DEEPENING EU-MOLDOVAN RELATIONS
What, why and how?

EDITED BY
MICHAEL EMERSON AND DENIS CENUŞĂ

A Trilogy of Handbooks: Understanding the EU’s Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine
Deepening EU-Moldovan Relations
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What, why and how?

2nd edition

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One of a trilogy of Handbooks explaining the EU’s Association Agreements and DCFTAs with Georgia, Moldova and Ukraine

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<td>AA</td>
<td>Association Agreement</td>
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<td>ATM</td>
<td>Autonomous trade measures</td>
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<tr>
<td>ACAA</td>
<td>Agreement on Conformity and Assessment and Acceptance of Industrial Products</td>
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<td>AEO</td>
<td>Authorised Economic Operator</td>
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<td>ANRE</td>
<td>National Agency for Energy Regulation</td>
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<tr>
<td>ANSA</td>
<td>National Agency for Food Safety</td>
</tr>
<tr>
<td>ATP</td>
<td>Autonomous trade preferences</td>
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<tr>
<td>CAA</td>
<td>Common Aviation Agreement</td>
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<tr>
<td>CE</td>
<td>Conformité Européenne</td>
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<tr>
<td>CEN</td>
<td>European Committee for Standardisation</td>
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<td>CENELEC</td>
<td>European Committee for Electrotechnical Standardisation</td>
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<tr>
<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<tr>
<td>COSME</td>
<td>Competitiveness of small and medium-sized enterprises</td>
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<td>CRS</td>
<td>Computer reservation system</td>
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<td>CSDP</td>
<td>Common Security and Defence Policy</td>
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<tr>
<td>DCFTA</td>
<td>Deep and Comprehensive Free Trade Area</td>
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<tr>
<td>DG</td>
<td>Directorate-General</td>
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<td>DO</td>
<td>Designation of origin</td>
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<td>DSM</td>
<td>Dispute settlement mechanism</td>
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<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EESC</td>
<td>European Economic and Social Committee</td>
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<tr>
<td>EIB</td>
<td>European Investment Bank</td>
</tr>
<tr>
<td>ETSI</td>
<td>European Telecommunications Standards Institute</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<td>EUBAM</td>
<td>EU Border Assistance Mission</td>
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<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>GI</td>
<td>Geographical indication</td>
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<tr>
<td>GMO</td>
<td>Genetically modified organism</td>
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<td>GOST</td>
<td>Gosudarstvenny Standart (State Standard)</td>
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<tr>
<td>GPA</td>
<td>Government Procurement Agreement</td>
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<tr>
<td>GSP</td>
<td>Generalised System of Preferences</td>
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<tr>
<td>ICT</td>
<td>Information and communication technology</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IPR</td>
<td>Intellectual property right</td>
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<tr>
<td>MAFI</td>
<td>Ministry of Agriculture and Food Industry</td>
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<tr>
<td>MFN</td>
<td>Most favoured nation</td>
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<tr>
<td>MOLDAC</td>
<td>National Institute of Metrology and the National Centre of Accreditation</td>
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<tr>
<td>NBM</td>
<td>National Bank of Moldova</td>
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<tr>
<td>NBS</td>
<td>National Bureau of Statistics</td>
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<tr>
<td>NCFM</td>
<td>National Commission for Financial Markets</td>
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<td>NCIP</td>
<td>National Commission on Intellectual Property</td>
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<tr>
<td>NCTS</td>
<td>New Computerised Transit System</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>NIPS</td>
<td>National Intellectual Property Strategy</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<tr>
<td>OGP</td>
<td>Open Government Partnership</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<tr>
<td>PEM</td>
<td>Pan-Euro-Mediterranean system of rules of origin</td>
</tr>
<tr>
<td>PLLC</td>
<td>Public limited liability company</td>
</tr>
<tr>
<td>SPS</td>
<td>Sanitary and phytosanitary (food safety) regulations</td>
</tr>
<tr>
<td>TBT</td>
<td>Technical barriers to trade (industrial product standards)</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
</tr>
<tr>
<td>TRQ</td>
<td>Tariff rate quota</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>VLAP</td>
<td>Visa Liberalisation Action Plan</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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</table>
This Handbook seeks to explain the contents of a long and complex legal treaty – the Association Agreement, which includes a Deep and Comprehensive Free Trade Area (DCFTA) – between the Republic of Moldova and the European Union (EU). Like most complex legal texts, it cannot be read like a book. Therefore, the purpose here is to make it possible for anyone to understand what each chapter of the Agreement means, in terms of both the nature of the commitments that the parties take on and the prospects for their implementation.

The first edition of this Handbook was published in 2016. Much has happened in the intervening two years in Moldova towards implementing the Agreement. The purpose therefore of this second edition is to move beyond explaining the Agreement, and to give an account of how it is being implemented and to offer some preliminary evaluation of the process.

The Handbook has in mind a broad range of readers, including officials, parliamentarians, business leaders, lawyers, business consultants, think tanks, civil society organisations, university teachers, trainers, students and journalists.

The 30 chapters in this Handbook are mainly the same as those in the Agreement, but they are not identical. Some chapters of lesser interest in the Agreement are not covered here, and there is some rearrangement of the various chapter headings.

The present Handbook is one of a trilogy that covers very similar but not identical agreements between the EU on the one hand, and Georgia, Moldova and Ukraine on the other. All three books are available electronically for free downloading in English and the respective languages of the three countries at www.3dcftas.eu.

There are some references in the Handbook to an Association Agenda, which is a document drawn up jointly by Moldova and the EU, reviewing progress in implementing the Association Agreement, and which usefully provides updating and some greater detail on various topics. The Agreement and Agenda are thus not to be
confused. The official texts of both documents are also available in English and Romanian at www.3dcftas.eu.

A much shorter and more accessible version of the first edition of the Handbook is available, with the aim of reaching a wider readership, including students. This version is also available for free downloading in English, Romanian and Russian at www.3dcftas.eu.

The Handbook has been prepared by two teams of researchers and experts, from CEPS in Brussels and Expert-Grup in Chişinău. Established in 1983, CEPS is a leading think tank on European affairs, with a strong in-house research capacity and an extensive network of partner institutes throughout the world. Its mission is to produce sound policy research leading to constructive solutions to the challenges facing Europe.

The Expert-Grup is an independent think tank, specialising in economic and policy research. Its core activities are economic analysis, forecasts and policy research.

While much of the content of the Handbook is undoubtedly rather dry, we hope that the reader will appreciate the lighter touch in the artwork of Constantin Sunnerberg, which graces the book’s cover and the introductory page of each chapter.

Thanks are due to the CEPS editorial team, Anne Harrington and Margarita Minkova, for their painstaking work.

Finally, the authors are most grateful to the Swedish International Development Agency (Sida) for their support and funding for the project, and in particular to Mirja Peterson and Maria Liungman for their encouragement from the beginning, and to Sanna Leino more recently.

The views expressed in this book are entirely those of the authors and should not be attributed to CEPS, Expert-Grup, Sida or the European Union.

Michael Emerson and Denis Cenuşa
**SUMMARY**

**What?**

The Association Agreement between the European Union (EU) and the Republic of Moldova is a comprehensive treaty establishing the relations between the parties and includes a long-term roadmap of reforms to be implemented by Moldova. The trade-related content, which aims to establish a Deep and Comprehensive Free Trade Area (DCFTA), is one the most important parts of the overall Agreement.

The Agreement was signed in June 2014, and much of its content entered provisionally into force in September 2014. Since then the Agreement has been ratified by the Moldovan and European Parliaments and also by all 28 member states of the EU. As a result, the Agreement entered fully into force on 1 July 2016.

**Why?**

Of all the countries of the EU’s eastern neighbours, Moldova is objectively the most European on several accounts, with a common history, language, culture and border with its direct neighbour, EU member state Romania. Many Moldovan citizens also have dual Moldovan–Romanian citizenship, and thus are citizens of the EU too. Reflecting these close ties, Moldova became the first of the six Eastern Partnership countries to secure visa-free travel with the EU.

The political and economic objectives of the Agreement are fundamental for the future of Moldova as an independent and secure European state. They can be simply defined, as follows.
The political purpose is to deepen the realisation of Moldova’s ‘European choice’ and its relations with the EU. This means making a reality of fundamental European values, namely democracy, the rule of law and respect for human rights, and norms of the European security order. Membership of the European Union is not directly prefigured in the Agreement, but neither is it excluded, and its resolute implementation is the only path for securing Moldova’s EU integration.

The economic purpose is to help modernise Moldova, by boosting trade with the EU and the world, and reforming domestic regulations in line with best European practice. Combined with an improving business climate and stronger institutions, Moldova has the potential to become a good location for foreign and domestic investment, producing exports to the EU and international markets.

How?

The Agreement amounts to a charter for Moldova’s modernisation through alignment on EU norms and standards, which generally correspond to best international practice. Moldova does not have to ‘reinvent the wheel’ in many technically complex areas, where the choice of regulations and standards that differ from tested international practice would be highly costly and inefficient.

Since September 2015, the EU has almost completely opened its market for tariff-free imports from Moldova. This means the opening of new competitive opportunities for the Moldovan economy, while preserving the most vulnerable domestic sectors from a sudden competitive shock (Moldova will remove its tariffs on imports from the EU gradually, for different sectors over a period of up to ten years). Moldova’s trade structure has already begun to diversify substantially in favour of EU markets, mitigating the losses from the trade embargo imposed by Russia. The technical requirements for access to the EU market are demanding and strict, but they are applied in a professionally fair manner, without (as elsewhere) geopolitical manipulation.

Financial assistance is available to help with technical support and investment where there are heavy adjustment costs, with grants
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from the EU, and loans or investment from the European financial institutions.¹

The Agreement, with its DCFTA, is no magic wand to cure Moldova’s political system and economy of all its problems. However, its provisions do engage with a substantial part of Moldova’s political and economic reform agenda. This normative alignment, which is far more than a technical matter, goes to the heart of the urgent task of establishing sound, corruption-free governance.

**Part I. Political Principles, the Rule of Law and Foreign Policy**

These chapters deal with the non-economic content of the Agreement. The commitments made, while of fundamental importance, are mostly qualitative in nature.

The crucial political objective in the Agreement is for Moldova’s democratic institutions to assure respect for core European values. The Agreement provides for the detailed monitoring of democratic institutions, including the rule of law and human rights. Respect for democratic values is considered in the Agreement to be of such ‘essential’ importance that in the event of their grave violation the Agreement itself may be suspended.

The quality of democracy and the rule of law in Moldova are seriously damaged by the politicisation of the public institutions, and the EU has stressed the need for reform.

In December 2016, a hotly contested but fair election for the Presidency was held, following a constitutional amendment that made this a direct election, unlike the previous problematic process of election by the parliament. In the final round, Igor Dodon defeated Maia Sandu. The pro-Russian tendency of Igor Dodon has meant a clash with the pro-European orientation of the Government, whose leadership is dominated in the background by the oligarch Vlad Plahotniuc. Although he holds no official office, Plahotniuc is chairman of the main party in power and the formal coordinator of the governing coalition. This oligarchical influence seems to be an important factor in inhibiting effective anti-corruption policy.

See Table S.1 for an overview of the state of affairs in Moldova concerning political principles, rule of law and foreign policy.

¹ Notably, these include the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).
Table S 1. Overview of political principles, rule of law and foreign policy

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Assessment/results</th>
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<tr>
<td>1.1 Political institutions</td>
<td>Institutions marred by excess politicisation and oligarchs’ influence</td>
</tr>
<tr>
<td>1.2 Human rights</td>
<td>Human rights record improving, but significant problems remain</td>
</tr>
<tr>
<td>2.1 Judiciary, corruption</td>
<td>Judiciary reform not yet effective; serious corruption problems remain</td>
</tr>
<tr>
<td>2.2 Free movement of people</td>
<td>Visa-free travel to the EU used by a million; half of the population issued biometric passport</td>
</tr>
<tr>
<td>3. Foreign/security policy</td>
<td>Foreign policy disputed between pro-EU government and pro-Russian presidency</td>
</tr>
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</table>

Judicial reform faces strong political opposition and as a result is incomplete. Further action is needed to complete reform of the prosecutor’s office.

Moldova’s human rights record shows some improvement, but significant problems remain particularly in efforts to eliminate discrimination (for example, against people with disabilities, LGBT individuals and the poor). The most problematic situation with respect to human rights, however, is in the Transnistrian region, as reflected in many judgments of the European Court of Human Rights.

Success in anti-corruption policy is universally considered to be a prerequisite for the overall success of the Association Agreement and Moldova’s EU future. Important steps are still needed to ensure the full institutional and operational capacities of the National Anti-corruption Centre, National Integrity Commission and the General Prosecutor’s Office. They need to regain public trust and become independent from any political interference.

The objective for Moldova to attain for its citizens visa-free access to the EU has been achieved. Moldovan citizens with biometric passports have been freely travelling to Schengen countries for the past four years, with this access also applying to around 35% of the citizens of the Transnistrian region.

Moldova aligns with the EU on foreign and security policy issues to a substantial degree, while continuing to carefully calibrate its position on Russia-related issues, such as the EU’s sanctions. The election of Igor Dodon to the Presidency in December 2016, however, has made the issue of pro-European versus pro-Russian orientation a more explicit source of tension between the Government and the
Presidency. The most significant operational programme is the EU Border Assistance Mission, which facilitates practical cooperation across the borders of Moldova and Ukraine with the Transnistrian region, while contributing to the broader objective of settling the conflict.

**Part II. Deep and Comprehensive Free Trade Area**

These chapters are the hard core of the economic content of the Agreement, covering both tariff and non-tariff barriers to trade, with many legally binding obligations undertaken by both parties.

The elimination of tariffs is the classic basis for a free trade area. The DCFTA has established a free trade area for trade in goods since the start of the provisional application of the Agreement in September 2014. This liberalisation is a result of a continual process of trade facilitation between the EU and Moldova since 1998 (notably the Generalised System of Preferences (GSP) in 1998–2005, followed by the GSP plus in 2006–08 and then autonomous trade measures in 2008–14). It allows Moldova to prepare for full trade opening with the EU, while for the most sensitive sectors Moldova will eliminate its tariffs on imports for the EU over periods of five to ten years.

Although the benefits of the DCFTA can only be fully realised in the medium and long term, some positive results can already be seen in the trade in goods between Moldova and the EU, with a marked 21% growth of exports to the EU recorded in 2017, now reaching 66% of Moldova’s total exports. Moldova still needs to ensure a friendlier business climate, to eliminate technical barriers to trade and to comply with the technical and food safety standards of the EU.

While Moldova has taken some important steps towards improving customs procedures in line with EU practices, the Customs Service still faces challenges, including deficient customs terminals, reduced trust and a high perception of corruption.

See Table S.2 for an overview of Moldova’s progress in implementing its DCFTA with the EU.
Table S 2. Overview of DCFTA in Moldova

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<tr>
<td>4. Market access, goods</td>
<td>Encouraging growth of exports to EU emerge, now reaching 66% of total</td>
</tr>
<tr>
<td>5. Trade remedies</td>
<td>No restrictive measures so far</td>
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<td>6. Customs services</td>
<td>Significant progress, but still inefficiencies and perception of corruption</td>
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<td>7. Technical standards (TBT)</td>
<td>Adoption of EU standards accelerates, weak institutional capacities still</td>
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<td>8. Food safety (SPS)</td>
<td>Adoption of EU SPS proceeds, but with delays, poor facilities and corruption</td>
</tr>
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<td>9. Services</td>
<td>Approximation advances, but with delays</td>
</tr>
<tr>
<td>10. Public procurement</td>
<td>Approximation well advanced, serious implementation problems remain</td>
</tr>
<tr>
<td>11. Intellectual property rights</td>
<td>Legal regime fairly advanced, enforcement issues remain</td>
</tr>
<tr>
<td>12. Competition policy</td>
<td>Institutional capabilities of Competition Council need strengthening</td>
</tr>
<tr>
<td>13. Statistics</td>
<td>Implementation according to European standards has accelerated</td>
</tr>
</tbody>
</table>

Adoption of European technical standards for industrial and agri-food products is vital for the modernisation and competitiveness of Moldovan industry. The process of approximating EU directives in this field, adopting precise European standards and discontinuing GOST (former Soviet) standards has been a long one, but it shows clear signs of acceleration.

As regards food safety, Moldova is embarking on a comprehensive strategy for applying EU sanitary and phytosanitary regulations, which should take around two to four years to implement. This will in due course assure high health and safety standards for Moldovan consumers, as well as position Moldovan enterprises to export to the EU and other international markets. Institutional weaknesses of the key government agency (ANSA) remain, particularly at the local level. The costs of the adoption of safety standards and related bureaucratic burdens constrain the growth of the agri-food output and the diversification of exported foodstuffs of animal origin.

A competitive and diversified service sector is of huge importance for Moldova’s economy. The Agreement involves more
liberalisation and fewer reservations on the Moldovan than the EU side. Moldova has made significant progress towards bringing its public procurement system into compliance with EU, but serious implementation problems remain, in particular with electronic procurement. In relation to intellectual property rights, the legal framework is largely consistent with international rules as well as those of the EU, but enforcement similarly needs strengthening. Moldova largely complies with the DCFTA requirements on competition policy, but the institutional capacity of the Competition Council needs reinforcement.

An agreement was reached with the Transnistrian region for it to be partly covered by the DCFTA from January 2016, allowing its products to have tariff-free access to the EU market. This could also become a step in the direction of reunifying the country. Still, the agreement is rather fragile and its sustainability is uncertain since the region is following a very different geopolitical course. Nevertheless, exports from the region to the European market increased, while the volume of goods going to Russia gradually declined.

**Part III. Economic Cooperation**

The chapters under this heading are numerous, and they vary greatly in terms of the extent of legal obligations and their economic importance. This summary highlights a selection of the most important cases.

As regards the macroeconomic context, after the huge initial losses at the beginning of the post-Soviet transition it was not until 2000 that Moldova’s economy began to recover. But then it was hit hard by the global economic crisis of 2009. In 2010, Moldova began to emerge from the crisis with renewed growth. In late 2014, however, a major bank fraud – incurring losses of 16% of GDP – coupled with drought and a difficult regional environment (economic crises in Ukraine and Russia, and slow economic growth in the EU) caused a further loss of GDP in 2015.

The economy has begun to recover from these severe macroeconomic shocks, as reflected in positive growth of 4.1% in 2016 and 4.5% in 2017, which is expected to continue in 2018. The slow pace of structural reforms and progress in improving the business climate, however, including doubts over the rule of law, prevent the economy from moving onto the fast-growth track that could translate into a perceptible improvement in living standards.
The EU has traditionally supplied significant technical and financial assistance to Moldova, including budget grants and major investment from the EIB and EBRD. In 2015, however, amid bank fraud and the slow pace of reforms, Moldova’s development partners (including the EU) suspended financial assistance until the government showed clear evidence of reforms. A new loan and grant package for €100 million was agreed in principle in 2017, but first disbursements have been held up pending compliance with specific sectoral conditions.

See Table S.3 for an overview of EU-Moldovan economic cooperation.

**Table S.3. Overview of EU-Moldovan economic cooperation**

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<th>14. Macroeconomics</th>
<th>Recovery of macro growth underway; macro-aid conditions not met</th>
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<td>15. Financial services</td>
<td>2014 bank fraud still not resolved; governance reforms proceed slowly</td>
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<tr>
<td>16. Transport</td>
<td>Fast growing sector for air and road; extensive approximation underway</td>
</tr>
<tr>
<td>17. Energy</td>
<td>Approximation advances; de-monopolisation of gas and electricity difficulties</td>
</tr>
<tr>
<td>18. Environment</td>
<td>Approximation advances; implementation still weak</td>
</tr>
<tr>
<td>19. Digital</td>
<td>ICT usage advances rapidly; approximation advances</td>
</tr>
<tr>
<td>20. Consumer protection</td>
<td>Approximation advances, institutional capacities to be enhanced</td>
</tr>
<tr>
<td>21. Company law</td>
<td>Corporate governance reforms badly needed, but delays in legislation</td>
</tr>
<tr>
<td>22. Agriculture</td>
<td>Agri-food exports to EU grow; big challenge to enhance productivity</td>
</tr>
<tr>
<td>23. Employment/social</td>
<td>Approximation well advanced; liberalisation of labour code suspended</td>
</tr>
<tr>
<td>24. Education, culture</td>
<td>Educational standards weak; Erasmus programme useful</td>
</tr>
<tr>
<td>25. Science, technology</td>
<td>Research capacities weak; useful participation in Horizon 2020</td>
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Until recently, Moldova’s banking and financial market seemed, if underdeveloped, at least sound in its basic functions. Yet it was hit by the discovery of extensive bank fraud in 2014, resulting in the liquidation of three major banks. It is highly disturbing that the investigation into who stole the assets and who is responsible for their recovery continue so slowly and inconclusively. While under the 2016 IMF agreement the financial and banking sector went through considerable transformation, the corporate governance-related reforms are still badly needed, achievable through comprehensive approximation to EU regulatory norms.

The DCFTA sets out the EU’s detailed rules and regulations for most modes of transport (road, rail, inland waterways, sea and intermodal). Reforms along these lines are progressing. The EBRD, EIB and European Commission are funding major investments in transport infrastructures and adopting a more conditionality-driven approach with a focus on advancing the sectoral reforms.

The legal provisions of the Agreement and DCFTA in the energy sphere largely consist of commitments made under Moldova’s accession to the Energy Community Treaty in 2010, including the EU’s Third Energy Package. Compliance with these provisions is proceeding unevenly. The independence of Moldova’s regulatory body on energy (ANRE) continues to be judged as inadequate by the Energy Community Secretariat. The Moldovan market for both gas and electricity is currently dominated by Russian companies (Gazprom and Inter RAOUES, respectively). Projects for de-monopolisation and diversification are being developed through network connections with Romania for both gas and electricity and privatisation of some gas assets with the participation of Romanian companies. But these can advance only with a combination of European funding and effective liberalisation of the market.

Moldova’s environmental policy is being aligned with EU legislation, although insufficient financial and human resources cause difficulty and delay. Environmental investment projects are being funded by the EBRD, EIB, the European Commission and some member states. Serious risks to the sustainability of the Dniester River may result from Ukraine-Moldova agreements on increasing energy production, which severely contradict the EU’s environmental acquis.

The broad digital sector is growing rapidly and represents a vital part of economic reform and modernisation in Moldova. The Agreement provides for comprehensive alignment with EU regulatory practices within one to seven years, but progress here is
rather slow. A large IT infrastructure of online public services and facilities for investment in the IT sector have been developed. However, they lack penetration at the level of local administration and among the rural population.

Moldova has considerable potential for agricultural development, and its agri-food exports to the EU are now growing. The major challenge is to enhance the currently low level of productivity in the sector and its vulnerability to natural disasters. Moldova has adopted an extensive programme for replicating many technical elements of EU farm policy, which seems to be overly ambitious. There are substantial EU technical assistance and funding projects to support the process, with grants from the EU and capital from the EIB.

Moldova has developed an elaborate legislative and institutional framework for governing the labour market, which for the most part corresponds to EU standards and those of the International Labour Organization. More attention has to be paid to its practical application by improving the Labour Inspection service and reducing informal employment. Political negotiations over a revision of the Labour Code, intended to introduce liberalising reforms, are currently at an impasse. Other domains for legislative approximation include company law and consumer policy.

Moldova’s educational performance has not improved substantially in recent decades. Basic educational reforms are supported in the Association Agreement, notably for higher education through the ‘Bologna process’, and with concrete programmes like Erasmus+, which benefits a large number of Moldovan students.

There are extensive possibilities for Moldova’s inclusion in the EU’s agencies and programmes, with the potential to develop institutional capabilities and advance policy reforms. For example, in 2014 there was agreement on Moldova becoming a full participant in the EU’s main research programme, Horizon 2020.

Moldova’s borders with Romania and Ukraine create opportunities for business, social and cultural cross-border exchanges at the regional level. The EU contributes funding to cross-border cooperation initiatives.

The EU also supports Moldovan civil society organisations as drivers of democratic change. In 2017, the Government sought (unsuccessfully) to introduce measures that would have undermined their role. Due to the low credibility of the government, civil society
turned into a vital partner of the EU in supporting the implementation of the Association Agreement.

**Part IV. Legal and Institutional Provisions**

A comprehensive and joint institutional framework, centred on the Association Council, will monitor the implementation of the Agreement and provide a platform for political dialogue. Implementation of the Agreement is supported by well-defined dispute settlement mechanisms. These provisions now function in a regular manner. The Association Council met for its fourth annual meeting on 3 May 2018, and issued joint conclusions stressing the importance of the structural reforms in key areas, sound rule of law and anti-corruption policies, an effective multi-party system and inclusive decision-making process, and strengthened bilateral cooperation in the security area.

**Overall assessment**

Our overall assessment presents a mixed picture.

On the positive side, macroeconomic growth has resumed after a period of seriously damaging economic shocks. Exports to the EU are also growing quite rapidly, and now account for 66% of the country’s total exports, as the DCFTA begins to take effect. This positive export performance should continue as the EU market itself is growing, and there is a high assurance of reliable and open market opportunities. By contrast, Russian sanctions against Moldova have been damaging, notwithstanding some very small gains acquired due to the rapprochement with Russia by the new pro-Russian President, Igor Dodon.

There is also broad engagement in the very ambitious programme of approximation on EU regulations under the Association Agreement and DCFTA. Yet there are difficulties here, with quite extensive slippage in the timetables for legislation, and more fundamental weaknesses in the implementation capacities of the public and private sectors.

In part, these weaknesses have to be seen as inherent in the challenge of economic and societal development, starting from a relatively low starting point. However, the badly needed advancement in productivity and living standards is being held back by grave defects in Moldova’s governance and rule of law. There are too many instances where the government has failed to push through
reform measures, including its fight against corruption, or attempted to adopt counter-reforms. It has even failed to act credibly in response to the major bank fraud of 2014, where those criminally responsible remain to be identified and prosecuted. These failings have a depressing impact on potential foreign investment, which could in principle become a major driver of fast economic growth. In addition, there is the problem for potential investors of strategic uncertainties resulting from the divergent geopolitical discourses of the President and the Government.
PART I.

POLITICAL PRINCIPLES, RULE OF LAW, AND FOREIGN POLICY
1. Political Principles

Provisions of the Agreement

The entire Association Agreement is premised on a common commitment to modern European democratic political values, recognised in the preamble:

[T]he common values on which the European Union is built – namely democracy, respect for human rights and fundamental freedoms, and the rule of law – lie also at the heart of political association and economic integration as envisaged in this Agreement.

These principles are repeated in Art. 2 and are declared “essential elements” of the Agreement. This links up to Art. 455, which states that in the case of violation of these principles the Agreement may be suspended. Political dialogue and cooperation on “domestic reform” should be conducted with respect for these same principles (Art. 6). This political dialogue is conducted through regular meetings at different ministerial and senior official levels.

On the substantive implementation of the basic principles, the jointly agreed Association Agenda text of 26 June 2014 is more explicit. Priority matters for action include institutional questions guaranteeing democracy, the judicial sector, and human rights and fundamental freedoms. These challenges are addressed in considerable detail in the Agenda.

Democratic institutions. The Association Agenda sees the strengthening of the institutions as essential to guaranteeing respect
for democracy and the rule of law. There is a specific call for a comprehensive revision of the constitution to clarify the competences of the president and to prevent potential conflict through institutional deadlocks. Furthermore, Moldova has committed itself to clarifying the appointment procedures and competences of the Constitutional Court, and to upgrading the legislation on party financing and advancing decentralisation.

**Judicial sector.** To ensure the impartiality of the judiciary, prosecution and law enforcement bodies, and their freedom from political interference and corruption, Moldova is expected to ensure the independent functioning of the National Anti-corruption Centre, review the appointment procedures of judges, strengthen the independence of the judiciary, establish zero tolerance of corruption for the legal profession, and reform legislation of the prosecutors, judges and lawyers. In a subsequent statement the EU stresses the urgent need for key reforms: “The reform of the judicial sector and the fight against corruption need real decisive action. It will be moreover crucial for the new government to act resolutely on the serious crisis in the banking sector.”

**Human rights and fundamental freedoms.** In the Association Agenda, Moldova has committed itself to ensuring the rights of the most vulnerable groups and national minorities, implementing the Law on Ensuring Equality, and guaranteeing the effective implementation of the judgments of the European Court of Human Rights. In the latest EU–Moldova human rights dialogue, the EU “encouraged the Moldovan government to ratify the European Charter for Regional or Minority Languages as well as to adopt a national strategy dedicated to national minorities”.

The Association Agenda addresses freedom of expression and focuses on the freedom and pluralism of media, and protection of journalist sources. It also envisages the protection of children’s rights and guarantees the implementation of legislation to prevent domestic violence. In an effort to improve gender equality, Moldova is expected to ensure equal treatment in social, economic and political life, and in decision-making.

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Implementation perspectives

The constitution. According to the constitution of 1994, Moldova is an independent, sovereign and indivisible state. The country must be governed according to the supreme values of the rule of law, democracy, human rights and fundamental freedoms, justice and political pluralism. Moldova has a parliamentary form of governance, with limited presidential powers. This is a result of the contested constitutional reform carried out through Law No. 1115-XIV of 5 July 2000, which ended the semi-presidential form of governance. The changes established that the president be elected by a large majority of the members of parliament (61 out of 101 votes or three-fifths of the total number of MPs); failure to elect a president requires new elections in the national assembly. In March 2016, the Constitutional Court declared the changes introduced in 2000 unconstitutional and established direct presidential elections by the citizens. The elections held in October-November 2016 resulted in the victory of an openly pro-Russian candidate. This sparked tensions between different branches of power - the pro-EU-oriented government and parliamentary majority, and the pro-Russia presidential office.

In October 2017, the Constitutional Court allowed the possibility of a “temporary suspension” of the President, if he refused to fulfil his constitutional obligations, in particular the promulgation of laws. The same ruling entitled the Prime Minister or the Speaker of the Parliament to temporarily assume the role of the President on specified issues. Furthermore, in October 2017, with the temporary suspension of the President, the parliamentary majority appointed the Defence Minister, renewed the government’s composition and in January 2018, adopted the anti-propaganda legislation. Under these circumstances, the Court started to reshape the political environment through its rulings, indirectly disadvantaging the opposition in many respects.

The democratic institutions are generally perceived to be fragile because of the strong influence of oligarchic groups. The politicisation of the institutions (ministries, agencies, local public administrations,  

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4 See the Constitutional Court’s decision of 4 March 2016 (www.constcourt.md/libview.php?l=ro&idc=7&id=759&tl=/Prezentare-generala/Serviciul-de-presa/Noutati/Curtea-Constitutionala-a-restabilit-dreptul-cetatenilor-de-a-si-alege-Presedintele).
etc.) is widespread. It covers various areas, but in particular law enforcement, prosecution and the anti-corruption institutions. This phenomenon has seriously undermined the rule of law and good governance, particularly since July 2009, when the institutions started to be partitioned in line with the political weight and interests of governing political parties.

**Political parties.** The political system is dominated by two types of political parties: those subordinated to local oligarchic groups and those suspected of being financed by external sources (Russia). To ensure a fairer and more competitive environment for political parties, the authorities passed Law No. 36 of 9 April 2015\(^5\) (on financing political parties), which introduces the possibility of financing political parties through individual contributions as well as public funds (up to 0.2% of the state budget revenues). Of the public funds, 50% should be provided proportionally to performance in parliamentary elections and 50% in relation to local elections. Allocations should be envisaged in the annual budget law, which also provides for the improvement of reporting on electoral campaign expenses and capping donations from individuals and business representatives. The law also prohibits the use of funds earned abroad, which affects the right of Moldovans abroad interested in funding political parties during the electoral campaigns. In line with this law and according to the annual budgetary laws, the Central Electoral Commission approved the allocation of about MDL 39 million in 2016 and MDL 40 million in 2017 for political parties based on the results of national and local elections in November 2014 and June 2015, respectively. Political parties with legal status that participated in the elections are eligible to access state subventions. Independent candidates are not eligible.

**Electoral processes.** Although the electoral process is competitive, it is marred by irregularities that prevent it from being considered truly fair and free. Since the declaration of independence, Moldova has organised eight national parliamentary elections: five regular elections and three early elections on account of the inability of parliament to elect the president. Moldova held direct presidential elections in 1996 and 2016. The OSCE reported that the latest early parliamentary elections of November 2014 were marred by irregularities. Among the main concerns, the OSCE underscored the

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following problems: deficiencies of the new electronic system for processing voters, political interference in the mass media and the exclusion of one party from the elections (Patria).\(^6\) The OSCE made various comments on the local elections of June 2015, notably regarding unbalanced media coverage, legal inconsistencies and the independence of the Central Electoral Commission.\(^7\)

Numerous earlier objections raised by the OSCE remained pertinent in the presidential elections of October/November 2016, in particular regarding the verification of signatures, the financing of the electoral campaign, unbalanced media coverage, etc. The ruling of the Constitutional Court of December 2016 confirmed some of these deficiencies. It also emphasised that the supporters of the Russia-subordinated Moldovan Metropolitan Church committed abusive interference in the presidential electoral campaign and used “extremist, xenophobic, homophobic and sexist language against a candidate”. Additionally, the Court objected to the lack of legal actions sanctioning the religious cults for electoral interference.\(^8\)

In 2017, civil society organisations requested the creation of a Working Group to amend the Electoral Code, taking into account recommendations by OSCE and the Office for Democratic Institutions and Human Rights on the previous parliamentary elections. The Central Election Commission undertook to extend the online registration period for voters from abroad in order to increase the number of registered voters and improve the transparency of the process.\(^9\) A preliminary feasibility study conducted with financial support from Norway and Sweden pointed out that Moldova implements the preconditions for a gradual introduction of electronic votes.\(^10\) However, there is a very little progress in establishing electronic voting, although the increasing level of emigration requires some urgent tools to facilitate voting by Moldovan citizens living


 abroad. The introduction of a State Register of Voters in 2014 led to some improvements of the electoral lists, but more efforts are needed to eliminate the problem entirely.

The introduction in April 2017 of the mixed-voting system by the Democratic Party supported by the Party of Socialists was seen as a major drawback for the national electoral system. This resulted in the creation of uninominal constituencies from which 51 MPs will be elected, including three from the diaspora, two from the Gagauzia Autonomy and two from Transnistrian region. The remaining 50 MPs will be appointed based on the previous party list principle. The Venice Commission advised against the new electoral system, in particular because it exposes local candidates to influence from the business people. The political preconditions of the EU’s macro-financial assistance promised to Moldova in November 2017 also referred critically to the changed voting system. As a result of the contested decision by the Moldovan courts to invalidate the mayoral elections in Chisinau that took place in June 2018, the European Parliament promptly passed a Resolution advocating suspension of macro-financial assistance for which a tranche had been scheduled for July 2018.

The excessive use of government resources, vote-buying practices and disproportionate access to mass media constitute the main factors that distort the outcome of elections, combined with the effective powers of political parties supported by the oligarchic groups. Geopolitical factors continue to have a divisive effect on elections, with voters choosing between pro-Western and pro-Russian political parties.

**Human rights.** Moldova has adhered to the European Convention on Human Rights and Fundamental Freedoms and must implement the rulings of the European Court of Human Rights (ECHR). Overall, the number of cases filed against Moldova in Strasbourg decreased to 758 in 2017 from 1,354 in 2013 and 1,011 in 2015. The number of applications filed against Moldova between 11 See the Central Electoral Commission, Press release, 24 May 2016 (http://cec.md/index.php?pag=news&id=1042&rid=15359&l=ro).


13 See Legal Resources Centre of Moldova (http://crjm.org/en/category/publications/).
1998 and 2017 totals 13,400, of which 1,348 are still pending. Moldova ranked at fourth place in terms of its number of applications per capita in 2017. By December 2017, the ECtHR had issued 354 rulings on Moldova,\(^{14}\) costing approximately €17 million.

The most common infringements refer to pre-trial procedures and conditions of detention, the prohibition of inhuman or degrading treatment and torture, and the lack of effective remedy. The Strasbourg Court also ruled on judgments linked to the violation of the freedom of expression, freedom of religion and the prohibition of discrimination. Up until January 2018, 13 judgments concerned the Transnistrian region and charged both Moldova and Russia with breaching the right to education, the right to life, the prohibition of inhuman or degrading treatment, and the right to liberty and security.\(^{15}\) However, the majority of these rulings have not been executed.

Significant progress has been made in the enforcement of ECtHR judgments and fulfilment of the European Convention on Human Rights, however, and also in the activity of mediators to promote the inclusion of people with disabilities, and victims of torture and ill treatment. Although the authorities have undertaken measures to fight discrimination, this remains a serious problem regarding the poor, those who are HIV-positive or LGBT, Roma and women.

Since 2016, the National Council for the Prevention of Torture has been active. It is presided over by the Ombudsman. The competences of the Council are limited to performing field visits and issuing recommendations. It lacks any enforcement mechanism and adequate financial resources for the members of the Council.

A newly established Council on the Prevention and Elimination of Discrimination started examining cases in 2013. Although the Council is very active, with approximately 140 decisions issued on discrimination cases only in 2016, it is severely limited in its mandate. The legislation does not allow the Council to apply sanctions, nor can it lodge complaints to the courts. This gives its decisions merely a declarative or prescriptive character. Additionally, the Council faces institutional shortcomings and a high turnover of personnel.

\(^{14}\) See ECtHR (http://echr.coe.int/Documents/Annual_report_2017_ENG.pdf).

\(^{15}\) See www.echr.coe.int/Documents/CP_Republic_of_Moldova_ENG.pdf.
According to its 2016 activity report, the areas of discrimination reported were access to public services (49%), the labour market (25%), damaging personal dignity (13%), access to justice (8%) and education (6%). A new draft law increasing the competences of the Council was drafted in 2017, but there are doubts whether this will empower the Council. Some amendments to the Criminal Code and Code of Administrative Offenses concerning violence targeting an individual’s sexual orientation and sexual identity were proposed, but they have not yet been approved.

According to a poll carried out by the Council together with local and Romanian NGOs in 2014, the Moldovans who suffer discrimination the most are the poor (31.9%), the elderly (28.8%) people with mental disabilities (25.7%) or physical disabilities (23.9%), and sexual minorities (19.9%).

There have been some attempts to improve the integration of people with disabilities, who number about 610 persons out of 10,000 citizens according to the 2014 national census. Their political rights are gradually improving; 80% of persons with disabilities participated in the 2016 presidential elections. Important changes took place in May 2015, when the law amending the Electoral Code was passed, giving people with mental disabilities the right to vote. The Civil Code also requires changes by offering people with mental disabilities the right to take decisions by themselves. However, disabled people face continued discrimination, poor integration into the labour market, difficulties in accessing public spaces (schools, hospitals, public administration, etc.), particularly in rural areas, and limited protection of their rights in the courts (e.g. people with a mental illness).

Members of this social group rely excessively on state allocations and family support, and have overall limited resources to actively take part in public life.

A new National Human Rights Strategy for 2018-22 was approved at the end of 2017 aimed at facilitating access to justice,

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18 See the “Report on preventing and combating the discrimination in Moldova 2015” (www.egalitate.md/media/files/Raport%20general%202015.pdf).
promoting equality, protecting the rights of people with disabilities and of citizens belonging to minorities and originating from the Transnistrian region, etc. However, the Strategy lacks an effective mechanism for institutional planning and coordination and has no assurance of adequate budgetary allocations.

**Gender equality.** With regard to gender equality, major changes will be implemented as a result of Law No. 180 of 15 May 2014, adopted in April 2016. The law introduces amendments to the Electoral Code, the Law on Government and the Parliament Regulation setting a minimum of 40% women represented on the electoral lists of political parties, the composition of the government and in the permanent bureau of the elected parliament. It also requires the amendment of advertising and mass media legislation, prohibiting sexist messages and images. In addition, it changes the legislation on healthcare protection, labour and detention, and improves women’s conditions. All these provisions are in line with best practices promoted by the Council of Europe and the EU.

Moldova adopted the law to join the Council of Europe’s Convention on preventing and combating violence against women and domestic violence in February 2017, but it must now complete the ratification procedure. Previous legislation of July 2016 introduced numerous provisions aimed at protecting the victims of violence. According to the National Action Plan for the Association Agreement implementation in 2017-19, the National Justice Institute should carry out training courses on the prevention of domestic violence for judges. The Inter-Ministerial Coordinating Council on preventing and fighting domestic violence meets with civil society representatives to examine and coordinate actions concerning the pressing issues.

**Inter-ethnic relations.** The strategy for the Consolidation of Inter-Ethnic Relations approved in February 2017 promotes ethnic diversity and measures to integrate ethnic minorities into public life in a non-discriminatory way. According to the 2004 census, minorities account for about 23% of population. Delays in the implementation of the Strategy caused reactions from the OSCE High Commissioner on National Minorities, who in November 2017 urged the authorities to adopt the Action Plan and allocate financial support, particularly for programmes teaching the state language to minorities. The integration of the Roma minority takes place under the Action Plan for supporting the Roma people of Moldova (2016–20), adopted in June 2016. Financial resources are the main constraint in the
implementation of the strategic documents on inter-ethnic dialogue, and more specifically on integration of Roma people.

**Political principles at a glance**

Democracy, respect for human rights and the rule of law are deemed “essential elements” of the Association Agreement, on which the Association Agenda text is more detailed.

Respect for democracy and rule of law in Moldova is seriously damaged by the politicisation of the institutions and the strong influence of oligarchic groups.

Reinstated direct voting for the president of the country in 2016 intensified the geopolitical disputes between different branches of power.

Moldova’s human rights record is improving, but significant problems remain, in particular in efforts to eliminate all forms of discrimination (against women, minorities, the poor, persons with disabilities and the elderly).

The human rights situation in the Transnistrian region is not improving, with violations of the right to education, the prohibition of degrading treatment, and the right to liberty and security, as reflected in judgments of the European Court of Human Rights.
2. **RULE OF LAW AND MOVEMENT OF PEOPLE**

This chapter treats two sets of partly related issues: first, the fight against organised crime, corruption and terrorism; and second, border management and the movement of people, in particular the issue of visa-free travel between Moldova and the EU. Combating corruption remains the most pressing cross-sectoral issue of the Association Agreement.

*Justice system.* The Justice Sector Reform Strategy for the years 2011–16, extended until 2017, changed various technical elements of the juridical system: salaries for judges were increased as also were the number of court staff; judicial hearings started to be recorded and streamlined and an improved system of randomly assigning cases was introduced, ensuring access to schedules and judgments of the courts. However, the reform failed to substantially improve the integrity of judges and the leadership of the key judicial institutions. The Centre for Reform of the Judicial System (CRSJ), established in 2015, seemed to deviate from rather than implement the reforms prescribed by the 2011-16 strategy.

The EU Delegation and civil society organisations complained that the CRSJ\(^{19} \) has not ensured sufficient transparency and public consultation in preparing a series of draft laws. Acknowledging that

the 2011-16 strategy fell flat, the Minister of Justice proposed in January 2018 a series of measures to revive the justice system. On the one hand, the proposal refers to the following: obligatory verification of the assets and revenues of the judges by the National Authority of Integrity; merit-based promotion of the judges during the selection; increasing the competition by introducing periodic contests among judges; operating constitutional amendments aiming at easing the contest for entering the Superior Court of Justice; and dismissing any judge who fails the integrity check. On the other hand, the measures seek to make the Superior Council of Magistracy more accountable and less influential in deciding the career trajectories of judges. In addition, the infrastructure of the courts of appeal should improve, reducing the burden of the court in Chisinau that is responsible for examining some 45% of files nationwide.\(^\text{20}\) In parallel, a new Justice Reform Strategy for the period 2018-21 is in the process of being drafted and was proposed for public consultations in early 2018.

To date, the EU has invested approximately €30 million of €60 million intended for reform of the judicial system. Because of insufficient progress in reforming the justice sector in 2014-15, the EU decided to annul the remaining amount (€28 million) of budgetary support,\(^\text{21}\) confirming the hard realities faced in reforming the justice system.

**Reforming the Prosecutor’s Office.** The Justice Sector Reform Strategy led to a new Law on Prosecution adopted in February 2016, after numerous delays in 2015. The law refers to the functioning of the General Prosecutor’s Office and of the Superior Council of Prosecutors, along with the appointment, transfer and promotion of prosecutors, and reduced layers of hierarchy. It also provides for the President to appoint the prosecutor general, upon the proposal of the Superior Council of Prosecutors, as opposed to the current appointment by the parliament. The prosecutor’s mandate will now last for seven years instead of five. The law entered into force on 1

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August 2016, but in order to make it fully functional, secondary legislation and the law on specialised prosecutor offices still need to be adopted. A new General Prosecutor was appointed in December 2016, in line with new prosecutor legislation and the amended constitution, while overlooking controversial information about his assets. Various civil society organisations questioned the fairness of the selection competition and associated the new prosecutor with perpetrators of the violence amidst 2009 youth unrest, and the 2012-14 banking fraud.

The fight against corruption, crime and terrorism

Several chapters of the DCFTA have a direct bearing on the fight to reduce corruption, for example, on competition and public procurement policies. While the Agreement deals with corruption only in brief and declaratory terms, the Association Agenda document refers to the need to implement an anti-corruption strategy and improve the functioning of the NAC and the National Authority for Integrity.

According to independent sources, Moldova’s record in the fight against corruption is poor. For instance, the Transparency International Perception Index for 2016 ranks Moldova in 128th place out of a world total of 176 countries. Georgia and Ukraine came in at 44th and 135th place, respectively. As detailed below, there has been considerable legislation and institutional development aimed at curbing corruption, but these have not yet translated into convincing results.

The biggest corruption scandals of the last few years have related to deep problems in the banking sector and the implication of offshore companies, questions about the integrity of judges and political corruption surrounding members of parliament.

According to an assessment of perceptions among professionals in the judicial sector, between 2011 and 2015, corruption increased significantly among lawyers (42%) and prosecutors (26%), and less among judges (5%). Corruption was found to be highest among
lawyers, judges and prosecutors at the Courts of Appeal (30-54%), and lowest at the Superior Council of Magistracy (11-21%).

The authorities have been implementing national anti-corruption strategies since 2004. The newest one, adopted in March 2017, foresees actions for the period 2017-20. It introduces various notions on integrity, such as political, institutional and private sector integrity, and unifies all the national policies relevant for fighting corruption and ensuring integrity. The Strategy provides a new holistic approach in tackling and preventing corruption, based on the Transparency International methodology in assessing the national integrity system. The measures relate to eight pillars of actions, which refer to Parliament, Government, the public sector and local public administration, justice and anticorruption authorities, Central Election Commission and political parties, Court of Accounts, Ombudsman, private sector, and civil society and media.

Since 2012, the National Anti-corruption Centre has been authorised to conduct preventive, operational, investigative and integrity testing activities; to carry out anti-corruption screening of draft legal acts; to develop and implement integrity plans and to monitor anti-corruption policies, research and studies. Its institutional independence is frequently questioned by civil society and opposition due to political interference in the appointment of the head of the Centre, and the presumably selective approach it applies in investigating corruption cases. The independence and accountability of the NAC have been also subject to political disputes within the latest ruling coalitions, which returned supervision over the Centre to the Parliament in 2015.

Since 2016, the National Authority for Integrity, which replaced the old National Integrity Commission, has been undergoing institutional reforms. Although intended to strengthen its institutional independence and expand the competences of the Authority, the slow pace of reform practically blocked its activity for about two years. This seriously affected the issuing of assessments on the declarations of

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22 Derived from the Legal Resources Centre from Moldova, “Perceptions of judges, prosecutors and lawyers on justice reform and fight against corruption”, December 2015.

income and interests that are obligatory for the public officials under the new vetting rules. This agency has so far proved to be ineffective: only two penal cases have been brought to the court, and just 17 cases resulted in the application of administrative and disciplinary sanctions.\(^{24}\)

In early 2018, the Authority’s activity was gradually revived after the new leadership was appointed in late 2017, with a focus on selecting integrity inspectors and defining its internal regulations. With the introduction of the mixed-voting system in spring 2017, the Authority is going to issue integrity certificates to the electoral candidates for uninominal constituencies. An e-integrity information system for the submission of declarations of assets and interests has been functional since January 2018.

The integrity system relies on an Electronic Register of persons required to submit declarations. In 2016–17, 610 criminal cases on corruption were finalised by the National Anti-Corruption Centre (NAC), of which 278 cases involving 348 persons were submitted to the courts. The most affected areas were justice and home affairs, the private sector, public administration and public funds. In 2016-17, four cases of corruption involved ministers and deputy ministers, 10 referred to judges, 17 to mayors, 43 to heads and deputy heads of autonomous public institutions and state organisations, 34 customs public servants, 45 police officers, etc. The courts imposed sentences in 90% of the cases, of which about 69% were penal fines (on average about €2,000). Prison sentences were ruled in only 19% of the cases, while 35% were prison sentences with suspension.\(^{25}\)

An important reform was started in 2016, devoted to the prosecution. The distinction between petty and high-level corruption was established, alongside a specialised agency to target high-level corruption – the Anticorruption Prosecution Office (APO). It is subordinated to the General Prosecutor, but has a separate budget and personnel, thereby ensuring its independence. Contrary to the initial concept, however, the mandate of the APO was extended with

\(^{24}\) See the Progress report of the National Integrity Commission for 2013-2015, (www.ani.md).

additional competences for investigating cases of petty corruption and to present them in courts. This meant also a partial overlap with the activities of the National Anti-Corruption Centre. As a result, the anti-corruption prosecutors have been diverted from investigating high-level corruption cases; in 2016 more than 75% of cases carried out by the APO were petty corruption cases.26

A report issued by the EU in December 201727 underlines that the transposition of the 4th EU anti-money laundering Directive is making slow progress. This same is observed for the Agency for the Recovery of Criminal Assets (ARCA), set up in May 2017, but which by February 2018 was still understaffed and without any clear regulation of its activity.

