



# AFTER THE BILLION WENT MISSING:

THE PATHOLOGICAL TURN OF EUROPEANIZATION IN THE  
REPUBLIC OF MOLDOVA

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Source: [UNDP Moldova/Lilia Surdu and Ina Zglavuta, 2014](#)



## SUMMARY

This analysis on mapping of the EU-driven reform pathologies is supported by data on one side, of the perception indices on corruption (the World Justice Project Rule of Law Index, Corruption Perception Index of Transparency International, WGI, and the analyses of the Legal Resources Center from Moldova – on how lawyers relate to the corruption in Moldova from within the Moldovan judicial system), and, on the other side by looking at the progress made in the field of rule of law, mainly the EaP Index. Along with this, the analysis will be sensitive to the changes of government and the impact they had on the judicial independence, and to the high-level corruption convictions (the actors involved and their position vis-à-vis European matters). In the end, a set of recommendations will be provided for improving the EU's approach towards reforming the justice system in Moldova, and for re-branding its role as a normative power in the region.

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## Introduction: pathologies of Europeanisation

Representing EU's emphasis on stability near its borders, the European Neighborhood Policy (ENP), launched in 2004, aims at supporting the structural changes in the neighboring countries from the East and from the South. In 2009, in a search for reform, the Eastern Partnership (EaP) was launched, as a specific area of ENP in the East, in order to deepen and strengthen the relations between EU and its six Eastern neighbor states, all post-Soviet countries with remaining degrees of ties with the Russian Federation - Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, and Ukraine. EU's regional initiative that celebrated last year 10 years has both a bilateral (Association Agreements and DCFTA) and a multilateral track. But did the EU achieve measurable impactful results when using the EaP instruments?

Building on recently developed studies on 'pathologies of Europeanization', the focus of the policy analysis will be on mapping these pathologies in the post-2014 context in the specific case of the Republic of Moldova, more precisely in the area of rule of law reforms - on judicial impartiality and politicization of the justice system. The model used for identifying the so-called 'pathologies' refers to an inadequate approach in the transfer of norms, due to: (1) valuing quantity over quality – the growing number of laws adopted per year, (2) partisan empowerment of domestic change agents (the cases of Vlad Filit and Plahotniuc are emblematic), and (3) biased assessment of the rule of law, leading to a promotion of a uniform model, which does not take into consideration the national realities. The judicial sector is very relevant in the Moldovan case, being one in which it does not show the desirable improvements, as it can be seen in the last [Progress Report of the European Commission](#) (2019). In addition, in EU's pursuit for stability and in tailoring its monitoring mechanisms, it should maintain its interest in strengthening the rule of law in Moldova, given the new post-Maia Sandu political context, understanding that it "*cannot take its poetry from the past, but only from the future*".

Why is the Republic of Moldova relevant for a deeper understanding of the EaP effects on the ground? Because 2014 was a symptomatic year for the Republic of Moldova, as for the others EaP partners, for various reasons: in the midst of the conflict in Ukraine, the Association Agreement with EU was signed, soon followed by a comprehensive Association Agenda, bringing the relations to a new level; meanwhile, \$1 billion 'disappeared' from three Moldovan banks, the equivalent of 12% of Moldova's GDP, a bank fraud in which Vlad Filit, the former Prime Minister, was a key actor. As such, Moldova's capacity to solve this is a test case for its judicial independence.

Moreover, 2020 brings to an end the "20 Deliverables for 2020", and the European Commission proposed a new policy framework for the EaP, focusing on reinforcing resilience in areas that are priorities of the von der Leyen Commission - sustainable economy, digital transformation, climate change, accountable institutions and rule of law. Remains to be seen how these priorities will convert in policies on the ground – and how/if the normative power of the EU will have a more suitable impact.



## The Contractual Terms & Politics on the Ground

**83/126.** This is the ranking position that the Republic of Moldova got in the 2019 World Justice Rule of Law Index. Coupled with the “*corruption concern*” stated in all three Association Implementation Reports on Moldova (2017, 2018, 2019), it might be the case to track down how the EU managed to transfer the rule of law norms through interventions funded mainly through the European Neighbourhood Instrument (ENI).

The EU-Moldova Association Agreement entered into force on 1<sup>st</sup> of July 2016, after being signed in September 2014 and applied provisionally. The main [goal](#) of the Agreement is to deepen both the political association and economic integration between the EU and Moldova. It also revolves around a deep

commitment regarding the share values in the field of democracy and rule of law, human rights and fundamental rights, good governance, a market economy, and sustainable development. Together with other two EaP countries – Ukraine and Georgia- that signed Association Agreements, Moldova has a “privileged” status within the Neighbourhood Policy, even though, unlike the Balkan countries, it does not have a candidate status, meaning that it is a bit more economically disadvantaged, due to more limited access to certain instruments of EU funding.

