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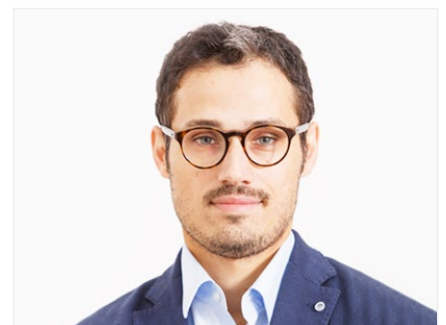
EU-PROMOTED REFORMS IN GEORGIA, MOLDOVA, AND UKRAINE: PROGRESS OR CHALLENGE?

Policy Paper

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Summary

In recent years, the EU has made considerable efforts to help Georgia, Moldova, and Ukraine to carry out internal reforms. To do this, the EU has relied on the Association Agreements/DCFTAs (AA/DCFTA) and macro-financial agreements (MFAs) with the national governments of this particular part of the Eastern European neighbourhood. The AA/DCFTAs contain guidelines for the carrying out of comprehensive reforms in various sectors of public affairs. To facilitate and structure the reforms along the European integration objective which is enshrined in the AA/DCFTAs, the EU and the three countries in question are supposed to design 'Association Agendas' (AAs). Georgia and Moldova are operating with recent AAs, unlike Ukraine which did not adopt a more up-to-date AA after the 2015 document.



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These documents, which were conceived by the EU with Ukraine and Moldova in mind, contain more actions to be taken than is the case for Georgia. Deficient areas which tend to coincide in all three countries are the judiciary, public administration, the fight against corruption, and energy. In addition, the EU can also use MFAs which allow a strategic and calibrated approach in the pursuit of reform. The strength of the latter lies in the application of the conditionality mechanism which usually drives the most urgent reforms. However, the EU may face situations in which, due to a lack of progress, it has to reintroduce older conditions into the new MFAs.

To turn challenges into progress, this policy brief presents a series of recommendations, such as prioritising reforms which can be integrated into the rule of law, expanding the conditionality mechanism against non-MFA agreements, focusing on improving levels of professionalism amongst public servants, and the implementation of a reform-monitoring mechanism together with like-minded pan-European organisations. To increase the effectiveness of reform assistance to Georgia, Moldova, and Ukraine, this policy brief suggests practical solutions towards updating existing instruments and some novel ideas which take into account some of the political, institutional, and policy-making shortcomings of the past.

Introduction

Relations between the EU and its partner countries in the east – Georgia, Moldova, and Ukraine – are firmly anchored in an ambitious agenda which involves policy reform. More than anything else, the Association Agreements which were formalised in 2014 created the necessary normative framework within which transformative reform could be carried out. They come from across the entire spectrum of policy domains, demonstrating the great diversity of bilateral engagement between the EU and its more '*Europeanisable*' neighbours. This policy brief aims to provide a snapshot of priorities and turning points in the implementation of those reforms which are being supported by the EU.

To be able to understand the primacy in terms of the EU's reform prioritisation on the one hand, and the implementation status of those reforms by the national governments of Georgia, Moldova, and Ukraine on the other hand, the policy brief resorts to two sources of evidence. Firstly, it examines the Association Agendas (AAs) which were convened by the EU with the three associated states, Georgia,

Moldova, and Ukraine (all of which are AA/DCFTA states). The content of the AAs permits those reforms to be traced where they have been considered essential in the aftermath of the negotiation and signing of the paramount bilateral agreements, the Association Agreements and DCFTAs.¹ Secondly, this policy brief looks at the most pressing reforms by analysing the last two iterations of EU macro-financial assistance which were designed for the AA/DCFTA countries. This will allow critical reforms to be tracked and current progress to be assessed.

The policy brief begins with the inspection of the latest versions of the AAs to have been issued by the EU and its three partner countries. The focus is on reforms which are highlighted as priorities. Next, the policy brief has the aim of being able to point out those reforms which are on the current table when it comes to discussions between the EU and Georgia, Moldova, and Ukraine, by examining the most recent MFAs which point to the most pressing current issues. Finally, the policy brief concludes with the main findings and sets of recommenda-

tions which are addressed to European stakeholders and the national governments of the three states which are being examined.

1. Association Agendas: the 'road maps' for EU-orientated reforms

When moving towards novel ideas to improve the EU-driven reform format in Georgia, Moldova, and Ukraine, it is important first to analyse the means through which the EU is contributing to the reform agenda in these countries. Currently, there are two ways in which the EU is attempting to engage the three associated states in 'virtuous circles' of reform: *the first* is formed by the agreements (AA/DCFTAs) which have been signed between these countries and the EU in the last decade (2014). They provide the groundwork for a modern, dynamic, complex legal basis, one which reflects current changes in the EU *acquis* and the ambition of expanding and deepening the political dialogues. However, these strategic documents lack practicality for a daily reform routine which requires more detailed and achievable goals and measures. Given this, the EU and these countries should resort to *the second tool*, which is the Association Agendas (AAs). These are significantly shorter, and are more accurate in terms of actions, being commonly updated through a biennial review process. The drafting of the new AAs depends upon sectoral progress in the implementation of the AA/ZLCAP, as well as on the political consensus in the dialogue between the EU and the three countries.

