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(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

FINAL OPINION

**ON LIMITING EXCESSIVE ECONOMIC AND POLITICAL INFLUENCE
IN PUBLIC LIFE (DE-OLIGARCHISATION)**

**Adopted by the Venice Commission
at its 135th Plenary Session
(Venice, 9-10 June 2023)**

on the basis of comments by

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I. Introduction

1. On 11 March 2023, the Venice Commission adopted an interim opinion ([CDL-AD\(2023\)010](#)) on the Draft Law of the Republic of Moldova on limiting excessive economic and political influence in public life (de-oligarchisation) (hereafter “the interim opinion”).
2. It is recalled that the draft law ([CDL-REF\(2023\)011](#)) submitted to the Venice Commission was a preliminary version that the authorities intended to amend on the basis of the recommendations of the Venice Commission. It was thus decided to prepare an interim opinion on this preliminary version of the draft law.
3. By letter dated 3 May 2023, the Minister of Justice of the Republic of Moldova informed the President of the Venice Commission that following a series of consultations at the national level, the Moldovan authorities decided to abandon the draft law and pursue a different, systemic, approach towards de-oligarchisation. In this context, the Moldovan authorities submitted an *Action Plan regarding some measures to limit excessive economic and political influence in public life (de-oligarchisation)* (hereafter “the Action Plan”) prepared by a multi-agency working group. On 2 June 2023, the Moldovan authorities submitted an updated Action Plan ([CDL-REF\(2023\)026](#)) followed, on 7 June 2023, by detailed information about the progress made in its implementation.
4. Having served previously as rapporteurs for the interim opinion, Mr Francesco Maiani, Ms Grainne McMorrough, Ms Angelika Nussberger, and Mr Cesare Pinelli continued to act as rapporteurs for this final opinion.
5. This final opinion was prepared in reliance on the English translation of the Action Plan. The translation may not accurately reflect the original version on all points.
6. This final opinion was drafted on the basis of comments by the rapporteurs. It was discussed at the meeting of the Sub-Commission on Democratic Institutions on 8 June 2023. Following an exchange of views with Ms Veronica Mihailov-Moraru, Minister of Justice of the Republic of Moldova, it was adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023).

II. Background

7. Preventing non-transparent, undue influence of individuals on political, economic and public life is certainly a priority for any state wishing to achieve a democratic system governed by the rule of law and respectful of human rights. This concern has a specific connotation in the States of Eastern Europe, such as the Republic of Moldova, Ukraine and Georgia, where the non-transparent influence of so-called “oligarchs” is a major problem for democracy-building.
8. It is difficult to grasp the extent of the adverse influence of “oligarchs” on the rule of law, because “oligarchs”, usually, do not exert overt influence on political life and on the media directly, but in an indirect and scarcely visible manner. Often illegal methods are used to merge political decision-making and business interests. “Oligarchs” tend to successfully avoid the jurisdiction and ambit of the criminal, anti-corruption and anti-monopoly legislation utilising methods designed to undermine the protective mechanisms of separation of powers and by exerting undue influence on the judiciary to their benefit.
9. Indeed, in the Republic of Moldova, as in other countries, oligarchisation is the combination of exercising political power without political mandate, influence on parliaments, governments, political parties, judiciary and law enforcement bodies; ownership or influence on the media, decisive, if not monopolistic, influence on a number of areas, such as energy, mining, oil and gas,

metallurgy, real estate, etc.¹ Speaking about the problem of oligarchy, the term "captured state" has also been used.²

10. While the Venice Commission firmly supports the goal of fighting oligarchic influence, it stresses that the so-called "de-oligarchisation" is a very complex issue, and the choice of the means to achieve it is of decisive importance if the system is to be effective while respecting democracy, the rule of law and fundamental rights.

11. In its interim opinions concerning the draft laws submitted by the Republic of Moldova and Georgia,³ which were to a large extent based on the Law of Oligarchs of Ukraine, the Venice Commission outlined the general state of play and distinguished two approaches.

12. The first approach, which the Venice Commission referred to as "systemic", involves the adoption and strengthening of legal tools in many fields of law, such as legislation relating to media, anti-monopoly, political parties, elections, taxation, anti-corruption and anti-money laundering (etc.) with a view to preventing the destructive influence of oligarchy in a comprehensive and coordinated manner. This "systemic" approach has a long-term preventive effect.