The European Union monitors and supervises the level of implementation of the Association Agreements as stated in the provisions of AAs through an institutional set-up, with four bodies per country: an association council, an association committee, a parliamentary association committee and a civil-society platform. All three countries that signed the Association Agreements – Moldova, Ukraine, and Georgia – have the same institutional design through which the relations with EU are managed:

**The association council's main role:** to supervise and monitor the application and implementation of the AA and to review the functioning of the AA in light of its objectives. The association council meets at the ministerial level, regularly, at least once a year. Additionally, the association council examines any major issues arising within the framework of the AA and any other bilateral or international issues of mutual interest

**The association committee's role** is to assist the association council in the performance of its duties. Theoretically, it should consist of civil servants from both the EU and the Republic of Moldova

**The parliamentary association committee (PAC)** consists of representatives of the European Parliament and the parliaments of Moldova. Each PAC has its own procedures

**The civil-society platform (CSP)** has been established to promote regular meetings of representatives of the civil societies from both sides of the AAs. The CSP consists of civil-society

Source: [Clingendel Report- The Europeanisation of Moldova, 2016, p 9](#)

### EU-Moldova Cooperation Timeline

- 1998: EU-Moldova Partnership and Cooperation Agreement
- 2005: Inclusion Moldova in ENP, ENP Action Plan launched
- 2005: Start EUBAM border mission
- 2009: Start Autonomous Trade Preferences
- 2009: Start EU Confidence-Building Measures programme Transnistria (in UNDP framework)
- January 2010: Start of negotiations on AA/DCFTA
- May 2010: Moldova joins Energy Community
- June 2010: Start EU-Moldova Visa Liberalisation Dialogue
- April 2014: Moldovan citizens gain visa free travelling to the EU
- June 2014: Conclusion of AA/DCFTA and provisional application
- June 2014: ENP Action Plan replaced by Association Agenda
- July 2015: EU suspends budget support after bank frauds
- July 2016: AA fully into force



representatives from the EU, including members of the European Economic and Social Committee and representatives of the civil community of Moldova. A worth mentioning center is the Institute for European Policies and Reforms, which is part of the Eastern Partnership Civil Society Forum

The Association Agreement is divided into seven titles (the most extensive one is related to DCFTA). As the latest data reveals, about 40% of the acquis provided by the Association Agreement is transposed into national law. The Eastern Partnership Riga Summit in 2015 refreshed the dialogue between the EaP countries and the EU, and set the **20 Deliverables for 2020**, with a sectorial focus on: economic development and market opportunities, strengthening institutions and good governance, connectivity, energy efficiency, environment and climate change, mobility and people-to-people contacts.

But besides being the Eastern Neighbor, it also has an Eastern neighbor of its own and internal matters to be debated.

Moldova is often in the geopolitical position of being talked about, as a site of improvement and intervention, and as an actor reduced to choosing between two cardinal points. It will be just one of those oversimplified explanations to assume that the Moldovan identity and politics is built just on aligning to one or another set of values, because as the past quarter century has shown, both pro-Russian and pro-European governments have been involved in serious scandals, which weakened the level of trust towards the political apparatus, as they failed in meeting the needed socio-economic improvements. The geopolitical argument is used to a certain extent in the national political arena, in the sense that you adhere to either one or another set of values, choosing the path of a pro-democratic reform or the one of a pro-autocratic regime (at least at the level of public discourse). It happened in 2009 with the protests contesting the parliamentary elections and the creation of the Alliance for European Integration (a pro-European coalition), which in 2014 barely managed to edge out the “skeptical opposition” – which led to an unstable political landscape, and Vlad Filit – former Prime Minister – arrested with charges related to the one billion bank fraud, being conditionally [released](#) at the end of 2019.

The last four years have been marked by Vladimir Plahotniuc's presence, who had high tendencies towards power concentration, being the leader of the pro-European Democratic Party, and one of the richest Moldovan oligarchs; he had an increased control of the Moldovan political and judicial bodies. He was recently convicted, being internationally tracked.

