

2nd SHADOW REPORT

Quarter I-III, 2017

SUMMARY AND RECOMMENDATIONS

National Action Plan for the Implementation of the EU-Moldova Association Agreement NAPIAA II (2017-2019)

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EXECUTIVE SUMMARY

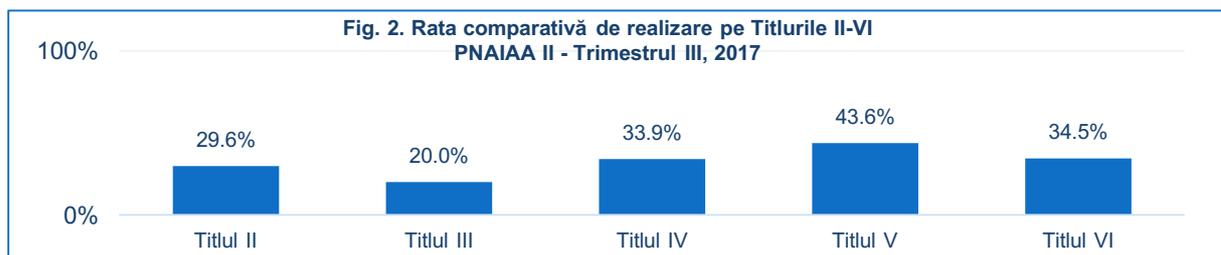
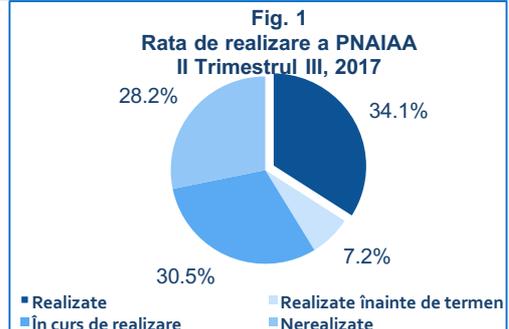
The purpose of this Alternative report is to provide an independent evaluation of the outcomes registered in the implementation of the Association Agreement in line with the objectives set out in the NAPIAA II (2017-2019), in particular during the first quarter of 2017. In this regard, the report includes a quantitative, qualitative evaluation, accompanied by an estimation of the implementation effort, as well as by a qualitative analysis of the key areas with multiplier effect, which refers to each of the five monitored Titles of the NAPIAA. In the qualitative analysis the authors took into account the last developments, which occurred by 15 December 2017.

Therefore, this report has looked at **390 measures of the NAPIAA, monitored during Quarters I-III of 2017** as follows: **212 measures** with the deadline in Quarter III, 2017 and **150 measures** with continuous implementation (2017-2019). It has also taken stock of **28 measures**, whose deadlines went beyond Quarter III of 2017, but which were implemented before the deadline.

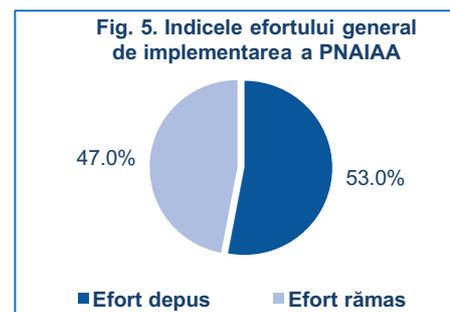
IMPLEMENTATION RATE OF THE NAPIAA (QUARTER III, 2017) - 34.1% - IMPLEMENTED MEASURES

	Nr. Of measures	implemented	In course of implementation	Not implemented	
Total measures assessed during the reporting period	390	161	119	110	
Measures to be implemented by Q III	212	78	86	48	
Measures with continuous implementation	150	55	33	62	
Measures implemented before the deadline	28	28	-	-	
<i>PNAIAA II (2017 – 2019)</i>		1411	161	119	110

The results of the quantitative evaluation show a **34.1% implementation rate of the NAPIAA**, which indicates that only a little more than 1/3 of the planned actions were fulfilled within the reference period. The most results are noted in the implementation of measures corresponding to Title V (DCFTA), with the implementation rate of 43.6%, followed by Title VI (Financial assistance and anti-fraud provisions) – with a rate of 34.5% and Title IV (Economic and sector cooperation) – with a rate of 33.9%. The fewest results are noted in Title III (Justice, freedom and security).



The statistic evaluation is complemented by the **implementation effort index**, which aims at measuring the level of engagement and efficiency of the authorities in implementing the NAPIAA. According to the authors' estimations, **the national authorities have undertaken efforts which are half of the planned potential, registering an index of 53%**. The biggest effort was made in accomplishing the measures provided for in Title V, which has set out issues like trade and establishment of a Deep and comprehensive free trade area with the EU (DCFTA). The least effort was made to accomplish the objectives of Title II of the NAPIAA, that refers to Political dialogue and reforms.





General Appreciations – PNAIAA II – Limited progress (Nota 3)

Making a synthesis of the **conclusions of the qualitative analysis** through the light of the results achieved in relation to the key areas relevant to the 5 Titles of the NAPIAA, **the authors of the report have identified that in the reference period the national authorities have registered limited progress in implementing the objectives, set out in the NAPIAA**, which is confirmed, to a large extent, by the quantitative evaluations. Therefore, in spite of a moderate progress in the implementation of actions planned in Title V (DCFTA), which sets out certain actions relevant to the capitalization upon free deep trade with the EU, there is significant limited progress or lack thereof (Title III) in other Titles of the NAPIAA. Below are the **main findings and assessments following the qualitative analysis** of the five evaluated titles of NAPIAA.

