

Reforming the Security & Intelligence Service of the Republic Moldova



EaP Security Forum

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SUMMARY

The purpose of the study was to summarize the legislative and institutional efforts on reforming the Security and Intelligence Service of the Republic of Moldova. This study followed the 2013 Parliament's Strategy of reform and focused on the 2014 Association Agreement between the European Union and the Republic of Moldova, with the subsequent Associations Agendas, and results of its implementation.

Out of the three basic objectives of the 2013 Strategy, the independence of the Security and Intelligence Service creates the most confusion, and the other two – institutional capacities and accountability, although targeting two important issues, have several flaws in their more specific objectives and goals.

The Association Agreement set the most clear strategic objectives for the reform process, and the Association Agendas/included other significant objectives for a firm reforming, which, however, were not accomplished.

The policy brief is part of the project „**Eastern Partnership Security Forum**”, that aims to launch the “EaP Security Forum” that will engage nongovernmental and governmental experts from Georgia, Moldova, Ukraine in a joint effort to strengthen security resilience of their countries in the areas of cybersecurity, intelligence reform, offsetting hybrid threats, and strengthening the national defense.

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The reform of the intelligence service in Moldova has not begun yet, despite being discussed and promoted for 7 years. The new democratically elected Parliament, with an unprecedented pro-European majority, must restart the reform process of a pillar that is important for the national and regional stability and security, as well as establish a new National Intelligence Service.

INTRODUCTION

The activity of the Security and Intelligence Service of the Republic of Moldova remains in the permanent attention of the society and is generally criticized. The cases of illegal surveillance, blackmails or political bias generate constant public accusations. The situation is aggravated by the extreme confidentiality of the activity undertaken by the institution. The Moldovan society does not understand what are the objectives it follows and does not know what are the methods of activity of the service. The negative perception is well-founded, given the outdated legislative regulation.

There have been several modest attempts of reform that have not been successful. Some of the good proposals did not come true/to fruition, while some harmful ones took root. This is because the reform process had an flawed start. Effectively, the process of reforming the intelligence service must start from a special law. The study analyses the policy documents adopted for reform purposes. Starting from the parliament's strategy, the focus is directed to the Association Agreement of the Republic of Moldova with the European Union.

The bibliography consists of legislative acts, international agreements, strategies and programs, and relevant international studies on the role and responsibilities of intelligence services. The study does not cover all aspects of the broad topic of reforming intelligence. It only outlines some of the important objectives that correspond to the country's national security priorities, and considers international recommendations and practices in the field.

The objective of the study is to provide a coherent answer to the question of what a modern intelligence service should look like and what are the concrete actions that have to be undertaken in the next period. For this objective, the study is structured based on the analyzed documents, discussions, conclusions and recommendations. The methodology uses the documentation, observation and analysis tools to address these questions.

STRATEGY OF REFORMING THE SECURITY AND INTELLIGENCE SERVICE

Adopted on 10 October, 2013 by the Parliament of the Republic of Moldova¹, the Strategy of reforming the Security and Intelligence Service became a document reflecting the parliamentary vision for that time. Further, on 27 June of 2014 was signed the Association Agreement by the Prime minister and ratified by the Parliament on 2 July of 2014. Towards the implementation of the Agreement, the Government had corresponding association agendas. Still, the 2013 Strategy was important for setting the stage for reform, and showed the government's will for reform before the signing of the Association Agreement.

According to article 28 from the 2013 Strategy, the „KGB shadow” continuously hovers over the special service, mainly because of the closed and confidential nature of activity and the poor relations the institution has with the general public. -Despite the commitment for reform, the provisions in the Association Agreement and the efforts that were made to address the issue, this perception has practically not changed until 2021², which will be further discussed below.

¹ Parliament decision Nr. HP230/2013 from 10.10.2013 regarding Strategy of Reforming the Security and Intelligence Service

² Institute for Public Policy, Public Opinion Barometer, February 2021, p.40,83

The strategy of Reforming the Security and Intelligence Service sets three basic objectives: 1) ensuring the independence in the activity of the Service; 2) streamlining institutional capacities in the main fields of activity; 3) increase the accountability of the Service in relation to the society and consolidating the democratic oversight on the Service. Of the three basic objectives, the independence of the Service generates the most confusion, and the other two related to institutional capacities and accountability, although relevant, have flaws in their specific objectives.

The Strategy argues that the objective of ensuring the independence of the Service rests on the need to protect it from any influence coming from political and business environments, the civil society, as well as ensure there would be no conflict of institutional interests and involvement of the corruption factor. Undoubtedly, the intelligence service must act in strict accordance with legal provisions and act in the public interest. At the same time, the Service cannot isolate itself from politics, the business environment or the civil society. However, inappropriate influences and interference must be countered by penal and preventive methods. The **legality** effort cannot be confused with institutional independence. Institutional independence cannot replace **accountability**. Ensuring a modern intelligence service is more often seen as part of the executive branch, but this is not the case with ensuring its independence³.

