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Guidelines for the EU: Modeling a resilience-building mechanism for Moldova and the “Association Trio”

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Introduction

Building on the European Union's (EU) official document dedicated to promoting resilience in the Eastern Partnership (EaP) countries beyond 2020², the EU revealed its broader strategic goals for the transformation of the region, including Georgia, Moldova and Ukraine. Along with the standard promotion of prosperity and stability, the EU seeks to increase the resilience of its Eastern neighborhood. Prior to that, the 2016 Global Strategy of the EU set out resilience as one of the central priorities for external actions. In its next steps, the EU codified resilience in the official position supporting the development of the Eastern Partnership region. The Covid-19 pandemic emboldened the need to build resilience in the EU neighborhood. To this end, the EU plans to contribute up to €2.3 billion in investments for the economic recovery of the "Association Trio" countries - Georgia, Moldova and Ukraine³. However, the post-pandemic recovery and, therefore, the forging of the resilience of the neighbors, is accompanied by structural reforms such as the good governance and rule of law⁴. Consequently, reforms go hand in hand with building resilience, at least in the EU's vision of a resilient proximity.

The EU defines resilience as the *"ability of states and societies to reform, thus withstanding and recovering from internal and external crises"*⁵. Therefore, the resilience envisaged by the EU has two components: the reform process and its result, which consists of a resilient state capable of bouncing back, or even forwards, in the event of adversity. Additionally, the EU points out that resilient states imply a beneficial combination of domestic capacities that intertwine democracy, trust in institutions and sustainable development. With this as the ideal of the resilient state, the EU announced that it aims at promoting resilience in the neighborhood.

The predilection for building resilience in EaP countries on the EU side has been amplified in the last decade. The cause of this is the multiplying geopolitical effects that this region is producing, primarily, but not only, because of the Russian malign interventions. Investing in the resilience of neighbors is rather an innovation of the EU approach that has long included support for structural and sectoral reforms, representing a subtle form of democratization. Objectively speaking, the focus on resilience in the EaP coincides with the existential need for functional states in the immediate proximity, with established accountability and control systems. Without that, seeking only stability can lead to the preservation of the status quo, while prioritizing the generation of prosperity may serve kleptocratic networks more than the public interest. In other words, promoting resilience, with the EU's support, is supposed to have an enabling effect to transform states, by adding more strategic and practical impacts on the ongoing reform process. To this end, the EU has already established five directions in which it intends to build resilience in the Eastern Partnership: *economy, rule of law, environment, digital space and societies*.⁶

² EU, Eastern Partnership policy beyond 2020: Reinforcing Resilience – an Eastern Partnership that delivers for all, March 2020.

³ EU, Speech by President Charles Michel at the Batumi International Conference, July 2021.

⁴ Idem.

⁵ EU, A Global Strategy for the European Union's Foreign and Security Policy: Shared vision, Common Action: A stronger Europe, June 2016.

⁶ EU, Eastern Partnership policy beyond 2020: Reinforcing Resilience – an Eastern Partnership that delivers for all, March 2020

The current policy brief attempts to present a set of guidelines (“mechanisms”) that can facilitate the injection of the resilience logic into the actions of the EU towards one of the Eastern Partnership countries - Moldova. This policy brief complements a previous research paper on resilience building by the EU in Georgia, Moldova and Ukraine, published by CEPS in 2019⁷. The guidelines described in this policy brief can be replicated in other countries from the region, where the EU is willing and has the capacities and authority to promote resilience.

The policy brief is divided into three sections, followed by a conclusion and recommendations:

- At the outset, several underlying principles are proposed for the EU to apply in promoting resilience in Moldova (and the “Association Trio”^{8 9 10} as a whole) – *smart conditionality, ex-post assessment and continuity of reform*.
- The second section looks at three fundamental pillars that should be at the heart of the resilience efforts from the side of the EU – *rule of law, institutions and critical infrastructure*.
- Next, the third section designs a resilience building mechanism that aims to recalibrate and refine the existing EU toolbox, avoiding reinventing the wheel.