In essence, AAs allow the difficult legal texts of the AA/DCFTAs to be assimilated, making the European integration process easier to understand, review, and follow when it comes to understanding which gains have been made and which opportunities have been missed.

Furthermore, AA facilitates the conduct of relevant final monitoring, evaluation, and reporting, which would otherwise be difficult to achieve solely based on observing the implementation of the huge AA/DCFTA. Both the EU and the three associated countries are supposed to be equally committed to fulfilling the goals of the AAs in good faith, providing to this end political, technical, and financial means, and involving local civil societies.

It is worth mentioning that the AAs entail legally binding commitments due to the implementing function for the AA/DCFTAs, which more efficiently prevents the political deviations which existed in the past. Prior to the AA/DCFTAs, the EU carried out country-tailored action plans which had been envisioned by the European Neighbourhood Policy (ENP). The density of the outcome of the action plans was dictated mainly by the intensity of the political commitment, which exposed the reforms to a higher risk of non-compliance. The AAs represent a game-changer in terms of a better-structured and ownership-building reform framework.

Between 2014 and 2021 the EU has negotiated and set out a greater number of association agendas with Georgia and Moldova than it has with Ukraine. The first two have implemented two AAs each, while the only document for Ukraine dates from 2015.² The content of these documents makes it possible to identify the priority policy areas on the one hand, and the most reform-intensive domains on the other.

This policy brief analyses the latest iterations of AAs for each of the three countries. These documents are useful for tracking the policy interests of the EU, where Georgia, Moldova, and Ukraine manifested political openness. Both sides draft and approve the AAs by reaching a political and policy-related consensus, during the association councils which reunite the EU's high-level decision-makers with representatives of the associated states.

The most recent AA with Georgia corresponds to the period 2017–2020.³ It contains *eleven priority reforms* and *283 measures*. Moldova negotiated its most recent AA for the 2017–2019 interval.⁴ This document outlined *thirteen principal reforms* and *529 measures*. Ukraine has the oldest AA,⁵ which was launched in 2015. It included *ten major reform areas* and envisages *330 activities*, which is of a smaller proportion than the Moldovan document and only slightly bigger than the document to which Georgia agreed. A comparative look at the number of actions which have been established with the EU shows clearly that Moldova has been under greater reform pressure than the other two countries. In part, this could derive from a mixture of stagnation and deviation in the previous reform process.

The policy fields which have been prioritised for reform are distinct in each of the three cases, which demonstrates a large degree of differentiation in terms of good governance shortcomings and sectoral shortcomings. Out of eleven leading issues, the continued efforts towards an independent judiciary, better pub-

lic administrative reform, human rights enactment, and peaceful conflict resolution are all at the top of the Georgian AA. As for Moldova, the recovery of assets which were stolen during the enormous banking frauds that were revealed in 2014,⁶ along with the prevention of corrupt practices in the public sector, were among the thirteen issues which were of the greatest concern to be incorporated into the AA. Ukraine's AA underlined constitutional and electoral reforms as a priority, along with the establishment of new anti-corruption institutions (out of a total of ten key areas).

As shown in *Figure 1*, below, the differences in the choice of reform priorities between the three associated countries have two main grounds. Firstly, the AAs of Georgia and Moldova are more recent (2017–2020), being issued after the dialogue with the EU had expanded into more fields of cooperation than immediately after the signing of the AA/DCFTAs, as is the case of Ukraine's AA. Secondly, the AAs of Moldova and Ukraine projected some individual peculiarities which stemmed from the unfolding crises that had been caused by se-

