

# The Fight against corruption in Moldova: What can be learned from Croatian experiences?

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## Introduction

The aim of this paper to make a brief overview of the progress and the challenges which Moldova is facing in terms of combating corruption, in light of meeting the standards set by the EU through its Neighborhood Policy and the Eastern Partnership program. It resulted from the wider study prepared by the authors of this study.<sup>3</sup>

The paper also comparatively approaches the experiences of Croatia during the EU accession process in this particular area. Although Moldova’s relations with the EU are not part of the same policy as was the case with Croatia<sup>4</sup>, the reform processes in the country have to deal with the same challenges by applying similar instruments and techniques in order to promote domestic political reforms regarding these very sensitive issues. In this context, Croatia’s integration experiences could be relevant for Moldova as Croatia started the accession process being aware that corruption was widespread in the country and was at the same time confronted with the strengthened EU’s conditionality.

According to the definition used by the Transparency International, corruption is understood as “*the abuse of entrusted power for private gain*” (Transparency International, 2014). Corruption could be classified as grand, petty and political, depending on the financial damage and the sector where it occurs. Grand corruption occurs at a high level of government, has negative implications on policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good. Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens at places like hospitals, schools, police departments and other agencies. Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by

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The study is prepared within the project “EU Moldova Think Tank Dialogue” developed by the Romanian Centre for European Policies (CRPE). The aim of this study was to make a critical assessment of the progress and the challenges which Moldova is facing in combating corruption, in terms of fulfilling the EU standards set in the framework of the EU’s Neighborhood Policy and the Eastern Partnership program. The study also takes into consideration the experiences of Croatia during the EU accession process in this particular area. The study is based on the secondary data sources (analytical material, strategic documents, legislation, action plans, progress reports, public opinion surveys, etc.) both for Moldova and Croatia. The primary sources concern the interviews with selected experts implemented in Moldova in spring 2014 and later on in Croatia.

<sup>4</sup> Croatia’s accession to the EU was supported by the instruments of the Stabilization and Association Process, which also covered the remaining countries of Western Balkans.

political decision makers, who abuse their position to sustain their power, status and wealth (Ibidem).

The two countries have made quite a different progress in the fight against corruption which is underlined in this paper. According to Freedom House indicators of national democratic governance, the ratings are based on a scale from 1 (the lowest level of democratic progress) to 7 (the highest), both countries have recorded progress in the last decade. However, Croatia reached the score 4.00 in 2013 while Moldova was ranked with 5.75. (Freedom House, 2013a, 2013b). Furthermore, Transparency International (TI) ranks Croatia in the middle of the scale regarding the corruption perception index in 2013 (48th position on a scale in which 100 = low corruption while 0 = highly corrupted country). Moldova is positioned as 35<sup>th</sup> on the same scale, meaning a higher level of corruption (Transparency International, 2013a). Finally, citizen's perception towards corruption also confirms these differences but shows that in general the same institutions are seen as the most corrupted ones in both countries: political parties, judiciary, legislature and medical and health services (Transparency International, 2013b).

### **Moldova – key challenges in fighting corruption**

Moldova is a partner country to the EU within framework of the European Neighbourhood Policy and the Eastern Partnership. Since 2009 when a pro-European coalition came to power for the first time the country managed to make a significant progress in fighting corruption. In 2014 the progress made by the country in all areas including the anticorruption resulted with lifting of visas for Moldovan citizens traveling to the EU as well as in signing of the Association Agreement with the EU. The Association Agreement is accompanied by an Association Agenda which proposes a list of priorities for joint work in 2014-2016.

However, despite all progress it could be said that Moldova is just at the beginning of a process of developing an efficient anticorruption system. The main Moldovan institutions in the field of fighting corruption include: National Anti-Corruption Centre, National Integrity Commission, Anti-Corruption Prosecution and, Court of Accounts. A common problem with these institutions are insufficient financial and human resources and unclear responsibilities which sometimes overlap. Such institutional fragmentation allows numerous blocking points and possibilities for vetoes. Furthermore, the system of appointing key positions in anti-corruption institutions doesn't secure their full independence from the political influence (Gamurari and Ghinea, 2014).

