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EU Accession Prospects of Ukraine, Moldova and Georgia - first responses to the conditions set by the European Commission

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Summary. In the week following Russia's invasion of Ukraine on 24 February 2022 all three East European states associated with the EU – Ukraine, Moldova and Georgia – submitted applications to accede to the EU. In response the European Commission published in June 'Opinions', setting out in each case conditions that should be met for these applications to advance on the path towards membership. This paper reports on the first half year of the work undertaken by the three states to meet these conditions. All three states have set in motion actions to meet the conditions, which largely concern fundamental political and rule of law criteria for membership. In all cases there is much work in progress underway, with some conditions already met, and others at an earlier stage. For both Ukraine and Moldova it is possible to see large fulfillment of the conditions in the course of 2023. For Georgia there are still some more basic political obstacles to be overcome. The Commission is due to publish in October 2023 comprehensive evaluations of the preparedness of each of the three states, and in the cases that the conditions are largely met, the EU should as a next step open up the formal accession negotiation process. It is also recommended that by that time the EU will have reformed the accession process itself, notably by switching to qualified majority voting on the details of the procedures, and better still adopting a staged accession process that would assure structured incentives for overcoming the blockages in the present system as seen in the Western Balkans.



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Table of Contents

OVERVIEW	3
The conditions.....	3
Preliminary assessment	3
Next steps.....	5
UKRAINE	7
Summary.....	7
Seven conditions.....	8
MOLDOVA	19
Summary.....	19
Nine conditions	21
GEORGIA	31
Summary.....	31
Twelve conditions	33

OVERVIEW

This paper reports on the first responses of Ukraine, Moldova and Georgia to the 'conditions' (or 'steps', or 'priorities', or 'recommendations') set by the European Commission (EC) for each of the three states to advance on the path towards membership of the European Union (EU).

The conditions

The conditions were set in the Opinions that the EC published on 17 June 2022 in response to the membership applications that the three states submitted in the week following the Russian invasion of Ukraine on 24 February.

The Opinions on Ukraine and Moldova recommended the granting of candidate states to these two states 'on the understanding' that the enumerated conditions would be met. The Opinion on Georgia recommended that 'candidate' status would be granted once the conditions are met.

The European Council at summit level on 23-24 June confirmed the EC's recommendations and granted candidate status to Ukraine and Moldova, while expressing its readiness to grant this also to Georgia once the conditions have been met.

The conditions concern politically fundamental aspects of the accession process, with a common focus on the rule of law, and between seven and twelve conditions in all, as summarized below in Table 1. In the lists of conditions a number of significant points emerge. Only Georgia sees conditions relating to problems in the functioning the state's democratic institutions. By contrast the last parliamentary and presidential elections in Ukraine and Moldova have been generally assessed to have been free and fair, and so no specific steps were required, whereas for Georgia there are major outstanding political challenges. All three sets of conditions, however, see focus on the rule of law, anti-corruption and de-oligarchisation.

This choice to restrict the conditions to mainly political fundamentals, to the exclusion of economic issues, is in line with current EU practice to make of these political priorities a prerequisite first step in accession process. However all three states have already made substantial progress in many of the economic chapters, given their years of experience in implementing the Deep and Comprehensive Free Trade Areas (DCFTAs) in their Association Agreement with the EU.

Preliminary assessment

In the six months since the conditions were published all three states have responded with urgency, and with various procedures followed by the governments and parliaments, aiming to satisfy the conditions rapidly. To summarise the state of play a color coding is adopted in Table 1: green where substantial progress is already registered and the condition is almost fully implemented, yellow where there is work in progress, and orange where serious issues remain to be addressed. All three states see several headings in the green, yellow and orange categories, thus a mix of achievement already and work in progress.

Ukraine and **Moldova** see only one instance of orange assessments, and so the outlook can be for continuing progress for fulfillment the conditions. As already noted, the workings of the political institutions have implicitly been assessed to be of sufficient quality to dispense with the need to specify further conditions on this account. In both cases the priority concern is over the rule of law, where progress is ongoing, but needs to be consolidated.

Table 1: Assessment of conditions set by the EC for advancing towards accession to the EU

	Ukraine	Moldova	Georgia
Political polarisation			1 Measures, but insufficient
State institutions			2 Major progress, but more needed
Judicial reform (a)	1 Progress, further changes needed	1 Work in progress	3 Measures, but insufficient
Judicial reform (b)	2 Work in progress	2 Work in progress; certain deviations	
Anti-corruption	3 Work in progress	3 Work in progress	4 Measures, but more is needed
Money laundering	4 Work in progress		
De-oligarisation	5 Work in progress	4 Work in progress	5 Superficial measures, greatly insufficient
Organised crime		5 Work in progress	6 Solid basis for strong progress
Media environment	6 Major progress		7 Measures taken but greatly insufficient
Human rights (a)	7 Major progress	9 No major problems	8 Measures but insufficient
Human rights, ECHR (b)			11 New legislation addresses priority
Gender equality			9 Useful progress
Civil society		8 Work in progress	10 Positive participation, with shortcomings
Public defender			12 Major progress with setting new rules, but election delayed.
Public administration		6 Renewed attention	
Public procurement		7 Useful steps	

 - Condition is mostly implemented

 - Progress is going on

 - Actions taken, but serious issues remain to be addressed

For **Georgia** there are four orange ratings, concerning political polarization, judicial reform, de-oligarchisation and the media, where the progress is lacking the most. This is directly reflected in political polarization, which has been a challenge for Georgia over the recent years. Georgia scores positive results on a number of issues, mostly at the level of passing new laws or amending existing legislation. But the substantial progress is missing in the areas where strong political will is required. For key political issues the failure to address de-oligarchisation is also hindering the taking of adequate measures on other political and rule of law accounts.

Next steps

On how satisfaction of these conditions may lead to next steps, the European Council has limited itself to saying that 'The Council will decide on further steps once all these conditions are met'.

This is a disappointingly empty formulation, although for Ukraine it is understood that a preliminary assessment of the conditions will be undertaken in the first half of 2023. It might be expected that in the case of **Ukraine** and **Moldova** satisfaction of the conditions would lead to the formal opening of accession negotiations, customarily marked by a first inter-governmental conference and thence the process of 'screening' and 'opening' of the many 'chapters' and 'clusters' of the accession process. A plausible scenario would be for this to follow on from the comprehensive reports due from the EC in October 2023 on all aspects of the accession process, covering all clusters and chapters.

In the case of **Georgia**, it is stated in the Opinion of the EC that satisfaction of the conditions would lead to the granting of candidate status, thus one step behind the other two.

While waiting for next steps to be clarified by the EU, it is relevant to note that there is an ongoing debate in the EU institutions and among think tank circles about the need to reform the existing enlargement methodology, for which there are ideas in circulation¹. The existing system of subjecting the opening and closing of all 35 chapters to the unanimous agreement of all member states is heavily criticized for its openness to the abuse use of veto powers by individual member states². One simple but important reform would be for the Council to agree to switch to qualified majority voting for the detailed decisions on the opening and closing of clusters and chapters. A more ambitious and structured reform would be to introduce a Staged Accession process, with progressive inclusion in the policies, funding and institutions of the EU, conditional on ratings of performance of the candidate state in relation to the clusters and chapters³.

¹ Emerson, M. and S. Blockmans, *'Next steps for EU Enlargement – Forwards or backwards?'*, CEPS (Brussels) and SCEEUS (Stockholm), 23 November 2022.

² The most egregious instances have been the successive blocking of the opening of chapters for North Macedonia, first by Greece until the word North was added to its name, and then by Bulgaria until June 2022, in both cases for reasons unrelated to the competences of the EU.

³ Op.cit.

To give a real renewed momentum to the enlargement process, such reforms should be introduced by the end of 2023 coinciding with decisions on next steps for Ukraine, Moldova and Georgia in the light of their fulfillment of the conditions. Given also the many market opening and regulatory steps taken already by these three states under their DCFTAs with the EU, once accession negotiations are begun it will be observed that these states have already passed the conventional benchmarks for the opening of many of these chapters, thus ahead in this respect of most Western Balkan states. The procedures should be adapted to recognize this.

UKRAINE

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Summary

Ukraine's authorities have been very ambitious regarding the seven EU conditions, aiming to implement them already in 2022. However, Ukraine has not met this self-imposed deadline in full.

The institutions responsible for the overall process of Ukraine's EU integration have been coordinating this task, led by Olha Stefanishyna, Vice Prime Minister of European and Euro-Atlantic Integration. The necessary legislation was marked as "European integration" and prioritised in the Verkhovna Rada.

Ukraine's plans and progress in implementation of the conditions have also been closely communicated and coordinated with the European Commission at regular working meetings. Ukraine's action plan for implementing the seven recommendations was shared with the Commission.

The seven conditions for Ukraine can be tentatively split into political and technical categories. The political category includes conditions related to judicial reforms, the fight against corruption and anti-oligarchic law, where decisions require strong political will to withstand vested interests. The technical category covers conditions requiring implementation of EU and international best practices in Ukrainian norms.

In general, technical conditions have been implemented more thoroughly, with fewer omissions or shortcomings. On the other hand, progress over political recommendations has been accompanied by heated debates and concerns regarding the possible derailing of potential reforms.

Still, despite hurdles and risks, progress has been registered for all seven conditions. Notably, the Council of the EU has also recognised this in the conclusions of its session on December 13, 2022. This also allowed the Speaker of Ukraine's Parliament to claim that the main legislative body has fulfilled its part of the recommendations of the EC.

The EC will make a preliminary assessment of Ukraine's progress in implementing the seven conditions in spring 2023, thereby providing a benchmarking for further steps and reforms still needed.

⁴ Institute for Economic Research and Policy Consulting (IER), Kyiv.

Table 2: Summary of ratings for Ukraine's response to the Commission's conditions.

