

The NAPIAA provides for the biggest number of measures in relation to Title IV of the Association Agreement. A total number of **891 implementation measures** were implemented during the years 2014-2016.

Thus a total number of **540 measures were implemented** during the reference period, including 27 measures with the implementation deadline for 2017-2022 and 41 measures with continuous implementation term.

At the same time, **239 measures were partly implemented**, while **109 measures remain not accomplished**. It must be mentioned that 3 measures from the total number of the planned ones became inactive.

Thus, the total rate of implementation of the measures mentioned in Title IV of the NAPIAA is **60.8%**, 26.9% of the measures were partly implemented and **12.3%** of the measures were not implemented.



| Table 4. | Total | Implemented | Partly implemented | Not implemented |
|--|-------|-------------|--------------------|-----------------|
| NAPIAA 2014 - 2016 | 891 | 540 | 239 | 109 |
| To be accomplished by 31.12.2016 | 747 | 472 | 195 | 80 |
| To be accomplished by 2017 - 2023 | 88 | 27 | 34 | 27 |
| Continuous | 53 | 41 | 10 | 2 |
| Inactive | 3 | | | |

CONCLUSIONS (TITLE IV)

1. A Public Administration Reform Strategy 2016-2020 and its implementation Action Plan were adopted during 2016. The strategy aims at optimising and making the central public authorities more efficient, improving the delivery of public services, decentralising the powers to local public administration and implementing the territorial public administration reform.
2. A moderate progress was registered in the area of corporate governance. Certain legislative and normative amendments were undertaken to reform the financial and banking systems. The progress in the investigations of the banking frauds is still awaited. Moldovan authorities must continue taking efforts in strengthening the independence of key regulatory bodies in the sector and apply committed measures to tackle issues in the banking and financial sectors.
3. The much-awaited laws to transpose the EU 3rd energy package in area of electricity and natural gas in line with Moldova's commitments in the Energy Community Treaty have been adopted. However, the real effects of the new energy legislation shall be visible only after proper implementation is unfolded. The reform of the National Energy Regulator is still in delay. The new Energy law that shall reinforce its independence and efficiency is pending adoption.
4. In the area of regional development, it remains essential to adopt the necessary legal framework to clarify and strengthen the institutional setting where the key regional infrastructure planning is done. The ongoing public administration reform shall take into account the regional development priorities outlined in the National Strategy for Regional development 2016-2020.
5. The role of civil society is crucial to strengthen the rule of law and make Moldovan public institutions transparent and accountable. Certain progress has been achieved in the area of cooperation with civil society by the adoption of the law allowing natural persons to donate 2% of their income taxes to non-governmental organisations, while deducting it when calculating the income tax, and by passing a new governmental regulation to improve the transparency in decision making process. A EU-Moldova Civil Society Association Platform was created in 2016 pursuant to the article 442 of the Association Agreement. However, the National Participation Council was not active since 2015. Still, many civil society organisations from Moldova underlined at the beginning of 2017 certain worrisome tendencies from public authorities with the civil society that should be urgently addressed. In 2017 the European Union is planning to unfold a comprehensive support package to support the development of the civil society in Moldova in particular on the local level.
6. Mass media and audio-visual sector in Moldova continues to be polarised and heavily affected by political affiliation. Certain legislative measures to ensure greater ownership transparency, and limitation of concentration of mass-media were undertaken by the Moldovan authorities. However, the effort to ensure



a proper environment for the operation of independent mass-media is still needed. Issues with the access to public information by investigative journalist were reported. The adoption of the new Audio-visual Code is still awaited. At the end of 2016 the Mass-Media Forum of Moldova adopted a Road-Map, which called upon the Moldovan authorities to develop and start implementation of a National Mass-Media Strategy in 2017.

7. Until present, Moldova participates actively in 5 EU programmes i.e. EU Health and Growth, COSME, Creative Europe and Horizon – 2020, Erasmus +, which offers a potential to benefit from additional financing sources in the concerned areas and to better connect Moldovan research, business, culture, youth communities. However, an assessment of the participation in the EU Programs would be required to explore ways to increase their benefits for Moldova.