The results achieved in **Title II indicate a limited progress**:

- There are some important results in the area of **Foreign and Security Policy** in particular by signing the Agreement with the EU on security proceedings for the exchange and protection of classified information.
- In the area of **Regional stability** there are developments in the negotiation process in “5+2” format, expansion of the EUBAM mandate and the initiation of joint control of the Moldovan-Ukrainian border on the Transnistrian segment.
- In **Political dialogue**, even if the political Moldova-EU relations show more intensity during the reference period as compared to 2016, along with the promotion of the Action plan on the implementation of the Strategy for consolidating interethnic relations, however, there are involutions voiced by some civil society organizations in relation to the **electoral reform**, which, as a matter of fact has not been planned, in the NAPIAA and might impact the functioning of the democratic institutions in the context of parliamentary elections in the autumn of 2018.
- Moreover, as regards **Domestic reform** there are some regresses related to the **failure to promote the new law on non-commercial organizations**, that have added even more to the worsening of the cooperation with the civil society.
- With regard to **Human rights** there are delays in the approval of the new NHRAP III, although it had been already developed.
- In the **Prevention of corruption** there are no significant developments related to the enforcement of the new package of laws on integrity, as there is no functional NIA. On the other hand, non-transparent procedures for promoting new members in the SCM and SCP show limited political will in advancing the **justice sector** reform.

Although some actions per sub-domains within **Title III** had been undertaken, **in general there is a lack of progress**:

- The area of the **Rule of law did not advance**, thus missing the opportunity of reforming the judiciary and the Constitutional court, by not approving the draft laws on amending the Constitution. A new draft with similar contents to the draft of 2016 for the judiciary was registered in the Parliament early December 2017.
- **The roles of the SCM and SCP was not strengthened**, while the elections of the members of SCM and SCP took place without a comprehensive process of debates and presentation of programs by the candidates. **The Parliament ignored the requirements of transparency and public debates on SCM and SCP** by the academia/civil society.
- There are several initiatives on the agenda of the Ministry of Justice that refer to the simplification of the procedures of looking into civil matters and building the functions of judicial inspection, but which are, yet, at the approval stage.
- **No progresses were registered in promoting public policies that refer to personal data protection**. The area of **fight against corruption registered progresses in adopting public policies and planning documents – NACS and the Integrity Law**. In spite of these, no demotivating sanctions for acts of corruption were promoted, being returned to the NACC for improvements.
- **Whistleblowers’ protection has not had new public policies approved**.



- **The draft Law on preventing and combating money laundering was not adopted**, neither the department level implementation acts.

The qualitative analysis of the actions planned for **Title IV indicate limited progress**:

- **The reform of the public administration was initiated** by adopting a new Law on the Government and by reforming the Ministries, their number being reduced from 16 to 9. At the moment, the reform of public authorities and public institutions subordinated to the ministries is being carried out.
- **Certain amendments to the legal framework, that refer to the company law have been initiated**, including in relation to book-keeping, audit of financial situations, listing of trading companies on the stock exchange, merger of companies, reorganization and liquidation of legal entities, as well as the transposition of EU regulations that refer to limited liability companies.
- **The Laws on the operation of banks and non-banking financial companies** which belong to a financial conglomerate **had been adopted**, as well as acts which transpose provisions on additional standards for bank administrators and how banks are administered had been approved. All these measures were favorably appreciated in the context of the IMF program.
- **It had not been managed to pass the Law on preventing and combating money laundering and terrorism financing**, that had to be passed on the basis of the NAPIAA before, as early as 2015.
- **The process of transposing** into the primary legal framework of the Energy package III **had been finalized**. Nevertheless, the electricity procurement procedures in 2017 did not fully comply with the energy procurement standards. For 2018, the advancement of electricity interconnection projects with Romania and the natural gas pipeline Ungheni-Chisinau remains a priority.
- The actions related to the promotion of rural and regional development **had not advanced significantly**.
- **The cooperation with the civil society declined** due to the failure to promote the Law on non-commercial organization and the attempts to impose restrictions on the participation of the civil society in drafting and promoting public policies, as well as policies related to the financing civil society organizations from abroad. The language of the political rhetoric towards the civil society organizations was intimidating and restrictive. A number of civil society organizations signaled issues related to their activity, including via multiple opinion polls, where the questions related to the civil society were biased. Though the Parliament had put forward a draft Strategy of civil society development in Moldova, the draft had not been approved within the reference period.

The most qualitative results were registered in the implementation of the measures within **Title V, which indicates, in general, moderate progress**:

- Exports to **the EU slightly increased** compared to the same period of 2016, while for certain product chapters, which are limited by tariff quotas (in particular fruit), there were significant exceeding of the limits set out in the AA/DCFTA.
- At the same time, **it had not been, however, succeeded to promote exports of food products such meat products, dairy products and eggs**, due to lack of a significant progress in implementing **commitments in sanitary and phytosanitary measures**, in spite of undertaking actions, such as (1) transposition of a set of technical regulations on fighting against avian influenza, (2) enforcement of the rapid alert system for cases of identifying diseases in the livestock sector and creation (3) of a sanitary and phytosanitary inspection post, that was opened at Leuseni border crossing point.
- **A new e-procurement system (MTender) was launched** in April 2017 **as a pilot, however, it refers only to low value public procurement**. At the same time, **there were legal initiatives which try to promote waivers from the public procurement rules** for some public institutions. For instance, the initiative to waive procurements for the Public services agency, which affects the transparency and competitive basis of public procurement.
- In a different context, **the National Program on Competition and State Aid for 2017-2020 (NPCSA) was approved**, amendments to the Criminal code regarding the **exoneration from criminal liability of entrepreneurs which cooperate with the Competition Council within leniency programs** had been drafted, **however, these had not been approved yet**.



There is limited progress in Title VI:

- **The EU multiannual framework of assistance for 2017-2020** had been negotiated and approved.
- The management of the **Asset recovery agency** was appointed, however, one tried to transfer the new authority under the Ministry of Finance, which affected the full operationalization of the ARA in the shortest period of time.
- NACC was appointed as the institution responsible for the cooperation with **OLAF**. Also, a number of **investigations on frauds involving European funds** were initiated.
- The Memorandum of understanding with the EU, Loan and grant agreements on **providing macro-financial assistance to the Republic of Moldova** amounting to 100 mln. euro had been signed. Nevertheless, the negotiation process was **influenced by the promotion of electoral reform**, disregarding the urges from a number of civil society organizations and European institutions to postpone it due to the lack of wide consensus on this reform and its risk to impact the functioning of the democratic institutions.
- For the first time, the **disbursement of the macro-financial assistance installments will be conditioned by an evaluation of the state of the art in relation to the functioning of the multi-party system, the rule of law and human rights**, on top of the 28 technical and legal conditions.
- Within the reference period, the Republic of Moldova got no installment within the budget support programs. Moreover, the European Commission, for the first time, **cancelled the last installment of the budget support** for the justice sector. Still, according to the last announcement of the European Commission, the Republic of Moldova shall receive payments for the budget support programs active in 2017 amounting 36.3 mln. Euro (out 47 mln EUR planned) by the end of this year.

