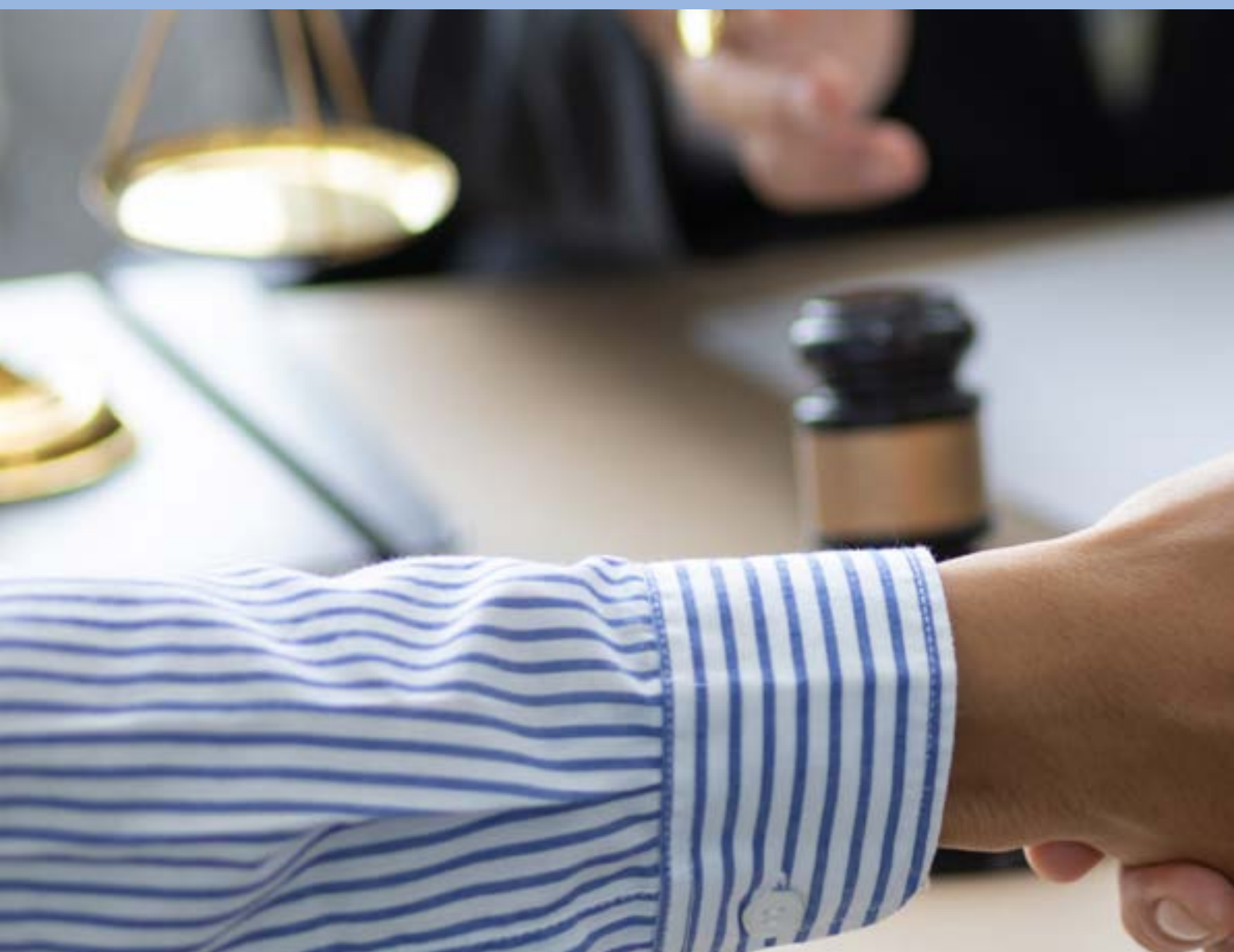




# **PARTNERING FOR GOOD IMPLEMENTATION OF LAW IN MOLDOVA**

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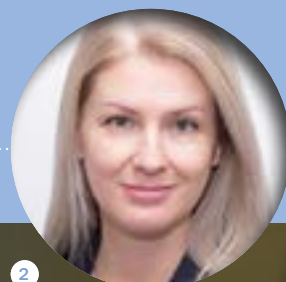


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Poor dispute resolution and enforcement is a broad issue affecting society, the economy and politics, and impacting younger and smaller companies in particular. ”



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The development and implementation of robust commercial legal frameworks is essential for well-functioning markets in the EBRD economies. As with any reform, it requires local stakeholders to become the champions and key drivers of change. In Moldova, the EBRD has built a strong partnership with the authorities to deliver better dispute resolution and enforcement services and EU accession reforms.



