



KEY MESSAGES

- The Billion Dollar Bank Theft through which USD 1 billion was stolen from the country brought about economic crisis and severely damaged Moldova's image and credibility.
- Despite pressure from the public and the international community, Moldovan authorities have failed to bring any substantial results in the investigation of the alleged financial crimes, recovering the stolen assets, and punishing those responsible.
- The withdrawal of financial assistance by the IMF, World Bank, and EU to the country in response to the theft did not produce any meaningful change to the way the authorities responded.
- The implementation of a number of international sanctions regimes were advocated for to aid Moldova in its fight against kleptocracy. This included civil society campaigning for the introduction of a Global Magnitsky Act in Moldova itself, and the imposition of Magnitsky-style sanctions against Moldovan kleptocrats by the EU and the US. To date, however, little has been adopted.

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ASSET RECOVERY AND ANTI-CORRUPTION FRAMEWORK

CORRUPTION OVERVIEW

In the last few years, Moldova has seen massive corruption at the highest government levels. Acts of corruption have been de facto facilitated by the Moldovan state through some of its institutions, destroying the country's fragile credibility before its international partners and its own citizens. Once acclaimed as the Eastern Partnership's good student, holding "the highest mark for deep and sustainable democracy", Moldova became a captured state and a regional security threat for the EU.3

Although corruption was and is widespread in Moldova, two cases have shocked the Moldovan public and severely damaged the country's image and credibility: the Russian Laundromat and the Billion Dollar Bank Theft. Compared to them, other acts of corruption look trivial. Grand corruption has turned the country towards kleptocracy, and away from reforms and democratic development. In just a few years, the country has seen a dramatic backslide in democratic standards, freedom of expression, freedom of the mass media, freedom of assembly and especially peaceful protest. Moldova is now seen as a source of corruption, organized crime and money laundering, which hardly comes as a surprise in a situation where the Moldovan government passed a law that decriminalized several economic crimes.4

THE RUSSIAN LAUNDROMAT

Moldova was a central piece in the Russian Laundromat - a massive money laundering operation in EU jurisdictions between 2010 and 2014,⁵ originating in Russia.⁶ Moldovan judges overnight legitimized fake debts of Russian companies in favor

of fictitious companies registered in the EU, with Moldovan citizens acting as proxies (sometimes without suspecting it). The involvement of Moldovan citizens allowed the "debts" to be processed by the Moldovan court system. The total amount of the money laundering operation is believed to be over USD 80 billion. USD 22 billion passed through the Moldovan scheme alone. Sixteen Moldovan judges were involved in the laundromat and while all of them were briefly detained for one month in 2016, they were subsequently released. Most of the judges resigned or were suspended, two judges have since died, and one has fled the country, but none of the judges were convicted.7

In October 2020 all involved judges were freed from criminal investigation, and some of them immediately requested the Supreme Council of Magistrates to be reinstated to their positions.8 In fact, no high-ranking public servant or official who had responsibility to act to prevent money laundering has been convicted until now. Moldindconbank, a commercial bank alleged to have acted as the hub of the entire operation in Moldova, suspected of laundering USD 21 billion through Moldova and registering revenues from this activity, has continued to work undisturbed.9 The authorities have not attempted to recover any assets of illicit origin from Moldindconbank. In comparison, Danske Bank has been cooperaling in the investigations, and has forgone its profits registered from the Laundromat in Estonia.10 One decade since the start of the operation, the criminal investigation in Moldova is stagnant.

THE BILLION DOLLAR BANK THEFT

In 2014, approximately one billion USD, disappeared overnight from three Moldovan





banks acting in acting in concert (Unibank, Banca Socială and Banca de Economii), all owned by Ilan Shor either directly or through proxies.11 The National Bank of Moldova (NBM) acted quickly to bail out the three banks by allocating money from the national foreign currency reserves. At the time, the NBM currency reserves were around USD 2.8 billion. A third of the Central Bank currency reserves were loaned to the Ministry of Finance which used the funds to cover the hole within the banking system. In spite of the bailout, the banks went bankrupt anyway. Two years later, without any wider consultations, the Government approved legislation according to which the theft will be covered by the taxpayer in the course of the next 25 years.¹²