The efficiency of the institutional capacities showcases a good direction of development, but it must be directed correctly, first through the methods of professionalization, integrity and motivational leadership within the service. Replacing them with internal reform measures or an infrastructural upgrade will not build a **transparent** and **effective** service.

The accountability of the Service in relation to the Moldovan society and the consolidation of democratic oversight seems to be best of the three proposed basic objectives. But upon closely studying its specific objectives, one can identify the shortages of the said proposal. The Strategy rightly states that the deficiencies within the information system reduce the degree of confidence in the Service's capabilities and create difficulties in establishing an efficient and useful dialogue for ensuring national security.

The premises are good, but, among the positive practices, only the publication of the draft normative acts and the partial opening of the files related to the activities of the previous political regime are mentioned. The specific objectives contain several useful and important proposals, such as expanding the dialogue and creating sustainable partnerships, but other essential ones are missing, such as ensuring strategic planning that would be in line with society's expectations, or having the Service issue activity reports, with some due restrictions. Both planning and reporting would help create an **efficient** and **inclusive** service. Other states' experiences in the field demonstrates there is great potential for openness and dialogue⁴.

The Association Agreement sets the most clear strategic objectives for a reform in the field, and the Association Agendas include objectives that could support a firm reform process. These objectives, however, have not been accomplished yet.

ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF MOLDOVA

The Association Agreement⁵ is a comprehensive document that aims to promote Moldova's political and economic integration into the EU. Among other things, important attention is paid to the issues of stability, conflict prevention and crisis management, reflected in the Title II; and those related to freedom, the security and justice sectors,

³ DCAF SSR Backgrounder Intelligence Service, Roles and responsibilities in good security sector governance, 2017

⁴ Lozancic D., Insights and lessons learned from Croatia's intelligence reforms, DCAF, 2020

⁵ Association Agreement between the European Union and the Republic of Moldova, 30.08.2014

according to Title III. The Association Agreement establishes a solid foundation for the country's development and the Association Agendas⁶ will serve to the multiple amendments and legislative creation in the field.

The reform of the Security and Intelligence Service has been consistently among the priorities within those agendas, but it has not been carried out. On the contrary, during 2014 - 2021, the activity of the Service was disturbed by the political disputes and clashes manifested in the several switches in the subordination of the Service - from the President of the country to the Parliament and vice versa, in addition to a third attempt that was declared unconstitutional. Also, during this period, the director of the Service was changed four times and several important projects halted their implementation.

There were two fundamental objectives for the intelligence reform: the new Law on the National Intelligence Service and the Law on counterintelligence and external intelligence. The projects were elaborated, passed several institutional endorsements and project approvals, but did not result in final approval in the Parliament. This may be a great missed opportunity for the intelligence reform process, given that those laws could have supported the development of the intelligence community in Moldova.

These two new laws are important for several reasons. First, the existing law on Security and Intelligence Service lacks any human security-based approach or provisions supporting the respect for human rights in the activity of the Service; focuses on state security, which is detrimental to the individual and community security; omits any clear regulation of the institutional control of the service, through the judicial bodies, the Court of Accounts or the personal data protection authority; and does not imply any international cooperation. Even the parliamentary control is poorly regulated, vague and inefficient⁷.

Second, a modern intelligence service must be guided by the principles of good security sector governance: accountability to representative authorities; transparency and oversight; the protection of sensitive information; rule of law on an unambiguous framework; inclusive procedures; effectiveness in ensuring state and human security; or efficiency in the use of public resources. Those principles may be included by passing new laws.

The Report on the measures undertaken until 2017, in compliance with the Association Agenda⁸, finds that the progress in the passing of laws on the National Intelligence Service, counterintelligence and external intelligence was stopped, due to "differences of vision at the institutional level". Additionally, the Parliament's regulations states that registered projects that were not, however, included in the parliamentary agenda during more than 2 years become null and void. The efforts for reform of the intelligence service were, therefore, practically abandoned.

The only important legislative changes regarding the Security and Intelligence Service, after the adoption of the Service Reform Strategy in 2013, were made in 2016, when the control over the Service was switched from the President to the Parliament and in 2019, when it became subordinate to the President yet again/ the Presidency regained control over the institution. There were no other key legislative changes. The law has remained without essential changes since its adoption in 1999. Other specific objectives that were established in the Association Agendas were important for improving the general stability and security environment, but those were not directly related to reforming the intelligence sector.