RECOMMENDATIONS (TITLE IV)

1. Continue the central public administration reform, through the revision of the structure and functions of the ministries and other authorities subordinated to the Government.
2. An integrated approach should be taken with respect to the central public administration reform, local public administration reform and the administrative-territorial reform, since in all three have as focus the optimisation and increased efficiency of public authorities, quicker and more efficient interaction with the citizens and with the entrepreneurs, closer authorities to the citizens through the services they provide.
3. Development and implementation of the legal framework for the transposition of the EU directives and regulations in the area of corporate governance, audit, accounting and commercial societies.
4. Implementation of all the finance and banking sector related commitments taken by Moldova in the framework of the memorandum with the IMF.
5. Efficient implementation of the Regional Development Strategy and provision of higher level of competences to the Regional Development Councils and to the Regional Development Agencies.
6. Systemic planning of the public policies and of the sectoral interventions by the public authorities, aimed at the synergy of use of funds for regional development.
7. Adoption of the Law on energy, which provides for the reform of ANRE (National Energy Regulator), as soon as possible during the first semester of 2017.
8. The Parliament of Moldova must contribute to the organisation of the competition for the appointment of the new leadership of the ANRE. In this respect, it is crucial that the final draft of the law should transpose all the recommendations of the Energy Community Secretariat.
9. Considering the objective of conclusion of the new energy interconnection infrastructure between Moldova and Romania by 2020, the Moldovan Government should accelerate the process of conclusion of the technical design papers and start the construction works as soon as possible.
10. Adoption of a new Audio-visual Code in line with the EU Directive 2010/13/UE and Council of Europe/OSCE recommendations offered to the 2011 draft.
11. Drafting and adoption of a Mass-Media Development Strategy in Moldova for 2017-2020.
12. Approval and commencement of implementation of the new Civil Society Development Strategy for 2017-2020
13. Adoption and implementation of a new law on non-commercial organisations
14. Development of a cost-benefit analysis to assess the impact of Moldova's participation in the framework of the EU Programmes.



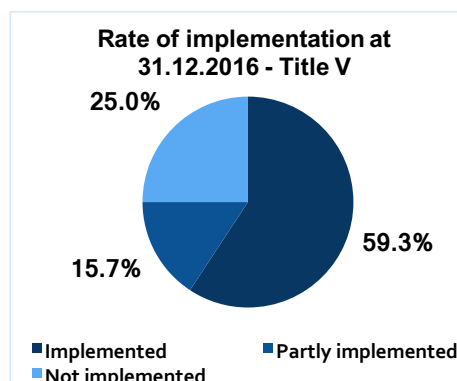
1.4. TRADE AND TRADE-RELATED ASPECTS - DCFTA (TITLE V)

QUANTITATIVE PROGRESS ASSESSMENT

There were a total number of **572 implementation measures** stipulated in the NAPIAA, Title V, for 2016, out of which **339 measures** were implemented during the reference period, including **99 measures with a continuous implementation timeline** and **one measure that was initially scheduled for 2017-2022**.

90 measures were partly implemented, including 76 measures that were scheduled for 2017-2022, while **143 measures were not implemented**.

In this respect, the conclusion is that the total rate of accomplishment of Title V of the NAPIAA is **59.3%**, **15.7% were partly implemented**. The rate of non-accomplishment is **25%**.



| Table 5. | Total | Implemented | Partly implemented | Not implemented |
|---|-------|-------------|--------------------|-----------------|
| NAPIAA 2014 - 2016 | 572 | 339 | 90 | 143 |
| To be implemented by 31.12.2016 | 376 | 239 | 87 | 50 |
| To be implemented by 2017 - 2022 | 77 | 1 | - | 76 |
| Continuous | 119 | 99 | 3 | 17 |

CONCLUSIONS (TITLE V)

1. The EU is the main trading partner of Moldova. Over 63% of Moldovan exports go to the EU, and around 50% of imports are coming from the EU. Thus, the value of exports to the EU reported increased by 6.9% in 2016 compared to 2014. In real terms, the volume of exports increased of over 27% since implementation provisional DCFTA September 1, 2014 until the end of 2016.
2. Moldova managed to value only partially the tariff quotas offered under the DCFTA, mainly due to the poor infrastructure for certification and laboratory testing of products offered for export, lack of necessary sanitary measures in place and certain regulatory and institutional impediments.
3. Efforts are needed to increase the investment in the infrastructure for testing the conformity of Moldovan industrial goods with the EU standards.
4. Quality verification centres at the border and customs crossing points in order to verify the quality of exported goods are still missing. It affects the efficiency of exports of animal and vegetable products.
5. A new law on public procurement is in place. However, its practical implementation is still an important challenge. The E-procurement is not fully operational.
6. A completion law is in place and is generally in line with the EU acquis. However, the law does not favour the application of leniency policy and the fines for non-competition activities are not sufficiently dissuasive. The efficiency and the role of the Competition Council still needs to be reinforced.

RECOMMENDATIONS (TITLE V)

1. Technical barriers in the trade area:

- a. Implementation of the national regulatory framework in the area of standardization, metrology, compliance assessment and market surveillance for the industrial products that have the potential of being produced and exported from Moldova;
- b. Infrastructure investments to test compliance of the industrial goods with the EU standards implemented in Moldova; ensure the due level of quality of these tests performed in the Moldovan laboratories through their certification and periodic audit of compliance;
- c. Adoption and implementation of the Industrial Products' Compliance Assessment Agreement, including the Roadmap.