13. The second approach, which was adopted also by the Moldovan draft law and which the Venice Commission referred to as "personal", seeks to identify the persons who are considered to wield this negative influence on the state through specific criteria, such as wealth, media ownership, etc. According to the draft laws, the persons fulfilling a combination of these criteria would be publicly declared "oligarchs" with their information included in a public register. Once registered as "oligarchs", these persons would then be subjected to a series of limitations that included exclusion from the financing of political parties or activities, exclusion from privatisations of public property, and the strict obligation for public officials to report on the content of exchanges with them or their representatives. The "personal approach" is thus rather punitive in character.

14. In its interim opinions on the Republic of Moldova and Georgia, the Venice Commission supported the "systemic approach" and expressed its strong reluctance to accept the personal approach, as had been outlined in the draft legislation which it assessed.

15. The Commission wishes to stress that the anti-oligarch strategy needs to fit the historical, legal, political and contextual situation of each country. There is no one-size-fits-all. It is clear that the prevailing domestic context is very different in the Republic of Moldova, as compared to Ukraine and Georgia. Ukraine is fighting a war of aggression by the Russian Federation, which seems to have resulted in reducing the extent of the adverse influence of the "oligarchs". Such situation can obviously not be compared with that of Georgia and the Republic of Moldova, even if part of the territory of both countries, occupied by the Russian Federation, is not under the control of the respective governments. The timing and the extent of the measures to be taken against "oligarchs" will accordingly differ for the Republic of Moldova, for Ukraine and for Georgia.

¹ See among many others, [CDL-AD\(2020\)013](#), Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service, § 48; Wojciech Konończuk, Denis Cenuşa and Kornely Kakachia, "[Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms](#)", Understanding the EU's Association Agreements and Deep and Comprehensive Free Trade Areas with Ukraine, Moldova and Georgia, 2017; [Study](#) prepared by the Reporters Without Borders, 2016.

² European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova ([2017/2281\(INI\)](#)), § 3.

³ Venice Commission, [CDL-AD\(2023\)009](#), Georgia - Interim opinion on the draft law on de-oligarchisation; [CDL-AD\(2023\)010](#), Republic of Moldova - Interim opinion on the Draft Law on limiting excessive economic and political influence in public life (de-oligarchisation).

III. Analysis

A. Preliminary remarks

16. The Venice Commission underlines at the outset that the danger of concentration in the hands of a private individual of significant influence over the economic, political and public life of a country without transparency, legitimacy and accountability may exist in virtually any country. Most countries have devised and put in place a set of interconnected legislative, (inter-) institutional, administrative, economic and other measures in order to prevent the disruptive effects on democracy, the rule of law and human rights brought on by the concentration of such influence with the objective of levelling the playing field for all actors in society. Depending on the context of the country concerned, such measures, for example, include an effective competition policy, anti-corruption and anti-money-laundering measures, measures to ensure media pluralism, rules on the financing of political parties and election campaigns, etc. As indicated above, the Venice Commission qualifies such an approach as a “system” to fight oligarchic influence.

17. The question of the application of “systemic” and/or “personal” approaches is certainly a difficult and complex question, which the Venice Commission has carefully considered, and to which it wishes to provide an answer at this stage while acknowledging that the reflection needs to be continued, not least in the light of the future experience in fighting oligarchic influence.

18. The Venice Commission reiterates that the standard-compliant and most efficient manner to prevent and limit oligarchic influence in a democratic country is the “systemic” one. Every state should adopt “systemic” measures against the disruptive effects of oligarchic influence and implement them (if this is not already the case), adapting and developing them as appropriate to its specific context.

19. The Venice Commission acknowledges that in exceptional, extremely critical situations, for example, a situation of state capture, the effective implementation of the above systems may be difficult, and radical solutions such as some measures of a personal nature could appear to be justified, as a measure of last resort, on a temporary and exceptional basis, and as a supplement, not an alternative, to the anti-oligarchic influence system.

20. However, it needs to be stressed that even when exceptional and last resort, such personal measures would necessarily require clear legal criteria and strong guarantees of an independent decision-making body and due process, with notions defined in such a way that they can be proven and – as a consequence – judicially controlled, with the establishment of special procedures for the investigation into the applicability of the criteria, for making decisions, for a comprehensive appeal process against these decisions and the possibility of having the oligarch designation removed for a person previously registered as an oligarch. Besides, in a situation of state capture, even “personal measures” would likely meet the same hurdles as the comprehensive system, and thus likely fail to reduce oligarchic influence effectively. This is the great paradox of de-oligarchisation laws considered by the Venice Commission: If the administration and the judiciary are strong and independent enough to support the implementation of “personal measures” of the kind described, then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary are “captured” by the interests that the “personal measures” intend to fight, then such measures are either ineffective or – having to be adopted through executive acts that are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.