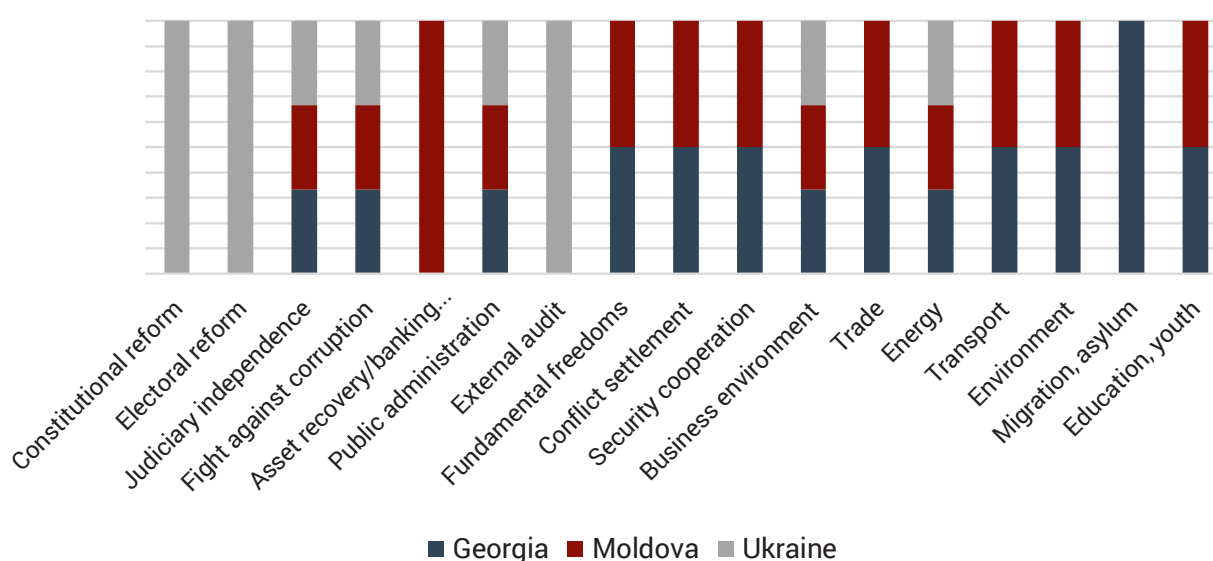


Figure 1. The priority areas for reform in the EU's AAs with Georgia and Moldova (2017–2020), and with Ukraine (2015).

Source: Author's compilation based on the AAs between the EU and the three associated countries.

vere policy and political dysfunctions. Moldova was mitigating the consequences of bank fraud, which accounted for about 15% of its national GDP. The post-Viktor Yanukovich political transition in Ukraine required structural reforms, with the authorities and the EU emphasising changes in the constitution and to electoral law as some of many required pressing reforms.

The fact that the AAs of Georgia and Moldova were designed after the entering into force of the AA/DCFTAs in 2016 also influenced the level of ambition in terms of the agreed reforms. Nevertheless, the Ukrainian AA from 2015 targeted more goals in some policy sectors than did that for Georgia which has its more current AA. In any case, Moldova has the primacy in the total share of committed reforms with 529 measures, ahead of Ukraine (with 330), and Georgia (with 283). It is important to note that the degree of commitment to the reforms does not correspond in any way to the high quality of their execution. On the contrary, the high number of actions being taken could be detrimental to the outcome due to the limited institutional capacities of the associated countries and the competing political interests which often change.

Moldova has been ahead in committing to reforms across the majority of policy fields, from good governance, foreign policy, and security, to trade and energy. The rule of law and justice reform had a massive presence on the reform agenda (covering 67 actions), taking in the improvement of electoral legislation, the continuation of administrative reform, boosting the capacity of state institutions, and fighting corruption within the law enforcement agencies and the judiciary.⁷ The anti-corruption measures, which included a reform of the police, encompassed more than sixty actions in Moldova's AA for 2017–2019. Georgia and Ukraine incorporated fewer measures which were related to corruption. This finds some justification

in the case of Georgia which improved its external perception of corruption during the radical structural reforms of Mikhail Saakashvili from the middle of the 2000s. The Georgian anti-corruption policies paid off, placing the country higher in the international rankings than some EU/NATO member states, such as Romania and Bulgaria.⁸ At the same time, Ukraine has been no less problematic than Moldova, needing probably as many anti-corruption measures. Georgia's AA for 2017–2020 entails less engagement in terms of energy reform, partly because it joined the Energy Community at a later date (July 2017) than Moldova (2010) and Ukraine (2011). The lack of physical conditions for any interconnection with the European energy market reduces the number of activities, although the legal approximation is similar to that which has been undergone by Moldova and Ukraine.

A closer analysis of the AAs for Georgia, Moldova, and Ukraine lead to several overarching observations.

Firstly, the political context in the AA/DCFTA states has an immediate effect on the quality of the implementation of the AAs, leading to significant delays in the updating of the reform agenda, as the case of Moldova shows, where the AA expired in 2019 and did not undergo an immediate update. The main cause of this is successive political crises after the fall of the oligarchic regime in 2019, something which should become much less likely after the early elections of July 2021 which ended with victory for the pro-EU 'Action and Solidarity Party' (winning 63 out of 101 seats).⁹ Similarly, the country underwent political crises in the 2019–2021 period, which in part has delayed its adoption of a new AA. Therefore the EU can design a more specific transition policy dialogue with the AA/DCFTA states which can serve to substitute for the time gaps which exist between the 'old' and 'new' AAs.

Secondly, although the AAs have a crucial role in guiding reform, the Ukrainian AA dates from 2015, making it somewhat redundant for any alignment with currently-running reforms. Consequently, the EU should encourage the revision of the AAs because they ensure greater levels of transparency amongst the authorities and makes it possible to involve local stakeholders in the prioritisation of reforms (primarily civil society organisations and the mass media).

Thirdly, although the AAs explicitly the goal of the reforms, they lack details about the institutions which are in charge of specific reforms, as well as clear (non-) budgetary sources which support them.

Finally, the AAs also lack benchmarks by which progress can be measured, which significantly reduces the clarity of the expected results and allows greater levels of discretion for partner countries about what should be considered an actual outcome. Filling in the gaps for the current format of the AAs will increase institutional responsibility for the reforms, as well as improving the feasibility and predictability of any results which are achieved. Furthermore, those institutions which are involved in the reforms can be stimulated through specific capacity-building projects which are designed together with the EU, and which are aimed at improving the technical, professional, and linguistic skills of staff, attracting new talent, including from the diaspora.

