

The glass half empty. An assessment of Ukraine and Moldova's progress in implementing EU recommendations

Krzysztof Nieczypor, Kamil Całus

On 22 June 2023, the EU Commissioner for Neighbourhood and Enlargement Olivér Várhelyi presented the European Commission's oral assessment of the progress Ukraine, Moldova (and also Georgia) have made in implementing the recommendations which these countries' governments had received in June 2022. It is an initial and informal opinion on their level of preparedness for the launch of accession talks with the EU. A full report regarding this issue will be published in October, and will serve as a basis for deciding whether to start negotiations with these states. The decision will be made at the EU summit in December.

In line with the presented assessment, Ukraine has 'completed' two out of seven recommendations, those linked with the reform of the media and the judicial governance bodies, and achieved 'good progress' as regards the reform of the procedure for appointing Constitutional Court (CC) justices. As regards other areas, that is the de-oligarchisation of the state, the reform of legislation regarding the national minorities, the fight against corruption and money laundering, the Commission has only identified 'some progress'.

Moldova, for its part, has completed three out of nine recommendations: it has successfully increased the involvement of civil society in decision-making processes and achieved progress in ensuring the protection of human rights, enhancing gender equality and combatting violence against women. According to the Commission, Moldova has also successfully addressed the shortcomings identified by the OSCE/ODIHR and the Venice Commission regarding reform of the electoral law. In another three areas, that is judiciary reform, public finance management reforms and de-oligarchisation, Moldova has achieved 'good progress'. Only "some progress" was achieved in the fight against corruption & organised crime and in public administration reform.

Commentary

- The reform of the procedure for appointing CC justices is the most important issue in the seven recommendations communicated to Ukraine; from the point of view of the Ukrainian authorities, it has also been one of the most difficult recommendations to implement. To achieve 'good progress' in this area, Ukraine needs to implement more than half of the required measures. According to Commissioner Várhelyi, to complete this process Kyiv needs to adopt the law amending the rules for appointing CC justices, which is currently being considered. However, it is unlikely that this law will be enacted

quickly because it envisages a modification of the system of the Advisory Group of Experts, who issue opinions on the candidacy of specific judges. Independent members of this Group, who will be appointed by international organisations, will have a decisive vote in these opinions. The Ukrainian government will most likely delay the adoption of this law until the vacancies at the CC are filled (according to the currently valid procedure) with individuals loyal to them (the Ukrainian parliament is yet to appoint three justices and the Congress of Judges two). However it is likely that the relevant legal amendments will be made, and the process of implementing the recommendations will be completed once the appointment of CC justices is finished.

- As regards de-oligarchisation and the reform of legislation on national minorities, the EC has requested that Ukraine meet the requirements presented by the Venice Commission, which in its opinion published on 13 June criticised the provisions of both laws. It emphasised that the provisions of the so-called law on oligarchs violate the rights guaranteed by the European Convention on Human Rights, and that the criteria to define whether an individual can be considered an oligarch are vague and discriminatory. It also stated that this piece of legislation grants the president considerable influence on the process of deciding whether a specific individual is an oligarch, which in turn creates the risk that this procedure may be applied selectively in order to target political competitors. As regards the reform of legislation on national minorities, the Venice Commission argues that the provisions regulating issues such as the use of national minority languages in the education system, in the media and during public events (for example, the introduction of quotas for using minority languages as languages of instruction, including the categorisation of these languages as so-called indigenous languages, languages of EU member states and non-EU languages) are discriminatory, and suggested that they should be amended. In addition, it pointed out that the rules to prevent instances of violation of the state's sovereignty and territorial integrity should be removed from this law and included in another piece of legislation linked to the criminal code.
- It can be expected that the Ukrainian authorities will not attempt to hamper the efforts to implement the recommendations regarding de-oligarchisation because the importance of oligarchs and their influence on the state have significantly decreased as a result of the war (some of them have lost a portion of their assets, their control of the media and parliament; Ukraine's strategic industries have also been nationalised). More difficulties are likely to emerge regarding the implementation of the recommended legislative amendments relating to national minorities, as because Kyiv views them as important in the context of national security. Ukrainian decision makers will attempt to convince their EU partners that the current law is important in the context of preventing various forms of separatism, which was one of the reasons behind the Russian invasion. The issue will continue to provoke tensions in Ukraine's relations with its EU neighbours – especially with Hungary, which has for years demanded that Ukrainian legislation be amended and is making its support for Ukraine's integration with the EU and NATO conditional on Kyiv's decision to grant comprehensive rights to the Hungarian minority in Ukraine.
- As regards Moldova, it seems unlikely that it will successfully implement all its nine recommendations ahead of the EU summit in December. Although the ruling majority led

by the pro-Western Party of Action and Solidarity (PAS), which has been in power since 2021, is determined to carry out the necessary reforms, this process has encountered numerous obstacles. The reform of the judiciary is being hampered by resistance from some judges and employees of the public prosecutor's offices who had cooperated with Vlad Plahotniuc's regime. In addition, the state of Moldova's judiciary makes it impossible to effectively prosecute individuals responsible for corruption. Another factor slowing down the pace of reform involves the lack of human resources, both administrative staff and a younger generation of judges and prosecutors. The huge scale of economic migration (in 2022 alone Moldova's population shrank by 2%) has brought about an evident 'brain drain', while the low salaries offered by the public administration offices and the judiciary discourage the most highly skilled individuals (and those who are not entangled in corruption) from seeking employment in the public sector.