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Corruption in Moldova's Energy Sector and the Impact on Energy Security

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1. General context

Since the early days of Moldova's independence, the country's energy security has largely depended on the Russian Federation for both gas consumption and electricity generation. The entry points and the gas compressor station of the Trans-Balkan pipeline are under the control of self-proclaimed Transnistrian authorities on the left bank of the Dniester river, which serves as proxies for the Kremlin authorities in achieving their foreign policy objectives in the region. Less than 19% of Moldova's electricity demand is produced domestically by 3 combined heat and power (CHP) plants that run on natural gas as fuel,¹ with Gazprom being the only gas supplier. Gazprom owns 50% and controls another 13.4% of shares of Moldovagaz, the only gas utility for Moldova, having a de facto monopoly in Moldovan gas market. Through the Iasi-Ungheni gas interconnector with Romania, a volume of 1.2 million cubic meters of gas was supplied in 2015, or about 0.1% of Moldova's annual consumption without the Transnistrian region.²

The energy system of the Republic of Moldova operates in parallel with the energy system of Ukraine, being interconnected by 7 high-voltage power lines. About 80% of Moldova's electricity consumption is procured from abroad: from Ukraine or from the MGRES power plant located in the Transnistrian region. Even the import of electricity from Ukraine cannot avoid the Transnistrian territory, except for a single power line. Two interconnection lines reach the Transnistrian side and 4 lines are connected to the transformer station of MGRES power plant, also located in the separatist region. Moldova has a common border with Romania in the west, but the electric power systems of these states do not work in parallel.

The price of electricity supplied by MGRES has never been based on a cost structure, as Transnistria does not pay for the gas consumption. The gas tariffs in the Transnistrian region are set by the self-proclaimed government and are below market rates, while all revenues from gas sales are transferred to the so-called "special gas account," funds which subsequently are loaned to the separatist region's budget. In fact, the Russian Federation has used Moldova's dependence on Russian gas to establish a contractual system whereby Moldovan consumers are forced to finance separatism in their own country by purchasing energy from MGRES in Transnistria and accumulating gas debts. In 2007-2016 alone, nearly \$1.3 billion from the so-called "special gas account" was transferred to the separatist budget, accounting for up to 35% of total budget spending for the 10-year period. Gazprom served as the main instrument to finance the geopolitical agenda of the Kremlin administration, which can be summarized as follows: *strengthening Russian influence in Moldova by financing separatism and maintaining the role of mediator of the Transnistrian conflict to advance its own interest.*³

Although the Moldovan authorities have been aware of the need to strengthen the country's energy security and eliminate dependence on Russian gas by diversifying the electricity and gas supply, little

¹ Electricity TSO Moldelectrica, https://moldelectrica.md/ro/electricity/energy_sources

² ANRE (energy regulatory agency) report for 2016, page 22.

³ IDIS Viitorul, "Energy and politics: the price for impunity in Moldova", Apr 2017, <http://viitorul.org/files/Policy%20Paper%202017%20-%20Impunitate%20si%20intelelegeri%20rentiere%20sectorul%20energetic%20ENG%20II.pdf>

has been done in this regard until present. The objectives of diversification have been included in all energy strategies over the last 20 years. The Energy Strategy till 2010, adopted in 2000,⁴ mentions that “*the Government will take steps to build new gas pipelines to secure the gas supply.*” In 2007, a new Energy Strategy was approved that runs until 2020,⁵ which stated that “*the Government will take measures to build new gas pipelines to secure the gas supply.*” Thus, after almost 7 years of “intensive” work, all efforts concerning the diversification were limited to changing one word in the Government decision. As we will observe in this research, particularly in the case of electricity supply through the intermediary company Energokapital, the involved parties are interested in preserving the status quo through coordinated efforts:

- On one hand, **Russian Federation** continues to finance the separatism by providing “gas subsidies” to the Transnistrian region, consolidating thus their geopolitical influence by increasing Moldova’s total debt for Russian gas; Gazprom turns a blind eye on the mismanagement of Moldovagaz in order to corrupt and loyalize Moldovan political elites;
- At the same time, **Moldovan political decision makers** aim for personal enrichment from corruption schemes and raise no concerns with the financing of the self-proclaimed regime in Transnistria by supplying gas “on credit” and passing the debt to Moldovagaz.