Following these findings, the authors of the report provide a set of **Recommendations** relevant to each evaluated Title, in particular taking into account the process of NAPIAA II update, planned for the following period by the authorities to include the priorities agreed upon within the new EU-Moldova Association Agenda (2017-2019).



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

1.1. CONCLUSIONS AND RECOMMENDATIONS (TITLE II)

1.1.1. CONCLUSIONS

POLITICAL DIALOGUE

1. This chapter of NAPIAA II does not provide specific measures which would touch upon the objective of strengthening democratic institutions. In this respect, taking into account that after the presidential elections the experts of the Council of Europe, OSCE/ODHIR, but also the Constitutional Court recommended a series of amendments to the electoral legislation aimed to exclude registered deficiencies, NAPIAA II should contain activities for these legislative measures.
2. The bilateral political relations between EU and Moldova have registered a high intensity during 2017 if compared with the previous year, with high level communication being carried out, as well as within the EU-Moldova institutional structures related to the implementation of the Association Agreement. The most important event in the context of the EU-Moldova relations was the Eastern Partnership Summit.
3. One of the main subjects on the bilateral EU-Moldova agenda during the year was linked to the decision of the EU to offer to the Republic of Moldova a programme of micro-financial assistance worth 100 mln. EUR., subject to the political conditionality, which will be evaluated by the EU institutions focusing on the undertaken electoral reform without a large consensus in society.

INTERNAL REFORM

4. The Ombudsman received moderate support to strengthen its capacities. The working conditions and the motivation of the employees of the institutions still remain unclear. The increase of salaries for the Ombudsman and his deputies have taken place after their reduction in 2015.
5. The efforts to strengthen the legal framework for non-commercial organisations were ignored, with a series of restrictions for the former being promoted, such as their financing or participation in drafting and promotion of public policies.
6. The draft law which tightens criminal liability for crimes committed out of prejudice, disregards or hatred was approved in first reading by the Parliament.

HUMAN RIGHTS

7. The human rights promotion registered a moderate progress. The NHRAP III was promoted at the level of Parliament. However, the institutional framework related to the monitoring of public policies in the area – the Council and the Permanent Secretariat are not yet functional.
8. Some of the NAPIAA II provisions are used to promote the liberation from criminal liability for crimes in the business sector.

PREVENTION AND FIGHT AGAINST CORRUPTION

9. During 2017 a series of criminal cases were initiated by the Anticorruption Prosecutors' Office, with the involvement of public officials and public servants. A series of cases managed by the criminal investigation bodies led to convictions, however the sentences included penalties without enforcement (convictions with suspension or criminal fines). Many cases are at the pre-trial and trial stages.
10. A tendency of selective criminal justice is notices, particularly with respect to certain persons who hold public dignity functions and which are part of particular political parties. Even if there were cases of convictions of representatives of governing political parties, the former imply convictions with suspension of enforcement or criminal fines.
11. No significant progress was registered with respect to the implementation of the on-line electronic system of declaration of assets and interests, as well as collection of statistical date on acts of corruption. This is primarily due to the lack of functionality of the NIA, although the new Law on NIA is in force for more than a year and a half.



INDEPENDENCE AND ADMINISTRATIVE CAPACITY OF THE JUDICIAL SYSTEM

12. The activities provided for in Title II, but also in Title III with respect to the rule of law and the independence of the judiciary do not relate to the strengthening of the processes of selection of the members of the SCM and SCP. Being two self-management bodies within the system of judiciary bodies and of the prosecutors' bodies, they hold extensive competences as regulated by the special laws which related to the selection, promotion and sanctioning of judges and prosecutors.
13. In 2017 elections took place both in the SCM and SCP, which did not involve any prior process of promotion and debates from the candidates. During the election period the programmes of the candidates were not presented, whilst the general assembly of judges and the general assembly of prosecutors voted from the reduced number of registered candidates. The independence of the SCM and of the SCP entails also the fact that these two groups of professionals from the justice area efficiently and effectively use their right to self-managements via their elected representatives.
14. The Parliament ignored the requirements of transparency and public hearings while nominating the candidates for the positions of members of SCM and SCP from the academia/civil society.
15. NAPIAA II provides for in Title III certain actions related to the strengthening of the role of the judicial inspection. There are no actions provided for the strengthening of the role of the prosecutors' inspection, although the Law on prosecutors' offices from 2016 provides for as a novelty the creation of the inspection of the prosecutors as a unit within the Prosecutor General's Office. To be able to ensure an efficient control over the activity of the prosecutors, including in the sense of administrative capacity and independence of the justice sector, including of the prosecutors, the strengthening of this new structure is absolutely necessary.

FOREIGN AND SECURITY POLICY

16. The ratification of the security procedures on exchange and protection of classified information with the EU offers new opportunities of cooperation and partnership between the Republic of Moldova and the European Union in the area of security and defence policy of the EU.
17. The MFAEI ensures the implementation of the new law on the application of international restrictive measures. The webpage of the MFAEI is regularly updated with the list of international restrictive measures of the EU to which Moldova adhered¹.
18. The Eastern Partnership Summit (EaP) in Brussels confirmed the objective of strengthening the resilience of the partnership countries, set in the Global EU Security Strategy. In this respect the authorities of the Republic of Moldova should more actively use the opportunities of cooperation and partnership with the EU in the area of security and defence.
19. Based on the Global Security Strategy objectives the EU plans to integrate its capacities of security and defence by the end of this year via the creation of the initiative of permanent structural cooperation (PESCO) in the defence area. It could thus offer a new dimension of cooperation between the Republic of Moldova and the European Union.