### WHAT IS GOOD IMPLEMENTATION OF LAW AND WHY DOES IT MATTER?

The EBRD often hears from its economies that they have a good law, but it does not work – regardless of whether it is a law on secured transactions, public-private partnerships or companies. This typically means that the public institutions entrusted with regulating and monitoring these areas lack the necessary knowledge, people or financial resources. Ultimately, laws work if society is confident that the courts or other dispute resolution forums will uphold the law and protect party rights, and that court decisions will be enforced.

The courts and law enforcement face the same challenges as public institutions, with an added complication: due to the principles of independence of justice, reforming legal institutions is not an easy or quick fix. A further compounding factor in many EBRD economies is the perception of corruption and abusive practice. For instance, a 2022 European Commission report on Moldova noted that the low stock of foreign direct investment was “reflecting weaknesses in the business environment and continuing problems with corruption and the protection of property rights”.<sup>1</sup> Poor dispute resolution and enforcement is a broad issue affecting society, the economy and politics, and impacting younger and smaller companies in particular.<sup>2</sup>

When focusing on good implementation of commercial laws, it is important to use all the available tools – such as alternative dispute resolution (ADR) and simplified court proceedings – for enforcing contractual rights.

A country that enjoys investor and business confidence in its justice system also enjoys trust in the economy.

### IMPACT OF GOOD DISPUTE RESOLUTION AND THE LTP'S ROLE

The Bank's Legal Transition Programme (LTP) focuses on various topics to help EBRD economies improve their implementation of commercial laws. These include expanding the use of commercial mediation by businesses in EBRD economies, leveraging technology to increase access to dispute resolution mechanisms for small and medium-sized enterprises (SMEs) by developing online courts, and bringing more transparency and efficiency to the enforcement of commercial court decisions.

The value of this work lies not only in offering solutions once the debtor refuses or is incapable of paying its debt or providing services or goods. Its greatest value is preventive. A country that enjoys investor and business confidence in its justice system also enjoys trust in the economy. An example of this is the United Kingdom, whose “procedurally competent, fair and reliable” judicial process<sup>3</sup> makes it an attractive hub for dispute resolution services and contributes to its reliable and investment-friendly environment.

<sup>1</sup> See European Commission (2023).

<sup>2</sup> See OECD (2017), p. 49.

<sup>3</sup> See US Department of State (2023).

One demotivating factor in reforming public institutions – including courts and enforcement – or training professionals is that it takes a long time to show results, which are also difficult to measure. However, there are attempts to estimate the benefits of legal reform. Recent research from the UK Law Commission on the value of law reform shows that estimated economic gains from the five highest value projects completed since 2019 is about £670 million (€778 million) over 10 years.

Another notable example is electronic trade document reform, where the UK Law Commission recommended “[allowing] for legal recognition of trade documents in electronic form to be used in the same way as their paper counterparts. The government’s economic impact assessment established that the benefit of this reform over the course of 10 years would exceed £1 billion [€1.2 billion]”.<sup>4</sup>

The quality of justice and enforcement in a country is fundamental to a well-governed economy – one of the Bank’s key transition qualities of a sustainable market economy.

## PARTNERS FOR REFORM IN COMMERCIAL DISPUTE RESOLUTION

When it comes to justice reform, the focus in many EBRD economies is on anticorruption, criminal and prosecution law. Examples include Georgia, Moldova and Ukraine, which are all gearing up for accession to the European Union (EU) since being awarded candidate status and need to get their justice houses in order. Investing most of the resources into a fight against corruption may leave commercial justice and enforcement reform on the sidelines.

The Bank is among the handful of development institutions that continue to be a partner in business law reform, reminding countries about the huge need for such reform. The EBRD has a unique position in the markets in which it operates owing to a direct connection with businesses. No other stakeholders in the EBRD economies are both an investor in the private sector and a development partner, with the Bank’s expertise and access to governments. The Bank’s unique position to support the private sector, including SMEs, and to enhance the environment for businesses through policy engagement is very well explained as a key feature of the EBRD’s business model and position within the multilateral development bank (MDB) system.<sup>5</sup>

“Building strong, long-term relationships is key to successfully reforming the justice system in Moldova. Working with the EBRD has been crucial in digitalising legal services and promoting alternatives to courts, such as commercial mediation and arbitration. Implementing these solutions while considering the needs of litigants, lawyers and businesses brings Moldova closer to the European community.”