Real steps concerning the gas interconnection with Romania started in 2013 with the construction of Iasi-Ungheni pipeline. Despite the strong political and financial support from EU and other international development partners, the pipeline is not slated to be operational before the fall of 2021. However, this interconnector would not cover the gas consumption of the Southern part of Moldova, which still depends on the Trans-Balkan pipeline system. On the other hand, the uncertainties over the gas transit contract between Ukraine and Russia in 2019 forced the Moldovan authorities to create an alternative gas supply route in just six months by modernizing the Trans-Balkan pipeline, to enable it to operate in reverse mode.

The vulnerabilities of the energy sector were exploited by Gazprom alongside with the corrupt Moldovan politicians, who tolerated and even facilitated fraudulent schemes in the energy sector to the detriment of the national interests of Moldova.⁶ There have been numerous corruption scandals in the energy and gas sector over the years. Although political parties with different geopolitical orientations were in power, no one has been convicted and the unjustified costs are borne by consumers. This research highlights the most severe cases of corruption and their role in undermining the energy security and increasing Moldova's dependence on Russian gas.

⁴ Government decision no. 360 of April 10, 2000, https://www.legis.md/cautare/getResults?doc_id=73726&lang=ro#

⁵ Government decision no. 958 of August 21, 2007, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=325108>

⁶ Community Watchdog.MD, “*Moldovagaz - 20 de ani de fraude masive sub protectia actionarilor si institutiilor de stat*” [Moldovagaz - 20 years of massive fraud under the protection of shareholders and state institutions], September 2019, https://www.watchdog.md/wp-content/uploads/2019/09/Studiu-Moldovagaz-09-2019_compressed-1-1.pdf

2. Corruption cases and the actors involved

2.1. Hostile takeovers of the gas supply complex

Before the launch of the Turkish Stream in 2019, Gazprom has used the Trans-Balkan pipeline to supply 20-25 bcm (billion cubic meters) of gas annually to Balkan countries. The pipeline crosses Ukraine and Moldova, including the breakaway Transnistrian region. Aiming to take control of critical gas transmission infrastructure, in December 1993 Gazprom signed a controversial gas supply contract in conspiracy with officials from Moldova and self-proclaimed Transnistria. The contract included several abusive provisions that lead to a staggering increase of Moldova's gas debt:

- The gas price was increased from \$38.5 to \$80 for thousand cubic meters. During that period, Gazprom supplied gas on European market at an average price of \$72.8;⁷
- Gazprom requested advanced payments and imposed a fine equivalent to 128% per annum on the amounts due, which was 17 times more than for other countries of the former USSR.

These provisions were not accidental, given the fact that Transnistrian separatist region stopped paying for gas consumption after the 1992 Transnistrian conflict. Consequently, in 1994 alone Moldova's gas debt to Gazprom increased from \$22 million to \$291 million, including \$91 million of Transnistria's debt and \$100 million of penalties. As a result of the artificial debt swelling, in 1995 the Government of Andrei Sangheli agreed on a debt-to-equity swap and ceded in favor of Gazprom a 50%+1 share of the newly formed company Gazsnabtranzit, Moldova's gas transmission operator. The government violated the provision of the Law on foreign investments⁸ and underestimated the assets of Gazsnabtranzit. As a result, Moldova was prejudiced with over \$416 million for the benefit of the Russian concern.⁹

The Kremlin administration attempted to reproduce a similar scenario in Ukraine 20 years later, following the Russian aggression in Donbass. Gazprom increased the price of natural gas for Ukraine by 81%, from \$268.5 to \$485, on a prepaid basis,¹⁰ and began supplying gas to the separatist regions in eastern Ukraine in February 2015, contrary to the provisions of the contract with Naftogaz.¹¹ Putin himself insisted upon delivering gas to the separatist regions in the Eastern Ukraine: "*we should provide stable gas supplies to all our customers, including the citizens in the south-east of Ukraine*".¹² However, Naftogaz sued Gazprom in the Stockholm arbitration court and was exempted from paying the illegal debt. Moldovagaz cannot apply similar tactics because, according to the agreement signed with Gazprom, any disputes are examined by Moscow Commercial Arbitration Court. Obviously, there

⁷ Mihail Sudo, El'vira Kazankova, "Energeticheskie resursy. Neft' i prirodnyj gaz. Vek uhodyashchij", 1998, http://www.rus-stat.ru/index_vid_1_year_1998_id_34.html

⁸ Art. 9 point 2 of the Law no. 998 of April 1, 1992 on the foreign investments, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=310926>

⁹ IDIS Viitorul, „The gas industry in RM: the burden of ignorance and the cost of errors”, http://viitorul.org/files/Politici%20PubliceGAZZ_ENG.pdf