Regarding cooperation over crime, in 2015 the agreement on operational and strategic cooperation between Moldova and Europol, signed in December 2014, was ratified. The SIENA system for sharing information used in trans-border crime investigations between Moldova and Europol has been operating since April 2015. With the support of Europol, Moldova took part in two operations during 2015: one to combat the illicit trafficking of cars (‘Hit 2-BLUE AMBER’) and the other targeting human trafficking and illegal migration (‘BLUE AMBER-SIROCCO’).

Moldovan embassies benefit from Anti-terrorism Guidelines, enforced by the Ministry of Foreign Affairs and European Integration. The Moldovan authorities take part in the Counter-Terrorism Network under the Police Cooperation Convention for Southeast Europe, established in December 2014.

**Movement of people and border management**

The Agreement sets the stage for comprehensive dialogue and cooperation on legal and illegal migration, trafficking and smuggling of people, border management, asylum, return policies and movement of people.

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The latter is dealt with only in summary terms in the Agreement itself, but the Visa Liberalisation Action Plan (VLAP) goes into much more detail. Moldova was required to fully implement the visa ‘facilitation’ and ‘readmission’ agreements and took gradual steps to qualify for visa ‘liberalisation’ (i.e. visa-free travel to the EU). To this end, Moldova implemented measures under four headings: i) document security, including biometric passports; ii) integrated border management, migration management and asylum; iii) public order and security; and iv) external relations and fundamental rights. The VLAP was applied in two phases: i) legislation and institutional arrangements, followed by ii) implementation. Following a series of progress reports, the European Commission finally concluded in November 2013 that the necessary conditions for visa-free travel to the EU for short stays for holders of biometric passports could begin, effective in April 2014.

Document security and biometric passports. According to the available data,\(^\text{28}\) at the end of 2017, about half of the population (1.5 million) were in possession of biometric passports. In addition, the number of those with biometric passports from the Transnistrian region had increased since visa liberalisation to more than 100,000 (representing approximately 20% of the region’s population). Biometric passports can be easily obtained across the country within short waiting periods, by application both in person and online (e-services). The price for a passport issued within 30 days is €39 (MDL 850), or €77 within 24 hours. In the first three years of the visa-free regime with the EU, more than 1 million Moldovans travelled more than 3 million times to Schengen countries, avoiding expenditure on Schengen visas that in the preceding year cost travellers a total of about €35 million.

The number of Moldovan citizens who have reclaimed Romanian citizenship (and therefore gained EU citizenship) was estimated to be more than 300,000 by 2014.\(^\text{29}\) Unofficial figures indicate a higher number of more than 500,000 Moldovans with Romanian citizenship, many of whom have Romanian passports and/or IDs. The Romanian authorities do not provide official statistics on these individuals.

\(^{28}\) See the Centre for State Information Resources, REGISTRU.

Personal data protection is regulated by Law No. 133 of 8 July 2011. The National Centre for Personal Data Protection is responsible for monitoring and supervision. In 2014, the Centre performed 93 investigations in response to citizens’ complaints. Out of 174 checks, 55 cases were ruled as legal infringements. Consultations on a new law on personal data protection were launched in October 2017. Although the aim of the draft law is to strengthen the institution’s operational capacity, it also raised concerns about widening the agency’s competences without ensuring control over its activity. The Centre may obtain the right to interfere in the activity of public authorities or business entities without the need for a reasonable suspicion or a judicial control procedure. Reviewing the draft law in late 2017, the Council of Europe indicated that some provisions are inconsistent with the EU acquis, and that the procedure for receiving complaints and their settlement is highly questionable in terms of its effectiveness. The draft law is scheduled to be adopted by the end of 2018.

Integrated border, migration management and asylum. In December 2015, the Border Police approved a plan to handle potential migration flows linked to the refugee crisis that hit Europe in that year. The relevant Moldovan authorities participated in the project called ‘Fighting irregular migration’ during 2013–15 financed by the EU (€1.2 million), within the programme for supporting Moldova’s implementation of the VLAP. In November 2017, the EU decided to allocate budgetary assistance of €21.5 million, including for the implementation of VLAP. In the EU Council Conclusions of 26 February 2018, the EU emphasised the need to pay special attention to the further implementation of the anti-corruption and anti-money laundering measures foreseen in VLAP.

A National Strategy concerning migration and asylum for 2011–20 is currently being implemented with the aim of ensuring a comprehensive management of migration and asylum processes and

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30 See the report of the National Centre for Personal Data Protection for 2014.
31 Opinion of Maria Michaelidou and Nevena Ruzić, experts of the Council of Europe, on the compliance with the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) and other European standards.
harmonisation with relevant international and European legislation, including a better regulation of migration flows. The strategy focuses on emigration and immigration, (re-)integration, asylum and stateless people, etc. The Strategy for employment of 2017-21 requires the authorities to facilitate the integration of the immigrants into the labour market. Their number doubled to 4,204 persons between 2009 and 2014, but the number of work permits issued to foreign citizens (11,000 persons) decreased by a quarter in 2014 comparing to 2009.

The EU’s First Report on the Visa Suspension Mechanism of December 2017 shows that the number of entry refusals of Moldovan citizens and of illegal stays has risen to 4,660 and 7,660 cases respectively, while asylum applications also grew substantially to 3,675 applications.

**Public order and security.** The authorities have undertaken measures to increase the institutional and operational capacities of the Ministry of the Interior, at the central and local levels. These measures focus on operational and strategic planning, risk assessment, inter-institutional cooperation and digitisation of activities related to fighting criminality and ensuring public order, trans-border cooperation, etc. Cooperation agreements have been signed between the General Prosecutor’s Office and Eurojust, the Ministry of Internal Affairs and Europol, the National Anti-corruption Centre and the European Anti-fraud Office (OLAF). Moreover, there are various bilateral agreements between Moldovan law enforcement and prosecution institutions and their EU member state counterparts.

As noted in chapter 3 on foreign and security policy, the EU Border Assistance Mission to Moldova and Ukraine (EUBAM) oversees the segment between the Moldovan separatist territory of Transnistria, which borders Ukraine to the north and Moldova to the south. In April 2015, EUBAM was involved in a common border surveillance operation, called ‘Danubius’, covering the Ukraine–Moldova common border and focusing on fighting illegal migration, drugs, weapons, smuggling of tobacco and alcoholic beverages and combating extremist groups acting to destabilise the situation at the border. EUBAM also participates in activities related to risk assessments of human trafficking and illegal migration, and is
involved in the implementation of the National Integrated Border Management Strategy 2015.\textsuperscript{33}

\begin{quote}
\textbf{Rule of law and movement of people at a glance}

Reform of the justice system is failing to enhance the integrity of the judges, but it has improved some technical aspects of the justice system.

Moldova’s corruption problem is very serious and is not being overcome. An effective anti-corruption policy is universally considered a prerequisite for the overall success of the Association Agreement and Moldova’s economic future. Important steps are still needed to ensure the full institutional and operational capacities of the several anti-corruption bodies.

Moldova’s aim of obtaining visa-free access for its citizens to the EU was achieved from April 2014. More than half of the population possess biometric passports and can travel freely to Schengen countries, including approximately 20\% of the citizens of the Transnistrian region.

Border management is a matter of strategic significance for Moldova. The EU is intensifying the programmes in this area, contributing through the EU Border Assistance Mission.
\end{quote}

\textsuperscript{33} See EUBAM’s Annual Report for 2016.
3. FOREIGN AND SECURITY POLICY

The Association Agreement aims to facilitate the gradual alignment of Moldova’s foreign, security and defence policies with those of the EU at bilateral, regional and multilateral levels. These include areas covered by the EU’s Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).

The CFSP encompasses issues related to the strategic interests and objectives of the EU, the joint actions and common positions adopted by the Union and the procedures for implementing these actions and positions.

The CSDP may undertake a wide range of tasks, including humanitarian, conflict prevention and peacekeeping tasks, the deployment of combat forces in crisis management, disarmament operations and post-conflict stabilisation.

Conflict diplomacy. The parties aim to work together for the peaceful resolution of regional conflicts and reaffirm their commitment to the international canons of sovereignty, territorial integrity and the inviolability of borders in accordance with the Charter of the United Nations and the Helsinki Final Act of 1975. The Association Agreement restates the need for a sustainable solution of the Transnistrian conflict within Moldova’s territorial integrity and sovereignty, as well as the imperative of post-conflict rehabilitation.

Moldovan sensitivities. Moldova has consistently shown support for the EU’s CFSP/CSDP, while shaping its own position on sensitive matters of foreign policy. In 2015, Moldova aligned its position on 75% of the EU declarations and Council decisions, and on
71% in 2016, yet the country maintains its opposition to the recognition of Kosovo’s independence, bearing in mind the unresolved Transnistrian issue. Moldova has abstained from approving the EU’s economic sanctions targeting Russia (banks, energy companies and defence enterprises). It has also refrained from supporting the visa bans on Russian officials regarded as linked to the annexation of Crimea and the destabilisation of the eastern Donbas region of Ukraine. The Moldovan authorities did agree to join the travel bans and asset freeze sanctions against certain Ukrainian officials. Russian sanctions against Moldovan agri-food goods largely remained in place, except for the access to the Russian market offered to producers from pro-Russian territories, Transnistrian region and Gagauzian autonomy.

Another sensitive issue lies in the Eurosceptic views of President Igor Dodon, whose four-year mandate runs until December 2020. Although having in principle only ceremonial competences in foreign affairs, in 2017 Igor Dodon signed a Memorandum of Cooperation with the Eurasian Economic Commission and applied for observer status in the Eurasian Economic Union. In his view, cooperation with the EU can be combined with a dialogue with the Eurasian Union and a strategic partnership with Russia. One of his declared political goals is to review the Association Agreement in the parts related to foreign and security policy and trade liberalisation, invoking the neutrality status of Moldova and the need to protect the local producers, respectively.

**EU Border Assistance Mission (EUBAM).** The EU is continuing EUBAM efforts in Moldova and Ukraine, launched in 2005. Its mandate was extended five times; the latest one runs until 30 November 2020. EUBAM provides assistance to Moldova and Ukraine in coping with security issues related to the movement of people and goods across the Transnistrian segment of the Moldovan-Ukrainian border. The mission supports the Moldovan Customs Service in implementing the trade provisions of the Agreement regarding the elimination of customs duties and taxes, customs and trade facilitation, administration of tariff quotas, legal approximation in the customs area, and issues related to rules of origin. The mission’s

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activity includes combating illegal cross-border movements, with the broader aim also of contributing to the peaceful settlement of the Transnistrian conflict.

The mission is headquartered in Odessa (Ukraine), has an office in Moldova and five field offices – two on the Moldovan side of the joint border and three on the Ukrainian side. It plans to open an office at Chișinău airport. With a biennial budget of €14.8 million (for 2015–17), EUBAM employed about 169 staff members of which 106 were from Moldova and Ukraine. EUBAM is an advisory and technical body that operates along the 1,222 km border (955 km of land and 267 km of river borders) between Moldova and Ukraine. Moldova’s breakaway Transnistria region accounts for 453 km of the same border where EUBAM is also active.

EUBAM assists Moldovan–Ukrainian cooperation on issues such as border demarcation, joint border patrolling, and jointly operated border crossing points, rail traffic, trade facilitation and the common border assessment report. EUBAM will have observer status at the new jointly operated border-crossing point at Palanca-Mayaki-Udobnoe. Construction started in May 2017 and should finish by the end of 2018, with EU financial assistance. Under the Eastern Partnership’s Integrated Border Management Flagship Initiative, the two other jointly operated Moldova-Ukraine crossing points are established at Kuchurgan-Pervomaisk (functional since 2017) and Reni-Giurgiulesti. The EU plans to allocate about €10 million to these projects in the period 2018-20.

EUBAM carries out border control checks on trains, and an assessment of the regulations governing railway border-crossing points. It facilitates the establishment of an automated exchange of border crossing data on people and vehicles that cross the Moldovan–Ukrainian border, including the Transnistrian segment. It provides recommendations to solve problems in the transport field (freight train movement, licence issuance and vehicle insurance requirements, and the registration of Transnistrian vehicles).

35 See the EUBAM Activity Report for the period 1 December 2015 to 30 November April 2016.
The mission participates in trilateral meetings together with Moldovan and Ukrainian authorities on the assessment of common border security. The highest risks at the border are considered to be the smuggling of cigarettes, alcohol and ethanol, while prevention of weapons, ammunition and explosives smuggling is a top priority. Together with the Swedish Police, EUBAM runs a project aimed at enhancing the operational capacities of the Bureau for Migration and Asylum on preventing and combating illegal migration and trafficking of human beings. EUBAM cooperates with the FRONTEX agency on monitoring the movement of firearms, nuclear materials and the like in the region.

The Transnistrian conflict settlement is one of the main priorities of the EUBAM. It participates in the ‘5+2’ framework, taking part in Working Groups related to road and rail transportation, and customs and law enforcement. The assistance offered by the Mission includes various aspects: advisory work regarding the free movement of people and goods across the Transnistrian region towards Ukraine; boosting the dialogue between Chișinău and Tiraspol on transport and customs, trade and law enforcement; helping to settle border problems; and monitoring respect for human rights and European border control standards.

As of 1 January 2016, the Transnistrian region joined the DCFTA free trade area (see chapter 4), and the EUBAM mission contributed to this positive development by helping to build up the technical aspects of border controls, as well as through broader confidence-building efforts.

**Moldova in CSDP operations elsewhere.** Under the terms of the Association Agreement, Moldova and the EU have committed themselves to enhancing their cooperation in crisis management. In particular, the Agreement encourages the improvement of Moldova’s military capabilities, Moldova’s greater participation in EU-led crisis management operations and, on a case-by-case basis, in training missions conducted under the CSDP. In April 2017, the EU and Moldova signed an agreement on security procedures for the CSDP-related exchange of classified information. It has a complementary role to the framework agreement for Moldova’s participation in EU

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37 The ‘5’ comprise Russia, the US, Ukraine, the EU and OSCE; the ‘2’ comprise Chișinău and Tiraspol.
crisis management operations of 1 July 2013. Currently, Moldova contributes to the EU Training Mission in Mali by providing human rights-related assistance (one person).

**International Criminal Court.** The Association Agreement reaffirms that the prosecution of the most serious crimes, such as genocide, war crimes and crimes against humanity, should take place at both the national and international levels. To this end, the Agreement promotes the implementation of the 1998 Rome Statute of the International Criminal Court, which Moldova ratified in 2010. Moldova adopted a law in 2016 clarifying its provisions for implementation of the UN Security Council Resolutions.

**Weapons of mass destruction and disarmament.** Moldova and the EU have agreed to advance the non-proliferation of weapons of mass destruction, through the ratification and implementation of the relevant international instruments. They have also agreed to advance their effective control and cooperation to combat the illegal arms trade (in line with Council Common Position 2008/944/CFSP of 8 December 2008) and to fight international terrorism (in line with, inter alia, the framework UN Security Resolution 1373 of 2001).

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**Foreign and security policy at a glance**

*The Transnistrian conflict and the role of Russia continue to shape the foreign and security aspects of EU–Moldova cooperation.*

The alignment by Moldova with the EU on CFSP matters exceeds 70%, with careful calibration of its position on Russia-related issues, such as EU sanctions. President Dodon, however, seeks a more positive pro-Russian orientation with cooperation with the Eurasian Economic Union.

*The most significant operational programme is the EU Border Assistance Mission, which facilitates practical cooperation over the borders of Moldova and Ukraine with the Transnistrian region, while contributing to the broader objective of settling the conflict.*

EUBAM contributes to the professionalisation of border control personnel of Moldova and Ukraine and is involved in upgrading the common Ukraine-Moldova crossing points.
PART II.
DEEP AND COMPREHENSIVE FREE TRADE AREA
4. Market access for goods

Tariff liberalisation is the basic starting point for creating a free trade area. Since the start of the provisional application of the DCFTA on 1 September 2014, the EU has liberalised imports from Moldova for almost all goods, with only a limited number of exceptions in agricultural products. Liberalisation by Moldova is subject to transitional periods.

Provisions of the Agreement

Before analysing the provisions of the DCFTA, it should be noted that the EU unilaterally liberalised a part of its trade with Moldova as early as 2008 through autonomous trade preferences (ATP). Initially these ATP only covered industrial goods, but after Russia’s import ban on several Moldovan agricultural products, the EU amended its ATP in 2013 and 2014 to extend duty-free treatment to Moldovan wine and to grant duty-free quotas for apples, plums and table grapes. The ATP applied until 31 December 2015, in order to make it easier for business to adapt during the transition period between the autonomous preferences and the DCFTA.\(^{38}\)

The DCFTA has established a free trade area for trade in goods since the start of the provisional application of the EU-Moldova Association Agreement from 1 September 2014.

For **industrial goods**, the DCFTA provides for asymmetric trade liberalisation: the EU will immediately and fully abolish import duties on all Moldovan industrial products, whereas Moldova will open its market for several products only after a transition period of three to five years. Moldova will gradually phase out its tariffs for certain types of plastics and related products, furniture and several textile products, such as carpets and clothing. This should give Moldovan exporters the time to prepare for competition from the EU.

For **agricultural products**, the parties will not fully liberalise trade. Although the EU will immediately liberalise access to its market for most Moldovan agricultural imports, it will still impose tariff rate quotas (TRQs) on a limited number of sensitive products (Table 4.1). The MFN customs duty will apply to imports exceeding the TRQs. Moreover, for the types of fruits and vegetables subject to entry prices in the EU (e.g. tomatoes, courgettes and peaches), Moldova will still have to pay an import duty, with the exemption of the *ad valorem* component of that import duty.

**Table 4.1 Moldovan products subject to annual duty-free TRQs for import into the EU**

<table>
<thead>
<tr>
<th>Product description</th>
<th>Volume (tonnes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tomatoes, fresh or chilled</td>
<td>2,000</td>
</tr>
<tr>
<td>Garlic, fresh or chilled</td>
<td>220</td>
</tr>
<tr>
<td>Table grapes, fresh</td>
<td>10,000</td>
</tr>
<tr>
<td>Apples, fresh</td>
<td>40,000</td>
</tr>
<tr>
<td>Plums, fresh</td>
<td>10,000</td>
</tr>
<tr>
<td>Grape juice</td>
<td>500</td>
</tr>
</tbody>
</table>

For a large group of agricultural products, listed in Annex XV-C (including pig and poultry meat, and dairy products), the EU may apply an “anti-circumvention mechanism”. This defines for each category of products an average annual volume of imports (i.e. a “trigger level”). If imports from Moldova into the EU reach 70% of this trigger level in a given year, the EU must notify Moldova about the volume of imports of the products concerned. If 80% of the trigger volume is reached, Moldova is obliged to provide the EU with a sound justification of the increase of imports. Only when 100% of the trigger volume is reached may the EU temporarily suspend the preferential treatment of the products concerned for a period of six months.
Moldova will - unlike the EU - only liberalise most of its agricultural products after a transitional period over a maximum period of ten years (e.g. dairy products, meat products and wines). Moreover, Moldova will only partially liberalise trade for sensitive products such as pigment, poultry meat, processed meat products, sugar and sweeteners through TRQs.

The DCFTA also prohibits export duties and includes a standstill clause stating that neither party may increase any existing customs duty or adopt any new customs duty on goods originating in the territory of the other party. Quantitative restrictions on imports and exports are also prohibited by the DCFTA, except if allowed by the relevant WTO rules (i.e. Art. XI GATT).

Detailed rules of origin are laid down in Protocol I of the Association Agreement. These rules specify when a product is wholly obtained in the territory of one of the parties or when products have undergone “sufficient working or processing” in order to obtain the movement certificate ‘EUR 1’. An annex to the protocol defines four different criteria for sufficient processing for each product (i.e. tariff heading): i) a change of tariff heading (e.g. a screw will be originating in Moldova if it is made from imported materials of any other heading); ii) a minimum value added (e.g. for passenger cars, the value of all the non-originating materials used to manufacture the car may not exceed 40% of the total value of the product); iii) specific processing or working requirements or iv) a combination of the first three requirements. The DCFTA also allows bilateral cumulation, meaning that producers in the EU and Moldova can use materials and components originating in the other’s country as if they originated in their own country when seeking to qualify for preferential treatment. For example, when a Moldovan car producer imports intermediate parts from the EU to manufacture a car, those intermediate parts will be regarded as Moldovan and will not have to be taken into account in the calculation of the maximum threshold of the non-originating materials (i.e. 40%, as explained above).

In addition, Moldova has been able to accede to the Pan-Euro-Med Convention for diagonal cumulation (see further below).

**Implications for Moldova**

The first three years of DCFTA implementation were marked by serious economic and political problems that affected domestic demand and business confidence, with consequences for trade and
investment activities. Moreover, these were underscored by adverse developments from Russia, which is also an important trading partner for Moldova. All these factors certainly distort the outcome of the first years of DCFTA implementation.

As a result, in 2015 and 2016, total exports of Moldova decreased significantly compared to 2014, and only in 2017 did they exceed the 2014 level by 3.6%, as shown in Table 4.2. The decline in exports was largely attributable to the big fall in Russian imports, whereas exports to the EU held to a more or less stable level. The generally adverse economic conditions were aggravated by multiple Russian bans of goods from Moldova. Other Eastern Partnership countries, such as Belarus, also reduced their demand for imported goods as they encountered difficulties in selling their own production.

Table 4.2 Trade turnover between Moldova and the EU ($ mn)

<table>
<thead>
<tr>
<th>Period</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total turnover</td>
<td>7,656</td>
<td>5,954</td>
<td>6,065</td>
<td>7,257</td>
</tr>
<tr>
<td>Turnover, EU</td>
<td>3,814</td>
<td>3,172</td>
<td>3,306</td>
<td>3,986</td>
</tr>
<tr>
<td>Growth (%)</td>
<td>5.7</td>
<td>-16.8</td>
<td>4.2</td>
<td>20.6</td>
</tr>
<tr>
<td>Share (%)</td>
<td>49.8</td>
<td>53.3</td>
<td>54.5</td>
<td>54.9</td>
</tr>
<tr>
<td>Total exports</td>
<td>2,340</td>
<td>1,967</td>
<td>2,045</td>
<td>2,425</td>
</tr>
<tr>
<td>Exports to the EU</td>
<td>1,246</td>
<td>1,218</td>
<td>1,332</td>
<td>1,597</td>
</tr>
<tr>
<td>Growth (%)</td>
<td>9.6</td>
<td>-2.2</td>
<td>9.4</td>
<td>19.9</td>
</tr>
<tr>
<td>Share (%)</td>
<td>53.3</td>
<td>61.9</td>
<td>65.1</td>
<td>65.9</td>
</tr>
<tr>
<td>Total imports</td>
<td>5,317</td>
<td>3,987</td>
<td>4,020</td>
<td>4,831</td>
</tr>
<tr>
<td>Imports from the EU</td>
<td>2,568</td>
<td>1,954</td>
<td>1,974</td>
<td>2,389</td>
</tr>
<tr>
<td>Growth (%)</td>
<td>3.9</td>
<td>-23.9</td>
<td>1.0</td>
<td>21.0</td>
</tr>
<tr>
<td>Share (%)</td>
<td>48.3</td>
<td>49.0</td>
<td>49.1</td>
<td>49.5</td>
</tr>
<tr>
<td>Balance with the EU</td>
<td>-</td>
<td>-736</td>
<td>-642</td>
<td>-792</td>
</tr>
</tbody>
</table>

Initially, the evolution of Moldovan exports to the EU market can be assessed as satisfactory, except for the decrease of 2.2% in 2015, while exports to other destinations declined much more sharply. In the following years exports to the EU have steadily increased, compensating the reduction of exports to other destinations (mainly to CIS countries, in particular to Russia) (see Tables 4.2 and 4.3).
Moreover, exporters of agri-food products, the area in which the DCFTA impact is expected to be the highest, increased by 47.4% in 2017 compared to 2014. Thus, the elimination of tariff barriers had some significant and immediate positive effects on Moldovan exports to the EU.

Table 4.3 Exports of Moldova to the EU that increased ($ mn)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total exports</td>
<td>1,246</td>
<td>1,218</td>
<td>1,332</td>
<td>1,597</td>
<td>19.9</td>
</tr>
<tr>
<td>Vegetable products</td>
<td>248</td>
<td>309</td>
<td>343</td>
<td>422</td>
<td>22.9</td>
</tr>
<tr>
<td>Machinery and appliances</td>
<td>254</td>
<td>247</td>
<td>259</td>
<td>344</td>
<td>33.0</td>
</tr>
<tr>
<td>Textiles and text. products</td>
<td>246</td>
<td>220</td>
<td>229</td>
<td>264</td>
<td>14.8</td>
</tr>
<tr>
<td>Prepared foodstuffs</td>
<td>112</td>
<td>102</td>
<td>149</td>
<td>167</td>
<td>11.6</td>
</tr>
<tr>
<td>Misc. manufactures</td>
<td>97</td>
<td>95</td>
<td>123</td>
<td>141</td>
<td>14.9</td>
</tr>
<tr>
<td>Animal or veg. fats, oils</td>
<td>73</td>
<td>68</td>
<td>37</td>
<td>47</td>
<td>28.7</td>
</tr>
<tr>
<td>Footwear, headwear</td>
<td>29</td>
<td>21</td>
<td>25</td>
<td>28</td>
<td>15.6</td>
</tr>
<tr>
<td>Base metals and articles</td>
<td>30</td>
<td>23</td>
<td>19</td>
<td>27</td>
<td>38.2</td>
</tr>
<tr>
<td>Transport equipment</td>
<td>6</td>
<td>6</td>
<td>18</td>
<td>20</td>
<td>14.6</td>
</tr>
<tr>
<td>Plastics, rubber products</td>
<td>16</td>
<td>12</td>
<td>13</td>
<td>16</td>
<td>21.8</td>
</tr>
<tr>
<td>Live animals and products</td>
<td>9</td>
<td>9</td>
<td>8</td>
<td>13</td>
<td>61.4</td>
</tr>
<tr>
<td>Chemicals</td>
<td>15</td>
<td>14</td>
<td>11</td>
<td>13</td>
<td>15.7</td>
</tr>
<tr>
<td>Mineral products</td>
<td>19</td>
<td>13</td>
<td>9</td>
<td>10</td>
<td>22.7</td>
</tr>
<tr>
<td>Wood, charcoal, cork</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>16.7</td>
</tr>
<tr>
<td>Paper, wood pulp, paper</td>
<td>8</td>
<td>4</td>
<td>4</td>
<td>6</td>
<td>41.0</td>
</tr>
</tbody>
</table>

The export of products subject to annual duty free TRQs increased immediately after the start of the DCFTA’s implementation. Thus, in 2017 for goods such as grapes, plums, wheat, maize, barley and ethyl alcohol, the increase was up to seven times. For this reason, formal discussions were started on the possibility of increasing the tariff rate quotas/trigger levels for these categories in the Subcommittee on Trade and Sustainable Development on 18 October 2017.

However, the tariff-free quotas are still far from being exhausted and the major barrier in this context is the non-compliance
with EU sanitary and phytosanitary standards that would ensure access to the EU market for meat, eggs and dairy.

The geographical structure of Moldovan exports has changed, with the EU partners now the destination for 66% of the total (Table 4.4). While this change reflects an arithmetic result of both positive trends in relation to the EU and negative ones in relation to Russia, the overall strengthening of the EU’s position as a destination for Moldovan exports is very important. Moldova needs predictable trade partners that follow the rules of international trade.

Table 4.4 Moldova’s trade structure by country or region, 2013 and 2017

<table>
<thead>
<tr>
<th></th>
<th>2013 Exports, %</th>
<th>2013 Imports, %</th>
<th>2017 Exports, %</th>
<th>2017 Imports, %</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>46.8</td>
<td>45.0</td>
<td>65.9</td>
<td>49.5</td>
</tr>
<tr>
<td>Russia</td>
<td>26.0</td>
<td>14.4</td>
<td>10.5</td>
<td>11.8</td>
</tr>
<tr>
<td>Other CIS</td>
<td>12.0</td>
<td>16.1</td>
<td>8.6</td>
<td>13.1</td>
</tr>
<tr>
<td>Other Eur.</td>
<td>2.2</td>
<td>1.5</td>
<td>2.6</td>
<td>1.6</td>
</tr>
<tr>
<td>US</td>
<td>1.0</td>
<td>1.5</td>
<td>0.8</td>
<td>1.5</td>
</tr>
<tr>
<td>China</td>
<td>0.3</td>
<td>8.7</td>
<td>0.8</td>
<td>10.5</td>
</tr>
<tr>
<td>Rest of world</td>
<td>11.7</td>
<td>13.0</td>
<td>10.9</td>
<td>12.1</td>
</tr>
</tbody>
</table>

Meanwhile, the main goods exported by Moldova to the EU are textiles, machinery and appliances, vegetable products and other foodstuffs and beverages (see Table 4.5).

Table 4.5 Main EU imports from, and exports to, Moldova, 2017

<table>
<thead>
<tr>
<th>HS</th>
<th>Product</th>
<th>Moldovan exports to the EU</th>
<th>Moldovan imports from the EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>I-IV</td>
<td>Animal and food products</td>
<td>€ mn</td>
<td>% of total</td>
</tr>
<tr>
<td>-- I</td>
<td>- live animals, fish, dairy, eggs</td>
<td>558</td>
<td>36.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>0.6</td>
</tr>
<tr>
<td>-- II</td>
<td>- fresh nuts, fruit, veg., cereals</td>
<td>345</td>
<td>22.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>41</td>
<td>2.7</td>
</tr>
<tr>
<td>-- IV</td>
<td>- animal, vegetable fats, oils</td>
<td>163</td>
<td>10.7</td>
</tr>
<tr>
<td>V</td>
<td>Mineral products</td>
<td>8</td>
<td>0.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----</td>
<td>----------------------</td>
<td>----</td>
<td>---</td>
</tr>
<tr>
<td>VI</td>
<td>Chemicals, pharmaceuticals</td>
<td>6</td>
<td>0.4</td>
</tr>
<tr>
<td>VII</td>
<td>Plastics, rubber and products</td>
<td>12</td>
<td>0.8</td>
</tr>
<tr>
<td>VIII</td>
<td>Raw hides, skins and saddlery</td>
<td>24</td>
<td>1.6</td>
</tr>
<tr>
<td>IX</td>
<td>Wood, charcoal, cork and products</td>
<td>8</td>
<td>0.5</td>
</tr>
<tr>
<td>X</td>
<td>Paper, wood pulp, paper products</td>
<td>4</td>
<td>0.3</td>
</tr>
<tr>
<td>XI</td>
<td>Textiles and textile products</td>
<td>292</td>
<td>19.2</td>
</tr>
<tr>
<td></td>
<td>- clothing</td>
<td>230</td>
<td>15.1</td>
</tr>
<tr>
<td>XII</td>
<td>Footwear, headwear</td>
<td>63</td>
<td>4.1</td>
</tr>
<tr>
<td>XIII</td>
<td>Items of stone, glass, ceramics</td>
<td>39</td>
<td>2.5</td>
</tr>
<tr>
<td>XIV</td>
<td>Pearls, precious stones, jewellery</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>XV</td>
<td>Base metals and articles thereof</td>
<td>93</td>
<td>6.1</td>
</tr>
<tr>
<td>XVI</td>
<td>Machinery and appliances</td>
<td>257</td>
<td>16.9</td>
</tr>
<tr>
<td></td>
<td>- machinery, boilers, etc.</td>
<td>11</td>
<td>0.7</td>
</tr>
<tr>
<td></td>
<td>- electrical, electronic equipment</td>
<td>246</td>
<td>16.2</td>
</tr>
<tr>
<td>XVII</td>
<td>Transport equipment, autos</td>
<td>6</td>
<td>0.4</td>
</tr>
<tr>
<td>XVIII</td>
<td>Scientific, other instruments</td>
<td>20</td>
<td>1.3</td>
</tr>
<tr>
<td>XIX</td>
<td>Arms and ammunition</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>XX</td>
<td>Miscellaneous manufactured items</td>
<td>126</td>
<td>8.3</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>1,519</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: WTO trade statistics.

**Rules of origin.** The Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM),\(^{39}\) established in 2012, provides for so-called ‘diagonal cumulation’ of value added for the purpose of establishing the origin of goods that can profit from free trade agreements (FTAs) with the EU. The PEM was originally signed by the EU together with all the Balkan countries and those of the European Free Trade Association, Turkey and southern Mediterranean countries that have concluded FTAs with the EU. The diagonal cumulation means that any value added in the chain of production of intermediate goods in any of the PEM countries may be added together to meet the EU’s rules of origin requirements.

Art. 5 of the PEM Convention provides the possibility for third countries to request accession, as long as they have a free trade agreement with the EU. In accordance with this provision, in June 2013 Moldova submitted a request for accession. In September 2015, after concluding all internal procedures, the PEM Convention entered into force for Moldova.

The PEM mechanism is of considerable economic interest for Moldova, since it opens the possibility of developing supply-chain linkages with nearby countries, including Turkey and the Balkans, which can benefit from diagonal cumulation, in addition to the possibilities for bilateral cumulation with Romania and other EU member states. This concerns especially future investment and new trade structures that can develop as a result of the DCFTA and PEM combined. Given the small size of the Moldovan economy and its proximity to the EU, Turkey and the Balkans, this overall system has a very good fit with Moldova’s interests. Moreover, Moldova ratified a free trade agreement with Turkey on 31 March 2016, which entered into force on 1 November 2016.

Even if the rules of origin within the DCFTA have been replaced by the PEM rules, the process of replacing the rules of origin within the Moldova-Turkey FTA is still ongoing.

Transnistrian region. The EU is a crucial export market for Transnistrian exporters. The region has benefited from the asymmetric trade liberalisation that the EU has granted to Moldova since 2006 within various preferential trade regimes (GSP, GSP plus and ATP). The growth in the region’s exports during 2005–14 consisted mostly of exports to the EU. During this period, the share of the EU in the region’s total exports almost doubled: from 20% in 2005 to 37% in 2017. Meanwhile, the share of Russia in the region’s total exports shrank from 40% in 2005 to only 10% in 2017. The monitoring of the trade flows from Transnistrian region is made difficult because the statistics published in the region only report exports to CIS, non-CIS and other destinations. The share of exports destined for the EU is not given.

Until 31 December 2015, the EU extended to the Transnistrian region the same regime of preferences (ATP) that it had granted to Moldova. But when this was replaced by the DCFTA for Moldova, the ATP regime for Transnistria also had to come to an end. For this reason, negotiations were engaged between Chișinău, Tiraspol and the European Commission over Transnistria’s possible accession also to the DCFTA. Without this, the EU would cancel its trade preferences
for Transnistria and apply its regular (MFN) import tariffs regime to goods originating from the Transnistrian region. This would severely hit Transnistrian exporters and undermine the already-shaky economic and social conditions in the region. While there had been fruitless conversations for some time between the parties over what to do when the DCFTA entered into force, an agreement was made at the last minute for Transnistria to join the DCFTA on 1 January 2016 under special conditions.

The formal decision of the EU–Moldova Association Council gives only very limited information on how it will be applied, notably that Title V of the Association Agreement (the DCFTA) will apply to the “entire territory” of the Republic of Moldova, meaning Transnistria included, and that its application will be reviewed after ten months, and thereafter once a year.\(^{40}\) Details of the agreement with Tiraspol are not publicly available. The main point for Transnistria is that EU tariffs are scrapped immediately as for the rest of Moldova. Conditions that Transnistria has to meet presumably include dismantlement of tariffs on imports from the EU on the same schedule as for the rest of Moldova, and as also for procedures for issuing certificates of origin, customs clearance, technical and sanitary and phytosanitary standards, competition policy, public procurement and fiscal policy. The review clauses underline the concerns of the EU and Chişinău that Tiraspol should deliver on its commitments. A technical agreement allowing cooperation between specialised bodies of Chisinau and Tiraspol for collaboration on SPS issues (in particular veterinary, quarantine and plants protection, etc.) was signed in February 2018. Other aspects can be activated in the context of conflict settlement which advanced during the 2017 Austrian Presidency of the OSCE, and the ongoing Italian Presidency in 2018.

Beyond these technicalities, the agreement for the DCFTA to be applied to the ‘entire territory’ of Moldova is of considerable political significance in relation to objectives for a progressive reunification of the country. At the same time, it underlines the weakening of economic links of Transnistria with Russia.

Market access for goods at a glance

While the benefits of the DCFTA can only be fully realised in the medium and long-term, some positive results have already appeared for trade in goods between Moldova and the EU after three years.

Moldova still needs to ensure a friendlier business climate, eliminate technical barriers to trade and comply with complex sanitary and phytosanitary standards of the EU.

Moldova also acceded to the Pan-Euro-Med Convention on rules of origin, bringing in the useful possibility of diagonal cumulation of value added with the EU’s other free trade partners.

Agreement was reached with the Transnistrian region for it also to be covered by the DCFTA as of 1 January 2016, which is a valuable step in the direction of re-unifying the country. However, the progress made in implementing the DCFTA in the region lacks transparency, thereby making it difficult to carry out a thorough assessment.
5. TRADE REMEDIES

This chapter focuses on rules on ‘trade defence’ measures that the EU and Moldova can take against imports from the other party that cause or threaten to cause injury to the domestic industry, notably anti-dumping, anti-subsidy and safeguard measures. These DCFTA provisions essentially incorporate the relevant WTO rules.

Anti-dumping and countervailing measures. The DCFTA provisions on anti-dumping and countervailing measures rely on Art. VI of GATT (1994), the WTO Anti-Dumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures. If a company exports a product at a price lower than the price it normally charges on its own home market, it is considered to be ‘dumping’ the product. The WTO agreement allows governments to act against dumping where there is a ‘material’ injury to the competing domestic industry. Before taking action, however, the government must be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared with the exporter’s home market price) and show that the dumping is causing injury or threatens to do so. The importing country may then impose a countervailing (provisional) duty to correct any damage to its industry.

The DCFTA adds specific features of the EU’s trade defence practice that go beyond the WTO agreements, such as the “public interest” and the “lesser duty” rules. The former implies that a party may decide not to impose anti-dumping or countervailing measures when it is not in the public interest to do so, for example when the
interests of consumers or the employment situation would be negatively affected. The lesser duty rule implies that the amount of a (provisional) anti-dumping duty shall not be higher than adequate to remove the injury in the domestic industry. This rule stresses the remedial rather than punitive character of the EU’s approach to trade defence.

**Safeguard measures.** The DCFTA provides for both global safeguard measures and bilateral safeguard measures. The former relies on Art. XIX of GATT (1994) and the WTO Agreement on Safeguards. These rules regulate when and how WTO members may take a safeguard action (e.g. quantitative restrictions or duty increases higher than bound tariffs) to protect a specific domestic industry from an increase in imports of any product that is causing, or threatening to cause, serious injury to the industry. The key difference here, compared with the anti-dumping provisions, is that it does not require finding an ‘unfair’ practice by particular supplying enterprises or countries. Correspondingly, the safeguard action has to be applied to all WTO member states, and the country imposing these measures may have to pay compensation to other members whose trade is affected. This largely explains why anti-dumping measures are used much more often than safeguard measures.

The bilateral safeguard measures allow the EU or Moldova to temporarily suspend DCFTA preferences in case their application would result in an unexpected and significant increase of imports causing economic damage to the domestic industry of the importing party. It is possible to either suspend the further tariff liberalisation or to reintroduce the MFN customs duty rate. The key differences with the global safeguard measures is that i) this procedure can only be used to protect the domestic industry from unexpected consequences of the DCFTA liberalisation, and thus only targets the goods from the other party (i.e. no MFN treatment) and ii) the duty may not exceed the MFN duty applied before the DCFTA.

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**Trade remedies at a glance**

*There are provisions for anti-dumping, anti-subsidy and safeguard measures to protect the importing economy from serious damage, or threats thereof, based on the relevant WTO rules. None of these measures has had to be used so far, and trade remedies are very rarely used in EU–Moldovan trade relations.*
6. CUSTOMS SERVICES

For the DCFTA to work well there have to be high-quality customs services at the frontiers, with efficient facilitation of traffic to avoid delays and check smuggling and corruption in the long queues of heavy goods vehicles. This chapter of the DCFTA sets out key principles for customs legislation and procedures, in order to facilitate operational cooperation between the customs services of the EU and Moldova.

Provisions of the Agreement

This chapter discusses core principles in the functioning of European customs services and the legislative commitments and numerous operational provisions contained in the Agreement.

Key principles for customs legislation and procedures. At a general level the EU and Moldova commit to ensure that their customs legislation and procedures are stable, transparent, non-discriminatory, applied effectively and prevent fraud. They aim at reducing and simplifying the data and documentation required by customs agencies.

At the legal or operationally precise level, the parties undertake the following commitments:

- Approximate Moldova’s customs code to that of the EU, establish modern transit conditions and cooperation between customs services (see detail below).
• Apply relevant international instruments, including those developed by the World Customs Organization and the revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures.

• Apply a single administrative document for customs declarations.

• Provide for advance binding rulings on tariff classification and rules of origin.

• Adopt rules that ensure that any penalties imposed for the breach of customs regulation or procedural requirements are proportionate and non-discriminatory.

• Provide effective and transparent procedures guaranteeing the right of appeal against customs’ and other agencies’ administrative actions, rulings and decisions.

• With regard to fees and charges imposed by customs authorities, Moldova has to prohibit administrative fees from having an equivalent effect to import or export duties. Moreover, fees and charges have to be transparent and made publicly available, and should not exceed the cost of the service provided by the customs authority.

_Customs code._ Annex XXVI states that Moldova has to approximate to the Community Customs Code laid down in Regulation (EEC) 2913/92 within three years of the entry into force of the Agreement. But because the Customs Code was considered outdated (relying on paper-based processes), it was replaced in October 2013 by the Union Customs Code (UCC, in Regulation (EU) 952/2013).\(^\text{41}\) The new UCC will complete the progression to a paperless and electronic customs environment and introduces several new procedures. The substantive provisions of the UCC entered into force on 1 May 2016, but with a transition period until 31 December 2020 to develop new IT systems or to upgrade existing ones. At the meeting of the EU-Moldova Customs Sub-Committee on 6 October 2016, it was concluded that Annex XXVI should be amended to include the new UCC, while the deadline for implementation (i.e.

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\(^\text{41}\) See Regulation (EU) 952/2013 laying down the UCC. The regulation entered into force on 30 November 2013 and repealed Regulation (EC) 450/2008. The European Commission adopted the UCC’s Delegated Act and Implementing Act in 2015, which allows the UCC to enter into force on 1 May 2016.
three years after the entry into force of the agreement) should be maintained. The EU already completed its internal procedures to update the annex to the UCC, but the Association Council still needs to formally adopt the decision.

Moldova also has to implement the EU rules on the relief of customs duties within three years, enshrined in Regulation (EU) 1186/2009 and on actions against goods suspected of, or actually infringing certain intellectual property rights in Regulation (EC) 608/2013.

**Transit traffic.** The EU and Moldova must ensure the progressive interconnectivity of their respective customs transit systems, with a view to Moldova participating in the common transit system set out in the Convention of 20 May 1987 on a Common Transit Procedure (which was amended in 2017 in order to be aligned with the new UCC). This procedure is used for the movement of goods between the 28 EU member states, EFTA countries, Turkey (2012), Macedonia (2015) and Serbia (2016). Moldova already has observer status to the Convention and has to implement it within three years of entry into force of the Association Agreement. A crucial step to full membership will be Moldova’s adoption of the Common Transit’s New Computerised Transit System (NCTS), which enables an economic operator to submit common transit declarations electronically. Moldova will also have to apply the relevant WTO provisions, such as Art. V of GATT, and adopt any future WTO measures for improving trade facilitation.

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42 Council Decision (EU) 2017/1364 of 17 July 2017 on the position to be adopted on behalf of the European Union within the EU-Republic of Moldova Association Council as regards the amendment of Annex XXVI to the Association Agreement between the European Union and Moldova.


46 This means that Moldova will also have to apply the WTO Trade Facilitation Agreement that was adopted by WTO members in November 2014. The Trade
**Customs cooperation.** The EU and Moldova must strengthen their customs cooperation by exchanging information concerning customs legislation and procedures; cooperating on the automation of customs procedures; exchanging relevant information, best practices and data; and cooperating in the planning and delivery of technical assistance, etc. The DCFTA establishes a procedure for “Mutual Administrative Assistance in Customs Matters”, annexed in Protocol III to the Association Agreement. This establishes detailed procedures for information exchange over cases of suspected or actual fraud in relation to customs legislation. Customs authorities may also provide ‘spontaneous assistance’.

The DCFTA also establishes a Customs Subcommittee that must monitor the implementation and administration of this customs and trade facilitation chapter, including the issues of customs cooperation, and the proper functioning of the Rules of Origin and Mutual Administrative Assistance in Customs Matters (Protocol III). In the first three meetings of the Subcommittee, the EU and Moldova discussed customs cooperation, the concept of the Authorized Economic Operator, the fight against fraud, the new UCC and Moldova’s accession to the PEM Convention. Moldova will have to strengthen its relations with the business community by consulting regularly with trade representatives on legislative proposals and procedures related to customs and trade issues. All customs-related legislation has to be transparent and made publicly available, as far as possible through electronic means and a consultation mechanism to debate proposals of new or amended customs legislation.

In addition to the DCFTA, the EU and Moldova have developed other instruments for customs cooperation, notably in the context of the Eastern Partnership. For example, in May 2012 the EU and Moldova adopted a “Strategic Framework for customs cooperation”. This document identified various priority areas, most of which have been taken over in the DCFTA. One particular point of interest relates to safe and fluid trade lanes by achieving maximum trade

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Facilitation Agreement will enter into force once two-thirds of members have completed their domestic ratification process. The Agreement is already ratified by the EU, but not by Moldova.

facilitation for reliable business, with customs acting as a link in the supply chain. For example, the EU and Moldova aim to create fast lanes to move pre-approved eligible goods across the border quickly. Recognition of authorised economic operators (AEOs) could be part of this process. In the EU economic operators can apply for an AEO status to benefit from reduced controls and simplified customs procedures. The AEO status is granted to reliable operators who comply with security and safety standards.

Another important instrument in EU–Moldova customs cooperation is the 2005 European Union Border Mission (EUBAM) (see chapter 2 on foreign and security policy). The Mission works with Moldova and Ukraine to harmonise border control and procedures with those in place in EU member states. The mandate of the Mission has already been extended five times (in 2007, 2009, 2011, 2015 and 2017), with the current mandate expiring on 30 November 2020. EUBAM increasingly assists Moldova and Ukraine with the implementation of their respective DCFTAs. For example, it assists Moldova and Ukraine (especially the customs services) to create the legal framework, institutional infrastructure and administrative capacity to implement the DCFTA customs and trade facilitation rules. Much of this work is accomplished using the mission’s Trade Facilitation Working Group, set up in 2015 as a platform for cooperation between the relevant national government agencies, national business and key international development partners such as USAID, AmCham and the European Business Association. For example, in collaboration with the European Commission (DG-TAXUD) and others, EUBAM assisted the Moldovan customs services to introduce reforms related to post-clearance control and audit as well as the AEO concept.48

Finally, in 2013 the European Anti-Fraud Office (OLAF) and Moldova signed an Administrative Cooperation Agreement that sets out a framework for practical cooperation between OLAF and the Moldovan authorities on measures to prevent and detect cigarette smuggling, including information exchange and joint investigations.49 This agreement will be crucial to tackling the illegal smuggling of

cigarettes into the EU because these products mainly enter the EU via its Moldovan border, causing the loss of millions of euros to the state budgets of Ukraine and EU member states (the OLAF estimation is €10 billion a year). EUBAM is also working with OLAF because a large share of the illicit cigarettes comes from Transnistria, which is then moved to the EU via Moldova. For example, with the support of EUBAM, the Moldovan Security Service and General Prosecutor’s Office raided and shut down in 2015 an illegal cigarette factory near Chișinău, which produced counterfeit brands of cigarettes for smuggling to the EU.

Implementation perspectives

With the objective of bringing Moldovan legislation in line with EU law and the international standards listed in the Association Agreement, important actions have been taken in the field of implementing the Authorised Economic Operator (AEO) concept, electronic customs declarations, IPR protection, promotion of the single window concept and introducing measures to fight corruption. These measures have resulted in increased customs revenues. Other issues still need more efforts, however, such as approval of the new Customs Code and its related legislation, recognition of the AEO, implementation of the New Computerised Transit System (NCTS), etc.