2. The prioritised reforms: through the lens of EU macro-financial assistance

The EU commonly sets out the most pressing reforms for Georgia, Moldova, and Ukraine in terms of macro-financial assistance (MFAs). These cover a variety of sectors, from public sector governance to anti-corruption and the rule of law. The European part unilaterally establishes the content of the MFAs, to which third countries must align themselves in order to be eligible for EU assistance. Unlike AAs, sectoral reforms which have been envisaged in MFAs are closely monitored. As a rule, only after the due fulfilment of the conditions can the EU disburse its financial assistance. Otherwise, the EU applies the principle of political and sectoral conditionality by suspending financial support.¹⁰

Since 2009,¹¹ the EU has launched several MFA programmes for Georgia (totalling three), Moldova (two), and Ukraine (four), to which were added those MFAs which are related to the 2020 pandemic. However, in order to understand the most current and therefore pressing reforms, this policy summary examines only the most recent MFAs which were agreed before and during the COVID-19 outbreak.

1. Pre-pandemic MFAs included sectoral and political conditions. The policy areas which were addressed in the MFAs and the general number of sectoral conditions to be met differ from country to country. The latest MFA for Georgia was signed in 2018, being the third since 2009 (MFA III). It included €45 million (€12.5 per capita) and eleven sectoral conditions, including justice reform.¹² The recent MFA for Moldova dates from 2017. This is the second MFA to be offered by the EU to this country (MFA II),¹³ offering aid of €100 million in combined loans and grants (€ 38.4 per capi-

ta). Moldova's MFA includes 28 measures, with a strong focus on fighting corruption and money laundering. Finally, the EU MFA for Ukraine which has been undergoing implementation since 2018 was the fourth before the pandemic (MFA IV). The aid consisted of loans worth €1 billion (€23.2 per capita) and eighteen sectoral measures, with notable actions being required in the field of anti-corruption policies.¹⁴

2. Against the backdrop of the coronavirus pandemic, to mitigate the economic impact, the EU has proposed the latest round of macro-financial assistance to AA/DCFTA countries in the form of 'Corona-MFAs'. Conditions have been attached to this MFA only for the second tranches, which are expected by the end of autumn 2021. Furthermore, the pandemic-related MFAs only include loans, unlike previous MFAs which also included a grant component for Georgia and Moldova. As on other occasions, Ukraine's MFA is the largest of the three countries in nominal terms,¹⁵ with €1.2 billion representing €27.9 per capita. The reforms which have been highlighted by the EU in the case of Ukraine relate to public sector governance and justice reform, totalling six out of eight conditions. Social issues and the public sector are a priority in the MFA with Georgia (€150 million, or €40.5 per capita), totalling four out of seven actions. The sectoral policies which have been presented in the MFA for Moldova (€100 million, or €38.4 per capita) include the fight against corruption and the business environment, totalling four out of six objectives.¹⁶

Table 1 below synthesises the policy areas which have been prioritised by the EU, which is preparing the appropriate conditions by enquiring about both national governments and civil society organisations. The most reform-intensive policy areas, which are therefore treated as imperative, are presumably those in which sectoral conditions prevail in pre-pandemic and crown-related MPAs for Georgia (covering

five out of eight policy areas), Moldova (covering *three out of eight areas*), and Ukraine (again covering *three out of eight areas*).

Table 1, presented above, illustrates the variations in sectoral conditions which the analysed MFAs are demanding in terms of reforms in the associated countries. In Georgia, the actions in its two MFAs refer to social policies (covering six actions), the business climate (four actions), and public sector governance (three actions). Moldova's MFAs highlight the business climate (nine actions), the fight against corruption and money laundering (eight actions), and the energy sector and financial sector (each with five actions), all of which are the most pressing areas of required action as far as the EU is concerned. According to the MFAs for Ukraine, the main areas which are undergoing reform include public sector governance (covering six actions), the fight against corruption and money laundering (six actions), and public assets (five actions).

From the information which has been included in *Table 1*, it is clear that the EU highlights the significance of fighting corruption only in the cases of Moldova and Ukraine, while in the case of Georgia social policies are the top priority. Based on a crosscheck of the conditions which are contained in the EU's MFAs, in some cases the same action as in the previous MFA is replicated in the subsequent one. One of the obvious reasons for this is a lack of progress in the implementation of the appropriate reforms:

- Those structural policies which have stagnated the most in **Georgia**, between MFA III (2018) and the 'Corona-MFA' (2020), cover four issues: 1) *ensuring the proper functioning of attempts to resolve the public procurement disputes mechanism*; 2) *passing legislation in regard to entrepreneurs which is in line with the EU acquis*; 3) *improving the efficiency of labour inspections*; and 4) *increasing professionalism and integrity in the judicial sec-*

Table 1. The sectoral conditions in the EU's MFAs for Georgia, Moldova, and Ukraine before and after the pandemic.