¹⁰ Dr. Frank Umbach, NATO review, "Russian-Ukrainian-EU gas conflict: who stands to lose most?", May 2014, <https://www.nato.int/docu/review/articles/2014/05/09/russian-ukrainian-eu-gas-conflict-who-stands-to-lose-most/index.html>

¹¹ Rbc.ru, "Газпром нашел способ начать прямые поставки газа в Донбасс" [Gazprom has found a way to start direct gas supplies to Donbass], Feb 2015, <https://www.rbc.ru/politics/19/02/2015/54e5e47c9a7947081ec94c4a>

¹² Gazprom press release of April 8, 2015, <https://www.gazprom.com/press/news/2015/april/article223355/>

are very limited chances that Moldovagaz would obtain a favorable decision in that court. In fact, Gazprom is the one who gets favorable decisions regarding the confirmation of the debt for the gas supplied to Moldovagaz, including to the separatist region, in order to formally justify itself to the tax authorities of the Russian Federation.

The plunder of Moldova's gas system continued when the Government adopted another illegal decision in October 1998, incorporating Moldovagaz and transferring to Gazprom a 50% share of the company in a debt-to-equity swap. The Government decision no. 1068/1998 stated that the capital of Moldovagaz was determined on a preliminary estimate of both transmission and distribution pipelines (including the assets of Gazsnabtranzit), thus violating again the provision of the Law on foreign investments. The same Government decision specified that in 1999 the Department of privatization and state property management (Vladimir Filat) will carry out a revaluation of Moldovagaz's assets in order to increase the equity and to repay the gas debt accordingly. However, this provision was not enforced either.

These and other frauds related to the mismanagement of Moldova's natural gas system were described in the report of the Court of Accounts, following the audit carried out in 2000-2001 at the request of the Parliament. Despite the report containing pertinent proofs of frauds committed by high-level Government officials and the administration of gas companies in favor of Gazprom, it has not been heard in the Parliament. Moreover, Mr. Tudor Șoitu, the head of the audit team, was placed under investigation by the Prosecutor's office and fired from the Court of Accounts.¹³ This well-coordinated effort by prosecutors and judges to intimidate Mr. Șoitu suggests a strong political circle with the intent to cover up the fraud.

2.2. Fraudulent administration of Moldovagaz

The corrupt practices have continued even after the supposedly pro-European coalition came to power in 2009. Following an inspection report conducted by the energy regulatory authority (ANRE) of Moldovagaz's subsidiary, ANRE issued four decisions in 2012 regarding fraud amounting to MDL 243.5 million (equivalent to \$20 million) in the construction of gas pipelines and procurement of materials at excessive prices. However, the investigations of alleged fraud at Moldovagaz and its subsidiaries turned against their initiators. Just two weeks after the first inspection report was issued, there was an assassination attempt of one of ANRE directors, Nicolae Raileanu.¹⁴ A grenade placed in Mr. Raileanu's car exploded, but this assassination attempt has not yet been investigated. A number of frauds that took place at Moldovagaz and its subsidiaries were highlighted in a whistleblowers' report published in September 2019,¹⁵ including:

- Excessive losses in gas distribution networks, amounting to 32.8 million cubic meters or 3.4% from the volume of supplied gas, while the losses in EU member states are well below 1%;¹⁶

¹³ Application no. 18835/08 by Tudor Soitu against Moldova, <http://hudoc.echr.coe.int/eng-comold?i=003-3392826-3805577>

¹⁴ IPN.md press agency, "ANRE denounces 'assassination attempt' against Nicolae Raileanu", April 11, 2012, https://www.ipn.md/en/anre-denounces-assassination-attempt-against-nicolae-raileanu-7967_997076.html

¹⁵ *Supra* note 6, Community Watchdog.MD (2019)

¹⁶ Inogate, "Energy (electricity & gas) sector performance assessment and improvement under the regulatory perspective", Jan-Mar 2015, page 135, http://www.inogate.org/documents/14_AZ_Regulatory_Treatment_of_Losses_v5_clean.pdf