1 Constitutional Court	Legislation adopted, but the EU requests further changes
2. Justice system reform	Steady progress, outcome still uncertain
3. Anti-corruption	One component done (SAPO head), steady progress in others
4 Anti-money laundering	Progress with FATF standards; less so on law enforcement strategy
5. De-oligarchisation	Legislation being implemented, Venice Comm. Opinion awaited
6. Media environment	Major legislative progress
7. National minorities	Major legislative progress, implementation untested
Overall	Major steps taken, implementation work in progress

Seven conditions

1. Reform of the Constitutional Court. *Enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations.*

Specificity, significance. The recommendation is specific and highly significant. In October 2020, the Constitutional Court of Ukraine (CCU) had triggered a crisis that could have seriously undermined the major anti-corruption reforms, particularly the functioning of the public register of declarations of public officials and preservation of their potential liability for violating respective procedures. In response to CCU's actions, President Zelensky suspended the CCU Head Oleksandr Tupytskyi and later unconstitutionally⁵ dismissed him and another judge from their positions. In December 2020, to mitigate the emerging crisis, the Venice Commission, upon the request of Zelensky, issued an urgent opinion on the reform of the CCU⁶ calling for the establishment of a real competitive selection procedure for its judges. However, by the time Ukraine received candidate status in June 2022,

⁵ See <https://en.dejure.foundation/tpost/450lfedas1-president-zelenskys-decree-to-repeal-the>.

⁶ European Commission for Democracy through Law, "Ukraine: urgent opinion on the reform of the Constitutional Court", December 11, 2020, <https://www.coe.int/en/web/portal/-/constitutional-court-of-ukraine-needs-reform-says-venice-commission>.

Ukraine's political leadership not yet taken the necessary steps to implement the Venice Commission's recommendations of December 2020.⁷

Feasibility, prospects for implementation. On December 13, 2022, following the priorities put by the EC and conclusions of the European Council, the Rada adopted in the second reading the draft law № 7662 "On Amendments to Some Legislative Acts of Ukraine on Improving the Procedure for Selecting Candidates for the Position of a Judge of the Constitutional Court of Ukraine on a Competitive Basis".⁸ The approval of the final text took place after the Venice Commission issued its opinion on the draft law on November 23, pending since September.

The adopted law does not differ significantly from the initial draft elaborated by the Rada's Committee on Legal Policy. The law envisages the establishment of the Advisory Group of Experts (AGE) that would examine candidates for the Constitutional Court and consist of six members: one delegated by the Parliament, one by the President, one by the Congress of Judges, one by the Venice Commission, and two members delegated by international organisations that assist in Ukraine in reforms of the rule of law.

The Rada strengthened the text by making AGE's decisions binding for the three appointing bodies (the Parliament, the President, and the Congress of Judges), who will not be able to designate candidates who receive a negative assessment of the AGE. At the same time, by preserving the parity between international and national components of AGE, the law does not grant the former a decisive voice in vetting the candidates as it was advocated by CSOs and supported by the G7 Ambassador Group.⁹ Moreover, contrary to the Venice Commission's recommendations, it does not envisage a seventh member in the AGE whom international partners would delegate to avoid possible deadlock during the selection process. Also, the calls from civil society to include its representative in AGE remained unaddressed.¹⁰

Thus, by granting the three appointing bodies a "blocking stake" within the AGE, the adopted law may not eradicate the problem of political dependency on the CCU judges but could further facilitate the practice of political appointments. The guarantee of non-partisan appointment of CCU judges became even more critical in light of the recent resignation of three more CCU judges. Since the latter were appointed under the Parliamentary quota, it paves the way for the presidential "Servant of the People" faction to nominate for vacant

⁷ In particular, since the 2020 Venice Commission's opinion, four CCU judges were appointed without transparent competition procedure. Moreover, the fourth appointment came after the EC issued its decision calling for implementation of the VC's recommendations on a selection to the CCU.

⁸ The Law № 7662, signed by the Head of the Verkhovna Rada, <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1582306>.

⁹ G7 Ambassador Group, <https://twitter.com/G7AmbReformUA/status/1601283579958681600>, posted on December 9, 2022.

¹⁰ European Commission for Democracy through Law, "Ukraine: urgent opinion on the Draft Law "On amending some legislative acts of Ukraine regarding improving procedure for selecting candidate judges of the Constitutional Court of Ukraine on a competitive basis", November, 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2022\)046-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)046-e).

positions loyal candidates and further cement the influence of the current political leadership over the Constitutional Court.¹¹

Following harsh criticism coming from the civil society¹², the Venice Commission (this time by its Plenary Session) issued another opinion on the adopted law where it explicitly recommends to complement the AGE with an additional seventh member from among international experts.¹³ However, contrary to the Venice Commission's opinion, the President signed the law shortly after it was approved by the Rada. At the same time, the spokespersons of the EC and EEAS expressed expectation that the Ukrainian authorities would fully align its legislation with Venice Commission's recommendations.¹⁴ Initially, further changes in the newly adopted law seemed uncertain, as the Government has been stressing that the new legislation requires effective implementation rather than another modification. However, after the Venice Commission refused to delegate its representatives to the AGE¹⁵ and in the light of the February 3 Ukraine-EU Summit, Prime-minister Denys Shmyhal signaled that the work on the necessary amendments is ongoing.

Rating: Key legislation adopted, but further changes are requested by the EU and civil society.

2. High Council of Justice and High Qualification Commission of Judges of Ukraine. *Finalise the integrity vetting of the candidates for the High Council of Justice members by the Ethics Council and the selection of candidates to establish the High Qualification Commission of Judges of Ukraine;*

Specificity, significance. The recommendation is specific and highly significant. After the failure of the post-Euromaidan reform of the judiciary to achieve the expected results, the guaranteeing of the integrity of judges and renewal of judicial governance bodies became even more critical for the country's democratic development. After an unsuccessful attempt to reboot the system amid the resistance of the judicial circles in 2019, two draft laws aimed to unblock the reform were adopted in the Rada by the President's initiative in

¹¹ As of December 2022, the current President and the Parliament appointed 4 judges to CCU while 5 more vacant positions should be filled by the Parliament and the Congress of Judges in the near future. The CCU is comprised of 18 judges.

¹² DeJure Foundation, "What is wrong with the Venice Commission's urgent opinion CDL-PI(2022)046 on the draft law №7662 on the competitive selection procedure for the candidates to the Constitutional Court of Ukraine", December 7, 2022, <http://en.dejure.foundation/tpost/nfhzui2711-what-is-wrong-with-the-venice-commission>.

¹³ European Commission for Democracy through Law, "Ukraine: Opinion on the Draft Law "On Amending some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine in a Competitive Basis", December 17-18, 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)054-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)054-e).

¹⁴ See the EEAS spokesperson's statement on HCJ and CCU from January 13, 2023: https://www.eeas.europa.eu/eeas/ukraine-statement-spokesperson-appointments-high-council-justice-members-and-reform_en?fbclid=IwAR3qWVvKWRW8rRhACBbt1EaVbsNFVQ0kMxAKfKeazZefhkC25JtXCd3Ndws.

¹⁵ European Commission for Democracy through Law, "Follow-up to the Opinion CDL-AD (2022)054", January 25, 2023, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI%282023%29002-e>.

July 2021. The recommendations of the European Commission specifically address the implementation of these legislative acts.

One of the laws (Nº 1635-IX) envisages obligatory integrity checks of the current members and candidates for the High Council of Justice (HCJ) to be conducted by the Ethics Council, which consists of three representatives of the judicial sphere and three international experts. Notably, the latter have a decisive vote in case of parity. After the newly created Ethics Council became operational in December 2021, 10 members of the HCJ voluntarily resigned, thus effectively blocking the work of the whole institution. Due to the war, the Ethics Council resumed its work only in May by checking the remaining four members of the HCJ and vetoing one of them as a result. That brought the number of vacant seats at the HCJ to 17 out of 21. In parallel, the Ethics Council continued to interview the candidates for the HCJ.

The second law (Nº 1629-IX) envisages a special Competition Commission to run the competition process for members of the High Qualification Commission of Judges (HQCJ), the body responsible for the selection of judges. Like the Ethics Council, the Competition Commission consists of three members delegated by the judicial branch (the Council of Judges) and three international members with a decisive vote. The body started working in January 2022 and initiated the application process for the candidates for the HQCJ in February, resuming it in July.

Feasibility, prospects for implementation. Since the EC published its priorities, the vetting of the candidates for the HCJ has gained momentum. In August, three new members of HCJ were appointed: two under the Verkhovna Rada's quota and one by the Congress of Legal Scholars, thus bringing the number of active members of the body to 7.¹⁶ At the same time, the watchdogs of judicial reforms have questioned the integrity of the candidate delegated by legal scholars, although he was appointed under the new procedure. Another issue that drew criticism from civil society was the suspension by the Ethics Council of online broadcasting of interviews with candidates to guarantee their security during wartime. In this respect, civil society representatives had questions about the career paths and fortunes of 12 out of 16 candidates recommended by the Ethics Council for appointment by the Congress of Judges. However, it should be noted that the most controversial candidates were eliminated from the competition.

What is essential, the HCJ has finally become operational by reaching 15 active members when the Congress of Judges appointed eight out of sixteen recommended candidates in mid-January 2023. Although judicial reform watchdogs have questioned the integrity of the majority of the selected candidates despite their approval by the Ethics Council,¹⁷ Ukraine has avoided the worst-case scenario when the judicial reform is blocked completely. Meanwhile, the Ethics Council conducts interviews with candidates under the prosecutors' quota, while the selection of candidates under quotas of legal scientists and the President

¹⁶ The President of Supreme Court of Ukraine is a member of HCJ *ex officio*.

¹⁷ CSOs question the decision of the Ethics Council to close online broadcasts of all interviews of candidates to HCJ due to security reasons.

is expected soon. At the same time, the Council of Advocates lags behind schedule in announcing its own Congress to appoint candidates to the HCJ.

Regarding the HQCJ, the Competition Commission admitted 301 out of 302 candidates to the competition (almost 19 candidates per seat). By the end of December 2022, after checking all the contenders according to integrity and professional competence criteria, the Commission allowed 64 candidates to enter the interview stage that started immediately in an open live-stream mode in mid-January 2023.

While the selection process for both bodies resumed during wartime, the HCJ's relaunch and its integrity are decisive for the success of HQCJ reform since the HCJ appoints the HQCJ members.

Rating: Legislative and institutional progress, but implementation still to be tested.

3. Anti-corruption. *Further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine.*

Specificity & significance. Although the fight against corruption has been the priority for public policy and many necessary reforms have been implemented, Ukraine has not achieved a qualitative breakthrough in terms of results. Nonetheless, starting in 2020, the newly established anti-corruption institutions faced mounting pressures to progress.

In August 2020, the Specialised Anti-Corruption Prosecution Office (SAPO) Head resigned as his term in office ended. Political problems with the selection commission's formation delayed the selection process for about a year, while the appointment of the winner had been obstructed until very recently. The incumbency of the NABU Head also ended - in April 2022. However, the preparations for selecting a new Head have only started recently (see the discussion below).