Policy areas	Georgia	Moldova	Ukraine
Public sector governance	MFA III - 2 Corona-MFA - 1	MFA II - 3 Corona-MFA - 1	MFA IV - 4 Corona-MFA - 2
Public assets	MFA III - 1 Corona-MFA - 1	MFA II - 2	MFA IV - 4 Corona-MFA - 1
Fighting corruption and money laundering	-	MFA II - 6 Corona-MFA - 2	MFA IV - 6
Energy sector	Corona-MFA - 1	MFA II - 5	MFA IV - 1 Corona-MFA - 1
Financial sector	MFA III - 2	MFA II - 5	
Business climate	MFA III - 2 Corona-MFA - 2	MFA II - 7 Corona-MFA - 2	Corona-MFA - 2
Social safety net and labour market	MFA III - 3 Corona-MFA - 3	-	MFA IV - 3
Justice sector and the rule of law	MFA III - 1 Corona-MFA - 1	Corona-MFA - 1	Corona-MFA - 2
Total actions	20	34	26

*The cells in orange indicate the reform-intensive policy areas.

Source: Author's compilation based on the reports by the European Commission covering macro-financial assistance which has been offered to Georgia, Moldova, and Ukraine: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/macro-financial-assistance-mfa-non-eu-partner-countries_en.

tor. Overall, the EU rarely complained about the reforms which have been implemented by Georgia until 2019–2020, when the political crisis placed far greater emphasis on the structural shortcomings in the sector which includes the rule of law (specifically the independence of the judiciary sector).

- In the case of **Moldova**, five out of the six policy areas which have been targeted by the 'Corona-MFA' (2020) are also largely reflected in the MFA II (2017). In other words, in the last three years, the Moldovan government has not satisfactorily resolved and/

or fully resolved the five conditions which were required by the EU to be resolved in 2017. These are: 1) *improving the integrity of the public procurement system*; 2) *ensuring a credible disciplinary body in the judicial sector (involving the Superior Council of the Magistracy)*; 3) *increasing the efficiency of the National Integrity Authority by expanding its inspection competences*; 4) *achieving results in terms of asset recovery after six years of the investigation of bank fraud*; and 5) *adopting the new Customs Code which is aligned with that of the EU*. Due to delays in meeting all

of the conditions which are contained within MFA II, the funding programme expired in July 2020 and the EU was unable to deliver the last part of the €100 million assistance, constituting a figure of €40 million.¹⁷

- The 'Corona-MFA' (2020) for **Ukraine** has maintained four conditions which were previously requested in MFA IV, mainly due to the low levels of progress which have been registered between 2018 and 2020. More precisely, those reforms which have not yet produced any results are as follows: 1) *increasing the predictability of the tax system (in terms of digitisation, risk management, etc)*; 2) *promoting the integrity and effective functioning of the judiciary by investigating the background of judges through the recently-created selection mechanisms (involving a new 'Commission for the High Qualification of Judges')*; 3) *intensifying the recovery of assets in the state banking sector*; and 4) *improving corporate governance in state-owned companies following OECD standards*.

Over the last decade the EU has used MFAs to varying degrees of success as a lever to promote certain reforms, complementing AA efforts which do not have an explicit tool regarding certain conditions which have to be met. Although MFAs also have limitations when it comes to producing reforms in the required target areas, they are the most robust tools for the EU in terms of being able to promote reforms in the AA/DCFTA countries. In order to improve efficiency in promoting reform, the pre-set conditions which normally underpin the MFAs could be incorporated into the implementation of the AAs. On the other hand, to be able to increase the effectiveness of conditions in the MFAs, disbursements could be divided into smaller amounts, proportional with the number of measures and/or reforms. Consequently, the *quid pro quo* relationship between the EU and AA/DCFTA countries will be more equitable, with greater efficiency for reforms, even

with the risk of multiplying the number of MFA payments which the EU currently makes by two tranches (to include Georgia and Moldova alone) or three (to include Ukraine).

3. The pressing issues: rule-of-law reforms

In recent years reforms have become one of the most complicated and complex areas of communication with the EU. However, in order to understand those issues which are seen today as being imperative, it is necessary to talk about current issues which the associated countries refrain from abandoning and which the EU closely monitors.

In the case of Georgia, the main political areas to be included in the 2021 'political agreement',¹⁸ which was facilitated by the president of the European Council, Charles Michel, opened up a way out of the 2019–2020 political crisis. The most vital reforms for Moldova belong to the conversation which was initiated in June 2021, between the Moldovan president's office and the EU concerning the 'Economic Recovery Plan' (involving a figure of €600 million for 2021–2024). Last but not least, the most up-to-date understanding of those reforms which are imperative for Ukraine is derived from the goals which were set out at the EU-Ukraine Association Council in spring 2021.

The three national contexts mentioned above are used to describe in more detail those areas in which the EU and national authorities have found a common denominator.

