

Annex 1 – Annual Action Programme 2012 for the Republic of Moldova

1. Identification

Title/Number	Support for justice sector reforms CRIS: ENPI/2012/23420		
Total cost	EU contribution: EUR 52 million		
Aid method / Method of implementation	Sector Policy Support Programme: - Sector budget support (direct centralised management) - Project mode (direct centralised management)		
DAC-code	15130	Sector	Legal and judicial development

2. Rationale and country context

2.1. Country context and rationale for sector policy support programme (SPSP)

2.1.1. Economic and social situation and poverty analysis

The Moldovan economy was badly hit by the global economic downturn. Relatively rapid growth in 2008 (7.8%) fuelled by foreign remittances and inward investment turned to a 6% fall in GDP in 2009 as the downturn in trading partners hit remittances and exports, followed by 6.9% and about 6% recovery of GDP in 2010 and 2011. The heavy dependence of the economy on remittances meant that domestic demand also fell with the result that the current account deficit contracted from over 17% of GDP in 2008 to projected 11.7 % in 2011. At the same time, inflation which had been stimulated by energy and food price rises, increased from 0.4% in 2009 to 7.8% in 2011. The Republic of Moldova (hereinafter Moldova) has the lowest GDP in Europe, ranking 130th in the IMF world list at USD 3,087 per capita in 2010. Some 21.9% of the population were below the absolute poverty line in 2010. The most vulnerable were recorded in households of 5 or more members (35%), the elderly living alone, and those dependent on private agriculture.

The IMF's three-year Extended Credit/ Extended Fund Facility Programme, concluded in January 2010, remains on track. The IMF Executive Board had recently approved the disbursement of the fourth credit tranche under the mentioned programme¹.

2.1.2. National development policy

The 2007 National Development Strategy (NDS) 2008-2011 has provided the main medium-term strategic planning document. It was developed to take forward the reforms outlined in the Economic Growth and Poverty Reduction Strategy Paper (EGPRSP) and support those agreed in the EU-Moldova ENP AP for 2007-2013. This aligns Moldova to EU standards with the objective of European integration². NDS initiatives are reflected in the national budget and in the Medium-Term Budget Framework (MTBF) which covered in 2011 about 84% of the priorities outlined in NDS. To follow on from the NDS the Government is currently elaborating the Country Development Strategy "Moldova 2020".

¹ For details: <http://www.imf.md/press/pressw/press-120201.html>

² National policies focus on economic development and reduction of poverty by increasing access to the key sectors: education, healthcare, social protection and employment.

2.2. Sector context: policies and challenges

The rule of law is both a fundamental principle and an overarching objective of the EU in cooperation with the Eastern Partners. As recognised in the Commission Communication "On Cooperation in the Area of Justice and Home Affairs within the Eastern Partnership", the EU is ready to monitor even more closely the reform of the judiciary, while encouraging and supporting the EaP countries to further strengthen their justice systems and guarantee the independence of the judiciary, its impartiality, effectiveness and accountability, as well as access to justice. "Improved functioning of the judiciary" appears also among the core objectives identified by the Eastern Partnership Platform 1 "Democracy, Good governance and Stability".³

Over recent years the Moldovan authorities have taken considerable steps towards the reformation of the justice system. Numerous plans and strategies have been adopted and many remain under the implementation.

The Strategy for Justice Sector Reform, developed through consultative working group, was adopted by Parliament in November 2011. An Action Plan for its implementation through to 2016 was approved by Government in December 2011. The Strategy is comprehensive, drawing together reforms covered by earlier documents as well as preparing the ground for development of additional and further reforms. Both the Strategy and Action Plan address justice sector reform in the context of seven key pillars:

- I. The judiciary
- II. Criminal justice
- III. Access to justice and enforcement of courts' decisions
- IV. Integrity of the players in the justice system
- V. The role of justice in economic development
- VI. Observance of human rights in the field of justice
- VII. Well-coordinated, managed, and responsible justice system.