21. For these reasons, anti-oligarch legislation of the kind which the Venice Commission has been asked to assess concerning Ukraine and Georgia, is not seen as a democratic response to

this scourge. De-oligarchisation legislation of this kind undermines democracy and the rule of law.

22. In the opinion of the Venice Commission, the design and realisation of an effective system to prevent the re-establishment of oligarchic influence would, first of all, require a close look at why the existing legal tools have not been able to adequately address the destructive influence of “oligarchs” (for example, analysing why certain oligarchic monopolies have not been broken up): Identifying which pieces of legislation can be further strengthened, taking into account the power of “oligarchs” in counteracting these measures, and identifying where the weaknesses or loopholes are with a view to making these the legal provisions “oligarch resistant”. It would also require analysing the way various institutions (anti-corruption, anti-monopoly bodies, state audit, banking supervisory authorities, etc.) can work better together in preventing and eliminating the influence of “oligarchs” (for example, if there are legal impediments preventing effective cooperation and information exchange, these should be addressed; bodies working in this field should be obliged to report about the weak implementation by other bodies when there is reason to suspect that their work has been influenced by oligarchs). This should culminate in a focused strategy to tackle oligarchisation, recognising the interconnected nature of the problem, allowing for bridges to be built between various fields of law and the institutions that implement them (through the specific lens of tackling oligarchisation) with due regard to the need to strengthen their independence and effectiveness.

23. Indeed, there already exist in the Republic of Moldova some of the tools and mechanisms which belong in a “system” as outlined above. The Action Plan presented by the Republic of Moldova is an important indicator in this regard.

B. Action Plan for de-oligarchisation

24. The Venice Commission welcomes the decision of the Moldovan authorities to abandon the draft law and shift the focus to the systemic approach, starting with a coordinated multi-agency⁴ work in developing the National Action Plan for de-oligarchisation.

25. The Action Plan mainly echoes the recommendations made by MONEYVAL⁵ and GRECO⁶ to the Republic of Moldova. It aims at conducting gaps analysis, consolidating legislative and institutional frameworks, increasing reporting and raising awareness in a number of areas such as public property management; anti-money laundering and anti-monopoly measures; transparency of beneficial ownership; efficiency of asset recovery in the context of already imposed international sanctions; better risk-management in banking and insurance sectors and improved transparency of political party financing. The Action Plan also foresees a monitoring mechanism to consolidate input from various agencies and ensure their good cooperation and coordination. The Action Plan will be reviewed and, eventually, adjusted every six months.

26. The Venice Commission welcomes the inclusive process of development of the Action Plan as well as its priorities based on the initial needs assessment and the recommendations of international organisations.

⁴ The Office of the President of the Republic of Moldova, the Ministry of Justice, the Ministry of Foreign Affairs and European Integration, the Ministry of Economy, the State Chancellery, the Intelligence and Security Service, the Service for the Prevention and Combating of Money Laundering, the National Bank of Moldova, the Public Property Agency, the National Commission of the Financial Market, the Legal Resources Center from Moldova, the Institute for European Policies and Reforms, the Audiovisual Council, the Competition Council, the Central Electoral Commission and the Public Procurement Agency.

⁵ See MONEYVAL Evaluation Report ([MONEYVAL\(2019\)6](#)), 17 July 2019 and the 1st Enhanced Follow-up Report ([MONEYVAL\(2022\)4 SR](#)), May 2022.

⁶ See GRECO's Second Interim Compliance Report ([GrecoRC4\(2023\)3](#)) published on 19 May 2023.

27. It is not for the Venice Commission to prescribe the exact elements of a “system”, as the Moldovan authorities are themselves better placed to identify and analyse existing tools and shortcomings therein and design an appropriate strategy. Nonetheless, the Venice Commission will enumerate a number of important building blocks of the “system”, some of them being already referred to in the Action Plan, which – although non-exhaustive – may provide further guidance in this respect.

28. As concerns specific sectors, an effective competition policy has to be established and implemented on a sound legal basis. The full range of anti-competitive behaviour outlined in EU regulations has to be covered. The bodies in charge of this sector have to be provided with the legal tools (inspection and enforcement powers) and have to use these tools to effectively break up existing monopolies and cartels. Entry into oligarchy-controlled sectors should be actively encouraged to foster competition.

