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SOME REFLECTIONS ON THE TIMING OF MOLDOVA'S NEGOTIATIONS OF THE EU ASSOCIATION AGREEMENT

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Moldova's Foreign Policy Statewatch represents a series of brief analyses, written by local and foreign experts, dedicated to the most topical subjects related to the foreign policy of Moldova, major developments in the Black Sea Region, cooperation with international organizations and peace building activities in the region. It aims to create a common platform for discussion and to bring together experts, commentators, officials and diplomats who are concerned with the perspectives of European Integration of Moldova. It is also pertaining to offer to Moldova's diplomats and analysts a valuable tribune for debating the most interesting and controversial points of view which could help Moldova to find its path to EU.

NEXT TOPICS TO BE COVERED:

*China's credit to
Moldova*

*Great Britain and
Slovakia's contribution
to Moldova's
integration in the EU*

Moldova started the negotiations with the EU on the Association Agreement in January 2010 and is aiming to start the dialogue on visa-free travel and the deep and comprehensive free trade area as soon as possible. Even if the opportunities are good, there are some, mostly internal issues, which are undermining the chances of Moldova to quickly sign a convenient Association Agreement. The main challenges faced by Moldovan authorities are related to the institutional capacity, the negotiation team and the constitutional crisis in Moldova.

BACKGROUND. Moldova institutionalized the relationship with the European Union (EU) in 1994 by signing the Partnership and Cooperation Agreement (PCA). The document entered into force in 1998, for a period of ten years with the automatic annual prolongation. The PCA quickly became obsolete due to fast changes in

the foreign policy priorities of Moldova. Following the cooperation within the European Neighbourhood Policy, Moldova implemented the Action Plan (2005-2008) and found itself in the situation to negotiate a new agreement with the EU. The PCA's successor is named the Association Agreement (AA) between the EU and Moldova. The AA is expected to be more ambitious, going beyond simple cooperation by adding clear elements of integration. However, the title of "association" is rather symbolic due to the absence of the membership perspective.

Even if the former government was willing to start negotiations over the new agreement as soon as possible and the European Commission received the negotiation mandate in December 2008, the EU hesitated to initiate the consultations. The EU's delay was initially driven by the poor implementation of the EU-Moldova Action Plan, the human rights violations of the communist government towards media and political opponents, adding lately, the April civil unrest and riots. Under these circumstances, the EU conditioned the start of the negotiations on Association Agreement with the organization of free and fair elections. After the new government was invested, it was agreed to start negotiations the first two rounds already took place in Chisinau on January 12-13, and Brussels on March 25-26.

SUBSTANCE OF THE ASSOCIATION AGREEMENT.

Despite the fact that the content of the agreement is secret due to the confidentiality clause, the general details were publicly announced. During the first round of negotiations, four chapters and accordingly four groups of experts were set: political dialogue and reform, cooperation in the foreign policy and security fields; economic, sector and financial cooperation; justice, freedom and security; and inter-human contacts. The AA arrangement is matching the Eastern Partnership (EaP) structure and, besides the standard provisions, is confirming the possibility to reach agreements on deep and comprehensive free trade area (DCFTA) and visa-free travel, both very important for Moldova.

The statements of the EU and Moldova officials revealed that parties' opinions are overlapping in 90% of the agreement content, but 10% will be subject, however, to negotiations. Though there is not much to negotiate, this process might take longer than expected. The case of Ukraine is a relevant instance. The EU started to negotiate the PCA with Ukraine in March 2007 and, since September 2008, Ukraine succeeded to shift from negotiating the PCA (or Enhanced Agreement) to AA. Using the experience of Ukraine, Moldova is trying to focus on problematic issues from the very beginning, and organizes negotiations at the level of experts in between the rounds of negotiations by using videoconferences and rapid exchange of correspondence. In addition to this, the new government received a credit of sympathy from some of the EU members like the Baltic States, Romania, Poland, Sweden, Hungary and Great Britain that are ready to offer their expertise during the negotiations. Also, Moldova is about to receive a group of nine experts

from these states, under the umbrella of the European Commission, which is going to assist the key-ministries in dealing with the requested reforms.

PROBLEMS. It is noteworthy that after the first round of negotiations there were many optimistic declarations. The head of the European negotiations team, Gunnar Wiegand, declared that there was a very good start, and the co-chair of the EU-Moldova parliamentary cooperation committee, Monica Macovei, stated that she hopes that EU and Moldova will conclude the negotiations by the end of 2010 and will sign the agreement next year. Despite the optimism, there are some problems that could slow down the negotiation process.