2. Sanitary and phyto-sanitary measures:

- a. Establishment of control centres at the border crossing points;
- b. Transposition of sanitary standards for the Moldovan products with export potential;
- c. Starting the export of products of animal origin (eggs, milk, meat);
- d. Implementation of the animal traceability system;



- e. Functioning of the laboratories for quality checks and compliance assessment of animal and vegetal products.

3. Public procurement:

- a. Implementation of the National Public Procurement System Development Strategy;
- b. Adoption and enforcement of legislative acts on sectoral public procurement contracts;
- c. Functioning of the National Complaints Management Agency.

4. Competition and state aid:

- a. Approval of the modifications to the legislative framework to ensure the compliance with the Law on competition;
- b. Establishment of a mechanism of *ex-ante* evaluation of the draft legislative and normative framework in relation to competition and state aid;
- c. Approval and implementation of the National Competition and State Aid Programme for 2016-2020;
- d. Analysis of the competition environment on the priority markets that have an increased impact on consumers, on business environment and on society at large;
- e. Strengthen control and sanctioning mechanisms for disbursement of illegal state aid.



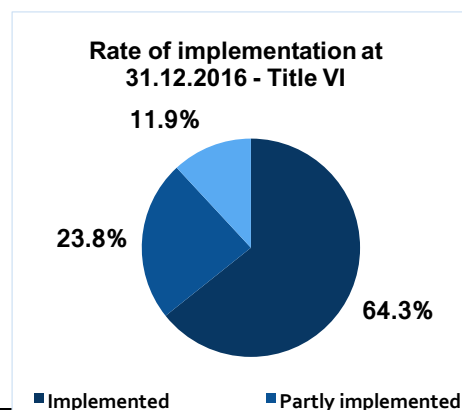
1.5. FINANCIAL ASSISTANCE AND ANTIFRAUD AND CONTROL PROVISIONS (TITLE VI)

QUANTITATIVE PROGRESS ASSESSMENT

A total number of **42 implementation measures** were provided for Title VI in the NAPIAA for the period 2014-2016, out of which **27 measures were implemented**, including 6 measures with a continuous implementation timeline.

At the same time, 10 measures were partly implemented, while **5 measures remained not implemented**.

Thus, the conclusion is that the **total rate of accomplishment of Title VI is 64.3%**, 23.8% of the measures are partly implemented, while 11.9% of the measures are non-implemented.



| Table 6. | Total | Implemented | Partly implemented | Not implemented |
|--|-------|-------------|--------------------|-----------------|
| NAPIAA 2014 - 2016 | 42 | 27 | 10 | 5 |
| To be implemented by 31.12.2016 | 35 | 21 | 9 | 5 |
| Continuous | 7 | 6 | 1 | 0 |

CONCLUSIONS (TITLE VI)

1. During 2014-2016 the European Union offered to Moldova an amount of EUR 310 million in the framework of bilateral financial support programmes and EUR 62 million as investment grants through the Neighbourhood Investment Fund (NIF).
2. The EU direct budget support was suspended in June 2015, due to the lack of progress in the investigation of the banking system fraud. However, after the IMF support programme was agreed with the Moldovan Government in late 2016, the European Commission has resumed its support by transferring 43.5 mln. EUR in December 2016.
3. The most important accomplishment during the reference period is the adoption of the Penal Code amendments setting penalties for the fraudulent use of the EU funds or for any actions causing prejudice to the EU funds.
4. The Administrative Agreement between NAC and OLAF on the operational cooperation and data exchange in the anti-fraud area was signed. At the end of 2016 the NAC was assigned by the Government as the national liaison point with OLAF.
5. However, in the light of the Report of the European Court of Auditors from September 2016, which highlighted a series of issues in the implementation of the EU funds in Moldova, the European Commission will most probably re-think the mechanism of direct budget support.

RECOMMENDATIONS (TITLE VI)

1. Efficient implementation of the mechanism of technical assistance coordination.
2. Coordination with the development partners the intervention areas and priorities to ensure the synergy and efficiency of funds.
3. Promotion of the Draft law on recovery of proceeds of crime and of the Draft law on the establishment of the Assets Recovery Agency.
4. Efficient cooperation between OLAF and NAC, Anticorruption Prosecution Office and Court of Accounts in detecting the cases of fraudulent use of the EU funds.
5. Consolidation of the Court of Accounts' capacities to audit EU funds implemented in Moldova, in line with the EU requirements in this area.