In terms of strategic framework there are two strategies of key importance in Moldova which regulate the area of anticorruption: the National Anti-Corruption Strategy 2011-2015 (NAS) and the Strategy for Justice Sector Reform 2011-2016 (SJSR). NAS implementation has often been criticized for being formal and for lacking qualitative impact assessment elements. The fact that no special funds have been allocated for implementation of the NAS represents a serious problem. This has direct repercussions on the quality of NAS action plans which as a consequence contain measures of a limited ambition. To support the SJSR implementation the EU secured 70 million euro grant, which is strikingly different when compared to NAS implementation. As a consequence in 2013 compared to 2012 the budget allocated to the justice sector increased by 59.6%. The pace of SJSR implementation is more or less uniform and balanced, but there were some delays in its implementation.

Since 2011 Moldova accelerated the pace of adopting the anti-corruption legislation, but there is still much room for improvement. Due to the frequent legislative changes, there are discrepancies and conflicts between different legislative acts and some legislation which is not precise enough. Many laws don't provide clear accountability mechanisms. These laws say what the public official should not do, but they don't provide proportional sanctions. Therefore there is a need for reviewing the legal framework from the point of view of its coherence. An additional problem with the anti-corruption legislation is the implementation. Moldova, for example is one of the few countries in the world which has a Law on polygraph testing. Even though this law exists since 2008 the subordinate regulations that would ensure its implementation are still missing. Finally, there is a problem of discrepancy in how legal norms are understood and applied by the judges.

There are a number of laws regulating public procurement but the question of whether the definitions within these laws are satisfactory has often been debated (European Commission 2012, 13). The public procurement system in Moldova requires a mandatory publishing of procurement intention announcement before drawing up a procurement process plan. However, implementation of this requirement is insufficient because often announcements are not published and plans not drawn up (Ibidem). Moreover, data related to public procurement often involve the issue of personal data protection and Moldova needs to regulate what should be the limit to application of the personal data protection regulations when it comes to public functions.

The Law on conflicts of interest did not apply at all until 2012, when the National Integrity Commission was established. In the area of the conflict to interest the problem is that the definition of the conflict of interest is general, without identification of situations where a conflict of interest is clearly unacceptable (Cozonac et al. 2012, 37). Law on the conflict of interest doesn't provide proportional sanctions as well as clear accountability instruments. Furthermore, the statute of limitation concerns many cases of conflict of interest and declaration of incomes.

The Law on the transparency of the decision-making process, despite achieving certain progress, is still insufficiently enforced. In 2012, the government initiated implementation of the e-Transformation program which allows citizens and businesses electronic access to public data. (Bertelsmann Stiftung 2014, 4). However, in practice not all public institutions comply with the Law on public availability of information. Sensitive documents such as reports of the Chamber of Accounts are not publicly available. Similarly, the integrity plans made by Moldovan institutions are treated as internal documents despite fact that the UN Convention against Corruption (UNCAC) foresees that the corruption risk assessment activities should be made public.

One of the most problematic areas in the field of anti-corruption is financing of political parties. Some legislative changes were introduced in 2014 but the capacities of bodies authorized to identify violations in this area are still low. There is evident lack of a political will in this area because parties represented in the parliament resist the idea of enforcing a transparent and efficient mechanism of party financing (Bertelsmann Stiftung 2014, 27).

The Law on the protection of whistle-blowers currently does not exist and Moldova needs to improve its measures for protection of citizens in this field. In the study conducted by Transparency International Moldova during 2012 less than 10% of surveyed businesses and households stated that when faced with corruption they complained about it, stressing as the

primary argument that such actions would not change anything (Transparency International Moldova 2012, 36).