In September 2020, the Constitutional Court of Ukraine (CCU) declared selected provisions of the law establishing the National Anti-Corruption Bureau (NABU) and the procedure of the appointment of its Head unconstitutional.¹⁸ This crisis was resolved only a year later, in October 2021. Moreover, in October 2020, the CCU ruled unconstitutional the criminal liability for false information in e-declarations.¹⁹ Furthermore, it removed the authority of the National Agency for Prevention of Corruption (NAPC) to collect, stock and

¹⁸ See <https://zakon.rada.gov.ua/laws/show/v011p710-20#n2>.

¹⁹ See [https://3dcftas.eu/op-eds/the-ruling-of-the-\(un\)constitutional-court-of-ukraine-is-there-a-way-out](https://3dcftas.eu/op-eds/the-ruling-of-the-(un)constitutional-court-of-ukraine-is-there-a-way-out).

release e-declarations. The Parliament restored the NAPC's authority²⁰ in December 2020, but the sanction for false declarations was considerably softened, and the previous investigations were closed.

There has also been pressure on reforms aiming to reduce opportunities for corrupt deeds. These issues have not been addressed in the seven recommendations and thus are not analysed here.

Feasibility, prospects for implementation. The European Commission's recommendation has become the trigger for changes. On July 28, 2022, Oleksandr Klymenko, the former NABU detective, was appointed as the SAPO Head ²¹, with more than a half-year delay. Notably, since the new SAPO Head assumed office, one can observe the progress made by the SAPO in cooperation with the NABU on the number of high-profile cases and on revitalising some old ones (like the "Rotterdam plus" case).

At the same time, to ensure the sustainability of anti-corruption reforms and the effectiveness of the anti-corruption infrastructure, the due selection process for the NABU leadership has still to take place. After a half-year delay since its establishment, the Competition Commission for selecting the director of the NABU held its first meeting only on August 28, 2022.

The Commission consists of six qualified members, three of which are internationals. As of mid-December, the Commission has launched the application process for interested candidates and has approved questions for tests on the knowledge of legislation and identified preliminary dates for examination for candidates. At the same time, the Parliament has introduced the discriminatory requirement for the NABU Head by eliminating from competition those lawyers who went abroad after the start of Russia's full-scale invasion and stayed there for personal reasons for more than 21 days. That cut out women lawyers who had the full right to be abroad. Nevertheless, one could hope that this norm will not narrow down substantially the number of aspiring candidates. In the end, 74 candidates were admitted into the competition in December 2022. As of mid-January 2023, 22 of those continued to compete for the office after the first two rounds of examination. The appointment of the new NABU Head should take place in early 2023.

However, it is impossible to strengthen the fight against corruption without further crucial steps, such as enforcing the law regarding the NABU's right to intercept telecom networks independently without the involvement of the Security Service of Ukraine (SSU), and reforming the SSU by depriving it of unusual functions in the anti-corruption and economic spheres, restoring regular checks of officials' e-declarations by the NAPC etc. Also, the government should not further postpone the approval of the State Anti-Corruption Program for 2023-2025 drafted by the NAPC.

Rating: One key appointment made, for the rest work in progress.

²⁰ See <https://zakon.rada.gov.ua/laws/show/1074-20#Text>.

²¹ See <https://www.ukrinform.net/rubric-polytics/3538588-oleksandr-klymenko-appointed-as-head-of-sapo.html/>.

4. Anti-money laundering and law enforcement sector reform. *Ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF); adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment.*

Specificity & significance. The FATF has formulated as many as forty recommendations in general, but the required degree of compliance for Ukraine has not been defined. According to Ukraine's Second Enhanced Follow-up Report & Technical Compliance Re-Rating, issued by FATF in June 2020,²² Ukraine was fully compliant with 11 recommendations, largely with 22 recommendations and partly with six. This is not much different from EU member states. For instance, Poland is fully compliant with two FATF recommendations, largely with 21 and partly with 17. German compliance is better but not 100%: 17 compliant, 18 largely compliant, and five partly complaint. Subsequently the EC provided clarifications regarding the expected changes, specifying six priority areas, including measures on terrorism prevention, beneficiary ownership, etc.²³

The recommended adoption of a strategic plan for improved law enforcement is only a step on the road to reforms, albeit crucial one, as despite significant efforts since 2014, law enforcement remains mediocre. In December 2021, only about 30% of the population trusted the national police and 29% the Security Service.²⁴

Feasibility, prospects for implementation. The Verkhovna Rada adopted three laws implementing the FATF standards, albeit not yet covering all six recommended.²⁵ As regards a strategic plan the Government has created the Interdepartmental Working Group development of an overarching plan for reforming the entire law enforcement sector,²⁶ though there are no results yet.

Rating: Useful progress over FATF standards; no strategic plan yet for reforms of law enforcement.

²² See: <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/Moneyval-2nd-Follow-Up-Report-Ukraine-2020.pdf>

²³ R6: Targeted financial sanctions related to terrorism and terrorist financing; R7: Targeted financial sanctions related to proliferation; R15: New technologies; R25: Transparency and beneficial ownership of legal arrangements; R28: Regulation and supervision of designated non-financial businesses and professions (DNFBPs); R33: Statistics

²⁴ See: <https://www.kiis.com.ua/?lang=ukr&cat=reports&id=1093&page=1>.

²⁵ On improving the regulation of ultimate beneficial ownership and the ownership structure of legal entities (<https://zakon.rada.gov.ua/laws/show/2571-IX#Text>). On the ratification of the Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism (<https://zakon.rada.gov.ua/laws/show/2589-20#Text>). On the adaptation of Ukrainian legislation to selected FATF standards and the requirements of EU Directive 2018/843 (<https://zakon.rada.gov.ua/laws/show/2736-IX#Text>).

²⁶ See: <https://www.qp.gov.ua/ua/posts/v-ofisi-genprokurora-obgovorili-pidgotovku-strategicnogo-planu-reformuvannya-organiv-pravoporyadku-yak-castini-sektoru-bezpeki-i-oboroni-ukrayini>

5. Anti-oligarchic law. *Implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation.*

Specificity & significance. Strong oligarchic influences have been among the critical threats to both democracy and the stable and inclusive economic development of Ukraine.

The current law defines an oligarch as a person meeting at least three out of four criteria: (i) ownership of, or significant influence over, media outlets; (ii) control over a business monopoly; (iii) participation in political life; and (iv) a net worth of UAH 2.4 bn or more. These criteria are not entirely specific and thus open to interpretation. The law restricts oligarchs' media ownership, and participation in political life and privatisation.

A main concern is that the National Security and Defence Council (NSDC), the authority headed and personally appointed by the President, is responsible for deciding who is an oligarch and, thus, who faces restrictions.

The EC seems to attempt to mitigate the threat that the anti-oligarchic law is being used as a political instrument against opponents by asking for legally sound implementation and referring to a forthcoming Venice Commission opinion.

Feasibility, prospects for implementation. The law was adopted in November 2021 and entered into force in May 2022. In late June 2022, the NSDC adopted the regulation on the register of oligarchs, the procedure for its formation and maintenance. In July, Oleksiy Danilov, the NSDC Secretary, reported that the register had been ready and that 86 persons had been scrutinised using the anti-oligarch law criteria.²⁷ Since then, no public announcements regarding the results of these checks have been made. In any case, implementation of the law has progressed.

However, the Venice Commission's opinion is crucial for assuring a correct reform. As of end-2022, the opinion has not been released yet. This postpones the recommendation's implementation until 2023.

Rating: Progress in the anti-oligarchic law implementation, Venice Commission's opinion still pending.

²⁷ See: <https://www.epravda.com.ua/news/2022/07/20/689398/>.

6. Audio-visual media services directive (AVMSD). *Tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers the independent media regulator.*

Specificity & significance. This condition asks for legal alignment with the EU's Audio-visual Media Services Directive (AVMSD).²⁸ Independent media are the cornerstone of democracy.

Most of the country's outlets have been affiliated with high-profile Ukrainians who tend to use them for political influence.²⁹ At the same time, some smaller media stakeholders adhering to high quality and journalism standards aim to counterbalance the stakes.

Since 2014, there have been ongoing efforts to reform the sector. The law on public TV and radio broadcasting was adopted in 2014, and in 2017, and the public broadcaster Suspilne became operational. The transparency of media ownership increased while state-run media organisations were privatised. Following the adoption of the anti-oligarch law, Petro Poroshenko sold his TV channels to current or former employees in late 2021, while Media Group Ukraine, owned by Rinat Akhmetov, ceased operations in August 2022.³⁰

The war has resulted in further changes in the media market. In mid-March 2022, the National Security and Defence Council decided to merge all nationwide channels into a single government-run broadcasting marathon (#UAразом). Although security considerations in Ukraine's information policy are undoubtedly crucial, there are questions about the political dimension of these changes. Opposition TV channels "Espresso", "Priamyi", and "Channel 5" were excluded from the single marathon in April³¹ and not brought back despite their appeals. However, the channel "We – Ukraine", created by former employees of TV channels recently closed by Rinat Akhmetov, swiftly got all permits and joined the single broadcasting in October.

Feasibility, prospects for implementation. Ukraine has progressed considerably in implementing this condition. On December 13, 2022, the Verkhovna Rada voted the new law on media in the second and final reading, and the President signed it several weeks later.³² Although the draft law caused concerns, particularly related to the protection of the Ukrainian media space and preservation of sanctions against the aggressor, in its final reading the text was supported by all vital parliamentary forces.

²⁸ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0013:EN:NOT>.

²⁹ Korbut, A. 'Strengthening public interest in Ukraine's media sector,' Chatham House, April 23, 2021, <https://www.chathamhouse.org/2021/04/strengthening-public-interest-ukraines-media-sector/summary>.

³⁰ See: <https://iwpr.net/global-voices/why-ukraines-steel-tycoon-closed-his-media-empire>.

³¹ See: <https://global.espresso.tv/shutdown-of-espresso-pramyi-and-channel-5-teams-responded-to-danilovs-criticism-and-are-ready-to-participate-in-united-ukrainian-marathon>.

³² See <https://zakon.rada.gov.ua/laws/show/2849-IX#Text>.

The new law marks systemic changes in the media market regulation³³ by changing the licensing system, introducing co-regulation, and strengthening the independent regulator — the National Council of Ukraine on Television and Radio Broadcasting.

However, the law on media does not cover the entire AVMSD. For instance, TV advertisements are regulated by another legal act in Ukraine. Thus, further efforts to ensure complete alignment are expected.