The main criticism towards this decision was the lack of a credible investigation, the lack of asset recovery and the fact that no one was punished for the crime. The publishing of the Kroll-2 report¹³ by an independent auditing company revealed that the politicians in power at the time of the theft and their business partners to also be the suspected main beneficiaries of this crime, namely Vlad Plahtoniuc, Vlad Filat and Ilan Şor.¹⁴ A parliamentary committee report conducted in 2019 led to similar conclusions and pointed out to the undermining of investigations by the General Prosecutor's Office in the period 2015-2019.¹⁵

14% of GDP was stolen overnight and the immensity of the crime outraged the population. For comparison, the theft would be equivalent to USD 587 billion disappearing overnight from a few German banks with the Central Bank stepping in to bail them out with taxpayer money, without any public scrutiny on the issue. Six years later, this crime remains unpunished. Although some charges were raised, no one has been convicted. The trial of a fugitive MP llan Shor has been ongoingly postponed, while a few of his alleged accomplices and Members of the Moldovan Parliament were freed

from criminal investigation by the Moldovan General Prosecutor on October 2nd, 2020.¹⁶

In the years since the theft, Moldova has fallen 38 places in the Freedom of the Press Index - from 55th place in 2013 to 91st in 2020.¹⁷ In Transparency International's Corruption Perception Index Moldova has fallen from 102th place in 2014 to 120th in 2019.18 Moldova has also fallen steadily in the Economist Intelligence Unit's Democracy Index, changing its classification from "flawed democracy" to a "hybrid regime", a non-democracy, for the first time in 2017, three years after the theft.19 Moldova is also seen to pose a considerable risk of money laundering, being ranked 71/140 in the 2020 Basel Institute's AML index, with a score of 5.4 out of 10.20 These are but a few international rankings that depict a general trend of the worsening of democratic standards in the country and that did not go unnoticed by the international community, with concerns being expressed on multiple occasions.21

The short- and medium-term effects of the crisis brought about by the Billion Dollar Bank Theft were drastic: double-digit inflation, the national currency exchange rate tumbling 30% against the USD, electricity prices rising sharply by around 30%, natural gas prices by 15%. Within a few months these spikes trickled into rising prices for consumer products.²² Overnight, because of a single act of grand corruption, the population lost around a third of their income in real terms. Massive protests erupted, an economic crisis was underway, and Moldova's partners (the IMF, EU, World Bank) turned away.²³ Because of stalling reforms, a lack of progress in the investigation and worsening democratic standards that culminated with the cancellation of local elections through court order, EU funding was frozen repeatedly: in 2015,²⁴ 2017,²⁵ and 2018.²⁶

As a result of the theft, the country was sinking into a corruption-inflicted economic





crisis and isolation, and social unrest was rising, with hundreds of thousands people taking to the streets.²⁷ The ruling political class faced tremendous internal and external pressure to deliver an investigation of the thefts, recover the assets and punish those responsible. However, as revealed five years later in an independent investigative audit, those responsible were those in power.²⁸

To stop the waves of protest, a gradual stifling of democratic freedoms started. Propaganda to silence inconvenient opinions, defamation, attacks on civil society, intimidation of NGOs and free media, and the introduction of legislation that limits transparency and democratic freedoms, all took place.²⁹ Freedom of the media, freedom of speech and of peaceful assembly, political pluralism, all suffered. Democratic backsliding epitomised in the 2018 court decision to cancel local elections threw Moldova into further isolation, with new calls for economic sanctions on the country.³⁰

While democracy was receding, corruption was advancing.31 The financial crimes threw Moldova into oligarchy, with key persons involved placed into decision making positions in government, parliament, supervisory institutions, law enforcement and the judiciary.³² A citizenship for investment programme was approved in spite of harsh criticism by Moldovan civil society and international partners that feared it would facilitate money laundering. So was a tax amnesty that effectively allowed for the pardoning of past instances of economic crime and legalising the proceeds of past corruption.33 Public money was used with no accountability to facilitate private public partnerships (PPPs) and public tenders alike.34 Cases of corruption pointing to the lack of supervision,35 and even complicity by the state (like in the case of tobacco smuggling³⁶) generated substantial amounts of illicit financial flows. Corruption has become part of the state and often decisions have been taken to facilitate corrupt interests instead of

fighling against them.