Modernisation and simplification of the Customs Service. The Moldovan Action Plan for the Implementation of the Agreement, as revised in December 2016, includes several measures and actions to be undertaken by the Customs Service and other relevant authorities in order to improve, simplify and modernise the customs system. The harmonisation with international standards for the nomenclature of goods was realised with the adoption of Law No. 172 of 25 July 2014.

Moreover, the service has completed installation of the UN/UNCTAD Automated System for Customs Data (ASYCUDA), used to process customs declarations in line with the customs duties concessions applied by Moldova towards the EU. In addition, the

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50 In 2017 customs revenues increased by 17% in comparison with 2016.
51 For the revised Plan, see http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=369730.
52 See http://lex.justice.md/md/354306/.
Customs Code of 2000 and customs tariff legislation of 1997 were brought in line with EU practices and legislation (e.g. the combined nomenclature of goods, a ‘blue lane’ and protection of intellectual property rights). At the same time, a working group is coordinated by the Ministry of Finance to draw up a new customs code, which will transpose the provisions of the Unions Customs Code. In this respect, an internal Action Plan was approved for Moldova’s approximation to the new UCC (see above). A working group has examined the document and proposed public consultations in December 2017.

Important changes were also introduced to the environmental pollution tax. For example, in order to comply with WTO rules, the discriminatory element of this tax has been eliminated so that both importers and domestic producers are subject to the tax.

In order to improve the governance capacity of the Customs Service, the new law on customs services was drafted and voted by the Parliament in October 2017. This law extends and unifies the provisions related to the Customs Service from the existing Law No. 1150-108/765 on customs services of 24 July 2002, and defines the organisation and core functions of the Customs Service.

An institutional reform, which started in 2017, gave the Customs Service a new organisational structure. This reorganisation aimed at ensuring a more efficient administration at the managerial and operational levels, as well as clear delimitation of responsibilities for each subdivision at central and regional level. In the process of reorganisation, the number of customs offices decreased from seven to three, while the staff was reduced by 12% and now consists of 1,520 persons.

Various measures were undertaken to simplify the customs rules for Moldovan exporters, in particular through the AEO concept.

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54 Order of the Ministry of Finance no. 67 of 23.05.2016 on drafting, finalising and promoting the draft of the new Customs Code.
that has been applied since 2014. Currently, 106 companies benefit from AEO status.\(^{59}\) The Moldovan authorities are examining the possibility of signing a mutual recognition agreement with the EU on AEOs (in April 2017 a Roadmap was prepared) and have decided to implement the unilateral recognition of EU AEOs (Order of the Customs Service of 23 June 2015). The simplified procedures for AEOs from the EU have been applied as a pilot project at Leușeni customs post since July 2015 and were extended for 2017, following a positive evaluation from the EU. Moreover, the legal framework now includes provisions\(^{60}\) related to the possibility of postponing the payment of the import duties for the authorised economic operators (AEOs), in case of providing a guarantee.

A government decision of May 2015 reduced the number of obligatory documents for exports from nine to three, and from eleven to three for imports. In addition, in August 2016 a new Regulation was adopted on the declaration of the customs value of goods,\(^{61}\) in order to approximate to the EU’s UCC.

The authorities also apply the mechanism of approved exporters to facilitate the export of ‘preferential origin’ from Moldova. The approved exporter certificate excludes the obligation to apply for the EUR 1 movement certificate. The regulation for issuing and withdrawing the certificates of approved exporters was adopted in June 2015\(^{62}\) with five companies already benefiting from this type of certificate. Another big step towards the simplification of customs procedures is the procedure for the electronic declaration for exports and imports (Government Decision No. 904 of 13 November 2013).\(^{63}\) The submitted declarations are stocked afterwards in the ASYCUDA system, administered by the Customs Service. The share of electronic declarations for exports increased between 2014 and 2015 from 21% of the total to 61%, and in 2016, this reached 98%. The use of electronic declarations for imports is at a lower level of 19% in 2016 (compared to only 5% at the end of 2015).

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\(^{63}\) See [http://lex.justice.md/md/350292/](http://lex.justice.md/md/350292/).
The authorities implemented also the principle of facilitating lanes (‘corridors’) for quick customs clearance: the ‘green lane’ free of customs clearance (74% in 2016 from 64% in 2015); the ‘yellow lane’ with a checking of documents (17% in 2016 from 13% in 2015); and the ‘red lane’ with physical and document checks (approximately 9% in 2016 from 10% in 2015). Since July 2015, the authorities have operated a ‘blue lane’ in all customs posts, which allows companies to benefit from ‘free of customs clearing’ with no further post-customs clearance.

The protection of intellectual property rights (IPRs) is part of the authorities’ current efforts. A regulation on the protection of IPRs by the customs office was adopted in July 2016,\(^6^4\) reflecting the EU’s IPR regulation (Regulation (EU) 608/2013). Together with the State Agency on Intellectual Property, the Customs Service undertakes measures for the implementation of the National Strategy on IPR 2020.

In October 2014, the EU developed a twinning project for the development of a ‘one-stop shop’ for the implementation of the NCTS. After being approved in March 2015 by the European Commission, the project was launched in November 2017.\(^6^5\) Moreover, a Memorandum of Understanding was concluded between the Customs Service and UNCTAD on the development of the Integrated Customs Information System based on the ASYCUDA World Software (drawn up in Geneva on 7 November 2016).

The Customs Service and EUBAM work towards the better management of common Moldova–Ukraine borders. Discussions on resuming rail traffic for goods and passengers through the Transnistrian region continued in recent years. Priorities include the establishment of a common control of Transnistrian companies at the Transnistrian segment of the Moldova–Ukraine border; enhancing the efficiency of information exchange between Ukraine and Moldova; and resuming transit through pre-conflict routes.

The newly created customs post Cuciurgan-Pervomaisk is the first one situated on the Transnistrian section of the Moldovan-
Ukrainian border. It was activated in the second half of 2017 for the checking of the exports and will be extended to imports in 2018, according to plans. This is an important step towards establishing control over the Transnistrian section of the border with Ukraine, which has been out of control for 25 years.

**Anti-corruption measures.** Since 2013, the Call Centre of the Customs Service has operated an ‘anti-corruption’ hotline. The first Action Plan on the integrity of the Customs Service was adopted for 2015 and requires quarterly reports on integrity to be submitted to the Anti-corruption Centre. Representatives of the World Customs Organization visited Moldova in July 2015, as part of their efforts to increase the integrity of the Customs Service. Anti-corruption measures undertaken by the customs authorities include the adoption in October 2016 of the Code of Ethics and Behaviour for Customs Officers, developed with the support of EUBAM’s experts. Nonetheless surveys by Transparency International Moldova show an uneven record on perceptions of corruption in the Customs Service. Positive perceptions of the integrity of the Customs Service are still less than 30%.

Overall, the major outstanding challenges in the customs field concern the poor conditions of customs terminals, the high perception of corruption and limited transparency related to the investigation of corruption cases. In addition, trust levels are low in the customs service among business and the ‘militarised’ nature of the Customs Service (e.g. organised in military-style grades).

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Customs services at a glance

Ensuring a fast, transparent and efficient customs services is a vital element for Moldova’s economic integration with the EU. Moldova is making significant progress in this area. In line with the requirements of the DCFTA, numerous measures have or are being taken, including:

- a new combined nomenclature of goods
- fewer permissive acts required for exports and imports
- the authorised economic operator (AEO) concept
- electronic customs declarations
- launching the New Computerised Transit System
- adoption of the Code of Ethics and Behaviour for Customs Officer

Still, the Customs Services face various challenges, such as customs terminals with outdated infrastructure, low levels of trust and a widespread perception of corruption.
7. TECHNICAL STANDARDS FOR INDUSTRIAL GOODS

As the customs tariffs will almost fully disappear between the EU and Moldova, non-tariff barriers such as technical standards for goods will become the main obstacle to trade (conventionally called technical barriers to trade or TBTs). In order to tackle these technical barriers, Moldova will adopt the relevant EU legislation, standards and procedures. This will be a long and complex operation, but one fundamental for modernising and making its industry internationally competitive.

Provisions of the Agreement

Basic features of the European system. While the system is highly complex and has been changing over time, its basic features can be simply described. There is a two-level system:

- In the first level, there are a limited number of EU harmonisation laws, of which a few ‘horizontal’ regulations or directives cover the general methodology and institutional framework, and around 30 directives cover broad sectoral product groups, such as machinery. For the product groups the directives outline the ‘essential requirements’ related to health and safety that products have to meet before they can be placed on the EU market.
The second level consists of a very large number (around 5,000)\textsuperscript{68} of product-specific ‘harmonised standards’, which provide the technical means to comply with the essential health and safety requirements defined in the sectoral product directives. These standards are produced at the request of the European Commission by one of the three technical organisations (CENELEC for electrical products, ETSI for telecommunications equipment and CEN for the largest number of other products).\textsuperscript{69} When the Commission is satisfied with the proposed standards, it publishes them in the EU’s \textit{Official Journal}, so they then have official status as ‘harmonised’, which are presumed to meet the essential requirements of the applicable directive.

An overview of the harmonised standards, grouped by the existing sectoral product directives, can be found on the website of the European Commission.\textsuperscript{70} For example, for the very important category of machinery, the applicable directive defining the health and safety requirements is listed, followed by several hundred harmonised standards for specific products or components.

The qualitative difference between the directives and standards is that while the former are binding laws, the harmonised standards, although having official recognition, are voluntary for manufacturers that choose to use them, or they can set their own specifications. In the latter case, however, the manufacturer has still to prove \textit{conformity} with the relevant directive, which will usually be a costlier procedure than adopting the harmonised European standards that give automatic conformity with the relevant directive.

When placing a product on the EU market covered by the EU’s harmonisation legislation, the manufacturer must draw up and sign an EU Declaration of Conformity in which the manufacturer ensures

\textsuperscript{68} Author’s own calculation based on data in the 2014 annual reports of the three European standardisation organisations (www.cencenelec.eu/Pages/default.aspx and http://www.etsi.org/).

\textsuperscript{69} CEN refers to the European Committee for Standardisation, CENELEC to the European Committee for Electrotechnical Standardisation and ETSI to the European Telecommunications Standards Institute.

and declares that the products concerned satisfy the essential requirements of the relevant product directive and that the relevant conformity assessment procedures have been fulfilled. By drawing up the EU Declaration of Conformity, the manufacturers assume responsibility for the compliance of the product. Only then may the manufacturer affix the Conformité Européenne (CE) marking to the product. Products bearing the CE marking are presumed to be in compliance with the applicable EU legislation and benefit from free circulation in the EU internal market.

**Horizontal directives.** Important horizontal EU legislation to which Moldova must approximate consists of two legal acts of 2008 known as the ‘New Legislative Framework’, namely Decision 768/2008/EC on a common framework for the marketing of products and Regulation (EC) 765/2008 on the requirements for accreditation and market surveillance. The former sets out a common framework of general principles and reference provisions for the marketing of products. It establishes criteria for EU sectoral legislation by providing the definitions of fundamental concepts (e.g. “placing a product on the market” and “harmonised standards”). It also defines the obligations for manufacturers, importers and distributors and sets out several modules of conformity-assessment procedures, which are explained further below together with the accreditation requirements.

In addition, Moldova has to approximate Directive 2001/95/EC on general product safety. This directive imposes general safety requirements on any product put on the market and defines the criteria that must be met before a product is considered safe. Moldova has to ensure that producers comply with these rules and monitor product compliance with the applicable EU requirements. It will have to identify products that pose a serious risk to health and safety and prohibit such products from the market. In addition, it has to put in place a system of liability for defective products in line with the relevant EU rules.\(^\text{71}\)

**Sectoral directives.** According to Annex XVI of the Agreement, Moldova has to approximate to 20 sectoral directives that provide for CE Marking, covering a wide range of products such as machinery, lifts, the safety of toys, medical devices and simple pressure vessels.

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For each product group, these sectoral directives define the ‘essential’ health and safety requirements and the specific conformity assessment procedures to be followed (also explained below). In addition, several directives covering cosmetic products, pharmaceuticals, chemicals and construction of motor vehicles – for which specific rules and procedures apply – are included in the annex. Moldova’s approximation to these directives is complicated by the fact that these directives are currently being updated in the light of the New Legislative Framework, in particular the EU’s Decision 768/2008/EC on a common framework for the marketing of products, which aims to improve market surveillance and boost the quality of conformity assessments (see below on conformity rules and procedures).72 Moldova is obliged to follow these legislative developments.73

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72 In order to bring product harmonisation legislation in line with the provisions of Decision 768/2008/EC, the EU has recently aligned the following 20 pieces of sectoral legislation to the new common framework of the marketing of products.
- Directive 2009/48/EU; Transportable pressure equipment
- Directive 2010/35/EU; Restriction of hazardous substances in electrical and electronic equipment
- Directive 2011/65/EU; Construction
- Regulation (EU) No 305/2011; Pyrotechnic articles
- Directive 2013/29/EU; Recreational craft and personal watercraft
- Directive 2013/53/EU; Civil explosives
- Directive 2014/28/EU; Simple pressure vessels
- Directive 2014/29/EU; Electromagnetic compatibility
- Directive 2014/30/EU; Non-automatic weighing instruments
- Directive 2014/31/EU; Measuring instruments
- Directive 2014/32/EU; Lifts
- Directive 2014/33/EU; ATEX
- Directive 2014/34/EU; Radio equipment
- Directive 2014/53/EU; Low-voltage equipment
- Directive 2014/35/EU; Pressure equipment
- Directive 2014/68/EU; Marine equipment
- Directive 2014/90/EU; Cableway installations
- Regulation (EU) 2016/424; Personal protective equipment
- Regulation (EU) 2016/425; Gas appliances
- Regulation (EU) 2016/426; appliances burning gaseous fuels
Several EU acts listed in Annex XVI have indeed been amended, recast or repealed and replaced by new EU acts since the Associations agreement was negotiated. Therefore, the joint Trade Committee has adopted in October 2016 a decision to update Annex XVI to reflect these recent legislative developments. The new annex contains 35 sectoral directives, including a deadline for approximation which in most cases is 2016 or 2017.

**European standards.** The Agreement requires Moldova to adopt the body of European standards, which includes, in addition to the 5,000 harmonised standards, the 25,000 European standards (i.e. all the standards developed by CEN, CENELEC or ETSI). Clearly, this will be a huge challenge for Moldova. Because the Agreement does not provide for a timetable for transposing the standards, Moldova will have to prioritise its transposition efforts. Moldova is also required to repeal any conflicting national standards, including conflicting GOST standards.

Moldova must ensure that its relevant national bodies participate fully in the European and international organisations for standardisation and conformity assessment, including accreditation. In particular, Moldova is obliged to progressively fulfil the membership conditions for the European standardisation organisations (CEN, CENELEC and ETSI).

**Conformity and surveillance procedures.** The Agreement envisages wide-ranging cooperation between the two parties in the fields of market surveillance and conformity assessment procedures. Moreover, the parties have to promote cooperation between their respective organisations, public or private, responsible for these matters.

As noted above, Moldova has to approximate Decision 768/2008/EC on a common framework for the marketing of products. This Decision establishes a highly complex set of differentiated

Further alignment proposals are pending on medical devices and other product groups.

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73 See footnote 1 to Annex XVI.
74 Decision No 1/2016 of the EU-Moldova Association Committee in Trade Configuration of 19 October 2016, updating Annex XVI to the Association Agreement.
75 GOST stands for Gosudarstvenny Standart (State Standard), as used in the USSR and post-Soviet states.
models (called “modules” in the text) for conformity assessment procedures. The sectoral directives covering the different product groups identify which module of conformity assessment is required. For certain groups of products that present a high risk to the public interest (e.g. pressure vessels, lifts and certain machine tools), a conformity assessment by a third party is required before placing the product on the market. These third parties are laboratories, inspection and certification bodies, which are known generally as conformity assessment bodies, or more formally as Notified Bodies. When implementing this decision, Moldova will have to guarantee that its Notified Bodies offer all guarantees of independence, objectivity, impartiality, confidentiality and professional integrity. For various low-risk products the manufacturer can prepare the declaration of conformity.

Moldova also has to approximate Regulation (EC) 765/2008, which lays down rules on the requirements for accreditation of conformity assessment bodies and for market surveillance of products to ensure that products placed on the EU market fulfil the specific health and safety requirements defined in the sectoral EU legislation. This regulation includes detailed rules on how a national accreditation body (i.e. the body that evaluates whether a conformity assessment body meets the specific requirements) should be organised. There has to be a single national accreditation body, operating with impartiality and objectivity, and on a non-profit basis.

Moldova will have to establish and maintain surveillance authorities that monitor and control whether products placed on its market meet the EU health and safety requirements. These market authorities must perform checks on the characteristics of products through documentary, physical and laboratory checks. The surveillance authorities must have the competence to withdraw products from the market that present a serious risk. However, a decision to withdraw products from the market has to be proportionate, communicated to the relevant economic operators and must state the exact grounds on which it is based. Moreover, in such a case, Moldova will have to notify the Commission of such a decision and also notify it to Rapid Alert System for dangerous non-food products (RAPEX).

The Agreement aims to conclude an Agreement on Conformity and Assessment and Acceptance of Industrial Products (ACAA). ACAAs are a specific type of mutual recognition agreement envisaged by the EU for any country of the eastern or southern parts of the
European Neighbourhood Policy and the Western Balkan countries. By concluding an ACAA, the parties agree that industrial products listed in the annexes of an ACAA, fulfilling the requirements for being lawfully placed on the market of one party, may be placed on the market of the other party without additional testing and conformity-assessment procedures. Still, before concluding an ACAA, Moldova would first have to fully implement its obligations related to the EU’s directives, including the harmonised standards and accreditation and conformity assessment institutions, described above. These reforms will be closely monitored by the EU institutions. An ACAA would consist of a framework agreement, providing for the recognition of equivalence of the conformity assessment, verification and accreditation procedures, and one or more annexes setting out the products covered.

Relations with third countries. Moldovan producers are entirely free to manufacture for export to third-country markets, such as Russia, according to those countries’ own technical standards. On the import side, the question is more complex. Once the sectoral EU directives are implemented, imports, including those from Russia, will have to meet the essential health and safety requirements of those directives before they can be placed on the Moldovan market. These products do not have to be produced on the basis of the EU harmonised standards per se, which are voluntary. Yet only products from third countries that follow the EU’s harmonised standards will have the ‘presumption of conformity’ to be placed on the Moldovan (and EU) market.

Implementation perspectives

Legislative approximation. The National Action Plan for the implementation of the Association Agreement and DCFTA\textsuperscript{76} contains various actions, both legal and technical, covering TBT provisions. In terms of legal approximation, the Ministry of Economy delivers notifications to the European Commission concerning drafted legal acts and informs the Association Committee of the progress achieved in the implementation of Annex XVI.

\textsuperscript{76} For the revised Plan, see http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=369730.
The authorities continue to transpose the core horizontal EU legislation. According to the National Action Plan, so far the following horizontal EU laws have been transposed: Directive 85/347/EEC concerning liability for defective products; Directive 2009/3/EC relating to units of measurement; Regulation 765/2008/EC on accreditation and market surveillance relating to the marketing of products; Decision 768/2008/EC on a common framework for the marketing of products; Directive 2001/95/EC on general product safety; Regulation (EU) 1025/2012 on European standardisation.

The pace of transposition of the sectoral EU legislation shows signs of accelerating, with about half of the directives entirely or partially implemented (on measuring equipment, energy equipment safety, construction materials quality, industrial machines, medical equipment, non-autonomous weighting apparatus, pyrotechnic, packaging and package waste, cosmetics composition control, road traffic safety, etc.). The others are in the process of approval at different stages of the legislative process.

**Adoption of standards.** As of mid-2017, some 16,591 (66%) out of 25,000 European standards (CEN/CENELEC) have become Moldovan national standards. It is planned to adopt the entire corpus of European standards by the end of 2019. Simultaneously, there is an ongoing process of identifying and withdrawing the standards (mainly the GOSTs) that are in conflict with European standards. During 2015-17, approximately 8,700 GOST standards were withdrawn. The national standardisation body set up seven technical committees to identify the contradictory standards that should be repealed. Overall, approximately 20% of the existing 24,600 national standards still represent the former CIS (GOST) standards.

The Institute for Standardization of Moldova allows full online access to information on the country’s standards through the "E-Standards” Automated Information System.

**Institutions.** The reform of the institutions responsible for coordinating policies of standardisation, metrology and accreditation started in 2012\(^\text{77}\) and has continued since.\(^\text{78}\) The reform included the

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\(^{77}\) See Governmental Decision no. 996 of 27 December 2012 concerning the measures for reforming the quality infrastructure.

\(^{78}\) See Governmental Decision no. 77 of 25 January 2013 concerning the reorganisation of the state enterprise, the Centre of Accreditation in Products Conformity Assessment.
adoption of normative acts leading to the creation of new institutions and the reorganisation of the old ones. Consequently, three autonomous institutions were set up: the National Institute of Standardisation (later renamed as the Institute for Standardisation of Moldova), the National Institute of Metrology and the National Centre of Accreditation (MOLDAC). The institutions collaborate with the Ministry of Economy and Infrastructure, which monitors their activities and which is the only central authority responsible for the coordination of the quality infrastructure. The approximation process covering the accreditation and surveillance activities of MOLDAC has been initiated. The Law on market surveillance\(^79\) and Law on accreditation and conformity assessment\(^80\) have been adopted in line with EU legislation, but it will take time to complete their full implementation.

At present, MOLDAC’s accreditation capacities are being assessed by the European accreditation body, while the conformity assessment bodies (testing, calibration and medical, as well as certification bodies, etc.) are able to perform their work in line with European and international standards.

The Institute for Standardisation of Moldova participates in the activities of the European standardisation organisations, with the status of an affiliated member of CEN and CENELEC and observer status at ETSI. It participates in the activities of the technical committees of CEN. Currently, the institution carries out actions to satisfy full-membership criteria, such as ensuring transparency, openness and consensus-based decisions.\(^81\) The requirements to pay membership fees and a lack of expertise and relevant human resources are among the main factors that may hold back the Moldovan authorities from advancing their status within these organisations. In addition, Moldova has to transpose at least 80%\(^82\) of

\(^79\) http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=363991
\(^80\) See http://lex.justice.md/md/364085/.
\(^81\) The National Standardisation Institute aims at increasing the level of transparency through publishing the National Programme for Standardisation and organising open discussions with relevant stakeholders on conflicting standards proposed for cancellation.
the existing European standards\textsuperscript{83} necessary to reach the eligibility criteria. The newly adopted Law on standardisation\textsuperscript{84} provides the elements of the national standardisation system, the attributions of the national standardisation body and its relations with regulatory authorities.

In the field of metrology, the Moldovan body has established cooperation with European specialised bodies, such as the European Legal Metrology (WELMEC) and the European Association of National Metrology (EURAMET). In May 2017, the National Institute of Metrology (NIM) was accepted as an associated member of the WELMEC (participation in seven Working Groups). In the same period, NIM became an associated member of the EURAMET. It is planned to participate in the work of four technical committees (Quality, Thermometry, Ionising Radiation, Mass and Related Quantities).

MOLDAC has been an affiliated member of the European Cooperation for Accreditation (EA) since 2011. In February 2017, MOLDAC was assessed by the EA team on whether it can accede to its Multilateral Agreement (EA MLA).\textsuperscript{85} Being part of the agreement means recognising and accepting the equivalence of the accreditation systems operated by the participating members and also the reliability of the conformity assessment results by the members. In May 2017, all the actions to eliminate problems of non-conformity were presented for examination and acceptance of MOLDAC to the EA. In October 2017, MOLDAC became a signatory country to the EA MLA, by signing a bilateral agreement, which foresees the same requirements as for the full EA MLA members. This gives access to the European market to Moldovan products tested by conformity assessment bodies accredited by MOLDAC.

Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The first steps towards opening negotiations on an ACAA have been taken, but the process seems to be complicated and demanding. In November 2016, a Roadmap was adopted for the initiation of negotiations on this agreement, the paper being coordinated with the experts of the European Commission.

\textsuperscript{83} CEN/CENELEC have adopted about 25,000 standards.
\textsuperscript{85} For more on the EA MLA, see www.european-accreditation.org/the-mla.
(according to the document, the signing of the ACCA between the Republic of Moldova and the EU and its inclusion as an additional Protocol to the Association Agreement should take place in the 4th quarter of 2022). Moldovan authorities have chosen three product sectors to be covered by future ACAA: construction products, toys and low-voltage equipment. Simultaneously, the Moldovan side took actions focused on developing and strengthening some elements of the conformity assessment system, but it lacks a comprehensive strategy to restructure the entire system. The amendment of legislation and its approximation to horizontal EU legislation in the field, as a precondition for an ACAA, is ongoing.

The followings challenges remain for ensuring the implementation of the TBT provisions of the Agreement and DCFTA:

- poor technical endowment of the testing and certification bodies;
- insufficient proficiency in the English-language on the part of technical committee members, hindering their examination of drafts of standards, as well as participation in these meetings;
- limited interest of local actors in engaging in the standardisation process, because of the lack of financing for participation in the activities of the technical committees;
- inadequate financial resources for companies to effectively implement the transposed European standards;
- resistance, even of an ideological character, towards the application of European standards among different relevant stakeholders accustomed to working in line with GOST standards; and
- lack of effective enforcement mechanisms, especially for food production.

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86 See Government Order no. 103 of 5 June 2015 on working group to draft the multiannual procurement plan for purchasing the necessary equipment for the testing laboratories.
Technical standards for industrial goods at a glance

Adoption of European technical standards for industrial goods is of strategic importance for Moldova’s economic modernisation and integration with the EU. Most positively, this complex process is now seen to be accelerating, with transposition of EU directives and adoption of harmonised standards, and adoption of laws on standardisation, metrology, accreditation and conformity assessment.

Even if primary legislation has been adopted, much remains to be done for effective implementation of European standards.

Moldovan authorities have chosen three product sectors to be covered by future ACAA: construction products, toys and low-voltage equipment. However, insufficient progress has been made to launch ACAA negotiations.

Transposition of European standards requires withdrawing conflicting GOST standards. This effort is advancing, but is still encountering opposition from various certifying laboratories and enterprises using GOST standards.
8. FOOD SAFETY REGULATIONS

The chapter on sanitary and phytosanitary measures (SPS) basically concerns the food safety standards required to facilitate trade in agricultural and food commodities and plants, while safeguarding human, animal and plant life or health (Art. 181). The key mechanism consists of approximating Moldovan legislation to EU legislation. The Agreement also aims to reach a common understanding on animal welfare standards.

Provisions of the Agreement

Approximation. The Agreement does not specify the list of laws to be approximated, but rather leaves that to be done within three months after the Agreement enters into force. The products to be covered are listed (in Annex XVII-A), including live animals and animal products. The list was worked out in the course of 2015 and jointly adopted by Moldova and the EU at a meeting of the SPS Subcommittee on 1 June 2016. The provisions of Annex XXIV-B offer a comprehensive list of EU legislation that must be approximated by 2020, and the timeline for every individual action.

Equivalence. To recognise the equivalence of measures or groups of measures taken by Moldova with those of the EU, for sectors or subsectors and for commodities or groups of commodities, specific rules are established. The process is to be launched by the exporting party based on the “objective demonstration of equivalence”, and the “objective assessment of this demonstration” by the importing party. This process should be interactive. It is then the
responsibility of the importing party to determine equivalence or not, or to withdraw or suspend equivalence, based on internationally recognised standards or proper scientific evidence. The importing party may conduct verifications for which detailed rules apply. With equivalence recognition comes the reduction of physical checks at frontiers and simplified procedures.

The EU conducts regular audits to ensure conformity, for example the audit conducted in 2014 on the egg sector (see further below).

**Trade conditions.** Once the approximation has been fully undertaken, the import conditions for the products or sectors in question will apply to the whole territory of Moldova as the exporting country (Art. 186). Enterprises wishing to export to the EU, however, still need to obtain certification from the competent authority of Moldova, which has to guarantee that the establishment meets relevant health requirements of the EU and has the power to suspend the establishment’s listing in case of non-compliance.

**Pests and animal diseases.** There are detailed provisions for handling problems of animal or plant diseases and pests. The animal and fish diseases are listed in Annex XVIII-A. In the case of pests, each party must establish and communicate the lists of regulated pests. Procedures are established to recognise the pest-free status of given regions for the purpose of trade. Procedures are established for notification of risks to public, animal or plant health through diseases.

**Safeguard measures.** Where the importing country needs to take measures to control a serious health hazard or risk, it may take provisional restrictive measures affecting imports, but these have to be suitable or proportional in order to minimise the disruption of trade.

**SPS Subcommittee of the Association Council.** This subcommittee is in charge of the implementation review of the SPS chapter and may inter alia decide upon modifications to the Annexes. Decisions will be taken on the basis of consensus of the parties.

**Pre-existing import arrangements.** The EU maintains a comprehensive system for the regulation of imports of agri-food products from third countries to assure their compliance with its SPS requirements, notably under Regulation (EC) 854/2004 on rules for the organisation of controls of products of animal origin.

This regulation first sets the rules for the approval within the EU itself of establishments (i.e. slaughterhouses or food processing
factories), and goes on to require officially designated, competent authorities to carry out or organise controls to verify compliance with SPS requirements. The regulation also establishes comparable rules for approving establishments in third countries for the purpose of exporting to the EU market. These arrangements are currently being used by Moldova and will remain in force while the provisions of the Agreement are being implemented.

Total SPS compliance across the entire territory of Moldova is an ambitious objective, and the system will take quite a few years to become effectively applied throughout the agri-food sector. In the meantime, the procedures exist for those enterprises willing and able to comply to be certified for export to the EU. This is an important element of effective flexibility in the Agreement and can help avoid excessive costs of compliance.

In addition, there are certain EU provisions to exempt small-scale production from various SPS requirements (Regulation (EC) 853/2004 on hygiene rules). For example, hygiene rules do not apply to production for private domestic consumption, or small quantities supplied to local retail establishments and markets. Moldova remains free to apply similar exemptions for local markets.

Implementation perspectives

Moldova has considerable potential in the agri-food sector, but shortcomings in the SPS regulatory system are holding back exploitation of this potential.

This is especially the case for products of animal origin, where so far authorisations for exporting to the EU have been possible for only three products: honey, caviar and egg flour. Some 18 companies from Moldova exported 3,440 tonnes of honey worth €50.8 million to the European market in 2016. But much of Moldova’s honey is exported in bulk, to be later processed in the importing countries, which means that the final products are not labelled as ‘Moldovan’ on the EU market.

For fresh fruits and vegetable and wines, the SPS regulations are less of a problem.

Current status quo in the SPS regulatory system. The National Agency for Food Safety (ANSA) is the administrative authority, subordinated to the government (executive), even though the policies in the field are adopted by the Ministry of Agriculture, Regional Development and Environment (MARDE). The two institutions
signed a bilateral agreement on collaboration in April 2016, which emphasises that ANSA is responsible for implementing relevant SPS actions and also for providing MARDE with data tracking the progress in the field. The agency has regulatory and control competences on food safety and veterinary standards, animal husbandry, plant protection and phytosanitary quarantine, control of seeds, quality primary products, food products and animal feed. It can restrict the import and marketing of goods (fertilisers, pharmaceuticals for veterinary use, agri-food and genetically modified organisms), if they contradict national standards and requirements. Moreover, the agency supervises the export of agri-food goods to local markets through its units at the customs offices.

Major institutional changes were underway in 2016-17, and they continue into 2018. At the ministerial level, the Ministry of Agriculture and Food Industry merged with the Ministry of Regional Development and Construction (regional development component), and the Ministry of Environment and the Agency for Land Relations and Cadastre.

The National Food Safety Agency, ANSA, is the main institution responsible for SPS policy and practice. The organisational structure was approved on a November 2017. ANSA has around 1,600 members of staff, and is responsible for several categories of acts: phytosanitary and quarantine permissive acts, safety acts, sanitary–veterinary certification of seed and seedlings; and exports to countries of the CIS. Its personnel are involved in capacity-building activities (ad-hoc training sessions) with a focus on food safety and agri-food composition, veterinary residues, food and feed contaminant surveillance, disease investigations (swine fever and rabies) and contingency planning.

Two units within ANSA are in charge of inspections. One unit deals with sanitary and veterinary supervision, which includes animal welfare, disease eradication, animal identification and monitoring. The other unit deals with supervision of marketing, distribution and consumption of food products, of both animal and vegetal origins. At the local level, ANSA has territorial units in 34 districts (raioane), including Chișinău, Balți and Gagauzia (in total, 37 territorial units).

Among the priorities in the SPS field are the diversification of the export of animal-origin products and the improvement of the laboratory infrastructure. The SPS legislation for the period 2016–17 includes measures to make Moldovan companies eligible for exporting class-B eggs and poultry, and the EU’s assessments have
now started for both products. Transition periods for trade liberalisation with the EU are foreseen for the following products: pasta, pepper, corn (three years); cheeses, vegetables (tomato, cucumbers, etc.), fruits (cherries, nectarines, raspberries, wines, juices, jams) and bakery products (five years); and milk, meat and fresh cherries (ten years).

**Implementation.** The list of EU laws for SPS to be approximated was not fixed in the Agreement, but it is scheduled to be decided upon within three months of its entry into force. In 2015, the Moldovan authorities elaborated this list with the aid of a screening done with European experts under a TAIEX project and presented it to the European Commission for consultation. In March 2016, the list was published for public consultation in Moldova.\(^87\) The official amendment of the Agreement (Annex XXIV-B) to bring this into effect took place in the context of the SPS Subcommittee held in Brussels, on 1 June 2016.

The agreed list of SPS legislation covers 235 EU directives and regulations. The largest share relates to veterinary requirements (78 directives) and rules for safety of agri-food products (48 directives), with fewer in the following areas: access to the market of agri-food, animal feed and animal origin sub-products (27); general framework legislation (10); specific rules for animal feed (10); genetically modified organisms (10); medical goods for veterinary purposes (6).

The periods of approximation agreed for SPS legislation are up to five years until 2020. The bulk of the legislation is scheduled for two-year periods of approximation (for 68 directives), three-year periods (52 directives) and four-year periods (57 directives) starting from 2016. The Moldovan authorities are expected to transpose 37 EU directives in 2016, with only a minor number (eight) left for 2020.

During 2015–17, the executive adopted and examined numerous decisions and proposals for draft laws, the most relevant of which are the following:
- Food Safety Strategy for 2018-22
- draft Law on General Food Hygiene Requirements for food of animal origin, transposing Regulations 852, 853/2004

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- draft law on the Rapid Alert System for Food and Feed at national level\(^8^8\)
- draft law on sanitary-veterinary requirements for animal by-products not destined for human consumption, transposing Directive 2008/98/EC
- draft law on control of quality requirements for fresh fruit and vegetables (Regulation (EC) 1234/2007)
- law on the classification of carcasses of cattle, pigs and sheep (Regulation (EC) 1249/2008)\(^8^9\)
- requirements for the quality evaluation of milk and meat products
- automatic informational system for a Moldovan vineyard register, which started in September 2017
- sanitary veterinary standard laying down control measures for classical swine fever \(^9^0\)
- draft regulation was adopted concerning a ‘one-stop shop’ for the issuance of permits for exporting products of animal origin
- automatic information system for a phytosanitary register on plant protection and phytosanitary quarantine
- draft law aimed at establishing the Rapid Alert System for Food and Feed (RASFF) - Regulation (EC) 178/2002.

MARDE’s competences were completed by transposing Regulation (EC) 882/2004 on official controls to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

Since 2015, with the support of the World Bank, inspection points for ANSA have started to be incorporated in the customs point in Tudora and Criva. New inspection points are foreseen for customs points on the border with Romania, at Giurgiulești and Leușeni.

**Development and equipment of laboratories.** The national laboratory infrastructure is underdeveloped and insufficient. The efforts to renovate the infrastructure are more fragmentary than systemic, with poor results so far. Overall, there are 16 laboratories accredited at the national level. Some six laboratories are accredited to

\(^9^0\) See http://lex.justice.md/md/368050/.
issue testing reports for goods exported to Russia, and eight can issue phytosanitary certificates for exporting to the EU.

For many sectors, the reference laboratories have not been identified and their role is not clearly defined. In the case of divergent results of the tests carried out by different laboratories, it is not possible to make a clear decision on the final result.

The National Reference Laboratory for Veterinary and Food Safety and the Republican Veterinary Diagnostic Centre is not fully equipped with the most advanced equipment for testing parameters in the field of food safety. Besides, the National Centre for Verification and Certification of Plant and Soil Production is not capable of testing all food safety parameters, such as pesticide residues, heavy metals, genetically modified organisms (GMOs), DNA sequencing, etc.

Given that laboratories are accredited by MOLDAC, which just recently was positively assessed to join bilaterally the EA MLA, the Laboratory for Veterinary and Food Safety has been internationally accredited since March 2017, but only for eight methods. Thus, testing of products destined for export to the EU will be carried out for some indicators outside the country.

According to the Food Safety Strategy for 2018-22 support documents, border inspection posts do not have adequate facilities and conditions for unloading goods and sampling. Only two out of ten (Criva and Tudora) posts were able to carry out full screening and sampling at the border in September 2016. The same conclusion is confirmed in a report issued by the Court of Accounts of Moldova.

The Moldovan authorities are currently implementing a project for the creation and operation of a laboratory for determining pesticide residues in plants, soil and production of non-animal origin. Support comes from EU member states (Romania) and other countries (Norway and Israel). A bio-molecular laboratory for detecting GMOs was opened in May 2016, with the support of Israel’s Agency for International Development Cooperation.

The EU has offered laboratory kits for investigating bird diseases like avian influenza and the Newcastle Disease. The beneficiary of these kits is the Republican Veterinary Diagnostic Centre (IP CRDV), whose staff participated as well in training organised by a Romanian institute on diagnostic methods in rabies, rabies vaccination and detection of salmonella, etc. This centre is still testing animal-origin food products (meat, fish, milk and honey) on the basis of the relevant European standards or technical regulations.
At the same time, the Centre uses international standards (ISO) for testing the presence of microbiological diseases.

Procedures for developing the Automatic Informational System (LIMS) for the management of veterinary, sanitary and food-safety laboratories were initiated in 2014, but due to lack of funds and poor institutional cooperation, the project is still in its early stages of development.

Also, the authorities have been developing an Information System for the State Register for Animals since 2007, in line with the European Biodiversity Information System for Farm Animals (EFABIS).

One of the first audits by the EU – conducted by DG Sanco (Health and Consumers) of the European Commission – for products of animal origin (class B eggs) took place in 2014. However, the report emphasises that the ANSA is not able to deliver the level of assurance required for exporting class B eggs to the EU. It identifies the following problems: ineffective surveillance, deficient internal reporting and audit systems, insufficient training of the personnel of the territorial units and lack of diagnostic resources within laboratories to detect the avian influenza and the Newcastle Disease viruses.61 Unfortunately, this continues to be the case in 2017, for most of the conclusions. There are discussions with the Commission over the next audit to be undertaken in 2018.

Challenges. With the reorganisation of the Ministries, the focus on strengthening the capacities of ANSA weakened at least for a year (September 2016–September 2017). The lack of funds led to significant delays in the implementation calendar of the harmonisation plans on SPS legislation. It also became clearer that expectations in this field vastly underestimated both the financial and administrative efforts that would be required to implement the provisions of the Association Agreement.

The major outstanding challenges in the SPS field concern the activities of ANSA. The agency has made some progress in improving the governance of the sector, but it still requires serious institutional

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61 See DG Sanco, European Commission, Final Report of an Audit carried out in the Republic of Moldova from 25 November to 3 December 2014 in order to evaluate the animal health controls in place for class B eggs intended for export to the European Union (audit number 2014-7351).
capacity building in its staffing and laboratories. These requirements are quite far-reaching, including enhancing professionalism and conducting targeted training sessions, with a focus on territorial units and laboratories; modernising existing laboratories; applying international and/or European standards and technical regulations by laboratories.\(^{92}\) The export of goods of animal origin is hampered by the poor infrastructure that is installed in laboratories and their lack of international accreditation.

ANSA faces frequent accusations of involvement in corruption related to influence peddling and passive corruption in the process of importing goods from the EU in 2017, or the illegal issuing of phytosanitary certificates for goods exported from Moldova (e.g. the export of Polish apples to the Russian market as Moldovan goods), and illegal export schemes involving the Transnistrian region, which were exposed in 2016. The Agency was subject to various audits and anti-corruption evaluations, especially in 2017, when five investigations were conducted by the National Anti-corruption Centre. As a result, three of the Heads of Customs Phytosanitary Control Stations, two chiefs and one inspector of the National Agency for Food Safety (ANSA) were detained by the anti-corruption prosecutors. Also in 2017, the Court of Accounts of Moldova conducted its first audit on the regularity and veracity of ANSA’s financial and patrimonial reports. The main conclusion of the report was that ANSA lacks a clear financial reporting mechanism; the internal control mechanisms are primitive and the laboratories are outdated.

The GOST standards are still applied in the foodstuff industry to a significant degree, although there is a clear shift towards EU standards as exports towards the European market develop.

\(^{92}\) This refers in particular to ISO/IEC 17025:2005, specifying the general requirements for the competence to carry out tests and/or calibrations, including sampling.
Food safety regulations at a glance

Moldova still lacks financial and institutional resources needed to fully implement the commitments on SPS, which is reflected in significant delays in the implementation calendar of the legal harmonisation. A trackable action plan is urgently needed.

Institutional weaknesses in the key government agency (ANSA), in particular at the local level, the poor infrastructure of laboratories and corruption cases (phytosanitary certificates) are serious constraints on the growth of the agri-food sector. So far Moldova has been able to export to the EU only three categories of goods of animal origin: caviar, honey and egg flour, although other non-animal foods and wines have done better.

Reform measures should focus on increasing the supervision and control capacities of ANSA over the entire food chain.

This will in due course assure high health and safety standards for Moldovan consumers, as well as position Moldovan enterprises to export to the EU and other international markets.
9. SERVICES

The development of a modern and competitive services sector is of great importance for the modernisation of the Moldovan economy. In this regard, the DCFTA provides for a comprehensive liberalisation of establishment and trade in services, subject however to extensive reservations – more by the EU than Moldova.

Provisions of the Agreement

The provisions of the Agreement are organised under three headings: i) establishment, ii) cross-border supply of services and iii) temporary presence of natural persons for business purposes.

Establishment. This entails the right of either enterprises (‘legal persons’), or individuals (‘natural persons’) to pursue business in the country of the other party. Enterprises may create or acquire branches or representative offices. Individuals may pursue their business through self-employment or set up undertakings that they control.

The Agreement provides for national treatment and MFN treatment for establishment. This means that the EU and Moldova must grant as regards the ‘established’ enterprises treatment no less favourable than that accorded to its own enterprises, or those of any third country, whichever is better.

For several economic activities, however, both the EU and Moldova have reservations that restrict national treatment or MFN treatment. These reservations are laid down in the annexes to the Agreement (Annex XXVII-A and E) and essentially replicate the
parties’ reservations under the GATS (General Agreement on Trade in Services). Moldova has fewer reservations than the EU and its member states (see Table 9.1). Moldova’s liberal approach is mainly due to the fact that the country has only a few reservations at the level of the WTO (i.e. in its Schedule of Specific Commitments on Trade in Services). It is important to note that these reservations in the DCFTA are listed in a negative list. This means that the EU and Moldova will open up all services sectors (i.e. the default position), except for those sectors listed where reservations apply (as detailed in the annexes). That approach guarantees automatic coverage for new services not listed as exceptions.

Table 9.1 National treatment or MFN reservations to establishment

<table>
<thead>
<tr>
<th>EU party reservations</th>
<th>Moldova reservations</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU-wide reservations</td>
<td>Member state-specific reservations*</td>
</tr>
<tr>
<td>Horizontal reservations</td>
<td>2</td>
</tr>
<tr>
<td>Sectoral reservations</td>
<td>30</td>
</tr>
<tr>
<td>Total</td>
<td>161</td>
</tr>
</tbody>
</table>

* The number of member state-specific reservations stands for the number of reservations that are being applied by different EU member states.

The list of EU reservations is complicated because it includes both EU-wide and member state-specific reservations. With regard to horizontal reservations (i.e. reservations applying to all sectors or subsectors), important EU-wide reservations reflect concerns, for example, that economic activities regarded as public utilities may be subject to public monopolies. Several member state-specific reservations also exist for real estate purchases. Numerous EU-wide or member state-specific reservations remain in the areas of agriculture and hunting, fishing, energy mining, professional services, financial services, transport services, etc.

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93 See http://i-tip.wto.org/services/SearchResultGats.aspx, for an overview of Moldova’s reservations under the GATS.
The Agreement also includes a standstill clause that forbids, subject to the reservations in the Annex, the EU and Moldova from adopting new discriminatory regulations as regards the establishment of legal persons of the other party by comparison with their own legal persons. A soft commitment is included to further negotiate investment protection provisions and a mechanism for investor-state dispute settlement.

**Cross-border supply of services.** The DCFTA section on cross-border supply of services covers the supply of a service i) from the territory of a party into the territory of the other party (GATS Mode 1) and ii) in the territory of a party to a service consumer of the other party (GATS Mode 2). Yet it does not apply to audio-visual services, national maritime cabotage or domestic and international air transport services. The EU and Moldova must grant market access and national treatment to services and service suppliers of the other party. In contrast to the section on establishment, however, the section on cross-border supply of services works with a *positive list*. This means that the EU and Moldova only make market access and national treatment commitments in those service sectors listed in the Annex.

In the sectors where market-access commitments are undertaken, the EU and Moldova are prohibited from limiting the following aspects:

i) the number of service suppliers (e.g. by quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test);

ii) the total value of service transactions or assets in the form of quotas or the requirement of an economic needs test; and

iii) the total number of service operations or the total quantity of services output by quotas or through the requirement of an economic needs test.

The sectors or subsectors liberalised, including the applicable market access and national treatment reservations, are listed in great detail in Annex XXVII-B (EU and its member states) and XXVII-F (Moldova). Still, the liberalisation is – similar to establishment – rather asymmetrical: whereas Moldova only has a limited number of reservations for unbound service sectors in its list, the EU has

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94 The conditions of mutual market access in air transport are covered by the bilateral Common Aviation Agreement (explained in chapter 16).
numerous reservations (Table 9.2). Again, this is mainly due to Moldova’s liberal approach in the GATS.

<table>
<thead>
<tr>
<th></th>
<th>EU**</th>
<th>Moldova</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mode 1</td>
<td>Mode 2</td>
</tr>
<tr>
<td>Business services</td>
<td>79</td>
<td>22</td>
</tr>
<tr>
<td>Communication services</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Construction and engineering services</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Distribution services</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>Educational services</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>Environmental services</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Financial services</td>
<td>33</td>
<td>11</td>
</tr>
<tr>
<td>Health services and social services</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Tourism and travel-related services</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Recreational, cultural and sporting services</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Transport services</td>
<td>26</td>
<td>12</td>
</tr>
<tr>
<td>Other transport services</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Energy services</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Other services</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>201</td>
<td>72</td>
</tr>
</tbody>
</table>

* EU-wide and member state-specific reservations are grouped together. The number of member state-specific reservations represents the number of reservations that are being applied by different EU member states.
** EU-wide reservations or member state-specific reservations.

Temporary presence of natural persons for business purposes. This section covers measures of the parties concerning the entry into and temporary stay in their territory of categories of natural persons for business purposes (GATS mode 4), such as key personnel (i.e. senior personnel responsible for the setting-up or operation of an establishment), graduate trainees, business sellers or independent professionals (i.e. those engaged in the supply of a service and established as self-employed for such purposes).
With regard to key personnel and graduate trainees, both the EU and Moldova have to allow entrepreneurs of the other party to employ in their establishment natural persons of that other party, provided that such employees are key personnel or graduate trainees. The temporary entry and temporary stay of key personnel and graduate trainees will be for a period of no longer than three years for intra-corporate transferees, 90 days in any 12-month period for business visitors for establishment purposes and one year for graduate trainees. Each party will also allow the entry and temporary stay of business sellers of the other party for a period of no longer than 90 days in any 12-month period. However, for these three categories (i.e. key personnel, graduate trainees and business sellers), the EU and its member states will apply reservations (177 in total), such as the requirement of an economic needs test, residency requirements and nationality conditions. Moldova has again – in line with its GATS commitments – taken a much more liberal approach, with only 7 reservations (6 in the area of legal services and 1 in the area of services provided by midwives, nurses and paramedical personnel).

The DCFTA also liberalises services provided by contractual service suppliers in specific sectors. Each party must allow the supply of services into their territory by contractual service suppliers of the other party. Nevertheless, this liberalisation is subject to several conditions and reservations. Among the most important conditions, for example, is the requirement that the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, who has obtained a service contract not exceeding 12 months. Moreover, they must possess at least three years of professional experience in the relevant sector and must have a university degree or a qualification demonstrating knowledge of an equivalent level and relevant professional qualifications. The reservations (mostly residency requirements or economic needs tests) are listed in the annexes. The EU party has again more reservations than Moldova. Whereas the EU has 73 reservations in 18 sectors, Moldova only has 7 reservations (again mainly in the area of legal

95 For the lists of reservations on key personnel, graduate trainees and business sellers, see Annex XXVII-G (Moldova) and Annex XXVII-C (EU and EU member states).