TRANSNISTRIAN CONFLICT SETTLEMENT

20. Important developments have been registered in the process of negotiation in the format "5+2" through the advancement in the implementation of the agreements of the "Berlin Protocol" with subsequent conclusion of the 4 protocol decisions in the area of education, use of agricultural fields and telecommunications.
21. Progress was attained in the development of the national vision of reintegration of the country, with the involvement of all national relevant authorities and with the involvement of the civil society. Despite this, the adoption in the near future of a common vision in the area of reintegration of the country may be affected by certain difference in approaches, but also may be hampered by the interinstitutional problems of cooperation between the President on one hand, and the Government and the Parliament on the other.

¹ <http://www.mfa.gov.md/international-restrictive-measures/>



ENFORCEMENT OF THE ASSOCIATION AGREEMENT IN THE TRANSNISTRIAN REGION

22. Even if the authorities from Tiraspol did not advance in the implementation of the conditions of uniform application of the provisions of Title V (DCFTA) of the Association Agreement in the Transnistrian region, most probably the EU Council will decide on the prolongation of the its implementation for another term of one year.

EUBAM ACTIVITY

23. The mandate of the EUBAM Missions was extended for another period of three years starting with 1 December 2017 until the end of November 2020. The activity and the capacity of the Mission will be a reduced one and will concentrate particularly on the support of the technical measures to confidence building between Chisinau and Tiraspol, fight against cross-border crimes and the full implementation of the Integrated Border Management.

MOLDOVAN-UKRAINIAN COOPERATION IN BORDER MANAGEMENT

24. After a long period of negotiations, the common border control point on the Moldovan-Ukrainian border at „Cuciurgan-Pervomaisc”, which is on the Transnistrian strip was open on 17th of July 2017. It will contribute on one hand to the facilitation of movement of persons and goods from/to the Transnistrian region, and will consolidate the customs and border control cooperation on the Moldovan-Ukrainian border on the Transnistrian strip.
25. The provisions of the Governmental Agreement in the area of common control of the Moldovan-Ukrainian border signed in October 2017 sets the objective to extend the common control on all control points of border crossings on the Moldovan-Ukrainian border.

1.1.2. RECOMMENDATIONS

POLITICAL DIALOGUE

1. Introduction into the updated NAPIAA II of key provisions related to ensuring the functionality of democratic institutions aimed to comply with the European standards in the electoral field, taking into account the parliamentary elections which will take place in the autumn of 2018 and the fact that the EU will closely monitor the implementation of the electoral reform via the programme of financial assistance.

INTERNAL REFORM

2. Strengthening the capacities of the Ombudsman via contribution with an adequate office space and improvement of employment conditions for the staff of the Ombudsman's Office.
3. Return to the law on non-commercial organisations and priority promotion in the Parliament.
4. Promotion of amendments to the Criminal Code and the Code on Misdemeanours which related to the tightening of penalties for crimes committed on grounds of prejudice, disregard or hatred.

HUMAN RIGHTS

5. Promotion of NHRAP III and the creation of the Council and of the Permanent Council with the evaluation of the workload for the latter. The current personnel set for the Secretariat may not be sufficient to efficiently implement the given mandate.
6. Review of the draft Law on the amendment of the Criminal Code and the Criminal Procedure Code (the Bib Brother initiative) to differentiate among the measures which may be applied with respect to different types of crimes with the use of information technologies (breach of copyright, child pornography, banking crimes, breach of honour and dignity). Reduction of the level of intrusion into the private life depending on the gravity of crimes for which the special investigation measures are prescribed for is also necessary.

HUMANISATION OF CRIMINAL POLICY

7. Review of the draft law on the amendment of the Criminal Code, the Criminal Procedure Code and of the Code on misdemeanours which significantly reduces the penalties and criminal liability for crimes committed in the business sector.



FINANCING OF POLITICAL PARTIES

8. Update the NAPIAA II with actions of revision of the legislative framework on financing of political parties, including the financing from the state budget and the restrictions for the financing of political parties in the context of the evasive practices registered in the latest elections in Moldova.

PREVENTION AND FIGHT AGAINST CORRUPTION

9. Urgent functionality of the NIA to ensure the efficient application of the Law on declaration of assets and personal interests.
10. Promotion of integrity via the promotion of the Law on protection of integrity warning agents (whistle blowers).
11. Urgent implementation of the on-line electronic submission of declarations of assets and interests.
12. Strengthening the framework of statistical collection of data on acts of corruption.
13. Update the NAPIAA II with supplementary actions related to the activity of NIA, namely (a) ensuring the functionality of NIA and (b) implementation of the random distribution of files to the integrity officers.

INDEPENDENCE AND ADMINISTRATIVE CAPACITY OF THE JUDICIARY SYSTEM

14. Revision of election procedures in the SCM and SCP via the amendments of completion of the Regulations on organisation of elections in these bodies with provisions related to the period of registration in the competition, promotion stage with meeting with judges/prosecutors, as well as the revision of the criteria of admission as candidates (absence of disciplinary sanctions, compliance with the integrity requirements etc.)
15. Setting similar criteria for the candidates appointed by the Parliament for the vacant positions in the SCM and SCP from the academia/civil society. Organisation of the selection competition via a transparent procedure, evaluation of activity programmes presented by the candidates to ensure the independence and the efficiency of the self-management bodies, flawless reputation, compliance with the integrity requirements.
16. Strengthening the role and of the capacities of the prosecutors' inspection based on the new Law on prosecutors' offices.

FOREIGN AND SECURITY POLICY

17. Use of the opportunities of training in the area of security and defence offered by the EU via the European Security and Defence College (ESDC).
18. Explore the possibilities of cooperation with the European Centre of Excellence for Countering Hybrid Threats from Helsinki²
19. Strengthening the capacities of management of crises at national level, via the creation of a Centre for Crisis Prevention (SITCEN).
20. Strengthening the capacities of Strategic Communication (STRATCOM) at national level with the support of the StratCom East.