Georgia. The political crisis which was triggered by the 2019 anti-Russian protests revealed a high degree of public disagreement with government policy as led by the ruling 'Georgian Dream' party.¹⁹ The outcome of the 2020 legislative elections did not repair the widespread political polarisation and chronic

mistrust between the ruling 'Georgian Dream' and the largest representative opposition party. The EU has played a key role in developing solutions for sustainable political instability, with interventions involving them having been more visible than those of other western players (such as the US or UK). As a result, Georgian forces signed a reform 'roadmap' in April 2021,²⁰ which included the most urgent reforms which were required to overcome the crisis. None of the actions refers to sectoral issues which can be related to the economy or to other non-political areas. *Of the five blocks of measures* which are contained in the document, *two blocks* reflect concrete political reforms in the field of justice and electoral law, with timelines attached:

- As part of *judicial reform*, the signatories of the 'roadmap' agreed to guarantee the independence of the judiciary through the merit-based appointment of judges and that of the future general prosecutor, along with ensuring greater transparency in rulings which are issued and, in general, the greater integrity of the justice system.
- The proposed actions for *electoral reform* include changes to regulations which govern the distribution of power within parliament, the liberalisation of thresholds for local elections, the depoliticisation and professionalisation of the Central Electoral Commission (CEC), and mechanisms to prevent institutional blockages in the appointment of the head of the CEC. The reforms described above repeatedly emphasise the fact that judicial and electoral rules are high on the agenda of decision-makers in Georgia and the EU.

Despite the importance of the agreement negotiated by the EU, the parliamentary majority of the "Georgian Dream" has unilaterally withdrawn from it at the end of July 2021. The rul-

ing party justified the decision with the alleged compliance with all provisions, as well as the fact that the opposition United National Movement (UNM) abstained from signing it²¹. However, both the EU²² and the US²³ have lamented the termination of the agreement, noting that it remains an essential platform to move forward with the rule of law reforms, which are ongoing rather than completed.

Moldova. The anti-corruption agenda and justice reforms have a strong presence in the priorities which have been envisioned both by the EU and the national authorities. The pandemic-related 'Economic Recovery Plan for Moldova', which represents €600 million in investments for the 2021–2024 period,²⁴ represents a financial framework which the EU has approved at the request of Moldova's presidential office under Maia Sandu. Although generically intended to support the restoration of economic growth, including methods which involve assisting businesses, the 'recovery plan' aims to stimulate justice and anti-corruption policies. In this regard, the president's office, as well as the EU, also depend upon parliament and the executive which was formed after the early elections of 11 July 2021. Until now, the efforts of the president's office in Moldova had two main directions in the field of political reforms:

- To simplify its work on *anti-corruption policies*, the president's office launched the 'Anti-Corruption Advisory Committee' in June 2021. Committee members include three local NGOs and media specialists, as well as three international experts from Romania, Slovakia, and the USA. It will receive financial support from the EU, the US, and other western donors. Although the committee will have a purely consultative role in the presidency bureau, the aim is to focus its work on raising public awareness of high-level corruption cases, which could place more public pressure on responsible

state institutions. Structurally, the presidency reported the intention to draft a bill which would allow the confiscation of the income of senior officials (ministers and MPs), along with judges who have no evidence to justify legality.²⁵ Another widespread idea is the fight against major corruption with the support of the EU's prosecutor's office (which specialises mainly in the fight against fraud where this is related to the EU budget), which would require both legislative changes and inter-institutional cooperation with Moldova's own prosecutor's office.

- *Judiciary reform* is part of parallel efforts. If early elections create a favourable political wind in parliament, the president's office is considering an initiative to cleanse the judiciary of corrupt judges through a verification mechanism which should also involve international experts.

Ukraine. The reforms which are being proposed for Ukraine cover a good many policy areas, including the banking and energy sectors which still have a long way to go. Applying an analysis of the speech regarding the results of the 2021 EU-Ukraine Association Council, which brings together high-level officials from both sides, it is easy to identify which reforms most concern the EU and are unavoidable for Ukraine. Almost at the beginning of the joint communiqué from the EU-Ukraine Association Council,²⁶ emphasis is placed on the imperative need to strengthen the rule of law and the fight against corruption:

- The stipulated *anti-corruption reforms* contemplate the requirement to ensure the effectiveness of anti-corruption agencies in generating public confidence in state institutions. A great deal of attention is paid to the complete restoration of the electronic declaration system and the application of

strong dissuasive sanctions, which are undermined by the decisions of opposing constitutional court judges.

- Less specific is the focus on the *judicial sector*. However, the main idea here revolves around the institution of a credible mechanism to verify the integrity of judges. A global strategic vision is presented in the 'Justice Sector Reform Strategy', which was adopted by President Volodymyr Zelensky in June 2021,²⁷ and which suggests that a qualification commission be established in order to select judges with the participation of foreign experts, providing resources to the Anti-Corruption Supreme Court, optimising the courts at the local level, etc. This strategy requires a very detailed and convincing plan of action, one which outlines laws and regulations which should be changed in parliament. Without a more concrete approach, justice reform runs the risk of being sporadic and politically directed.

The evidence provided in this section highlights the fact that political reforms, especially those which are related to the rule of law, have a greater weight in the EU's bilateral agenda with each of the partner countries. The EU has formulated specific calls for justice reform and the fight against corruption in different contexts, given the different local political dynamics. At the same time, the European demand for urgent reform finds a certain political opening in associated countries, where there are political forces which are trying to build the rule of law at home.