96 See the EU’s reservations in Annex XXVII-D and Moldova’s reservation in Annex XXVII-H.
services). Similar or identical conditions and reservations also apply to sectors for which the parties have liberalised the supply of services by independent professionals.

**Regulatory framework and internal market treatment.** The EU and Moldova also aim to tackle regulatory barriers to trade in those services sections where they have made specific commitments. For example, the DCFTA defines some basic rules for licensing (i.e. the process through which a service supplier or investor is required to obtain a licence from a competent authority before being allowed to supply a service). The DCFTA requires that licensing and licensing procedures proceed in a clear, transparent and pre-established manner, and that it is proportionate to a legitimate public-policy objective. Moreover, judicial, arbitral or administrative tribunals or procedures have to be established to review licensing decisions. These rules also apply to qualification requirements (i.e. requirements relating to the competence of a natural person to supply a certain service). The Agreement also envisages the mutual recognition of necessary qualifications and/or professional experience that natural persons must possess to provide a specific service. The EU and Moldova are obliged to encourage their relevant professional bodies to provide the Trade Committee with recommendations on mutual recognition of requirements, qualifications, licences and other regulations.

In four services sectors, i.e. i) postal and courier services, ii) electronic communications, iii) financial services and iv) international maritime transport, the DCFTA includes specific rules and procedures on regulatory cooperation. Moldova has committed to approximate the EU’s key legislation in these four services sectors (included in Annex XXVIII). Although the Agreement does not strictly oblige Moldova to approximate the EU legislation, it states that “each Party recognises the importance of the gradual approximation of the Republic of Moldova’s existing and future legislation to the list of the Union acquis set out in Annex XXVIII”. The DCFTA links

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97 Authors’ own calculations in which EU-wide and member state-specific reservations are grouped together.

98 These are the sectors for the EU: i) legal services, ii) architectural services, iii) engineering services, iv) computer services, v) management consulting services and vi) translation services.

99 See Arts 230, 240, 249 and 253.
implementation of these approximation commitments with further market access.\textsuperscript{100} The Trade Committee can decide to review and modify the annexes with reservations in these four sectors if Moldova implements the relevant EU legislation. The potential scope of further liberalisation is not specified in the Agreement, but the DCFTA concluded with Ukraine gives some guidance. In the Ukraine DCFTA, the Trade Committee may decide to grant the reciprocal ‘internal market treatment’ with respect to these four services sectors. In practice, this means that for these specific sectors, the reservations of the EU and Ukraine to market access and national treatment, listed in the corresponding annexes, will be lifted.

These sectors are discussed in further detail in their respective chapters.

\begin{quote}
\textbf{Box 9.1 Summary of commitments and reservations of the EU and Moldova for services sectors}

**EU**

Reservations on establishment: \textit{substantial horizontal and sectoral reservations}

Commitments on liberalisation of the cross-border supply of services: \textit{large degree of liberalisation, but with extensive reservations}

Commitments on contractual services and independent professionals: \textit{extensive reservations}

**Moldova**

Reservations on establishment: \textit{large degree of liberalisation with few reservations}

Commitments on liberalisation of the cross-border supply of services: \textit{almost full liberalisation}

Commitments on contractual services and independent professionals: \textit{almost full liberalisation}
\end{quote}

\textsuperscript{100} See for example Art. 213.
Implementation perspectives

*Opportunities through services liberalisation.* Services constitute the most important sector in terms of share of GDP, almost 60%. Balance of payments data for 2016 indicate that Moldova is a net exporter of services, with a surplus amounting €180 million, which represents 3.2% of GDP. The most significant share in the value of both imports and exports of services is held by transport services, followed by tourism, telecommunications, computer and information services. See Table 9.3 for further data.

*Table 9.3 EU trade in services with Moldova, 2014-15 (€ mn)*

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>% change 2015/2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU exports</td>
<td>596</td>
<td>616</td>
<td>3.0</td>
</tr>
<tr>
<td>EU imports</td>
<td>565</td>
<td>660</td>
<td>17.0</td>
</tr>
<tr>
<td>Total trade</td>
<td>1.161</td>
<td>1.276</td>
<td>10.0</td>
</tr>
<tr>
<td>Trade balance</td>
<td>31</td>
<td>-44</td>
<td></td>
</tr>
</tbody>
</table>


In the context of liberalisation under the DCFTA, it is anticipated that this sector could create new opportunities for Moldova by expanding its output of services in sectors where it has a comparative advantage, thus creating jobs, contributing more to GDP and generating foreign exchange.

The major challenge to developing services stem from the shortage of investments and the scarce availability of qualified labour. The continuous emigration of the labour force, especially the ‘brain-drain’, leads to an insufficient supply of labour with respect to demand. Therefore, it is necessary to fill this gap by attracting and employing foreign citizens while at the same time respecting the minimum conditions for the protection of the local labour force.

The medical services are an outstanding case where the government intends to attract immigration to cover the shortage of medical staff. The government has elaborated a Strategy, involving

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the establishment of an information mechanism on vacancies and offering appropriate working conditions and other facilities. The government also aims at improving collaboration at the international level, by signing bilateral agreements in the field of human resources in medical sector. Moldova is a convenient destination for foreign students seeking medicine studies that are relatively good, but at lower costs. The State University of Medicine and Pharmacy "Nicolae Testemtanu" hosts the largest number of international students, with round 500 enrolments. More than 35% are students from EU member states (in particular from Romania, Bulgaria, but also from Sweden, Finland and France). The Strategy envisages creating the necessary conditions for their integration in the national labour market because most of them will remain in the country after their studies to practice for a few years.

**Regulatory challenges for services liberalisation.** The prospects for liberalising Moldova’s services are quite varied owing to the complexity and comprehensiveness of the sector. One of the challenges of services liberalisation arises from the fact that there remain many barriers represented by domestic regulations inherited from the past. Addressing market access and national treatment barriers will not lead to an automatic expansion of this sector unless domestic regulations are also reformed. Initiatives are being taken throughout 2018,102 coordinated by the Ministry of Economy and Infrastructure (MEI), to assess the national legislative framework on services. The purpose is to identify potential contradictions with commitments under the Agreement with regard to the market access of the cross-border supply of services. This evaluation will lead to a report to be submitted to the Association Committee on the liberalisation of cross-border supply of services, with proposals for the extension of liberalised areas.

With regard to Moldova’s approximation to the EU acquis in the four sectors discussed above, progress has been made in the area of postal services. In the area of international maritime transport services and telecommunication services, Moldova needs to make more progress. The EU and Moldova also envisage updating the annexes related to the EU acquis with regards to anti-money laundering,

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102 These actions are mentioned in the 2017–19 National Action Plan for the implementation of the Association Agreement, approved by Government Decision No. 1472 of 30 December 2016.
telecommunications services and international maritime transport. However, no progress has been made at this point. In the area of financial services, the Commission has recently concluded that legislative approximation, as foreseen in the DCFTA, “has become secondary in the face of a major corruption crisis in the banking sector, whose resolution depends on restoring the fundamentals of good governance among key institutions”.\textsuperscript{103} Nevertheless, the Commission argues that Moldova can take inspiration from the EU law to design its own regulatory and supervisory frameworks conducive to financial stability. More details on these specific sectors are discussed below.

**Temporary presence of natural persons for business purposes.** The liberalisation of GATS Mode 4 services can bring benefits for Moldova by facilitating work in the EU by different service providers (nurses, teachers and domestic workers, as well as more skilled ones, such as medical doctors, architects and engineers), resulting in remittances of income, which is the largest source of external capital in Moldova. The country will also benefit from the enhanced skills and resources of returning migrants. However, as mentioned above, the EU will apply several reservations, such as the requirement of an economic needs test, residency requirements and nationality conditions. On the other hand, there is a high probability that skilled individuals are more likely to emigrate, thus raising concerns about a ‘brain drain’. As for establishment, it is necessary to transpose definitions and conditions of temporary stay into national legislation.

During 2016 and 2017, amendments to national legislation on labour migration were adopted in Law No. 200 of 16 July 2010 on the regime for foreigners, and Law No. 180 of 10 July 2008 on labour migration. In general terms, the amendments aim to facilitate the hiring of foreign citizens, although this was qualified as a bureaucratic step by the representatives of the business community. The measures include the simplification of procedures residence permits for foreign citizens and for work permits. Various provisions refer exclusively to the European Union citizens, for example facilitating the work conditions for the European business visitors.\textsuperscript{104}


\textsuperscript{104} See section 4 “Temporary Presence of Natural Persons for Business Purposes”, Article 214 “Scope and definitions” of the Association Agreement.
Moldova’s services sector at a glance

The services sector has become increasingly important for Moldova’s economy and now accounts for around 60% of the country’s GDP.

In contrast to foreign trade in goods that steadily registers a significant deficit, the trade in services makes a positive contribution to the current account of Moldova’s balance of payments.

The DCFTA requirements can lead to a more open, transparent and better functioning services market in Moldova.

The implementation process is recording a relatively slow pace being affected by a series of constraints generated by the volatilities in the political and macroeconomic environment in recent years.

The government restructuring initiated in 2017 has changed the institutional framework that deals with several service sectors.

Even if several delays are recorded in the implementation of the provisions of the Agreement, the timetable for the years 2018-20 envisages an activation of the process.
Public procurement is of great economic importance in both the EU and Moldova. It accounts for around 18% of GDP in the EU and offers an enormous potential market for Moldovan companies. The DCFTA provides for the gradual and reciprocal liberalisation of the parties’ public procurement markets under the strict condition that Moldova implements the EU’s key public procurement rules. Moldova must ensure that public purchases of goods, works and services are transparent and fair, guarantee sound competition, tackle corruption and ensure that public authorities get the best value for their taxpayers’ money.

**Provisions of the Agreement**

In the DCFTA chapter on public procurement, the EU and Moldova envisage mutual access to their respective public procurement markets on the basis of the principle of national treatment at national, regional and local levels for public contracts and concessions in the traditional sectors as well as in the utilities sector. It covers any state, regional or local authority, including public undertakings in the field of utilities such as state-owned enterprises and private undertakings operating on the basis of special and exclusive rights. Defence procurement, however, is not covered by the DCFTA.

The DCFTA procurement rules only apply to contracts above certain value thresholds listed in Annex XXIX-A of the Agreement. As foreseen in the Agreement, however, these thresholds have been updated to reflect the thresholds under the new EU public
procurement directives adopted in 2014 (see below). In October 2016, the joint EU-Moldova Trade Committee adopted the new thresholds. (see Table 10.1).\textsuperscript{105}

Table 10.1 Adjusted thresholds for the application of public procurement rules

<table>
<thead>
<tr>
<th>Public procurement rule</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Public supply and service contracts awarded by central government authorities and design contests awarded by such authorities</td>
<td>€134,000</td>
</tr>
<tr>
<td>b. Public supply and public service contracts not covered by point (a)</td>
<td>€207,000</td>
</tr>
<tr>
<td>c. Public works contracts</td>
<td>€5,186,000</td>
</tr>
<tr>
<td>d. Works contracts in the utilities sector</td>
<td>€5,186,000</td>
</tr>
<tr>
<td>e. Concessions</td>
<td>€5,186,000</td>
</tr>
<tr>
<td>f. Supply and service contracts in the utilities sector</td>
<td>€414,000</td>
</tr>
<tr>
<td>g. Public service contracts for social and other specific services</td>
<td>€750,000</td>
</tr>
<tr>
<td>h. Service contracts for social and other specific services in the utilities sector</td>
<td>€1,000,000</td>
</tr>
</tbody>
</table>

The DCFTA includes provisions relating to i) institutional reforms and the award of procurement contracts, ii) Moldova’s approximation to the EU’s public procurement law and iii) market access.

**Institutional reform.** Moldova must establish and maintain an appropriate institutional framework necessary for the proper functioning of its public procurement system. It has to designate a central executive body responsible for economic policy tasked with guaranteeing a coherent policy in all areas related to public procurement, including implementation of this chapter. In addition, Moldova must establish an impartial and independent body that will review decisions taken by contracting authorities or entities during the award of contracts.

\textsuperscript{105} Decision No 2/2016 of the EU – Republic of Moldova Association Committee in Trade Configuration of 19 October 2016.
Award of contracts. The DCFTA also defines “basic standards regulating the award of contracts”, which are derived directly from EU public procurement law and include the principles of non-discrimination, equal treatment, transparency and proportionality. Moldova has to comply with these basic standards no later than nine months from the entry into force of this Agreement. This set of rules lays down key publication requirements. Moldova must ensure that all intended procurements are properly published and made public in order to enable the market to be opened up to competition and to allow any interested economic operator to have access to information regarding the intended procurement prior to the award of the contract. There has to be a non-discriminatory description of the subject matter of the contract, equal access for all economic operators and appropriate time limits. Contracting entities may not impose discriminatory conditions, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity. Contracts must be awarded in a transparent manner to the applicant who has submitted the economically most advantageous offer or the offer with the lowest price, based on tender criteria. The final decisions are to be communicated to all applicants and upon request of an unsuccessful applicant, while the reasons must be provided in sufficient detail to allow a review of the decision.

Legislative approximation. According to the initial provisions of the Agreement, Moldova was obliged to approximate to Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17 on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (i.e. utilities). In 2014, however, the EU adopted a new legislative package on public procurement which replaced Directives 2004/17 and 18. These new Directives aim to simplify the EU procurement regime, introduce more flexibility, establish better access to EU procurement markets for SMEs and ensure that greater consideration is given to social and environmental criteria. Moreover,

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a specific Directive has been adopted on the award of concession contracts. This legislative package was adopted in February 2014 and the member states had until April 2016 to transpose the new rules into their national law.

In order to catch up with these new EU public procurement rules, the EU-Moldova Trade Committee adopted a decision to amend the entire Annex XXIX. The new acts for approximation are Directive 2014/23 on the award of concession contracts, Directive 2014/24 on public procurement, as well as the Directive 2014/25 on procurement by entities operating in the water, energy, transport and postal services sectors. Yet, these directives do not have to be implemented in their entirety or at once. Annexes from XXIX-B to XXIX-S divide these directives into “basic”, “mandatory” and “non-mandatory” elements (i.e. provisions that are not mandatory but recommended for approximation) and elements “that fall outside the scope of legislative approximation”.

**Market access.** This is clearly linked to Moldova’s progress in approximating to EU public procurement rules and institutional reforms. Annex XXIX-B includes an “indicative time schedule” for institutional reform, legislative approximation and market access, which was also adjusted in 2016 together with the update of the annexed public procurement Directives. This time schedule foresees four phases for Moldova to implement EU public procurement directives, and the specific market access that Moldova and the EU will grant to each other (Table 10.2). The market access provided in each phase means that the EU will grant access to contract award procedures to Moldovan companies – whether they are established or not in the EU – pursuant to EU public procurement rules under treatment no less favourable than that accorded to EU companies, and vice versa. This schedule also indicates that the EU and Moldova will open their respective procurement markets gradually and simultaneously. Contrary to other DCFTA chapters (e.g. on trade in goods), the EU will not grant access to – a section of – its procurement market before Moldova offers the same market access to the EU. Moreover, each phase will be evaluated by the Trade Committee and the reciprocal granting of market access will only take place after a positive assessment by this committee, which will take into account

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107 Decision No 2/2016 of the EU-Republic of Moldova Association Committee in Trade Configuration of 19 October 2016.
the quality of Moldova’s legislation as well as its practical implementation. The Trade Committee will only proceed to the evaluation of a next phase once the measures to implement the previous phase have been carried out and approved.

Prior to the beginning of legislative approximation, Moldova has to submit to the Trade Committee a ‘comprehensive roadmap’ for the implementation of this procurement chapter, covering all reforms in terms of legislative approximation and institutional capacity-building. This roadmap must comply with the four phases of the indicative schedule of Annex XXIX-B (see Table 10.2). Following a favourable opinion by the Trade Committee, this roadmap is to be considered the reference document for the implementation of this chapter.

Table 10.2 Adjusted indicative time schedule for approximation of public procurement rules

<table>
<thead>
<tr>
<th>Phase</th>
<th>Action</th>
<th>Indicative time schedule*</th>
<th>Market access granted to the EU by Moldova</th>
<th>Market access granted to Moldova by the EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Implementation of the “basic standards”, the institutional reforms and the public procurement roadmap</td>
<td>9 months</td>
<td>Supplies for central government authorities</td>
<td>Supplies for central government authorities</td>
</tr>
<tr>
<td>2</td>
<td>Approximation and implementation of basic elements of Directive 2014/24/EU and of Dir. 89/665/EEC</td>
<td>5 years</td>
<td>Supplies for state, regional and local authorities and bodies governed by public law</td>
<td>Supplies for state, regional and local authorities and bodies governed by public law</td>
</tr>
<tr>
<td></td>
<td>Approximation and implementation of basic elements of Directive 2014/25/EU and of Dir. 92/13/EEC</td>
<td>5 years</td>
<td>Supplies for all contracting entities in the utilities sector</td>
<td>Supply for all contracting entities</td>
</tr>
<tr>
<td></td>
<td>Approximation and implementation of other elements of Dir.</td>
<td>5 years</td>
<td>Service and works contracts for all</td>
<td>Service and works contracts for all</td>
</tr>
</tbody>
</table>
Deepening EU-Moldovan Relations: What, why and how?

<table>
<thead>
<tr>
<th>2014/24/EU</th>
<th>contracting authorities</th>
<th>contracting authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Approximation and implementation of Dir. 2014/23/EU</td>
<td>6 years</td>
</tr>
<tr>
<td>4</td>
<td>Approximation and implementation of other elements of Dir. 2014/25/EU</td>
<td>8 years</td>
</tr>
</tbody>
</table>

* That is, from the entry into force of the DCFTA.

Implementation perspectives

*Development of public procurement during the post-Soviet period.* The public procurement system and legislation of Moldova have been continuously developing. The system has known three distinct periods: modernisation of the legal framework, digitalisation of public procurement and approximation to the EU’s public procurement law.

Operational responsibility for policy development is delegated to statutory agencies, which since 2009 is the Public Procurement Agency. The Agency was established by Government Decision No. 747 of 24 November 2009, which regulates its organisational structure and competences. The Agency represents a specialised administrative authority with functions of coordination, monitoring, and evaluation of fulfilment by the contracting authorities of the public procurement procedures, including the award of public contracts. The Agency has supervisory competences and is not seen as a policy driver in the area of public procurement. The responsibility for harmonising public procurement legislation lies with the Ministry of Finance.

At first glance, the economic importance of government procurement in Moldova may seem rather meagre in comparison with EU countries. In the previous decade the share of public procurement in Moldova (in GDP) varied between 5% and 10%, never attaining the EU average values of 18%. Total public contracts increased from MDL 4,523 million (around €220 million) in 2009 to MDL 7,526 million

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108 Reports on activity of Public Procurement Agency of the Republic of Moldova.
(around €378 million) in 2016. However, the real numbers of public procurement are underestimated by the Public Procurement Agency in its reports because it does not include data on small value contracts.

**Legal framework.** The first Law on Procurement of Goods, Works and Services for Public Needs (No. 1166-XIII) was adopted in 1997 and provided a reasonably sound basis for public procurement. Shortly after the enactment of the law, the government established the first entity responsible for public procurement – the National Agency for Public Procurement. However, the problems of weak institutional capacity, a high degree of centralisation and insufficient enforcement of the law regarding public procurement hindered the development in this area.

Later on, in order to address these problems, but also to approximate to the EU standards, Parliament adopted Law No. 96-XVI on Public Procurement of April 2007. The new law changed the conduct of public procurement through decentralisation of the procurement procedures to the municipality and district level. However, this decentralization has given rise to a sharp increase in number of contracting authorities to over three thousand. This increase in the number of procurement authorities is a challenge, partially due to the lack of resources to prepare a sufficient number of public procurement specialists and to coordinate the activity of so many entities.

While the law on public procurement was generally developed in line with the relevant EU directives, a number of additional specific concepts were incorporated into it. The law provided measures to ensure integrity in public procurement processes, namely:

- a national procurement system based on principles of transparency, competition and objective criteria in decision-making;
- establishment of the conditions for participation, selection and award criteria, and tendering rules;
- sufficient timeframes for potential suppliers to prepare and submit their tenders and using by default an open tender procedure;

109 Ibid.
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- transparent publication of all procurement decisions and invitations to tender;
- procedures, rules and regulations for review of the procurement process, including appeal;
- selection of personnel responsible for procurement, including screening procedures covering conflicts of interest; and
- development of new electronic procedures applied to the public procurement process.

Moreover, it should be noted that the Law on Public Procurement of 2007 defined the principles for regulating public procurement relations. It clearly defined the types of public procurement, the rules and procedures for awarding public procurement contracts and the ways of solving disputes, focusing on the rights and obligations of the parties participating in public procurement procedures. But the law of 2007 did not introduce all the provisions of EU Directive 2004/18/EC. The law introduced provisions on domestic preference, an electronic procedure (e-procurement), short deadlines for tender submission and a complaints procedure.

Finally, in July of 2015 the Parliament adopted a new Law on public procurement (No. 131), which was one of the prerequisites for the accession of the country to the WTO Agreement on Government Procurement. This law partially implemented Directive 2014/24/EU and of Directive 89/665/EEC. Among the main provisions taken from these Directives are the possibility for contracting authorities to award contracts not only on lowest prices, but also on other qualitative criteria, as well as the introduction of specific procedural measures to ensure transparency and equal treatment (e.g. to allow representatives of civil society to participate in tender commissions).

Digitalisation of public procurement (e-procurement). The digitalization of public procurement started in 2009, when the government adopted a technical concept of the State Information Automated System for Public Procurement Register or SIA. The full implementation of the SIA started only in 2012, due to lack of financing, and gained slowly pace in following years. A clear regulatory framework has been approved with the adoption of the regulation on using the electronic auction. This implements EU standards and facilitates the analysis of the prices for the offers. Broadly, the electronic auction is designed to increase the transparency of public procurement and requires the operators to
properly register in the electronic system. The e-procurement portal was further developed and new functionalities added, such as the announcement of intended procurement activities, the availability of electronic bidding documents, the automated public procurement bulletin and the generation of an electronic bid template for economic operators.

Despite efforts to modernise and expand the application of the SIA, it still remains an underdeveloped and underutilised tool. By 2016, only 311 contracting authorities out of circa 3,000 were registered in the SIA and performed procurement through the system. Also, the technical capabilities of the SIA were not upgraded. Namely, the system is unable to provide a transparent, analytical and intelligent platform for all participating parties in the tender. In order to change the situation, the Ministry of Finance started in 2016 the testing of a new electronic procurement system (MTender) due to be fully functional by the end of 2018. Moreover, the new electronic system will facilitate the digitalization of the entire procurement cycle, from planning to contracts implementation. Also, the information about any procurement operation will be available to all interested parties, including simple citizens willing to monitor the acquisitions.

**Approximation process and related reforms.** The Ministry of Finance, together with twinning project partners, developed the new Law on Public Procurement that came into force in May 2016 (Law No. 131 of July 2015). As mentioned above, it ensures the implementation of Directive 2004/18/EC, thus ensuring transparency, comprehensiveness and competition in accordance with EU standards. The law also transposes Directive 2007/66/EC, which provides for rules aiming at clear and effective procedures by seeking redress where bidders consider that contracts were unfairly awarded. In particular, the establishment of an independent appeals body was planned (i.e. the National Complaint Settlement Agency). However, this agency was established with a one year delay in September 2017, which gave rise to heightened risks of corruption in the sector and undermined the confidence of private sector in impartiality of the new body in this timeframe. This was also one of the conditions for the EU macro-financial assistance of €100 million in 2017-2018.

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110 See the Public procurement regulation on using the electronic auction approved by Government Decision No. 774 dated 4 October 2013.
In order to enhance the applicability and functionality of the new Law, a large set of various normative acts has been approved (approximately 10 normative acts of secondary legislation between 2016 and 2017).

Under the new Law, public contracts are awarded without any discrimination against foreign suppliers. The government has also thus shown its commitment to opening its procurement markets to international competition. Moldova submitted a formal request to join the WTO Government Procurement Agreement (GPA) in November 2009 and renewed its request in 2013. Since 2014, Moldova has accelerated its negotiations to accede to the GPA by gradually expanding its market access offer, and fully engaging in legal reforms to bring its legislation in line with the GPA rules. As a result, in September 2015 the WTO Committee on Government Procurement approved the terms of Moldova’s accession. It gave Moldova six months, until mid-March 2016, to submit its instrument of accession. Moldova missed this deadline as the parliament was not able to ratify it, but the Committee extended the deadline. Moldova subsequently submitted the ratification documents in June 2016 and thus became member of the WTO GPA.

**Challenges for Moldova’s system.** In recent years, there were made significant efforts to modernise the public procurement system of Moldova according to best EU standards and practices, but there are still significant challenges in the field. These problems were defined in a newly adopted Strategy of Public Procurement System for 2017–2020. Among the most pressing challenges are the efficient implementation of the new electronic procurement system; the large number of procuring entities and the necessity to slash it by 75%; and weak institutional capabilities of contracting authorities, especially the newly established National Complaint Settlement Agency. All these challenges stem from the internal resistance to the existing institutional status-quo on the part of the central and local officials who are prone to corruption and opposed to a more transparent procurement system.
Public procurement at a glance

Moldova has already taken significant steps to bring its public procurement system into compliance with EU laws and best international practices, with a new law adopted in 2015. Legal, institutional and procedural changes have been made, though with some delays.

Further reforms remain to be undertaken for approximation to EU norms in accordance with the DCFTA.

The main problems are to ensure the transparency of public procurement by implementing a new electronic system, cutting the huge number of contracting authorities, as well as strengthening the institutional capacities of all contracting entities, especially of the National Complaint Settlement Agency.
11. INTELLECTUAL PROPERTY RIGHTS

The protection of intellectual property is important for promoting innovation and creativity in our knowledge-based economies, and for developing employment and improving competitiveness. The DCFTA requires Moldova to modernise its system on intellectual property rights (IPRs). Reforms will contribute to a stable and enforceable legal environment to protect IPRs, which is crucial for attracting foreign investment and supporting the technological modernisation of the economy.

Provisions of the Agreement

The DCFTA chapter on IPRs seeks to facilitate the production and commercialisation of innovative products while guaranteeing an adequate level of protection and the enforcement of intellectual property rights. It complements Moldova’s obligations under the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This WTO agreement establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. The DCFTA confirms these WTO rules and goes beyond them in several areas. This has important implications for Moldova, as in principle it has to extend these ‘TRIPS-plus provisions’ to all WTO members in accordance with the TRIPS’ MFN clause (Art. 4 TRIPS).
Contrary to other DCFTA chapters, the section on IPRs does not oblige Moldova to approximate a selection of the EU’s IPR legislation annexed to the Agreement. However, the main text of the DCFTA is very detailed, and its provisions reflect – or sometimes copy – several principles and procedures of the EU’s IPR legislation. The DCFTA lays down rules on copyrights, trademark, geographical indications (GIs) and designs, including detailed enforcement provisions.

**Copyrights.** The parties must comply with several international conventions and agreements (e.g. the Rome Convention for the Protection of Performers, producers of Phonograms and Broadcasting Organisations, the Berne Convention for the Protection of Literary and Artistic Works and the Copyright Treaty of the World Intellectual Property Organisation (WIPO)). With regard to the duration of authors’ rights, the DCFTA states that the rights of an author of a literary or artistic work have to be protected for 70 years after his/her death. The Agreement also covers broadcasting and communication to the public, the protection of technological measures and rights of management information and release rights. A provision on cooperation on collective management of rights goes beyond the TRIPS agreement but only envisages (i.e. a soft commitment) that the parties’ ‘collecting societies’ conclude agreements with each other in order to promote the availability of works, as well as to ensure the mutual transfer of royalties for the use of such works.

**Trademarks.** The DCFTA mainly requires accession to, and implementation of, such international agreements as the WIPO Trademark Law Treaty, the Protocol relating to the Madrid Agreement concerning the International Registration of Marks and the Singapore Treaty on the Law of Trademarks. Moldova has already acceded to each of these international agreements. Nevertheless, the country must establish a fair and transparent system for the registration of trademarks in which any refusal by the relevant trademark administration is communicated to the applicant in writing.

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111 Provision transposed into national legislation by Law no. 212 of July 2016 to amend Law no. 139 of July 2010 on copyright and related rights.
112 More specifically, these are authorities established under national IPR law that represent the holders of a certain IPR, and who have the responsibility to administer the IPRs of its members, such as collecting societies responsible for collection of copyright royalties for musicians.
and duly reasoned. Moldova must also provide a publicly available electronic database of trademark applications and registrations.\footnote{113 Such electronic database is, already, publicly available and is in continuous improvement (http://www.db.agepi.md/).}

**Geographical indications (GIs).** The text of the Agreement recognises that Moldova’s IPR legislation (e.g. Law No. 66-XVI of March 2008 on the Protection of Geographical Indications, Designations of Origin, and Traditional Specialties Guaranteed) already meets the required conditions with regard to registration and control of GIs, and therefore does not require further legislative approximation to the EU *acquis*. The AA annexes contain an elaborate list of geographical indications of agricultural products, foodstuffs and types of wines and spirit drinks of both parties (for the EU, e.g. prosciutto di Parma, Champagne and Feta cheese), which will be protected against any direct or indirect commercial use or misuse of a protected name for comparable products. This list was largely taken over from a bilateral agreement between the EU and Moldova, concluded in 2013, which is now replaced by the DCFTA.\footnote{114 See the Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs, OJ L 10/3, 15.1.2013. See also Art. 456(3) of the Association Agreement.} A specific subcommittee on GIs will monitor the implementation of these provisions and report to the Trade Committee. The DCFTA provided for the possibility to add new geographical indications to be protected, which happened in October 2016 when the subcommittee added new geographical indications to be protected by amending the relevant annexes (i.e. Annex XXXX-C and D).\footnote{115 Decision No 1/2016 of the EU-Republic of Moldova Geographical Indications Sub-Committee amending Annexes XXX-C and XXX-D to the Association Agreement between the European Union and the Republic of Moldova.}

**Designs and patents.** Moldova must also provide for the protection of independently created designs that are new and have individual character. The protection will be provided by registration and will confer upon the holder the exclusive right to use the design and to prevent third parties without his/her consent from using, making or offering it, putting it on the market, importing or exporting it. The duration of protection available will be 25 years from the date of filing the application for registration. Specific rules are provided for patents for medicinal and plant products. For example, the provisions
on pharmaceutical data protection, which go beyond the TRIPS agreement, require that Moldova implement a comprehensive system to guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.

**Enforcement of IPRs.** The Agreement has a strong section on the enforcement of IPRs. These commitments go beyond the TRIPS Agreement, but the complementary measures and remedies in the DCFTA must be fair and equitable and should not result in additional barriers to trade. The section on civil measures and procedures, which is largely based on the EU’s IPR Enforcement Directive,\(^\text{116}\) includes detailed procedural provisions on the judicial enforcement of IPRs (e.g. on transparency, procedural fairness, the right to information, measures for preserving evidence and publication of judicial decisions). Judicial authorities must have the competence to recall products from the market if they infringe an intellectual property right or to order the destruction of those goods. Moreover, judicial authorities must be able to issue an injunction and penalty payments or pecuniary compensation payments against the infringer, with the aim of terminating the infringement. Provisions on the liability of intermediary service providers (e.g. online service providers) are also envisaged.\(^\text{117}\) These are copied from the EU’s e-Commerce Directive\(^\text{118}\) and provide for a ‘safe haven’ regime, under which certain types of intermediary service providers are exempted from liability for IPR infringements, under certain conditions.

**Implementation perspectives**

*The institutional framework.* After gaining independence, it was necessary to create an institution with legal competences in the field of IPRs. This was done in November 1991 by a presidential decree, which established the State Agency for Copyright (ADA) to ensure the protection and legal interests of authors of literary, scientific and artistic works.


\(^\text{117}\) These provisions are not included in the DCFTA chapter on establishment, trade in services and electronic commerce (Arts. 256-260).

\(^\text{118}\) See Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market (the directive on electronic commerce).
Subsequently, in May 1992 another presidential decree established the State Agency on the Protection of Industrial Property (AGEPI) under the Ministry of Economy and Finance. In 1995, AGEPI obtained the status of a state enterprise subordinated to the government. In September 2004, a merger of ADA and AGEPI as the State Agency on Intellectual Property was approved (while the AGEPI acronym continues). Ten years later, in July 2014, the parliament adopted a Law on the AGEPI, changing the agency from a state enterprise into a public institution, while remaining subordinated to the government. This contributed to strengthening its institutional capacity, through regulating its legal status, principles and directions of activity.

The legislative framework. Over time a series of laws in the field of legal protection of intellectual property was approved. This process started in the mid-1990s with laws on trademarks and appellations of origin, patents, protection of plant varieties, protection of industrial designs and copyright and related rights.\footnote{119 These were Law No. 588-XIII of September 1995 on Trademarks and Appellations of Origin; Law No. 461-XIII of May 1995 on Patents; Law No. 915-XIII of July 1996 on the Protection of Plant Varieties; Law No. 991-XIII of October 1996 on the Protection of Industrial Designs; and Law No. 293-XIII of November1994 on Copyright and related rights.}

In 2008, due to the development of the national IPR system and the tendency to bring the system closer to European standards, a series of amended or supplementary laws in line with new trends was adopted. Namely, these are the protection of trademarks (No. 38-XVI of February 2008), plant varieties (No. 39-XVI of February 2008), inventions (No. 50-XVI of March 2008), and geographical indications, appellations of origin and traditional specialties (No. 66-XVI of March 2008). In July 2010, Law No. 139 on copyright and related rights was adopted.

The National Commission on Intellectual Property is an advisory body under the government established to coordinate and ensure interaction between ministries and other central administrative authorities, as well as holders of intellectual property rights. In May 2012, the National Commission adopted a new National Intellectual Property Strategy (NIPS) until 2020, which the government followed up in August 2015 by approving a NIPS Action Plan for the period 2015–17. Given the complex and multifunctional nature of intellectual
property and its involvement in all areas of economic, scientific, cultural and social life of the country, the structure of the plan sets out the responsible authorities and the actions necessary to achieve the objectives, deadlines and expected results of implementation, etc.

In the framework of the NIPS, a first step was taken to support national holders of IPRs abroad. Specifically, approval was given in 2016 to the Regulation on Support for Patenting Abroad of Inventions and Plant Varieties created in the Republic of Moldova. This document envisages financial support up to €3,000 for small- and medium-sized enterprises, as well as for research institutions to cover register costs of inventions and plant varieties abroad, including in the EU countries.

**Accession to international conventions and agreements.** Between 1993 and 2014 Moldova engaged in a comprehensive programme of accession to international conventions and agreements concerning IPRs, as listed in Box 11.1, thus ensuring Moldova’s integration into the international and European intellectual space. This culminated in 2014 with the signature of the DCFTA with the EU.

**Box 11.1 Timeline of steps taken by Moldova in acceding to IPR conventions and organisations**

**1991**
- WIPO Patent Cooperation Treaty

**1993**
- Convention establishing the World Intellectual Property Organization
- Paris Convention for the Protection of Industrial Property
- Agreement on Measures concerning the Protection of Industrial Property
- Establishment of the Interstate Council on Industrial Property Protection
- Hague Agreement concerning the International Registration of Industrial Designs
- Nairobi Treaty on the Protection of the Olympic Symbols
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

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120 Regulation was approved by Government Decision no. 805 of June 2016.
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
</table>
- Convention for the Protection of Literary and Artistic Works (Berne, 1886)  
- Trademark Law Treaty (Geneva)  
- Eurasian Patent Convention (Moscow)  
- Cooperation Agreement with the European Patent Office (EPO) |
| 1996 | - Eurasian Patent Convention |
| 1997 | - International Convention for the Protection of New Varieties of Plants  
- International Union for the Protection of New Varieties of Plants  
- Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks  
- Protocol relating to the Madrid Agreement concerning the International Registration of Marks |
| 2000 | - Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods  
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration |
| 2001 | - Accedes to the World Trade Organization and the Agreement on Trade-Related Aspects of Intellectual Property Rights |
| 2005 | - WIPO Patent Law Treaty* |
| 2009 | - Singapore Treaty on the Law of Trademarks |
| 2014 | - Signature of the DCFTA with the EU (Title V, Chapter 9 on IPRs) |

* The WIPO Patent Law Treaty was signed by the Republic of Moldova in 2000, but entered into force only in 2005.
**Outstanding challenges.** Despite these important national and international initiatives there is limited cooperation with international holders of intellectual property rights, mainly due to the small size of Moldova’s market, and consequently the limited risks for IPR holders.

There is also the problem of low enforcement of intellectual property protection, the source of which is the limited knowledge about IPR systems among judges and a lack of interest on the part of IPR holders. The provided IPR trainings for the judges and prosecutors had a rather meagre participation. Other challenges for Moldova’s IPR system are insufficient intellectual, creative and innovative activity, a high level of piracy and counterfeiting, and poor involvement of the holders of IPRs in protection actions. There is a very low utilisation of IPR potential by small and medium-sized enterprises, a large number of unfair competition cases and submission of ill-intended IPR registration applications. In addition, there is an insufficient level of culture in the IPR field and a lack of transparency within the organisations regarding the collective management of copyright and related rights.

Regarding enforcement, the key EU law for approximation is Directive 2004/48/EC on the enforcement of intellectual property rights. New Moldovan laws are designed to bring current legislation into line with these provisions. In particular, emphasis is placed on creating a system of counteraction in cases of infringement of rights. Law No. 115 of 23rd June 2011 made amendments to the Contravention Code, the Criminal Code and the Code of Criminal Procedure, which govern the liability for infringement of intellectual property rights and introduce the rights enforcement mechanism.

Also, there are some challenges in transposing some IPR mechanisms from the AA into local practice. Specifically, after a transition period of five years, since 2018, the Republic of Moldova is obliged to implement workable measures at the customs border in order to stop any unlawful use of the protected geographical indications. One of the main challenges is to assure the tight cooperation in this field of Customs Service and of AGEPI, as well as to boost institutional capacity of the former. Another challenge was specific for transition period for Moldova to new mechanisms of

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121 According to the data of National Institute of Justice, only two relevant trainings were organised in this field by the Institute in 2016, attracting 45 participants.
geographical indications protection. Some local companies interpreted this period as a possibility to further produce and export some products with EU geographical indications (the ‘Prosecco case’), thus contradicting the AA.¹²² The interventions from the AGEPI and Ministry of Agriculture via the courts during 2016-17 set a positive case aimed at protecting the European geographical indications in Moldova.

Although some progress has been made to bring the promotion and protection of intellectual property rights closer to European practice, the authorities still need to do more on the following issues:

- Improve the strategic and operational coordination between the various institutions responsible for the protection of intellectual property rights. Rationalise the overlapping competence areas of several authorities, namely the Customs Service, the Prosecutor’s Office, the Ministry of Internal Affairs, the Ministry of Economy and Infrastructure, Ministry of Foreign Affairs, the Ministry of Health, Labour and Social Affairs, as well as of the Ministry of Education, Culture and Research. Update and improve the IPR training programmes dedicated to the staff of these institutions based on thorough assessment of their knowledge and needs.

- Enhance the qualification of judges in the IPR area, by continuing training programmes for judges with the participation of international consultants and study visits to the EU in order to assimilate good practice. It requires boosting the participation of judges and introducing regular assessment of the judges concerning their IPR knowledge.

- Develop a strategy to identify local products that could obtain intellectual property titles, which would also include training and support (technical and financial) activities for producers, and actions to promote those products in the EU and other markets. The recently adopted Regulation on Support for Patenting Abroad of Inventions and Plant Varieties could inspire a mechanism aimed at geographical indications.

¹²² This was the case for the geographical indicator “Prosecco” for wines.
Intellection property rights at a glance

The main IPR engagement of the AA is to ensure a level of protection similar to that found in the EU, including effective means of enforcement.

Currently, the legal framework on intellectual property is consistent with both international rules and those of the EU. However, the harmonisation of legislation must be continued to follow changes at the international and EU levels.

The legal framework is being amended, as laid out in the National Intellectual Property Strategy (NIPS) 2012–20 and the NIPS Action Plan. First steps have been taken to support local holders of IPRs in registering their inventions and plant varieties abroad.

While the legal framework is fairly advanced, the primary task ahead is its implementation, as well as improvement of institutional capacities of main stakeholders in the field and stepping up the law enforcement in the area of IPRs.
12. **COMPETITION POLICY**

An effective competition policy, controlling monopolistic behaviour by companies and trade-distorting subsidies of the government, is essential for the sound functioning of a modern economy. It leads to a level playing field for economic operators, lower prices for consumers, better quality and wider choice of the consumption goods, while reducing the scope for corruption.

**Provisions of the Agreement**

*Antitrust and mergers.* Moldova is obliged to maintain comprehensive competition laws that effectively address anti-competitive cartels, mergers and the abuse of dominant position by enterprises. These competition laws should be enforced by an appropriately equipped independent authority in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and the rights of defence. Moreover, they should also apply to state monopolies, state enterprises and enterprises entrusted with exclusive rights in so far as the application of these competition rules do not obstruct the particular tasks of public interest assigned to these enterprises. The EU–Moldova DCFTA also envisages cooperation and coordination between the competition authorities of the EU (i.e. the European Commission) and Moldova (i.e. the Competition Council) to enhance effective competition law enforcement. For example, the competition authorities may cooperate in enforcement activities or exchange non-confidential information.

*State aid.* The DCFTA provisions on state aid apply to all goods and services liberalised by the Agreement, except agriculture and
fisheries. Largely inspired by the EU Treaties, notably Art. 107(1) of the Treaty on the Function on the European Union (TFEU), the DCFTA states that:

State aid granted by the Union or the Republic of Moldova, or through the resources of one of the Parties, in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and services and which affects trade between the Parties, shall be incompatible with this Agreement.

However, the DCFTA does not provide further definitions or guidelines clarifying this principle. Nevertheless, the Agreement requires that within five years from the date of entry into force of the DCFTA, state aid should be assessed on the basis of above-mentioned criteria. However, as an exception, Moldova has negotiated a transition period of up to ten years to repeal the state aid schemes deriving from the Law No. 440-XV of July 2001 on Free Economic Zones.

EU competition rules will for example be useful to determine when state aid ‘affects’ trade between Moldova and the EU and will therefore be covered by the DCFTA. In the EU, state aid granted per member state to a single undertaking that does not exceed €200,000 over a period of three fiscal years falls outside the scope of EU state aid control, because it is deemed to have no impact on competition and trade in the EU internal market. Moreover, EU state aid rules allow certain types of government interventions to achieve a number of policy objectives. The TFEU lists the types of state aid that “shall” or “may be considered to be” compatible with the Agreement. For example, various social aids and disaster relief “shall” be considered compatible and various regional economic development aids “may” be compatible. In the Block Exemption Regulation, the European Commission specifies the categories of aid and the conditions under which aid measures can benefit from such an exemption, thus

exempting them from the requirement of prior notification and Commission approval.\(^{124}\)

In order to promote and strengthen transparency in the area of state aid, every two years the EU and Moldova will report to each other on their state aid activities and review the implementation of this DCFTA chapter.

**Institutional aspects.** The Agreement is largely silent on how Moldova’s competition policy should be administered. But in the area of state aid, the DCFTA explicitly obliges Moldova to establish an independent authority that will have the power to authorise state aid schemes, as well as the power to order the recovery of state aid that has been unlawfully granted.\(^{125}\) Here there is a crucial political issue, going beyond the question of formal institutional organisation – namely how the system works in practice.

The EU’s own experience in this regard has some strong messages. In many member states the government and/or parliament make the top-level appointments for fixed medium-term periods (five or six of years), but the appointees cannot be dismissed at the discretion of the government or parliament. Most importantly, individual case decisions of these bodies are sovereign, and are not subject to approval of the government. Such considerations are crucial in Moldova, given the prevalence of endemic corruption and the political leverage of leading entrepreneurs.

The overall conclusions for Moldova are that i) the top-level appointments to the Competition Council should be for fixed periods of several years and should be protected from politically motivated dismissals by transparent and strict procedures that guarantee the right of defence; and ii) the case decisions of the Competition Council should be made independently of the government or parliament.

\(^{124}\) For the most recent version of the EU Block Exemption Regulation, see Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Arts 107 and 108 of the Treaty.

\(^{125}\) Moldova has established an independent authority responsible for state aid before the entry into force of the AA/DCFTA. For more details, see section “Implementation perspectives”.

Implementation perspectives

*Competition policy during the post-Soviet period.* Moldova’s first legal framework for competition was established by Law No. 906 of January 1992 on limiting the monopolistic activities and competition development, which was supplemented by a more qualitative one in 2000 (Law on Competition Protection No. 1103 of 30 June 2000). The law focused on preventing, reducing and repressing monopolies and unfair competition, which also included uncompetitive agreements and abuse of dominant position. The responsible authority was the National Agency for Competition Protection, which had general supervision competences, but was not empowered to carry out investigations on abuses or infringements of the competition legislation. However, this Agency was only established, after a significant delay, in 2007, while the existing legal framework remained largely divergent from that of EU.

In 2012, in order to approximate to European practices, Moldova’s competition policy legislation was revised with the adoption of Competition Law No. 183, and the Law on State Aid No. 139, together with additional regulations (six on competition law and 12 on state aid). The Competition Council was created through restructuring the National Agency for Competition Protection. The Competition Council has a wide range of powers: decision, regulation, prohibition, intervention and inspection, along with adoption of sanctions related to the areas of competition, state aid and advertising. Its main attributions refer to the prevention of anti-competitive practices, removal of competition infringements and the promotion and improvement of the competition culture. Any piece of legislation that can affect the competition environment should receive prior approval by the Council.

The Competition Council is run by the Administrative Council, which represents a collegial decision-making body comprising five members. All members of the Administrative Council, including the president, are appointed through parliament’s decision, at the proposal of the speaker of the parliament. Their mandates last for five years, with the possibility to be extended for one more mandate. They can be dismissed by the parliament, after a proposal by the speaker or

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126 For more information, see the website of Moldova’s Competition Council (www.competition.md/).
by a third of the MPs, if they breach relevant competition legislation or if they are sentenced for committing offences. The members of the Administrative Council should be qualified and independent, and they can only be detained or arrested by the General Prosecutor’s Office.

The Administrative Council takes decisions on the basis of the majority of votes of those present. There are four types of acts adopted by the Administrative Council: decisions, regulations, prescriptions and rulings. Decisions can include the identification of the violation, but also the sanctions applied. Regulations concern the initiation of the investigations, while the prescriptions define the measures to be taken to stop the breach of the law. The rulings are the only acts that can adopt, modify or cancel the legislative framework related to the Council’s activity and organisation. These acts can be challenged in court during a 30-day period following their adoption.

There are cases when the Competition Council can authorise an economic concentration or state aid by issuing a permissive document. To this end, the companies should notify the Council and provide the documentation that justifies the reason for the concentration, the estimated turnover, etc. Mergers should be communicated to the Council before being implemented. This refers to cases when the turnover of the companies in Moldova in the previous year reached MDL 25 million (around €1.1 million) or the individual turnover of the company was less than MDL 10 million (around €457,000).

The highest numbers of cases currently under investigation arise in the following fields: anticompetitive behaviour of public authorities (16 cases in 2016) and abuse of dominant position (15 cases in 2016). Fewer instances were reported in cases of anti-competitive agreements (10 cases in 2016), unreported mergers (8 cases in 2016) and unfair competition (11 cases in 2016).127

The sanctions applied by the Competition Council are successfully challenged in court due to weak reasoning of the cases, insufficient investigative potential and/or inadequate capacities of defence possessed by the Council. Nevertheless, the number of cases won by the Council in courts increased up to 75% of all cases (2016),

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which can indicate that Council’s institutional capacity has strengthened. In spite of these positive signs, a key challenge for the institutional development of the Council relates to employment of qualified personnel. Due to low remuneration of public officials, and general shortage of qualified personnel on labour market, the Council remains staffed only at circa 50% of all potential vacancies.\textsuperscript{128}

\textbf{DCFTA implementation: Progress and challenges.} As explained above, the DCFTA gives to the relevant authorities in Moldova a considerable degree of discretion on how to define and operate its competition policy.

Since 2012, with the support of the EU and its member states, the efforts of the Moldovan authorities have been oriented towards strengthening the enforcement and effective implementation of the Competition Law, including capacity building in the Competition Council. Particular attention has been devoted to enhancing transparency on state aid rules through setting up the Informational Autonomous System “State Aid Register” (SIRASM), which is now fully operational.\textsuperscript{129}

Although the Competition Law is in line with the EU’s key competition principles, it contains several significant shortcomings. For example, the current legal framework is unclear when it comes to the applicability of the leniency policy. This policy is determined by the Criminal Code (Art. 246) that lays out various penalties for anti-competitive practices, including up to three years in prison. Under the current competition rules leniency only applies to the application and size of fines, without offering any immunity against the imprisonment as specified in the Criminal Code. The problem with contradictory provisions concerning leniency in competition policy still needs to be resolved.