TRANSNISTRIAN CONFLICT SETTLEMENT

21. Approval of the common vision on the reintegration of the country as soon as possible.
22. Continuation of the negotiation in the format "5+2" on all three baskets of the subjects of negotiation.
23. Ensuring an efficient mechanism of monitoring and implementation of the protocol agreements agreed in November 2017.
24. Progress during next year on the resolution of the issues of free movement of persons between the two banks of the Nistru river.

ENFORCEMENT OF THE ASSOCIATION AGREEMENT IN THE TRANSNISTRIAN REGION

25. Active promotion of the objective of identification of solutions to exclude the import tariffs applied by the authorities in the region for EU products in the negotiations agenda with Tiraspol in the format of

² <https://www.hybridcoe.fi/>



sectorial working groups of confidence building, but also in other formats of negotiations („5+2” and „1+1”).

EUBAM ACTIVITY

26. Strengthening of territorial offices and strengthening the capacities of the EUBAM office in Chisinau which would take over the coordination of activities to support the confidence building measures between Chisinau and Tiraspol and the implementation of the Integrated Border Management.

MOLDOVAN-UKRAINIAN COOPERATION IN THE AREA OF BORDER MANAGEMENT

27. Preparation of the technical and organisational conditions to start next year the common management of at least on new crossing point of the Moldovan-Ukrainian border on the Transnistrian strip.



II. FREEDOM, SECURITY AND JUSTICE (TITLE III)

2.1. CONCLUSIONS AND RECOMMENDATIONS (TITLE III)

2.1.1. CONCLUSIONS

RULE OF LAW

1. The reforms in the area of rule of law have registered a moderate progress. The modification of the Constitution with respect to the judiciary and the reform of Constitutional Court were not promoted until approval. There is an emerging risk that the amendments which relate to the Constitutional Court become obsolete in light of article 143 of the Constitution. On the other hand, the strengthening of the role of the SCM and of the judiciary inspection did not register progress, the amendments being at the stage of review by the Parliament.
2. The simplification of civil procedure in certain cases was also not finalised, the complex draft law of amendment of the Civil Procedure Code, Family Code, Enforcement Code and of other laws being at the stage of second reading in the Parliament.

PERSONAL DATA PROTECTION

3. No progress was registered in the promotion of the NAPIAA II activities in the area of personal data protection. The actions set for this area are in process of implementation.

FIGHT AGAINST CORRUPTION

4. The Law on integrity and the NIAS were approved, the latter being a planning and monitoring documents of the efforts on the implementation of the public policies in the area of integrity and fight against corruption.
5. Despite this, a series of important amendments related to the use of demotivating instruments, including criminal penalties were not promoted. There are not sufficient institutional instruments to ensure that the good obtained from criminal activity are efficiently pursued and confiscated.
6. Immediately after creation, the functionality of ARBI was exposed to risks of transfer from the NAC to the Ministry of Finance, after which these initiatives were withdrawn, whilst the Government issued a negative notice on the proposal.

MONEY LAUNDERING AND FINANCING OF TERRORISM

7. The high priority actions related to prevention and fight against money laundering and financing of terrorism are still not implemented, with a number of deadlines, including those mentioned in the previous NAPIAA being breached.
8. Insufficient political will is noticed from the Parliament to promote the Law on the prevention and fight against money laundering and financing of terrorism, which significantly limits the effectiveness of the specialised institutions – Central Bank, NCFM, NIS and others to promote implementation measures.

2.1.2. RECOMMENDATIONS (TITLE III)

RULE OF LAW

1. Urgent promotion of the amendments to the Constitutions with respect to the SCM, appointment of the judges, independence of the judiciary and the reform of the Constitutional Court.
2. Approval of the amendments to the legislative framework with respect to the functioning of the SCM and of the judiciary inspection on the application of sanctions with respect to judges.
3. Promotion of the amendments with respect to the simplification of the civil procedure, the use of the integrated case management system for litigants to reduce time spent in courts.
4. Update the NAPIAA II with actions to support the activity of the prosecutors' inspection to ensure its functionality based on the Law on prosecutors' offices.



PERSONAL DATA PROTECTION

5. Approval by the Parliament of the Law on video surveillance.
6. Review the process of filtering/exclusion of personal data in the process of publication of information which are of a public interest as a result of the mandate of a person with a public dignity, public servant or other statute implying a mandate of public authority.
7. Review of the normative framework on the management and use of personal data by the public authorities.

FIGHT AGAINST CORRUPTION

8. Return to the proposals to approve demotivating mechanisms to reduce high level corruption (prevention instruments such as harsh sanctions in the Criminal Code, but also efficient instruments to pursue illegal property such as a functional ARCG).
9. Approval of the implementing framework related to the Law on integrity.
10. Approval of the Law on the protection of integrity warning agents (whistle-blowers).
11. Update the NAPIAA II with actions aimed to implement the law on protection of integrity warning agents (whistle-blowers).

MONEY LAUNDERING AND FINANCING OF TERRORISM

12. Urgent adoption of the Law on the prevention and fight against money laundering and financing of terrorism.
13. Approval of the normative acts implementing the Law on prevention and fight against money laundering and financing of terrorism from the Central Bank, the NCFM, NIS and other actors included in the list of reporting entities in cases of suspicion of money laundering.
14. Adjustment of the Criminal Code to the provision of the Law on prevention and fight against money laundering and financing of terrorism for activities of non-reporting of cases of money laundering or financing of terrorism.
15. Approval of additional restrictions for the legal entities which participate in transactions of public procurement, PPPs, concessions and privatisation, the actions of which are directly or indirectly controlled by entities from jurisdictions which do not comply with international standards of transparency.



III. ECONOMIC COOPERATION AND SECTOR COOPERATION (TITLE IV)

3.1. CONCLUSIONS AND RECOMMENDATIONS (TITLE IV)

3.1.1. CONCLUSIONS

PUBLIC ADMINISTRATION REFORM

1. The Government advanced in the implementation of certain actions related to the reform of the central public administration as provided by the Action Plan for 2016-2018 on the implementation of the Strategy of Public Administration Reform (2016-2020). In this respect, the new Law on Government was promoted, as well as the new Regulations of Ministries. At the same time, the authorities in the subordination of the ministries still remain under the process of revision and reform, the aim of which is to reduce costs and increase their efficiency in the implementation of sectorial public policies.