Rating: Major progress.

7. National minorities. *Finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission, and adopt immediate and effective implementation mechanisms.*

Specificity & significance. The recommendation has two components with different degrees of specificity. The component related to legal alignment is quite specific. It requires adopting a new legal framework aligned with the already-issued Venice Commission recommendations. The second component is less clear as it is hard to measure whether the adopted implementation mechanisms are sufficiently effective as no criteria are defined.

The current law on national minorities³⁴ in Ukraine was adopted in 1992 and last amended in 2012. The law is highly declarative, not aligned with Ukraine's international commitments in the sphere and thus fails to serve the country's needs in full.

Similar recommendations have been made in a resolution of the Council of Europe of December 8, 2020.³⁵ It highlights the continuity and significance of this issue for Ukraine-EU relations, especially in response to ongoing Hungarian concerns.

Feasibility, prospects for implementation. On December 13, 2022, by an overwhelming majority, the Parliament adopted the new law on national minorities (communities), and later on, the law was signed by the President.³⁶

Key innovations include the legal formulation of powers and responsibilities of the central executive body implementing public policy regarding the protection of the rights and freedoms of national minorities (communities), and envisages the establishment of consultative and advisory bodies at various executive levels and centres of nationalities in regional centres or designated settlements. The law also regulates international cooperation and foreign relations of national minorities (communities).

Several outstanding issues remain. First, some experts express concern that the adopted framework law might not be comprehensive enough, and changes in other legal acts

³³ See: <https://dslua.org/publications/zaiava-ho-zakon-pro-media/>.

³⁴ See <https://zakon.rada.gov.ua/laws/show/2494-12#Text>.

³⁵ Resolution CM/ResCMN (2020). See https://search.coe.int/cm/pages/result_details.aspx?ObjectId=0900001680a07742.

³⁶ See <https://zakon.rada.gov.ua/laws/show/2827-20#Text>.

regulating the rights and freedoms of minorities might be needed.³⁷ Second, the sufficiency and efficiency of suggested implementation mechanisms remain to be tested in practice. Moreover, Hungary and Romania have already expressed their concerns about the newly adopted legislation.

Rating: Major legislative progress, implementation to be tested.

³⁷ See: <https://www.eurointegration.com.ua/news/2022/12/14/7152467/>.

MOLDOVA

Denis Cenușă³⁸

Summary

Moldova's implementation of the EU's conditions started immediately in the month after the EU Council conclusions of June 23, 2022 that granted it EU candidate status³⁹. This was in response to the Commission's 'Opinion', published on 17 June, which set out nine blocks of conditions (consisting of 13 measures) that Moldova is asked to meet in order to advance the pre-accession dialogue.

The government of Moldova had already in April launched the National Commission for European Integration (NCEI) in April to coordinate its policies to support its membership bid.⁴⁰ The NCEI discussed a first draft of an action plan dedicated to the EC's conditions on July 13, after which it launched a public consultation on July 25⁴¹. More than 10 NGOs and stakeholders participated in the consultations. Although the action plan was generally welcomed, certain NGOs criticized certain aspects of it, which in some parts lacks clear objectives and actions to achieve them, as well as clear indicators to measure progress and the source of financing. The representatives of the Ministry of Foreign Affairs and European Integration (MFAEI) explained the rapid consultations by the need to proceed with the implementation of the EU requirements quickly. The final version of the Action Plan was approved by the NCEI on 4 August (with 60 actions in total).⁴² The evaluation of the document shows that more than half of the proposed actions were scheduled to be implemented by June 2023.⁴³ At the same time, during the hearing in Parliament in the Committee on Foreign Affairs and European Integration, the representative of the MFAEI stated that the government intends to implement all actions by the end of March.⁴⁴ This

³⁸ Associated expert at Think Tank "Expert-Grup" (Moldova) and Eastern European Studies Centre (Lithuania).

³⁹ EU Council, Conclusions on Ukraine, the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations, 23 June, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>

⁴⁰ Presidential Office of the Republic of Moldova, President Maia Sandu's statement after the meeting of the National Commission for European Integration, 13.7.2022, <https://presedinte.md/rom/discursuri/declaratia-presedintei-maia-sandu-dupa-sedinta-comisiei-nationale-pentru-integrare-europeana>.

⁴¹ Ministry of Foreign Affairs and European Integration of the Republic of Moldova, MAEIE announces public consultations on the draft Action Plan for the implementation of the conditions submitted in the context of granting the Republic of Moldova the status of a candidate country for accession to the European Union, 20.7.22, <https://mfa.gov.md/ro/content/maeie-anunta-consultari-publice-pe-marginea-proiectului-planului-de-actiuni-pentru>

⁴² Ministry of Foreign Affairs and European Integration, "Action Plan for the implementation of the steps proposed by the European Commission in the Opinion on the Republic of Moldova's application for membership of the European Union", 4.9.2022, <https://mfa.gov.md/ro/content/maeiexplica-aderarea-la-ue>; <https://mfa.gov.md/ro/content/maeiexplica-aderarea-la-ue>

⁴³ Expert-Grup, State of the Country Report 2022, 15.12.2023, <https://www.expert-grup.org/en/biblioteca/item/2436-raportul-de-stare-a-%C8%9B%C4%83rii-2022/2436-raportul-de-stare-a-%C8%9B%C4%83rii-2022?category=7>

⁴⁴ Ministry of Foreign Affairs and European Integration, 31.1.2023, <https://mfa.gov.md/ro/content/vicepremierul-nicu-popescu-cadru-audierilor-din-parlament-lucram-la-elaborarea-unui-nou>.

raises the question about the measures that the government set out to implement permanently. It shows that the government seeks to speed up the implementation of the EU requirements. Moldova is notable in having developed an explicit action plan aimed at monitoring the progress of the fulfillment of the EU requirements. Apart from the NCEI, the institution responsible for the day-to-day coordination around the implementation of the action plan is the Ministry for Foreign Affairs and European Integration (MFAIE). In view of its understaffing the MFAIE intends to hire up to 20 more people specialized in EU affairs in order to deal with the increasing work load related to the pre-accession dialogue. In addition, the government will establish 35 groups involving sectoral ministries (13) and state agencies, which will be in charge of sectoral integration, especially during future accession negotiations.

Our summary assessment of the conditions set by the Commission are given in the Table. This confirms a picture of the Moldovan authorities having moved fast in adopting action plans and proposed measures. It has to be said that quite a few of the Commission's requirements are lacking in specificity, and some are raising topics where the issues or problems are not that significant for the strategic challenge of accession to the EU. Overall, the action plans and proposed measures are in the circumstances well developed, while assessment of their implementation will continue well into 2023.

Table 3: Summary of ratings for Moldova's response the Commission's conditions.

1.Judicial reform (a)	Comprehensive actions are announced and initiated.
2.Judicial reform (b)	Details from OSCE/Venice Commission to be addressed
3.Fight corruption	Work in progress, fight against grand corruption advances
4.De-oligarchisation	Extensive measures planned, major earlier de-oligarchisation
5.Organised crime	Extensive measures set in motion.
6. Public administration	A permanent challenge, receiving renewed attention
7.Public procurement	Some useful measures being taken
8.Civil society	No big issues here
9.Human rights	No significant problems
Overall	Comprehensive Action Plan, implementation underway

Nine conditions

1. Judicial reform (a). *Complete essential steps of the recently launched comprehensive justice system reform across all institutions in the justice and prosecution chains, to ensure their independence, integrity, efficiency, accountability and transparency, including through efficient use of asset verification and effective democratic oversight; in particular, fill all the remaining vacancies of the Supreme Council Magistracy and in its specialised bodies.*

Significance and specificity. Judicial reform has been the main driver behind the political campaigns in the 2020 presidential and early 2021 parliamentary elections that brought Maia Sandu and the Action and Solidarity Party (PAS) to power. To this end, the government pursues two main goals: to ensure the integrity and credibility of justice institutions, and to cleanse the judiciary of corrupt judges and prosecutors through external review. The EU's condition usefully mentions some specific actions, such as completing the composition of the Judiciary of the Supreme Council.

Feasibility, prospects for implementation. The Moldovan authorities have identified six measures, for which the implementation deadline is December 2022, namely:

- adjust the legislation on the responsibility of judges,
- improve the selection procedures for the Supreme Council of the Magistracy,
- introduce wealth and integrity mechanisms of evaluation for the admission of candidates to the National Institute of Justice (which prepares future judges and prosecutor),
- improve the legislation on prosecution considering the recommendations of the Venice Commission (issued on June 2022), and
- to carry out the pre-vetting of judges and prosecutors to fill vacancies in the Council Superior of Magistracy and the Superior Council of Prosecutors (based on Law No. 26 of March 10, 2022),
- establish a Pre-Vetting Commission (PVC), with the participation of external and national experts, appointed by Parliament.

The main attribution of the PVC is to evaluate the judges who compete for a position in the Superior Council of Magistracy. The PVC began its activity in June⁴⁵, with the evaluation

⁴⁵ Pre-vetting Commission, "Herman von Hebel, President of the Pre-Vetting Commission, at the Justice Reform and Combating Corruption forum: "In a few weeks, we will have the first public hearings of the candidates for positions in the Superior Council of Magistracy"", 16.9.2022, <https://vetting.md/herman-von-hebel-presedintele-comisie-pre-vetting-la-forumul-reforma-justitiei-si-combaterea-coruptiei-in-cateva-saptamani-vom-avea-primele-audieri-publice-ale-candidatilor-la-functii-in/>

of up to 100 judges planned, which was later reduced to about 70. The evaluation process is very complex, delaying its finalisation originally scheduled for December. The original deadline was not met. The Ministry of Justice has determined that in 2013 the pre-vetting will be completed for those judges and prosecutors who must form the Supreme Court of Justice, the Superior Council of Prosecutors, the Superior Council of the Magistracy.⁴⁶ Only after that, the government plans to start the extraordinary evaluation of the rest of the judges and prosecutors.

While these measures are all in principle positive, a negative light on the reform process emerged with evidence of conversations between Justice Minister Sergiu Litvinenco⁴⁷ and various representatives of the justice sector, pointing to alleged interference in appointments ("rigged contests") within the judiciary and the investigation of high-level corruption cases. No investigation regarding this has been initiated so far.

Rating: Comprehensive actions are announced and initiated, while their adequacy remains to be seen.