Three pro-resilience approaches

European integration in Moldova, as in other EaP countries where this process is more robust (Georgia, Ukraine), incorporates various principles that drive the EU’s *modus operandi vis a vis* third states. The main set of principles embeds the differentiation, “more for more”, and country-tailored approach or local ownership. These elements support the implementation of the Association Agreements of the EU with Moldova since 2014. However, building resilience requires a more holistic and comprehensive understanding (and subsequent mechanism) of critical policy areas, preventive actions in fields where risks are greatest. Furthermore, such efforts imply that long-term strategies for political and institutional reforms are necessary. In this regard, the EU should employ three approaches that can have a positive impact on filling in the resilience-building with practical and tangible content – *smarter conditionality, efficiency evaluation of the assistance and reform continuity*.

1. Smarter conditionality. Moldova has learned quite early that the EU is serious about suspending the financial assistance for non-compliance with the sectoral

⁷ Denis Cenuşa, EU policy on strengthening resilience in Moldova, Ukraine and Georgia, May 2019, <https://www.ceps.eu/ceps-publications/eu-policy-on-strengthening-resilience-in-moldova-ukraine-and-georgia/>

⁸ The “Association Trio” is an initiative of the Ministries of Foreign Affairs of Georgia, Moldova and Ukraine launched in May 2021 to better coordinate relations with the EU and European integration between the three countries that are implementing Association Agreements with the EU. Additionally, the presidents of Georgia, Moldova and Ukraine signed a declaration of the “Association Trio” at the Batumi Conference in July 2021.

⁹ Denis Cenuşa, Deepening differentiation within the Eastern Partnership and the emergence of the pan-European “Trio”, https://www.ipn.md/en/deepening-of-differentiation-within-the-eastern-partnership-and-the-emergence-7978_1081998.html

¹⁰ Denis Cenuşa, Georgia-Moldova-Ukraine “Association” Triangle: Deepening EU Integration and the “Shield” Against Russian Influence, https://www.ipn.md/en/georgia-moldova-ukraine-association-triangle-deepening-eu-integration-and-the-7978_1083346.html

conditions or for violating the underlying criteria of rule of law. Due to the crimes in the banking sector, unveiled in 2014¹¹, the EU annulled the budgetary support in 2015-2016. Then, the macro-financial assistance stopped in 2018-2019, following the cancellation of the results of the 2018 local elections in Chisinau capital city. The EU has adjusted its assistance, diverting it from the central authorities and directing it through programs and projects to the beneficiaries comprising local administration, media and civil society. This sort of flexibility in applying conditionality by the EU has been helpful, but it answers only partially to the need of building resilience. A smarter conditionality to sustain the EU's goal of building resilience in Moldova would need to include several elements in the event of non-compliance: (1) *sector-by-sector assistance cancellation (instead of the complete shutdown)*; (2) *institutional focus*; (3) *creation of an Emergency Resilience Fund adapted to each country*. The first element would make it possible to stop funding only in the areas where the setback occurred instead of suspending all aid. Greater selectivity can help avoid creating negative shocks in policy areas that are responsible for state resilience. Second, the application of conditionality should affect reforms in critical areas (energy, critical infrastructure, etc.) to a lesser extent. In this regard, the targeting of political institutions should be separated from sectoral or technical ones, avoiding doing more harm than good by suspending assistance. Last but not least, given the vicissitudes of the EU-Moldova dialogue in the last decade (which also characterizes EU relations with Georgia and Ukraine), the continued promotion of resilience development requires the design of an Emergency Resilience Fund. It would be useful both to ensure a kind of reserve budget for unexpected crisis management emergencies (climate-change natural disasters, post-pandemic recovery, etc.) that arise when assistance is suspended because of Moldovas's non-compliance with the conditionality rules.

- 2. Efficient evaluation of assistance.** To ensure that resilience remains at the centre of the EU's actions in Moldova, European assistance provided for reforms should include a resilience component, as it does for sustainable development. This would mean that the assessment of the efficiency of EU aid should include a vision of how the resilience criteria are being properly applied. Furthermore, the European Court of Auditors (ECA)¹² should be equipped with tools to carry out an assessment of EU aid focused on resilience, such as post-assistance institutional and budgetary self-sufficiency or resistance to sectoral shocks. This can be done in two steps. First, the EU should introduce a mandatory periodic (annual) country-based assessment, which is currently sporadic. Second, once the resilience development objective has been effectively integrated into EU aid, it can become one of the criteria against which the European Court of Auditors could check the support provided by the EU on a permanent basis.
- 3. Reforms continuity.** Another approach to consider is the continuity aspect of reforms, which emphasizes the role of sustainability in EU-supported reforms. This aspect is essential for both EU aid and locally implemented reforms to be viable in the long term. Without ensuring the continuity of the structural reforms that cover