AGRICULTURE AND RURAL DEVELOPMENT

2. Moderate progress was registered with respect to the implementation of the NAPIAA II activities in the area. One important aspect is the implementation of the ENPARD commitments to ensure the receipt of additional funds from the EU for the sector.

REGIONAL DEVELOPMENT, CROSS-BORDER AND REGIONAL COOPERATION

3. Moderate progress was registered in the area of regional development. Actions were taken with respect to the implementation of the current public policies. Once approved the Concept of National Spatial Planning will offer more clarity on the areas where regional development investments should be channelled to.

COMPANY LAW, ACCOUNTING AND CORPORATE GOVERNANCE (INCLUDING FINANCIAL SERVICES)

4. A positive outcome is the approval of the Law on banking activity which transposes European standards, but also the good international practices in the area of banking licencing, regulation and supervision. The approval of the Regulations on the requirements for managers of banks and on the management framework for the activity of banks have as main aim the improvement of corporate governance in the banking sector.
5. The internal control and audit environment continues to register progresses. The draft Law on the financial conditions audit was approved in first reading by the Parliament and has as main aim the establishment of the legal framework related to the delivery of audit services by the audit entities.
6. The new Law on accounting improves the national legal framework and transposes the provisions of EU legislation, as well as reaffirms the commitment of the authorities to reduce the administrative burden and develop the corporate sector. However, both the law on accounting and the law on financial conditions audit will be approved with delay.
7. The Ministry of Economy and Infrastructure (MEI) initiated the updated of the Energy Strategy of the Republic of Moldova and plans to present an amendment for approval to the Government. Also, the new Energy Strategy of the country is planned to be developed in 2018.

ENERGY SECTOR COOPERATION

8. The NAPIAA II provisions for the energy sector contain only a part of the necessary objectives to be implemented during 2017-2019, the other commitments are mentioned in the Action Plan of the Government and in the Programme of activities of the National Energy Regulation Agency (NERA) for 2016-2018.
9. Out of 9 planned measures in the reference period a little more than half have been implemented and only one under the timeline requirements of the NAPIAA II.
10. After a number of delays, with the adoption of the Law no. 174/2017 on energetics on 22nd September 2017, which also complements the Law no. 107/2016 on electricity and the Law no. 108/2016 on natural gas, approved on 27th of May 2016, the national authorities have transposed the provisions of the 3rd Energy Package into the primary legislation, with the exception of the obligation to separate the natural gas distribution from supply, extended for implementation until 1 January 2020.



11. A series of delays are registered with respect to the transposition of the provisions of the new Laws into the secondary normative framework. Thus, until present, out of total of 79 transposition acts, only one third was approved. Until 2017 the Government and NERA must finalised the transposition of other 24 acts, the others being planned for adoption primarily in the first half of 2018.
12. The objective of construction of the natural gas pipeline Ungheni-Chisinau until the end of 2019 remains on the agenda of the Government. However, taking into account the financing agreements concluded with EBRD and EIB, which are at the ratification stage and the initiation of the process of privations of Vestmold-transgaz, clarifications are necessary with respect to the process of investments, including the initiation of construction works in 2018 and the operational stage of the natural gas pipeline Ungheni-Chisinau until 1 January 2020.
13. Taking into account the two parallel agendas of interconnection of the electro-energetic system with the EU, synchronic and non-synchronic connection to ENSTO-E, it is important that the Moldovan Government maintains its objective to build the LTE interconnection Isaccea-Vulcănești-Chișinău and the „back-to-back” station until the beginning of 2019.

COOPERATION WITH CIVIL SOCIETY

14. Cooperation with civil society registered a worsening compared to the previous evaluation periods. The activities mentioned in the NAPIAA II do not necessarily contribute to the attainment of the objective of cooperation with civil society set in the Association Agreement (art. 134 and 135). The initiatives of limitation of external financing of civil society organisation and exclusion from the process of decision making and formulation of public policies affects even more the reduced trust in the public sector, whilst the use of terminology such as foreign agents for the representatives of civil society only contributes to the worsening of the public image of the civil society organisations.

3.1.2. RECOMMENDATIONS

PUBLIC ADMINISTRATION REFORM

1. Review of the activities planned in NAPIAA II in the context of the progress registered in the implementation of the public administration reform Strategy and Action Plan.
2. Update of the NAPIAA II with new cooperation activities with the EU on the evaluation of capacities of public administration from the perspective of SIGMA public administration standards.
3. Ensuring a transparent process on the implementation of the next stage of the reform of the public administration reform planned for 2018-2019, namely the process of decentralisation and the territorial-administrative reform.
4. Promotion of the reform of public administration authorities, particularly the ones which are currently under the subordination of the ministries.
5. Strengthening the role of control and inspection, separately from the implementation functions, to ensure that the public policies are efficiently implemented.
6. Increase the attractiveness of the jobs in the public sector, particularly after the amendments and efficiencies applied in the public administration.

AGRICULTURE AND RURAL DEVELOPMENT

7. Strengthening the efforts to implement the commitments under ENPARD.
8. Increase the pace of transposition of the EU Regulations and Directives which have as time limit of transposition mid and end of 2018.
9. Approval of amendments related to ecological products
10. Update the NAPIAA II with supplementary activities related to the implementation of the Law on the principles of subsidy allocation for agricultural producers, particularly those related to the methodology of distribution of the funds managed by the AIPA.

REGIONAL DEVELOPMENT, CROSS-BORDER AND REGIONAL COOPERATION

11. Promotion of the concept of the National Spatial Planning Concept
12. Adjustment of the draft Law on regional development with other legal aspects related to the reform of central and local public administration, including the territorial-administrative reform, as well as other actions related to the public administration.



13. Promotion of additional acts relevant to the process of spatial planning, including the Spatial Planning Code and other relevant acts
14. Update the NAPIAA II with additional activities to ensure the implementation of the National Strategy on Regional Development for 2016-2020.