Conclusion and recommendations

The EU operates with a complex reform advocacy toolbox in its Eastern European partner countries: Georgia, Moldova, and Ukraine. More precisely, there is a two-tier framework being used by the EU to support reform. The central one is made up of the Association Agreements/DCFTAs, which is backed up by the Association Agendas (AAs). In addition to these, the EU has made use of the political and sectoral conditionality of the MFA agreements. The two categories can be distinguished through several criteria: the number of required actions, efficiency in the monitoring progress, effectiveness in the results, and the intensity of the related built-in conditions.

If one were to examine the main finding of this policy brief, then it could be seen as striking that there are a large number of commitments to the reforms, which in no way reflect the quality of their execution. Due to the limited institutional capacities of the partner countries and unstable regional political dynamics, various reforms have stalled or have even been abandoned. Therefore the inclusion of a large number of actions requires careful examination because it can be detrimental to the results. Furthermore, in order to advance in certain policy areas, priority must be given to pressing issues (such as reforms to the rule of law). In this sense, a more flexible application of the reform agenda, as well as the conditionality mechanism, will help to minimise the effects of political blockages, ensuring continuity and the tangibility of the actions.

Faced with incidents in which national governments are open to abandoning the political arrangements that underpin the reform agenda, as happened in Georgian in July 2021, the Association Agreement with the EU gains even more prominence and significance due to legal effects that involve serious costs in the event of non-compliance. Drawing on the observa-

tions in this policy brief, a set of recommendations is presented below which are aimed at addressing shortcomings in terms of promoting EU reform on the one hand, and the implementation of reforms by the three associated countries on the other. The recommendations which have been made include categories for political, policy, and technical areas:

Political aspects:

- Prioritise rule of law reforms in all frameworks in order to promote EU reforms - in terms of Association Agendas and Macro-Financial Assistance Agreements - in the three associated states.
- Apply a priority calibration principle to the reform agenda to highlight urgent reforms which have the greatest spill-over and crosscutting effects for policymaking (and other secondary reforms), with an emphasis on quality over quantity.
- Use conditionality tools as a stimulus to those reforms which have been integrated into the Association Agendas, similar to the reforms which have been envisaged by macro-financial assistance which is strictly linked to the conditionality mechanism.
- Divide macro-financial assistance disbursements into smaller shares which are proportional to the number of structural conditions and/or reforms which have been invoked in those agreements which have been signed with the associated countries in order to maximise the positive outcome of the reforms and reduce anti-reform room for manoeuvre.
- Develop a solid joint monitoring mechanism by the EU with a pan-European like-minded organisation (such as the Council of Europe, the Energy Community, etc), allowing a thorough and depoliticised assessment of progress in policy areas which require urgent reform, such as justice, anti-corruption, and legislation of electoral system.

Policy aspects:

- Negotiate and sign 'Economic Recovery Plans' for Georgia and Ukraine, following the template of similar plans which have been designed for EU member states, and which have already been agreed for Moldova, offering conditional assistance with reforms which cover both economic aspects (structural reforms) and political policy areas (reform to the rule of law: justice and the fight against corruption).
- Increase levels of professionalism in national public servants from all associated countries, by replicating the project which was implemented for Ukraine (the College of Europe Natolin project for Ukrainian public servants), in order to prepare these institutions for EU-driven reforms as a whole.

Technical aspects:

Introduce an intermediate (and fully transparent) stage in the EU dialogue with AA/DCFTA countries during the transition from the old Association Agenda to a new one, which will reduce the risks of delays (such as in the case of the Moldovan or Georgian political crises), and ensure continuity in the reform monitoring and reporting processes.

- Create more order in the dynamics of AA/DCFTA-related reforms in Ukraine, where a new Associated Agenda would have added value (replacing the one which was published in 2015), and also help the civil society organisation and the mass media to hold the authorities accountable for the state of the reforms.
- Improve the Association Agendas format by adding a benchmarking mechanism, as well as better defining the institutional delegation of responsibilities, to increase institutional accountability for reforms, and the feasibility and predictability of results.
- Increase accountability in terms of meeting the objectives of the Association Agendas by carefully reflecting progress in the Association Implementation Reports which have been published by the EU for Georgia, Moldova, and Ukraine.