2. Judicial reform (b). *Across all these areas, address shortcomings identified by OSCE/ODIHR and the Council of Europe/the Venice Commission.*

Significance and specificity. Compliance with the recommendations of the OSCE and Council of Europe bodies on electoral legislation and rules of the rule of law is a prerequisite for progressing along the accession process. However, the Commission's condition is vague and does not prescribe specific proposals from the ODIHR or the Venice Commission. The Moldovan authorities should therefore list outstanding positions received so far from the ODIHR and the Venice Commission, organize their implementation and justify derogations, if any.

Feasibility, prospects for implementation. The Moldovan government's Action Plan refers only to the recommendations of the OSCE/ODIHR and the Venice Commission for the adoption of the new Electoral Code. The ruling party adopted the new Code in first reading on July 28, 2022. The Venice Commission released its assessment on 20 October⁴⁸ welcoming attempts to improve the legislation, while noting a range of problematic changes. There were public consultations in November. Among the main problems identified are the following aspects:

⁴⁶ Ministry of Justice of the Republic of Moldova, 20.1.2023, <https://justice.gov.md/ro/content/sergiu-litvinenco-activitatea-de-baza-ministerului-justitiei-anul-2023-va-fi-continuarea>.

⁴⁷ Top Officials' Telegram Accounts Hacked in Moldova, 10.11.2022, <https://balkaninsight.com/2022/11/10/top-officials-telegram-accounts-hacked-in-moldova/>

⁴⁸ Venice Commission, Joint opinion on the draft electoral code, 21-22 October 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)025-e).

- the political composition of the Central Electoral Commission (CEC) produces a disproportionate political dominance of a single political party (as after the legislative elections after 2021);
- transparency of the appointment of lower-level electoral management bodies;
- lack of regulation of the electoral management bodies of the Autonomous Territorial Unit of Gagauzia;
- use of the absentee ballot certificate on voting day;
- registration of residents abroad;
- lack of explicit obligation for the CEC to organize polling stations for the population residing in the Transnistria region or well-argued derogations from the principle of universality of the vote;
- lack of safeguards for donations from legal persons to prevent illicit financing;
- the problematic mechanism of counteracting “false information” during electoral media coverage;
- publication of ballot papers only in Romanian (except regions populated by minorities);
- limitations on candidates for presidential elections based on education, knowledge of the Romanian language, medical conditions (right to privacy) and period of residence abroad (now ten years), etc.

In October the Venice Commission published its opinions on four other requests for evaluation of Moldovan legislation adopted in 2022, covering issues such as the reform of the Supreme Court of Justice⁴⁹, amendments to media legislation regarding the use of symbols associated with military aggression (by Russia against Ukraine)⁵⁰, combating extremist activities⁵¹, and illegal enrichment (Article 330 of the Criminal Code).⁵² On December 8, the parliamentary majority (53 MPs) adopted the Electoral Code in the final reading without taking into account most of the recommendations of the Venice Commission, such as the composition of the Central Election Committee, the ballot papers in Romanian, etc. This constitutes a deviation from the EC’s conditions.

Rating: Detailed processes with the OSCE/Venice Commission are engaged, while many issues remain to be addressed.

⁴⁹ Venice Commission, Joint opinion on the draft law on the Supreme Court of Justice, 21-22 October 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)024-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)024-e).

⁵⁰ Venice Commission, Opinion on amendments to the Audiovisual Media Services Code and to some Normative Acts including the ban on symbols associated with and used in military aggression actions, 21-22 October 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)026-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)026-e).

⁵¹ Venice Commission, Amicus curiae Brief on the clarity of provisions on combating extremist activities, 21-22 October 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)027-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)027-e).

⁵² Venice Commission, Joint amicus curiae Brief of the Venice Commission and the OSCE/ODIHR relating to the offence of illicit enrichment, 21-22 October 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)029-e).

3. Anti-corruption. *Deliver on the commitment to fight corruption at all levels by taking decisive steps towards proactive and efficient investigations, and a credible track record of prosecutions and convictions; substantially increase the take up of the recommendations of the National Anticorruption Centre.*

Significance and specificity. The fight against political corruption is another crucial priority of the current government. However, the Commission's condition lacks specificity on how to progress in the fight against corruption, and achieve a 'credible record' of prosecution and conviction. The wording about increasing adoption of the recommendations of Anti-Corruption Center lacks specific criteria.

Feasibility, prospects for implementation. The Action Plan suggests nine actions to meet the EC's condition. Of these, three are scheduled to come into operation by the end of 2022. The rest should be completed in 2023. Measures are to include clarifying the respective competences of the Anti-Corruption Center and the Anti-Corruption Prosecutor's Office (scheduled for 2023), improving investigation procedures, and updating the regulation for the protection of whistleblowers (reporting of illegal practices). The changes in the Code of Criminal Procedure operated in July 2022 facilitate the carrying out of the judicial action and the issuance of the sentence in the absence of the investigated.⁵³ These provisions are used to request the advancement and completion of the legal case against the fugitive oligarch Vladimir Plahotniuc. The Anti-Corruption Prosecutor's Office requested the new hearing of the case for February.⁵⁴ The court approved in November 2022 to end the criminal investigation into Plahotniuc's involvement in the 2014 bank fraud in his absence.

Notably, already the heads of the Anti-Corruption and Anti-Corruption Prosecutor's Office were changed, attracting professionals from civil society organizations and the diaspora (Iulian Rusu and Veronica Drăgălin, respectively). Both are supportive of the government's reform agenda. Their focus is fighting grand corruption. They have been instrumental in initiating and advancing criminal investigations against the following political actors: former President Igor Dodon (2016-2020) and members of his family in connection with the illegal financing of the Socialist Party; the former members of the Democratic Party and former members of the Communists Party who collaborated politically, allegedly in exchange for bribes,⁵⁵ with Vladimir Plahotniuc (2015-2019); the Shor Party and its leaders Ilan Shor and Marina Tauber, as well as other regional members of this party, on charges of illegal financing. All these investigations are accompanied by assets seizure due to their dubious origin.

⁵³ Parliament of the Republic of Moldova, Law No. 189 of July 14, 2022 on the modification of some regulatory acts, https://www.legis.md/cautare/getResults?doc_id=132365&lang=ro.

⁵⁴ TV8, 26.1.2023, <https://tv8.md/ru/2023/26/01/noi-detalii-in-dosarul-frauda-bancara-cand-va-avea-loc-urmatoarea-sedinta-de-judecata-pe-cazul-lui-vladimir-plahotniuc/221330>.

⁵⁵ In late December 2022, after 3 years of investigation, the files of the 14 former parliamentarians were closed, and those investigated were declared innocent, due to a lack of reliable evidence. <https://unimedia.info/ro/news/a2a82c4761599b6e/dosarul-celor-14-ex-deputati-transfugi-clasat-dupa-3-ani-de-investigatie-persoanele-au-fost-scoase-de-sub-urmarire-penala.html>

Rating: Work in progress, while the fight against grand corruption has already advanced.

4. De-oligarchisation. *Implement the commitment to de-oligarchisation by eliminating the excessive influence of vested interests in economic, political, and public life.*

Significance and specificity. The Commission's condition lacks operational specificity. However a significant breakthrough in de-oligarchization occurred already in 2019 when the then ruling oligarch, Vlad Plahotniuc, fled Moldova avoiding criminal investigations into financial crimes and political corruption. But in an online interview published on 28 October 2022⁵⁶, Plahotniuc announced that he plans to return to Moldovan politics in the nearest future⁵⁷, while it remains uncertain what this may mean in practice.

Feasibility, prospects for implementation. According to the Action Plan, the authorities have developed ten measures to ensure the implementation of the "de-oligarchization". The Ministry of Justice opened consultations with interested civil society organizations (October 31). The measures include:

- drafting of the concept, law and action plan;
- evaluation of the negative impact of oligarchs on the market;
- strengthening of the supervision of the financing of political parties;
- countering media market concentration;
- development of institutional capacities to monitor people with excessive economic power;
- adjustment of state ownership and corporate governance policy; and
- improve public-private partnership.

The Ministry of Justice together with the Presidential Office have started working by studying Ukraine's anti-oligarchic legislation (of November 2021).⁵⁸ On 10 October the Moldovan authorities requested assistance through the European Commission's TAIEX instrument to assess the impact of oligarchs on the market. The Central Election Commission seeks to increase its staff to monitor political party financing monitoring by the end of November 2022. While several of the above measures should be completed by December

⁵⁶ https://tribuna.md/2022/10/28/interviu-in-exclusivitate-cu-vladimir-plahotniuc-despre-revenirea-in-politica-moldoveneasca/?fbclid=IwAR39vRkmMQ_KgoXaHKPtI3zxncaXSKTkadLRfcGBILaDOrDIzAivkN7clI

⁵⁷ This followed the decision of the US authorities, invoking the Magnitsky Act, to sanction Plahotniuc on allegations of state capture and systemic corruption, and Ilan Shor for facilitating Russian malign influence and involvement in the 2014 banking crimes.⁵⁷ Consequently, their assets in the US are frozen and US individuals and companies are prohibited from conducting transactions them.

⁵⁸ <https://www.rferl.org/a/ukraine-zelenskiy-anti-oligarch-law/31548053.html>.

2022, most of them are in their initial stage and are scheduled to be implemented by April-June 2023. The Ministry of Justice carried out the last consultations on this subject on January 18, setting as its next objective the comprehensive analysis of the draft of the Concept of the de-oligarchization law. No new deadline was announced.

Rating: Extensive measures planned, but there is still a long way to go for an effective de-oligarchisation.

5. Organised crime. *Strengthen the fight against organised crime, based on detailed threat assessments, increased cooperation with regional, EU and international partners and better coordination of law enforcement agencies; in particular, put in place a legislative package on asset recovery and a comprehensive framework for the fight against financial crime and money laundering, ensuring that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF).*

Significance and specificity. Due to the high incidence of high-level corruption and dysfunctions in the management of the public sector, state institutions have been weakened with organized crime penetrating different aspects of state affairs, particularly the banking-financial sector. The illegal financing of political parties and the illicit enrichment of politicians in Moldova involves crimes related to money laundering and the siphoning of money in the offshore.

The Commission's condition includes two specific measures by strengthening anti-money laundering legislation, and by building a robust asset recovery mechanism.