Under these headings key elements relate to the inefficiency of the system to deliver impartial, accountable, and transparent justice for all, bound by inadequacies in procedural codes, the weakness of self-regulation or administration by the various professional bodies, and widespread corruption or system manipulation. The situation is compounded by politicisation of the system and reform impeded by competing objectives of the legislative, executive and judicial branches of Government, each of which controls a part of the system, and by the unstable political environment. The result is an astonishingly low level of trust in the justice system by the population, calculated recently at less than 2% for the judiciary, 11% for the prosecution.

The Corruption Perception Index (CPI) indicates the fact that the population of the country and the international community perceive Moldova as a country with widespread corruption.⁴ In

³ Communication from the Commission "On Cooperation in the Area of Justice and Home Affairs within the Eastern Partnership", 26/09/2011, COM(2011) 564 final.

⁴ In the past 12 years the index for Moldova varied between 2.1 and 3.3, on a 0-10 scale, where lower values indicate a higher degree of corruption.

2011 Moldova ranked 112 from 183 countries evaluated under CPI with 2.9 points. The 2010 Global Corruption Barometer (GCB) indicates that 37% of the Moldovan respondents had offered a bribe in the last 12 months. According to the same report police and justice are among the most corrupt areas.

In May 2011 the President of Moldova set up a National Council for Law Enforcement Bodies Reform, which includes high level public officials from all law institutions of Moldova, and representatives of scientific and civil society. The Council is to supervise coordination between these various agencies to achieve consensus on the nature of the reforms and the manner and timetable of their implementation. Overall responsibility for implementation of the Strategy rests with the Ministry of Justice, but actual reform will be dependent upon the actions by several institutions, many of which are not accountable to Government⁵. To coordinate participation of relevant stakeholders and to support Action Plan implementation seven working groups are in establishment, one for each of the key pillars of reform.

The Action Plan provides an estimated incremental cost for the introduction of the Justice Sector Reforms over the period to 2016 of around MDL 1.9 billion (approximately EUR 125 million), compared to an annual budget for 2012 for the justice system of about MDL 384 million (EUR 24 million), around 1.7% of the state budget.⁶

The Action Plan provides a framework for monitoring implementation of reforms. Performance monitoring has not been well established through the sector or the sector institutions and indeed is one of the areas to be addressed through the reforms. With the exception of an incipient and incomplete case management system for the courts, management information systems are relatively basic. An integrated case management system, compatible across the judicial process is envisaged, and this will enable performance based monitoring and evaluation, but this is not in place at the present.

2.3. Eligibility for budget support

- (1) It is confirmed that the standard Eligibility Criteria for Budget Support (included as General Conditions in the Technical and Administrative Provisions) have been met: a well defined and comprehensive Justice Sector Reform Strategy has been adopted by Parliament. The Action Plan for implementation of this Strategy has been approved by Government;
- (2) a stability oriented macroeconomic policy is in place. A three-year agreement for a combined Extended Credit Facility (ECF) and Extended Fund Facility (EFF) was agreed with the IMF in January 2010 and has remained on track through the first two years. The latest IMF review reported recovery from the 2009 recession, containment of inflation and an anticipated return to fiscal sustainability in 2012;
- (3) a reliable Public Finance Management (PFM) system is in place, confirmed by a PEFA Assessment update in late 2011 in which most indicators were assessed at A or B. PFM reform is embedded in the National Development Strategy and Action Plan (2008-2011) and implemented by the multi-donor PFM Project until the end of 2012.
- (4) the requirement on transparency and oversight of the budget has been fulfilled. The Annual Budget Law for 2012 has been approved in December 2011 and published in the Official Gazette of the Republic of Moldova in January 2012. The approved law has

⁵ For example, the Prosecutor General's Office and Parliamentary Advocates (ombudsmen) report to Parliament.

⁶ The level of sector financing stood at 1.75 – 1.87% during 2009-2011 and is expected to be increased to 2.3% in 2013 (0.4% of GDP) and to 3.1% in 2014 (0.7% of GDP) according to the latest MTBF projections.

been placed on the Moldovan legislation web-portal.⁷ The latest annual audit report dates September 2011. The annual report and opinion of the Court of Accounts on the GoM's financial statements for 2010 was discharged by the Parliament on 8th December 2011, along with annual audit reports for 2008 and 2009. The latest 2008-2010 PEFA assessment denotes full transparency in terms of public access to key fiscal information.⁸

The Moldovan authorities are concerned with the necessity of designing the next round of PFM reforms, continuing with the implementation of new Financial Management Information System, budget preparation and execution methodologies, Public Internal Financial Control (PIFC) system as well as improvement of tax administration, reorganization of Financial Control and Revision Service into a financial/ budgetary inspection body, approximation of the public procurement system to the EU *acquis* and enhancement of the debt management function. A medium- to long-term strategy to include the next more advanced level of PFM reforms would be needed.

