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Position Paper on the necessity to include measures aiming at reforming the state-owned enterprises sector in the Action Plan for Accession to the European Union for 2023-2027

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Position paper on the draft of the government decision regarding the approval of the National Action Plan for Accession to the European Union for the years 2023-2027 (PNAA)

The deetatization and restructuring of the economy, as well as the good governance of the sector of state-owned companies and public property as a whole, are key components of chapter 20 of the *acquis communautaire* (enterprise and industrial policy), but not of the PNAA 2023-2027. On 28.09.2023, the Ministry of Foreign Affairs and European Integration submitted to public consultations "the draft government decision on the approval of the National Action Plan for Accession to the European Union, for the years 2023-2027"¹ (PNAA). The draft plan was developed based on the recommendations of the Commission Analytical report on Moldova's alignment with the EU *acquis*, published on February 2, 2023². However, it should be mentioned, that the European Commission's Report was drawn up based on the answers of the Republic of Moldova to the EU accession questionnaire³. The questionnaire completed by the authorities of the Republic of Moldova follows the chapter structure of the community *acquis* and measures the alignment of domestic legislation to the *acquis*. Section I letter "B" of chapter 20 of the questionnaire is dedicated to the privatization and restructuring of the national economy. The questions in this section assess the degree of restructuring of the economy and the quality of governance of the state-owned enterprises. Following the analysis of the responses to this chapter of the questionnaire, the European Commission emphasizes in its Report the need to "continue reforms and increase the attractiveness of the national economy, in particular, for foreign direct investments".

The need to reform the state-owned enterprises sector is also emphasized in the Commission Opinion on the Republic of Moldova's application for membership of the European Union. According to the findings of the EU Commission expressed in the Opinion on the application for membership of the Republic of Moldova, the state-owned enterprises sector continues to suffer due to the lack of appropriate corporate governance practices, due to inefficiency, and austere oversight, which further undermines private sector investment and economy-wide competitiveness and poses major fiscal risks. In this regard, the Commission recommends prioritizing on the government's agenda the reform of the sector, in particular, the improvement of corporate governance of state-owned enterprises sector, the reorganization, privatization, and liquidation of state-owned companies that do not pass the triage criteria⁴.

Despite the recommendations of the European Commission, the PNAA 2023-2027 does not include measures aiming at catalyzing the process of restructuring the national economy and improving the governance of the state-owned enterprises sector. The harmonization of national legislation with the provisions of chapter 20 of the Community *acquis* is to be ensured through the actions provided for in Chapter 20 of the PNAA 2023-2027. Regrettably, this chapter does not provide for any measure dedicated to the denationalization and restructuring of the national economy or aimed at improving the governance of the state-owned company sector. In such circumstances, PNAA does not respond to the recommendations of the European Commission's Analytical Report and cannot fully contribute to increasing the attractiveness of the national economy as requested by the Commission in its Analytical Report on the alignment of the legislation of the Republic of Moldova with the Community *acquis*.

¹ <https://particip.gov.md/ru/document/stages/proiectul-de-hotarare-cu-privire-la-aprobarea-planului-national-de-actiuni-pentru-aderarea-la-uniunea-europeana-pentru-anii-2023-2027/11222>

² [Commission Analytical report on Moldova's alignment with the EU acquis](#), DG NEAR, 02.02.2023

³ [Information provided by the Government of the Republic of Moldova](#), part II, published on 24.06.2022.

⁴ *ibidem*



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Following the analysis of the draft of PNAA 2023-2027 it is considered imperative to include in chapter 20 of the PNAA 2023-2027 the measures described below, which implementation is absolutely necessary to improve the corporate governance of state-owned enterprises and the completion of the restructuring process of the national economy.