ASSET RECOVERY OVERVIEW

Under pressure from the public, and from the international community, the Moldovan authorities have committed to investigate financial crimes, to recover stolen assets, and to punish those responsible for the stolen billion.³⁷ However, even though the actions that followed suggest steps in the right direction, they have failed to bring any substantial results. A few examples of the steps taken by the Moldovan government in the aftermath of the theft scandal are listed below.

THE ESTABLISHMENT OF A CRIMINAL ASSET RECOVERY AGENCY

The government officially committed to recover the stolen assets and proceeded with the institutional framework, including establishing an authority dedicated to this task. It took three years following the Billion Dollar Bank Theft before the Criminal Asset Recovery Agency (CARA) was founded - a special authority dedicated to investigate, trace and recover stolen assets from any corrupt practice.³⁸ Prior to the establishment of CARA in 2017, no institution had the authority or single mandate to recover assets of a criminal origin. This problem became acute after the theft, when the government faced pressure to recover the stolen billion. The Criminal Assets Recovery Agency was founded as a subdivision of the National Anticorruption Center (NAC), subordinated to the Parliament, and its staff specializes solely in recovering stolen assets. However, the pace of the institutional adjustment has proven to be very slow. Just to finish the institutional setup of CARA took three years and, after its founding, the institution was left dysfunctional - in a legal vacuum and with no funding for at least two more years.

FEW ASSETS RECOVERED DESPITE BILLIONS ALLEGEDLY FROZEN

After solving initial administrative issues, the





Criminal Asset Recovery Agency began seizing assets from corrupt criminal activity, with results being published on the NAC website.³⁹ However, CARA failed to show concrete results regarding the confiscation and recovery of the stolen billion, pointing to the lack of political will to progress on the subject. According to the information provided by the Criminal Asset Recovery Agency, at the moment, the Agency has frozen around MDL 4 billion (approx. EUR 200 m) in connection to the Billion Dollar Bank Theft.⁴⁰ Since the agency was founded in 2017 it has had between 2-4 billion MDL frozen in any given month. However, none of the assets from the stolen billion have ended up being eventually recovered, i.e. confiscated and transferred to the state budget.⁴¹ Instead, after some time, freezes have been simply lifted. The Agency has published information about particular confiscations, but does not produce aggregate reports, nor information about assets recovered. The confiscation process itself is also being handled by the Anticorruption Prosecutor's Office, making the process more complex since not a single agency is fully responsible.

LACK OF TRANSPARENCY REGARDING CORRUPTION INVESTIGATIONS

As part of the asset recovery effort, two forensic reports were commissioned by the National Bank of Moldova from the investigative company Kroll (conventionally called Kroll-1 in 2015 and Kroll-2 in 2017). The authorities have attempted to keep the reports hidden and there is no indication of the fact that the findings were used effectively to recover the assets. The first Kroll report was published following pressure from the protest movement in 2015 by Mr Andrian Candu, then Speaker of Parliament, on his blog.⁴² The second Kroll report was published after the change of government, in the summer of 2019, by the new Parliament.43

REVENUES FROM BANK LIQUIDATIONS PRESENTED AS ASSET RECOVERY

Facing pressure from the international community and from the population, Pavel Filip, a new Prime Minister in 2016, made a commitment to install an outdoor billboard to show the progress of the asset recovery in real time. After initial inaction on the promise, the Prime Minister was reminded of his promise by civil society. Instead of a billboard, the government published a spreadsheet table on the Finance Ministry's website.44 Concerns were expressed on multiple occasions about the quality of information presented.45 The table falsely represented revenues from the liquidation of three banks as the "recovery of stolen assets". The sale of buildings, cars and other assets owned by the three banks under liquidation, was presented by the Ministry of Finance as the recovery of the stolen billion. The authorities have refused to adjust their calculations and kept this inaccurate narrative until now. While the Ministry is communicating that assets are being recovered from the stolen billion, in reality the banks are just being liquidated.