29. The Action Plan aims to improve public property management, including as regards the application of international standards, legality and transparency of privatisation and procurement, which is important. The transparency of public procurement⁷ has to be further increased by aligning legislation to relevant EU Public Procurement Directives⁸, effectively excluding corrupt and fraudulent companies or individuals from accessing government contracts,⁹ by taking measures to prevent corrupt needs assessments or terms of reference tailored to certain entities, by enforcing conflict of interest regulations in procurement processes and strengthening the audit and oversight of public contracting and ensuring accountability for integrity breaches in procurement in practice.

30. Measures to prevent and fight corruption should be reinforced in line with GRECO recommendations, including addressing high-level corruption by, where needed, increasing the capacities and independence of the authorities in charge, as well as – when it comes to preventive measures - in the area of asset declarations, gifts and other advantages and conflicts of interest, in line with GRECO recommendations – for example, to introduce rules for parliamentarians on how to interact with third parties seeking to influence the legislative process; institutional improvement of the National Integrity Commission to ensure independent and effective control of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property, etc.¹⁰ - and the Venice Commission's Rule of Law Checklist.¹¹

31. Given that “oligarchs” are often defined by their influence on media, a central issue is a need to strengthen media pluralism, including by the enforcement of competition law and merger control procedures, as outlined above, and transparency of media ownership, in line with Recommendation of the Committee of Ministers of the Council of Europe on media pluralism and transparency of media ownership,¹² and ensuring that such ownership information covers all media actors and is easily available and accessible to the public.

32. The Action Plan aims to improve the legislative and regulatory framework to ensure the availability of information on beneficial owners. The implementation of relevant anti-money

⁷ See OECD [Public Procurement Recommendation](#), 2015.

⁸ Directive [2014/24/EU](#) of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance.

⁹ See, in this regard, the good practices of the EU Anti-Fraud Knowledge Centre, including the system put in place in [Malta](#) for excluding companies or individuals convicted of corruption, fraud, money laundering, tax evasion, distortion of competition.

¹⁰ See GRECO's Second Interim Compliance Report ([GrecoRC4\(2023\)3](#)) published on 19 May 2023.

¹¹ Venice Commission, [CDL\(2016\)009](#), Rule of Law Checklist, §§ 114-116.

¹² [CM/Rec\(2018\)1](#), adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies.

laundering measures should be further enhanced in line with international standards and recommendations by MONEYVAL. More specifically, in order to identify who possibly hides behind complex ownership structures of companies, sometimes through direct and indirect foreign ownership, the transparency of legal persons and arrangements and timely and effective access to accurate up to date beneficial ownership information should be strengthened, in line with recommendations of MONEYVAL¹³ and the Financial Action Task Force (FATF),¹⁴ using a multi-pronged approach¹⁵ on the basis of a variety of information sources to ensure that competent authorities have access to accurate and up-to-date information on beneficial ownership to expose oligarchic structures. This information should be made available to all agencies which are relevant for limiting the influence of "oligarchs". Only on the basis of such information can they take effective measures in this fight, and only through smooth cooperation between these agencies can their work be effective.

33. According to the Action Plan, an annual report on the financing of political parties will be presented to the Parliament. It is recalled that the rules on the financing of political parties and election campaigns should be reinforced, aiming to reduce the role of "big money" in politics and easing participation of candidates and parties not beholden to oligarchic interests. These rules need to be implemented in a general, non-selective way, and this implementation needs to be controlled by an independent judiciary. Only such transparent independent control can remove any doubts as to a politically biased implementation. This can be done by reinforcing campaign expenditure caps, introducing a ban on donations by legal persons, increasing allocation of public funds to political parties, in particular during election campaigns, lowering thresholds for receiving public funds and/or providing air time for political parties on the main television networks to level the playing field. The campaigns of all political parties should be monitored in order to identify major expenses (e.g. for meetings and rallies) which were not declared. The role of the existing control mechanisms should be strengthened in supervising compliance with party finance rules and public scrutiny of party and election campaign finance should be eased.

34. Given that "oligarchs" use tax loopholes and the possibility to shift the declaration of revenue to low-tax countries, tax legislation should be reformed, to more effectively tax the wealth of oligarchic structures and cut out such tax benefits and exemptions used by such structures. In this context, international cooperation will be very helpful. Again, information on beneficial ownership is essential for this purpose and needs to be shared effectively between the relevant bodies and agencies.