Feasibility, prospects for implementation. The authorities have planned 15 measures. Some actions planned for the end of 2022 have already been implemented, including the modification of the Code of Criminal Procedure to establish extended confiscation (Law No. 190 of July 21, 2022), and the adoption of the Development Strategy in the field of the Interior for 2022-2030⁵⁹ (September 23⁶⁰). Although the Venice Commission made suggestions (concerning the rights of the defendants, proportionality of the sentence, etc.) related to the modification of the Criminal Code in relation to illicit enrichment punishable by confiscation, it has also underlined that the Moldovan Constitutional Court has discretion on the interpretation of national legislation in accordance with the country's Constitution. The measures are to be implemented progressively. Two measures scheduled for the summer of 2023 relate to the civil confiscation mechanism and the application of the new legislation to counter money laundering.

⁵⁹ Ministry of Interior Affairs of the Republic of Moldova, Development Strategy in the field of Home Affairs for 2022-2030, <https://mai.gov.md/sites/default/files/QR%20Code/subiect-12-nu-484-mai-2022.pdf>.

⁶⁰ <https://noi.md/md/societate/ce-prevede-strategia-de-dezvoltare-a-domeniului-afacerilor-interne-pentru-anii-2022-2030>

Some concerns about institutional integrity in the field of the fight against organized crime were revealed by the alleged threats received by the NGO that is a member of the selection committee of the director of the prosecutor's office - head of the Prosecutor's Office for the Fight against Organized Crime and Special Cases (PCCOCCS). The pressure invoked by the NGO representative could be linked to an incident of undue access to personal data by the respective NGO during the evaluation of the prosecutors' assets, which affected the integrity of one of the candidates for the position in the PCCOCCS.⁶¹ There is a risk that the selection process will be cancelled.⁶² It has been suggested that the contest resume after the completion of the extraordinary investigation by prosecutors, which does not yet have a clear deadline, but is supposed to start in 2023.

Rating: Extensive measures set in motion; major earlier de-oligachisation.

6. Public administration reform. *Increase the capacity to deliver on reforms and provide quality public services including through stepping up implementation of public administration reform; assess and update the public administration reform strategy.*

Significance and specificity. The Commission's condition lacks operational specificity, leaving the initiative to the Moldovan authorities.

An old unresolved issue concerns decentralization, implying a redistribution of political competences over the budgets of the territorial administrative units (rayons), which are 95% funded by the national budget. With local elections scheduled for spring 2023, civil society representatives are calling for stepping up public administration reform, suggesting abolition of rayon councils and transferring their powers to key rayon cities.⁶³ After five years of inactivity, in September 2022 the government revived the Committee for Decentralization, which involves representatives of central and local authorities. In October, the government launched discussions on local administrative reform, and announced plans to present the draft of a new reform strategy by the end of 2022, which will focus on improving public services, especially for the rural population.

Feasibility, prospects for implementation. The Action Plan foresees four actions, two with a deadline of December 2022, including: the development of capacities of central authorities in the field of policy formulation through the use of the Support for Improved Governance and Management (SIGMA) methodology; and continue with the digitization of public services, ensuring that at least 34 public services become operational on the

⁶¹ <https://ipre.md/2023/01/26/ipre-condamna-orice-intimidare-in-privinta-lui-directorului-executiv-iulian-groza-si-vine-cu-informatie-privind-incidentul-de-accesare-eronata-a-datelor-privind-bunurile-imobile/>.

⁶² <https://unimedia.info/ro/news/5cbba5477c6b78c7/jurist-despre-cererea-lui-groza-de-anularea-a-concursului-pentru-sefia-pccocs-e-periculoasa-nu-se-face-referinta-la-vreun-viciu-a-procesului-de-preselectie.html>.

⁶³ Congress of Local Authorities in Moldova, The reform of the Level II Local Public Administration must and can be done this year, 13.9.2022, <https://www.calm.md/reforma-administratiei-publice-locale-de-nivelul-ii-trebuie-si-poate-fi-facuta-acest/>.

governmental electronic platform. The government intends to adopt a new strategy in this domain, building on the results of the 2016-2022 strategy. An important element in the strategy will be to retain professional civil servants through salary policy reform.

Rating: Public administration reform is a permanent challenge, receiving renewed attention.

7. Public procurement. *Complete the reform of public financial management including improving public procurement at all levels of government.*

Significance and specificity. The EC's condition lacks specific content.

In the current context of state of emergency in force since October 2021, the government has operated outside the normal rules for public procurement (for example, with directly negotiated contracts to two companies to audit the alleged debts worth approximately \$700 million of the Moldovan gas operator MoldovaGaz with Russia). However the government will have to return to normal tendering practice and improvement of public procurement policies.

Feasibility, prospects for implementation. Three measures related to public financial management are planned by the end of 2022: i/ a new regulation dedicated to low-value public procurement to help close loopholes that allowed multiple low-value tenders to be held instead of fewer larger tenders where there are more efficient safeguards; ii/ establishment of procedures to expedite information on capital investment projects financed with budgetary and external sources; and iii/ adoption of a new evidence-based strategy on financial management.

Rating. Some useful measures being taken.

8. Civil society. *Enhance the involvement of civil society in decision-making processes at all levels.*

Significance and specificity. The EU requirement lacks operational detail on how to involve the civil society organization in the governmental decision-making processes.

Since the beginning of its mandate, the current government has sought to incorporate members of civil society organizations into state institutions, in ministries, state agencies, and ad-hoc bodies (such as Pre-Vetting Committee for judges etc.). The EU and other Western partners are able to fund projects carried out by the civil society organizations in cooperation with the government. Civil society organizations can usefully ensure more transparent decision-making, while holding the government accountable for the quality of the reforms.

Feasibility, prospects for implementation. The government has committed to implement several measures to meet the EC's condition, mostly with a deadline of May-June 2023. They include:

- creation of permanent consultative platforms,
- renewal of the civil society development strategy (replacing the previous document of 2018-2020),
- increase in access to information of public importance.

A concern with the making of grants to civil society organizations from the public budget, as one of the measures included in the action plan, is the risk of developing "governmental non-governmental organizations" (GONGOs).

The co-optation of civil society in state institutions followed by multiple crises due the Russian aggression against Ukraine has temporarily limited the criticisms by civil society and the media of the government. However there have been some criticisms of disproportionate measures by the law enforcement bodies in the face of anti-government protests⁶⁴ and some tensions over intolerance by government officials towards such criticism.⁶⁵

Rating: No big issues here, but impartial government accountability by civil society organizations needs to be significantly strengthened.

9. Human rights. *Strengthen the protection of human rights, particularly of vulnerable groups, and sustain its commitments to enhance gender equality and fight violence against women.*

Significance and specificity. The EC's condition needs to be more specific.⁶⁶

The government's attention to human rights has been consistent. The ruling party ratified the Istanbul Convention of October 2011 to curb violence against women. The government ensured protection of the LGBT march in June 2022, and appointed an openly gay person as Moldova's ambassador to the US.

⁶⁴ Promolex, Joint statement on the dispersal of the October 16, 2022 protest, 17.10.2022, <https://promolex.md/22843-declaratie-comuna-privind-dispersarea-protestului-din-16-octombrie-2022/?lang=ro>

⁶⁵ Newsmaker, 20.10.2022, <https://newsmaker.md/ro/daca-cineva-vine-sa-ti-darame-casa-nu-iei-prastia-gavrilita-intrebata-daca-nu-s-a-intervenit-prea-dur-la-protestele-lui-sor/>.

⁶⁶ An issue involving the Ombudsman may be added here: Under the justification of national security, the government suspended the licenses of 6 TV channels affiliated with the Shor Party and the Socialists. The representatives of the Audiovisual Council justified the decision by the fact that the television channels do not reflect the war in Ukraine objectively, more precisely by the omission of the war theme. Certain civil society organizations have pointed out that the government refused to organize hearings of the Prime Minister and the head of the Audiovisual Council. The Ombudsman has reacted with criticism about the disproportionality of the measure and has started documentation of the case. The parliamentary opposition accused the government of the intent to favor other television channels that refrain from criticizing the ruling party by indirectly redirecting the financing of advertisements.

Feasibility, prospects for implementation. The government has mentioned eight actions in its action plan, of which the majority are planned by the end of 2022. These actions include:

- modernize the anti-discrimination legal framework to strengthen the competencies of the Equality Council (draft bill no 304, registered in parliament in July 2022);
- fortify the institution of the ombudsman (draft bill no 167, approved in first reading in July 2022);
- adjust the national legislation to combat domestic violence in accordance with the ratified Istanbul Convention;
- adopt the new action plan (2022-2025) for implementation of the 2017-2027 Roma strategy.

Rating. No significant problems.

GEORGIA

Tinatin Akhvlediani⁶⁷

Summary

The task of responding to the Commission's 12 conditions has to a large degree been structured around nine Working Groups convened by the speaker of the parliament, leading on to hearings of parliamentary committees and voting on related legislation. The Working Groups largely relate to the Commission's priorities.⁶⁸

Five out of eight parliamentary parties, including the ruling party and four opposition parties are engaged in the Working Groups. Three other parliamentary opposition parties refuse to participate in the working groups, but sporadically engage in the committee hearings and plenary voting. Civil society organizations (CSOs) and experts also participate in the meetings.

The 12 conditions effectively divide between politically fundamental ones, which according to our present ratings may stand in the way of advancing along enlargement procedures, and the other priorities where more progress is visible and where shortcomings are not of such significance as to block advancing on the enlargement procedures. In the first group of politically fundamental priorities, the most challenging are political polarisation, judicial reforms and de-oligarchisation. Most of the problems here link to the unresolved and central issue of de-oligarchisation, which holds the key to resolving the other fundamental political shortcomings. In the second group of priorities, where more progress is visible refers to less politically sensitive areas.

Overall, the assessment indicates that Georgia can implement priorities in an active and dynamic manner, when there is a strong political will for this. Yet, political polarisation and

⁶⁷ Centre for European Policy Studies (CEPS), Brussels.

The assessment provided in this chapter is based on desk research, as well as stakeholder consultations with the CSOs and experts present on the grounds in Georgia, as well as in Brussels. The author also acknowledges the detailed and comprehensive review of the 12 recommendations and on what should be done by a group of Georgian civil society organisations. For many of the recommendations we are happy to endorse their proposals. <https://civicidea.ge/en/12-steps-towards-eu-candidacy/>.

The findings of the assessment are mostly in line with the draft assessment provided by the Georgian civil society as reported in the document: <https://grass.org.ge/ka/publikaciebi/kvleva/2325-kandidatis-statusmetri-evrokavshiris-12-pirobis-shesrulebis-mdgomareoba>.