We must note that the Moldovan Intelligence Service is not necessarily at fault for the issues and challenges it faces, at least not at the middle or low-level managements. During 2013 – 2016 and 2019 – 2021, the Security and Intelligence Service did take certain measures to initiate the development of the reform agenda, and showcased more openness and intention for collaboration with the civil society⁹. The Service had a new web site, adapting it so as to

⁶ Association Agenda between the European Union and the Republic of Moldova, Brussels, 26.06.2014

⁷ Law on Security and Intelligence Service, No. LP753/1999, web access: legis.md

⁸ Progress Report on the Association Agenda, 2017

⁹ Enicov V., Engagement between Civil society and Intelligence community in Moldova, DCAF, 2021

provide more information on the institution's activity; a new Strategy on Information Security was elaborated and promoted; after the implementation of the 2015 National cyber security programme, the Service started working on new Cyber Security Strategy; there was created a platform allowing consultations with the civil society on important issues; and several seminars and conferences were conducted with independent experts, Civil Society Organisations representatives, academia and media representatives¹⁰.

During 2017, 2018, and in the first half of 2019, the Service was visibly closed-off from any form of collaboration with the civil society and did not issue publicly any information on the service's activity. This was the result of the "captured state" situation and the undue, abusive control of the Service exerted by the oligarchic structures. During that time the Service was involved in a contentious issue, related to the illegal extradition of 7 Turkish professors to the authoritarian regime of Turkey. Later on, the former director of the Security and Intelligence Service was convicted for abuse and grave human rights violations¹¹. The case is in appeal, and the Moldovan society awaits for more clarity in the case and new convictions of those who took part in the crime.

That was not the only case of undue activity of some of the Service's officers: the Moldovan civic activists continue to discuss the use of illegal surveillance practices against the political opposition, civic activists and media representatives; the denigration of political opponents; and the cases of blackmail of important media representatives; among others. Thus, regrettably, the statements from the 2013 Strategy regarding the "KGB shadow" remain valid.

The failed reforming agenda had no political support of the Parliament and other supreme authorities, as well as the support of the President, Government or the Supreme Security Council, which made it impossible to have any of the established objectives and goals accomplished.

With the parliamentary elections that took place on July 11, 2021, there is hope that the reform process will be resumed, and its specialized commission will continue to work on the draft laws on the National Intelligence Service, counterintelligence and external intelligence.

CONCLUSIONS

Prior to the signing of the Association Agreement, the state authorities undertook a series of measures aimed to reform the intelligence service. These measures were not well-founded and did not set the right targets. The main issue is that the reform efforts aimed to improve the existent regulation, rather than ensure good governance in the security sector by rethinking the existing regulation and establishing a new framework. Well-intentioned attempts to pursue reform on an old institutional foundation were doomed to failure. However, the lack of any political will for pursuing a real change in the sector also played an important role in that.

Unfortunately, the objectives set by the Association Agreement have not been achieved and at some stages have even been abandoned. The lack of any progress is primarily due to the 'captured state' issue, where the beneficiaries were engaged in illegal activities to pursue their personal interests, showcasing no will for the modernization of state institutions. Such an approach could not have delivered results.

The Association Agreement has set out several conditions and reforms to be achieved – including those related to the country's stability and security environment. Given that, the methods and means used to achieve those goals can be adjusted. It is also important to note that the Association Agenda aimed to fundamentally change the Security Services institution, and ensure modern principles that would base its activity.

¹⁰ Official SIS site, web access: sis.md/communicate

¹¹ General Prosecutor Office, press release, web access: procuratura.md/news, 9.09.2020

At the same time, the realization of the intelligence reform could be guided by the common interests declared by the "Association Trio", a platform established between Moldova, Georgia and Ukraine on May 17, 2021. According to the Declaration of the Heads of State of the Association Trio, signed on July 19, 2021 during the Batumi International Conference, the states will work closely to increase their resilience and ability to better respond to the challenges facing the regional and European security, including on countering hybrid threats, strengthening cyber resilience, fighting disinformation, and developing new cooperation platforms with the relevant EU agencies and services¹².

Conclusions of the study:

- The reform process of the intelligence service in Moldova has not begun yet, despite it being discussed and promoted for 7 years.
- The main failure of the reform of the Security and Intelligence Service is the lack of progress in the adoption of a new Law on National Intelligence Service and the Law on counterintelligence and external intelligence.
- The lack of transparency in the activity of the Intelligence Service creates premises for severe violations of human rights, political bias and infringement of law.
- The new, democratically elected Parliament, with an unprecedented pro-European majority must restart the reform process of this important pillar for the national and regional stability and security, as well as establish a new National Intelligence Service.

RECOMMENDATIONS

The new comprehensive and concise Law on the National Intelligence Service guided by good governance principles in the security sector, must respond to the needs of ensuring the delivery of valid and correct information to state authorities to help define national interest threats; prevent and react to major security crises; and harmoniously combine national, state and human security interests.