1. Reorganization of the Public Property Agency (APP) to strengthen its capacity in order to ensure the fulfilment of its extended mandate. The implementation of state policy in the field of administration and denationalization of public property is carried out through the APP. The existing organizational structure of the Public Property Agency is specific to one of the policy-making authorities, while the mandate of the institution is quite different from that of the ministries. Thus, in addition to the transposition of all functional requirements into organizational design parameters, it is absolutely necessary to reorganize APP to implement a structure much closer to a corporate-type model, including through> i) establishing a Supervisory Committee that will include independent members and representatives of state-owned enterprises; ii) creation of an own fund to ensure the financing of the fixed component of the remuneration of the members of the boards and censors commissions iii) the depolitization of the institution, including through the nomination of the deputy directors of the APP by the general director and not by the government; iv) the administrative subordination of the APP to the ministry responsible for developing policies in the field of administration and denationalization of public property etc. The new organizational structure of the APP must allow the elimination of the constraints identified in "Analysis of the functional alignment of the organizational structure of the Public Property Agency"⁵.

Implementation measure: Amendment of GD no. 902/2017

2. Digitization of all processes within the APP through the implementation of an integrated information system (IS) for records, privatization, and administration of public property. According to the Register of Public Patrimony data, on January 1, 2023, the Public Property Agency was managing 122 state-owned enterprises (Î.S.) and 70 joint-stock companies (S.A.) with state capital (all called generically state-owned enterprises). APP keeps records of all immovable property owned by the state, of state-owned assets in the economic administration of commercial enterprises, records of the patrimony of local and central public institutions, as well as records of the patrimony of state enterprises, etc. In addition, the APP initiates and monitors the implementation of privatizations, public-private partnerships (PPP), and concession contracts, as well as the way of valorization of real estate and public property of the state by monitoring the collection of related payments. In the absence of an automated information solution, carrying out the above-listed activities involves numerous patrimonial risks and the allocation of an imposing number of human-hours resources, which the agency does not have. Without digitization of all processes within the APP, the reform of the state-owned enterprises sector is more of a chimera than a realistic target.

Implementation measure: Approval of the GD regarding the concept and regulation of the information system Public Patrimony Register and State Property Administration with its subsequent operationalization.

3. Improving the governance of state-owned enterprises by professionalizing their control bodies. The governing bodies of state-owned enterprises must include professionals nominated exclusively based on the competence and integrity. Although on 12.04.2023 the Government approved the regulations for the nomination and remuneration of board members of state-owned enterprises and members of censors' commissions, the high standards set out in these regulations apply only to independent members. At the same time, the inclusion of independent members in the board composition of state-owned enterprises is only an option and not mandatory. Thus, it is necessary to revise these decisions to ensure that the selection of all members of the boards of state-owned companies is based on criteria of professionalism and integrity and to set as a mandatory condition the presence of independent members in the composition of the boards of state-owned companies.

⁵ Vitalie, Rapcea., Calin, Negura. „[Analiza alinierii functionale a structurii organizatorice a Agentiei Proprietății Publice](#)”, Expert-Grup, Chișinău 2023.



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Implementation measure: Amendment of GD no. 209/2023 and GD no. 210/2023

Repeal art. 19 (5), Law no. 246/2017 to exclude the provision that foresees that the majority of the board members of state-owned enterprises is made up of representatives of the Ministry of Finance and the Ministry of Economic Development and Digitalization.

3. Reducing the burden of micromanagement in the administration process of state-owned enterprises and focusing more on activities aimed directly at improving corporate governance. The normative acts in force claim numerous micro-management activities from the APP with questionable added value. Scrapping of inventory items of state-owned enterprises, authorizing the travel of administrators, checking the correctness of the calculation of the stock of unused annual leave days for the nearly 200 administrators of state owned-companies, verifying the correctness of the calculation and justifying the granting of material aid for the annual leave of administrators, participation in commissions regarding the determination of unused assets of state companies, participation in working groups regarding the disposal of assets of state companies, authorization of procurement that exceed the amount of MDL 400 thousand, authorization of loans to be contracted by state-owned enterprises, participation in the tender committee of unused assets and many other activities that consume almost entirely the time of APP employees specializing in corporate administration. Given these regulations, the APP turns into an institution that, rather, administers state-owned companies, undermining the operational autonomy of the directors, instead of focusing on corporate governance and administration through the governing bodies of state-owned enterprises.

Implementation measure: Amendment of Law no. 246/2017 by eliminating the need for the founder's consent for procurement greater than MDL 400,000 lei (the founder's consent remains necessary for purchases exceeding 25% of the value of the state-owned enterprise's assets)

Amendment of GD no. 875/2015 to ensure the selection and approval of the audit entity by the board.