A proper leniency policy can be an effective tool for the Competition Council, leading to incentives for the dissolution of existing cartels. The EU leniency system is a useful point of reference. In the EU, the Commission has developed a detailed leniency policy,

\begin{footnotesize}
\textsuperscript{128} Ibid.
\textsuperscript{129} Regulation concerning the organization and functioning of the Informational Autonomous System “State Aid Register” was approved by GD No. 1112 of October 2016.
\end{footnotesize}
which defines the information that a company involved in a cartel
needs to provide to benefit from full or partial immunity from fines.\textsuperscript{130}

The Court of Audits’ report assessing the activity and the public
funds of the Competition Council, issued in March 2015,\textsuperscript{131} underlines
various shortcomings:

\begin{itemize}
\item lack of prioritisation of the cases that should be investigated,
which disperses the human resources across investigations that
have a small impact on the market and consumers;
\item lack of efficient methods for identification of the cartel
agreements;
\item deficiencies in the planning of investigations, and the lack of an
efficient mechanism to monitor the implementation of the
Council’s decisions; and
\item deficient strategic planning of financial and human resources,
with high costs for maintaining the apparatus.
\end{itemize}

In addition to this list of recommendations there is also the
need to strengthen the institutional capacities of the Competition
Council and the transparency of its decisions, for example by
publishing relevant decisions online. The Council has reported that all
above-mentioned recommendations of the Court of Accounts were
implemented by 2016.\textsuperscript{132} Still, the competition legislation must be
further reformed and the institutional capabilities of the Council need
to be strengthened. Especially, it is imperative that the Council
expand its investigations into some critical sectors of the economy
susceptible to concentration, like export of cereals and activity of
Giurgiulesti port.\textsuperscript{133}

Many of above-mentioned aspects were included as priorities
in the new National Program concerning Competition and State Aid,
which has established ambitious measurable objectives to be achieved

\textsuperscript{130} See the Commission Notice on Immunity from fines and reduction of fines in
cartel cases (2006/C 298/11). Also the member states’ competition authorities
coordinate their leniency programmes, in cooperation with the European
\textsuperscript{131} See the Court of Audits, “Report on Competition Council’s performance”,
\textsuperscript{132} Competition Council, “Report of activity 2016”.
\textsuperscript{133} https://anticoruptie.md/en/investigations/economic/the-grain-market-in-
moldova-under-the-russian-monopoly.
by the end of 2020. This Program aims to achieve, for example, the reduction of product market regulation indicator from current 2.48 points to 1.55 points (calculated on basis of OECD methodology), as well as to reduce the share of state aid from current 4% in GDP up to 1% of GDP.

**Competition policy at a glance**

*Moldova largely complies with the DCFTA competition requirements, but the implementation of the new competition-related legislation still remains problematic.*

*The Competition Council is independent and has investigative and decision-making powers, but the institution needs to improve its financial and human resources management.*

*The Competition Council should improve and refine its investigative and monitoring capabilities, as well as to expand the investigations into some critical areas of economy, like the exports of cereals and activity of Giurgiulesti port.*

*The legal framework should be improved in order to explore more efficiently the cartel agreements and other anti-competition practices, e.g. by a clear and attractive leniency policy.*

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134 Approved by Law No. 169 of July 2017.
13. Statistics

A modern and internationally comparable statistics system is indispensable for informed policy-making and for supplying the business sector and civil society with tools for their work. All the post-Soviet states have had to face the same challenges of radical reform of their statistical systems. These reforms involve fundamental changes, notably the move from systems that essentially served the needs of the state to systems that serve the private sector and society as a whole, and more technically a greater use of sampling methods rather than exhaustive data collection.

Provisions of the Agreement

The EU has engaged all six Eastern Partnership states and the Central Asian states in extensive cooperation programmes to assist this long and complex process. Many of the projects listed below are ‘group activities’ for the whole Eastern Partnership and, in some cases, also with the Central Asian states.

For Ukraine, Moldova and Georgia this is enhanced by collaboration and by the explicit commitments made in the Association Agreements to align their statistical systems with that of the EU (i.e. Eurostat), which sets out a huge number of legal regulations in the Statistical Requirements Compendium. This is a highly ambitious programme. The time horizon for compliance with EU regulations is not specified, however, but experience from the accession of the new member states of the EU would indicate that this is a long-term process. For a realistic perspective, it took around 15
years for other new EU members to complete the transition, with much more support from the EU than Ukraine, Moldova or Georgia will be receiving.

The cooperation between Eurostat and the partner states takes the following structure:

- seminars on statistical strategies, once a year for three days;
- training courses on current issues and recent developments in statistical systems, about five to six times over a two-year cycle;
- collection of selected data series, about 300 in number (i.e. a selection of key series, though fewer than what the EU member states comply with), in which the partner states submit data in accordance with Eurostat questionnaires, allowing Eurostat to publish comparable data series; and
- in-depth assessment of the statistical system of Moldova.135

Implementation perspectives

The national legislation on statistics is currently based on Law No. 93 of May 2017 on official statistics. This recently adopted law replaced the previous one No. 412 of December 2004, and partially transposed into national legislation the provisions of Regulation (EC) No. 223/2009 on European Statistics, as well as the European Statistics Code of Practice. According to the Law, the central statistical authority of the country is National Bureau of Statistics (NBS), which produces economic, social and demographic statistics, with dissemination on its official website in both Romanian and Russian, and for certain information in English.

In recent years, the NBS has undergone significant internal organisational changes to increase the efficiency of data collection, processing, analysis and dissemination. Current efforts to amend the law aim to increase the professional independence of the general director of the NBS, in line with the European Statistics Code of Good Practice.136


Since September 2014, when the provisional implementation of the Agreement started, the authorities have undertaken a range of measures targeting compliance with EU best practices on statistics, concerning work accidents, the energy and environment sectors, and Millennium Development Goals, in particular. Work has started on a methodology for collecting innovation statistics. With EU support a project on improved regional statistics started in November 2014.

Among the most important achievements are the compilation of the gross regional product and adoption of a uniform territorial breakdown for statistics in line with EU NUTS Regulation.\textsuperscript{137} Moreover, the recently adopted national classification of statistical territorial units in line with EU standards has been adjusted to the existing territorial breakdown of regions of economic development, established in accordance with Law No. 438 of December 2008 on regional development. This eliminated the differences between territorial breakdowns used for statistical and regional development purposes, which existed before 2017.

The NBS enjoys significant donor support from the EU, Sida, the UN System and other development partners. In July 2015, the Sector Aid Coordination Council was established to improve the coordination of donor support.

The following major challenges remain:

\begin{itemize}
\item addressing several weaknesses in the coverage and delivery of statistics, namely delays in getting the results from the 2014 census. The delay was caused mainly by poor management of the census and by limited political will to speed up the data processing. Data on this census were published only at the start of 2017;
\item the data lack estimates for the Transnistrian region;
\item overcoming several institutional problems, including poor coordination of the statistical system between the NBS and other institutions, the imbalance between the small headquarters versus many small regional units of the NBS and the need to enhance the role of the Statistics Council; and
\end{itemize}

\textsuperscript{137} Nomenclature of territorial units of statistics of the Republic of Moldova was adopted by GD No. 570 of July 2017.
• tackling the issue of high-rates of non-response of the respondents to key statistical research tools, as well the limited access of NBS to administrative data.

**Moldovan statistics at a glance**

The legislation on statistics broadly reflects international and European standards, and its implementation in practice has accelerated in recent years.

The National Bureau of Statistics faces challenges related to financial constraints and dependence on external assistance, and weak institutional and IT capacities.

There are constraints concerning data on migration and the resident population, the environment, business and regional statistics, as well for the Transnistrian region in particular.
PART III.
ECONOMIC COOPERATION
After the collapse of the Soviet Union and independence, Moldova suffered one of the deepest and longest economic declines among the transition countries. Despite economic growth after 2000, Moldova’s GDP per capita is still one of the lowest among the Eastern European countries and those of the CIS.

Moldova’s economy began to recover only in 2000 after the huge initial losses at the beginning of the post-Soviet transition. But it was then hit hard by the global economic crisis of 2008–09. While the economy began to recover in subsequent years, it was then hit hard again in early 2014 by a major bank fraud, with losses of 16% of GDP, such that in 2015 the economy went back into recession. Even if 2016-17 has seen a useful macroeconomic recovery, with growth of some 4%, the general state of the economy suffers from serious systemic weaknesses and governance.

In general terms, over the last seven years, the economic development of Moldova has been characterised by a high volatility. During this period the highest growth in the history was recorded with 9.4% in 2013, but there were two years in which the economy experienced a mild decrease: -0.7% in 2012 and -0.4% in 2015. The recorded oscillations show that the economy continues to be vulnerable. Agriculture continues to have a substantial weight in GDP (over 10%), but this sector remains sensitive to unfavourable climate conditions. Typically, in dry years, agriculture contributes negatively to GDP growth and vice versa in good ones. Also, it
should be noted that the remarkable growth of GDP of over 9% in 2013 was substantially due to growth recovery in agriculture, which occurred after a big decline in 2012.

Another factor that affects economic growth is the dynamic of remittances. This source of income contributes significantly to households’ consumption. From 2010 to 2013, the volume of inflow of remittances increased strongly, but during 2014-16, negative economic developments in Russia severely affected the remittances. It is only in 2017 that the situation recovered with about €1.2 billion of remittances, but this was still smaller than the maximum registered in 2008 (€1.4 billion). Moldova belongs to the top 10 countries in the world in the share of remittances in GDP. In 2017, they represented 19.2% of GDP.

The industrial sector is contributing to economic growth, with its share in GDP increasing from 12.8% to 14.6% between 2010 and 2017. Due to low wage costs, labour-intensive industries, such as for the manufacture of footwear, clothing or wiring, have advanced. But most industry still has a rudimentary character, and the economy largely lacks the technological and human potential needed for more advanced industries. There are also risks because of the unpredictability of external orders, particular in the midst of the emerging protectionism in the global economy.

The share of exports in GDP rose to 30% by the end of 2017. Since 2006, however, the CIS region ceased to be the most important destination for Moldovan exports, with exports to the EU rising to a higher share. This contributed to the efforts of the authorities to diversify trade partners in order to overcome the losses from the bans still applied by Russia on Moldova’s imports.

Development perspectives

While 2010 could have been a turning point for the Moldovan economy, as it overcame the economic crisis with renewed growth and a new ‘pro-European’ government was set up, what followed was not encouraging. During these last few years, corruption has been a dominant theme in public perceptions and debate,\textsuperscript{138} which together with legal shortcomings and weak institutions culminated in a major

\textsuperscript{138} See Transparency International’s Corruption Perception Index and World Economic Forum Competitiveness Report Ethics and Corruption Score.
bank fraud in late 2014. Three banks that constituted about 35% of Moldova’s banking assets became insolvent due to fraudulent loans that led to losses amounting to 16% of GDP.\(^\text{139}\) This eroded public trust in the entire banking system, highlighted flaws in corporate governance and supervision of the banking system, contributed to a major devaluation of the national currency and stained Moldova’s external image. Financial relations with important development partners were put on stand-by.

In the medium and long run, the prospects for development are affected by a range of economic, social and demographic challenges. The decline in formal employment and the growth of informal jobs creates long-term social challenges. Additionally, there are demographic challenges due to the incapacity of the economy to fully integrate the younger generation, due to limited economic opportunities, with a high propensity of this category of the population to emigrate. Internal geo-political games and frequent controversial legislative initiatives have aggravated systemic vulnerabilities. The election of an openly pro-Russian President in 2016 triggered confusion for the business environment about the continuity of the European economic integration. This perception was accompanied by the slow pace of reforms, including some initiatives that contradicted the Association Agenda. A number of legislative initiatives were harshly criticised by a large part of the civil society and external partners (e.g. the fiscal amnesty, the offering Moldovan citizenship in return for investments, the decriminalisation of economic crimes, the low transparency in electricity procurement, and others). Consequently, investment activity showed a negative trend in the last few years, while the financial support from the development partners became uncertain due to a lack of progress in meeting the conditionality criteria.

The forecasts for economic growth for 2018 are favourable, at between 4-5\(^\text{140}\). They are based on the assumption that the agricultural sector will have a positive year. External budget support, particularly EU assistance, will continue to foster public investments,

\(^\text{139}\) Losses from loans and future interest accounted for 16% of GDP, according to the Kroll Final Report prepared for the National Bank of Moldova, April 2015 (http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf).

while household consumption will be also stimulated by increased remittances. On the other hand, the economy will continue to grow under its potential for at least two reasons. First, the uncertainty that is currently affecting corporate investment decisions will remain at high levels, especially against the background of parliamentary elections projected for February 2019. This will hamper the growth of bank lending, due to both low demand from companies and limited supply. Banks will also be cautious to assume risks, with concern for Basel III implementation. Second, the competitiveness constraints will continue to affect exports.

*Table 14.1 Main economic indicators of Moldova*

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</thead>
<tbody>
<tr>
<td>GDP growth (%)</td>
<td>6.8</td>
<td>-0.7</td>
<td>9.4</td>
<td>4.6</td>
<td>-0.5</td>
<td>4.1</td>
<td>4.5</td>
</tr>
<tr>
<td>Inflation, annual average (%)</td>
<td>7.7</td>
<td>4.6</td>
<td>4.6</td>
<td>5.1</td>
<td>13.6</td>
<td>2.4</td>
<td>7.3</td>
</tr>
<tr>
<td>Budget deficit (% GDP)</td>
<td>-2.4</td>
<td>-2.2</td>
<td>-1.8</td>
<td>-1.7</td>
<td>-2.2</td>
<td>-1.7</td>
<td>-2.7</td>
</tr>
<tr>
<td>External debt (% GDP)</td>
<td>77.0</td>
<td>82.2</td>
<td>83.6</td>
<td>82.5</td>
<td>97.9</td>
<td>97.7</td>
<td>85.8</td>
</tr>
<tr>
<td>Current account (% GDP)</td>
<td>-11.2</td>
<td>-6.8</td>
<td>-5.0</td>
<td>-3.7</td>
<td>-5.7</td>
<td>-4.2</td>
<td>-7.5</td>
</tr>
</tbody>
</table>

*Sources: EBRD, NBS and NBM.*

The text of the Agreement and financial assistance from the EU

The text of the Association Agreement on macroeconomic cooperation is short and simple. It foresees regular dialogue on macroeconomic policy. Moldova will aim at gradually approximating its economic and financial regulations to those of the EU, while ensuring sound macroeconomic policies (Art. 24), but there are no timetables or precise references to EU legislation.

Surprisingly the text of the Agreement is silent on the significant financial cooperation between Moldova and the EU and the European financial institutions, notably macro-financial loan and grant funding from the European Commission, further grant funding from the EU budget and investment funding from the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD). From a strictly legal standpoint, these activities do not derive their basis from the Agreement, but they are important in complementing and helping fund implementation of the Agreement.
Regular grants from the EU budget are programmed for the period 2014–17 for an amount in the range of €335–410 million, to support Moldova’s reform agenda through financial and technical cooperation. The indicative allocation for the 2014–20 period is €610–746 million with supplementary allocations dependent on progress towards a “deep and sustainable democracy” and implementation of agreed reform objectives. The targeted allocations for this funding are shown in Table 14.2.

Table 14.2 EU budgetary assistance to Moldova, by sector, 2014–20

<table>
<thead>
<tr>
<th>Sector of intervention</th>
<th>Indicative amount (% of total)</th>
</tr>
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<tbody>
<tr>
<td>Public administration reform</td>
<td>30</td>
</tr>
<tr>
<td>Agriculture and rural development</td>
<td>30</td>
</tr>
<tr>
<td>Police reform and border management</td>
<td>20</td>
</tr>
<tr>
<td>Capacity development and institution-building</td>
<td>15</td>
</tr>
<tr>
<td>Civil society</td>
<td>5</td>
</tr>
</tbody>
</table>

During 2017-18, the European Commission assessed the level of fulfilment of the conditions for the disbursement of the direct budget support programmes for Moldova. A tranche of €28 million for the justice sector support was cancelled due to the lack of progress in judicial reforms. At the Eastern Partnership summit in November 2017, however, Moldova and the EU signed an agreement on financial assistance accounting for €100 million, of which €60 million will be offered in the form of a loan and €40 million in the form of a grant. The assistance should be disbursed during the next two years, in three tranches, based on fulfilment of 28 sectoral policy conditions. At the same summit, the EU offered to proceed with budgetary support for four programmes totalling €21.5 million, for police reform, public finance policy reforms, implementation of visa liberalisation and agricultural and rural development (ENPARD).

In addition, there will be political pre-conditions for disbursement of the financial assistance, in particular with regard to the electoral system, the rule of law and human rights. The EU

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Council Conclusions of February 2018 mention that it regrets that the new electoral law did not address some of the key recommendations of the Venice Commission.

In addition, the EU budget funds the Neighbourhood Investment Facility, which usually co-funds investment projects with the EIB, EBRD and selected financial institutions of the EU member states. The Facility grants funding to ease the financial conditions for investment necessary to support the DCFTA, and to exploit new trade opportunities. For example, in 2015, the Facility granted €2 million to leverage a €75 million loan from the EIB to upgrade Moldova’s winemaking sector. Another €4.5 million grant was to leverage €22 million of loans from the EBRD for sustainable energy-efficiency projects, including a biogas plant.

The EIB is a major investor in Moldova, having extended a total of €282 million in loans and investment so far. A major project initiated in 2014 comprises a €120 million loan for the Fruit Garden of Moldova, which will finance projects of a large number of micro, small and medium-sized enterprises in the horticultural sector.

The EBRD has become an even bigger investor in Moldova, having made financial contributions so far amounting to €1.25 billion to 122 projects. The largest shares of this investment have been in infrastructure and in the energy sector. The EBRD is also focusing on projects to help Moldova develop value-added exports, especially in the manufacturing and agri-business sectors, given not only the new opportunities, but also the need for enhanced competitiveness in the DCFTA context.

At the end of 2017, the EBRD approved a new strategy for Moldova for 2017-22. Some of the most important priorities of the EBRD for the next five years refer to restoring the transparency of the banking system, financing the renewable energy sector infrastructure developments and restructuring the banking sector. The EBRD decided in October 2017 to take over a controlling participation in one of the largest national banks (CB Victoriabank).

As noted earlier, the Moldovan banking sector was hit in 2014–15 by a major fraud, endangering the economy’s financial stability. Three major banks – Banca de Economii, Banca Sociala and Unibank – engaged in opaque transfers of up to $1 billion, which forced the central bank to provide emergency loans amounting to as much as 12% of GDP. With a new financing agreement with the IMF signed in 2016, linked to various legislative amendments and institutional
reform measures, the banking sector appears to be slowly recovering from the effects of the crisis. However, there is only slow progress in investigating the banking fraud and recovery of the money stolen from the three banks.

**Macroeconomic context and financial assistance at a glance**

Moldova’s economy began to recover only in 2000 after the huge initial losses at the beginning of the post-Soviet transition. But it was then hit hard by the global economic crisis of 2008–09. While the economy began to recover in subsequent years, it was then hit hard in early 2014 by a major bank fraud, with losses of 16% of GDP, such that in 2015 the economy went back into recession.

Even if 2016-17 has witnessed a useful macroeconomic recover, the general state of the economy suffers from serious systemic weaknesses in governance.

The EU is supplying significant financial assistance to Moldova, including budget grants, with major investments also from the EIB and EBRD. 2017 saw agreement with the EU over a new €100 million package of financial assistance. Disbursement is subject to political pre-conditions.
15. Financial Services

The Agreement envisages a comprehensive adoption by Moldova of the European system for regulating banks, insurance and securities markets with adoption, at least in the long run, of the entire EU legislative complex of laws. The objective is for the financial markets to be safe and efficient for consumers and systemically sound for the economy, and for the industry to have open access to European markets in order to secure its competitiveness and modernisation.

Provisions of the Agreement

General provisions. The Agreement commits Moldova to gradually make its financial market regulations compatible with those of the EU for banking, insurance, securities and asset management. A large number of EU laws – 39 directives and regulations plus a recommendation (listed in Annex XXVIII-A) – will be approximated with implementation delays mostly of three years. Yet there is a much more limited number of core regulations of systemic importance, and many of the others are technical implementing provisions for the core regulations.

National treatment. In general, the Agreement provides for national treatment for establishment and the cross-border supply of services, meaning that each party will grant to the other party’s operators treatment no less favourable than for its own. This is in line with standard WTO/GATS principles, under which, however, national treatment only applies once a service provider has legally entered the market. In addition, there are detailed provisions
facilitating the “temporary presence” of key personnel and suppliers of services. Still, there are still numerous specific reservations by individual EU member states (listed in Annex XXVII-B), many of which may be of small significance, but nonetheless complicate and limit the openness of the market.

**Market access.** In relation to establishment, the Agreement does not contain specific provisions on market access. In relation to the cross-border supply of services, under Art. 210, the parties’ market access commitments are inscribed in Annexes XXVII-B and XXVII-F to the Agreement. Market access commitments follow a positive list approach, as under the GATS.

**International standards.** At the same time, Art. 243 of the Agreement calls for Moldova “to make its best endeavours” to apply, inter alia, the following internationally agreed standards:

- Core Principles for Banking Supervision under Basel rules,
- International Association of Insurance Supervisors’ Insurance Core Principles,
- International Organisation of Securities Commissions’ Objectives and Principles of Securities Regulation,
- OECD Agreement on exchange of information on tax matters,
- G20 Statement on transparency and exchange of information for tax purposes, and

**Banks – Capital requirements.** The global financial crisis, with the collapse or near-collapse of major banks of systemic importance, has led to radical strengthening of the capital reserve requirements of banking systems. Below are the key EU laws in the Agreement, and as subsequently revised:

- Directive 2006/49/EC of 2006 on the capital adequacy of investment firms and credit institutions, which has been replaced by the 2013 Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms; and
- the related Directive 2006/48/EC of 2006 on the business of credit institutions, replaced by Directive 2013/36/EU of 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

These texts transpose into EU law the latest global standards on bank capital adequacy, commonly known as the Basel regulatory
The new texts are a combination of *directives*, which give some leeway to member states on how to implement the provisions, and *regulations*, which in EU law are directly applicable, and in this case specify precisely the various harmonisation requirements. While the basic minimum capital requirement of 8% of equity capital is unchanged (as in Basel I and the 2006 directives), the definition of capital has been tightened and further categories of reserve requirements have been introduced, giving essentially the following regime (under Basel III and the new 2013 laws):

- a minimum capital reserve requirement of 8%, plus...
- a capital conservation buffer of 2.5%,
- a countercyclical capital buffer of 0 to 2.5%,
- a capital buffer in systemically important institutions of 0 to 3.5%, and
- a systemic risk buffer of 0 to 3 to 5%.

As a result, depending on the specifics of individual banks, the requirements could effectively be doubled, although small to medium-sized banks can be largely exempt from the additional requirements. These capital reserve requirements are subject to extremely complex methodologies of definition and calculation, which take up the bulk of the texts in question. There are also new requirements with respect to liquidity to cover stress conditions.

**Accounting rules.** Four accounting directives are cited (in Annex XXVIII-2), which provide very detailed technicalities.

**Insurance.** The key law for regulating the insurance industry is Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance, also known as ‘Solvency II’, which is a fundamental text detailing rules for the conduct of the industry, its supervision and solvency. Moldova should comply with this directive within seven years. Implementation of Solvency II is understood to be a big challenge for Moldova, which will take a considerable time to be

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142 Basel I was the first internationally agreed set of banking regulations negotiated and produced the Bank for International Settlements (located in Basel), while Basel III is the most recent version, which takes into account the need for changes in the light of the 2009 financial crisis. While these norms are international, the EU legislates to make them strictly operational and binding.

realised. Some more specific laws are cited, for example for motor vehicle liability.

**Securities (MiFID).** The EU has established a comprehensive regulatory regime for investor transactions by stock markets, other trading systems and investment firms, with a single authorisation for investment firms to do business anywhere in the EU. The key law is Directive 2004/39/EC for markets in financial instruments (MiFID), supplemented by implementing Directive 2006/73/EC, with which Moldova should comply within seven years. These laws have now been replaced by Directive 2014/65/EU (‘MIFID II’), which entered into force in the EU in January 2018. MIFID II is of exceptional complexity, regulating various advanced financial investment instruments. We return below to the issue whether or when Moldova should approximate it.

**Investment funds (UCITS).** The basic law of the EU for investment funds was revised in 2009 in the wake of the Madoff scandal of 2008, and this text on the regulation of collective investment in transferable securities (UCITS) is cited in Annex XXVIII-A. The market in question has grown to a substantial size in the EU. But this text has undergone a further important revision (2014/91/EU), and therefore raises the question of updating the provisions of the Agreement.

**Financial derivatives.** The EU has introduced complex rules to regulate financial derivatives in a regulation on over-the-counter (OTC) derivatives, central counterparties and trade repositories, also called ‘EMIR’ (Regulation (EU) 648/2012). This was a major development, enabling the EU to deliver the G20 commitments on OTC derivatives agreed at the Pittsburgh summit in September 2009. The regulation ensures that information on all European derivative transactions will be reported to trade repositories and be accessible to supervisory authorities.

**Implementation perspectives**

**Present structure and state of Moldovan financial markets.** Moldova’s financial market is still underdeveloped, with a shallow non-bank segment, which hampers the domestic economy’s growth. Banks continue to dominate the financial system. Financial intermediation, as reflected in the ratio of the bank-dominated overall credit portfolio to GDP, was some 25.8% in 2016, compared to 2014 when it recorded 36%. This big decrease was caused by the major
bank fraud and the resulting financial crisis in 2014 (reported in some detail below). The tighter credit assessment requirements and the additional formation of provisions have dampened the risk appetite of most banks. This also led to the migration of financing demand to the non-banking financial sector, especially to microfinance and leasing companies, whose loan portfolios have increased by about 30% in the last two years. International development partners remain an important source of concessional funding for domestic credit expansion. Total financial-sector assets represent 60% of GDP, and banks account for about 90% of the total assets of the sector. Most other financial sector assets are represented by the insurance sector (about 4%) and microfinance segments (6%).

**Banking.** Moldova had until recently maintained a quite sound basic banking system. But in 2014, a huge financial fraud gravely damaged its reputation at sizeable cost to the economy (discussed in Box 15.1).

The National Bank of Moldova (NBM) was established in 1991, and is an autonomous legal entity, responsible only to the country’s parliament. The NBM regulates and supervises banking practices throughout the country, and defines national monetary management and exchange policies. The NBM issues licences to commercial banks, payment services providers, the foreign exchange bureau, foreign exchange offices and the foreign exchange bureaus of hotels. At the moment, the licensing requirements for banks include minimum thresholds for tier-one capital and risk-weighted capital adequacy; the respective thresholds were raised to MDL 200 million at the end of December 2012 (from MDL 100 million in 2008) and 16% at the end of July 2012 (from 12%).

At the end of October 2017, there were 11 banks in Moldova, including four subsidiaries of foreign banks and financial groups, and the remaining seven had some foreign participation. One such investor is the Banca Transilvania, one of Romania’s largest banks whose shareholders include the EBRD. In November 2017, this bank announced received the NBM’s approval to buy 100% of the capital of Victoriabank.

The banking sector remains relatively concentrated; the four largest banks (Moldova Agroindbank, Moldindconbank, Mobiasbanca and Victoriabank) hold over 77% of the total bank assets.

At the moment, the prudential framework for banks is largely in line with Basel I, which is less sophisticated than those set out in the
second and third generations of the Basel rules. This situation is expected to change beginning in 2018, when the new law on bank activity will enter into force, according to the Association Agreement. Thus, the Association Agreement brings new rules in the area of capital regulation, whereby Moldova is committed to transpose the provisions of the EU’s Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions within three years. The transposition of the Basel III provisions on banking licensing, regulation and supervision into the national legislation represents one of the most important actions. To achieve this goal, the Law on banking activity was adopted in 2017. This aims to strengthen the legislative framework applied to banks’ prudential supervision (regarding solvency capital, liquidity requirements, etc.).

A main objective at the current time is to unlock the process of selling the shares of several banks and insurance companies, including B.C. Moldindconbank, B.C. Moldova-Agroindbank, S.A. Moldasig, S.A. Asito, etc. However, not all the conditions for attracting high-quality strategic investors are met, and amendments to the law on the Capital Market will concern the improved procedures for selling newly issued shares. However, the decisions of certain foreign banking groups (such as the Bank of Transilvania) to invest in the banks under special supervision or administration regime represent important signs of improvement.

Box 15.1 The 2014 bank fraud

While the Moldavian banking system proved to be quite stable in the first two decades of the country’s independence, facing up to regional and global financial crises adequately, in 2014 it was hit hard by a series of dubious ‘mega-transactions’. At the end of the year three systemically important banks, accounting for 35% of the assets of the entire banking system, were becoming insolvent as a result of the dramatic degradation of their financial situation. The banks were placed under special administration. In November and December 2014, the NBM opened emergency credit lines for these three banks, amounting to MDL 9,434 million (€500 million) to maintain the stability of the financial system, followed by another loan of over MDL 5 billion (€250 million) in March 2015. These credits were granted at preferential

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144 See Law No. 220 of 6 October 2017 on Banking Activity.
interest rates and guaranteed by the state with maturities extended for an undetermined period.

When these loans were not repaid, it was decided to liquidate all three banks. It is still unclear who will reimburse the loans extended by the NBM. Intensive investigations were launched in 2015, without revealing who was responsible for the fraud. Despite measures taken to speed up the process of bank fraud investigation, the process is still showing no clear results over the past three years. Misused funds are recovered through the liquidation of the three decapitalised banks and the sale of their assets. The decision was taken to launch an inter-institutional platform to monitor and control the status of bank fraud investigations and to recover fraudulent assets. However, no public information about its meetings, decisions or results are available. The contract with the Kroll investigation company, working to identify and recover the assets bought with fraudulent funds, was extended. Its regular information notes show that a large group of companies concerted in a scheme to defraud several banks by contracting suspicious loans. Details about this mechanism are due to be published in the long-awaited Kroll 2 report during 2018.

The EU, IMF and other partners insist on advancing the investigation and conviction of the guilty persons, as mentioned in the most recent agreement on macro-financial assistance from the IMF and the EU.

**Non-bank savings and credit institutions.** The National Commission for Financial Markets (NCFM) regulates and supervises most non-bank financial services segments, the securities market, the insurance market, non-state pension funds and credit history bureaus. The NCFM was established in August 2007, as the successor of several agencies. A draft law aimed at establishing a common regulatory and supervisory framework for non-banking financial activities, including microcredit and financial leasing, is awaiting adoption. As of the end of 2014, the non-banking institutions under NCFM supervision comprised 240 savings and credit associations, and more than 100 microfinance organisations. The latter organisations accounted for about 60% of non-bank lending assets.

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The platform is supposed to include the representatives of Parliament, Government, NBM, General Prosecutor’s Office, NAC, NCFM and other institutions.
Regarding harmonisation with EU directives in the non-bank savings and credit institutions sector, within three years of the entry into force of the Association Agreement Moldova must implement the provisions of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.

Securities market. Moldova’s capital market is still embryonic, with trading taking place only in shares and bonds. Trading mechanisms for derivatives and government securities (secondary market) are yet to be developed. The trading mechanism for government securities is in the process of implementation. Deals related to the privatisation process have accounted for the bulk of transactions. In 2016, there were increases in the volume of transactions in both the primary and secondary markets. Thus, the volume of shares issued amounted to MDL 441.97 million (€20 million) or twice the volume as issued in 2015. The secondary market saw a doubling of transactions in securities (from MDL 648.5 million to MDL 1137.3 million).

In principle, foreign companies and individuals receive national treatment in securities markets. There are no restrictions on foreign portfolio investment in Moldova. Investment firms from the EU can operate as ‘accepted persons’ on the Moldovan market without the licence issued by the NCFM.

In terms of the regulatory framework, in recent years Moldova has taken steps to align its legislation governing primary and secondary capital market activities with that of the EU. A new Capital Market Law, in force since September 2013, transposed some of the relevant EU directives, including those for markets in financial instruments Directive (2004/39/EC and transparency for listed companies Directive (2004/109/EC). The NCFM is currently in the process of approving secondary legislation, which would regulate, inter alia, investment companies, undertakings for collective placements, the investors’ compensation fund, public offers, takeover bids and capital market infrastructure.

There remains the question of revising the approximation commitments of the Association Agreement, in line with new EU legislation. In recent years since the 2008 financial crisis, there have been fundamental revisions of the EU’s regulatory legislation, as for example with the entry into force in January 2018 of MIFID II for a wide range of securities markets. MIFID II is universally seen to be the most complex and burdensome of financial market regulations, suited only for the most sophisticated markets for securities. Without a
doubt there should be no precipitous move for Moldova to take on new commitments here.

**Insurance. As of the end of** October 2017, the Moldovan insurance market comprises 16 insurance companies, 14 of which are specialised in non-life insurance and 1 in composite insurance, and numerous insurance brokers and agents as legal persons. In 2016, gross premiums written amounted to MDL 1,381 million (€69 million), up from MDL 1.203 million in 2014 (€63 million), the main element being motor vehicle insurance. Market concentration remains high, with the five largest insurance companies accounting for some 67% of gross premiums written in 2016.

Legal approximation of the EU’s Solvency II Directive, on the business of insurance and reinsurance, is envisaged within seven years of the entry into force of the Agreement. This substantial time delay reflects the fact that Solvency II requires a risk-based approach for calculating solvency capital requirements for insurance undertakings, which will be difficult for the insurance market of Moldova without prior enhanced market capitalisation. Provisions of the directives relating to motor vehicle liability, insurance mediation and supervision retirement shall be implemented within three years of the entry into force of this Agreement. In this respect, the year 2018 foresees the launch of a comprehensive reform process of the non-bank financial sector, which also implies the transposing of these directives into national legislation. Thus, a new insurance law is due to be drafted, and adopted as well as the secondary framework for this sector. This regulatory framework will regulate the rating agencies or normative acts related to the capital market.

**Reform and approximation prospects and priorities.** The financial sector is one of the key areas of cooperation under the Association Agreement for promoting the market economy, even if the European Union does not offer to Moldova comprehensive market opening in financial services immediately or unconditionally. The process of legislative approximation is the precondition for market opening by the EU. As mentioned above, however, only the banking sector of the financial market of Moldova is rather developed. Therefore, adopting international standards in the areas with limited or almost no development would be very difficult, but achieving these objectives is necessary for building a functional market economy in due course.

The transposing process of the EU acts that had to be adopted into national legislation by September 2017 has not wholly kept up
with the schedule. However, several legislative acts have been adopted or are in the process of adoption, which transpose some of the most important actions set out in Annex XXVIII-A of the Association Agreement. This includes Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, and Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.

Currently, the strategic planning document for the 27 directives and regulations set out in Annex XXVIII-A of the Association Agreement is represented by the National Implementation Plan of the EU–Moldova Association Agreement (approved by Government Decision No. 1472 of 30 December 2016), but it covers all the areas of the Agreement and does not specify directly the financial part.

The delays in the approximation have been caused by recurring political crises in the country, alongside the huge bank fraud. All these factors led the EU and other international partners to suspend fresh financial assistance to Moldova. In this respect, the banking sector was the main subject discussed by all foreign donors before resuming cooperation with the Moldovan authorities. The new IMF Agreement seeks the rapid improvement of the governance and supervision of the financial/banking sector, while reaching the full transparency of the commercial banks' shareholding structure by the middle of next year.

In addition, the conclusions of the third Association Council meeting in March 2017 between the EU and Moldova highlighted the need for comprehensive, impartial and effective investigations of the 2014 banking fraud. The EU stressed the importance of proceeding decisively and in a transparent manner, with a view to ensuring that all persons responsible are brought to justice and light is shed on the schemes used, through open trials.

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Financial services at a glance

Until recently, Moldova’s banking and financial market system was, while underdeveloped, sound in its basic functions.

But at the starting point for implementation of the Association Agreement, the financial sector was hit by a huge bank fraud uncovered in 2014, resulting in the liquidation of three major banks. Investigation of this fraud advances only slowly. Overall this episode has revealed the most serious defects in the governance of the Moldovan economy.

The Association Agreement foresees a comprehensive approximation on EU regulatory norms, mostly within three years. But this also is getting off to a slow start.

A broad process of reform and recovery of the banking focuses on three headings: i) alignment on Basel III standards; ii) strengthening the regulation and supervision of non-banking financial market and iii) aligning the general financial reporting framework on EU practices.

Much of the EU legislation is extremely complex, especially its latest versions such as MIFID II. There should be no precipitous updating and extension of Moldova’s obligations in this respect.
16. TRANSPORT

Transport has been a key sector for the internal market since the early days of the European integration process. As a result, the EU has a well-established body of law and policies in this field. The DCFTA aims to expand and strengthen Moldova’s transport cooperation with the EU and thus to promote efficient, safe and secure transport operations as well as greater interoperability of transport systems. This will be fundamental for helping Moldova’s industries to integrate into the European supply chain and to boost contact between people.

Provisions of the Agreement

The DCFTA provides for a progressive liberalisation of transport in road, rail, inland waterways and intermodal, with approximation of many EU standards (Annexes X and XXVIII-D). For air transport, these rules are laid down in the 2012 EU-Moldova Common Aviation Agreement (CAA). Of all the transport modes, road and air are of special importance for links with the EU.

**Road transport.** This transport mode is the economically most vibrant in EU-Moldovan relations and will thus require the most attention. Goods and passenger transport companies, operators and drivers from Moldova are expected to comply in full with the EU’s *acquis* if they wish to engage in ‘trucking’ in the EU. The case of road haulage transport is complicated by the fact that access to the EU’s
market is subject to detailed quota provisions and permits issued at the level of the member states, which fear that their markets will be overrun by cheap Moldovan truckers.\(^{148}\) Under the DCFTA, eight member states have issued reservations to the full liberalisation of the road transport sector with Moldova.

Nevertheless, Moldova has agreed to approximate its legislation to the EU’s road transport acquis within strict timetables. For instance, immediate priority should be given to EU rules on driving licences\(^ {149}\) to be implemented upon the entry into force of the Agreement. For the implementation of the conditions to pursue the occupation of road transport operator\(^ {150}\) and the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers,\(^ {151}\) a two-year period has been agreed. Differentiated timetables exist for speed limitation devices\(^ {152}\) (within one year for international carriers, eight years for national carriers), as well as inland transport of dangerous goods (as of the entry into force of the DCFTA for international carriers and within eight years for national carriers).\(^ {153}\) This ambitious regime puts the onus on the Moldovan legislature to approximate domestic rules and standards to those of the EU, and introduce the necessary monitoring, inspection and enforcement mechanisms to assure proper implementation of the EU directives and regulations. Arguably, this is a costly affair, which needs sufficient financial support from the EU.

Air transport. For all practical purposes, the DCFTA refers to the 2012 CAA, which aims to progressively liberalise air transport between the EU and Moldova, “adapted to their reciprocal commercial needs and the conditions of mutual market access”.\(^ {154}\)

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\(^{148}\) According to standing case law of the Court of Justice of the European Union, these bilateral agreements have to be in conformity with the existing EU transport acquis. See the judgments in Cases C-466-9/98, C-471-2/98 and C-475-6/98, Commission v. United Kingdom, Denmark, Sweden, Finland, Belgium, Luxembourg, Austria, Germany, 5 November 2002.

\(^{149}\) See Directive 91/439/EEC.


\(^{151}\) See Directive 2003/59/EC.

\(^{152}\) See Directive 92/6/EEC.

\(^{153}\) See Directive 2008/68/EC.

\(^{154}\) A report prepared for the Commission in 2011 by consultants estimated that the economic benefit of such an agreement at around €17 million p.a. (mainly due to
Removal of all market access restrictions between the EU and Moldova should attract new entrants to the market and create opportunities to operate for underserved airports.

The CAA promotes regulatory cooperation and harmonisation of regulations and approaches based on EU legislation in the field of aviation safety, aviation security, air traffic management, computer reservation systems (CRS) and the environment (measures listed in Annex III), as well as non-discrimination and the creation of a “level playing field for economic operators”. The CAA foresees the gradual transition of Moldova to the full application of the EU’s air transport law (Annex II). The transitional arrangements provide that the implementation and application by Moldova of all the laws indicated in Annex III are subject to an evaluation by the European Commission and validation by a separate decision of the EU–Moldova Joint Committee. Such an evaluation is to be conducted two years after the entry into force of the Agreement.155

Yet, the CAA does not confer complete internal market access to Moldovan carriers: they only obtain the right to fly between Moldova and an EU destination, either directly or via an intermediate point in the neighbourhood, in the European Common Aviation Area or in Iceland, Liechtenstein or Switzerland (Annex II). That excludes Moldovan carriers from operating flights within EU member states (cabotage) and flights between two EU member states unconnected to a flight to or from Moldova.

Moreover, the DCFTA excludes national and MFN treatment for domestic and international air transport services, whether scheduled or non-scheduled, with a number of exceptions: i) aircraft

lower airfares, increased air travel and the associated economic activity). The analysis also showed that airfares on popular routes are likely to drop significantly as a result of increased competition. The Agreement would additionally help resolve issues in “doing business” for EU carriers. See COM (2012) 20 final, 27 January 2012.

155 Until that moment, the right for the air carriers of both parties to exercise ‘5th freedom rights’ other than those already granted by bilateral agreements between Moldova and the EU member states is excluded. The fifth freedom allows an airline to carry passengers from one’s own country to a second country, and from that country to a third country (and so on). Fifth-freedom traffic rights are intended to enhance the economic viability of an airline’s long-haul routes, but tend to be viewed by local airlines and governments as potentially unfair competition.
repair and maintenance services, during which an aircraft is withdrawn from service; ii) the selling and marketing of air transport services; iii) CRS services; iv) ground-handling services; and v) airport operation services (Arts 204-205 of the DCFTA). The reservations mentioned in the DCFTA have to be regularly reviewed by the Association Council’s subcommittee dealing with transport in order to progressively liberalise the establishment conditions. This ought to resolve the legal inconsistencies between the DCFTA and the CAA.\textsuperscript{156}

\textbf{Railway transport.} The DCFTA aims to reform the rail transport sector and gradually liberalise the freight and passenger rail market, but to realise these goals longer timeframes will be required than the four-year timetables mentioned in the DCFTA to implement the 11 EU regulations and directives listed in Annex X, in particular those regarding technical and safety conditions.

\textbf{Inland waterway transport.} The DCFTA imposes no national or MFN-treatment obligations on the EU with respect to national cabotage transport. Measures based upon existing or future agreements on access to inland waterways (including following the Rhine–Main–Danube link) do, however, reserve limited traffic rights for Moldovan operators. As with other transport modes, the priorities for approximation concern the conditions for market access, i.e. qualifications for operators, a central register, harmonised information services, safety standards for vessels and the establishment of a network of logistics centres, all to be implemented within an ambitious timetable of three years, except for transport of dangerous goods (immediately) and technical requirements of vessels (five years).

\textsuperscript{156} In the same vein, Arts 204-205 relate to the freedom of establishment and not to the cross-border provision of services. As these services are typically provided through establishment, one could argue that the DCFTA regime will prevail in practice. In some cases, however, services are provided without establishment (e.g. self-handling), which will mean that the applicable rules will have to be derived from the CAA. Similarly, the DCFTA lists two EU-wide reservations on establishment in the area of air transport services, one relating to the rental of aircraft with crew, the other with respect to CRS (Annex XVI-A). The relevant provision on CRS in the CAA (Art. 13) refers to access to the market, without detailing whether this is through or without establishment. That may indeed create a conflict, in which case one could either argue that the specialised (i.e. the CAA) or the later agreement (i.e. DCFTA) takes precedence.
International maritime transport. The DCFTA prescribes a regime of “unrestricted access to cargoes on a commercial basis, freedom to provide international maritime services, as well as national treatment in the framework of the provision of such services” and contains a number of standstill clauses to prevent the parties to the Agreement from introducing measures constituting (disguised) restrictions or having discriminatory effects. The right of establishment for service suppliers is excluded for national maritime cabotage. The DCFTA does not create national or MFN treatment obligations for the EU for the establishment of a registered company for the purpose of operating a fleet under the national flag of Moldova.

Implementation perspectives

The prominence of the transport sector for EU–Moldovan relations derives from Moldova’s immediate proximity to the EU. Moldova is also a link between the EU and CIS countries, crossed by internationally significant rail and road routes. The Association Agreement recognises the significance of rehabilitating and extending the internationally important road links crossing the territory of Moldova, starting with the M3 Chişinău–Giurgiuleşti and M14 Brest–Briceni–Tiraspol–Odessa, as well as upgrading and modernising the rail connections with the neighbouring countries used for international and transit traffic (Annex IX).

The importance of Moldova–EU transport connections results from the high trade flows between the two sides, as the EU is Moldova’s top trading partner for both exports. Passenger transportation is also notable, given the increasing number of tourists travelling to the EU, especially after the introduction of the visa-free regime in 2014.

In 2017, the volume of goods carried by transport companies, (including all modes of transport) increased by 23.8% as compared to 2016, amounting to 17.3 million tonnes. Thus, the volume of freight carried by the air transport increased 2.2 times, whereas for rail it increased 38%, and by road 19.3%. On the other hand, the waterway freight transport recorded a decrease of 0.6%. Overall, the increase in the volume of the transported freight was determined by the improvement of the economic situation in 2017.

After the public administration reform was launched in 2017, the Ministry of Economy and Infrastructure (MEI) became responsible
for the transport-related policies. The MEI plays a central role in the elaboration and implementation of the sectoral policy document, namely the Transport and Logistics Strategy for the period 2013-22,\(^{157}\) which supports the goals of the Association Agreement in the field of transport.

**Road transport.** The road transport sector is relatively competitive and stable compared to other sectors. About 71% of the total volume of freight and about 97% of the total number of passengers were carried by road transport in 2017.

The Association Agreement aims to consolidate the road infrastructure by encouraging cooperation with different development partners, and wider implementation of concepts like public-private partnerships and road taxes. The main partners that support transport-related projects remain the EBRD and the EIB. Currently, the projects on road rehabilitation financed by these two institutions amount to about €200 million, with about 400 km of national roads, especially interconnecting corridors with Romania (the national road R1, Ungheni – Chișinău – Suclei – the border with Romania or the bypass road to city Vulcănești). Additionally, the Multiannual Assistance Framework of the EU for 2017-20 includes measures dedicated to the transport sector, with an indicative allocation between €71-87 million.\(^{158}\)

The alignment to European norms in the field of road transport is foreseen in 2013 Road Transport Code.\(^{159}\) It includes the transposing of directives\(^{160}\) related to social legislation and persons involved in road transport activities, as well as the legislation\(^{161}\) concerning the vehicles used in road transport.

**Air transport.** Air transport is becoming more and more attractive, especially for passengers, and is recording significant growth. The number of people who used air transport services in 2017

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159 See Code No. 150 from 17 July 2014 on road transport.


accounted for 1.6 million passengers, increasing by 45.4%, compared to 2016. After the signing of the CAA, the number of companies that operate in airlines market reached 17 entities. In recent years, European companies such as Wizz-Air or Lot Polish Airlines also entered the national market, while the national company (Air Moldova) has extended its geographical destinations. Despite this fact, the financial situation of Air Moldova remains precarious, with the company being granted state aid of around €3 million (or MDL 75 million) at the end of 2017. Air Moldova has debts of over €50 million (or MDL 1 billion), double the sum it had accumulated in 2013.

In 2017, the Air Code\textsuperscript{162} of the Republic of Moldova was adopted. This legal act represents the basis for transposing the EU’s aviation legislation. It establishes the standards and procedures for aeronautical staff licensing, aircraft registration, air rules, aircraft, aerodrome, ground handling, aeronautical safety, etc. Even though the Air Code does not entail a full approximation of European legislation in the aeronautical field, it sets an initial framework for implementation of the EU \textit{acquis} at national level.\textsuperscript{163} After the adoption of the Air Code, there should follow new aviation legislation (Aeronautical Safety Law, Civil Aviation Accident and Incident Investigation Act, and Law on the liability of civil aviation operators and their insurance). At the same time, a major priority remains to transpose the key regulations and directives set out in Annex III of the Common Aviation Area Agreement.\textsuperscript{164} The current legal vacuum is a major barrier to the development of civil aviation, generating significant litigation and financial losses for national operators in this sector.

\textsuperscript{162} Act adopted on 21 December 2017 but not published yet (15 March 2018).


\textsuperscript{164} See Regulation (EE) No 300/2008 on common rules in the field of civil aviation security, Regulation (EU) No 1254/2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures, Regulation (EU) No 72/2010 laying down procedures for conducting Commission inspections in the field of aviation security, etc.
**Railway transport.** Moldova’s entire 1,200 km rail network is single track and not electrified. It borders Romania’s railway network in the west and Ukraine’s in the east. Because of the break-of-gauge to the west, rail transport is directed eastward, mainly to Odessa. There are two passenger trains from Chișinău to Iași (minimum five hours) and Bucharest (minimum 21 hours). In 2017, for the first time in the last four years, the volume of goods transported by rail increased (by 38% as against 2016), totalling 4.8 million tonnes of cargo.