**VERONICA MIHAILOV-MORARU**  
MINISTER OF JUSTICE  
OF MOLDOVA

It is therefore the role of the Bank to act as a partner to governments in assisting with good commercial law implementation, dispute resolution and enforcement. The EBRD’s key partner in this reform in Moldova is the Ministry of Justice (MoJ) and connected agencies.

This reform requires partnering with multiple stakeholders. In Moldova, the Bank works on alternatives to courts with the MoJ and its Mediation Council, the Mediation Centre at the Chamber of Commerce and Industry, the Superior Council of Magistracy and legal professionals. In the area of digitalisation of the enforcement process, the EBRD collaborates closely with the Ministry of Justice, the banking community, the Association of Moldovan Banks and the National Union of Enforcement Officers.

<sup>4</sup> See EBRD (n.d.).

<sup>5</sup> Ibid.

## AN ALTERNATIVE TO COURTS IN MOLDOVA

Since 2013, the LTP has actively supported the MoJ, the Mediation Council and the Mediation Centre at the Chamber of Commerce and Industry in the development of alternative dispute resolution (ADR) in Moldova via the Commercial Mediation and Arbitration Project. This project is being implemented in four phases.

The use of mediation was limited when the project began in late 2013. The Law on Mediation of 14 June 2007 was ineffective due to a lack of clarity, and the only realistic path to resolving commercial disputes was through the court system. At the same time, the backlog of pending cases in the courts was significant and, coupled with litigation costs, this restricted access to justice. This had an adverse impact on the general business environment in Moldova.

Thanks to the project, which is set to end in 2024, mediation is slowly but surely becoming more available and a credible alternative to courts in Moldova on commercial cases. The number of commercial mediation cases resolved through mediation increased 10 times – from 99 to 1,078 – from 2017 to 2023.

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**Figure 1.** The number of commercial cases resolved through mediation has climbed

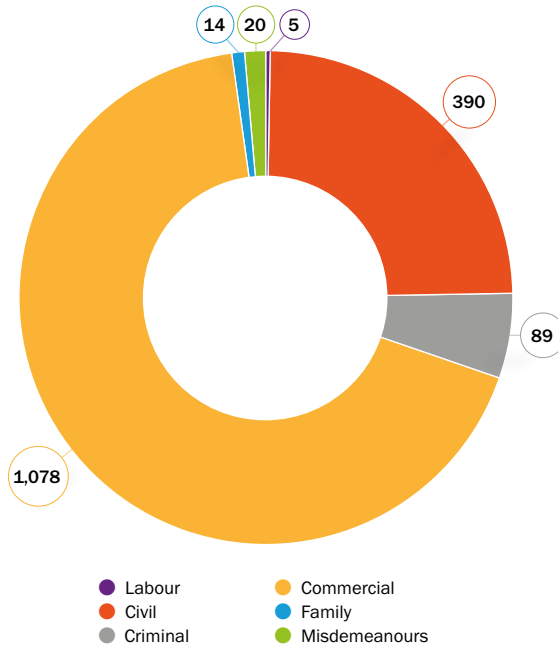


Source: Mediation Council of the Republic of Moldova.

During the 2016-18 phase of the project, the Mediation Centre at the Chamber of Commerce successfully mediated a case involving a large Moldovan glass manufacturing company (also a client of the EBRD) against the largest utility company in Moldova, which saved both companies considerable expense and time compared to the court route.

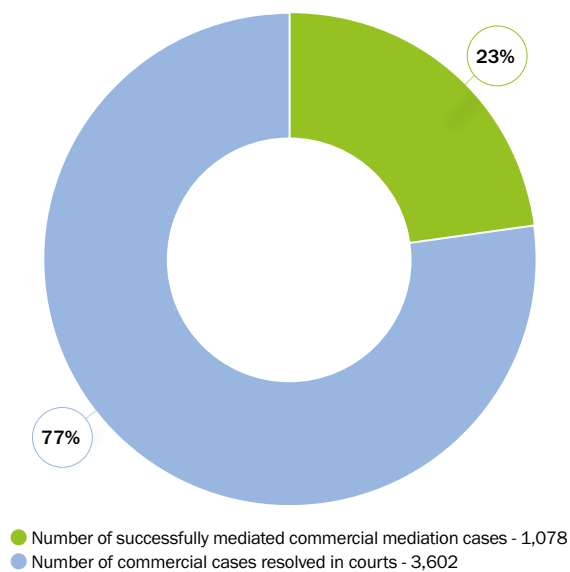


**Figure 2.** Number and distribution of mediated cases, by type of case



Source: Mediation Council of the Republic of Moldova.