Moldova needs to strengthen its efforts in prosecution of high ranking public officials. In 2013 just nine criminal cases against high ranking public officials were sent to court (one deputy head of district, five majors, ex-head of the Audio-visual Coordinating Council and head of the State Fiscal Inspectorate) (European Commission 2013, 19). In March 2013 the Moldovan Government resigned because of corruption allegations. However, the case was not brought to court but remained at a political level. The former Prime Minister Vlad Filat resigned but most of the ministers joined the new government which was formed in May 2013.

Today the perception of corruption in Moldova is improved, compared to what it used to be some years ago due to the efforts invested in the anti-corruption area as well as the media exposure. Still the country needs to increase its focus on anti-corruption education because bribery is highly spread among population. The role of civil society organizations in educating citizens and public officials should be underlined. Good practice can be taken from Transparency International Moldova, which regularly implements workshops and trainings for public institutions on particular corruption related subjects such as: conflict of interest, ethics, national and international legal framework, economic consequences of corruption, declaration of incomes etc.

### **Croatia - main achievements and key weaknesses of the anti-corruption system**

Croatia joined the EU on the 1 July 2013. During its EU accession process which started in the year 2000 Croatia has made strong efforts in developing a comprehensive legal and institutional framework to combat corruption. The accession to the EU had a strong role in leading the process of establishing legal, institutional and policy framework. However, the lack of political will in earlier stages has slowed down the reform processes.

Strict requirements for the closure of the newly introduced Chapter 23 “Judiciary and Fundamental Rights” allowed Croatia to avoid the establishment of a post-accession controlling mechanism for the monitoring of anticorruption, the fight against organised crime and judiciary reforms, which were established for Bulgaria and Romania. Furthermore, the experience of implementing Chapter 23 during Croatian accession negotiations inspired the European Commission to start a regular anti-corruption reporting mechanism to periodically assess the progress of the EU Member States in the area of anticorruption. The first report which also includes Croatia, based on the Eurobarometer survey on perception and experience with corruption, positioned the county among six member states lagging behind in scores. However, being the new EU member state, Croatia was in general rather positively evaluated (European Commission, 2014).

Among main achievements, it should be mentioned that Croatia has developed strategic documents and legislation to fight corruption in accordance with the *acquis communautaire*. Furthermore, the sectorial approach implemented in the strategic documents proved to be adequate. The country also ratified main international anti-corruption instruments. The legal framework for the suppression of corruption and organised crime is wide and is considered to be adequate for the current development moment of the country.

The legal framework has recently been significantly improved with new laws or amendments. The criminal code (which entered into force on 1 January 2013) increased the sanctions for some corruption offences; while the laws on the access to information, asset disclosure, and public procurement were also improved. The reformed criminal procedure code (2008) should particularly be underlined since it enhanced efficiency of proceedings (Ibidem). The legal framework for the financing of political parties with clear and transparent rules, supervision and reporting could also be mentioned as an example of good practice. On the negative side it should be stressed that some areas such as lobbying and protection of the whistle blowers still need to be regulated in legislation.

The characteristic of Croatian institutional framework in the area of anticorruption is the multitude of various institutions which increases the danger of overlapping competences and incoherence due to lack of coordination. Institutionally the system consists of the following institutions: Committee for the Fight against Corruption (executive body of the Government), National Committee for the Fight against Corruption (working body of Croatian Parliament in charge of monitoring anticorruption strategy), Independent Sector for Prevention of Corruption within the Ministry of Justice, Committee for Deciding on the Conflict of Interest, Commissioner for Information, Office for the Prevention of Corruption and Organized Crime (USKOK), the State Audit Office.

In terms of the institutional framework the establishment of the Office for the Prevention of Corruption and Organized Crime (USKOK) in 2001 as a part of the State's Attorney Office as well as later established specialised Police Office for Suppression of Corruption and Organized Crime (PNUSKOK) could be singled out the examples of good practice. This is due to the track record of proactive investigations and successful prosecution including notable cases concerning high level elected and appointed officials. In this context the prosecution of the former Prime Minister and Deputy Prime Minister as well as several former ministers could be viewed as a signs of strong political will to combat corruption.