COMPANY LAW, ACCOUNTING AND CORPORATE GOVERNANCE (INCLUDING FINANCIAL SERVICES)

1. The Central Bank must increase the pace of development/fine-tuning of the Regulations as a result of the approval of the Law on banking activity;
2. Approval in final reading of the law on accounting, law on audit of financial conditions and the law on the prevention and fight against money laundering and financing of terrorism, while complying to the general principle of transparency in the decision-making process. In this respect, it is important that the final versions of the Laws fully transpose EU legislation.
3. The National Financial Markets Commission (NCFM) should increase the pace of fine-tuning of the draft Law on the amendment of the Law no. 1134/1997 on joint-stock companies, as this area is behind schedule.

COOPERATION IN THE ENERGY SECTOR

4. Update of the NAPIAA II with a number of planned measures in the energy sector with the other priority actions, particularly with respect to the full transposition in the secondary legislation of the Third Energy Package related to the natural gas and electricity.
5. Resolution of the dispute initiated by Gas Natural Fenosa at the Secretariat of the Energy Community on the application of the fees of access to the distribution network, approved in accordance with the Methodology of calculation, approval and application of fees for the services of distribution of electricity, approved by NERA in February 2017.
6. Revision by NERA of the rules of electricity market, in the context of strengthening the competitiveness and creation of conditions to diversify the sources of supply of electricity from Romania.
7. To avoid the identified deficiencies in the purchase of electricity in 2017 it is important to ensure that the bid for electricity purchase for 1 April 2018 – 31 March 2019 takes place in full compliance with the guidelines on the annual purchase of electricity.
8. Take necessary actions (development of the technical proposal) to initiate the construction of the LIT 400 Vulcănești-Chisinau and of the back-to-back station, taking into account the fact that the current project is considered a Project of Mutual Interest (PMI).
9. Timely implementation of all the actions related to regulation from NERA, including the approval of the methodologies of calculation of regulated prices for electricity delivered by the main electricity supplier, as well as of the electricity and thermal energy produced by the urban thermal energy suppliers, approval of the Regulation on the development of distribution networks of electricity, appointment of the universal supplier of electricity and appointment of the last option supplier of electricity.
10. Advancement in the preparation of the separation and certification in due course of the operators of transport of natural gas until 1 January 2020.

COOPERATION WITH CIVIL SOCIETY

11. Restart of constructive discussions based on cooperation between the civil society and the public sector on the promotion of the Civil Society Development Strategy and Action Plan compliant with the commitments of cooperation set in the Association Agreement.
12. Immediate termination of pressures on the representatives of the civil society, including through restriction of financing from abroad and limitation of participation in working groups, as well as the activity of promotion of public policies.
13. Full revision of the actions within NAPIAA II related to cooperation with civil society.



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

4.1. CONCLUSIONS AND RECOMMENDATIONS (TITLE V)

4.1.1. CONCLUSIONS

STATISTICAL DATA ON TRADE AND ACCESS OF GOODS ON THE EU MARKET

1. During January – September 2017 the amount of exports to the EU expressed in USD grew with 16.6% compared to the similar period of 2016. Thus, the share of exports to the EU reached 64.6% out of total exports, with 0.8% more compared to the same period of the previous year.
2. A positive dynamic of export of goods which are subject to anti-circumvention measures was registered, taking into account the fact that there are categories of goods which have passed over the set limits (wheat, barley, processed cereals), which indicates a large potential for export. However, during 2017 the authorities did not manage to make full use of tariff quotas, such as for instance for meat products, dairy products or eggs.
3. Although the export of apples still remains rather modest (only 1% of the tariff quota), compared to the previous year it showed a significant increase from 74 tons to 453 tons. For other products included in this list such as tomatoes (export of 80 tons, 4%) grapes juice (export of 3.4 tons, 1%) and garlic (export of 0 tons), the full use of the quotas still remains quite modest.
4. Reduced use of the tariff quotas is due to the slow progress in the improvement of the infrastructure of certification and testing of products directed for export and non-implementation of sanitary standards, as well as due to the constraints the enterprises have in complying with the requirements from the EU.

TECHNICAL BARRIERS TO TRADE, STANDARDISATION, METROLOGY, CONFORMITY EVALUATION

5. The activities in the area of elimination of technical barriers to trade, standardisation, metrology and evaluation of conformity were insufficient. With the exception of the current activities of implementation of the international commitments already agreed, the acts of transposition of EU Directives and Regulations, with transposition deadlines in 2014 and 2015 are still in process of coordination and approval.

SANITARY AND PHYTOSANITARY MEASURES

6. The normative framework which implements the rapid alert system for food and feed products was approved at national level.
7. A new sanitary and phytosanitary inspection point was launched at Leuseni. This sanitary post is the largest in the country and will allow the verification of livestock.

PUBLIC PROCUREMENT

8. Starting 4 September 2017 the Public Procurement Complaints Review Agency became functional.
9. Starting April 2017 a new system of procurement M-Tender is being piloted, which should substantially improve the process of public procurement in Moldova.
10. The Regulations of the Public Procurement Agency was amended to ensure proper functioning of the public procurement mechanism and strengthen the capacities of the institution.

COMPETITION AND STATE AID

11. The competition and state aid sector registered a moderate progress in the implementation of the activities mentioned in NAPIAA II. With respect to the development and approval of public policies in the sector, most of them have a more advanced deadline. The activities with a deadline in the evaluated period were not fully implemented, the drafts being at the stage of consultation and endorsement.

4.1.2. RECOMMENDATIONS

TECHNICAL BARRIERS TO TRADE, STANDARDISATION, METROLOGY, CONFORMITY EVALUATION

1. Promotion of the Law on medical products and the Law on medical products for veterinary use



2. Update of the deadlines of implementation for the activities which are dependent on others from the NAPIAA II to ensure the proper order of approval of decisions, including the transposition of the EU Directives and Regulations.

SANITARY AND PHYTOSANITARY MEASURES

3. Strengthening the infrastructure at the customs points and border crossings and of the institutional capacities of intervention from the National Food Safety Agency (NFSA).
4. Increase the pace of transposition of the sanitary standards for animal origin goods to obtain the right to export to the EU.
5. Operational phytosanitary laboratories to ensure safety of food products (Crihana Veche, Cahul rayon and Bălți).