- According to the audit report of the expenses included in the gas tariff for 2015, Moldovagaz spent about \$4.5 million for the insurance of the gas transmission and distribution infrastructure, while the balance sheet value of the assets was \$70 million. The insurance premium equals 6.4% of the assets value, which is excessively high and should have raised red flags for the shareholders. Considering the cost of the insured property, no insurance company in Moldova can pay such compensation. The local company must have a reinsurance with an international company, which would require it to transfer almost the whole premium worth \$4.5 million. Given the fact that the energy regulatory agency did not accept these expenditures for tariff purposes, obviously no reinsurance was signed and the money was simply stolen by the perpetrators;
- Despite the fact that Moldovagaz has a legal department, the company paid undisclosed amounts for legal assistance services to the office of the so-called lawyer Valerian Mânzat (Legal Solutions LLC, Tarsen Grup LLC) and to MGS Legal Consulting LLC, among whose founders are the former Minister of Justice Vitalie Pirlog and former Deputy Minister of Justice Nicolae Eșanu – raising concern about the prospect of kickbacks;
- Unknown amounts of embezzled funds via procurement of foreign currency at an increased exchange rate compared to the average rate on the banking market.

Neither Gazprom nor the Government of Moldova, as shareholders of Moldovagaz, have taken any measures to prevent or investigate these and other violations committed by the company's management. Although the prosecutor's office conducted several searches of Moldovagaz offices, none of the investigations resulted in proper prosecution of the company's decision-makers or the Moldovan officials involved.¹⁷ Moreover, despite the fact that the company recorded losses of hundreds of millions of MDL almost every year, two of its top officials were decorated with Presidential award “Glory of Work” in 2012¹⁸ and 2017.¹⁹ The fact that state institutions are not interested in investigating these frauds raises concern about corrupt interests of political decision makers.

2.3. Corrupt schemes of electricity supply

The electricity sector has also been subject to vested interests and corrupt practices. The absence of regulation related to the import of electricity has been exploited by political elites. State-owned companies, subordinated to the Ministry of Economy, have concluded contracts on electricity supply through intermediary companies hiding in offshore jurisdictions, forcing thus the consumers to pay excessive bills. To date, no corruption scheme for energy imports has been investigated by the prosecutors and no officials have been held accountable for consumer fraud.

¹⁷ Ziarul de Garda, “Gusev și alți patru angajați, învinuiți în dosarul Moldovagaz” [Gusev and 4 other employees accused in Moldovagaz case], June 2016, <https://www.zdg.md/stiri/stiri-justitie/gusev-si-alti-patru-invinuti-in-dosarul-moldovagaz-procurorii-nu-stiu-unde-se-afla-gusev/>

¹⁸ Presidential decree no. 318 of October 05, 2012, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344965>

¹⁹ Presidential decree no. 362 of September 03, 2017, https://www.legis.md/cautare/getResults?doc_id=100273&lang=ru

Between 1998 to 2001, the state-owned company Moldtranselectro, in charge of operating the Moldovan power grid, imported electricity from Ukraine through a number of intermediary companies: Energoalians (Ukraine), Derimen Properties Ltd (British Virgin Islands), and Ferren-M (Moldova), the latter being allegedly founded by Natalia Diacov, the daughter of a former speaker of Parliament Dumitru Diacov. The state-owned company's administrators signed acceptance certificates on the import of electricity in the absence of primary accounting documents, creating thus a fictitious debt of approximately \$21.5 million.²⁰ This two-decade-old scheme led to an arbitration initiated by Energoalians. In 2013, arbitrators Mihail Savranskiy (Russia) and Victor Volcinschi (Moldova) decided by a vote of two to one in the claimant's favor, rejecting the Moldovan state's objections and forcing it to pay \$ 46.5 million.²¹ Volcinschi, who voted against his own country and in the interest of perpetrators, was referred to the ad hoc tribunal in 2010, when the Minister of Justice was Alexandru Tănase. Komstroy, the successor-in-interest of Energoalians, began the debt recovery procedure and demanded the seizure of Moldova's assets abroad. In April 2015 Komstroy managed to freeze the Belgian accounts of MoldATSA, a state enterprise responsible for air traffic security in Moldova.²² One year later the account freeze has been cancelled, however the case is still being examined at the Paris Court of Appeal.