THE DRAFTING OF POLITICAL STRATEGIC DOCUMENTS

Instead of acting to investigate and recover stolen assets, authorities have at times misinformed the public on the subject. An example of such behavior is the "Strategy of recovery of stolen assets", a document co-authored by three institutions that are central actors in the asset recovery effort: the General Prosecutor Office, the Anticorruption Prosecutor and the National Anticorruption Center. While the publication of the document in 2018, alongside an announcement that no assets related to the theft have yet been recovered, was welcomed by civil society, serious questions about the real objective of the document were also raised. The document presented an overlap of the recovery of the one billion with the recovery of other misappropriated assets during 2007-2014, creating confusion and room for speculation. Civil society further





criticised the document for distracting public opinion from the real beneficiaries, into a false narrative about progress in asset recovery and the investigation.⁴⁶ In the meantime, the document has disappeared from governmental websites.



MOLDOVA'S EXPERIENCE WITH TARGETED INTERNATIONAL SANCTIONS

After the freezing of financial support from the IMF, World Bank, and the EU failed to impact the situation in Moldova, the imposition of targeted individual sanctions on certain Moldovan officials became a subject of debate in the Moldovan society. Civil society representatives advocated on the issue of sanctions, asking the international community to help stop the deterioration of democratic standards in Moldova.

MOLDOVAN GLOBAL MAGNITSKY ACT

Originating in the United States, and bearing the name of a lawyer Sergei Magnitsky, who was arrested and killed in 2009 by Russian authorities after he exposed an illegal tax scheme, the Global Magnitsky Act aims to target individuals accused of major human rights violations and grand corruption in any country. After its adoption in the US, several other countries, including the Baltic states, Canada and the UK have adopted their own versions of the law.⁴⁷

Representatives of Moldovan civil society also advocated to have the Global Magnitsky Act in the Moldovan legislation - a draft law was proposed to the parliament in 2018, but it was ignored by the ruling Democratic party. All In the 2019 parliamentary elections, the pro-European parties had the approval of Magnitsky law as one of their commitments in the elections, and after the elections it was part of the so-called "anti-oligarchic package of laws". The action was given up during coalition talks, after the pro-Russian Socialists and pro-Russian president Dodon insisted against it.

As clearly shown in the Russian Laundromat and other cases, various regional criminal

groups have misused Moldovan banks for the purpose of money laundering and transferring tens of billions of dollars from the Russian Federation to offshore jurisdictions. Moreover, one of the banks implicated in the fraud of USD 1 billion, Banca de Economii, is also known for its involvement in the transfer of funds from the very illegal tax refund scheme, uncovered by Sergei Magnitsky. ⁵⁰ A Magnitsky law in Moldova could thus help to punish individuals and entities implicated in these major corruption scandals.

EUROPEAN UNION SANCTIONS AGAINST MOLDOVAN INDIVIDUALS ACCUSED OF CORRUPTION

In the aftermath of the Billion Dollar Bank Theft, among the main recommendations from civil society to the EU institutions was the establishment of an international investigation and asset recovery mechanism for the Billion Dollar Bank Theft, and to institute Magnitsky-style sanctions against Moldovan kleptocrats while imposing harsher conditions for funding in exchange for democratic reforms if the country wants to benefit from the EU Assistance.⁵¹

The Association Agreement signed between Moldova and the European Union, namely Article 18 of the document, gives the EU legitimacy to act on cross border crimes that have affected both the EU and Moldova, such as money laundering and grand corruption. Civil society has used this article (absent in other Association Agreements, such as Ukraine, for example) as an argument in favor of sanctions, asset recovery and international investigations. 52

Other EU legislation which was used as an





argument in favor of individual sanctions against corrupt Moldovan officials, was the European Parliament's Resolution on corruption and human rights in third countries, from 13th of September 2017.53 In the resolution, the EP calls on the EU:

"to include an anti-corruption clause alongside human rights clauses in agreements with third countries that should require monitoring an d consultations and, as a last resort, to impose sanctions or suspend such agreements in the event of serious and/or systemic corruption leading to serious human rights violations"

and

"encourages EU Member States to consider adopting legislation with a view to establishing clear criteria allowing for blacklisting and the imposition of similar sanctions against third country individuals and their family members who have committed serious human rights violations or have been responsible for, or complicit in, ordering, controlling or otherwise directing acts of significant corruption, including the expropriation of private or public assets for personal gain".