2.4. Lessons learnt

The experience gained during previous Budget Support Programmes has shown that Moldova qualifies for budget support and that the system is understood by the Government. However, experience shows that conditionality needs to be well explained to ensure not only relevance, but also ownership by the programme recipients.

2.5. Complementary actions

The EU assistance is focusing on various sectors and different aid delivery methods, including technical assistance and twinning, as well as sector budget support. Prior to the current programmes under ENP AAP 2011 and AAP 2012, the EU has provided support to the justice sector of around EUR 7 million a year through various forms of technical assistance.

Under ENP AAP2011, EU will be supporting four technical assistance projects for a total of EUR 10 million covering sector reform strategy development and implementation coordination, prosecution and pre-trial elements, the judiciary, and post trial judgement execution. Through the Comprehensive Institution Building (CIB) instrument, EU will support the Prosecutor General's Office, Ministry of Internal Affairs, and the Centre for Combating Economic Crime and Corruption. EU is also offering technical assistance through the projects implemented by other international organisations, like the Council of Europe and UNDP. The EU assistance is complemented by the USAID USD 8.8 million Rule of Law Institutional Strengthening Programme (ROLISP) that is expected to commence in the first half of 2012. Other bilateral donors and international NGOs are also active in the justice sector and human rights in Moldova.

2.6. Donor coordination

Government Decision No.12 of 19 January 2010 called for the establishment of an efficient mechanism for the effective coordination of donor support and the creation of sector committees to manage coordination of external assistance. Pillar VII of the Justice Sector Reform Strategy addresses this issue and it will be a specific task of the EU technical assistance to support this process. There is frequent coordination between major donors acting

⁷ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=341946>

⁸ According to PEFA assessment, the *public access to key fiscal information* (indicator PI-10) has been rated with highest "A" mark, denoting full transparency and access to budget information in line with the standards and best practices. All key dimensions of this indicator (annual budget documentation, in-year budget execution reports, year-end financial statements, external audit reports, public contract awards) have been reported as compliant.

in the Justice field under the joint leadership of the EU and US Embassy. In 2011 a regular donor coordination mechanism has been established by the Ministry of Justice.

3. Description

3.1. Objectives

The **overall objective** of the Justice Sector Reform Strategy is to build an accessible, efficient, independent, transparent, professional justice sector, with high public accountability and consistent with European standards, to ensure the rule of law and protection of human rights.

Specific objectives of the Strategy include:

- strengthening the independence, accountability, impartiality, efficiency and transparency of the judiciary;
- streamlining the process of pre-trial investigation and prosecution, as needed to safeguard human rights, ensure individual security and reduce the level of crime;
- improving the institutional framework and processes that ensure effective access to justice: effective legal aid, examination of cases and enforcement of court decisions within a reasonable time, upgrading the status of some legal professions related to the justice system;
- promotion and implementation of the principle of zero-tolerance to corruption in the justice sector;
- implementation of measures that will allow the justice sector to contribute to the creation of a favourable environment for sustainable economic development;
- ensuring effective observance of human rights within judicial practices and policies;
- coordination and definition of powers and responsibilities of key actors within the justice sector and ensuring cross-sectoral dialogue.

The objective of the EU Sector Policy Support Programme is to support the Government in the implementation of its Justice Sector Reform Strategy and the realisation of its objectives. While it will have the same broad objectives, the Programme will focus on key areas of reform in its conditions for disbursement.