Another alleged scheme of consumer fraud took place in 2008, during the communist government. In April 2008, Igor Dodon, then Minister of Economy and currently President of Moldova, negotiated the supply of electricity from Ukraine²³ through an intermediary company, Energo-Partner Kft. Following these negotiations, about 30% of electricity imported by Moldova from Ukraine's energy system was still procured from the state-owned Ukrinterenergo at market price (\$40/MWh), while the other 70% of electricity was supplied by the intermediary Energo-Partner Kft at a higher price (\$53/MWh). Between May and December 2008 alone, the Moldovan consumers were overpaid \$14.5 million as a result of higher electricity prices charged by the intermediary company.²⁴ As a result of the higher price for the electricity supplied by the intermediary company, in July 2008 the energy regulatory agency ANRE increased the electricity tariffs by 10%.²⁵ Energy experts submitted a complaint to the Prosecutor's Office, providing evidence that in just one year the intermediary company obtained a profit of over \$14.5 million from the price difference for energy. A criminal investigation was opened in November 2017.²⁶ However, the case was not sent to the court.

²⁰ Decision of the Court of Accounts no. 66 of July 04, 2002, https://www.legis.md/cautare/getResults?doc_id=16491&lang=ro

²¹ Sic.md, "*The Energoalians Affair: What You Need to Know*", September 2019, <https://sic.md/en/the-energoalians-affair-what-you-need-to-know/>

²² Rise.md, "*Millions from air traffic seized in Brussels*", August 2015, <https://www.rise.md/english/millions-from-air-traffic-seized-in-brussels/>

²³ Government Decision no. 32 of April 21, 2008, https://www.legis.md/cautare/getResults?doc_id=4848&lang=ro

²⁴ Anticoruptie.md, "*DOC // Schemă frauduloasă de import a energiei electrice*" [Fraudulent electricity import scheme], October 2017, <https://anticoruptie.md/ro/stiri/doc-schema-frauduloasa-de-import-a-energiei-electrice-igor-dodon-si-zinaida-greceanii-subiectii-unei-plangeri-depusa-la-procuratura-generală>

²⁵ ANRE decision no. 300 of July 31, 2008, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=328762>

²⁶ Anticoruptie.md, "*Proces penal într-un caz de corupție, semnalat de Centrul de Investigații Jurnalistice încă în 2008*" [Criminal trial in a corruption case, reported by the Center for Journalistic Investigations back in 2008], November 2017, <https://anticoruptie.md/ro/dosare-de-coruptie/proces-penal-intr-un-caz-de-coruptie-semnalat-de-centrul-de-investigatii-jurnalistice-inca-in-2008>

The frauds in electricity supply continued even after the communists lost power in 2009. Another scam was set up in 2014, after Ukraine suspended the export of electricity to Moldova due to a lack of coal, following the Russian aggression in Donbass. The only remaining source to cover about 80% of Moldova's energy consumption was the MGRES power plant in the Transnistrian region. As Transnistria does not pay for the gas, the separatist authorities resell the gas at subsidized tariffs to local consumers, including to the MGRES power plant, which supplies electricity to Moldova. Until November 2014 MGRES supplied electricity to Moldova at a price of \$68 per MWh, purchasing gas from Tiraspol-Transgaz at \$151.5 per thousand cubic meters. As mentioned earlier, all the income from the gas sales is accumulated in the so-called "special gas account" and transferred to the Transnistrian budget, increasing thus Moldova's debt to Gazprom.

After a conspiracy between the Moldovan oligarch Vladimir Plahotniuc and the self-proclaimed President of Transnistria, Yevgeny Shevchuk, in the fall of 2014, the electricity from Transnistria to Moldova began to be supplied by Energokapital – an intermediary company with shareholders hiding behind offshore companies.²⁷ The essence of the scheme was to create an illicit profit margin by reducing the gas tariff for electricity generation, since the gas tariffs are set by the separatist government. Energokapital supplied electricity to Moldova at a price of \$67.775 per MWh (almost identical to the price previously offered by MGRES), but purchased gas 15% cheaper, at \$129.5 per thousand cubic meters.²⁸ The MGRES power plant was assigned the role of providing services for Energokapital for gas flaring and electricity generation. The illicit margin was syphoned off by the beneficiaries of Energokapital, hidden behind Scottish limited partnerships. In July 2016, civil society watchdogs submitted evidences to prosecutors about how Energokapital transferred \$19.2 million to its offshore shareholders.²⁹ Instead of investigating the potential fraud, the Prosecutor's Office claimed that the statements of the experts are false and they did not present any documents that would confirm the illegalities.³⁰ This alleged financial crime appears to be enabled by political protection from the ruling Democratic Party, led by Vladimir Plahotniuc, for the following reasons:

- Energokapital received a supplier license from the Moldovan energy regulator ANRE at an astonishingly quick speed– within just 3 days, although the legal term is 15 days;
- The contract for the supply of electricity with Energokapital was signed by the state enterprise Energocom, subordinated to the Ministry of Economy, which at that time was led by Plahotniuc's relative Andrian Candu, also a member of the Democratic Party of Moldova;
- The offshore shareholders of Energokapital are connected to the "theft" of a billion dollars from three Moldovan banks;³¹

²⁷ Investigation by Sergiu Tofilat, "*Schema Energokapital explicată pe înțelesul tuturor*" [Energokapital scheme explained for everyone to understand], August 2016, <https://www.moldova.org/schema-energokapital-explicata-pe-intelesul-tuturor/>

²⁸ Press release of the self-proclaimed Transnistrian government of July 18, 2016, <http://gov-pmr.org/item/7269>

²⁹ IPN.md press agency, "*Authorities urged to examine transactions of company 'Energocapital' in offshore areas*", July 14, 2016, <https://www.ipn.md/en/economie/77740>

³⁰ Press release of the General Prosecutor's Office, July 29, 2016, <http://procuratura.md/md/newslst/1211/1/6723/>

³¹ Theblacksea.eu, "*Moldovan energy intermediary company linked to 'billion-dollar bank theft' scandal*", March 14, 2016, <https://theblacksea.eu/stories/moldovan-energy-intermediary-company-linked-to-billion-dollar-bank-theft-scandal/>

- Energokapital had its bank accounts at Victoriabank,³² controlled at that time by Plahotniuc;³³
- The Prosecutor's office refused to investigate the fraud, claiming that no evidence was submitted by the independent experts from the civil society, while all the media channels controlled by Plahotniuc published derogatory information about the experts.

It appears that the Energokapital scam was likely “blessed” by Kremlin administration, given the visit to Moscow of Moldovan deputy Prime-Minister Andrian Candu in September 2014,³⁴ just two weeks before the incorporation of Energokapital.³⁵ During the visit, Candu met with Alexandr Medvedev, the deputy chairman of the Board of Directors of Gazprom and with Alexandr Novac, Russian Minister of Energy.

3. Factors that facilitate the corruption in Moldova's energy sector

The biggest challenge for fighting corruption, including in the energy sector, is the desire of political elites to get rich illegally, to the detriment of national interests. The ruling political parties use the lack of regulation in energy sector to organize corruption schemes and subordinate regulatory and law enforcement institutions in order to avoid being held accountable.

3.1. Lack of regulation

Until recently, electricity imports were not regulated at all. The political party that controlled the Ministry of Economy put its intermediaries in the energy import industry and gained illicit profits that were embezzled by offshore companies, increasing thus the price for the final consumers. The situation changed only in January 2017, when the Energy Community Secretariat provided the Moldovan government with guidelines for the annual procurement of electricity.³⁶ The Guidelines established a procurement procedure for the regulated suppliers of electricity and created a group of observers, including representatives of the Energy Community Secretariat and the EU Delegation to Moldova, to ensure that the procurement process is transparent and non-discriminatory. Although the energy procurement guidelines have been adopted in power market rules approved by the energy regulator ANRE,³⁷ these procedures still do not apply to the state-owned company Energocom, which signs the electricity import contracts.

³² Copies of payment orders, <https://sergiutofilat.files.wordpress.com/2016/08/plati-energokapital.pdf>

³³ Newsmaker.md, „Крупнейший акционер Victoriabank связан с людьми из окружения Владимира Плахотнюка” [The largest shareholder of Victoriabank is associated with people from the circle of Vladimir Plahotniuc], February 9, 2015, http://web.archive.org/web/20150213061235if_/http://newsmaker.md/rus/novosti/krupneyshiy-aktioner-victoriabank-svyazan-s-lyudmi-iz-okruzheniya-vladimira-plaho-8488

³⁴ Press release of the Ministry of Economy of September 25, 2014, <http://mei.gov.md/ro/content/agenda-vizitei-la-moscova-vicepremierului-andrian-candu>

³⁵ Energokapital incorporation agreement of October 10, 2014, <https://sergiutofilat.files.wordpress.com/2016/07/energokapital-registration-docs-cis.pdf>

³⁶ Energy Community Guidelines for the annual procurement of electricity, January 2017, <https://www.energy-community.org/news/Energy-Community-News/2017/01/05.html>

³⁷ ANRE press release of August 7, 2020, <http://anre.md/anre-finalizeaza-preluarea-pachetului-energetic-iii-3-159>