After extensive advocacy efforts by Moldovan civil society, the European Parliament Resolution from 14th of November 2018 condemned the lack of progress in the fight against corruption, namely the investigation of the Billion Dollar Bank Theft case, warned against the decline of democratic standards in the country, and for the first time named the oligarch and at that time the President of the Democratic Party of Moldova, Vladimir Plahotniuc, in connection with selective justice based on fabricated accusations, shrinking space for civil society, and limited freedom of peaceful assembly and expression.54 The document also called for the prompt investigation of Ilan Shor, a politician and an alleged

frontman in the Billion Dollar Bank Theft case, condemned the lack of results in the recovery of any assets, and called "on the Council to consider personal sanctions and on relevant EU Member States to provide support to the investigation".

Government representatives tried to lobby for softer wording of the resolution through some of the MEPs close to the Democratic Party, most of them from the Romanian Social Democratic Party and the initial draft of the resolution did not explicitly name Vladimir Plahotniuc and llan Shor for their connection to the theft. The naming of Vladimir Plahotniuc and llan Shor for their connection came through the amendment processes and was the result of a successful lobbying effort from civil society and encouragement for its further work. To this day, however, the EU has not imposed sanctions either on Plahotniuc, or on Shor.

UNITED STATES SANCTIONS ON VLADIMIR PLAHOTNIUC

After an unfavorable result in the 2019 elections, Vladimir Plahotniuc resigned from his post in parliament and reportedly fled to the United States.⁵⁶ In January 2020, the US Department of State publicly designated Vladimir Plahotniuc and his immediate family members for Plaholniuc's involvement in "corrupt acts that undermined the rule of law and severely compromised the independence of democratic institutions in Moldova."57 Plaholniuc and his family members thus became ineligible for US visas, however, he was already residing on US territory, and has appealed the decision in the US courts. At the same time, the Moldovan Prosecutor General requested Plahotniuc's extradition, in June 2020, after opening investigations for money laundering in Moldova.⁵⁸ No other international sanctions against Plahotniuc, such as asset freezes, have so far been announced. For now, this is the only sanction against Plahotniuc, who has allegedly



benefited from the theft. The public data of the US security agencies show that Plahotniuc left the USA at the end of August and it is believed he has since been residing in Turkey.⁵⁹

The impact of the entry ban imposed on Vladimir Plaholniuc by the US, so far the only sanctioned Moldovan official accused of grand corruption, is likely small for two main reasons. Firstly, the delay in the applications of the sanctions in place has minimised their effectiveness. The sanctions against Plahotniuc have lost their scope of deterring the situation in the country from worsening. Plaholniuc was sanclioned only after he lost power, i.e. the possibility to come back to a transparent, democratic, inclusive type of government. Secondly, the chosen form of sanctions has a minimal punitive strength. While visa ban can complicate the life of Plahotniuc and his family in the United States, without the application of asset freezing measures as part of the sanctions, the allegedly illicitly acquired wealth of the family and the resulting high standard of their life will remain unaffected.



ASSESSMENT OF THE EFFECTIVENESS OF INTERNATIONAL SANCTIONS AS A TOOL AGAINST CORRUPTION

Unlike other countries, for example neighboring Ukraine, 60 only one Moldovan citizen, Vladimir Plahotniuc, was ever under international sanctions due to corruption allegations. Moldova has limited experience with Magnitsky style sanctions against corrupt individuals sanctioned by foreign governments for acts of corruption, and it is therefore difficult to make conclusions about the effectiveness of these sanctions. A few main takeaways, however, emerge:

SANCTIONS CAN UNITE ANTI-CORRUPTION ACTORS IN FIGHT AGAINST STATE CAPTURE

The public naming and shaming of a few individuals implicated in the corruption in Moldova, such as Plathotniuc and Shor by the European Parliament, together with a call on the Council to consider personal sanctions on Shor, was an encouragement to the groups who kept advocating for justice and fighting against kleptocratic state capture. Moldova's experience suggests that a mechanism of corruption-related Magnitsky style sanctions can therefore give civil society and the political opposition an idea around which to unite and therefore create a concentrated pressure to advance corruption investigations.