2016 brought again to light the (bi)polarized Moldovan society, when Igor Dodon won the presidential elections against the pro-European candidate, Maia Sandu. Igor Dodon has been suspended for four times during his mandate; he also publicly supports a close tie to Russia (having several meeting with Vladimir Putin and with the GazProm director). Maia Sandu served for 5 months as Prime Minister (June-November 2019), but lost the position under [a motion of no confidence](#), due to her government's initiative regarding the Prosecution Law

The new government, run by Ion Chicu (who formerly served in Dodon's cabinet), is supposed to be a technocratic one, but his first official meeting was with the Russian Prime Minister, Dmitrii Medvedev. Under this note, it seems that 2020 will be challenging one for the Republic of Moldova, when considering that it's also an electoral year, and the early elections still remain on the table.



## Starting as a Forerunner of EaP now we're...here – Problematization

As it was previously mentioned, the corruption discourse seems to still haunt Moldova – along with the package that it comes with: **poor rule of law reform implementation, a highly politicized judicial system, and too much of a conflict of interest.**

The beginning of the implementation period of the EaP was seen through positive lenses, the Republic of Moldova labeled as the success story of the Eastern Partnership. But the odds were not in Moldova's favor for long, as the 2014 bank fraud brought into the spotlight the internal political issues that lead to precautionary approach from EU's side. The political dialogue improved for a short period during 2016, concentrating mostly on conditionalities; no improvements were seen in 2017, the dialogue taking a slower pace, paving the way for the freezing of EU macro-financial assistance in 2018, €28 million (\$33.1 million), after the local elections in Chisinau were invalidated when the opposition's candidate, Andrei Nastase, won. At the same time, in 2018, the assistance of the EU was redirected towards the support of civil society, local authorities, and the media. And this is an interesting case, as there are some think - tanks and NGOs that benefited from the assistance and put their efforts into campaigns regarding the promotion of rule of law, mainly the Legal Resources Center from Moldova, and other think-tanks.

The EU-Moldova relations were revived with the investment of the pro-reform government in Chisinau of Maia Sandu.

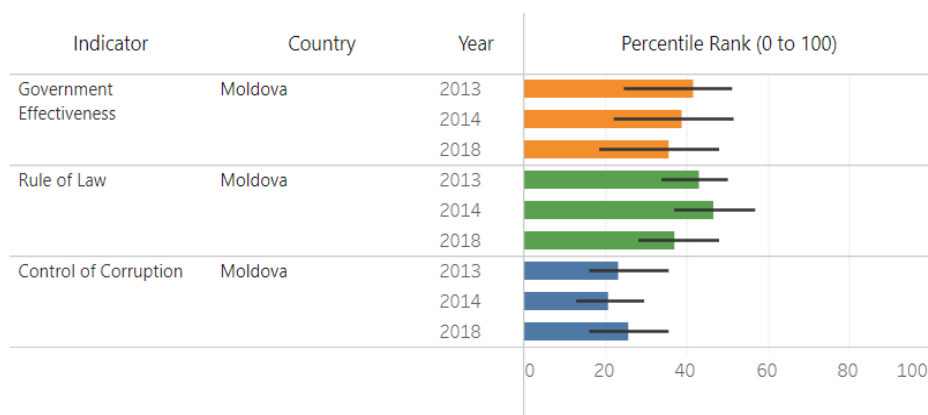
As we can see, the EU-Moldovan relations have been moving on shaking grounds in the last five years, and the main indicators regarding the rule of law in the country show a rather pessimistic turn of events. So, the question that pops out is **“Does the EU's way of promotion and transfer of rule of law norms have anything to do with the situation in Moldova?”**

## How the EU promotes the rule of law in the Republic of Moldova?

In the context of the EaP, Europeanization is seen as the capability of the EU to spread out its norms in order to stabilize and assist in the development of the target country. It operates through three mechanisms: **conditionality** (“*carrots and sticks*”), **socialization** – which implies a constant

interaction in order to align to the EU values, and **lesson-drawing** – also a type of socialization that implies the local elites at a deeper level and by looking and the EU's successful stories in other parts; the last two mechanisms can be seen in the support offered for different domestic agents – NGOs, media, politicians.

Source World Bank's Worldwide Governance Indicators  
<https://info.worldbank.org/governance/wgi/Home/Reports>





A simple understanding of **rule of law (RoL)** refers to the separation of law from politics by ensuring such a separation, mainly regarding the independence of the judicial system. There are, of course, other aspects in regards to the rule of law- the quality of the rules, for example, but I will concentrate mostly on the independence of the justice system, as this is the sector to which EU mostly refers to as an issue. The EU, through ENP/ EaP, promotes the rule of law as an objective in itself, and the reform of judiciary is an instrument in this scheme for ensuring a democratic governance and stabilization.