Among main weaknesses of the fight against corruption in Croatia, it is necessary to stress that development of anti-corruption policy needs to start as early as possible during the accession process. In Croatia, development of this policy was linked with (or resulting from) the EU integration process. However, some key steps were taken in final stages of the accession (amendments to the Law on the right of access to information, Law on prevention of the conflict of interest, Law on financing of political parties, Criminal procedure code etc.).

In order to improve the coordination of anticorruption policy Croatian Parliament in February 2015 adopted the new Strategy for combating corruption 2015-2020. The new strategy is focused on prevention of corruption through detection of corruption risks and elimination of the remaining legislative and institutional defects. The Strategy will be implemented through an accompanying action plan which will be revised every two years. The quality of the measures in the action plan will be of key importance for the success of this strategic effort.

Finally it should be stressed that in Croatia the level of participation of civil society and all interested stakeholders in formulating the anticorruption policy is still not adequate. Strategic documents are not always based on broad consultation at all levels and there is a need for supporting a stronger participative process (Prkut and Škrabalo 2013, 10).

## Conclusions

The fight against corruption represents a continual process which needs to be constantly upgraded in order to be able to recognize emerging corruption threats and react with appropriate instruments. In this process creation of the appropriate legislative and institutional framework is of key importance. The strategic documents for the fight against corruption need to pay attention to the analysis of the situation in each particular area in clearly defined periods covering both preventive and repressive measures. In Moldova as in Croatia the fight against corruption is greatly driven by international actors, particularly by the EU. During the enlargement process to Croatia the EU for the first time introduced a separate negotiation chapter which dealt with the judiciary and fundamental rights and which contained numerous conditions concerning the fight against corruption. This experience is important for Moldova which like all countries aspiring stronger ties with the EU should be aware that in building relations with the EU the fight against corruption will always stay at the center of the EU's conditionality. In creating an effective anti-corruption system rising awareness of the citizens about the negative consequences of corruption is crucial and in this sense the cooperation between the government and civil society organizations needs to be strengthened.

Moldova so far made a visible progress in fighting corruption which was rewarded in 2014 by lifting of visas for Moldovan citizens when traveling to the EU and by signing the Association Agreement with the EU. However, Moldova is still at the beginning of establishing an efficient anti-corruption system. Although in the past five years in particular Moldova adopted and upgraded numerous laws in this area the problem is in implementation which is lagging behind. In order to strengthen implementation of its anti-corruption policy Moldova has to enhance coordination between various strategic efforts covering this area. Furthermore, in the functioning of its anti-corruption institutions the country should consider changes aimed at obtaining more coherence and independence from political influence. Moldova's anti-corruption legislation needs to be further developed. In some areas like the conflict of interest the legislation needs to become more detailed while in the other like the public procurement more transparency is needed. Generally, all laws have to prescribe clearer accountability mechanisms and more proportional sanctions. In the next phase of its anti-corruption policy Moldova has to show greater willingness to prosecute high ranking officials which currently represents one of the weakest elements in its anti-corruption efforts.

During its accession process Croatia has successfully developed laws, regulations and penalties to effectively combat corruption. However, this is still an open process which needs to be continued. The experiences of Croatia in fighting corruption show that development of anti-corruption policy needs to start as early as possible in the process of building stronger ties with the EU. The other important lesson for Moldova and other countries is that the progress in this area greatly depends on the existence of a clear political will in the government and among political leaders. Despite all its achievements Croatia still has a lot of work to do in the area of anti-corruption, particularly when it comes to balancing its complex institutional framework and in strengthening the preventive measures. The new Strategy for the fight against corruption 2015-2020 has the potential for securing further improvements. However, it will justify its purpose only if its accompanying action plan (to be adopted) manages to contain ambitious and measurable high quality measures.

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