3.2. Expected results and activities

Expected results

Under Sector Reform Management:

- an effective sector reform management, coordination and consultative mechanism to be established and fully operational, including an inter-agency coordination council, subsector specific participatory working groups, and institutionalised arrangements for participation and consultation by civil society organisations and donors;
- a comprehensive and approved medium term strategy and implementation action plan under implementation, periodically reviewed for relevance and the need for amendment, with annualised and costed actions fully reflected in approved state

budget allocations for the relevant budgetary agencies, in line with the medium-term budgetary projections corresponding to the government's priorities for the sector;

- a performance related monitoring system backed by the generation of relevant statistics and the establishment of a sector wide information management system compatible across different institutions and stages of the justice process;

Under Reform of the Judiciary:

- increased independence, professionalism and impartiality of the judiciary, through the strengthening of the professional body (Superior Council of Magistrates), greater use of courtrooms and recording equipment with full public access to raise transparency and accountability, reducing the impact of corruption and increasing public trust; and
- improved efficiency through an overhaul of court functions and procedures, improved staffing and data management, and where appropriate enhanced facilities.

Under Reform of Investigation and Prosecution:

- a separation of investigative and prosecutorial functions, reflected in amended procedural codes;
- a strengthened investigative capacities based around the concept of a fair trials and rules of evidence;
- strengthened independence, impartiality, and professionalism of the prosecution;
- greater protection of victims rights.

Under the Enforcement of Judgements:

- a restructured penal system focussing on rehabilitation and resocialisation best practice and experience, reducing recidivism;
- a strengthened probation service to provide for more holistic support to offenders, manage non-custodial responses/sanctions and support social reintegration and reduce recidivism;
- an effective and fair execution of judgements through bailiffs.

Under Juvenile Justice:

- legislative and procedural amendments to ensure minimum compliance with CRC standards and the application of best practice for the treatment and care of children and juveniles in the justice system;
- introduction of education, sports, rehabilitation and other programmes to support social and economic integration of those in custody on release;
- adoption of best practice for the handling of children and juveniles in contact with the justice systems whether as offenders or victims.

Under Intolerance towards Corruption:

- measures provided by the Action Plan for implementation of the Justice Sector Reform to eliminate corruption in the justice sector being implemented, with established codes of professional conduct enforced through effective self-regulatory mechanisms and professional bodies;
- instruments to fight corruption in the justice sector developed, including strengthening the system of asset and income declaration, introduction of the regular integrity tests and raising salaries.

The SPSP will focus particularly on process to enhance dialogue and cooperation among key stakeholders, and on the Justice Sector Reform Strategy outcomes that address the investigation, prosecution and judiciary, enforcement of judgements, human rights related issues and anti-corruption. Activities will be geared to achieve conditions/indicators of policy matrix.

3.3. Risks and assumptions

Main risks to successful implementation of the Programme include: a) politicisation of justice sector reform, b) entrenched vested interests, c) budgetary constraints and delay of the reform implementation; and d) political instability.

Key assumptions include:

- The constituent parts of Moldova's establishment: Parliament, Government, and Judiciary remain committed to the extensive reform of the justice sector as a whole, and within the timeframe envisaged. Orientation towards European standards remains an agreed objective, as does compliance with Council of Europe agreements and European Court of Human Rights' judgements.
- Agreement on a formal coordination structure is maintained among the Justice sector stakeholders. In particular, the Parliament and Judiciary continue to support Government led coordination through the Ministry of Justice.
- Government remains committed and able to allocate sufficient resources to support implementation of the strategy and its coordination.
- Subject to EU-Moldova agreement, Government meets the requirements for budgetary support under ENPI AAP 2012 and the particular conditions for each disbursement.

3.4. Stakeholders

Stakeholders range across all three branches of Government: the legislature, executive, and judiciary, as well as the 'fourth estate' civil society. Parliament has direct involvement through the definition of the legal framework, the work of its Committees, and through the appointment and supervision of the Prosecutor General and the Parliamentary Advocates (Ombudsmen). The Judiciary is governed by the Superior Council of Magistrates (SCM), but institutionally includes the Supreme Court of Justice, Appeals, and District Courts, administratively supported by the Department of Judicial Administration (DCA), currently under the Ministry of Justice (MoJ). Prosecutors operate under a Superior Council of Prosecutors (SCP). Investigation is conducted by the Ministry of Internal Affairs (MoIA) as well as, at the moment, the Prosecutor General's Office (PGO), as well as other agencies including notably the Centre to Combat Economic Crime and Corruption (CCECC). Advocates are represented by a Bar Association (Union of Advocates), bailiffs by the Union of Judicial Executors. MoJ

also runs the penitentiary system and the probation service (through the Central Probation Office and district offices), as well as coordinates approximation of legislation through the Centre for Legal Approximation.