Endnotes

- ¹ To make an easier distinction between Association Agreements and Association Agendas, this policy brief will use the abbreviation AA/DCFTAs for the former and AAs for the latter respectively. This helps to avoid the eventual confusion between two documents which have different, albeit complementary, legal, and operational functions. Furthermore, the abbreviation AA/DCFTAs entails the 'Deep and Comprehensive Trade' component of the agreements in the AA/DCFTAs which have overwhelming levels of importance, although it is not yet an absolute component for the European integration process which involves Georgia, Moldova, and Ukraine.
- ² EU and EU-Georgia Association Agenda for 2017-2020: https://eeas.europa.eu/sites/default/files/annex_ii_-_eu-georgia_association_agenda_text.pdf; EU-Moldova Association Agenda for 2017-2019: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22017D1489>; and EU-Ukraine Association Agenda of 2015: https://eeas.europa.eu/archives/docs/ukraine/docs/st06978_15_en.pdf.
- ³ EU and EU-Georgia Association Agenda for 2017-2020: https://eeas.europa.eu/sites/default/files/annex_ii_-_eu-georgia_association_agenda_text.pdf.
- ⁴ EU and EU-Moldova Association Agenda for 2017-2019: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22017D1489>.
- ⁵ EU and EU-Ukraine Association Agenda of 2015: https://eeas.europa.eu/archives/docs/ukraine/docs/st06978_15_en.pdf.
- ⁶ Reuters: 'Moldova central bank officials detained over \$1 bn fraud', 5 March 2020: <https://www.reuters.com/article/moldova-banking-idUSL8N2AY4PF>.
- ⁷ EU and EU-Moldova Association Agenda for 2017-2019: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22017D1489>.
- ⁸ According to Transparency International, Georgia ranked in the top fifty least corrupt countries in the 2017-2020 period, better than Romania and Bulgaria.
- ⁹ Cenusă, Denis: 'Moldova after the snap elections: the historical victory of the pro-EU forces', July 2021: <https://3dcftas.eu/op-eds/moldova-after-the-snap-elections-the-historical-victory-of-the-pro-eu-forces>.
- ¹⁰ Cenusă, Denis: 'Scanning EU macro-financial assistance to Moldova, Ukraine, and Georgia: frontrunners and laggards', IPN News Agency: https://www.ipn.md/en/scanning-of-eu-macro-financial-assistance-to-moldova-ukraine-and-georgia-frontru-7978_1044272.html.
- ¹¹ European Commission: 'EU macro-financial assistance to non-EU partner countries', accessed 14 July 2021: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/macro-financial-assistance-mfa-non-eu-partner-countries_en.
- ¹² European Commission: 'EU macro-financial assistance to Georgia', accessed 14 July 2021: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/enlargement-and-neighbouring-countries/neighbouring-countries-eu/neighbourhood-countries/georgia_en.
- ¹³ European Commission: 'EU macro-financial assistance to Moldova', accessed 14 July 2021: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/enlargement-and-neighbouring-countries/neighbouring-countries-eu/neighbourhood-countries/moldova_en.
- ¹⁴ European Commission: 'EU macro-financial assistance to Ukraine', accessed 14 July 2021: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/enlargement-and-neighbouring-countries/neighbouring-countries-eu/neighbourhood-countries/ukraine_en.
- ¹⁵ Unlike the other two countries, all four EU MFAs which are dedicated to Ukraine have so far been in the form of loans.

- ¹⁶ EU macro-financial assistance to Moldova as part of the EU package to ten enlargement and neighbourhood countries, launched in April 2020: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0163>.
- ¹⁷ Cenusă, Dionis: 'The "darlings" of the EU conditionality mechanism – Georgia, Moldova, or Ukraine?', 11 August 2020: https://www.ipn.md/en/the-darlings-of-the-eu-conditionality-mechanism-georgia-moldova-or-7978_1075456.html.
- ¹⁸ EEAS: 'A way ahead for Georgia', April 2020: https://eeas.europa.eu/sites/default/files/210418_mediation_way_ahead_for_publication_0.pdf.
- ¹⁹ Denis Cenusă: 'The new "exits" and "turning points" in Georgia's and Moldova's political crises', 2021: <https://neweasterneurope.eu/2021/04/29/the-new-exits-and-turning-points-in-georgia-and-moldovas-political-crises/>.
- ²⁰ EEAS: 'A way ahead for Georgia', April 2020: https://eeas.europa.eu/sites/default/files/210418_mediation_way_ahead_for_publication_0.pdf.
- ²¹ OC-Media: 'Georgian Dream withdraws from EU-brokered deal with opposition', 2021: <https://oc-media.org/georgian-dream-withdraws-from-eu-brokered-deal-with-opposition/>
- ²² EU: 'Statement by president Charles Michel on the political situation in Georgia', 2021: <https://www.consilium.europa.eu/en/press/press-releases/2021/07/29/statement-by-president-charles-michel-on-the-political-situation-in-georgia/>
- ²³ US Embassy in Georgia: 'U.S. Embassy Statement on Georgian Dream's Withdrawal from April 19th Agreement', 2021: <https://ge.usembassy.gov/u-s-embassy-statement-on-georgian-dreams-withdrawal-from-april-19th-agreement/>
- ²⁴ EU: 'European Commission announces an economic recovery plan for the republic of Moldova', 2021: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2712.
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- ²⁶ EU: 'Joint press release following the 7th Association Council meeting between the EU and Ukraine', 2021: <https://www.consilium.europa.eu/en/press/press-releases/2021/02/11/joint-press-statement-following-the-7th-association-council-meeting-between-the-eu-and-ukraine/>.
- ²⁷ Ukrinform: 'Justice development strategy: how and why it can end the crisis in the constitutional court of Ukraine', 2021: <https://www.ukrinform.ru/rubric-polytics/3265351-strategia-razvitiya-pravosudia-kak-i-pochemu-ona-mozet-priblizit-zaversenie-krizisa-v-ksu.html>.