**Figure 3.** Number and ratio of mediated commercial disputes and commercial cases examined by courts in 2023



Source: Mediation Council of the Republic of Moldova.

The project also proposed improvements to the Moldovan arbitration framework. This was achieved by the EBRD partnering with:

- the Ministry of Justice and its Mediation Council for **policy and law reform**, as well as for **digital governance**
- the Mediation Council and the Mediation Centre at the Chamber of Commerce and Industry to **train mediators to provide qualitative service**
- with all three and the National Institute of Justice and courts to launch a **continuous awareness campaign to promote ADR**.

This would not have been possible without the support, including financial, from various donors: the government of Luxembourg, the UK government and the United States Agency for International Development (USAID). More partnerships were required to help with the expertise on mediation by the UK Centre for Effective Dispute Resolution and logistical implementation by the International Development Law Organisation.





### Box 1. Key achievements of the EBRD project on the implementation of law in Moldova (2013-24)

#### Policy advice and legislation:

- Contributed to the development of the new Mediation Law that was adopted in 2015.
- A draft new law on arbitration with explanatory note was developed and submitted to the MoJ in May 2023, based on the assessment of the arbitration framework with recommendations. Public consultations were conducted in June 2023 and the Moldovan parliament is expected to adopt the new law in 2024.
- A study with recommendations on the introduction of mandatory pre-litigation mediation session was presented to the MoJ, the Mediation Council and mediation practitioners in April 2023.
- Legislative amendments required to achieve sustainability and independence of the Mediation Council, the self-governing body in the area of mediation in Moldova, were developed in 2020.
- Developed a Strategy and Action Plan for 2020-2024 for the Mediation Council that was approved by its decision in August 2020.
- The Mediation Council approved the first rules on quality standards for mediation services in 2020, and rules on the competence, training and functioning of specialised committees within the Mediation Council were approved in 2022. Forms and templates required for the activity of the Mediation Council were developed in 2020.
- The concept for the e-registry and case management system for mediators was adopted by a government decision in February 2024.

#### Institutional capacity:

- Successfully piloted a court-annexed mediation system in four courts in 2013-16 and a national case referral system by the courts was launched in 2018.
- The first Mediation Centre at the Chamber of Commerce and Industry in Chisinau was established in 2016, and its facilities for mediation and training services were renovated in 2020.
- Two regional mediation centres of the Mediation Centre were opened in the northern region of Moldova in December 2022 and in the southern region in March 2023.
- The business model with recommendations for positioning in the Moldovan mediation market, collaboration with public authorities and ensuring long-term financial sustainability of the Mediation Centre was approved by its decision in July 2021.
- A Mediation Lab at Moldova State University was opened in December 2021, in partnership with the Mediation Council and the MoJ. The lab serves as a hub for practical training and exchanges for current and future mediation practitioners.

#### Training and awareness raising:

- The United Kingdom-based Centre for Effective Dispute Resolution accredited 52 people as mediators in 2014-16.
- A course on ADR as part of the curriculum at the Faculty of Law of Moldova State University was introduced in 2018.
- The training programme of the Mediation Centre was improved to ensure compliance with the standards of the International Mediation Institute. The institute accredited the Mediation Centre in April 2024.
- An e-training module on mediation referral for judges was developed in partnership with the National Institute of Justice of Moldova and 50 judges improved their knowledge on mediation in September 2023.
- The project has reached more than 3,400 people since 2013 through its awareness-raising efforts. A total of 835 people increased their knowledge and skills on mediation through the project's training activities on mediation. These include 165 mediators, 176 attorneys, 60 arbitrators, 167 judges, 60 notaries, 186 businesspeople and 21 academics.

#### Digitalisation:

- An e-register of legal professionals, including mediators and a case management system for mediators, with an automatic electronic statistical module, was developed and integrated with governmental e-services. It has been operational since February 2024.