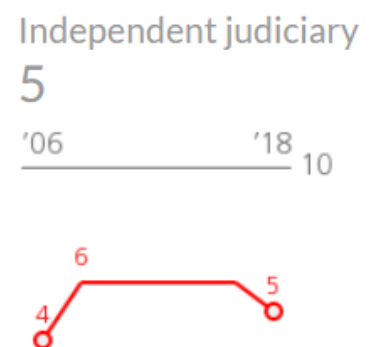
## The Facts

Source: Freedom House Nations in Transit report <https://freedomhouse.org/report/nations-transit>

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
National Democratic Governance	5.75	6.00	5.75	5.75	5.50	5.50	5.50	5.75	5.75	5.75
Electoral Process	4.00	4.25	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00
Civil Society	3.75	3.50	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25
Independent Media	5.75	5.75	5.50	5.00	5.00	5.00	5.00	5.00	5.00	5.00
Local Democratic Governance	5.75	5.75	5.75	5.75	5.75	5.75	5.75	5.50	5.50	5.50
Judicial Framework and Independence	4.50	4.75	4.50	4.50	4.50	4.75	4.75	4.75	5.00	5.00
Corruption	6.00	6.00	6.00	6.00	5.75	5.75	5.75	6.00	6.00	6.00
<b>Democracy Score</b>	<b>5.07</b>	<b>5.14</b>	<b>4.96</b>	<b>4.89</b>	<b>4.82</b>	<b>4.86</b>	<b>4.86</b>	<b>4.89</b>	<b>4.93</b>	<b>4.93</b>

! Disclaimer: the Nations in Transit Ratings (Freedom House) are varying from a scale from 1 to 7, with 1 being the most democratic, and 7 the least democratic; this goes for all the variables forming the score.

For the period 2014-2018 there aren't any improvements. The score for "*Judicial Framework and Independence*" worsened from 4.75 registered for 2014, 2015, 2016 to 5.00 in [2017](#) and [2018](#). The main public discontent gravitated around the billion dollar theft and the selective application of the law. The important cases of Ilan Shor and Veaceslav Platon, involved in the bank fraud, took place behind closed doors. The practice of promoting judges based on unclear remained an issue; in 2017, the case of Victor Micu – the chairman of the Superior Council of Magistracy was elected to the Supreme Court of Justice, holding so two functions. [The Superior Council of Magistracy](#) was in the spotlight also when, in 2017, the vacant positions in its structure have been occupied under no transparent criteria. There were six vacant positions, and eight applicants - five of them members or judges at the SCJ; no public debates were organized, even though there was public pressure.



Source: [BTI, Country Report- Moldova, independent judiciary from 2006-2018](#)

Moreover, in a [survey](#) from 2018 made by the Legal Resources Center in Moldova, there was addressed a question regarding the independence of the judges in Moldova. 81% of the



respondents (all of them lawyers) said that they don't believe that the judges in the Republic of Moldova are independent, just 17% of the respondents considered the judges to be independent. When asked to compare the 2018 situation with the one from 2011, just 28% said that the judges are more independent in 2018 than they were in 2011, with 69.7% believing that they are not.

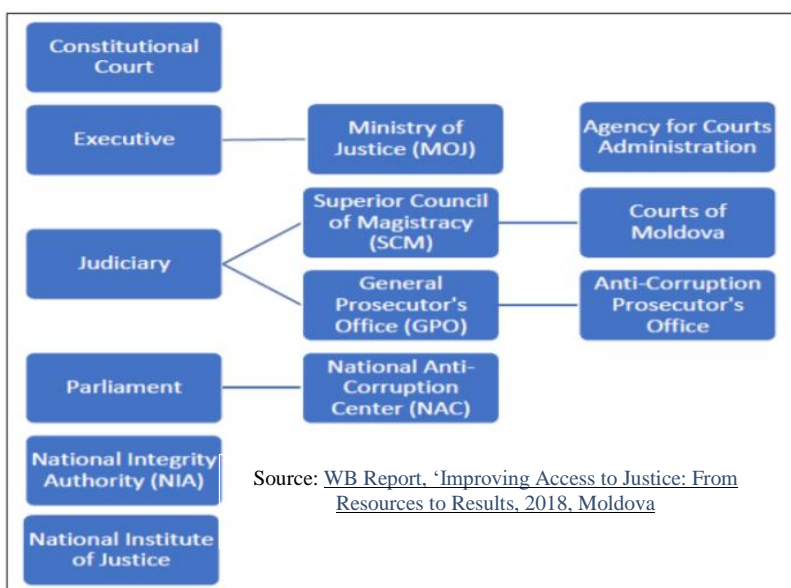
The year 2011 is not randomly picked, as this was the beginning year of the **2011-2017 Justice Sector Reform Strategy**. The latest data shows that 86% of the actions planned in the strategy have been implemented. For 2019, a reform of the justice system has been initiated in August.