3.5. Crosscutting Issues

The Programme is focussed on issues of governance and the protection of human rights within the justice system. Climate change, environmental sustainability, and gender equality issues are not directly relevant, although the improved and impartial application of the law will have significant benefits in these areas. Gender equality in the justice system, both in terms of employment and appointments and in terms of treatment of litigants, is a central feature of equal and fair treatment and access to justice. Practices that discriminate on the basis of gender, race or any other characteristic will be actively discouraged and where they occur penalised.

4. Implementation issues

4.1. Method of implementation

Untargeted budget support programme, centrally managed.

The technical assistance component will be implemented under direct centralised management.

4.2. Procurement and grant award procedures

Budget support (up to EUR 50.2 million)

Use of funds disbursed as budget support will follow Government of Moldova expenditure and procurement procedures.

Technical assistance (EUR 1.8 million)

All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

Participation in the award of contracts for the present action shall be open to all natural and legal persons covered by the ENPI Regulation. Extension of this participation to other natural or legal persons by the concerned authorising officer shall be subject to the conditions provided for in article 21(7) of the ENPI Regulation.

4.3. Budget and calendar

An amount of up to EUR 50.2 million will be disbursed as untargeted direct budget support. Complementary technical assistance to this budget support component will be provided through a service contract to Support the Reform Coordination Mechanism (EUR 2.8 million from AAP 2011).

An amount of EUR 1.8 million may cover possible extension of the AAP 2011 technical assistance projects. It may also be used for evaluation, audit and disbursement reviews (conditionality verification) for the current programme.

For the budget support, four instalments are envisaged, with disbursement based on an

assessment of compliance with general and specific conditions to be detailed in the Financing Agreement. With the exception of the first instalment, which is made of only a fixed component, instalments will comprise both a fixed and a variable component. The First Instalment will be released following the signature of the Financing Agreement.

Indicative Disbursement Calendar (EUR million)

Instalments	First	Second	Third	Fourth
Indicative Assessment	1st quarter 2013	1st quarter 2014	1st quarter 2015	1st quarter 2016
Indicative Disbursement	1st quarter 2013	2nd quarter 2014	2nd quarter 2015	2nd quarter 2016
Fixed Component	13.0	7.5	4.5	3.20
Variable Component (max)		4.5	7.5	10.0
Total: up to	13.0	12.0	12.0	13.2

The foreseen operational duration of the programme is 48 months from the signature of the Financing Agreement.

4.4. Performance monitoring and criteria for disbursement

A Steering Committee with the Minister of Justice as Chairperson, comprising representatives of all key justice sector stakeholders, will have overall supervision for monitoring implementation of the programme. The Committee will meet at least twice a year. Membership of the Steering Committee will be specified in the Financing Agreement and will include representatives from main justice stakeholders.

The Financing Agreement will specify the general and specific conditions for disbursement. General conditions will relate to the implementation of the sector reform strategy, satisfactory progress in macroeconomic policy, and in public finance management, and transparency and budget oversight.

Specific Conditions are expected to focus on the following areas:

For the fixed component

- management of the reform process;
- financial management policy, and

For the variable component

- the judiciary;
- investigation and prosecution activities;
- execution of judgements;
- juvenile justice;
- professional integrity.

The disbursements will be assessed depending on the degree of compliance with the conditions stipulated in the Financing Agreement.

4.5. Evaluation and audit

Evaluation of the programme as well as audits may be carried out. These tasks may be entrusted to independent consultants.

4.6. Communication and visibility

As part of the Financing Agreement, the Moldovan Government undertakes to ensure that the visibility of the EU contribution to the SPSP Programme is given appropriate coverage in the various publicity media. At appropriate milestones during the project duration and after appropriate events, press releases will be issued, in co-operation with the EU Delegation in Moldova. The Communication and Visibility Manual for EU External Actions will apply.