⁶⁸ The nine Working Groups are:

- On Amending the Rules of Procedure (for strengthening parliamentary oversight)
- On Revising the Electoral Code.
- On Judicial Reform
- On Strengthening the Fight against Corruption
- On the Special Investigation and Personal Data Protections Services
- On De-oligarchisation
- On Organised crime
- On Gender Equality
- On ECHR judgements

oligarchisation of the country limit the progress on key politically fundamental priorities and hinder Georgia from using to the full capacity of its solid institutional and administrative foundation that the country has developed through the implementation of its Association Agreement with the EU.

To ensure the correct implementation of the priorities, providing the mid-term review by the EU could be of utmost importance. This would clarify the expectations on fulfilling the priorities and would steer Georgia towards proper reform path.

Table 4: Summary of ratings for Georgia's response the Commission's conditions

1.Political polarization	Substantial initiatives by the parliament, but insufficient
2.Function state institutions	Major progress, but more needs to be done
3.Judicial reform	Measures, but insufficient
4.High-level corruption	Measures, but insufficient
5.De-oligarchisation	Superficial measures, ignore the current ruling oligarch
6.Organised crime	Solid basis for strong progress
7.Media environment	Measures taken but greatly insufficient
8.Human rights (a)	Measures, but insufficient
9.Gender equality	Useful progress
10.Civil society	Broadly positive participation of CSOs in the Working Groups, with shortcomings
11.Human rights - ECHR (b)	Appropriate new legislation should deliver tangible results
12.Public Defender	New procedural rules in line with international standards, but delays in the selection of the new Public Defender
Overall	Extensive action engaged; politically fundamental conditions not yet adequately addressed, the others are less problematic

Twelve conditions

1. Political polarization. *Address the issue of political polarisation, through ensuring cooperation across political parties in the spirit of the April 19 agreement.*

Specificity & significance. While political polarisation has become a systemic problem in Georgia over recent years, it has to be said this problem is serious also in several EU member states, including some of the oldest democracies. In Georgia the most acute instance was observed at the end of 2020, when after contested elections the opposition parties refused to take their seats in the Parliament, which then began to work as a one-party parliament consisting of only the Georgian Dream ruling party. The agreement of 19 April 2021, brokered by the European Council President Charles Michel, brought the way out from this deadlock and it remains the most important document with the guidelines for easing political polarization. Given its importance, this condition could be more specific in its guidelines on what fulfilment should look like.

Feasibility, prospects for implementation. The process organised at the Georgian Parliament, with setting up of nine Working Groups, is substantial, but it does not fully tackle the serious political polarization issues in the country. To better address the issue, power sharing in the Parliament should be given the priority as set out in the April 19 Agreement. This implies giving the mandate to the opposition parties to chair five committees in the Parliament, two of which should include the committees on Finance and Budget and on Human Rights and Civil Integration. There is also a lack of unity among the opposition parties, for instance some of them refuse their participation in the Working Groups, and are developing actions plans on addressing 12 priorities separately, which does not help resolving political polarisation.

Rating: Substantial initiatives by the parliament but incomplete and insufficient.

2. Functioning of state institutions. *Guarantee the full functioning of all state institutions, strengthening their independent and effective accountability as well as their democratic oversight functions; further improve the electoral framework, addressing all shortcomings identified by OSCE/ODIHR and the Council of Europe/Venice Commission in these processes.*

Specificity & significance. This recommendation is of fundamental significance, and is a *sine qua non* of progress towards candidate status. To address this priority, the 19 April Agreement, as well as the assessments and recommendations issued by OSCE/ODIHR and the Council of Europe/Venice Commission, set out important guidelines for Georgia.

Feasibility, prospects for implementation. Two Working Groups were created at the Parliament for the purpose of implementing this condition.

The Working Group on Amending the Rules of Procedure put forward legislative amendments to strengthen the parliamentary oversight and to introduce more flexible instruments and procedures for the MPs. The legislative amendments have been already adopted (November 2) leading to increasing the number of interpolations, improving deliberation of the Minister's hour and committee hearing, introducing quarterly reporting and publishing online committee hearings and MP's questions, and reducing majority requirement for the thematic inquiries.

The Working Group for Revising the Election Code proposed amendments to the Election Code, which was adopted by the Parliament on its first reading with multiparty support on October 5. The Electoral Working Group made further deliberations and proposed changes to the Draft Amendments of the Election Code after receiving the recommendations from the Venice Commission and OSCE-ODIHR. The amendments were adopted by multi-party support on December 15. The amendments include introduction of electronic voting system for all big cities in Georgia, halving the upper limit of expenditures on party financing, doubling the fine for the illegal use of administrative resources, introducing certification of members of the Precinct Election Commission to improve their neutrality and impartiality, improving legislation on the participation of voters with disabilities, expanding the mandate of local observer organisations, extending timeframe for complaints and inking for portable ballot boxes.

While the proposed bill makes some progress on improving the Election Code, the amendments do not tackle the main shortcomings, such as vote buying practices and abusing administrative powers in regions and remote areas before and during the elections. In addition, it is alarming that despite the recommendation of the National Platform of Georgia under the Eastern Partnership Civil Society Forum (EaP CSF), the International Society for Fair Elections and Democracy (ISFED) was denied participation in the Working Group, by the decision of the head the Working Group representing the ruling party.⁶⁹ This resulted in the withdrawal of another CSO from the Working Group on Judicial Reforms (see below) in the spirit of solidarity and overall damaged the inclusiveness of CSOs in the decision making processes (discussed later).

For further progress, the engagement of the CSOs in the Working Group should be improved and the refusals on their participation should be lifted. Priority should be given to the anti-deadlock mechanism for the election of the Chairperson and the professional members of the Central Election Commission, as stipulated by the 19 April Agreement.

Rating: Extensive measures being taken with omissions and shortcomings.

⁶⁹ <https://www.radiotavisupleba.ge/a/32004161.html> .

3. Judicial reform. *Adopt and implement a transparent and effective judicial reform strategy and action plan post-2021 based on a broad, inclusive and cross-party consultation process; ensure a judiciary that is fully and truly independent, accountable and impartial along the entire judicial institutional chain, also to safeguard the separation of powers; notably ensure the proper functioning and integrity of all judicial and prosecutorial institutions, in particular the Supreme Court and address any shortcomings identified including the nomination of judges at all levels and of the Prosecutor-General; undertake a thorough reform of the High Council of Justice and appoint the High Council's remaining members. All these measures need to be fully in line with European standards and the recommendations of the Venice Commission.*

Specificity & significance. Addressing this priority is crucial for Georgia's progress on the implementation of the 12 priorities. The need and urgency of judicial reforms are embodied in the Association Agreement, the 19 April Agreement and the recommendations given by the Venice Commission and OSCE/ODIHR. Given its importance, to foster the fulfilment of this priority more concrete guidelines could be put forward from the EU and review mechanisms should be developed to ensure that the undertaken actions and steps are made towards right direction.

Feasibility, prospects for implementation. Working Group on Judicial Reform together with the Legal Affairs Committee have prepared a judicial reform strategy and an action plan. The legislative amendments on judicial reform were submitted to the Parliament on 4 November and were sent to the Venice Commission and OSCE/ODIHR for their opinion. A draft constitutional amendment on the procedure for electing the Prosecutor General was adopted on the first reading by multiparty support in the Parliament. The amendment increases the threshold for electing the Prosecutor General to 3/5 of MPs. The Parliament has also launched the call for the non-judge members of the High Council of Justice (HCoJ). However, the parties could not agree on the selection of the candidates and the dialogue is expected to continue in the 2023 Spring plenary session. Besides the lack of agreement between the political parties, the Working Group had another shortcoming

As a shortcoming in the representativeness of the Working Group, the Georgian Young Lawyers Association (GYLA) refused their participation in the Working Group on Judicial Reforms for reasons already mentioned.⁷⁰ This significantly diminished the participation of the leading CSO in this crucial area.

The steps taken towards judicial reforms, including amending the rules on the appointment of the Prosecutor General, in line with the April 19 Agreement are positive. However, for tangible progress in this area should go beyond amending procedural rules and show more substantial efforts devoted to strengthening judicial system. This should be done by closely following the recommendations of the Venice Commission and

⁷⁰ In the spirit of the solidarity for ISFED which has been denied participation in the Working Group on Election Code.

OSCE/ODIHR, with Supreme Court judges to be appointed by 3/5 of MPs to ensure the participation of the opposition parties in the voting, and appointment of the non-judge members of the HCoJ should follow a transparent process by voting procedure by 3/5 of the full composition of the parliament. The engagement of the CSOs should be improved both in terms of the quantity and the relevance, including the participation of the GYLA.

Rating: Some positive steps taken, more is needed.

4. High-level corruption. *Strengthen the independence of its Anti-Corruption Agency bringing together all key anti-corruption functions, in particular to rigorously address high-level corruption cases; equip the new Special Investigative Service and Personal Data Protection Service with resources commensurate to their mandates and ensure their institutional independence.*

Specificity & significance. Georgia's impressive reforms on rooting out ordinary corruption in past years contrast with the recent slow-down of efforts towards tackling high-level corruption, which is now a systemic challenge for the country.

Feasibility, prospects for implementation. Two Working Groups were created under the Legal Affairs Committee, one on Strengthening the Fight Against Corruption, and another on Institutional Strengthening of the Special Investigation Service and the Personal Data Protection Service. Based on the proposals of the Working Group, the Parliamentary Committee on Legal Issues proposed the launch of a new Anti-Corruption Bureau to oversee and coordinate the anti-corruption policy, that will be accountable to the Parliament and the Anti-Corruption Council. The legislative amendments, covering six laws, expand the scope and the budget of investigative competences of the Special Investigation Service.

The steps taken so far are positive, as the newly proposed Anti-Corruption Bureau will gather the competences that were until now spread and scattered among the different state bodies. The participation of the CSOs in the Working Groups was effective, as it led to adding some executive powers for the Bureau to the initially proposed draft bill. However, the Bureau still lacks investigative powers. Further progress depends on the degree of the implementation of the proposed legislative amendments, including the election of the head of the Bureau and Special Investigation Service, that should follow a transparent and inclusive format. Granting investigative powers to the Bureau should be another effective step towards fulfilling this priority.

Rating: Useful steps being taken, more needed.

5. De-oligarchisation. *Implement the commitment to de-oligarchisation by eliminating the excessive influence of vested interests in economic, political, and public life.*

Specificity & significance. This priority is very important for Georgia, as the country has been slowly building a track-record of informal governance over the past years, which has become very noticeable since the presidential elections back in 2018. However, the condition is very general and lacks specificity on the expected actions, policies or legislative amendments to this end. As this is a systemic issue for Georgia, putting forward more concrete guidelines could significantly foster the progress on fulfilling this priority.