Regarding the EU's role in supporting the judicial system, the main focus is directed towards **professionalizing institutions** (for example, the Prosecutor's Office or new specialized agencies), and towards a broader coordination of the whole sector. From this point of view, there was a strategic collaboration with European agencies, mostly between the **National Anti-Corruption Center (NAC)** and the **European Anti-Fraud Office (OLAF)**, which signed an administrative cooperation arrangement in 2015. Together with this, at an institutional level, the creation of the National Agency for Integrity and ARBI - the agency in charge of recovering the criminal assets have been considered a success. According to the [Shadow Report on EU-Moldova Association Agreement of Expert Grup Moldova and the Institute for Policies and Reforms \(IPRE, Moldova\)](#), the National Integrity and Anti-corruption strategy for 2017-2010 had a modest progress; at the end of 2018, 44 out of 125 actions carried out, the other being either in progress -38% or 30%, partially implemented (34 or 27%) or not implemented. And this goes, as the Progress Reports of the European Commission show, also for the pieces of legislation passed: they exist, but they are poorly implemented. This is due to several factors: on one side, many of the laws passed don't find a necessity in the national context, the lack of personal in charge of enforcing it, the overload of work for judges, and a poor knowledge regarding the change of legislation.

Moreover, public suspicions regard also the Prosecutor; the Prosecutor's Inspection remains under the subordination of the General Prosecutor. A relevant example here is the case of Mihai Poalelungi, a judge loyal to Plahotniuc, who on February 2016 was re-appointed as president of the Supreme Court of Justice – being the only one candidate for the position. Also in 2016, an unfounded investigation has been initiated against Dominica Manole, a judge who previously issued a favorable verdict to the anti-Plahotniuc opposition.

Furthermore, the no confidence veto of Maia Sandu's government was a result of her government's initiative in changing the nomination of the General Prosecutor.

In addition, in the last three years, the Anti-Corruption Prosecutor's Office handled, on average, about 750 cases annually, received from the Anti-Corruption Agency and about 350 criminal cases initiated as a result of the directly received notifications. Important cases



Source: WB Report, 'Improving Access to Justice: From Resources to Results, 2018, Moldova'





include criminal prosecution on certain episodes of "Russian laundromat" and the "bank fraud"; money laundering cases, including the use of crypto-currency; issuance of manifestly illegal judgments involving five judges, a prosecutor, a lawyer and a doctor; as well as other cases involving persons with public functions. More information, which became public at the end of August 2019, confirms the existence of criminal cases on behalf of former politicians with a controversial reputation, such as Vladimir Plahotniuc. Two parliamentary commissions of inquiry initiated in June 2019 the investigation of the "bank fraud" and the cases of privatization and/or concession of several public assets.

### **So what's in for the new Commission? Conclusion and Recommendations**

As it was mentioned in the previously sections of the analysis, there are several ways through which the EU promotes the rule of law in Moldova: based on the conditionality mechanism, it freezes the macro-financial due to poor enforcement of rule of law reforms; directs its aid for creating specific agencies in rule of law matters or by professionalizing the judicial personnel or institutions; it supports (through public statements but not only) the local agents of change – being them good or bad examples, in the case of politicians or, more recently, towards strengthening the civil society sector in the area. The last aspect is important when considering the value-attachment that is given to Europeanization, one that is present in the Moldovan society.

Also, within EU the rule of law was the apple of discord, with high level politicians from Poland, Hungary, and Austria, challenging the *aquis communautaire*. So, the question is, how can you promote something that within your structure causes so much debate? During her promotional election tour, von der Leyen has been criticized for her lack of stance on the rule of law, stating that *"We all have to learn that achieving the full rule of law is always what we are aiming at, but nobody is perfect"*.

But this just one facet of a more complex issue. The new Commissioner for Neighbourhood and Enlargement, Olivier Varhelyi maintains the reform direction, and has the responsibility for reviewing the priorities of the Association Agreements. In the rule of law area, some **recommendations** can be:

- Continuing to support the civil society actors –NGOs, think-tanks, media, the watch dogs, as it was started in 2018
- Creating a monitoring mechanism for the anti-corruption agencies, as they sometimes tend to abuse their powers
- Creating a "regional meeting fora" with Romania and Bulgaria, as a meeting space for sharing good and bad practices – useful both in the rule of law field, and for better cooperation in the Eastern "flank"

### **Find out more**

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