First and the most important problem for Moldova would be the accession perspective. The European officials never missed the opportunity to remind Moldova that the AA has no membership perspective while Moldova keeps asking for it. Moldova was about 2-3 years behind Ukraine during the communist administration, whereas now, Moldova is still behind, but is quickly catching up with Ukraine and is even overrunning it in some fields. As strange as it would seem, Ukraine is the reason, apart from economic and democracy issues and enlargement *fatigue*, why Moldova is not receiving the membership perspective. The “package” treatment of Moldova and Ukraine makes the EU offer the same opportunities for both, while in the light of the last political events in Moldova and Ukraine, their ambitions and the eventual preparedness might be different. Moldova's authorities are now trying to implement a new strategy, conventionally called “preemptive implementation”. The main idea of this strategy is to implement reforms requested by the EU, before negotiating on them, in order to ask more from the EU during the negotiations. Also, there should be mentioned the “Rethink Moldova” programme, which comprises priorities on medium-term development, and focuses on three pillars: Responsible governance; Foster economic recovery; and Human capital. After the consultative meeting of the donors in Brussels on March 24, Moldova received 2,6 billion USD supporting this programme for 2011-2013.

Another issue that was highlighted by experts is the capacity of the negotiation team. It is an aspect that might be important, but not at all crucial. The real arguments during the negotiations are facts on implemented reforms, or, at least, real arguments on the capacity to implement reforms: well-prepared negotiators could slightly influence the opinion of the EU, but a well-implemented reform could really change the EU's attitude.

Following these two important issues, the announced referendum cannot be overlooked. The referendum on a new constitution, that is supposed to take place until June 16, might be something of bad taste for Europeans, who already mentioned that Moldova should stick to the recommendations of the Venice Commission, and organize the referendum after the early parliamentary elections, as required by the actual constitutional provisions. Also, provided the referendum does not take place, we should expect elections in spring 2011. Both scenarios would constitute an obstacle for the negotiation process. The

obstruction will occur before and during the referendum/election campaign, and maybe after. This can be the case especially if the referendum falls short and the new government will take office after elections. During the 2009 campaigns it was obvious how many ministries were working at reduced capacity, most of the ministries and other civil servants were actively participating in the pre-election process.

Although the details about the AA are missing due to the high-degree of confidentiality in the negotiation process, it is generally known that there are some differences in EU's attitude towards Moldova and Ukraine. The DCFTA is one of the issues that are to be negotiated differently. Ukraine is asking the EU to sign the AA and then the DCFTA when it is ready and the EU is opposing it. Whereas in the case of Moldova, the EU is proposing to sign the AA and then the DCFTA, Moldova willing to sign both agreements simultaneously. Considering the above-mentioned aspects, Moldova should expect to sign the new agreement next year.

SCENARIOS AND RECOMMENDATIONS. The Moldova's shortcomings are big but the opportunities are even bigger. The recognition of the membership perspective, the visa-free agreement, and the DCFTA should be Moldova's priorities.

Under these circumstances, two scenarios are possible. One of them is the quick signing of the AA accepting almost everything proposed by the EU and relinquishing to claim the membership perspective. And the second is trying to get more from the EU, including the prospect of becoming a member.

I consider that the most appropriate option would be to sign the AA promptly and then to negotiate DCFTA, visa-free agreement and to request consideration of the membership perspective. This process might happen following the logic of a *multi-speed* development. The choice is explained considering several facts. First, Moldova will negotiate longer the AA concurrently with the DCFTA due to a fuzzy perception of its economic interests and lack of a comprehensive research on the benefits from DCFTA. Another reason would be an eventual fulfillment of the conditions for visa-free travel and in the absence of the AA further progress will be delayed. In addition to this, there are no guarantees that, in case of a longer negotiation, the EU will grant the membership perspective.

Besides such important aspects as law-enforcement, border security and many other technical issues that should be implemented, I believe the involvement of the civil society would be very beneficial for the negotiations process on the AA, given the fact that NGOs do have more time to investigate the experience of other countries and to assess which actions could be implemented in Moldova. Also, the authorities should continue to study Ukraine's itinerary so that mistakes are avoided. In addition to this, it would be great to use the EaP instruments to prepare the ground for AA negotiations in some aspects. Last but not least, a better coordination among the ministries would be of real help in having a coherent position and a dynamic implementation of reforms.