According to the National Action Plan on the implementation of the Association Agreement, the commitments in the field of railway transport are to be achieved between 2018 and 2019. Various European directives are to be reflected in the new Railway Code, which should be adopted by the end of 2019. In October 2017, the Government approved the Concept for the Reorganisation of the Railway Sector and of the State Company "The Moldovan Railways" for the years 2018-21. This would see the creation of three independent companies, which would deal with infrastructure, passenger and freight, respectively.

The sector receives substantial loans from the EIB and the EBRD, accounting for €105 million, granted for the modernisation of the national railway sector. The loans will also cover the purchase of 10 new locomotives, and the rehabilitation of the vital segments of the railway infrastructure.

**Inland waterway transport.** Shipping is possible on the lower Prut and Nistru rivers, but it plays only a modest role in the country’s transportation system, also because parts of the Nistru are under the control of the separatist Transnistrian authorities.

**International maritime transport.** Moldova has one small oil terminal on the Danube at Giurgiulești (Cahul) that can handle small seagoing vessels. The harbour was opened in 2006 and occupies the entire Moldovan stretch of the river (less than 600 metres). Apart from the adoption and implementation of rules for the qualification of seafarers, safety standards for passenger and cargo ships, and legal acts on the liability of carriers of passengers by sea in the event of accidents, the DCFTA requires Moldova to harmonise its legislation on, inter alia, ship inspection and port state control. A major issue is that the Moldovan fleet is still on the blacklist of the Paris MoU on Port State Control. In recent years, dozens of Moldovan flagships have been involved in several international scandals related to shipwrecks, drug and arms trafficking, human trafficking, as well as entry into ports of occupied regions such as Crimea. With the support of the EU,
necessary changes to legislation and operational practice are underway. The registration of ships will be possible only after the approval of the Ministry of Foreign Affairs.

In reality, the commitments on approximation will have to be implemented with flexibility. The main actions relate to the transposing of the European legislation foreseen to be achieved by 2019. This refers principally to Directive 2006/87/EC laying down technical requirements for inland waterway vessels, and Directive 87/540/EEC on access to the occupation of carriers of goods by waterway in national and international transport, and on the mutual recognition of diplomas, and formal qualifications for this occupation.

The real challenge in Moldova’s approximation effort, however, is to ensure that the new legislation is properly implemented and enforced. Two recent cases recall that the transport sector is prone to high levels of corruption and a deficient justice system in Moldova. The first case has led to the suspension of Moldova from the Green Card Insurance System, meaning that Moldovan insurance companies will not be able to issue International Motor Insurance Certificates. The second case has led to the blocking of the financial resources of the State Enterprise MoldATSA, which is responsible for instructing planes that fly over Moldovan air space. Both cases have been resolved, but Moldova remains under close monitoring within the international Green Card system for the next three years, and by the European air traffic control agency (Eurocontrol).

**Territorial application.** A critical limitation in the application of the Association Agreement in the transport sector concerns Transnistria. Currently, Moldova does not have control over the roads in the Transnistrian region that are part of important international links and cannot therefore rehabilitate them or monitor the transit of goods and passengers. In practice, illegal control at the Transnistrian segment of the border violates the right to free movement and requires additional formalities and payments. Moldova cannot ensure that Transnistria will conform to international treaty obligations. Important work is being done by the EU Border Assistance Mission (EUBAM) to Moldova and Ukraine – for details see Chapter 27.
Transport policy at a glance

The DCFTA sets out the EU’s detailed rules and regulations for most modes of transport (road, rail, inland waterways, sea and intermodal), typically governing the qualifications of transport operators, the technical safety of vehicles and vessels, and the activities of inspection bodies.

Air transport is covered by the 2012 EU–Moldova Common Aviation Agreement, which aims at opening up the air transport market to low-cost competition while respecting high safety standards.

The adoption of the new Air Code serves as the basis for the transposing the process of Community legislation and for improving the quality of civil aviation regulations.

The existing Road Transport Code creates the necessary framework for ensuring the approximation with the European regulation in the field of road transport.

For the railway sector there is now a Concept for the reorganisation of Moldova Railways, which will lead to a new Railway Code.

Measures to improve control over the Transnistrian territory continue through expanding the common control border points between Moldova and Ukraine, and with the assistance from the EUBAM.
17. ENERGY

The reform and modernisation of Moldova’s energy sector is a challenge of the highest priority, for both economic and geopolitical reasons. The Association Agreement’s provisions are relevant for the necessary policy reforms to the energy sector. The regulatory reforms will be complemented by major investment to link power networks to those of the EU, via Romania.

Provisions of the Agreement

The Agreement contains two separate chapters on energy: one under the DCFTA heading concerns trade-related issues, and the second concerns broader cooperation on energy policy. Both chapters include references to the Energy Community Treaty to which Moldova acceded as a full member in 2010.

Energy Community Treaty.\textsuperscript{165} The contents of this Treaty thus pre-date the Agreement, but are carried over into it. The purpose of the Treaty is to provide for the application of much of the EU’s energy and environmental law in neighbouring non-member states. Because the intentions and content of the Treaty are entirely consistent and overlap with the Association Agreement, the latter includes references to the Treaty and, in particular, states in Art. 278 that in the event of

\textsuperscript{165} For detailed analyses, see the Secretariat of the Energy Community, “2015 Annual Implementation Report of the Acquis under the Treaty Establishing the Energy Community”, 8 October 2015, and previous reports.
conflict between the two texts, the Treaty will have legal precedence. For present purposes, therefore, the content of the two texts can be taken as parts of the same political project, even if there are legal distinctions between the two.

The blocks of EU law that feature in the Treaty cover the following aspects:

- electricity and gas, with rules for internal markets, access to networks, cross-border exchanges and security measures;
- renewable energy promotion;
- energy-efficiency measures;
- oil, with a provision for maintaining minimum stocks; and
- the environment (see also chapter 18).

Among these provisions, of particular importance are the rules for electricity and gas networks in the so-called ‘unbundling’ directives\textsuperscript{166} of the Third Energy Package. These require that transmission operators, such as electricity transmission line and gas pipeline companies, are separated from producers or suppliers of energy, and assure freedom of access to these transmission infrastructures for all suppliers or producers of energy. These ‘unbundling’ provisions are crucial to the de-monopolisation of Moldova’s energy markets.

\textit{Trade-related requirements of the DCFTA}. The DCFTA chapter on ‘trade-related’ energy applies basic free trade provisions to the electricity, crude oil and natural gas sectors. Customs duties and quantitative restrictions on the import and export of energy goods are generally prohibited. Energy prices for the supply of gas and electricity to industrial consumers must be determined solely by market prices. This chapter includes provisions on cooperating on infrastructure, establishing an independent regulatory authority, and on exploring and producing hydrocarbons.

\textsuperscript{166} See Directive 2009/72/EC for common rules for the internal market for electricity, replacing Directive 2003/54/EC; see also Directive 2009/73/EC concerning common rules for the internal market in natural gas, repealing Directive 2003/55/EC. The Agreement in its Annex VIII refers to the two repealed directives, while the Energy Community Treaty is more up-to-date, and in any case its provisions have legal precedence.
Regarding the transit of energy goods, the DCFTA incorporates elements of Art. V GATT 1994 and of Art. 7 of the 1994 Energy Charter Treaty, both of which assure the freedom of transit. Furthermore, under Art. 351 of the Agreement the EU and Moldova must ensure that transmission system operators minimise the risk of accidental interruption or stoppage of transit and transport. But a party must not be held responsible for an interruption of supply over which it has no control (e.g. interruptions caused by Russian actions).

**Broader provisions on energy cooperation.** This chapter envisages cooperation in general terms over virtually the whole landscape of energy policy issues, including policy strategies, crisis mechanisms, infrastructure modernisation, the enhancement of energy security, energy efficiency and savings, and support for renewable energies. Annex VIII of the Agreement lists numerous EU laws and the timetables for Moldova’s ‘gradual approximation’, including the main provisions of the Energy Community Treaty.

**Technical requirements for energy-using products.** The Agreement also sets out in Annex VIII two framework directives for energy-using products. The first defines the eco-design requirements of energy-using products, such as household electrical appliances, to be implemented within three years of entry into force of the Agreement. The second concerns the labelling of similar household appliances regarding their energy consumption, to be implemented within two years. These regulations specify the technical conditions for the CE conformity mark, which allows products to be sold on the EU market. Following full implementation of the directives, all household appliances produced in Moldova will thus bear the CE conformity mark and can be sold on the European market.

**Implementation perspectives**

**Regulation of gas and electricity markets.** Moldova has taken steps towards compliance with EU energy market legislation as part of the

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167 The Energy Charter Treaty of 1994 is not to be confused with the Energy Community Treaty of 2005. The Energy Charter was an early attempt to establish a wider international energy legal order for the post-Soviet era, including the EU, Russia and all other former Soviet Union states, and a number of non-European states.


commitments under the Energy Community (Law No. 117 of 23 December 2009). Furthermore, in 2011 Moldova agreed, politically, to transpose the Third Internal Market Package (Third Energy Package), which, inter alia, requires establishment of a single, independent authority to regulate the energy market. The Association Agreement refers explicitly to Directive 2003/54/EC on the internal market in electricity and Directive 2003/55/EC on the internal market in natural gas regarding the attributions of the regulatory authorities for electricity and natural gas (Art. 353) as guarantors of the efficient functioning of the energy market. These directives are reflected in the national legislation adopted in December 2009 and further amended in 2014-15. With the adoption of the Energy Law in September 2017 and previous gas and electricity legislation in May 2016, Moldova has formally transposed the Third Energy Package.

The responsible regulatory authority is the National Agency for Energy Regulation (ANRE), which in principle takes binding decisions autonomously and independently. The new Energy Law (Law No. 174 of 21 September 2017) ensures more transparency in appointing the administrative council of the regulatory body, with the EU Delegation and the Secretariat of the Energy Community observing the selection process, which can lead to more political independence. This Law is one of the conditions required by EU for the €100 million macro-financial assistance agreed in November 2017. According to this Law, ANRE will obtain full financial autonomy from the Parliament, but with checks of ANRE’s financial expenditures performed by the Court of Audits.

Earlier events in 2015 and 2016 showed clear political interference over the raising of gas and electricity tariffs. This concerned the decision to increase prices for final consumers by 30-37% for electricity and by 15.6% for natural gas, taken by ANRE on 18 July 2015. The decision was supported, in particular, by the Spanish-owned Gas Natural Fenosa and the Gazprom-controlled MoldovaGaz, but opposed by the political opposition, independent experts and the public. On 3 September 2015, ANRE decided, contrary to the law but amid enormous public protest, to suspend the increase in tariffs for 60 days while external audits were conducted. These audits confirmed the necessity to increase prices. IMF representatives said previously that the prices should be revised, since otherwise the companies providing electricity could go bankrupt and damage the financial stability of the sector. Despite continuing protests, ANRE then
confirmed the price increases for electricity, and to a lesser extent for natural gas, in line with the proposal of July 2015.

In January 2016, ANRE reduced the tariffs for natural gas by 10.9%, as a result of the reduced price for Russian natural gas and a review of the calculation methodology for tariffs.\footnote{See ANRE, 26 January 2016 (http://anre.md/ro/content/anre-mic%C8%99orat-tarifele-la-gazele-naturale-livrate-consumatorilor).} In April 2016, ANRE revised its previous decision and cut electricity prices by 11% for final consumers. The regulator justified its decision by the lower prices for imported electricity (by 27%). In both cases, however, prices were cut following pressure from mass anti-government protests. With regard to ANRE’s independence in taking decisions, the Secretariat of the Energy Community called in 2016 for changes in the law and regulatory practices in order to better comply with the Third Package, expanding the competences of ANRE and enhancing its independence and autonomy: “Interventions in ANRE’s autonomous decision-making must be stopped.”\footnote{Secretariat, op. cit., p. 139.} This case showed a growing role of the Secretariat in smoothing the dialogue between the regulator and the non-Moldovan market operators. The new legislation in the energy sector actually obliges ANRE to implement the international commitments, including those deriving from the Energy Community. A 2017 Memorandum of cooperation with the Secretariat foresees cooperation in developing the secondary legislation supporting the full transposition of the Third Energy Package.

\textbf{Gas.} Moldova’s gas market is fully monopolised (import supply, cross-border and national transmission, and distribution) under the vertically integrated joint-stock company MoldovaGAZ (50% of shares belong to Gazprom, 36.6% to the Moldovan state, and 13.4% to the authorities in Transnistria). However as a result of the newly built Ungheni-Iasi interconnector with Romania, a fully state-owned operator Vestmoldtransgaz has been set up, representing the second transmission operator in the gas market. The Secretariat of the Energy Community has determined that the transmission operators do not meet the criteria for functional unbundling of the Third Energy Package, which has been legally delayed until January 2020. In 2017, Moldtransgaz submitted to ANRE a proposal on fulfilling the
functional unbundling requirement, which the Secretariat of the Energy Community will need to approve.

The new law on natural gas adopted on 27 May 2016, introduced changes in line with the Third Energy Package, defining the organisation and functioning of the natural gas market, access to the market, criteria and procedures for the licensing of transportation, distribution, delivery and stocking of natural gas. It also envisages granting consumers the possibility to choose their gas suppliers, and the possibility of negotiable prices. The law entitles ANRE to apply financial sanctions against the enterprises dealing with natural gas, and also to notify the Competition Council in cases of competition distortions. Another aspect of the Gas Law that is not applicable yet is the right of the consumers to switch the gas supplier, which results from the monopolized structure of the gas market.

Some important steps have been taken in adopting secondary legislation on access to the gas transmission network, namely Regulation of 13 December 2016 on access to the natural gas transmission networks. ANRE and Secretariat work on preparing transmission and distribution networks codes, projected for the end of 2017.

Electricity. Moldova is largely dependent on electricity supplies from the Cuciurgan power plant in the Transnistrian region. Supplies from Ukraine have been of some significance, but were curtailed in 2014 because of the conflict there. The market remained a captive one for Cuciurgan during November 2014-March 2017, until a first ever transparent tender occurred, based on a Guidelines for the Annual Procurement of the Electricity elaborated by the Energy Community in December 2016 and transposed into a normative act of January 2017 by then Ministry of Economy of Moldova.172

An important achievement is that the electricity distribution sector was unbundled, with three companies (state-owned RED North, RED North-West and private RED Union Fenosa) legally separate from the transmission company. Though new Electricity Law of May 2016 envisages the ownership unbundling model, the state-owned transmission operator Moldelectrica is currently separated only legally from the supplier and generator, which makes it

impossible to fully implement the Third Energy Package. The Law boosts competition in the electricity market by giving consumers the right to choose suppliers, and opening the market to new participants such as renewable energy producers. According to the law, ANRE has the competence to monitor and sanction all stakeholders active on the electricity market, besides the owners of the licences.

While the Law ensures third parties’ access to the grid, the methodology for determining the tariffs for the access to the transmission networks needs improvements. Inaccurate revision of the distribution access tariffs in March 2017, based on a new methodology adopted in February 2017, triggered another dispute with Gas Natural Fenosa. This impedes the cost-recovery for the distribution network operators with regard to network losses. Rules for the interconnection access have been in place since January 2017, but Moldelectrica has not organised any tenders for this so far.

The full implementation of the Law will create the conditions for Moldova to prepare for joining the European Network of Transmission System Operators for Electricity (ENTSO-E), which will facilitate larger cross-border trade with the EU internal market. This will require synchronising these efforts with those of Ukraine to join ENTSO-E in 5-6 years.

Transnistrian connections. For both gas and electricity supplies the present infrastructure, corporate structures and supply arrangements are closely connected to facilities in the Transnistrian region, which Chişinău does not control.

Moldova’s electricity consumption relies heavily on the Cuciurgan gas-fired thermal power plant in Transnistria (Cuciurgan–Moldavskaya GRES with 2,520 MW installed capacity), which, since 2005, has been 100% owned by Inter RAOUES, the Russian international energy-trading company. Imports from Cuciurgan increased in November 2014 up to 80% of the overall Moldovan demand, when Ukraine restricted the export of electricity to Moldova due to shortfalls in coal-fired power production in the Donbas region.

The Cuciurgan power plant is largely fuelled by natural gas, which it purchases from a Transnistrian company, Tiraspoltransgaz, which in turn purchases it from a Moldovan company, MoldovaGAZ, and which in turn is controlled by the Russian Gazprom (50%), with 35.6% of shares belonging to the Moldovan government and 13.4% to the Transnistrian region (the Property Administrative Committee of the Transnistrian region).
This situation leaves open a major issue of indebtedness. The current debt of MoldovaGAZ to Gazprom amounts to approximately $7 billion of which almost all (90%) is accounted for by non-payment for gas supplies by Tiraspoltransgaz. It is believed that at least a substantial share of the profit from non-payment by Tiraspoltransgaz is transferred to the budget of the Transnistrian authorities. This is estimated at $1.3 billion in the period 2007-16, which covered about 35% of the region’s budget for the same period.

Finally, Inter RAOUES has reported that it is investing in adjusting the Cuciurgan power plant to meet EU requirements regarding the coordination of electricity distribution (UCTE), and has already agreed with the state-owned operator Moldoelectrica to boost the connection of Cuciurgan to Romania’s grid up to 400 MWt. The export of electricity from the region to regional markets, including Romania, will be enhanced after the interconnection Isaccea-Vulcanesti-Chisinau, including a back-to-back station, becomes operational, eventually in 2021.

Oil. Moldova is entirely dependent on oil imports. Its commodity reserve law is not in compliance with Directive 2009/119/EC on the maintenance of oil stocks and emergency procedures, requiring, inter alia, a minimum of 90 days of import supplies. A law on ensuring a minimum level of oil products stocks has been drafted and should enter into force in January 2021. It foresees gradually increasing the volumes for emergency stocks maintained – from 30 days of average daily net imports in 2020 to 90 days in 2022.

Renewables. Moldova has a binding target of 17% for a renewable energy share in gross final energy consumption and 10% in transport area by 2020, as required by the new 2016 Law on promotion of renewable sources. The entering of the law into force was postponed until 25 March 2018 aiming to provide adequate time for adopting the missing secondary legislation. The second report assessing the progress on promoting the renewables, published in 2017, shows some positive trends, e.g. increasing energy consumption from renewables to 15.8% in 2016 from 8.34% in 2010.

Energy efficiency. Overall, Moldova is complying only partially with Energy Community acquis for energy efficiency. The new energy efficiency law transposing the latest Energy Efficiency Directive 2012/27/EU is not yet adopted. Various corruption cases related to the allocation of the energy efficiency funds were reported. In 2014-16, Directive 2010/30/EU and other labelling regulations on energy-related house products were adopted. The Law on Energy Performance of Buildings of 2014 requires implementation of the
necessary buildings certification system. The Energy Community secretariat opened a case against Moldova related to this in October 2017. More effective policy in the sector should include the reduction of energy losses in power and heat generation, transmission and distribution, the promotion of the market for Energy Services Companies and implementation of the energy efficiency provisions in public procurement.

*Energy infrastructure investment projects.* The Agreement provides for support, in general terms, from the EU for investment in energy infrastructure via the EIB and the EBRD. There are two important projects underway or planned, for gas pipeline and electricity grid linkages with Romania, both of which were the subject of a Memorandum of Understanding between Romania and Moldova signed on 21 May 2015. However, the Secretariat of the Energy Community states that unless legislation is passed to implement the Third Energy Package, no real supply diversification will be legally possible, even for the planned link to Romania.\(^\text{173}\)

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\(^{173}\) Secretariat, op. cit., p. 137.
Energy policy at a glance

The Moldovan market for gas and electricity is currently dominated by Gazprom, directly for gas and indirectly through a gas-fired power plant in Transnistria, which supplies most of Moldova’s electricity.

Plans and projects for diversification are developed for network connections with Romania for gas and electricity, but this requires large-scale investment from European sources and further implementation of secondary legislation.

The legal provisions of the Agreement and DCFTA in the energy sphere largely consist of commitments made under Moldova’s accession to the Energy Community in 2010, including the Third Energy Package, which was largely implemented by the end of 2017 at the level of primary legislation. However, the compliance with these provisions proceeds unevenly, with serious delays for the unbundling of the gas sector in particular, and other shortcomings. The active cooperation with Energy Community and the conditionality introduced under macro-financial assistance from the IMF and EU to Moldova create incentives for speeding up the implementation of reforms, going beyond the adoption of the primary legislation. A critical issue is to assure the effective independence of the energy regulatory institution (ANRE).
The environment chapter of the Agreement is very ambitious and commits Moldova to cooperation over the whole landscape of environmental policy issues. Given Moldova’s starting point, implementation will be a long and difficult process, but will ultimately mean a radical improvement in environmental quality and the modernisation of the economy.

Provisions of the Agreement

Moldova agrees to undertake a gradual approximation of its legislation to that of the EU within time periods of two to ten years, in accordance with Annex XI of the Agreement on the environment, which lists 25 directives, and Annex XII on climate change with four directives. This covers the majority of EU environment law and policy, from environmental governance methods to air and water quality, waste management, industrial pollution and hazards, nature protection, chemicals and climate change.

Environmental governance. The centrepiece is the Environmental Impact Assessment Directive, introduced in 1985 and amended several times (in 1997, 2003, 2011 and 2014 – the key text is Directive 2011/92/EC). This requires that a long list of major project types (such as refineries, metallurgical smelters, major transport infrastructure and dams) do not receive the go-ahead before the publication of an assessment of their impact on humans, fauna and flora, soil, water, air, climate and the landscape.

Major pollutants and dangerous substances. The centrepiece here is the Industrial Emissions Directive (2010/75/EU), which
revises and modernises seven previous directives, simplifying existing legislation and cutting unnecessary administrative costs. The directive covers all industries liable to produce harmful emissions: energy, metals, minerals, chemicals, pulp and paper, large-scale pork and poultry production, waste management industries, etc. It sets out the main principles for the licensing and control of such installations, specifying limit values for noxious substances. It requires the application of best available techniques.

To counter air pollution the Ambient Air Quality Framework Directive (2008/50/EC) and four ‘daughter’ directives lay down limits for specific pollutants. The parties are obliged to enforce standards of air quality within the prescribed limits. Where ambient air exceeds any limit value or target value in a given zone or agglomeration, the authorities are to ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value. Procedures exist for exemptions or for the postponement of deadlines where limit values cannot be respected because of site-specific dispersion characteristics, adverse climatic conditions or transboundary factors.

A further key law is the Water Framework Directive (2000/60/EC), subject to several subsequent amendments, which has established a framework for the protection of inland surface waters, ground waters and coastal waters. Its objective has been to achieve a good status for all waters by 2015. The approach is based heavily on river basins, for which member states must prepare detailed management programmes. The parties should ensure that the pricing of water encourages consumers to use resources efficiently.

Legislation by the EU for the prevention and control of catastrophic industrial accidents was triggered by the major accident at a chemicals factory in the Italian town of Seveso in 1976. The resulting ‘Seveso Directive’ (96/82/EC) was later amended in view of the lessons learned from accidents such as those at Bhopal, Toulouse and Enschede (2012/18/EU). The directive now applies to more than 10,000 industrial establishments in the EU where dangerous substances are used or stored in large quantities, mainly in the chemical, petrochemical, logistics and metal refining sectors. The

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174 These are notably i) sulphur dioxide, nitrogen dioxide and oxides of nitrogen, and lead; ii) carbon monoxide and benzene; iii) ozone and iv) polyaromatic hydrocarbons, arsenic, nickel, cadmium and mercury.
Directive has contributed to reducing the incidence of major accidents, and is widely considered a benchmark for industrial accident policy and a role model for legislation in many countries worldwide.

According to the hierarchy of waste management techniques, landfilling is the least preferable option and should be limited to the necessary minimum, in accordance with the Landfill Directive (1999/31/EC). Where waste needs to be landfilled, it must be sent to landfills that comply with the requirements of the directive. The objective is to prevent or reduce negative environmental effects as far as possible, in particular on surface water, groundwater, soil and air, and on human health. The directive requires a system of operating permits for landfill sites. Existing landfill sites may not continue to operate unless they are brought into compliance with the provisions of the directive. Moldova has a seven-year timeframe for implementation.

**Natural habitat.** Nature protection is subject to two directives for natural habitats and sanctuaries for wild birds (92/43/EC and 2009/147/EC). These directives establish principles and procedures for the designation of special protection zones, and would be helpful references for the work of Moldovan NGOs in this domain.

**Climate change.** The central element of EU policy in this area is the Emissions Trading System Directive (2003/87/EC, updated in 2009/29/EC), with Moldova due to establish a compatible system within eight years. This requires establishing a system of relevant installations, a national development plan for the distribution of allowances and a system for these to be traded domestically. Further regulations governing fluorinated greenhouse gases and substances depleting the ozone layer, such as hydrofluorocarbons, are to be implemented within four and five years, respectively. Several provisions regarding the quality assessment of the consumed fuels, including the establishment of a system with data on fuels quality, are to be implemented within five years.

**Implementation perspectives**

**Environmental governance.** The radical and sustainable changes in the environment sector remain largely dependent on the coherence of the political engagement towards ‘green’ policies. Stronger institutional capacities of the central and local authorities, higher speed of the legislative approximation and consistency in financing play a crucial role in building from scratch or modernising the existing inadequate
environmental infrastructure. Due to government reform involving the reduction in 2017 in the number of ministries from 16 to 9, the Ministry of Environment was included in the new Ministry of Agriculture, Regional Development and Environment (MARDE). The newly shaped Ministry is the core institution responsible for drafting texts and coordination regarding environment-related policies, with the aid of several agencies. The MARDE is in charge of policies to ensure the rational utilisation of land resources and the promotion of ecological agriculture.

The national environmental legislation has been continuously developed since 1991, and is currently based on four primary laws: the Land Code (December 1991), the Water Code (June 1993), the Forestry Code (June 1996), and the Subsoil Code (February 2009). Moldova has acceded to the most important international climate and environmental legal frameworks.

There is a considerable strategic policy framework. The most fundamental is the Environment Strategy 2014-23 and Action Plan for 2018-20 (April 2014), which reflects the priorities of the Agreement. Other elements are the Waste Management Strategy 2013-27 (April 2013), the Strategy on adaptation to climate change 2020 (December 2014), the Biodiversity Strategy for 2015-20 (May 2015), the Action Plan for improving the soil 2017-20 and the 2014-18 Action Plan for forestation of the degraded soils. The principle of environmental protection was introduced into further strategic policy frameworks, such as the National Strategy for Agriculture and Rural Development.

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175 More specifically, these are the Waters of Moldova Agency; the forestry-focused ‘Moldsilva’ Agency; Ecological Inspectorate, State Agency for Land Relations and Cadastre; State Hydro-meteorological Service; Geology and Mineral Resources Agency; Ecology and Geography Institute; National Agency for Regulation of Nuclear and Radiological Activities; and the Fishery Service.

176 Namely, these are the Cartagena Protocol on Biodiversity (2002), the protocol on emissions of persistent organic pollutants of 1979 (2002), the Kyoto Protocol (2003), the Rotterdam Convention on pesticides and industrial chemicals (2004), the Amendment to the Montreal Protocol on substances destroying the ozone layer (2005), and the recent amendments to the Kyoto Protocol and Basel Convention on the control and transboundary movements of hazardous waste, and the Paris Agreement, ratified in 2017.

177 Additional strategic measures are the National Programme on the establishment of the national ecological network for 2011-18 (August 2001) and the National Plan for extension of forest vegetation for 2014-18 (February 2014).

**Box 18.1 Basic features of the Moldovan environment**

**Water resources.** The strategic aquatic sources are the Dniester and Prut rivers. Water from the Dniester covers 83% of the country’s consumption needs, totalling approximately 1 billion m³ (250 m³ per person in 2016). The waters of the Dniester and Prut rivers correspond to the categories of quality – II (clean) and III (average polluted), respectively. The main pollutants are elements of nitrogen, phenols, copper compounds and oil products.

**Soil and forestry.** The territory of Moldova consists mainly of highly productive soil (‘chernozem’ or black earth). However, the land is used inefficiently, which leads to soil degradation and pollution (40% of agricultural lands are considered to be degraded), while forestry occupies less than 12% of the country’s territory.

**Air quality** in Moldova is moderate. The main sources of pollution are combustion units (electricity power stations and boiler houses) and transportation (auto, rail, air and fluvial). The volume of greenhouse gas emissions has been shrinking substantially, falling to one-third of 1990 levels (43.2 megatonnes of CO₂ in 1990 and 12.8 megatonnes in 2013), due to the drop in industrial production after the end of the USSR, and in the consumption of fossil fuels (coal and oil fuel) in favour of natural gas as the main fuel for primary energy production. A worsening of air quality results from the doubling of cars in circulation from 404,916 in 2004 to 757,195 in 2014.

**Waste.** The major sources of waste production are mining, livestock and household waste. The latter growth at 10% annually, reaching 0.8 tonne/capita in 2015. Of the amount of pesticides accumulated during Soviet times, substantial amounts have been evacuated abroad and destroyed using external assistance. A list of 20 categories of waste sources (mineral, agricultural, manufactory, etc.) was elaborated in line with the waste management law of 2016.

**Natural areas.** The total natural areas under state protection constitute only 5.6%of national territory and include 312 landmarks. Among the most numerous landmarks protected by the state are natural hydrological and botanical objects, rare flora and fauna, natural reservations, and landscape reservations. In 2013, the authorities passed a law establishing the first national park: National Park Orhei. Three wetlands have been created to protect the habitat of the aquatic...
Work on institutional reform of the Ministry of Environment, started in 2015, including the establishment of an Environment Agency. However, the process slowed down because of the government reform of 2017 and the absorption of the Environment Ministry into the MARDE. This stopped the development of various specialised departments responsible for environment policies (forestry, soil, etc.).

A National Programme for the Green Economy and a road map promoting ‘greener’ SMEs and agriculture and energy efficiency was drafted between 2015-17, with the support of an EU project (EaP GREEN). An inter-ministerial working group was established in 2015, and reshaped in 2017, to monitor measures dedicated to the green economy (approximately 20 indicators are used).

The Environmental Impact Assessment Directive (2011/92/EC) became applicable in January 2015 as part of Law No. 86 of 29 May 2014. A guideline including practical information on how to perform environmental impact assessments was drafted, but not yet adopted. This is now scheduled for 2018. Nonetheless, the new law was applied to the project for extending the Iasi–Ungheni gas pipeline to Chişinău. In 2015-16, requests were made for 255 environment assessments. A regulation on public access to environmental information was approved by the Government (Directive 2003/4/EC) in 2017. The new law on natural gases adopted in May 2016 requires the fulfilment of the environment protection rules, in particular in the case of pipelines for transporting natural gas. A new concept for the list of the installations necessitating environment permits and the environment integrated permits will be developed in 2018.

The Government cooperates with the European Environment Agency with a view to drafting the technical concept for the National Integrated Environmental Information System, and boosting the capacities of the ministry. The authorities initiated the process for the establishment of the National Register on emissions and pollutants transfer, with publicly available information.

The National Institute for Standardization has adopted 127 European and international standards on the environment, while withdrawing 220 GOST standards in 2014. To raise public awareness the authorities drafted an optional course on ‘Ecological Education’
for schools and high schools, which will later be promoted as an obligatory course.

**Major pollutants and dangerous substances.** A major step towards managing air quality was taken with the drafting of the Atmospheric Air Protection Strategy reflecting the provisions of Directive 2008/50/CE on ambient air quality and cleaner air for Europe. The strategy will establish a register of pollutant sources for the enterprises with polluting activity, and due to be functional in the second half of 2018. A proposal for a Dangerous Waste Administration Centre was submitted for consultations in late 2016.

As part of the measures to implement the Rotterdam Convention on pesticides and industrial chemicals, the authorities drafted a law and regulations on the use of chemicals, and the export and import of dangerous chemicals (transposing Regulation (EC) 689/2008). This will be followed by a law to transpose the EU’s main law for regulating chemicals, the REACH Regulation (EC/1907/2006). The drafting of the law to transpose the Seveso Directive (96/82/EC) on the control of major accident hazards involving dangerous substances was initiated. The Regulation implementing the provisions of Directive 1999/32/EC on the decrease of sulphur content in certain liquid fuels was approved in April 2016. A law on waste was drafted, approximating Directive 2008/98/EC on waste.

A Register for chemical substances introduced into the country will be adopted in 2019. The transposing of EU air quality and pollutants-related Directives (2008/50, 2004/107, 2004/42, 2001/81 and 94/63) in Moldova, with support from the German Development Cooperation (GIZ), is foreseen for 2019.

**Water quality.** The provisions of the water-related directives are envisaged in the Law on Waters of 23 December 2011, which entered into force in 2013 and was amended in April 2014. This law approximates Directive 2000/60/EC (Water Framework), Directive 2007/60/EC on the assessment and management of flood risks, Directive 91/271/EEC on urban wastewater treatment and Directive 91/676/EEC regarding the protection of waters against pollution caused by nitrates from agricultural sources. Moreover, this law introduces two other directives that are absent in Annex XI of the Agreement, namely Directive 2006/7/EC concerning the management of bathing water quality, and Directive 2008/105/EC on environmental quality standards in the field of water policy. In 2016, the concept for an information system for water reserves (SIRA) was approved.
**Water Framework Directive.** Action Plans for the administration of the two national watershed districts, the Dniester River, and Prut-Danube and the Black Sea, were drafted by late 2016, but only the one for the Dniester River was enacted in 2017. The watershed districts are administered by two committees with consultative attributions, comprising representatives of central and local authorities, consumers’ associations, civil society and the scientific community. To improve the protection of water resources, the authorities modernised the monitoring system for the Dniester River by establishing and equipping 14 automatic hydrological stations, with the support of the World Bank and the (US) Millennium Challenge Corporation. The functioning of the watershed districts corresponds to the provisions of the Directive 91/676/EEC regarding the protection of waters from pollution caused by nitrates from agricultural sources (a government decision of October 2013). A Code of good practices for water protection against nitrates should be drafted by mid-2019.

**Flood risks.** A project for a feasibility study to assess the risk of floods started in 2014, with the support of European Investment Bank. The project envisages drawing up maps of regions vulnerable to flooding and establishing the Operational Monitoring and Management System of the Dniester and Prut rivers. It supports the implementation of 2013 Regulation on floods risk management, which transposes the 2007/60/CE Directive. By 2016, a methodology for floods risk management was drafted. MARDE will draft plans for river flood risk management, to be implemented by the end of 2019.

**Urban wastewater treatment.** Directive (91/271/EEC) is partially reflected in the regulation on requirements for the gathering, treatment and discharge of wastewater (government decision of 25 November 2013), and the regulation on conditions for discharge of wastewater from water bodies (government decision of 9 October 2013, amended in October 2014). A strategy on sludge treatment at sewage plants will be adopted in 2019. Expertise related to the directive’s implementation was shared by experts from Romania and the Czech Republic (TAIEX project). This included a preliminary assessment report on wastewater collection and treatment, drafted by the Moldovan authorities together with the Czech experts in 2015.
**Drinking water quality.** A regulation (conforming to Directive 98/83/EC) regarding water for consumption was drafted and examined by the National Coordination Committee concerning the Water and Health Protocol,\(^\text{178}\) and ratified by Moldova in July 2005. An updated Regulation on drinking water and sewage systems was adopted in 2017, with a new law due to be adopted in 2018. With Swiss support, the authorities conducted a project on the implementation of the protocol, with activities including training for water operators, promoting the adoption of relevant standards and developing partnerships between institutions (between the Ministry of Health and the Ministry of Environment).

Initiatives to increase the production of sustainable energy and cut emissions took place under the ‘Energy and Biomass’ project, financed by the EU and implemented by UNDP in 2011-14 and 2015-17, which helped to install modern heating systems based on biomass in at least 160 institutions in 127 localities and benefitting more than 102,334 persons.

**Natural habitats.** An important breakthrough regarding biodiversity is the Strategy on Biodiversity and the Action Plan\(^\text{179}\) that foresees a budget of €1.7 million (MDL 38.6 million), 20% of which will be covered by external assistance. The strategy aims to ensure a legal framework for the conservation of biodiversity, build up an efficient institutional framework, extend the natural areas under state protection, establish a national ecology network and ensure measures on biodiversity security. Legislation aiming at the conservation of natural habitats and of wild fauna and flora to preserve biodiversity, which reflects Directives 92/43/EEC and 2009/147/CE, was amended in December 2016. A law transposing Directives 92/43/EEC and a regulation transposing Directive 2000/60/CE related to protected habitats are scheduled for 2018-19.

**Waste management.** The establishment of an information system for waste management, with national and regional programmes, is proposed for 2019. Also scheduled for 2019 are Guidelines for the management of various types of waste (mining, extractive industry, etc.). The country’s only waste storage (Tintareni, 176 | PART III. ECONOMIC COOPERATION

\(^{178}\) See the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992.

\(^{179}\) The Biodiversity Strategy was adopted by Governmental Decision No. 274 of 18 May 2015.
Anenii-Noi rayon) complying with environmental criteria requires modernisation, which will cost €22.9 million, according to the EBRD’s feasibility study. The Court of Accounts assessed in June 2017 that sanitation services cover only 60-70% of urban areas, and 6-10% of rural areas.

**Genetically modified organisms (GMOs).** Currently, the regulatory measures on GMOs are ensured by Law No. 755-XV of 21 December 2001 on biological security, which will be amended and complemented with the Law on GMOs, scheduled for 2018. According to the Action Plan of the Strategy on Biodiversity for 2015-20, the draft law on GMOs (of 2015) was adopted in October 2016, partly transposing the provisions of Directive 2001/18/EC on the release into the environment of genetically modified organisms, and the provisions of the Cartagena Protocol on Biosafety of January 2000 to the Convention on Biological Diversity. The law foresees the establishment of standardised procedures for assessing the impact of GMOs on environmental and human health, monitoring activities, mandatory labelling and packaging of the products containing GMOs, establishment of the infrastructure to perform analyses (laboratories), etc. Supervision efforts in this area will provided by the National Committee on Biological Security, estimated to be established by 2019.

**Climate change.** The framework for the climate-related policies is represented by the Strategy on adaptation to climate change until 2020 and the related Action Plan, adopted with a budget of MLD 2.7 billion.\(^\text{180}\) The strategy reflects the provisions of the Association Agreement, and includes measures to increase the country’s capacity to adjust and react to the negative effects of climate change (e.g. droughts and floods). In addition, a Low Emissions Development Strategy aiming to cut emissions levels in 2020 by 25% compared with 1990 was adopted in December 2016 and is in line with the provisions of the global agreement on climate change, adopted in Paris in December 2015. Moldova is struggling to implement the greenhouse gas emissions trading system, embodied in Directive 2003/87/CE. However, a regulation monitoring CO\(_2\) gas emissions is scheduled for 2018.

**Major challenges.** Current environmental policies face various shortcomings, including a scarcity of human and financial resources,

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\(^\text{180}\) See Governmental Decision No. 1009 of 10 December 2014.
and corrupt practices in managing public properties, including land and forests (with dubious procedures for renting land in forests). Overall, there is a substandard administration of water, forestry and soil resources, and poor waste management. There are problems inhibiting the improvement of air quality (incomplete harmonisation with the European legislation, inefficient monitoring, etc.) as reported by the Court of Accounts in November 2017.

Governmental restructuring in 2017 produced a fragmentation of responsibility for environmental and climate change reforms. Climate change poses additional pressure on the water resources of country’s main river Dniester, with temporary suspension of irrigation operations to ensure sufficient water supplies.

There are also risks arising from Ukraine’s plans to increase the production capacity of the Dniester Hydroelectric Station (Novodnistrovsk). A bilateral agreement with Moldovan authorities, with a duration of 99 years, was drafted in 2017, but this is criticised for breaching various EU directives, endangering the sustainability of water resources for Moldova and the Odessa region of Ukraine, and damaging the river’s ecosystem.
Environmental policy at a glance

Moldova’s environmental legislation is extensive, and the newly drafted strategic framework focuses on all aspects covered in the Association Agreement (biodiversity, waste management, water supply and sanitation, forestry, climate change, etc.). A new focus is placed on the green economy and the UN 2030 Agenda.

Governmental reforms of 2017 created complications for building institutional capacities dedicated to the environment, with the Ministry of Environment absorbed into an enlarged Ministry of Agriculture and Regional Development.

Moldova’s codes and laws are being aligned with European legislation, although the lack of full political engagement and insufficient financial and human resources cause difficulties and delays.

The most pressing challenges concern the sustainable management of the Dniester River, linked to Ukraine’s plans for energy production, and waste. Environmental investment projects are being funded by the EBRD, the EIB and the European Commission.
19. Digital sector

This section deals with a family of chapters and subchapters in the Association Agreement on related topics, notably electronic communications and postal services, information society and audio-visual policy. Overall, this ‘digital’ sector inescapably becomes a strategic dimension to the challenge of creating a modern and internationally competitive economy.

Provisions of the Agreement

Electronic communications. There is a set of complex provisions in Articles 231 to 240 of the Agreement regarding electronic communications. They establish the ground rules for a competitive and well-governed sector and they address the regulatory authority, principles for authorisation of licences to service providers, the rights of access to interconnections with other service providers and the principles for governing the allocation of scarce resources, such as radio frequencies. Annex XXVIII-B lists the existing EU legislation with which Moldova is expected to comply ‘gradually’ within one to three years. It includes a selection of key directives adopted in 2002 and amended in 2009:

- Framework Directive 2002/21/EC (as amended by Directive 2009/140/EC) on electronic communication networks, which defines the products covered and the need for independent administrative capacity of the national regulator;
- Directive 2002/20/EC (also as amended by Directive 2009/140/EC) on the authorisation of licences for operators in the sector;
• Directive 2002/19/EC (also as amended by Directive 2009/140/EC) on the requirements that operators with significant market power must assure open access to network facilities and non-discriminating interconnection charges; and

• Universal Service Directive 2002/22/EC (as amended by Directive 2009/136/EC), which requires respect for the interests and rights of users, such as ‘number portability’ between operators.

Postal and courier services. The regulatory rules aim at preventing anti-competitive practices in this sector, regulating licensing provisions for universal service providers and ensuring the independence of the regulatory body. Several directives are specified in Annex XXVIII-C on regulation of the internal market for postal services. Courier services in the EU are increasingly subject to criticism for their high costs, and action in this regard is planned.

Information society. The objective here is to ensure the widespread availability of information and communication technologies (ICT), with quality services and affordable prices. The text emphasises the “exchange of information on best practices”. Moldova is expected to approximate the e-Commerce Directive (2000/31/EC) within three years and a framework law on electronic signatures (Directive 1999/93/EC) within one year.

Audio-visual services. Ground rules for the regulation of television broadcasting are laid down in the Audio-visual Media Services Directives (2007/65/EC and 2010/13/EU). Moldova will implement these provisions within two years.

Digital single market. The broad digital domain includes electronic communications, information society and audio-visual markets. These sectors have witnessed the fastest rate of technological change and development of any sector of the economy. That means that the stock of EU laws and regulations in this field, as represented in Annex XXVIII-B of the Agreement, is also subject to fast change. The European Commission has set out the directions of further developments in a comprehensive manner in its 2015 policy paper on a “Digital Single Market for Europe”. It outlines the agenda for action under three broad headings: i) better online access for

consumers and businesses, ii) creating the right regulatory conditions for advanced digital networks, and iii) building the digital economy through investment, interoperability and standardisation. Sixteen specific action points are highlighted and several of them will see amendments to the laws cited in the Agreement for approximation. These include reform of the directives on electronic communications, copyright regimes, consumer protection, courier services, audio-visual services and a Priority ICT Standards Plan.

A major new initiative by the EU is its General Data Protection Regulation (GDPR – EU/2016/679) which entered into force in May 2018. This responds to the current major concern over the use of private and personal data by tech companies such as Facebook and others. Consideration will no doubt be given to inclusion of this law in the relevant annex of the Agreement.

Implementation perspectives

*The growing digital sector.* The ICT sector plays an important role in Moldova’s economy and overall state governance. In 2015, the contribution of ICT to the country’s GDP was 5.1% (MDL 7.9 billion), while monthly salaries in the IT sector are many times higher than the average. According to official statistics, the salaries in IT sector increased from €450 in 2014 to €500 in 2016, whereas unofficially the salary in this sector is considered to be in the range of €800-1,500, compared with around €226 in 2016. The indicators of ICT penetration and access show that mobile telephony covers 99% of the territory, fixed telephony 33.8%, fixed Internet broadband 11.7% and mobile Internet (modems/cards) 4.7%. Around 35% of households have Internet connections with broadband. The broadband access increased significantly from 1.2 million units in 2014 to about 2.1 million in 2016. There is a growing use of mobile telephony, from 4.6 billion minutes in 2011 to 6.2 billion minutes in 2016, compensated by the declining interest for fixed telephony, from 2.7 billion minutes to 1.8 billion minutes for the same period.

According to the ICT Development Index Moldova improved its position from 66th place out of 167 countries in 2015 to 59th place in 2017 out of 176 countries.182 Selected data presented in Table 19.1

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shows Moldova’s IT connectivity to be ahead of Ukraine and Georgia, and comparable to neighbouring Romania.

Table 19.1 Aspects of ICT development in Moldova, Georgia, Ukraine and Romania

<table>
<thead>
<tr>
<th></th>
<th>Fixed-telephone subscriptions per 100 inhabitants</th>
<th>Mobile-cellular subscriptions per 100 inhabitants</th>
<th>Share of households with a computer (%)</th>
<th>Share of households with access to the internet (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moldova</td>
<td>35.2</td>
<td>34.3</td>
<td>108.0</td>
<td>111.0</td>
</tr>
<tr>
<td>Georgia</td>
<td>25.4</td>
<td>19.4</td>
<td>124.9</td>
<td>129.1</td>
</tr>
<tr>
<td>Ukraine</td>
<td>24.6</td>
<td>19.8</td>
<td>144.1</td>
<td>132.6</td>
</tr>
<tr>
<td>Romania</td>
<td>21.3</td>
<td>19.1</td>
<td>105.9</td>
<td>106.4</td>
</tr>
</tbody>
</table>

Source: International Telecommunications Union.

The government reform initiated in 2009 resulted into the absorption of the Ministry of Information Technology and Communication by the expanded Ministry of Economy and Infrastructure, in charge of elaborating and coordinating ICT policies. The e-Government Centre (established in August 2010) is responsible for strategic planning, management and implementation of ICT, acting on behalf of the State Chancellery. The National Regulatory Agency for Electronic Communications and Information Technology of the Republic of Moldova (ANRCETI) is the regulator in this field. The Agency was reorganised in 2008, when the new Law on Electronic Communications entered into force.

The state retains full ownership of the incumbent postal services operator Posta Moldovei, the incumbent broadcasting operator Radiocomunicații, and the incumbent fixed-telephony operator Moldtelecom, which is also active on the mobile telephony segment through its subsidiary Unité. These state-owned companies

subscriptions per 100 inhabitants, mobile-cellular telephone subscriptions per 100 inhabitants, international Internet bandwidth (bit/s) per Internet user, share of households with a computer, share of households with Internet access, share of individuals using the Internet, fixed-broadband subscriptions per 100 inhabitants, active mobile-broadband subscriptions per 100 inhabitants, the adult literacy rate, the secondary gross enrolment ratio and tertiary gross enrolment ratio.
have a quite extensive coverage of the market as follows: fixed telephony - 94%; fixed-line broadband - 64%; TV and radio broadcasting - 25.6%; and, the postal services - 100%. The most liberalised sector remains the mobile telephony, with only 3.6% of the market belonging to the state-owned entity.

Although on the whole the ICT market is subject to fair competition, the state-owned Moldtelecom has a monopoly in fixed telephony and ADSL Internet services. Overall, the Internet connection technologies (cable, FTTB, dial-up, Wi-Fi and mobile Internet) are provided by both private companies and Moldtelecom.

The dominant provider of Internet services in the Transnistrian region is Interdnestrcom, with no services delivered there by the Moldovan providers. On 25 November 2017, the Moldovan authorities and the administration of Transnistrian region signed a protocol on telecommunications. It aims at interconnecting the fixed phone, mobile and Internet connections across the two borders. However, progress will necessitate real trust between the two parties, which is still thin.

Moldova started to implement e-transformation policies in 2011, with a view to using ICT to improve public sector governance. This initiative aims at digitalising paper-based documentation (e.g. on civil status), paperless government, an e-procurement system and a management platform for delivering the results produced by sectoral services (MDelivery).

In 2011, Moldova joined the Open Government Partnership (OGP), a multilateral initiative of governments and civil society in 69 countries supporting the principles of promoting transparency, empowering the public, ensuring accountability, and embracing technology and innovation. Moldova’s first OGP Action Plan for the period 2012–13, drafted by the government through the e-Government Centre together with representatives of civil society, was approved by a government decision in April 2012. The first assessment of efforts to implement the OGP Action Plan conducted by civil society\(^{183}\) showed slow progress, with 52% of the OGP Action Plan having been implemented, but a satisfactory rate of compliance

(70%) was reported on commitments to efficient and transparent management of public resources. Less progress was achieved on ensuring participatory decision-making by the public (47%) and on the quality of public service delivery (40%). The OGP Action Plan for 2014–15 focused on further digitalising public services. The latest Action Plan for 2016–18, approved in December 2016, whose priorities include more transparent public spending, more participative decision-making process and improved delivery of public services. According to data for 2017, 42% of actions are fulfilled, and 58 are in progress. Important progress has been reported in opening the government datasets. In April 2011, the ‘open data’ platform was launched. The public can freely access 989 sets of data, published by about 50 public authorities or more than 53%. Over a million datasets had been downloaded by December 2015. These data cover public health, delinquency reports, licences, etc. Moldova holds an impressive 22nd place out of 122 countries according to the Global Open Data Index of 2015.