3.2. Political subordination of law enforcement and regulatory institutions

As mentioned in the previous section, corruption cases in the energy sector have arisen since at least 1994. Major frauds have been uncovered by the audit report issued by the Court of Accounts in 2001, by the inspection reports issued by ANRE in 2012, and by the civil society watchdogs in 2016 and 2017. Although the frauds amounted to hundreds of millions of USD and plenty of evidence has been submitted to the prosecutors, investigation of the frauds has focused on targeting the whistleblowers rather than the alleged perpetrators. The prosecutors conducted three inspections at Moldovagaz's offices during 2015 and 2016,³⁸ initiated criminal investigations in 2016 on an Energokapital case,³⁹ and on an Energo-Partner Kft scam in 2017.⁴⁰ However, none of the cases were sent to the court and no official was convicted. This raises concern that part of the illegal proceeds from these schemes was used to bribe Moldovan politicians, who subordinated the law enforcement institutions.

The proactive position of energy regulator ANRE in fighting the corrupt practices in the energy field has not gone unnoticed by the parliamentary majority. In 2013 and 2014 the Parliament replaced ANRE's board of directors and appointed persons loyal to political leaders. As a result of the new appointments, the Agency violated multiple times the tariff methodology, based on decisions influenced by the political agenda of the ruling parties.⁴¹ Even the Energy Community Secretariat raised concerns about the independence of Moldova's energy regulator.⁴² Moreover, in 2017, former and acting members of the Democratic Party were appointed almost simultaneously in administrative positions at ANRE and Moldovagaz. Thus, the Parliament appointed Tudor Copaci as general director of ANRE, Copaci being a former member of democrats (he left the political party a few days before being appointed), while the Government nominated an acting member of the Democratic Party, Vasile Botnari, as the chairman of the Board of Directors of Moldovagaz.⁴³

4. How corruption affected the development of Moldova's energy sector

Corruption schemes in both the energy and gas sector have resulted in higher bills for consumers. It took the Moldovan government 26 years to approve the first regulations on energy procurement and to eliminate intermediaries, thanks to the intervention of the Energy Community. Although there are no intermediaries in the gas supply chain, the mismanagement of Moldovagaz has led to excessive costs, part of which is included in tariffs by the energy regulator, and the other part leads to the accumulation of debts to suppliers, particularly for gas. None of the political forces that have been in

³⁸ Ziarul de gardă: „Gusev și alți patru angajați, învinuți în dosarul MoldovaGaz” [Gusev and four other employees, accused in the MoldovaGaz case], July 2016, <https://www.zdg.md/stiri/stiri-justitie/gusev-si-alti-patru-invinuti-in-dosarul-moldovagaz-procurorii-nu-stiu-unde-se-afla-gusev/>

³⁹ Deschide.md, “Afacerea Energokapital // Harunjen: Avem dosar penal de câteva luni” [Energokapital scam // Harunjen: We have a criminal case for several months], July 2016, <http://beta.deschide.md/ro/news/social/29466/Harunjen-Exist%C4%83-deja-dosar-penal-%C3%AEn-cazul-Energokapital.htm>

⁴⁰ *Supra* note 26

⁴¹ *Supra* note 6 at §2

⁴² Energy Community Secretariat's review of the National Energy Regulatory Agency, September 2016, <https://www.energy-community.org/news/Energy-Community-News/2016/09/08.html>

⁴³ Center ASPE, “Assessment Report of ANRE activity for 2015-2017”, October 2017, <http://eap-csf.eu/wp-content/uploads/Moldova-final-ro.pdf>

power have shown interest in verifying the economic activity of Moldovagaz and cracking down on the frauds that push up the gas debt.

The lack of regulation and transparency in the energy sector fuels corrupt practices and allows political parties in power to maintain the status quo. Moldova continues to purchase electricity from the separatist region, pushing up the consumption of non-paid gas. Maintaining Moldova's dependence on Russian gas is by far the greatest challenge that undermines the development of the energy sector and burdens the country's entire economy. The efforts undertaken by the Moldovan political decision makers have not been sufficient to strengthen the energy security of the country and to reduce Moldova's dependence on Russian gas.