PUBLIC PROCUREMENT

6. Faster advancement to electronic public procurement – starting 2012 the public procurement in Moldova a engaged in different piloting stages, but the national platform is still not implemented, which would ultimately impose the obligation on all public entities to pursue purchases on the electronic platform. This generates reduced level of trust from the civil society, but also from the citizens at large. Without e-procurement transparency in all stages of public procurement will not be ensured.
7. Abandon the increased number of exceptions – the EU Directives are very restrictive when it comes to exceptions from public procurement procedures. Instead of identifying entities which are to be exempted (i.e. Public Services Agency), the authorities should increase the pace of reforms in the sector and encourage more and more public entities to use the procedures of public procurement. Also, it is mandatory to include the state enterprises in the Law no. 131/2015. They use significant resources and without the obligation to follow the public procurement rules the risks of fraud, corruption and public funds losses are very high.
8. Simplification of application procedures for the representatives of civil society who wish to participate in working groups.
9. Establishment of risk indicators which will be used in the ex-post evaluation – the Regulations of the Public Procurement Agency provides that the risk indicators shall be established in the Methodology of ex-post control.

COMPETITION AND STATE AID

10. Update the NAPIAA II with reporting activities on the implementation of the National Competition and State Aid Programme (NCSAP) for 2017-2020.
11. Update the NAPIAA II with activities from NCSAP 2017-2020 related to the development and promotion of public policies.



V. FINANCIAL ASSISTANCE, ANTI-FRAUD AND CONTROL PROVISIONS (TITLE VI)

5.1. CONCLUSIONS AND RECOMMENDATIONS (TITLE VI)

5.1.1. CONCLUSIONS

FINANCIAL ASSISTANCE

1. While no important progress in the implementation of the conditions to obtain the direct budget support for the justice sector from the EU was attained, the EU did not disburse the tranche of 28 mln. EUR, which represents a novelty for Moldova and is a very strong sign sent by the EU to the national authorities with the negative evaluations related to the process of implementation of the justice sector reforms.
2. At the same time, the EU decided to disburse until the end of 2017 the other payments related to the programmes of budget support based on the evaluations of the European Commission amounting 36.3 mln. Euro (out 47 mln EUR planed) by the end of this year.
3. The MoU, as well as the loan agreement on macro-financial assistance of the EU for Moldova was concluded which provides for 100 mln. EUR (60 mln. EUR loan and 40 mln. EUR grant). The disbursement of the other three tranches until the end of 2018 is strictly conditioned not only by the 28 actions which the Moldovan authorities must undertake, but also by the evaluation of the compliance with the democratic mechanisms from the Moldovan authorities, which include the functioning of the parliamentary multiparty system, rule of law and human rights.
4. During the reference period the Multiannual Framework of EU assistance to Moldova for 2017-2020 was negotiated and agreed.
5. The inter-ministerial Committee on Strategic Planning examined and approved the Annual Report on external assistance offered to Moldova in 2016.

ANTI-FRAUD IN THE USE OF EU FUNDS AND ASSET RECOVERY

6. The institutional framework related to the recovery of damages out of criminal activity was strengthened. Although there have been attempts to change the status of the Criminal Assets Recovery Agency (CARA), these initiatives have not succeeded. There are additional efforts necessary to improve the legislative and normative framework to allow practical instruments for the application of the Laws no. 48/2017 and 49/2017.
7. Cross-border and transnational cooperation financed from EU funds may be more efficiently used if there were opportunities to co-finance the grant applicants from the state budget. A separate legislative framework could be considered in the context of the Romanian experience of co-financing of at least 2% from the total necessary 10% required by the EU.

COOPERATION WITH OLAF

8. The cooperation activities with OLAF are also subject to OLAF's initiatives. With this in mind the NAPIAA II still has a very small number of activities on cooperation with OLAF.

5.1.2. RECOMMENDATIONS

FINANCIAL ASSISTANCE

1. Implementation by national authorities of all conditions provided in the policy matrix to make use of the budget support programmes from the EU available for Moldova and planned for 2018, to avoid any postponement of other tranches.
2. Implementation of the national authorities of all conditions agreed in the MoU on macro-financial assistance. Particular attention should be given not only to the technical conditions, but more specifically to the compliance to the democratic mechanisms. The planned tranches are subject to the results of the evaluation of compliance with the set political conditionalities. In this respect, the national authorities should not admit blockages into the activity of opposition parties and into the civic initiatives related to the questioning of the electoral reform approved in summer 2017. Also, the rule of law conditionality shall be considered by the EU in the light of the progress in justice sector reform and fight against corruption.



3. The Government should strengthen its internal mechanisms of coordination and management of external assistance.
4. Increase the pace of amendment of the Government Decision no. 838/2008 on the creation of Inter-Ministerial Committee on strategic planning and the Government Decision no. 561/2015 on the institutional framework and the external assistance coordination mechanism offered to the Republic of Moldova by international organisations and donor countries while ensuring transparency in the decision-making process.
5. Improve the activity of the Inter-Ministerial Committee on strategic planning. For a more efficient monitoring of projects and programmes of external assistance it is recommended to organise meetings at least once in a half a year.

ANTI-FRAUD IN THE USE OF EU FUNDS AND ASSET RECOVERY

6. Update the CARA's activities with amendments to the normative framework related to the process of asset management, including their selling, use of ESCROW accounts, access to databases of other public authorities, including the Public Services Agency, exchange of data via the responsible peers from OLAF on registered properties on the name of suspects, close associates etc., to ensure the freeze of assets generated by criminal activity.
7. Approval of the Law on co-financing transnational and cross-border cooperation programmes and projects, financed by the EU.
8. Approval of demotivating sanctions for acts of corruption, assimilated to corruption and conflict of interests.
9. Increase cooperation between NAC and similar institutions in other states on issues of pursuit of assets resulting from criminal activity.

COOPERATION WITH OLAF

10. Increase the exchange of data between OLAF and NAC, including on other categories of crimes other than the ones which directly involve the financial interest of the EU.