The development of online public services was initiated due to the project Moldova Governance E-Transformation (GeT), implemented by the e-Government Centre with a credit from the World Bank (about 19 million USD), which has been satisfactorily executed.

Currently, the framework for public policies to develop ICT is outlined in the Digital Moldova 2020 strategy adopted by a government decision in October 2013. The strategy has the following major goals: improving connectivity and access to IT, promoting new IT content and services, increasing IT literacy to boost innovation, and promoting greater IT use by local government and the public.

The first steps in addressing cyber security consisted of adopting a Cyber Security National Plan in November 2015. This

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185 More specifically, see the platform at www.date.gov.md.
186 Derived from the Barometer of online services assimilation through the e-Transformation Agenda, e-Government Centre of Moldova, December 2015.
187 See the Global Open Data Index, 2015 (http://index.okfn.org/place/).
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includes such aspects as safe data processing, stocking and access; the security and integrity of electronic communication services and networks; prevention and combat of information crimes; capacity building for rapid reaction; and capacity building for cyber defence.

The authorities are continuing to take action to digitalise public services, with significant progress on issues like e-licensing, e-reporting, mobile signature and online payment for public services. The number of electronic services is steadily growing, with 112 services available on a public services portal (www.servicii.gov.md). The authorities are working to fight corruption through electronic public services, diminishing contacts with public servants and reducing the costs of public service delivery. Paying for public services became easier when the government implemented its electronic payment system.\textsuperscript{189} The same applies to issuing criminal records, paying police fines, apostils, obtaining licences for economic activities, electronic signatures, e-visas, etc. (in total 33 services by March 2018). Moreover, the public can access and comment on draft laws and governmental decisions before their approval using a participation portal (www.particip.gov.md).

The education system has increased its focus on IT with adoption of the agenda on e-transformation by the authorities. Various initiatives aimed at increasing IT educational capacity and enhancing youth interest in IT involve the state, business stakeholders, the non-governmental sector and the donor community. In September 2014, the authorities launched a master’s study programme on ‘Innovation Management and Technological Transfer’, as part of the EU TEMPUS TecNet Technological Transfer Network. The study involves universities from Moldova and certain EU member states (Italy, Portugal and Slovakia). USAID and the Swedish International Development Cooperation Agency funded a programme to establish the ICT Excellence Centre, Tekwill, in 2015, which was institutionalised in 2017. Designed as an inter-university platform for promoting innovation and entrepreneurship, Tekwill turned into a platform to boost IT entrepreneurship. In December 2017, the Moldova IT Park\textsuperscript{190} was established, allowing favourable fiscal conditions. The Park has attracted about 50 companies by January 2018.

\textsuperscript{189} The electronic payment system is Mpay (www.mpay.gov.md).

\textsuperscript{190} http://moldovaitpark.md/.
In addition, businesses support digital education, for instance through the Orange Foundation, which launched a digital laboratory involving three colleges with IT specialisations in 2015.

Software piracy, however, is a major problem for the digital sector, and is widespread among Moldovan consumers - the country being ranked 102nd out of 139 countries.\(^1\) This phenomenon affects the production of local software as well. The limited competitiveness of local software products stemming from the focus on IT goods with low added value is another issue. It reflects a lack of interest in developing finished and more sophisticated products.

**Approximating EU legislation**


These amendments to the law were positively assessed by an EU expert mission, organised through a TAIEX programme in November 2015. The experts recommended enhancing the focus on respect of consumers’ rights and on ensuring high-quality services in the field. At the time of writing, however, the draft law had not yet been adopted.

Some aspects of Framework Directive 2002/21/EC were transposed into Law No. 28 of 10 March 2016\(^2\) concerning shared utilisation of public networks of electronic communication and provisions to develop them. Any type of legal restriction applied by the public authorities to limit access to property or physical

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infrastructure related to electronic communications is prohibited, except in the case of emergencies. Furthermore, it ensures that the construction and rehabilitation of urban projects comprise special infrastructure for electronic communications. These provisions aim at strengthening information society, by enhancing the independence and administrative capacities of the national regulator and increasing personal data protection. The ANRCETI has the responsibility of drafting an action plan for 2016 to implement this legislation.

**Postal and courier services.** According to the National Action Plan for implementation of the Agreement for 2017-2019, the Directive 97/67/EC on common rules for developing the internal market of Community postal services and improving the quality of service is going to be transposed into Moldovan legislation by middle of 2019. The new Law on Postal Communication (No. 36 of 17 March 2016) amended the 1995 law. The universal service is provided by the state enterprise, Poșta Moldovei. The law also contains provisions defining the quality standards (on regularity and reliability). It ensures the gradual liberalisation of the postal services market. Yet, the state will preserve its monopoly on postal services for items weighing up to 350 grams. The fees for public postal services are based on the methodology approved by the ANRCETI.

**Information society.** The authorities are continuing their efforts to implement Digital Moldova 2020, in particular the actions to improve connectivity and access to IT. In this regard, the draft law on access to property and associated infrastructure for the shared use of public networks of electronic communication is to be defined and adopted.

The National Programme on Universal Service, transposing the Universal Service Directive 2002/22/EC, is being elaborated and scheduled to be adopted by the middle of 2019 as latest. Its objectives are to provide consumers with access to good quality electronic communications at affordable prices. The authorities are continually working to make the Single National Service for emergency calls fully functional. The Law on Service (No. 112) was originally drafted in 2011, but was not approved by the legislature until July 2014. The 112 Service was officially launched in March 2018, with an initial budget of 67 million MDL (about 3 million EUR. Meanwhile, the digitalisation of television is taking place through a programme on the transition from analogue terrestrial television to digital terrestrial approved by the government decision of 22 April 2015. The Coordinating Council
of the Audio-visual initiated in 2017 public campaigns informing promoting the transition towards digital terrestrial television.

**Audio-visual services.** The authorities initiated the transposition of the Audio-visual Media Services Directive (2010/13/EU) by amending the Audio-visual Code of 27 July 2006. The amendments were defined by the Ministry of Finance and Ministry of Justice, after consultation with the public. The Coordinating Council of the Audio-visual submitted a request to join the European Audio-visual Observatory, but it was cancelled due to budget austerity measures applied in 2015. In 2017, within a project financed by the EU and the Council of Europe, a working group was set to draft a new Audio-Visual Code and the Concept for media sector development.

There are also plans to transpose by late 2019 two other directives listed in Annex XXVIII-C, namely 2008/6/EC on an internal market for Community postal services and 2002/39/EC on the further opening of postal services to competition. The Agreement provides a timetable of five and seven years respectively for their transposition.

The digital sector faces the following major challenges:

- insufficient application of ICT tools by local public administrations;
- low levels of digital literacy among the public, which hinder the spread of electronic public services, particularly in the regions; and
- high incidence of software piracy, which hinders the development of the IT sector, including local software production.
Digital sector at a glance

This broad sector is growing rapidly and represents a vital part of the economic reform and modernisation process in Moldova.

A large IT infrastructure of online public services has been developed, but it lacks penetration at the level of local administrations and the rural population.

Both authorities and business, with the support of international donors, are developing initiatives focused on digital education and innovation. The first IT Park established in 2017, has gathered about 50 IT companies.

The Agreement provides for a comprehensive alignment on EU regulatory practices within one to seven years, with some progress already in place, and some approximation planned by the end of 2019.
EU legislation is intended to ensure a high and consistent level of protection of the health and safety of consumers by means of strict common safety rules and standards for products and services circulating within the internal market. Specific consumer protection legislation, the subject of this chapter, concerns broad principles and horizontal measures for enforcement. Most of the substantive conditions for the safety of individual foods, industrial products and services are defined in the sectoral legislation of the EU’s internal market, and are discussed in other chapters.

Provisions of the Agreement

The Agreement lays down a number of general commitments on consumer protection, notably that the parties “shall cooperate in order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection” (Art. 38). This requires, inter alia, exchanging information on consumer protection systems; providing expertise on legislative and technical capacity to enforce legislation, along with market surveillance systems; improving the information provided to consumers; and encouraging the development of independent consumer associations.

It also requires that Moldova approximate its legislation to that of the EU, as set out in Annex IV to the Agreement, while avoiding barriers to trade. Generally speaking, Moldova has committed to implementation timeframes of between two and four years.
Product safety is a key objective of consumer policy. Within two years Moldova is expected to have transposed into its legal order the provisions of the main acts in this field, i.e. the General Product Safety Directive 2001/95/EC and Directive 87/357/EEC. Certain products whose composition, manufacture or use may pose a risk to consumers are subject to more specific provisions.


To protect consumers from unfair contract terms Directive 93/13/EEC has to be incorporated, as well as, inter alia, Directive 97/7/EC on the protection of consumers in respect of distance contracts. Other EU legal acts to be approximated concern doorstep selling, package holidays and consumer credit.

In 2013, the European Commission adopted a Product Safety and Market Surveillance Package that aims to further improve product safety, in particular through enhanced product identification and traceability. At the same time, the Commission adopted measures to reinforce the safety of the food chain. Regarding the safety of cosmetic products, new rules entered into force in mid-2013.

To enforce consumer rules in 2013 the EU adopted new legislation on Alternative Dispute Resolution (Directive 2013/11/EU) and Online Dispute Resolution (Regulation (EU) 524/2013), providing for fast, low-cost and out-of-court procedures for consumers seeking redress, which will also soon become available throughout the EU.

Implementation perspectives

Developments in Moldova’s consumer protection. Market surveillance and consumer protection is a complex policy field that advanced considerably when the consumer-related rules and principles were established in Law No. 105-XV of 13 March 2003. Significant institutional reorganisation took place when the Agency for Consumer Protection was established in 2012. The Agency took over from earlier institutional arrangements that had been initiated in 1992, soon after independence. In September 2017, amid the reform of governmental structures, the Agency was renamed Agency for Consumer Protection and Market Surveillance. Its competences were extended with regard to supervision and monitoring, policy and methodological tools.
The Agency is the main body responsible for monitoring goods entering the market and services delivered to consumers, their compliance with national legislation, and the protection of the health and the security of the consumers. The Agency is a public institution subordinate to the Ministry of Economy and Infrastructure.

Apart from the 2003 law, the rights of consumers are established in other organic and secondary legislation. The legal acts that implicitly invoke consumer rights are a 1994 law on petitioning and a 2000 law on access to information. Other sectoral legislation refers to consumer protection and market surveillance concerning food safety, technical conformity regarding industrial goods and the reliability of services delivered to consumers.

The Agency’s competences are quite broad and include supervisory, monitoring/inspection, advisory and communication aspects, namely: i) organisation of market surveillance, covering all steps from production to selling, as well as delivery services; ii) oversight of the metrology measurements and equipment used by the producers; iii) monitoring the fulfilment of the conditions for trading activities; iv) efforts aimed at protecting consumers’ economic interests (about 2.9 million consumers and 30,000 trade enterprises); and v) communication and education of consumers about their rights.

The Agency develops partnerships with local consumers’ associations (NGOs) and international organisations. A list of 11 NGOs working in the field of consumer protection is presented on the webpage of the Agency, not all of which are active, however. One of these NGOs, the East-European Foundation, revealed in early 2018 mass irregularities regarding the composition of dairy production from some local producers and also in goods imported from Ukraine. Consequently, the Agency intensified the controls, issued various

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sanctions of about €600 (considered to be insufficiently dissuasive), and destroyed the 3.5 tonnes of irregular vegetal oils.

The measures undertaken by the Agency to ensure the security of goods and services available on the market mainly relate to technical regulations, metrological requirements and the contractual obligations of service providers. No monitoring activities can be carried out by the Agency to check how agri-food producers implement the sanitary–hygienic and sanitary–veterinary rules, which is the responsibility of other government agencies (see chapter 8). The Agency is, however, entitled to sample the goods introduced onto the market, including industrial food products, in the accredited laboratories.

The Agency’s director and deputy director can apply sanctions to companies that violate consumer rights (related, e.g. to price transparency, quality and safety of goods or services). It can demand the remedy or replacement of goods, or restitution of the value of the goods or services, and can shut down improper economic activities. The Agency can also request actions to remedy abuses and improper economic activities.

The Strategy for Consumer Protection 2013–20, approved by government decision in July 2013, represents the current framework of policies regarding consumer protection and market surveillance. The main objectives pursued by the strategy are i) diminishing the risks of transactions of dangerous goods and services and their access to the market; ii) empowering consumers’ decision-making through education and information; iii) improving the procedures for claiming consumers’ rights (by extra/judiciary measures) and recovery of damages.

In 2017, the Agency reported 8,939 consultations with businesses compared to 5,746 in 2015, about 50% of them taking place during monitoring activities. The number of petitions directly submitted by consumers increased in 2017 to 1,995, compared to 1,143 in 2016. Only about 23% of the petitions were registered through online means in 2017. The Agency managed to solve about 80% of total received petitions. The Agency participates in legal trials

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198 See the strategy at http://lex.justice.md/md/348894/.
supporting consumers. In 2017, the cases resolved amicably constituted only 14% (350 cases), compared to 154 cases in 2016. The value of the recuperated damage almost quadrupled, from 614,651 MDL (€27,873) in 2016 to 2.6 million MDL (€125,394) in 2017.200 The Agency increasingly focuses on consultations rather than checks, the number of which is being cut by at least a half.

**Implementation of the Agreement.** Overall, the Association Agreement envisages the implementation of 16 EU directives during the next four years, with 6 directives having already been transposed by Moldovan authorities. According to the national report on the implementation of the Agreement for 2014-16, the authorities have initiated the process of legal approximation to the EU acquis. In this regard, Law No. 422 of 12 December 2006 on the general security of goods was adjusted to ensure the creation of a mechanism guaranteeing general requirements for goods safety on the internal market (Directive 2001/95/EC on general product safety). A draft law amending the standards for consumer protection in the field of tourism (Chapter 19 of the Civil Code) was adopted in July 2016 and entered into force in March 2017 (transposing Directive 90/314/EEC on package travel, package holidays and package tours). In addition, Law No. 157 of 18 July 2014 on conclusion of the long distance contracts on consumer financial services was adopted (Directives 97/7/EC and 2002/65/EC).

According to the National Action Plan for implementation of the AA in 2017-19, the authorities plan to transpose the Regulation 2006/2004 on inter-institutional cooperation on consumers protection, two Regulations (98/257 and 2001/310) establishing the principles for extra-judicial and consensual solving of the litigations, and Decision 2009/251 on products containing the biocide dimethylfumarate that should be excluded from the market.

Some directives were implemented before the signature of the Agreement, notably directives on abusive provisions in contracts signed by consumers, on unfair business-to-consumer commercial practices in the internal market and on credit agreements for consumers.

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200 Ibid.
The main problems related to the effective implementation of market surveillance and consumer protection, and thus requiring attention, are summarised below:

- lack of institutional capacity (human and financial resources), which also affects the quality of the market supervision;
- little use of a risk assessment approach;
- inefficient communication and cooperation among the oversight authorities;
- insufficient proactive measures, mainly on the part of the Agency, to prevent violation of consumer rights;
- poorly equipped laboratories to test the safety of food and industrial goods;
- lack of progress in negotiating partnerships with international organisations like the Product Safety Forum of Europe (PROSAFE) and the International Consumer Protection and Enforcement Network (ICPEN);
- insufficient public support to ensure conformity in informal trade activities;
- largely passive approach of consumers in claiming their rights due to lack of knowledge and information coupled with inadequate communication tools used by the Agency; and
- a lack of discouraging sanctions against the producers, and the high cost of judicial procedures related to consumer rights for the Agency.\(^\text{201}\)

Consumer protection at a glance

Framework policies covering consumer protection and market surveillance are in place. The authorities are shifting the emphasis from checks and inspections to consultations and education.

The Agency is the key institution, with extensive competences that include market surveillance, monitoring procedures, the termination of improper economic activities, company sanctions and communication efforts. It accumulated more surveillance and policy drafting competences amid the 2017 government reform.

The approximation process is proceeding smoothly. But the capacities of the main institutions are limited, as are their financial resources, thus raising questions about effective implementation.

Irregularities in the field are numerous and consumer rights are frequently neglected, while the sanctions against the producers are rather soft. Consumers still largely remain passive stakeholders.
21. COMPANY LAW

To further support Moldova’s transition to a fully functioning market economy and to create a stable environment for investment and trade, the Agreement has a brief chapter on company law, corporate governance, accounting and auditing. There will be a regular dialogue on existing systems and new developments, with Moldova undertaking to approximate a selection of EU laws and international standards included in Annex II.

Company law. In this area, Moldova aims at improving the protection of shareholders, creditors and other stakeholders by undertaking to approximate a list of EU company law directives.

An important directive to be implemented within two years (2009/101/EC) requires public limited liability companies (PLLCs) to disclose basic information and documents relating to their statutes, balance sheets and profit and loss accounts for each financial year. They must also disclose the appointment of those individuals authorised to represent the company in dealings with third parties, winding-up or liquidation of the company, etc. All this information has to be recorded in a file opened in a central register, commercial register or companies register. This directive also includes rules on the nullity of companies, requiring a court judgment.

A second important directive, also to be implemented within two years, is Directive 77/91/EEC on the formation of a PLLC and the

202 See Title IV, chapter 3.
maintenance and alteration of its capital (later replaced by Directive 2012/30/EU). This requires that the statutes of a PLLC include information on the objectives of the company, the amount of capital, rules governing the appointment of members responsible for managing the company and the duration of the company. The directive sets the minimum capital requirement for EU PLLCs at €25,000. This directive also regulates the distribution of dividends, the issuance and acquisition of shares, and modification of capital. It furthermore limits the possibility for a PLLC to acquire its own shares.

In addition, Annex II includes several other directives to be implemented within two to four years, for example concerning the rules for the conduct of mergers and takeovers after the entry into force of the Agreement (Table 21.1).

**Table 21.1 Overview of EU company law directives for approximation**

<table>
<thead>
<tr>
<th>EU directive</th>
<th>Substance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directive 78/855/EEC concerning mergers of PLLCs (replaced by Directive 2011/35/EU)</td>
<td>Deals with mergers between PLLCs in a single EU country</td>
</tr>
<tr>
<td>Directive 82/891/EEC concerning the division of PLLCs, as amended by Directive 2007/63/EC and 2009/109/EC</td>
<td>Deals with the division of PLLCs in a single EU country</td>
</tr>
<tr>
<td>Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a member state by certain types of companies governed by the laws of another state</td>
<td>Introduces disclosure requirements for foreign branches of companies</td>
</tr>
<tr>
<td>Directive 2009/102/EC on single-member PLLCs</td>
<td>Provides a framework for setting up a single-member company (in which all shares are held by a single shareholder)</td>
</tr>
<tr>
<td>Directive 2004/25/EC on takeover bids</td>
<td>Establishes minimum guidelines for the conduct of takeover bids involving the securities of companies, where all or some of those securities are admitted to</td>
</tr>
<tr>
<td>Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies</td>
<td>Establishes rules to help exercise shareholders’ rights at general meetings of companies that have their registered office in an EU country and are listed on an official stock exchange. This Directive was amended by Directive 2017/828 which facilitates the interaction between companies and their shareholders and adds transparency of institutional investors.</td>
</tr>
</tbody>
</table>

Source: EU Official Journal.

**Accounting and auditing.** Moldova has committed to approximate Directive 78/660/EEC on the annual accounts of certain types of companies and Directive 83/349/EEC on consolidated accounts. These two directives have subsequently been replaced by Directive 2013/34/EU, which significantly simplifies and reduces the administrative burdens for companies and is intended to lead to greater EU cross-border comparability of accounts. Moldova has also agreed to approximate Regulation (EC) 1606/2002 on the application of international accounting standards. This directive requires EU companies to prepare their accounts in accordance with international accounting standards/international financial reporting standards. These standards are issued by the International Accounting Standards Board. Finally, Moldova has to implement Directive 2006/43/EC, which lays down the conditions for the approval and registration of individuals who carry out statutory audits, along with the rules on independence, objectivity and professional ethics applying to such individuals, and the framework for their public oversight. This directive was amended in April 2014 by Directive 2014/56/EU strengthening the independence of statutory auditors and audit supervision, and making the audit reports more informative.

**Corporate governance.** The EU and Moldova agreed to cooperate on further development of corporate governance policy in line with international standards (i.e. the OECD Principles on Corporate Governance), as well as gradual approximation of EU legislation listed in Annex II. This Annex includes two European Commission Recommendations (2004/913/EC and 2005/162/EC) on
the remuneration of directors, and the role of non-executive directors and supervisory boards, completed after the financial crisis by Recommendation 2009/385/EC. The texts on remuneration policy include guidelines on the balance between fixed and variable remuneration, the latter conditional on performance criteria. Termination payments (‘golden parachutes’) should also be subject to quantified limitations and should not be paid in the event of failure. Each listed company should publish a statement on its remuneration policy on these issues.

It has to be noted that a new Directive was adopted in 2017, which codifies or replaces several of the directives mentioned above, i.e. with Directive (EU) 2017/1132 on codification of certain aspects of company law concerning limited liability companies. The new directive now brings together the rules established by the repealed directives, without changing their content or adding new rules. Such a directive was required in the area of company law as the relevant legislation was spread across many different legal acts, with the first directives dating from the 1960s and 1970s, and which were amended numerous times.

Implementation perspectives

Moldova’s current legal framework for company law, corporate governance and accounting is weak and the implementation of the DCFTA requirements, as identified above, is a significant challenge. This is illustrated by Moldova’s relatively low position in the World Bank Group’s Doing Business ranking, despite some improvements in recent period. In particular, there are lingering problems in such

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203 Directive (EU) 2017/1132 codifies or replaces Directive 82/891/EEC concerning the division of public limited liability companies; Directive 89/666/EEC concerning disclosure requirements for branches opened in an EU country by certain types of company governed by the law of another country; Directive 2005/56/EC on cross-border mergers of limited liability companies; Directive 2009/101/EC on coordination of safeguards which are required by EU countries of companies within the meaning of the second paragraph of Article 48 TFEU; Directive 2011/35/EU concerning mergers of public limited liability companies and Directive 2012/30/EU on coordination of safeguards.

204 Republic of Moldova has moved up in the Doing Business ranking from 52nd place in 2016 edition to 44th place in 2018 edition.
domains as protecting minority investors, enforcing contracts and resolving insolvency.

The need to modernise Moldova’s legal framework in this area became dramatically clear when a major bank fraud was revealed in late 2014, as detailed in chapter 15. This was possible due to several factors, including poor administration of three banks plagued by the fraud, obscure changes in the ownership structure of the banks and violation of the basic principles of corporate governance. The magnitude of the scandal has attracted the attention of many internal stakeholders, but also international partners of Moldova. Because of the systemic importance of the banking sector, improving the corporate governance of banks is a priority. However, progress in this area was rather slow until recently, because of political instability in the country. Only in 2017, were significant steps taken with the adoption of financial and banking legislation, but the pace of the fraud investigation is still slow.

**Company law and corporate governance.** An important development related to company law is approval of the Corporate Governance Code by the National Commission for Financial Markets in January 2016. While the previous Corporate Governance Code had only recommendation status, the new code has the status of a policy document, and therefore should be implemented by all joint stock companies. Also, in 2015 several acts (regarding securities and collective investment institutions of securities) entered into force, subordinated to the legislation on the capital market.

There were made some efforts to transpose the EU company law directives in the Association Agreement, but the initial timeline has proved too ambitious. Only two directives from the first National Action Plan for 2014–2016 were transposed in accordance with its timeline (see Table 21.2). Implementation of other directives was postponed for one or two years, and they were included in the new National Action Plan 2017-2019. The delay is caused mostly by the

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205 Losses from fraudulent loans accounted for 12% of GDP, while losses from fraudulent loans and future interest accounted for 16% of GDP according to the “Final Report” prepared by Kroll for the National Bank of Moldova, London (http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf).


recent adoption by the EU of Directive 2017/1132 (see above). The new Directives are due to be transposed into the law on joint stock companies by 2019.208

Table 21.2 Progress with implementation of EU company law directives

<table>
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<tbody>
<tr>
<td>Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a</td>
<td>Drafted by TIV 2015 Entrance into force in TIII 2016</td>
<td>Transposed by Law nr. 96 of 13.05.2016 210</td>
</tr>
</tbody>
</table>

209 http://lex.justice.md/md/363997/.
210 http://lex.justice.md/md/365267/.
<table>
<thead>
<tr>
<th>Directive 2009/102/EC on single-member PLLCs</th>
<th>Drafted by TIV 2016</th>
<th>Entrance into force TIII 2017</th>
<th>Unfinished by deadline</th>
</tr>
</thead>
</table>

Source: Author’s compilation based on National Action Plans.

**Accounting and auditing.** According to the National Action Plan 2014 - 2016 finalised draft of a new law on accounting and a new law on auditing according to EU directives (2013/34/EU and 2006/43/EU) was planned for the last quarter of 2016. 212 However, the approval process of both these laws was completed with a one-year delay in December 2017, to enter into force only on 1 January 2019. The decision to apply new laws from 2019 was due to difficulties this would have created for private sector in 2018, as well as the late adoption by the Parliament.

**Outstanding challenges.** Overall, the reform of corporate governance is seen as highly important for advancing the modernisation of the Moldovan economy. While recent events in the banking sector have dramatically highlighted the costs of shortcomings in this area, the problems are not confined to this sector. The agenda for reform in line with EU standards is appreciated, and some advances are being made, but overall the needed legislative measures are falling behind schedule. Nevertheless, simple

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transposition of EU legislation without strengthening oversight and integrity capacities of such key institutions like National Bank, National Commission of Capital Market and Competition Council would prejudice its effectiveness.

### Company law at a glance

The Association Agreement does not impose strict obligations on Moldova in the area of company law, corporate governance or accounting, but provides a framework of EU legislation that Moldova has undertaken to implement.

Recent developments point to significant problems in corporate governance and regulatory failure in Moldova, which have proved to be especially costly in the banking system.

Reforms in line with EU legislation in the broad area of company law should improve Moldova’s business climate, creating a transparent environment for enterprises, with an appropriate level of protection of company shareholders and creditors. But currently, there are delays in drafting the required legislation, while the impact depends on effectiveness of the regulatory bodies.
22. AGRICULTURE

Agriculture is a very important sector for the Moldovan economy, with large potential for increasing the quality and volumes of its production and exports to the EU. The country has undertaken ambitious commitments to align its farm policies on those of the EU.

Provisions of the Agreement

According to the Agreement, “the Parties shall cooperate to promote agricultural and rural policies, in particular through progressive convergence of policies and legislation”. It goes on to list general objectives, such as improving competitiveness, exchanging best practices, and promoting modern and sustainable agricultural production (Arts. 67-68).

More precisely, Art. 70 further specifies that Moldova will approximate its legislation to that of the EU through the list of regulations and directives set out in Annex VII, as summarised in Box 22.1. Each regulation has stipulated a timeframe for implementation, mostly of four or five years.

There is room for debate about whether Moldova, keen to advance its EU integration, has made too many commitments too fast. Monitoring activities will inform policy-makers on this point in due course. In around two years, the authorities will conduct a stocktaking exercise, which might show whether the timetables in Annex VII warrant recalibration. In any case, the Association Council is empowered to make amendments as necessary.
Box 22.1 Summary of EU agricultural policy laws referred to in the Agreement

**Quality policy.** Seven regulations set the rules for protecting geographical indications and traditional specialities.

**Organic farming.** Three regulations set the rules for organic production and the labelling of organic products.

**Marketing standards for plants and derived products, fruit and vegetables.** There are a total of 24 regulations and directives, which mostly set out the technical standards for marketing specific commodities. For example, Regulation (EEC) 66/402 on the marketing of cereal seeds requires that products released on the market belong to officially certified varieties.

**Marketing standards for live animals and animal products.** As above, twelve regulations and directives primarily set technical standards for marketing specific commodities, as well as for the common organisation of markets. For instance, Regulation (EC) 543/2008 on marketing standards for poultry meat defines the characteristics of different cuts of meat and their names.

The objectives of the Agreement are supported by substantial EU financial and technical assistance to the farm sector. In 2016, the Moldovan authorities ratified the bilateral agreement with the European Commission for receiving €64 million to support agricultural policy under the European Neighbourhood Programme for Agricultural and Rural Development (ENPARD). The programme is to run from 2015 to 2018, but has started two years later. Of this, €54 million is in the form of budget support. Such support comes with conditions for the government to execute several programmes for investment: on modernising agriculture, agri-food and food chains and complying with EU food safety and quality requirements; on enhancing education as well as extending research and services to rural areas; and on improving access to capital, input and output markets for farmers; and on rural development. In addition, €11 million is to be allocated to technical assistance projects, for example to promote civil society organisations and local authorities in implementing agricultural policies that favour gender equality and are oriented towards empowering women.
The European Investment Bank (EIB) has major investment initiatives in Moldova, among which are a €120 million project called the ‘Fruit Garden of Moldova’. This project consists of a global loan to be executed through accredited banks to support the entire horticultural value chain, for individual growers and for participants both up- and downstream. It aims at ensuring the long-term viability of a strategically important sector of the economy. The project addresses quality and financial issues and is structured for developing existing facilities together with building new capacities. By December 2017, only €6 million or 7% of the total had been disbursed. The main reason for the slow start lies in the high indebtedness of the local producers, their low level of capitalisation, and high cost of the 50% co-financing clause applicable for participation in the project.

Another EIB project has allocated €75 million to modernise the winery sector (the Wine Sector Restructuring Programme, ‘Filière du Vin’), with implementation over the period 2012–19. This project focuses on the development of wines with protected designation of origin (DO) or geographical indication (GI) (or both). More broadly, the objective is to restructure the wine industry, improve quality and diversify export markets. By December 2017, 66 Moldovan producers have benefited from loans,213 with the EIB approving €47.8 million so far, while the own contribution of the beneficiaries amount to €55.5 million. The beneficiaries’ eligibility conditions include their own contribution of 50% of the investment and the pledging of assets. These conditions of access to funding are the most pressing challenge in the sector, limiting the number of potential beneficiaries among small- and medium-sized companies.

The Polish government has also engaged in an important project for credit financing in agriculture for €100 million. The programme had not started yet by the time of writing.

Developments in Moldovan agriculture and policies

Moldova has important resources of arable land and remains a rural country, with 58% of the population living in rural areas. Agriculture is accordingly of great significance for the development of rural communities and for the country as a whole. While the share of agriculture in GDP fell drastically from 30% during the 1990s to 12%

213 Principally, these are Asconi LLC, JSC Cricova, Vinaria Zimbreni and Vinaria din Vale.
in 2011, and 12.2% in 2017, it remains the highest in south-eastern and Eastern Europe. The agricultural sector accounted for 33.7% of employment in 2016 (410,900 people), down from 52% in 2000.\textsuperscript{214} The diminishing number of workers in agriculture results from both migration and the attractions of other sectors of the economy, especially the services sector. The added value per agricultural worker in Moldova ranks lower than other countries in the region, averaging about $6,383 per head in 2016, three times higher than in 2000, but 2.6 times lower than in Romania, or four times lower than in Bulgaria.\textsuperscript{215}

The bulk of agricultural production (90%) is vegetal (cereals, grapes, vegetables and fruits) and of animal origin (pork, poultry and milk). Cereal production has increased rapidly, by almost 42% since 2000.

\textit{Trade in agri-food goods.} The major trade partners for agri-food products are the EU and CIS countries. However, the share of trade with CIS countries has dropped in recent years, mainly because of Russia’s tariff and non-tariff barriers for wines and other agri-food products (especially since 2013) and because of general economic difficulties in Ukraine and Russia since 2014.

Exports of agricultural products to the EU have grown substantially over the last three years (by 25% from 2014, q3 to 2017, q3). The most significant growth in agri-food exports to the EU was registered for sunflower seeds, soybeans, honey, dried fruits, grapes, soybean oils, jams and ethyl alcohol. The biggest drop occurred in exports of fruit juices, as a result of Russia’s agri-food sanctions against EU countries that are normally importers of Moldovan agri-food goods (e.g. Poland).

The EU maintains extensive tariff rate quotas under the DCFTA (i.e. limited quantities for tariff-free access to the EU market). Nevertheless, in 2017 these quotas were not fully used for the most part. The quotas for table grapes was used to the extent of 51%, and plums 74%. As in previous years, the tariff quotas for apples remains unused. On the other hand, the export quotas were fully exhausted for sugar, and exceeded almost five times for processed cereals (ethyl alcohol). The quotas for other categories were used to different degrees – from 25% for sweetcorn and processed sugars, to 72% and

\textsuperscript{214} Derived from the National Bureau of Statistics, according to data from 2017.
85% for sugar and corn, respectively. Taking into account the early exhaustion for certain products, the revision of some allocated quantities has been already proposed to the European side (see Chapter 4).\textsuperscript{216} The quotas for agri-food of animal origin (pork, poultry, dairy products, shelled eggs, etc.) were completely unused due to the inability to meet the SPS requirements for exporting to the EU. The unused quotas mainly reflect the lack of skills and experience of exporting to the very demanding EU market.

The total exports of products of vegetal origin increased, by 19% ($66 million) in 2017, due to deliveries of cereals, fruits and oil seeds. The export of fruits had a positive evolution thanks to the partial removal of trade restrictions by the Russia.

Among the few agri-food goods of animal origin exported to EU is honey. However much of this honey is exported in bulk, being later processed in the importing countries, which means that the final products are not labelled as ’Moldovan’ on the EU market. The largest quantities of honey were shipped to Romania (823 tonnes), Italy (633 tonnes), Germany (536 tonnes), France (336 tonnes) and Slovakia (251 tonnes).

Wine is Moldova’s most successfully exported agri-food product. With around 150 wineries, Moldova is among the top ten countries in the world for wine production and exports, with 133 million litres of exported in 2016.\textsuperscript{217} However, since the introduction of Russian sanctions in 2006, wine exporters have faced difficult times, with dramatic falls of exports to Russia. At the same time, this has led to a costly but ultimately healthy process of diversifying external markets. After Russia again applied sanctions to Moldovan wines in 2013, the EU fully opened its market. During 2014–15, Russia gradually began to reopen its market, but only for five wine producers in their politically preferred regions, namely the Gagauzian autonomy and the Transnistria. This was the result of the political engagement between President Dodon and the Russian authorities, rather than a systemic approach to restore fully non-discriminatory access to the Russian market.

Agri-food products showing rapid growth in exports include honey and walnuts. Exports of honey grew from 403 tons in 2000 to


\textsuperscript{217} Derived from Comtrade.
2,696 tons in 2014, and 3,440 tonnes in 2016\textsuperscript{218} Walnut cultures expanded from 4,000 hectares in 2014 to 14,000 hectares in 2017, with exports increasing from 187 tonnes in 2000 to 13,400 tonnes in 2014, and 15,000 tonnes in 2016\textsuperscript{219} These two products and cereals face little or no export market constraints in the form of SPS requirements.

**Institutional framework and policies.** The leading institutions responsible for implementing agricultural and rural development policies are the Ministry of Agriculture, Regional Development and Environment (MARDE), the Ministry of Economy and Infrastructure, and a number of agencies. Due to the implementation of the Public Administration Reform, institutional changes were underway in 2016-2017, and continued in 2018, inter alia merging the previous Ministry of Agriculture and Food Industry with elements of the Ministry of Regional Development and Construction.

The strategic policy framework is represented by the National Strategy on Agriculture and Rural Development for 2014–20, approved in June 2014, together with an Action Plan adopted a year later. The major goals are increasing the competitiveness of the agri-food sector, ensuring sustainable management of natural resources in agriculture and improving living standards in rural areas.\textsuperscript{220} Related policies concern food safety, services in rural areas and regional development, SMEs, energy, transport and logistics, IT and tourism. Particular attention is devoted to digitising the agricultural sector, with an ‘e-agriculture’ strategy, aimed at improving IT infrastructure for public services in this domain.

The strategy involves efforts to build capacity in the planning and assessing activities of the line ministries (in particular the MARDE). Improving the subsidy mechanisms administered by the Interventions and Agriculture Payments Agency is a key priority. The subsidy mechanism significantly changed in recent years. Since 2017, the share of subsidies offered for heavy machines was cut from 55% to 33%. In exchange, more money became available for investing in high value-added agricultural products (HVAAP), and in post-harvest infrastructure. Moreover, 5% of allocations are devoted to innovative techniques in agriculture.

\textsuperscript{218} Ibid.

\textsuperscript{219} Ibid.

\textsuperscript{220} See the National Strategy on Agriculture and Rural Development, 2014–20.
Numerous initiatives seek to strengthen agriculture-related professional qualifications, including viticulture educational programmes. For addressing climate change issues, the authorities drafted a programme for conservation in agriculture for 2015–20, which is not approved yet, with a view to informing farmers about proper soil conservation.

A similar goal is envisaged by a World Bank programme, while Sweden supports a project on agro-technical methods for organic crop production. The authorities have implemented the Rural Extension Services Network, which is designed to provide services in the regions through 35 providers. The development of the strategy was a prerequisite for 2015–18 ENPARD programme referred to above.

There is a positive trend in the approximation of EU legislation. The procedures for legal amendments have been initiated and/or finalised concerning the following EU regulations:

- In July 2016, a law entered into force that transposes into national legislation the provisions of the Regulation (EC) 510/2006 on the protection of Geographic Indications (GI) and Designations of Origin (DO) for agricultural products and foodstuffs. The same law includes the harmonisation on Regulation (EC) 1216/2007 on agricultural products and foodstuffs guaranteed as traditional specialities;

- In June 2017, the draft law on organic agro-food production and the labelling of eco products was approved by the Government and was sent to the Parliament, where it is currently pending approval. The law transposes Regulation (EC) 834/2007 on organic production and labelling of organic products and the implementing Regulations (EC) 889/2008 and 1235/2008.\(^{221}\)

- By September 2016 the provisions of Regulation (EC) 1295/2008 on the importation of hops from third countries have been transposed into the local legislation.

- Transposition of the provisions of Regulation (EC) 1580/2007 on the fruit and vegetables sector has been long overdue and delayed upon the pressures from the producers groups. A draft...

law for the groups of agricultural producers has been proposed by the MARDE in March 2018.


- In September 2017, consultations began on draft regulations to transpose into national legislation Regulation (EC) 273/2008 on quality evaluation of milk and milk products,

- In March 2017, the Parliament has approved the Law on the classification of carcasses of bovine animals, swine and sheep, transposing the EU requirements for this subject.222

- Directive 66/401/EEC on the marketing of fodder plant seed has been transposed into the national legislation.

Although started, little or no progress has been made in several other areas:

- Regarding transposition of Regulation (EC) 1234/2007 on the common organisation of agricultural markets (referred to as the Single CMO Regulation), only small progress has been made.

- Transposition of Regulation (EC) 543/2008 on marketing standards for poultry.

- Directive 1999/105/EC on the marketing of forest reproductive material.

Overall, it is too early to assess the implementation of these legislative actions. Legislation is of course a necessary first step, but the harder part comes with the practical tasks of implementation.

**Challenges.** There are structural difficulties hampering the creation and functioning of agricultural producer groups, with an outdated agricultural education system, isolated extension services and weak agricultural research. The limited availability of banking loans also complicates the situation for farmers, with insufficient supply of long-term loans (the majority of investment loans are for three years) and high interest rates (15–20% per year).

The agricultural sector lacks supply-chain coordination and post-harvest infrastructure. Also problematic is the dependence on imported agro-chemicals, seeds and fuels. Finally yet importantly, there are deficiencies related to transparent and fair access to the mechanism for agricultural subsidies, which over the period 2010–17 accounted for about €260 million.

There is a high degree of vulnerability to fluctuations in climatic conditions (droughts, soil erosion, landslides, hail, frost and floods). These challenges are heightened by restricted access to irrigation systems and low take-up of modern technologies (plants resistant to droughts, anti-hail systems, meteorological risk assessments, etc.).

The public administration reform has delayed the implementation of DCFTA commitments, and the failure to strengthen institutional capacity will maintain the risk of improper implementation of the Association Agreement commitments.

The suspension of the EU budgetary support in 2017, owing to insufficient fulfilment of broader political conditions, was costly for the agricultural sector. Out of the €120 million pledged through the European Neighbourhood Instrument, with some €58 million through the ENPARD programme, not even half of this amount has reached the country’s agricultural sector.

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**Agricultural policy at a glance**

* Moldova has considerable potential for agricultural development, including for exports to the EU, which are now growing at a good pace.

* Major problems include low adaptability to climatic fluctuations, deficiencies in the organisation of agricultural producers, products with low added value and poor access to finance.

* Moldova has adopted an ambitious programme for replicating many technical elements of EU farm policy. There are substantial EU technical assistance and funding projects to assist the process, with grants from the EU budget and capital from the European Investment Bank. Still there are some concerns that the commitments made in the Association Agreement exceed Moldova’s capacities to reform the agricultural sector.
23. EMPLOYMENT AND SOCIAL POLICY

The Association Agreement seeks to promote cooperation over a large part of EU labour law and related conditions of work, much of which is closely related to the content of the ILO conventions that Moldova has already ratified.

Provisions of the Agreement

The EU labour-related legislation to be transposed is divided into three main categories: labour law, anti-discrimination and gender equality, and health and safety at work, and the numerous relevant directives are listed in Annex III.

The labour law category includes eight EU directives for gradual approximation to legislation. Among others, these directives cover such issues as employers' information and consulting obligations, part-time work, fixed-duration employment, collective redundancies and organisation of working time. All these directives should be transposed into national legislation within three to four years.

The anti-discrimination and gender equality category includes six EU directives for approximation. The main fields of regulation are equal treatment between people in employment and occupation and access to and supply of goods and services. The period of approximation for these directives is planned to be three to four years.

Health and safety at work is the largest category, containing a body of 25 directives for legislative approximation. Issues covered in these directives are minimum safety and health requirements for the
use of work equipment at temporary or mobile construction sites, the protection of workers from risks related to asbestos at work and many other provisions. The timeframe for legislative adjustment is three to ten years, with most directives requiring seven to ten years for approximation.

**Implementation perspectives**

Moldova’s labour market presents a contradictory picture. On the one hand, unemployment is at its lowest historical level, at 4-5%. On the other hand, the employment rate is only about 39%, which is the lowest in the region, and reflects the significant number of Moldovan workers who have emigrated in search of work. The official number of emigrant workers in 2014-17 oscillated between 300,000 and 350,000, with more than half of them working in Russia. Another feature of the local labour market is the high level of informal employment, which surged lately up to 36% of total employment in 2016, and presents a huge challenge to authorities to implement the ‘Decent Jobs’ agenda of the ILO.

Moldova has developed an elaborate legislative and institutional framework that governs all labour-related issues, which comprise both national and international layers. From the institutional viewpoint, this realm is regulated by the Ministry of Health, Labour and Social Protection, with some agencies subordinated to it for specific issues. The main institutions are the Labour Inspection, responsible for monitoring the implementation of labour standards, and the National Employment Agency in charge of implementing active labour market policies.

Moldova has ratified all eight ‘fundamental’ and all four ‘governance’ core conventions of the ILO. Furthermore, Moldova has ratified 30 of 177 technical conventions of the ILO, and has the goal of pursuing the ratification process in accordance with the objectives of the Agreement. There is a close relationship between the ILO conventions and EU labour market law, as Box 23.1 explains in detail.

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Box 23.1 Relationship between EU employment and social directives and ILO conventions

“There is an interplay between EU labour law, the European Social Charter and ILO Conventions: EU law, in particular the Charter of Fundamental Rights, takes into account the European Social Charter and ILO Conventions and in turn influences the evolving content and monitoring of the latter instruments.

All EU Member States are also members of the ILO. The EU is committed to promoting the ILO’s ‘Decent Work’ agenda to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen social dialogue on work-related issues.

All EU countries have ratified the core labour standards – that is, the fundamental ILO Conventions on freedom of association, collective bargaining, forced and child labour, equal remuneration and the elimination of discrimination. EU countries have also ratified the ILO ‘Governance Conventions’ on labour inspection, employment policy and tripartite consultations, as well as a considerable number of other ILO Conventions.

While ILO standards cover a wider range of areas than those in which the EU is competent to legislate, and EU law often goes beyond the minimum provisions of ILO Conventions, the principles that underlie the action of both organisations are similar. There is much common ground in the content of EU directives and ILO Conventions, with EU law reinforcing ILO standards. Directives on issues such as working time and young workers (see chapter 3) explicitly seek to take into account relevant ILO standards.

The protection, realisation and enforcement of core labour standards as well as the promotion of the ratification and effective application of other up-to-date ILO Conventions underpinning the Decent Work Agenda, are part of a growing number of bilateral agreements between EU and third countries, such as the new generation of EU free trade agreements. The follow-up mechanisms of these agreements include monitoring mechanisms involving social partners.”

**General labour law.** Employment policy is mainly regulated by eight laws.\(^{224}\) The backbone of the regulatory framework is the Labour Code approved in 2003, which is far removed from the former code of the Soviet period. This code significantly improved the legislative environment of the labour market. Nevertheless, not all the aspects of Soviet legislation were repealed. Also, despite many adjustments in the last decade, there are still some discrepancies between the economic reality and legislative provisions of the code. Business associations are seeking many amendments to boost the flexibility of the labour market, notably concerning fixed-term employment contracts, trial periods, the termination of employment contracts, shift work, subcontracting staff, and the review of arrangements to compensate for supplementary hours.\(^{225}\) In this context, in the late 2016, the Prime Minister issued an order to start the work on drafting out a new, more liberalised Labour Code. A new draft of the Code was presented in the framework of the Economic Council of the Prime Minister in October 2017, but afterwards the legislative process has stopped. There had been criticism from civil society that the drafting of the new Code lacked evidence-based assessments.\(^ {226}\)

Of the eight EU Directives on labour law to be transposed in national legislation, most of them were implemented by the end of 2017. In 2016 these were transposed the provisions of Directive 91/533/EEC on the employer’s obligation to inform employees of the contract conditions, and Directive 1999/70/EC on fixed-term work, but their adoption was delayed for a year due to the political crisis.\(^ {227}\) Subsequently, in 2017, the Labour Code was amended in accordance with three other directives: i) Directive 97/81/EC concerning the Framework Agreement on part-time work, ii) Directive 2001/23/EC relating to the safeguarding of employees’ rights in the event of transfers of undertakings and iii) Directive 2002/14/EC on establishing a general framework for informing and consulting

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\(^{224}\) More specifically, these are the Labour Code, the Law on Employment and Social Protection of Persons Seeking Work, the Wages Law, the Law on the Setting and Review of Minimum Wage, the Law on the Wage System in the Public Sector, the Law on Labour Force Migration and the Law on Labour Inspection.


\(^{227}\) See Law No. 52 of April 2016.
employees. Provisions of Directive 91/383/EEC on the safety and health for fixed duration employment or temporary employment relationships were already implemented into national legislation before the Agreement entered into force. The remaining two, Directive 98/59/EC on collective redundancies and Directive 2003/88/EC on certain aspects of the organisation of working time, will be transposed in 2018–19.

**Anti-discrimination and gender equality issues.** These are governed by legislation promulgated in 2006 and 2012 on ensuring equal opportunities for women and men. These laws already include most provisions of the two directives mentioned in the Agreement, namely Directive 2000/43/EC on equal treatment between people irrespective of racial or ethnic origin, and Directive 2000/78/EC on equal treatment in employment and occupation. Also, in 2016 a set of amendments was transposed to another three directives, namely Directive 2006/54/EC on the principle of equal opportunities and treatment in matters of employment and occupation, Directive 2004/113/EC on the principle of equal treatment in access to and supply of goods and services, and Directive 92/85/EEC on improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. As in the case of other amendments drafted in the second half of 2015, their final adoption was postponed by a year delay due the lack of a functional government. The remaining directive from the Annex III, like Directive 79/7/EEC on the progressive implementation of the principle of equal treatment in matters of social security, is due to be transposed by the end of 2018. Overall, in this field Moldova will finish the approximation process sooner than the specified period in the Agreement.

However, a major challenge remains in promoting practical actions to combat discrimination in employment. Specifically, there are hurdles for women to re-enter the labour market recently after giving birth, because the kindergarten infrastructure is underdeveloped and overcrowded in big cities.

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228 See Law No. 155 of July 2017.
229 See Law No. 5-XVI of 9 February 2006 on ensuring the equal opportunities for women and men and Law No. 121 of 25 May 2012 on equality.
Health and safety at work. This is regulated by two main laws, one of 2008 on occupational safety and health, and another of 1999 on insurance for work and accidents and occupational diseases. There are also many normative acts adopted by government decisions that implement the provisions of these laws in different sectors of the economy.

Moldova has made considerable progress in transposing the health and safety standards into national legislation. Directive 89/391/EEC on improvements in the safety and health of workers at work was already included in the law on occupational safety and health. Another six directives stipulated in the Agreement were implemented in national legislation by government decisions in the years preceding the final adoption of the Agreement.231 Also, three further directives were implemented in 2016, namely Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment and Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (vibration). In addition is Directive 90/269/EEC on the minimum health and safety requirements for the manual handling of loads where there is a particular risk of back injury to workers.