In February 2000, Gazprom cut off the gas supply to Moldova under the pretext of accumulated gas debt. According to Dumitru Braghiş – the Prime Minister at the time – Gazprom demanded the payment of debt worth \$195 million within two days, the daily payment for current gas consumption, and not to allow gas suppliers other than Gazprom to enter the market. *"If we do not meet these conditions, the gas will not be turned on"* Braghiş said.⁴⁴ Few things have changed since then, except that the gas debt of Moldovagaz has increased almost 20 times and today exceeds \$7.9 billion, including \$6.7 billion owed directly to Gazprom⁴⁵ and another \$1.2 billion owned to Gazprom's subsidiary Factoring Finans.⁴⁶ As a result, the diversification efforts on both electricity and gas supply have been long delayed. Nor can it be counted how many feasibility studies have been produced in the last 10-15 years regarding interconnection options. Even the emergency upgrade of the Trans-Balkan gas pipeline, to enable the gas supply to run in reverse mode, was performed in the second half of 2019 due to external factors. Uncertainties around the gas transit agreement between Ukraine and Russia after 2019 forced Moldovagaz to identify alternative solutions to supply gas to Moldova.

But even in this case, alternative gas supply routes do not completely solve the problem of Moldova's dependence on Russian gas. Indeed, now Moldova can suspend the gas supply to the separatist region if Transnistria refuses to pay. However, this would result in the shutdown of the MGRES gas-fuelled power plant, leaving Moldova without its largest source of electricity and creating system imbalances that would undermine the import of electricity from Ukraine. These risks have been assessed in all energy strategies approved by Moldovan governments throughout the years and the only feasible solution for ensuring the electricity supply is by interconnecting with the Romanian electricity transmission system. However, the electricity interconnection projects have also been delayed. According to the roadmap for the electricity sector approved in 2015, the power line Vulcanesti-Chisinau with back-to-back substation were to be put into operation in the second quarter of 2019.⁴⁷ In the meanwhile, the TSO in electricity sector Moldelectrica has pushed the deadline until the end of 2022.⁴⁸

⁴⁴ Vedomosti.ru, "Молдова сдалась" [Moldova surrendered], February 25, 2000, <https://www.vedomosti.ru/newspaper/articles/2000/03/03/moldova-sdalas>

⁴⁵ Gazprom's financial report for Q2/2020 at page 44, <https://www.gazprom.ru/f/posts/05/118974/gazprom-ifrs-2q2020-ru.pdf>

⁴⁶ Gazprom's financial report for Q4/2005 at page 47, http://www.gazprom.ru/f/posts/91/747099/repiv_2005.doc

⁴⁷ Government decision no. 409 of June 16, 2015, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=359712>

⁴⁸ Electricity transmission network development plan for 2018-2027 period, https://moldelectrica.md/files/docs/TYNDP_EN.pdf

5. Recommendations

Eliminating corruption in the energy sector and reducing dependence on Russian gas can only be achieved by diversifying energy supply options and implementing competitive market rules. In addition, it is necessary to strengthen the independence of the regulator and to investigate frauds that have taken place in the energy sector.

- **Diversification of energy supply.** The realization of the interconnection projects with the Romanian and implicitly European energy market will contribute to the diversification of the energy supply options, which is indispensable in order to have a real competition on the energy and gas market. Diversification is essential to consolidate Moldova's energy security, to stop the accumulation of gas debt and to give up the contractual gas supply scheme "on credit" to the Transnistrian region.
- **Developing fair and competitive markets.** Even if the interconnection projects will be finalized, Moldova needs to adopt and enforce legislation to stimulate competition and transparency of the energy market, ensuring that no supplier has a competitive advantage by not paying the full cost of gas for energy production. A functioning energy market operator, similar to Romanian OPCOM, must be also created to ensure non-discriminatory treatment for all market participants and to meet the challenges of competitiveness, sustainability and security of supply.
- **Consolidating the independence of the energy regulator ANRE.** The regulator should have the necessary functional and financial independence to approve and enforce fair rules on the market, which would improve the transparency and reduce corruption. The new law on energy approved in 2017 eliminated ANRE's financial dependence on Parliament. However, the rules of appointment of ANRE directors must be further improved to ensure the institutional independence of the Agency. The parliamentary selection committee must have an exact number of members and should conduct open hearings regarding the candidates, in order to ensure that there are no hidden arrangements to nominate politically affiliated candidates. The evaluation grid shall be revised as well, to replace the unreasonably abstract and subjective criteria such as "communication abilities."
- **Investigating the frauds in the energy sector.** The prosecutors must complete the criminal investigation on the cases already initiated and send the files to court. It is also necessary to conduct an audit of the economic activity of Moldovagaz from the moment of its incorporation in order to establish the amount of fraud that has been committed, initiate the process of asset recovery, and repay a part of the gas debt. The audit should also identify unreasonable expenses in order to exclude them from the gas tariff.