The Law on counterintelligence and external intelligence activities can offer instruments to counter modern hybrid threats, including foreign espionage activity; sabotage or subversion; and economic and illegal foreign political influences; as well as foster strong international cooperation.

The new regulations set by the two laws must envisage the activity of a single agency. These two laws can impact the enforcement of good governance principles in all aspects of state administration, and explore the important role of the intelligence service in combating corruption. These measures are particularly important nowadays, when corruption is officially declared as a major threat to national security, and the fight against corruption is the zero priority of the new political power in Chisinau.

Proposals for the Parliament:

- The new government must revive the process of reforming the Security and Intelligence Service. It can be done best within the EU-Moldova cooperation platform of the Association Agreement and Association Agendas, as well as through the Association Trio on Establishing Enhanced Cooperation on European Integration – Georgia, Ukraine and Republic of Moldova.
- It is necessary to review the draft and adopt the new Law on National Intelligence Service and the Law on counterintelligence and external intelligence.
- In order to overcome the extreme secrecy of the service's activities, but also improve its image, ensuring more transparency through annual activity reports would be vital.

¹² Declaration by the Heads of State of Association Trio - Georgia, Republic of Moldova and Ukraine, Batumi, 19.07.2021

ABOUT THE AUTHOR



Mr. Vadim Enicov have over 25 years of professional experience in the legal field. He started his professional activity in 1997 year at the Chisinau Prosecutor's Office, where served as Senior Prosecutor for the financial investigations and managed a group of prosecutors against corruption in public authorities. In the years 2002-2012, he held the position of Senior Consultant to the Service of the Security Council in the Administration of the President of Moldova, being responsible for the anti-corruption and economic security spheres. During that period, he engaged as Member and Secretary of the Authority for Verification of Assets Declarations, being appointed by presidential decrees. As team coordinator, had elaborated and coordinated the implementation of the Anti-corruption Strategy for Moldova, which contributed to the increase of the Corruption Perception Index from 2.3 in 2004 to 3.6 in 2012.

Currently, he is a researcher in the Institution for Financial Integrity, also developed studies for the Institute for Public Policies of Moldova (IPP), the Organization for Security and Co-operation in Europe (OSCE), the Geneva Center for Security Sector Governance (DCAF) and for other organizations. Performed more than 40 analytical studies and expertise reports on anticorruption and security issues. As well, Mr. Vadim ENICOV was appointed as the non-executive member of the Supervisory Board of the National Bank of Moldova by the Parliament's decision of 29 July 2016 for a term of seven years, responsible for internal control standards and efficient public oversight.

ABOUT THE IMPLEMENTING ORGANIZATION



Foreign Policy Association of Moldova (APE) is one of the leading foreign policy think-tanks in Moldova. The Association is committed to supporting the integration of the Republic of Moldova into the European Union and facilitating the resolution of the Transnistrian conflict in the context of the country's Europeanization. APE was established in 2003 by a prominent group of local experts, public figures, former government officials and high-ranking diplomats, who decided to contribute through their experience and expertise to the development of a coherent, credible and efficient foreign policy of the Republic of Moldova.

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ABOUT THE PARTNERS ORGANIZATIONS



Georgian Center for Strategy and Development (GCS D) is a non-partisan, non-governmental organization. Since its establishment, GCS D has directed efforts towards supporting Georgia's and regional sustainable, democratic development by embedding values of respect, impartiality, accountability, fairness and transparency in all interventions and undertakings. Over years GCS D has distinguished itself as an outstanding local think-tank. The organization has carried out number of research activities and issued remarkable publications, covering variety of topics. GCS D is the first Georgian organisation to establish a unit within its structure fully dedicated to research of topics related to terrorism, violent extremism and radicalisation. The Terrorism Research Center (TRC) of GCS D aims to increase the knowledge and awareness of the Georgian society regarding the above stated phenomena and to design and implement projects that help minimise the threat thereof.

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Foreign Policy Council "Ukrainian Prism" is a network-based non-governmental analytical center, the goal of which is to participate in providing democratic ground for developing and implementation of foreign and security policies by government authorities of Ukraine, implementation of international and nation-wide projects and programs, directed at improvement of foreign policy analysis and expertise, enhancement of expert community participation in a decision-making process in the spheres of foreign policy, international relations, public diplomacy. The Foreign Policy Council "Ukrainian Prism" is officially registered as a non-governmental organization in 2015, while analytical work and research had been carried out within the network of foreign policy experts "Ukrainian Prism" since 2012. At present, the organization united more than 15 experts in the sphere of foreign policy, international relations, international security from different analytical and academic institutions in Kyiv, Odesa, Kharkiv, Chernihiv and Chernivtsi.

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