Feasibility, prospects for implementation. The de-oligarchisation Working Group, consisting of MPs and civil society representatives was created under the Legal Affairs Committee. Based on the deliberations of the Working Group, the Legal Issues Committee proposed a draft Law on De-oligarchization. The law, however, largely resembles the de-oligarchisation law adopted in Ukraine instead of stemming from the internal systemic issues observed in Georgia. Given the statements from the ruling party representatives, the opposition parties fear that, once the law is adopted, it will mainly target the critical voices of the political and media representatives. The discussions around this priority reflect the high degree of political polarisation, which was reflected in the work processes of the Working Group. After active suggestions and advice from the civil society and the EU Delegation to Georgia, the draft laws were sent to the Venice Commission and ODIHR/OSCE for their legal opinion.

The Commission's drafting and the current response by the government appear to ignore 'the elephant in the room', namely the control and funding of the ruling Georgian Dream Party by Mr Bizina Ivanishvili, who has been directing changes in the government (including prime ministers) without accountability, and has a track record, inter alia, of egregious vote buying (presidential election in 2018). In these circumstances the proposed measures are superficial and miss the main point.

Ratings: Proposed measures are superficial, ignoring the reality of state capture by the ruling oligarch.

6. Organised crime. *Strengthen the fight against organised crime based on detailed threat assessments, notably by ensuring rigorous investigations, prosecutions and a credible track record of prosecutions and convictions; guarantee accountability and oversight of law enforcement agencies.*

Specificity & significance. The fight against organized crime is important priority for Georgia. This is also the area in which Georgia already has in place a legislative basis and law enforcement agencies providing a solid foundation for strengthening fight against organized crime.

Feasibility, prospects for implementation. To address this priority, a Working Group was launched under the Defence and Security Committee of the Parliament, involving the members of the parliament, Prosecutor's Office, the High Council of Justice, the Interior Ministry, the Ministry of Justice, the State Security Service and civil society. The Working Group has elaborated concrete proposals covering 76 activities to be implemented by line ministries and bodies. The activities refer to strengthening fight against organized crime, cyber-crime, human trafficking, money laundering, terrorism financing and drug-related crimes. The proposed activities should provide a good baseline for addressing this priority. Further progress will depend on implementing proposed activities.

Rating: Good progress built on solid basis.

7. Media environment. *Undertake stronger efforts to guarantee a free, professional, pluralistic and independent media environment, notably by ensuring that criminal procedures brought against media owners fulfil the highest legal standards, and by launching impartial, effective and timely investigations in cases of threats against safety of journalists and other media professionals.*

Specificity & significance. The media environment largely reflects the situation on protection of human rights and freedoms as well as political polarisation in the country. The freedom of the media has been deteriorating over the past years, given threats and actual deaths of journalists, and recent investigations and convictions of media outlet owners. This priority is both important and specific, referring to the major current shortcomings in current conditions.

Feasibility, prospects for implementation. The amendments were introduced to the Law on Broadcasting on 22 December 2022, with an aim of approximating the EU's Audiovisual Media Services Directive (AVSD). But the amendments have been broadly criticized by civil society for its Article 7 which foresees penalties to be paid by media representatives even when the ruling on penalties is appealed in the court. To show more progress in this direction, the requests and recommendations of civil society should be reflected in further amendments of the law.

Besides, addressing this condition mainly requires taking actual steps that so far are not pursued. Amongst others this should include stopping ongoing investigations and trials against media outlets, and releasing prisoners convicted on political grounds. This particularly refers to the former director of "Rustavi 2" and the founder of "TV Mtavari" Nika Gravamia, whose case has been judged to be politically motivated by the Public Defender's Office, Human Rights Center and Transparency International Georgia.⁷¹ Besides, the Prosecutor's office should relaunch impartial, effective investigations against organisers and

⁷¹ <https://www.transparency.ge/en/post/appellate-court-upheld-nika-gvaramias-imprisonment-politically-motivated-case> .

perpetrators of violence against media representatives that happened in July 2021 and the surveillance of targeted media professionals should be stopped.

Rating: So far there has been no tangible progress towards fulfilling this priority.

8. Human rights. *Move swiftly to strengthen the protection of human rights of vulnerable groups, including by bringing perpetrators and instigators of violence to justice more effectively.*

Specificity & significance. This condition is important for improving the protection of human rights of certain vulnerable groups. However, the Commission does not identify which groups are considered to be vulnerable. A more specific definition could provide clearer guidelines on what to focus.

Feasibility, prospects for implementation. The new National Strategy for Human Rights Protection for the years 2022-2030 has been approved by the government on 4 September. This document covers civil and political rights, justice issues, social and economic rights, equality and rights of the population affected by conflicts.

Concretely, LGBTQI+ persons remain among the most vulnerable groups, being the least protected and most marginalized in the country.⁷² ⁷³ The organizers and the perpetrators of violence against this group recorded on 5 July 2021 have still to be investigated and adequately punished. To avoid aggravating the public polarization, in July 2022 the organisers of Tbilisi Pride decided not to hold another 'March of Dignity', and all events of the Pride Week took place indoors. Unlike the previous year, police officers were mobilized sufficiently and the public safety was ensured. A joint statement was issued by the United Nations Development Programme, the Delegation of the EU to Georgia, and many European and other Embassies, which welcomed the successful completion of Pride Week 2022, setting the foundation for successful future events that will be held outdoors.

Saakashvili's case remains a major shortcoming in the human rights situation in Georgia. His mis-treatment in the prison, including the refusal of receiving proper medical treatment, strongly violates his human rights and damages Georgia's reputation in terms of human rights protection.

Rating: Some positive steps are taken, but this is strongly insufficient, more proactive actions need to be taken.

⁷² <https://georgia.un.org/en/180465-human-rights-legal-protection-and-public-attitudes-towards-lgbtqi-community-georgia>.

⁷³ <https://ge.usembassy.gov/decisive-action-needed-to-protect-lgbtqi-rights-in-georgia/>.

9. Gender equality. *Notably consolidate efforts to enhance gender equality and fight violence against women.*

Specificity & significance. There have been numerous efforts already undertaken towards strengthening gender equality. The main focus is on strengthening the fight against domestic violence where in spite of major improvements the issue remains challenging. The major guidelines are provided by the Istanbul Convention, with which Georgia needs to fully comply.

Feasibility, prospects for implementation. The deliberations of the Working Group on gender equality have led to the initiation of several legislative amendments. This includes amendments to the Organic Law on Normative Acts in order to provide mandatory Gender Impact Assessment for all legislative initiatives; easier access to state services, amendments to several legislative acts to establish gender equality as an equal opportunity, and to ensure legislative approximation and the adoption of best international standards and practices for fighting against gender based violence. The amendments were adopted on the third reading on December 15. These legislative amendments set a good foundation for further progress. Further legislative amendments should refer to sex crimes and in particular align Georgian legislation with Istanbul Convention, including on the definition of rape. Amendments should also define procedural steps on investigating and fighting against sex related crimes.

Rating: Useful progress is being made, notably on the key problem of domestic violence.

10. Civil society. *Ensure the involvement of civil society in decision-making processes at all levels.*

Specificity & significance. Georgia has a vibrant civil society and its engagement in decision-making is very important for fulfilling the 12 conditions. Civil society representatives come with a number of suggestions, including developing action plans and draft legislations.⁷⁴ Inclusion of civil society representatives in the Working Groups have already led to tangible results.

Feasibility, prospects for implementation. The participation of civil society in the deliberations of the Working Groups is a very positive step for fulfilling this condition. The participation of the CSOs has led to reshaping legislative proposals in a number of areas and therefore already exhibited positive results. However, there are several shortcomings identified in this process. For instance, several stakeholders have reported that the agenda of the Working Group discussions was never been available before the meetings and there were precedents where highly relevant CSOs were denied to participation in certain Working

⁷⁴ See for instance: <https://civicidea.ge/en/12-steps-towards-eu-candidacy/>

Groups (see Priority 2). For some key priority areas, the number of participatory CSOs was unduly limited, for instance in the Working Group on judicial reforms.

Rating: The participation of CSOs in the Working Groups, is a positive step, but this engagement should be further enhanced.

11. Human rights - ECHR judgements. *Adopt legislation so that Georgian courts proactively take into account European Court of Human Rights judgments in their deliberations.*

Specificity & significance. This condition is important for Georgia for the strengthening of judicial and democratic reforms. It requires a legislative basis, as well as proactive efforts by the Georgian courts to systematically take into account judgments of European Court of Human Rights.

Feasibility, prospects for implementation. The consultations run by the Working Group have fed into the proposal of legislative package which was already adopted by the Parliament on 18 October. The legislative package covers stimulating the reference to ECHR decisions by Georgian courts; supporting professional development of judges, prosecutors and defence lawyers; establishing new organizational units in the courts' system for analysing ECHR decisions and effective mechanisms of translation and publishing of ECHR decisions on Georgia. The legislative package is based on the implementation procedures of the Committee of Ministers of the Council of Europe.

Rating: The adopted legislation addresses the priority, and its correct implementation should deliver tangible results.

12. Public Defender. *Ensure that an independent person is given preference in the process of nominating a new Public Defender (Ombudsperson) and that this process is conducted in a transparent manner; ensure the Office's effective institutional independence.*

Specificity & significance. The Public Defender plays a crucial role for upholding democratic standards and human rights in the country. The last Public Defender, whose mandate has come to an end on 8 December played a pivotal role over the past years to support democratic processes and ensure protection of human rights. An impartial and independent successor to current Public Defender is essential.

Feasibility, prospects for implementation. On 9 September the Parliament adopted new procedural rules for electing the Public Defender. The procedure on the nomination and selection of a new Public Defender is in line with the recommendations of Committee of Ministers of the Council of Europe, and Venice Commission principles on protection and support of the Ombudsman's institution. This requires the support from both the ruling party

and the opposition parties. The procedural rules show positive steps towards more inclusiveness, participation and transparency. However, the political parties could not reach an agreement on the selection of the new Public Defender during the 2022 Autumn plenary session, even though the term of the previous Public Defender has expired on December 8. To fulfil this priority, the main shortcomings, which include the marginalisation of certain candidates on political grounds, should be eliminated and the political parties need to reach the consensus on the appointment of a new Public Defender as soon as possible.

Rating: New procedural rules in line with international standards, needing effective implementation.