¹¹ OCCRP, Grand Theft Moldova, July 2015, <https://www.occrp.org/en/laundromat/grand-theft-moldova/>

¹² The European Court of Audits, <https://www.eca.europa.eu/en/Pages/ecadefault.aspx>

critical institutions, the state of resilience is hardly achievable. There are certain policy areas, such as the rule of law (anti-corruption policies, judicial independence) or various sectors (critical infrastructure) that require a holistic and systematic planning of the reform cycle. More precisely, if necessary, EU-funded reforms should last over a longer time, based on a comprehensive ECA assessment that should include a focus on building resilience. .

Three pillars

The classical definition of resilience applied by the EU invokes the ability of states to “withstand”, “recover” and “bouncing forward” from external adversities. To this end, Moldova, Georgia, Ukraine and other Eastern European countries anchored in partnership agreements must strengthen institutions and sectors that are vitally important for functional resilience capacity. In this sense, greater attention should be paid to three elements: (1) institutions of the rule of law, (2) critical infrastructure, (3) crisis management procedures. They represent the fundamental pillars that, if improved, can bring Moldova closer to the EU’s definition of resilience.

1. Rule of law institutions. One of the weakest points of the Moldovan state building is the imperfect dysfunctional law. It served national interests inefficiently before 2009, while afterwards, for more than a decade, it was under constant attack from informal networks (oligarchic groups). The judiciary sector has defrauded the state through numerous decisions contested at the European Court of Human Rights (ECHR)¹³. The corrupt courts created fertile soil for illegal money transfers from abroad, facilitating multi-billion dollars money laundry schemes with the Russian money from unknown sources.¹⁴ The slow and/or ineffective investigation of these severe crimes also indicated that the prosecution has structural limitations. Since the 2020 presidential elections, the Office of the Presidency has treated the failed rule of law as one of the greatest threats to national security that is regularly discussed in the National Security Council. Shortcomings in the area of the rule of law undermines the proper functioning of other institutions, which can easily be hijacked by advocates and users of poor governance practices from the political or informal sectors. Therefore, the revitalization of the institutions of the rule of law (judiciary, integrity agencies, prosecution service, etc.) should be at the top of the EU’s agenda for building resilience in Moldova. To this end, the EU can launch a working group on the rule of law to assist and support local authorities dealing with judicial and anti-corruption reforms, with the concrete aim of providing professional knowledge and integrity-based work ethic. Ensuring steady progress also requires the long-term training of a new generation of reliable judges and prosecutors, which can hardly be achieved without technical and financial support from the EU to cover the scarce local budget. In addition, the EU could also establish a specialized EaP Rule of Law Forum, which could bring together the best performers in the field from across the region, promoting best practices and standards of integrity.

¹³ According to ECtHR, since the ratification of the European Convention on Human Rights in 1997, Moldova has faced 473 total judgements (one of the highest number per capita in the region), out of which 32 only in 2020. https://echr.coe.int/Documents/Stats_violation_1959_2020_ENG.pdf

¹⁴ Rise.md, The Russian Laundromat, August 2014, <https://www.rise.md/english/the-russian-laundromat/>

2. Critical infrastructure. A solid resilience capacity depends to a large extent on the functionality of the infrastructure vital to the functioning of the state (energy, transport, digital space, etc.). The EU has designed Directive 2008/114 on European Critical Infrastructures to improve the protection of the identification, designation and protection of the most important assets, primarily in sectors related to energy and transport. The latter together with Directive 2016/1148 on network security and information systems were included in the EU-Moldova Association Agenda for 2017-2019, which is in the final stage of being updating.¹⁵ The existing Agenda shows that the EU agreed to "explore the possibilities of cooperation in the protection of critical infrastructure" in Moldova. However, this measure has not yet been translated into concrete actions. At present, Moldova lacks comprehensive legislation that addresses the problems faced by critical national infrastructure, which is largely outdated, underdeveloped, underfunded and poorly protected. The EU is reviewing its 2008 Directive, extending it from protection only to resilience development, as well as taking into account the interconnectedness of the physical and cyber sectors. In light of this, the EU can help Moldova map out critical infrastructure (identification, designation and eventual protection) and its interdependencies with the EU and Ukraine (Associated Trio exponent). Another priority should be the radical improvement, or if necessary the development from scratch, of the resilience capacity of critical assets to boost preparedness for shocks, ranging from natural hazards, hybrid actions sponsored by foreign states (in the cyber field), health security, risks related to foreign direct investment. The EU has the knowledge and resources to help Moldova and the other two countries of the Association Trio to modernize and improve the protection of critical infrastructure.