Overall assessment. Despite progress in the approximation process, there are still some important issues to be addressed in the

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231 More specifically, the following directives were implemented:
- Directive 89/654/EEC on the minimum safety and health requirements for the workplace was transposed by GD No. 353 of 5 May 2010;
- Directive 2009/104/EC on the minimum safety and health requirements for the use of work equipment by workers at work was transposed by GD No. 603 of 11 August 2011;
- Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites was transposed by GD No. 80 of 9 February 2012;
- Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work was transposed by GD No. 244 of 8 April 2013;
- Directive 92/58/EEC on the minimum requirements for the provision of safety and/or health signs at work was transposed by GD No. 918 of 18 November 2013; and
- Directive 2003/10/EC on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (noise) was transposed by GD No. 362 of 27 May 2014.
field of health and safety at work. One of these is the ratification of ILO Convention 161 on Occupational Safety and Health. This convention, which requires the creation of occupational and health services at the enterprise level, mostly with the preventive functions, was suggested to the national authorities by the ILO, but is still only under consideration.232

Another important issue concerns occupational safety and health statistics. This kind of data is collected on the basis of sample surveys, yet only from companies with more than 20 employees. A significant number of companies below this threshold are not included in the survey, and as a result the real situation on health and safety standards compliance is not fully revealed.233

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**Employment and social policy at a glance**

Moldova has developed an elaborate legislative and institutional framework that governs all labour market issues, which for the most part corresponds to the standards of the EU and the International Labour Organization.

Transposition of a large share of EU directives on employment, social policy and equal opportunity was almost complete by the end of 2017, although with some delays. This should strengthen the quality of Moldovan legislation.

There is keen interest of the part of the business sector in adapting labour legislation to the realities of Moldova’s economy and in making it more flexible. However, the latest efforts to liberalise labour legislation were undertaken without evidence-based assessments, and the draft revision of the Labour Code has been suspended.

The high level of informal employment hinders the process of implementing labour legislation.

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233 Idem.
24. EDUCATION, TRAINING AND CULTURE

Education, training and youth

The Association Agreement sets out certain goals for the education system, notably its reform, modernisation and convergence with the Bologna process in the field of higher education, which includes enhancing the quality and relevance of higher education. The Association Agenda details some substantial instruments for undertaking the reforms.

In the World Economic Forum’s human capital index, Moldova was ranked at 62 out of 130 countries, last among European countries. The UNDP’s education index is equally unfavourable, in which Moldova was ranked at 114 out of 187 countries. According to the time series of this UNDP index, there has not been a substantial improvement in Moldova’s performance since 1980. These low rankings imply a lack of human capital for any major recovery in Moldova’s economic performance.

Moldova joined the Bologna process back in 2005, leading to the adoption of the three-cycle higher education system (with bachelor, masters and doctoral qualifications), which is an important step towards matching European standards. According to the new system, bachelor programmes should include no less than 240 ECTS credits.

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234 European Credit Transfer and Accumulation System.
masters degrees have to be comprised of no less than 120 ECTS and doctoral programmes no less than 180 ECTS. In 2008, the first group of around 31,000 graduates finished their studies at universities in accordance with the Bologna process for the first cycle (bachelors). In the same year, the second cycle (masters) of two-year courses following Bologna principles was launched. These programmes have developed further, such that in 2016–17, 19 public and 11 private higher-education institutions\(^{235}\) enrolled 74,726 students in accordance with the Bologna system (56,570 for bachelor studies, 13,639 for masters degree studies and 456 for doctorates in 2016). 56.7% of the total cohort of students are women. These numbers are gradually declining for demographic and migration reasons. The number of students dropped by approx. 30% in 2016-17 compared to 2011-12 (from 103,956 to 74,726 persons respectively). Similar negative trends occurs within education staff, currently 37,990 persons, compared to 48,729 in 2011. The Bologna process for doctoral studies is under development, with a few pilot doctoral programmes at two higher education institutions. The most popular studies for both bachelor and master’s studies are Social Sciences, Economics, Law, Engineering, Technologies and Architecture; less popular remain Agriculture, Healthcare and Services.

Other changes in the education field supported through the Bologna process envisage the implementation of the European Credit Transfer System, which facilitates the participation of students in European academic mobility programmes. The government’s Decision No. 56 of 27 January 2014 on academic mobility for bachelor, masters and doctoral studies ensures the recognition of qualifications (diplomas) in the EU and other countries participating in the Bologna programme. During a meeting of the Bologna Follow-up Board in January 2016, the Ministry of Education restated its commitment to developing the quality assurance framework (on the basis of the National Agency for Quality), and to making further adjustments to the national qualifications framework. The EU supports the adjustment of Moldova’s vocational training to the needs of the labour market, as well as linguistic diversity, language learning and professional life-long learning as drivers for job creation and growth. A scheme for organising dual vocational education and training (VET) was approved in January 2018, with support from the EU. This

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\(^{235}\) See the List of higher education institutions, Ministry of Education.
foresees an apprenticeship salary paid by the training company. For the period 2017-18, 50 companies launched dual programmes with approximately 600 persons benefiting from the system.

In the context of government reform of 2017, a new National Agency for Assessing the Quality of Education and Research will start to function in 2018.

The EU also supports Moldova’s educational reforms and modernisation through capacity building, and mobility and exchanges of both teachers and students. Moldova’s Academy of Public Administration, the State University of Tiraspol, the Technical University of Moldova and Moldova State University are among consortia that have been awarded joint capacity-building projects in 2015, with a budget of over €3 million. The projects focus on enhancing the competitiveness and employability of students, modernising libraries and creating an e-network to promote innovative e-teaching in continuing professional education.

The EU’s largest contributions are made through the Erasmus+ programme. Erasmus+ has a total budget for the EU plus third countries of €14.7 billion for the period 2014–20. Thanks to Erasmus, in the period 2004–14 around 900 students and academics from Moldova, and approximately 1,400 persons in 2015-17, benefited from mobility projects through scholarships, teaching, training activities and study visits, and these numbers are expected to grow in coming years. Out of 30 universities in Moldova, 23 are active participants in the Erasmus+ programme. Apart from that, the EU offers financial assistance for the renovation of the infrastructure of several schools in the Transnistrian region through the programme on Support Confidence Building Measures implemented by the UNDP.

Romanian is the sole state language of Moldova, but Russian is used by a minority of around 10-15% of the population. Studies in the Russian language for primary and secondary education, together with other national minority languages, are ensured by the state in regions populated by minorities and where a “sufficient demand” exists.236 Studies in Russian in higher education institutions (at the bachelor, masters and doctoral levels) are also available.237 The Ministry of

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237 See Art. 20, Law No. 3465-XI on the functioning of the languages spoken on the territory of Moldova of 1 September 1989.
Education earmarked about half a million MDL in 2016 for improving the teaching of the Romanian language to minorities.

Overall, diplomas issued by the universities and other higher education institutions from the Transnistrian region are recognised throughout Moldova for job applications. As for enrolment in studies, a complementary year and bachelor’s exams are requested from those who hold diplomas issued by Transnistrian institutions\(^{238}\) for accreditation of BA studies on the right bank of the Dniester River. The full recognition of the documents issued by the Transnistrian institutions is an issue under discussion in the negotiations on Transnistrian conflict settlement. Diplomas issued by University ‘Taras Shevchenco’ from Tiraspol are among the first beneficiaries. The separate Law on Education, adopted by the Gagauzia autonomy in April 2016, caused tensions with the central authorities during 2016 as it contradicts the national education legislation by considerably diminishing the role of central authorities and reducing the autonomy of universities there.\(^{239}\)

**Culture**

Cultural cooperation between Moldova and the EU is based on exchanges and the mobility of arts and artists. In particular, Moldova participates fully in the EU’s Creative Europe programme for cultural and creative sectors, signing an agreement to this effect with the European Commission in March 2015. Participation in this programme aims to connect cultural and creative organisations from Moldova with partners from all over Europe, opening access to funds for cultural cooperation projects, literary translation schemes, cultural networks and platforms.

The EU and Moldova also pledge to cooperate in the framework of UNESCO and the Council of Europe, to sustain cultural diversity, preserve and valorise cultural and historical heritage.

Concrete cultural cooperation projects were implemented with the EU’s eastern neighbours under the ‘Culture Programme II’

\(^{238}\) See p. 17, Plan-framework for higher education (BA, MA and Ph.D.) of 22 October 2015.

\(^{239}\) See the Ministry of Education, Press release of 5 May 2016 (www.edu.gov.md/ro/content/proiectul-de-lege-educatiei-din-uta-gagauzia-contravine-codului-educatiei).
launched in September 2015. The programme budgeted of €4.95 million for two components: EU support for capacity building and the inclusion of culture on the political agenda; and joint EU and Council of Europe support for six to twelve historic towns for developing urban strategies for rehabilitation of heritage. A series of reports were published focusing on solutions on how to develop Moldovan cultural and creative centres and to incentivise and professionalise the cultural sector. The programme also offered the access to 14 online courses; translated various handbooks into Romanian and created a database on different culture-related topics.

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**Education, training and culture at a glance**

Moldova’s human capital endowment is rather low and educational performance has not improved substantially in the last three decades.

Basic educational reforms are supported in the Association Agreement, notably for higher education through the Bologna process and European Higher Education Area, and with concrete programmes such as Erasmus+, which benefits large numbers of Moldovan students.

Moldova has joined the EU’s culture programme with an agreement signed on 18 March 2015.

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25. SCIENCE AND TECHNOLOGY

The Association Agreement sets out wide-ranging objectives for cooperation in the area of science and technology, aimed at strengthening research capacities and human potential and at sharing scientific knowledge. The Agreement encourages the EU and Moldova to implement joint projects, conduct training courses and increase the mobility of programmes and scientists through exchanges for Moldovan researchers. It also intends to facilitate the involvement of Moldovan institutions in the European Research Area.

While the terms of the Agreement are mostly general, it has already been followed up by an important complementary Memorandum of Understanding signed in August 2014 for Moldova’s full participation as an associate country in the Horizon 2020 (H2020) Framework Programme for Research and Innovation for the period 2014–20. Moldova’s associate status in Horizon 2020 provides similar rights as those of an EU member state, including a seat in the governing structures of the fund. The membership comes with a price tag, proportional to its GDP; however, it is alleviated through substantial rebates.

The Horizon 2020 programme is the centrepiece of the EU’s scientific and research activity, endowed with very substantial funds (€80 billion) for the period 2014–20. The areas eligible for project funding by Horizon 2020 cover both natural and social sciences (Table 25.1).
Table 25.1 Main thematic priorities of Horizon 2020

<table>
<thead>
<tr>
<th>Excellent science</th>
<th>Industrial leadership</th>
<th>Societal challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Research Council (ERC)</td>
<td>Leadership in enabling and industrial technologies (LEITs): nano-technologies, materials, biotechnology, manufacturing, ICT and space</td>
<td>Health and demographic change</td>
</tr>
<tr>
<td>Future and Emerging Technologies Marie Skłodowska-Curie actions, career development Research infrastructure (including e-infrastructure)</td>
<td>Access to risk finance Innovation in SMEs</td>
<td>Food security, sustainable agriculture and marine research</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Energy, transport and climate action</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Europe in a changing world; protecting freedom and security</td>
</tr>
</tbody>
</table>

Moldova participated in the predecessor of Horizon 2020, the Framework Programme 7 (FP7) for Research and Development, between January 2012 and 2014. Through this cooperation, Moldova received €3.75 million of total funding (compared with its financial contribution of €1.4 million).

The following projects were among those securing financial support from FP7:
- ICT R&D policy dialogue between Eastern Europe and Central Asia;
- evaluation of the demographic trends in CIS countries (HITT-CIS);
- High-Performance Computing Infrastructure in South-East Europe;
- consolidation of human potential and technological infrastructure;
- product quality (NUTRILAB); and
- water-related research (WaterWorks2014).

As part of efforts to strengthen scientific research cooperation, the Moldovan Office for Science and Technology was created in October 2012. The office is located in Brussels and is coordinated by the Academy of Sciences of Moldova through its auxiliary public institution, the Centre of International Projects. The Centre is the host organisation for the Moldovan FP7/H2020 National Contact Points Network. To encourage greater participation in Horizon 2020, Moldova plans to boost the H2020 National Contact Network, and set up training programmes in proposal preparation and project
administration. In 2017, the National Contact Points organised consultations concerning the information about the ongoing project calls. Similar informative consultations for 2018-20 projects were launched in 2018.

The Academy of Sciences has launched several programmes to foster the participation of R&D institutions and the non-governmental sector in Horizon 2020. These include the programme on the Connection of the Moldovan Centres of Excellence to the EU Research Infrastructure, which seeks to connect the Moldovan research centres to the thematic Pan-European Research Infrastructure, such as ESFRI (European Scientific Forum for Research Infrastructure), ERICs (European Research Infrastructure Consortia) and ETPs (European Technology Platforms). Another programme on increasing participation in Horizon 2020 through the mobility of researchers will provide mini-grants to support the participation of Moldovan researchers in the Horizon 2020 networks. To encourage the participants who submitted eligible proposals to H2020, the Academy launched the European BONUS Programme, with the last call registered in December 2016 and aimed at increasing mobility and networking with European research community.

Moldovan researchers interested in finding research-related jobs and services in European research centres can access the platform EURAXESS - Researchers in Motion. In addition, they can create their own profiles on the Horizon 2020 platform.

The official page of Horizon 2020 currently has a database of 27 institutions from Moldova (universities, state agencies and laboratories), with 9 more institutions compared to 2016. By January 2018, Moldova had 43 participations in Horizon 2020 projects, accounting for €3.64 million contribution from the EU. During 2014-18, Moldovan applicants submitted 322 project proposals out of which 268 were eligible, and only 32 retained. However, these retention rates are similar to the experience of Georgia and Ukraine (see Table 13), and in the EU itself success rates are highly competitive. The highest number of projects were proposed in three thematic areas: Europe in changing world, Marie-Sklodowska-Curie actions, and secure, clean and sufficient energy, etc. The most successful projects were for Marie-Sklodowska-Curie actions (6 projects, and 12% success rate) and climate action, environment, resource efficiency and raw materials (7 projects, and 32% of success rate).
Table 25.2 Horizon 2020 data on proposals for Moldova, Ukraine and Georgia

<table>
<thead>
<tr>
<th></th>
<th>Total submitted</th>
<th>Eligible proposals</th>
<th>Retained projects</th>
<th>Requested amount (€ mn)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moldova</td>
<td>322</td>
<td>268</td>
<td>32</td>
<td>69.4</td>
</tr>
<tr>
<td>Ukraine</td>
<td>1276</td>
<td>986</td>
<td>94</td>
<td>344.5</td>
</tr>
<tr>
<td>Georgia</td>
<td>224</td>
<td>187</td>
<td>21</td>
<td>34</td>
</tr>
</tbody>
</table>

With the revision of the 2004 Code on science and innovation, initiated in 2017 amidst the restructuring of the governmental institutions, the Academy of Sciences’ competences for innovation funds shall be transferred to the newly created National Agency on Research and Development. Under the same reform, 19 research institutions subordinated to the Academy were moved to the restructured Ministry of Education, Culture and Research. This creates uncertainty about the institution that will coordinate on behalf of Moldova the funds allocated under Horizon 2020.

Science and technology at a glance

In accordance with the Association Agreement, since 2014 Moldova has become a participant in the EU’s main research programme, Horizon 2020.

Moldova has strengths in the IT field and its current research projects cover various areas (e.g. demography and product quality).

The major challenge for Moldova is to strengthen the institutional capacities of its research community (in proposal preparation, submission, project administration, etc.), given the tough competition from other countries participating in Horizon 2020, including from Ukraine and Georgia.
26. EU AGENCIES AND PROGRAMMES

The EU has as many as 46 ‘agencies’, which are semi-autonomous and specialised bodies funded and overseen by the EU, with the objective of supporting the functioning of EU policies. There are also around 45 ‘programmes’, most of which (but not all) are funded and administered as integral parts of the EU institutions (mostly but not all in the European Commission). Of these, a considerable number are open to participation by Moldova as a partner under the Association Agreement, notably the 20 agencies and 19 programmes listed in Boxes 26.1 and 26.2, which highlight those with which Moldova already has ongoing cooperation at different levels (e.g. projects, seminars and study visits).

Box 26.1 EU agencies open to Ukraine, Moldova and Georgia*

European Agency for Safety and Health at Work (EU-OSHA)
European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)
European Asylum Support Office (EASO)
European Aviation Safety Agency (EASA)
European Centre for Disease Prevention and Control (ECDC)
European Chemicals Agency (ECHA)
European Defence Agency (EDA)
European Environment Agency (EEA)
European Fisheries Control Agency (EFCA)
European Food Safety Authority (EFSA)
European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)
European GNSS Agency (GSA)
**European Institute for Gender Equality (EIGE)**
European Maritime Safety Agency (EMSA)
European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)
European Network and Information Security Agency (ENISA)
European Police College (CEPOL)
European Police Office (Europol)
European Union Institute for Security Studies (EUISS)
The European Union’s Judicial Cooperation Unit (Eurojust)

* Bold text denotes agencies with which Moldova already has ongoing cooperation.

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**Box 26.2 EU programmes open to Ukraine, Moldova and Georgia***

Asylum, Migration and Integration Fund  
Copernicus, European Earth Observation Programme  
**Competitiveness of Enterprises and SMEs (COSME)**  
Creative Europe, Programme for the cultural and creative sectors  
Customs 2020  
Erasmus+  
European Maritime and Fisheries Fund  
European Statistical Programme  
European Territorial Cooperation  
Fiscalis 2020 (tax administration support)  
Galileo and EGNOS Programmes, global satellite navigation system  
**Health for Growth**  
Hercule III Anti-fraud Programme  
**Horizon 2020**  
Internal Security Fund  
Life Programme  
Environment and climate change  
Pericles 2020, programme for the protection of the euro against counterfeiting  
SESAR JU on modernisation of air traffic management  
European Union Civil Protection Mechanism

* Bold text denotes programmes with which Moldova already has ongoing cooperation.
Such participation offers a useful means of in-depth integration of professional experts and administrative organisations with EU counterparts, and aids reform processes.

Membership of an agency requires negotiation of a specific international agreement, and a decision on the financial contribution of the partner. Participation in a programme is carried out on the basis of a protocol or specific Memorandum of Understanding stating the details of participation. The participation of Moldova in these EU agencies and programmes is subject to regular dialogue and review.

Membership of the agencies and inclusion in programmes gives full access to the infrastructure and governing bodies, but also involves costs. To ease the financial burdens on Moldova, the EU can negotiate temporary rebates. Moldova is also able to pay up to 50% of membership fees from EU aid funds. The process of participating in various programmes, such as in research projects under Horizon 2020, can be extremely competitive, but Moldovan institutes will normally be joining consortia and counterparts in EU member states in these initiatives.

Moldova has concluded cooperation agreements or working arrangements with agencies concerned with judicial cooperation (Eurojust), police cooperation (Europol) and border management (FRONTEX), and has signed a letter of intent with the European Environment Agency, with which it currently implements the Shared Environmental Information System (SEIS). Moldova also has a Working Arrangement with the agency concerned with aviation security (EASA), since 2014.

In terms of programmes, the Moldovan authorities have completed the legislative procedures for joining Horizon 2020 for research and innovation (2014–20).\textsuperscript{241} Details of Moldova’s participation in Horizon 2020 are given in the chapter on science.

Moldova became the first country from the Eastern Partnership to join the programme on competitiveness for small and medium-sized enterprises (COSME 2020).\textsuperscript{242}

\textsuperscript{241} The agreement on participation in Horizon 2020 was ratified through Law No. 142 of 17 July 2014.

\textsuperscript{242} The Agreement for participation in COSME was ratified through Law No. 21 of 27 February 2015.
Moldova has also joined the Creative Europe programme\textsuperscript{243} aimed at supporting the cultural and creative sectors for which the Ministry of Culture is responsible. In this context, the Creative Europe Desk was established in Chișinău, in order to conduct training courses, seminars and consultations related to culture\textsuperscript{244}.

As detailed in the chapter on education, Moldova participates actively in the Erasmus+ programme 2014–20. Various projects involving universities, schools and teachers from Moldova are implemented through the Jean Monnet Programme, TEMPUS and e-twinning (the Community for Schools in Europe)\textsuperscript{245}.

Moldova also joined (multiannual) Third EU Action Programme on Health for economic development meant to coordinate the policies in the health areas\textsuperscript{246}.

\begin{boxed_text}

\textbf{EU agencies and programmes at a glance}

There are extensive possibilities for inclusion in EU agencies and programmes, with the potential to develop institutional capabilities and advance policy reforms.

Moldova is taking up a considerable number of these possibilities, which relate to important aspects of the country’s modernisation and integration with Europe, for example on health and safety standards, policing and justice, research, education and culture.

The EU offers financial assistance to contribute to the costs of participation.

\end{boxed_text}

\textsuperscript{243} The Agreement for participation in Creative Europe was ratified through Law No. 60 of 9 April 2015.

\textsuperscript{244} See the Ministry of Foreign Affairs and European Integration.

\textsuperscript{245} See the Ministry of Foreign Affairs and European Integration.

\textsuperscript{246} Horizon 2020 and Erasmus+ are dealt with in more detail in the chapters on science and education, respectively.
Moldova’s borders with Romania and Ukraine offer important opportunities for enhanced cooperation at the regional level. The Association Agreement calls for cross-border cooperation in general terms, and in specific sectors such as transport, energy, education, tourism and health. The EU offers substantial funding for projects, notably through land border programmes between regions in Moldova, Romania and Ukraine, which have three rather general priority areas: increasing competitiveness, facing environmental challenges and people-to-people cooperation.

Since 2007, the EU has spent over €1 billion on 15 cross-border and regional cooperation programmes in its eastern and southern neighbourhoods.

The links between the border regions of Moldova and Romania are naturally of great significance, given the commonalities of language, culture and history between the two countries. In 2009, the two countries signed an agreement on local border traffic based on Regulation (EC) 1931/2006 on local border traffic at the external land borders of EU member states. The agreement offers advantages to Moldovan citizens residing within 50 km of the Romanian–Moldovan border: they are entitled to apply for permits, which have the same duration as the passport and which allow them to visit the border area of Romania for up to 15 days at a time. Cross-border movements have become even easier since then, however, thanks to the scrapping in 2014 of short-term visa requirements for Moldovan citizens visiting Romania and the rest of the Schengen area.
The regions eligible for cross-border cooperation projects and programmes vary, which can lead to the involvement of either Moldova and Romania or Ukraine separately, or regions from all three countries together. For Moldova, however, given its small territorial size, the entire country is covered. Both public stakeholders and civil society organisations are eligible to submit applications. Eligible regions of Romania and Ukraine are indicated in Box 27.1.

Box 27.1 Regions of Moldova, Romania and Ukraine participating in cross-border cooperation

Moldova: Entire country
Romania: Counties of Suceava, Botosani, Iasi, Vaslui, Galati and Tulcea
Ukraine: Oblasts of Odessa, Vinnytsya and Chernivtsi

Moldova, together with Romania, is included in the Land Border Programmes of the European Neighbourhood Policy, with a programme for 2014–20 able to direct €81 million to projects, following an earlier programme for Romania–Ukraine–Moldova in 2007–13. The new Romania-Moldova Joint Operational Programme is financed through the European Neighbourhood Instrument (ENI). It envisages four thematic objectives: i) supporting education, R&D and innovation; ii) promoting local culture; iii) improving access to the regions and developing cross-border transportation; and iv) addressing common security and safety issues (access to health services, prevention of natural or man-made disasters, fighting organised crime and corruption). In 2018, the programme launched two calls for proposals. A Joint Technical Secretariat will conduct training programmes for potential applicants from eligible regions in Romania and Moldova in February-April 2018.

Specific projects concern cross-border trade, gas and electricity network connections, cooperation over emergencies and river basin environments (see Box 27.2 for details). In addition, the EU funds the Border Assistance Mission (EUBAM) on the Transnistrian frontiers with both Ukraine and Moldova (see chapter 2).

As part of the Eastern Partnership Territorial Cooperation Programmes (EaPTC), a Moldova–Ukraine Programme was approved in October 2014, with a budget of €3 million. It seeks to promote cooperation between border regions as well as social and economic development. In particular, Moldova cooperates with Ukraine’s regions such as Odessa, Vinnytsya and Chernivtsi Oblasts. Projects deal with issues such as reducing emissions, creating common space for creative and cultural industries, and early warning system for flood emergencies, improving waste management, promoting innovative agriculture, etc.248

Another important programme entailing cross-border cooperation, which includes Moldova, is the Black Sea Basin Programme for 2014–20 covering regions of the EU member states bordering the Black Sea (Bulgaria and Romania), as well as some regions of Turkey and Russia, along with Ukraine, Moldova, Georgia and Azerbaijan. The programme’s goal is to support sustainable growth and joint environmental protection in the Black Sea region (e.g. through the joint reduction of marine litter).

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Box 27.2 Romania–Ukraine–Moldova cross-border projects, 2007–13

- Improvement of cross-border cooperation petroleum and food products (Romania and Moldova, €3 million)
- Improvement of the response capacity of Mobile Emergency Service for Resuscitation and Extrication (SMURD) through a joint integrated system for efficient monitoring and disaster consequences mitigation in common border regions (Romania, Moldova and Ukraine, €6 million)
- Pipeline interconnection between the natural gas transmission systems of Romania and Moldova on the Iaşi (Romania)–Ungheni (Moldova) border (€7 million)
- Inventory, Assessment and Remediation of Anthropogenic Sources of Pollution in the Lower Danube Region (Ukraine, Romania and Moldova, €5 million)
- Feasibility Study on Synchronous Interconnection of Ukrainian and Moldovan Power Systems to the Continental ENTSO-E

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248 See http://eaptc.eu/.
European Power System (Romania, Moldova and Ukraine, €6 million)

- Prevention and protection against floods in the upper Siret and Prut River Basins, through the implementation of a modern monitoring system with automatic stations - EAST AVERT (Romania, Moldova and Ukraine, €8 million).

*Source:* Romania–Ukraine–Republic of Moldova Cross-border Cooperation (www.ro-ua-md.net/).

Moldova also participates in the Danube Transnational Programme, with a €5 million budget earmarked for Moldova from the overall budget of €263 million allocated to the entire region for the period 2014–20. This programme aims to ensure a better governed, more connected and responsible Danube River Basin through energy, environmental and cultural projects.

**Cross-border cooperation at a glance**

- Moldova’s borders with Romania and Ukraine create opportunities for business, social and cultural cross-border exchanges at the regional level.
- The EU contributes substantial funding to such cross-border cooperation initiatives.
- The Moldovan–Romanian border is of special significance because of the linguistic, cultural and historical commonalities between the two countries.
- Concrete projects include those enhancing regional emergency services, river management, and energy and transport connections.
Moldova’s civil society has engaged in active policy dialogue with the authorities, especially since the 2009 parliamentary elections. There are now more than 7,400 registered NGOs in Moldova, but only a quarter of them have been active in the last three years. These NGOs cover issues such as education, development, democracy and human rights, social services, youth and culture. Among them, the most active are think tanks and associations working in areas related to democracy, electoral behaviour, human rights and social assistance. There are no legal restrictions for citizens from the Transnistrian region to register a NGO, but those from the right bank cannot do the same in the Transnistrian region, and they are discouraged from dealing with issues related to good governance or human rights. A limited number of NGOs function as a watchdog, monitoring reform in Moldova and pressuring the government on progress. Overall, however, civil society still lacks the resources and capacities to become a strong driver of change.

Moldova’s NGOs are united at the national level under the umbrella of the National Council of NGOs, which includes around 100 members covering various areas. Since 1997, there has been an NGO Forum that meets intermittently (the last meeting was held in June 2013), bringing together representatives of the public, private and non-governmental sectors, including the donor community. In addition, there are mechanisms to include NGOs in the decision-making process, such as the National Participatory Council at the government level, established in 2010, and where groups are organised according to seven specific policies. Yet frequent political
crises have seriously undermined the role of the National Participatory Council leading to the temporary suspension of its activities in 2015, further renewed in 2017.

After 2009, many civil society representatives joined political parties or became public servants. They were replaced by a new generation of experts who have been taking leading roles in various areas (the economy, justice, human rights, etc.). The current trend is a reverse flow from the public sector back to NGOs and business, where the salaries are higher and the working conditions are less volatile. According to public polls, support for civil society among citizens is steady and is much higher than for political parties.

The EU has long supported Moldovan civil society, consisting of 5% of the EU’s financial support to Moldova for 2014–17. The formal frameworks of cooperation between Moldova’s civil society and the EU consist of three parallel, overlapping and poorly interconnected platforms. These are the multilateral Civil Society Forum of the Eastern Partnership, the bilateral Civil Society Platform established under the Association Agreement and the DCFTA-related Advisory Group. Often the same NGOs can be part of one or two platforms. The procedures for submitting projects to the EU are generally considered to be too bureaucratic and difficult, however.

(Multilateral) Eastern Partnership Civil Society Forum. One of the major avenues for the EU to engage Moldova’s civil society has been via the Moldovan National Platform of the Eastern Partnership Civil Society Forum (EaP CSF), established before the Association Agreement was signed in 2009. The Forum brings together members of civil society from all six countries with individual country platforms included in the Eastern Partnership. The Moldovan National Platform consisted of 84 registered organisations. Platform members actively participate in all working groups and subgroups of the Forum. Re-granting schemes are part of the resources allocated within the Forum to support projects in 2015-17 (media, gender equality, SMEs, etc.).

(Bilateral) Civil Society Platform of the Association Agreement. The Civil Society Platform was established under Art. 442(2) of the Agreement, and the initiative has created some confusion with the Moldovan National Platform in the Civil Society Forum. The Agreement states that the Platform:

shall be a forum to meet and exchange views for, and consist of, representatives of Civil Society on the side of the EU, including Members of the European Economic and Social
Committee (EESC), and representatives of civil society on the side of the Republic of Moldova (Art. 442 (2)).

Although the Agreement envisages that civil society would make up the platforms, the EESC pushed for a tripartite (unions, employers and government) structure. Civil society organisations, especially those working on human rights and democracy issues, argued for the need to go well beyond the EESC’s conception of social dialogue. Eventually the platform came to consist of three members each from civil society, trade unions and employers. The first meeting with European counterparts in the EESC took place on 10 May 2016 in Brussels. The main issues discussed at the meeting were progress in judicial reform and the situation in the banking sector. In 2017, there was only one meeting of the platform on 22 May 2017 in Chisinau that focused on DCFTA implementation. The third meeting is due to take place in Brussels in March 2018.

Eastern Partnership Think Tank Forum. The launch of this forum took place in Chişinău on 22 September 2017. Its aim is to bring together think tanks from the region in order to amplify their impact and promote the European integration through drafting policy recommendations and creating partnerships.

Advisory Group of the DCFTA. Moldovan civil society also participates in the monitoring of the DCFTA through an Advisory Group. The European Commission’s Directorate-General for Trade has adopted the general practice of consulting with civil society organisations over its free trade agreements. The Advisory Group includes NGOs and representatives of employers and trade unions. The meetings take place once a year in a Joint Civil Society Dialogue Forum to discuss issues related to sustainable development. The last similar meeting was in Chisinau in October 2017. Although the Agreement encourages an exchange of views on the implementation of the DCFTA, the technical knowledge on the part of the civil society organisations is rather low on such matters. The involvement of civil society organisations in EU-financed projects (TAIEX and twinning) for state institutions would contribute to building the capacity of civil society in particular areas (services, energy and intellectual property rights).

In December 2017, the EU launched a project to support the development of civil society in Moldova. Specifically, it targets the national consultative platforms of the civil society, involved in monitoring the implementation of the Association Agreement. Scheduled for 2018-20, the project has a budget of €688,400, which
should be spent on building the institutional capacities and skills for EU project management.

Overall, the dialogue between authorities and civil society lacks trust, and is fragmented by frequent political instability. The biggest challenges for Moldovan civil society itself are the scarcity of human resources in specific areas (such as social assistance and e-governance) and its high degree of dependence on external assistance, which raises questions about their credibility as ‘consumers of grants’. To improve the sustainability of civil society organisations, changes to the law of 1996 on non-governmental associations and the Fiscal Code were made in 2014, allowing certain fiscal concessions in relation to NGOs and religious associations. Additionally, a mechanism allowing the taxpayers to direct 2% of income taxes to any NGO registered by the Ministry of Justice became functional in 2017. In 2016-17, the government drafted a new Civil Society Development Strategy for 2018-20, aimed at increasing the participation of non-governmental sector in decision-making process and improving their financial sustainability.

However, in 2017, the environment of the civil society started to worsen, mainly amidst the opposition of various NGOs to changes in the electoral system, ultimately adopted in July 2017. In particular the Ministry of Justice attempted to change the new draft law on non-commercial organisations, elaborated together with civil society and intended to improve the conditions of the NGOs. The intended changes (3 articles) would create administrative burdens for the NGOs that access external financial assistance, and restrict the access to funds (including external financing) for the NGOs considered to have political affiliations, backed up by harsh sanctions up to liquidation of the NGOs. After protests from around 160 civil society organisations, and diplomatic interventions by external partners, the government abandoned the draft law, keeping the outdated old law in place. 2017 thus showed that civil society is vulnerable if it decides to criticise the government.
Civil society at a glance

Civil society in Moldova has been active in advocating democracy, human rights and social protection since the country’s independence, but the number of active NGOs is small and the resources are scarce.

Though there are no restrictions on the registration or activities of non-governmental organisations, the governments tried (unsuccessfully) to introduce harsh sanctions and limitations in 2017.

The EU supports Moldovan civil society organisations as drivers of democratic change in the country and as watchdogs of the government’s activities, and offers technical support to this end.

However, the structure of the EU’s cooperation with civil society needs reconsideration, since there are several overlapping platforms, which leads to duplication and increased costs.
PART IV.
LEGAL AND INSTITUTIONAL PROVISIONS
29. Dispute settlement

The Agreement has two different dispute settlement mechanisms (DSM), one that covers disputes related to the Agreement in general but excluding the DCFTA, and another more detailed one that covers the DCFTA itself.

The general dispute settlement mechanism

This mechanism is defined in quite simple terms in Arts 421 and 422 of the Agreement. It concerns disputes over the interpretation, application or implementation of the non-DCFTA parts of the Agreement. It is based on a traditional ‘diplomatic’ approach, under which the Association Council has the key role.

A party can initiate this DSM by sending a formal request to the other party and the Association Council. The parties shall then try to resolve the dispute by entering into good faith consultation within the Association Council or other relevant bodies (i.e. the Association Committee or a specific subcommittee). The Association Council can eventually settle the dispute, after a consultation period, by way of a binding decision. Because the Association Council takes decisions “by agreement”, both the EU and Georgia would need to approve the decision to resolve the dispute.

As long as the dispute is not resolved, it will be discussed at every meeting of the Association Council. If an agreement cannot be

249 See Art. 408(3) of the EU–Georgia Association Agreement.
reached in the Association Council after three months, the complaining party is allowed to take “appropriate measures”, such as the suspension of parts of the Agreement, but not of the DCFTA part (except in the special case of violations of the ‘essential elements’ of the Agreement – see further below). In the selection of appropriate measures, priority shall be given to those that least disturb the functioning of the Agreement.250

The ‘essential elements’ clause. As in other Association Agreements concluded by the EU, the EU–Georgia Agreement includes a suspension clause (in Art. 422(3)) relating to ‘essential elements’ of the Agreement (defined in Art. 2). This refers to “[r]espect for democratic principles, human rights and fundamental freedoms” as defined in several international agreements and conventions, and countering the proliferation of weapons of mass destruction.

In the event of violation of these fundamental principles, the complaining party can immediately suspend the Agreement, including rights and obligations under the DCFTA.

In practice, the EU very rarely uses these suspension clauses. If a reaction of the EU is required to address a specific human rights situation in the territory of the partner country, the EU prefers to act through diplomatic means (e.g. in the Association Council or annual summit meetings), or by using limited restrictive measures, such as arms embargoes, the freezing of assets or visa bans. Total suspension or termination of the Agreement is viewed as the ‘nuclear’ option, best not used.

The DCFTA dispute settlement mechanism

Arbitration. For disputes concerning the interpretation and application of DCFTA provisions, a separate and more sophisticated DSM is laid down in a long and detailed chapter (Arts 244-270) of the DCFTA. The mechanism is largely inspired by the WTO Dispute Settlement Understanding. If there is a dispute regarding the

250 The requirement of a three-month consultation period and the condition that the measures may not include the suspension of any DCFTA rights or obligations do not apply in the case of violation of the essential elements, referred to in Art. 2 of the Agreement (and further explained below).
interpretation and application of DCFTA provisions, the parties will first seek to come to an agreement through consultations.

If these consultations fail, the complaining party may request the establishment of an arbitration panel to rule on the dispute. The panel will be composed of three arbitrators chosen by the parties. The arbitrators must be independent, serve in their individual capacity, not take instructions from any government and comply with a Code of Conduct annexed to the Agreement. One party cannot block the establishment of an arbitration panel, because if the parties cannot agree on the composition of the panel, the panellists will be drawn by lot from a permanent list of arbitrators.251

Rulings of the arbitration panel shall be binding and each party must take the necessary measures to comply with them. If the party to whom the complaint was addressed fails to comply without offering at least temporary compensation, the other party is entitled to suspend obligations arising from the DCFTA at a level equivalent to the violation (e.g. by reinstating the MFN tariff on specific products). Again, in practice the EU very rarely relies on the DSM in its free trade agreements to resolve a trade dispute. It prefers instead to use diplomatic means (e.g. by discussing this in bilateral meetings, such as the Association Council or in unilateral statements) or, in some cases, the WTO Dispute Settlement Understanding.

This DCFTA DSM is without prejudice to possible dispute settlement under the WTO. However, the Parties are not allowed to pursue dispute settlement under both systems at the same time.

The DCFTA DSM includes several specific features. First, some elements of the DCFTA are excluded from this DCFTA DSM, such as parts of the chapter on trade remedies, and competition. Second, as regards energy disputes, the DCFTA DSM foresees quicker procedures if one party considers that dispute settlement is urgent because of an interruption of the transport of gas, oil or electricity, or a threat thereof. This procedure should allow the parties to react in a swift manner to potential energy disputes. Third, there is a procedure that obliges the arbitration panel to ask the Court of Justice of the European Union (CJEU) for a binding preliminary ruling when there

251 The Trade Committee has to establish a list of 15 experts who are willing and able to serve as arbitrators. Each of the parties has to propose five individuals and the two parties shall also select five individuals who are non-nationals of either party and one who shall act as a chairperson of the arbitration panel.
is a dispute concerning the interpretation and application of EU law (i.e. EU legislation annexed to the Agreement). This procedure aims to ensure a uniform interpretation and application of the Agreement’s annexed EU legislation without jeopardising the exclusive jurisdiction of the CJEU to interpret EU law.

**Mediation.** A separate lighter mechanism is included (in Annex XIX) for ‘mediation’ rather than ‘arbitration’, and which the parties can use to tackle market access problems, including non-tariff measures. This mechanism functions through the appointment of a single mediator who can advise and propose a non-binding solution within 60 days. The aim of the mediation is not to review the legality of a measure, but to find a quick and effective solution to market access problems without recourse to litigation. If the solution is agreed by the two parties it will be adopted as a decision of the Trade Committee. This mediation mechanism does not exclude the possibility, if a solution is not agreed, to have recourse to the dispute settlement mechanism with arbitration.

**Transparency.** In addition, the DCFTA includes a chapter on transparency (in Arts 219 to 226). Georgia has to establish “an effective and predictable regulatory environment for economic operators and efficient procedures, including for small and medium-sized enterprises, taking due account of the requirements of legal certainty and proportionality”. For example, laws, regulations, judicial decisions and administrative rulings that have an impact on the Agreement (i.e. measures of general application) must be published and communicated in a proper and timely manner. A contact point has to be established that responds to enquiries from interested persons regarding such measures of general application (proposed or in force). This chapter also includes rules on administrative and “review and appeal” procedures. According to the latter, each party shall establish or maintain impartial and independent courts, or other independent tribunals or procedures, for the purpose of the prompt review and, where warranted, correction of administrative actions in areas covered by the DCFTA.

While these legal provisions are well developed, it is positive that there has so far been no need to resort to their use.

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252 See Art. 267 of the EU–Georgia Association Agreement.
Dispute settlement, mediation and transparency at a glance

There are two basic mechanisms for dispute settlement – a ‘general’ one applicable to all parts of the Agreement except the DCFTA, and a second one applicable to the DCFTA itself.

The general mechanism relies on the two parties finding a mutually agreed solution in the Association Council, failing which the aggrieved party may take ‘appropriate measures’.

For DCFTA-related disputes there is a more elaborate system that provides two alternative tracks: either binding arbitration or softer mediation for consensual solutions.

There have been no disputes so far.
30. INSTITUTIONAL PROVISIONS

The EU–Moldova Association Agreement has largely been applied in a provisional form since 1 September 2014 and it entered fully into force on 1 July 2016. The institutional arrangements for reviewing and controlling the implementation of the Agreement are well developed.

Ratification and provisional application. After the Association Agreement was signed on 27 June 2014, several procedural steps were required before it could enter into force. Not only had the European Parliament to give its consent (which it did on 13 November 2014), the ratification of all the 28 EU member states was also required because the Association Agreement is a ‘mixed agreement’ (i.e. it includes provisions falling under the competences of EU member states). To avoid ratification delays, the EU and Moldova agreed to apply large parts of the Agreement provisionally from 1 September 2014, namely most provisions that fall within the EU’s competences, such as almost the entire DCFTA and many chapters on general principles, political dialogue, the rule of law and numerous items of sectoral cooperation. Once all the EU member states, the EU itself and Moldova ratified the Agreement, it entered into force on 1 July 2016.

Institutional framework. The Agreement establishes a comprehensive institutional framework, which will play a crucial role in the monitoring and implementation process.

The key institution is the Association Council, composed of members of the EU Council and Commission on the one hand, and members of the government of Moldova, on the other. The
Association Council must meet at least once a year at ministerial level, and is the core institution to monitor the application and implementation of the Agreement. It must also examine any other major issues in the relationship between the two parties. The Association Council has already met annually since the agreement’s (provisional) entry into force. In addition to discussing Moldova’s progress in implementing the Association Agreement and DCFTA, specific subjects of concern such as the political crisis in the country, the 2014 banking scandal and the peaceful settlement of the Transnistrian conflict are always on the agenda. Moreover the EU is pushing for reforms in those areas where Moldova is lagging behind, such as justice, the media, energy and the business environment.

The Association Council can take “binding” decisions where provided for by the Agreement. This means that the EU (and its member states) and Moldova are obliged to implement these decisions. For example, on 18 December 2015 the Association Council adopted Decision 1/2015 which applied DCFTA to the territory of Transnistria. It can also adopt non-binding recommendations. Both decisions and recommendations are taken by consensus between the parties.

The Association Council is assisted by an Association Committee, composed of representatives of the parties at senior official level, which in turn is assisted by specific subcommittees. The Association Council adopted rules of procedure for itself and the Association Committee and established subcommittees on freedom, security and justice, and on economic and sectoral cooperation. The Agreement already established a Trade Committee to address all

253 See the Joint Press Releases following the Association Council meetings between the European Union and the Republic of Moldova, 14 March 2016.
255 Decision 1/2015 of the EU-Moldova Association Council on the application of Title V of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, to the entire territory of the Republic of Moldova.
256 See Decision 1/2014 of the Association Council adopting its Rules of Procedure and those of the Association Committee.
257 See Decision 2/2014 of the Association Council adopting on the establishment of two subcommittees.
issues related to the DCFTA, complemented by several subcommittees (e.g. on SPS, customs, and trade and sustainable development).

Finally, the Agreement established a Parliamentary Association Committee, consisting of Members of the European Parliament and the parliament of Moldova, which has met already seven times, most recently in April 2018. The Agreement also envisages a Civil Society Platform, which allows civil society organisations from both sides to monitor the implementation process and prepare their recommendations to the relevant authorities both in Moldova as well as in the EU. During the last meeting the March 2018, the members of the platform discussed the state of play regarding the implementation of the Association Agreement, held a debate and adopted reports on the transboundary water management of Dniester River and on the social impact of AA/DCFTA implementation (see chapter 28).

**Dynamic approximation.** These joint institutions also play a crucial role in the process of Moldova’s (dynamic) approximation of EU legislation (i.e. the continuous updating of the list of EU directives or regulations in the many annexes to the Agreement in light of relevant legislative developments in the EU itself). As indicated in previous chapters, numerous EU acts listed in the annexes of the Agreement have already been replaced or amended in the EU; thus, the Agreement allows the Association Council to update or amend the annexes, “including to take into account the evolution of EU law”. However, because the Association Council decides by consensus, both the EU and Moldova need to agree on the updating of the annexes and several chapters of the DCFTA include specific provisions to update the annexed EU legislation. The Association Council has delegated to the Trade Committee the competence to amend or update the DCFTA annexes related to export duties, safeguard measures on passenger cars, technical barriers to trade, customs and trade facilitation, services and public procurement. The annexes with EU legislation have already been updated in the areas of:

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258 See Art. 438(4) EU–Moldova Association Agreement.
259 EU–Moldova Civil Society Platform, 3th meeting
260 See Art. 436(3) and 449 EU–Moldova Association Agreement.
261 See Decision 3/2014 of the Association Council on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration.
• SPS, Annex XXIV-B (i.e. the list of SPS legislation)\textsuperscript{262}
• TBT, Annex XVI\textsuperscript{263}
• Public Procurement, Annex XXIX\textsuperscript{264}

Moreover, the EU has already completed its internal procedures to update Annex XXVI to update the annexed Community Customs Code to the new Union Customs Code\textsuperscript{265} and is planning to update Annex XXVIII on services.\textsuperscript{266} While the Association Council has broad powers to amend the annexes, it cannot change the main body of the Agreement, since, being a Treaty, this would once again require the complex procedures of ratification according to the internal procedures of the EU and Moldova.

\textsuperscript{262} Decision No 1/2016 of the EU-Republic of Moldova Sanitary and Phytosanitary Sub-Committee of 1 June 2016 modifying Annex XXIV-B to the Association Agreement.

\textsuperscript{263} Decision No 1/2016 of the EU-Moldova Association Committee in Trade Configuration of 19 October 2016 updating Annex XVI to the Association Agreement.

\textsuperscript{264} Decision No 2/2016 of the EU-Republic of Moldova Association Committee in Trade configuration of 19 October 2016 updating Annex XXIX to the Association Agreement.

\textsuperscript{265} Council Decision (EU) 2017/1364 of 17 July 2017 on the position to be adopted on behalf of the European Union within the EU-Republic of Moldova Association Council as regards the amendment.

\textsuperscript{266} Council Decision on the position to be taken on behalf of the European Union within the Association Committee meeting in Trade configuration established by the Association Agreement between the European Union and the Republic of Moldova, of the other part concerning the update of Annexes XXVIII-A (Rules applicable to financial services), XXVIII-B (Rules applicable to telecommunication services) and XXVIII-D (Rules applicable to international maritime transport) to the Agreement (not yet adopted, Council Interinstitutional File: 2017/0338 (NLE)).
Institutional provisions at a glance

The Association Agreement has largely been provisionally applied from 1 September 2014 and it fully entered into force on 1 July 2016.

A comprehensive joint institutional framework will monitor the implementation of the Agreement and provides a platform for political dialogue.

The Association Council has a broad competence to amend the annexes of the Agreement, but not the main body of the Agreement.

These institutional arrangements have been working effectively since the Association Agreement entered into force.
These Handbooks offer a one-stop guide to the Association Agreements – the authors have painstakingly analysed the incredibly complex Agreements to deliver a compact and accessible overview to all those who need to grasp their contents. The national teams also shed light on the salience of the content for domestic reforms. Even though the Handbooks are not meant to be read like a book, the reader who does so is rewarded with a panoramic overview of the sheer scale and ambition of the AA-DCFTA. The Handbooks offer a plethora of pivotal insights into the Agreements while at the same time they throw up a number of important questions. A ‘bible.’

— Kataryna Wolczuk, Centre for Russian, European and Eurasian Studies, University of Birmingham

For Moldova, the signing of the Association Agreement and the DCFTA with the European Union in 2014 was an act of strategic geopolitical significance. Of all the EU’s eastern neighbours, Moldova is objectively the most European on several counts, including sharing a common history, language, culture and border with EU member state Romania. These provide a positive foundation for a successful Agreement, notwithstanding the major political challenges that confront contemporary Moldova.

The purpose of this Handbook is to make the complex political, economic and legal content of the Association Agreement readily understandable. This second edition, published two years into the Agreement’s implementation, adds new value, charting Moldova’s progress in putting the Agreement into effect.

Two teams of researchers from leading independent think tanks, CEPS in Brussels and the Expert-Grup in Chişinău, collaborated on this project, with the support of the Swedish International Development Agency (Sida). This Handbook is one of a trilogy examining similar Association Agreements made by the EU with Ukraine and Georgia.

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