Amendment of GD no. 500/1998 to allow the scrapping of used items only based on the board decision.

Amendment of annex no. 4 to GD no. 484/2019 for the elimination of the need for founder authorization for the travel of state-owned enterprises' administrators.

Amendment of GD no. 387/2014 to eliminate the need to attract the founder's representatives in the working group for the contracting of financial services.

Amendment of GD no. 480/2008 to allow the authorization of the commercialization of unused assets based only on the board decision and without the obligation to include the founder in the tender commission of unused assets.

4. Accelerating the reorganization of state enterprises (î.S.) in other organizational and legal forms to ensure a unique regulatory framework for the entire business environment in the Republic of Moldova. Following the OECD's good practices on the corporate governance of state-owned companies, the activity of state-owned companies must be subject to the same regulations as those applicable to private entities. In the Republic of Moldova, state enterprises do not obey the general rules. The establishment and operation of state enterprises is regulated by a dedicated law, which imposes different governance standards for state enterprises compared to the standards applicable to commercial companies. The normative acts that regulate the activity of state enterprises demand a greater involvement of the founder in their operational activity at the expense of focusing on improving governance and oversighting the management bodies' activity. Thus, the restructuring of state enterprises in other organizational-legal forms would create a unique regulatory framework for all enterprises, contributing to the restructuring of the national economy and increasing its attractiveness for foreign investments.

Implementation measure: Amendment of Art. 19, para. (3) letter b) of the Law no. 246/2017 to expressly specify the deadline for completing the reorganization of state enterprise in other forms of organization.

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Amendment of GD no. 902/2017 for staffing the functional unit responsible for the reorganization of state-owned enterprises.

Modification of the provisions of points 13, 14, 16, 17 of Annex no. 1 to GD no. 484/219 for the elimination from the new model statute of state enterprises of the appendices regarding the assets and lands transferred to administration and the facilitation of the reorganization of state enterprises by complying with the rigors of operating the changes to the acts of incorporation referred to in art. 17 of Law no. 220/2007.

5. Accelerating the implementation of the State Program for the Delimitation of Immovable Property in order to register the state's ownership right over immovable assets realized as a result of the delimitation process. The restructuring of the national economy is also delayed by the extremely difficult process of completing the creation of a cadastre of immovable property in the Republic of Moldova. At the initiation of the National Immovable Property Delimitation Program, approximately 320,000 privately owned lands and over 100,000 publicly owned lands located throughout the country were not delimited and, respectively, were not registered in the Immovable Property Register. According to the Agency of Public Services' progress report on the implementation of the Financial Registration and Evaluation Project (PIEF), in 2022, the primary registration of 10,881 private immovable properties and 5,452 publicly owned lands was carried out. At such a rate of progress, although expected to be completed in 2023, the delimitation and primary registration of immovable property will be completed only after 30 years for private immovable property and over 20 years for public property. In the absence of the primary registration of public property and private property, it is not possible to exercise the right of ownership over these properties, making it almost impossible to capitalize on these lands, which represents a significant barrier to the restructuring and development of the national economy.

Implementation measure: Amendment of GD no. 902/2017 to ensure the allocation of additional resources to the functional unit of the APP responsible for implementing the National Immovable Property Delimitation Program.

Modification of the annex to GD no. 80/2019 to update the stages of the State Program for the Delimitation of Immovable Property and ensure its completion until the eventual initiation of the regulatory amalgamation process (2026⁶).

In the context of the presented arguments and given the indisputable importance of restructuring the economy and improving the governance of state-owned enterprises to ensure the strengthened attractiveness of the national economy and attract foreign direct investments, the inclusion in chapter 20 of the PNAA 2023-2027 of the implementation measures listed in this position note is a sine-qua-non condition for ensuring the alignment of the Republic of Moldova with the provisions of the community acquis and the opening of the accession negotiations of the Republic of Moldova to the European Union.

⁶ Activity 1.1. from the annex to GD no. 126/2023 regarding the approval of the Strategy on Public Administration Reform of the Republic of Moldova