3. Crisis management procedures. A springboard for building resilience is crisis management capability that emanate primarily from the existing civil protection framework. The COVID-19 outbreak put the functioning of civil protection cooperation between the EU and Moldova to the test. The main lesson learned was that when the EU is overloaded with internal crises, it is doomed to delay its response to third countries. Therefore, the development of elementary internal capacities (in Moldova) for crisis management is of high priority. The EU has already committed to bringing Moldova closer to the Union Civil Protection Mechanism¹⁶, focusing on prevention, preparedness and response capabilities. In this regard, the EU stands ready to contribute to the exchange of knowledge and practices, including facilitating the exchange of data for early warning purposes. The ECA assessment suggested above on the efficiency of EU aid could be useful to see the result of EU support in the field of civil protection. As an alternative solution, the EU can establish a brand-new permanent Risk Governance Committee (RGC) that will bring together representatives of the institutions responsible for civil protection and resilience development (at senior official level) of Moldova. The proposed RGC can be organized on a bilateral and multilateral level, in which case the EU can assess together with the Moldovan side the risks that are national and/or transnational and common to the "Association Trio" and/or the Eastern Partnership region. Subsequently, the RGC may

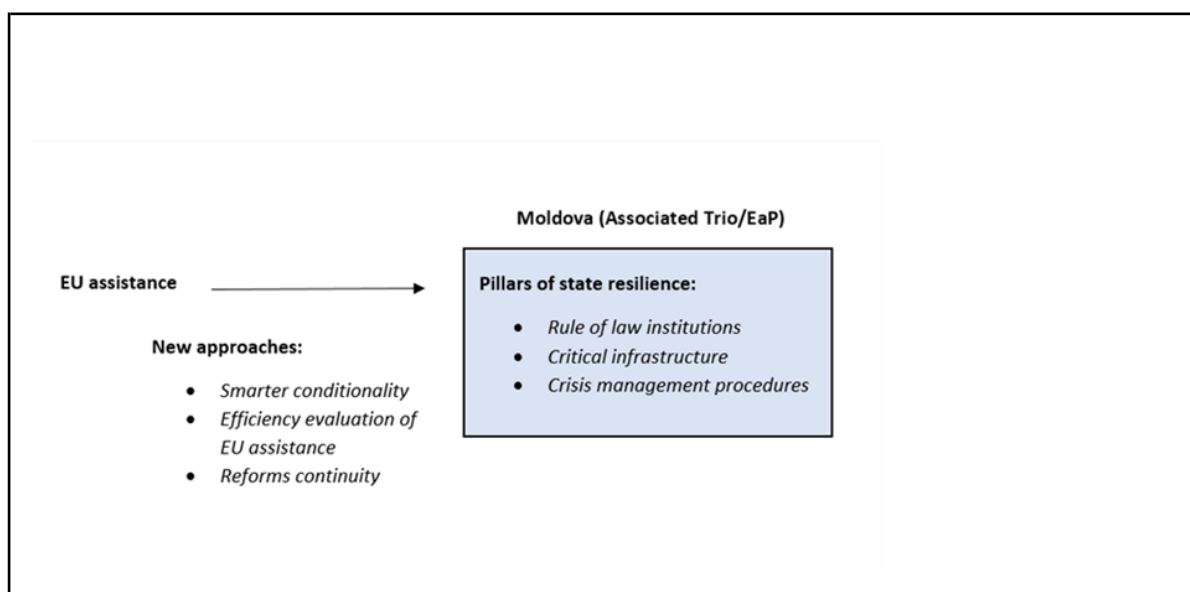
¹⁵ It is highly likely that the new pro-EU government formed after the snap elections on July 11, 2021 will sign the new Association Agenda shortly after the appointment.