35. The Venice Commission acknowledges that the Action Plan is a positive development towards putting a "system" in place. The Commission wishes to stress in this context that what matters for de-oligarchisation is not only for some sectoral laws to be adopted or amended on the basis of recommendations of various international bodies but that concrete measures be taken with the aim to reduce the oligarchic influence and assess, at regular intervals, what the impact of these measures is in countering oligarchisation. The coordinated and inclusive process shown in the preparation of the Moldovan Action Plan is therefore an encouraging signal in this regard.

¹³ See MONEYVAL evaluation and follow-up Reports ([MONEYVAL\(2019\)6](#) and [MONEYVAL\(2022\)4 SR](#)). Other than Moneyval's recommendations, international standards such as those of the FATF, the Council of Europe [Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism](#) (CETS No. 198) and the [EU Directive 2015/849](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ([as well as the forthcoming sixth anti-money laundering directive](#)) are also of relevance.

¹⁴ See for example, FATF, [Best Practices on Beneficial Ownership for Legal Persons](#), October 2019.

¹⁵ Combining registry approach, company approach, existing information approach and risk-based approach – see FATF, [Guidance on Beneficial Ownership of Legal Persons](#), March 2023.

IV. Conclusions

36. The Venice Commission underlines that the danger of concentration in the hands of a private individual of significant influence over the economic, political and public life of a country without transparency, legitimacy and accountability may exist in virtually any country. Most countries have devised and put in place a set of interconnected legislative, (inter-)institutional, administrative, economic and other measures in order to prevent the disruptive effects on democracy, the rule of law and human rights brought on by the concentration of such influence in the hands of a few. Depending on the context of the country concerned, such measures, for example, include an effective competition policy, anti-corruption and anti-money-laundering measures, measures to ensure media pluralism, rules on the financing political parties and election campaigns, etc.

37. The Venice Commission welcomes the decision of the Moldovan authorities to abandon the draft law and shift the focus to the systemic approach. The Action Plan developed in this regard aims at conducting sectoral analysis, consolidating legislative and institutional frameworks, increasing reporting and raising awareness in a number of areas such as public property management; anti-money laundering and anti-monopoly measures; transparency of beneficial ownership; efficiency of asset recovery in the context of already imposed international sanctions; better risk-management in banking and insurance sectors and improved transparency of political party financing. The Action Plan also foresees a monitoring mechanism to consolidate input from various agencies and ensure their good cooperation and coordination. The Action Plan will be reviewed and, eventually, adjusted every six months.

38. Therefore, welcoming the Action Plan, the Venice Commission makes the following recommendations:

- Further exploring other sectors and carrying out an in-depth and comprehensive analysis of the existing systemic measures of their shortcomings in terms of structure, powers and coordination;
- Devising corrective, additional or complementary legislation or measures, which, *inter alia*, include:
 - establishing and implementing an effective competition policy;
 - strengthening the fight against high-level corruption and the prevention of corruption, in line with GRECO's recommendations;
 - increasing the transparency of and accountability in public procurement;
 - strengthening media pluralism and transparency of media ownership;
 - enhancing the anti-money laundering policy, including the transparency of legal persons and arrangements and timely and effective access to accurate up to date beneficial ownership information, in line with MONEYVAL and FATF recommendations;
 - reinforcing rules on the financing of political parties and election campaigns and existing control mechanisms;
 - amending tax legislation;
- Strengthening the independence and effectiveness of the key regulatory and controlling authorities;
- Assess the way various institutions (anti-corruption and anti-monopoly agencies, state audit, banking supervisory authorities, etc.) can work better together in preventing and eliminating the influence of "oligarchs" over political, economic and public life;
- Carry out an impact assessment of such measures at regular intervals;
- Put thus in place a comprehensive system to prevent and fight oligarchic influence through a focused strategy to address oligarchisation, recognising the interconnected nature of the problem, allowing for bridges to be built between various fields of law and the institutions that implement them;

- Implement it without delay in a transparent and accountable manner.

39. Lastly, the Venice Commission underlines that, in order for the above-mentioned system to function effectively, the reform of the judicial system aimed at ensuring its independence, integrity and impartiality in line with the European standards and, more specifically, with Venice Commission recommendations, should be relentlessly pursued.

40. The Venice Commission remains at the disposal of the Moldovan authorities for any further assistance.