TARGETED SANCTIONS CAN SERVE AS A DETERRENT TO PREVENT THE WORSENING OF THE SITUATION ONLY IF THEIR THREAT IS REAL

Since the naming and shaming by the European Parliament resulted in concern and mobilisation on the side of potentially affected Moldova's MPs, the possibility of sanctions, provided it is a real, credible possibility, can serve as a deterrent against a worsening of the situation. However, since

the probability of targeted sanctions on Moldovan kleptocrats has been small thus far, it is unlikely that the discussions have had any real impact. As the country was sliding more into isolation, with its international partners distancing themselves from supporting the Moldovan government, those involved in state capture resorted to abuses, and corruption accelerated. More attempts to silence inconvenient opinions, more intimidation, and arbitrary justice were seen.

COUNTRY-WIDE FINANCIAL SANCTIONS DID NOT HAVE AN IMPACT IN MOLDOVA

When the government was under internal and international pressure to act on corruption, it did not investigate nor punish those responsible, while democratic standards in the country kept declining. Repeated financial sanctions and freezing or cutting of financial assistance to the country did not produce a change in attitude. On the contrary, the EU freezing aid was often exploited by governing politicians, thus feeding an anti-EU sentiment within society.

SANCTIONS SHOULD BE LINKED TO THE ASSET RECOVERY PROCESS

While the lack of results in asset recovery of the Moldovan authorities can have different reasons (from a lack of capacity to unwillingness), immediate asset freezes imposed on the international level could help the investigation and asset recovery in spite of weak domestic institutions. Furthermore, asset freezes could send a stronger signal for other potential kleptocrats that corruption has consequences and may discourage from following their example. The US sanctions on Plahotniuc are a missed opportunity in this regard and the US or other countries considering imposing sanctions on





kleptocrats should include also asset freezing and asset recovery provisions.



CONCLUSIONS

Moldova (with only one exception) does not have much experience with serving or former officials and/or politicians under international sanctions. Although the government was under internal and international pressure to act on corruption, it did not investigate or punish those responsible, while democratic standards in the country kept declining. Repeated financial sanctions and freezing or cutting of financial assistance to the country did not produce a change in attitude. While the IMF, World Bank, EU and others have withdrawn their financial support to Moldova, the implementation of a number of international sanctions regimes were considered to aid Moldova fight its kleptocrats.

After the attempts of the public and civil society in Moldova to bring about change in the country via domestic protests and advocacy were unsuccessful, advocating to demand international sanctions for Moldovan kleptocrats was one of the only remaining strategies for the pro-democracy movement in Moldova. Individual sanctions, or even the advocacy demanding individual sanctions for state captors, can be a useful tool to defend democracy in a country which has seen its decline.

After the change of regime in Moldova, an emphasis is currently put on punishing those who instrumented money laundering schemes and not on communication on the tracing, seizing, confiscating and repatriation of stolen assets. However, sanctions need to be seen as a stepping stone to bring back stolen assets and return it to the people. A corruption case cannot be concluded solely with the act of imposing targeted sanctions on individuals and entities. Sanctions have to be connected with an efficient asset recovery mechanism.

Based on the Moldovan experience,

Magnitsky-style sanctions against corrupt individuals will work only if the possibility of sanctions is real and credible to the society and especially to the incumbent kleptocrats. The possibility of sanctions was never truly taken seriously by local politicians and although the EU and the US condemned the situation, there was no mention of sanctions in the aftermath of the revelation of the one billion case. While difficult to ascertain, it is likely that if alleged politicians saw the risk of sanctions as a realistic scenario or if sanctions were to be implemented, the deterioration of human rights and control of corruption would not be so severe.

Because an important role of Magnitskystyle sanctions is to deter future abuses, as well as effectively punishing those that have already taken place, the effectiveness of a sanction mechanism can be maximized if there is a clear procedure in place with a more technical and less politicised decisionmaking process. Moldova's experience suggests that, because of excessive politicisation and unclear procedures in the sanctions process, kleptocrats relied on their lobbying power to avoid sanctions abroad, or a debate about their possibility, and even to whitewash their image internationally. The recent initiative voiced by the European Commission President von der Leyen to end unanimity on sanctions can be an important step in this direction.

Last but not least, Moldova's experience shows the importance of having an active and independent civil society. When the entire public service, including the judiciary and law enforcement, is silenced by state capture, civil society, the independent press, NGOs and watchdogs, as well as the political opposition, were the only ones who kept the public's attention on the issue of grand corruption, called on those in power to stay accountable, and advocated for justice and sanctions.





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