¹⁶ Victor Prohntchi, COVID-19 lessons for Moldova: strengthening the country's immunity system in the face of new crises, March 2021, <https://3dcftas.eu/publications/covid-19-lessons-for-moldova-strengthening-the-country%E2%80%99s-immunity-system-in-the-face-of-new-crises>

coordinate both preventive and reactive measures in the field of civil protection under crisis.

The six pillars and approaches described above represent an attempt to systematize and update the toolbox that, to a large extent, the EU already has in its possession. To make better use of them, as well as to serve the EU's foreign policy leitmotif, resilience, this policy brief advocates a calibration of EU assistance to promote resilience in Moldova and the "Association Trio" following the design below (See Figure).

Figure: Designing EU actions to build a more resilient state in Moldova (Associated Trio/EaP)



Source: Author's design

Conclusion and Recommendations

The EU has proclaimed that building resilience is a high priority on its foreign policy agenda, especially with regard to the eastern neighborhood. To promote the development of resilience, the EU must disseminate it in all actions towards those states that participate in a deeper process of European integration, such as Moldova. In fact, building resilience means developing functional states and the EU has the opportunity to channel reforms in its eastern neighbors to achieve greater state resilience. It is the perfect time to discuss how to integrate the element of resilience into the EU's strategic planning with regard to Moldova. The resilience building model proposed by this policy brief for Moldova is also relevant for other states that have association agreements with the EU (the "Association Trio" – Georgia and Ukraine).

In conclusion, the EU should review its approaches and forge three pillars to achieve greater resilience in Moldova, recalibrating and expanding the existing mechanisms and scope of action of the EU-subordinated institutions.

In order to give a more concrete direction to actions and delineate a feasible “mechanism” in the field of resilience building in Moldova and other Eastern Partnership countries, this policy brief outlines the following recommendations that lie on three paramount principles of (1) promoting resilience through reforms; (2) developing financial and institutional self-sufficiency, and (3) instilling integrity within the state institutions through the sanitation of the rule of law sector:

Resilience through reforms:

- **Flexible prioritization of reforms.** Prioritize the reforms and the corresponding financing that have real effect on consolidating the state institutions at the central and local levels to current and near future shocks (post-pandemic recovery, climate change-related natural disasters etc.).
- **Look beyond what the eye sees.** Assist in the development of local forecasting capacities to determine in time the policy areas to be addressed and recalibrated first, both institutionally and financially, taking into account emerging adversities.
- **Do not do more harm.** Apply *smarter conditionality* that allows a selective suspension of the assistance, protecting the assistance to policy areas that respond for resilience from unnecessary disruptions.

Ensuring self-reliance:

- **Developing future capacities.** Introduce a *permanent evaluation of EU assistance*, which also integrates the assessment of how the EU-supported reforms contribute to resilience building.
- **Institutions resistant in time.** Ensuring *continuity for policy reforms* that are responsible for the state functioning at large, until the achieved institutional strength is hard to undermine, with a particular focus on the rule of law institutions.
- **Laying the foundations for resilience.** Drafting and implementing a “roadmap” of actions dedicated to increasing the *resilience of the national critical infrastructure*, starting with mapping them and continuing with specific interventions for their improvement with the EU support.
- **New funds for resilience building.** Establish an *Emergency Resilience Fund (ERF)* that acts as a reserve fund for resilience-related activities, and which can also be supplemented with more financial resources in the case when the EU activates the conditionality and suspend its assistance.
- **More transnational coordination.** Setting up a permanent *Risk Governance Committee* (at the level of senior officials) that work in the field of civil protection and resilience building, which can operate at the bilateral and transnational multilateral level to better coordinate the preventive and reactive measures against the contingencies undermining the resilience.

Integrity within state institutions:

- **Invest in the rule of law for a stronger state.** Establish a task force on the rule of law to achieve reform of the rule of law in both the legal and practical sense, with the aim of exchanging technical knowledge and valuable ethics based on integrity.
- **New generation of actors of the rule of law.** Allocate financial, logistical and academic support to rejuvenate the population of lawyers and prosecutors for a long-term impact on the sanitation of the rule of law sector.
- **Unite the voices of integrity.** Launch an Eastern Partnership Rule of Law Forum to display and promote best practices among the most reliable actors upholding the principle of integrity in the field coming from Moldova and the entire Eastern Partnership region.