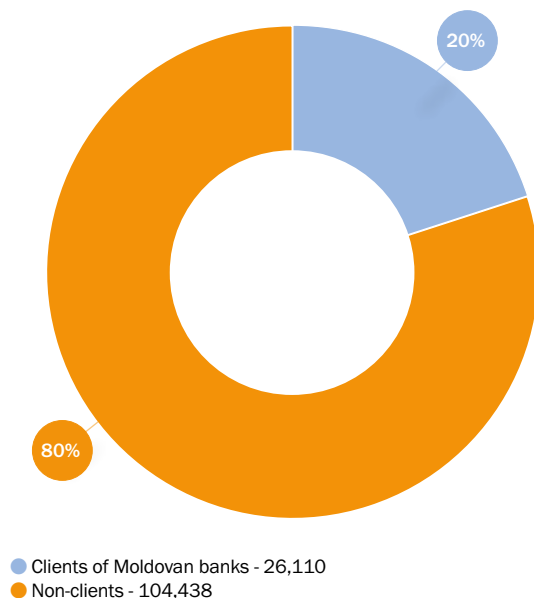
From 2017 to 2023, the number of commercial mediation cases resolved through mediation rose in 10 times, from 99 to 1,078.

## HELPING THE BANKING SECTOR SAVE ON ENFORCEMENT COSTS

The enforcement of a court judgment is essential to protect creditors' rights and an indispensable element of a business-friendly market. In Moldova, the time and costs associated with the exchange of communication between enforcement officers and commercial banks results in significant enforcement costs.

To address these issues, the EBRD partnered with the Association of Banks in Moldova, the National Union of Enforcement Officers and the Ministry of Justice to launch the Project on Streamlining Enforcement Procedures – Digitisation of Debt Enforcement by Bailiffs from Debtor Bank Accounts. This project seeks to identify and implement the best model for digitising the communication between enforcement officers and commercial banks in the process of debt collection.

**Figure 4.** Moldovan banks processed tens of thousands of requests for information about debtors' bank accounts in 2023



Source: National Union of Enforcement Officers of Moldova.



### Box 2. Cost of paper-based enforcement from debtors' accounts in Moldova

Every day, enforcement officers process an average of 516 requests for information about the existence of a debtor's bank account, according to the Association of Moldovan Banks. As about 80 per cent of these requests concern people who are not bank clients, most of the time banks give enforcement officers negative answers to such requests. About 500,000 paper documents circulate every year between the banks and the enforcement authorities.

## PROMOTING DIGITALISATION AS A SOLUTION

In its five-year Strategic and Capital Framework for 2021-25, the EBRD emphasised the role of digital solutions as enablers of transition,<sup>6</sup> noting that "[e]ffective partnerships will be crucial to success". Indeed, identifying digital champions and maintaining strong and effective partnerships during the planning, delivery and use of digital solutions are vital for the ultimate acceptance and use of such solutions.

Like many EBRD economies transitioning to digital governance, Moldova has been keen to expand the role of digital tools in justice systems. In response to this need, the Bank in 2023 developed guidance for the Moldovan authorities and 16 other EBRD economies on how to provide better access to commercial justice services, with a focus on SMEs. The guidance is based on the results of an assessment that evaluated the degree to which 17 EBRD economies were ready to introduce,<sup>7</sup> or had already developed, online courts<sup>8</sup> for commercial disputes.

<sup>6</sup> See EBRD (2020), p. 6.

<sup>7</sup> For the purposes of this assessment, online courts are defined as dispute resolution mechanisms conducted by default online, starting from the submission of the claim and ending with the delivery of the judgment, accessible directly to litigants and their representatives and augmented by services and tools to ease access to justice and litigant participation. For the results of the assessment, the Guide and compiling your own action plan to build online courts, see <https://ecourts.ebrd.com/report>.

<sup>8</sup> For more details on the Legal Transition Programme's work in the area of online courts, see *Law in Transition 2023* ([lit-ebrd.com](http://lit-ebrd.com)).



Digital tools are especially suitable in commercial justice where, usually, participants in proceedings have better digital skills and where the costs and speed of court cases directly affect the economic environment and its attractiveness to investors. The findings from the assessment and the guidance have been shared with the Moldovan authorities and will, hopefully, inform decisions on ongoing reforms in digital justice.

The promises of digital tools go beyond the improvement of court proceedings, however. More efforts are needed to ensure that businesses can effectively enforce judgments and ultimately recover their money. Such processes often entail the need to sell debtors' assets. While the Moldovan government has committed to improving the framework on enforcement, a transparent, fast and effective electronic system for the sale of assets (property) is still needed.

This is an area where the Bank could leverage its experience in the development of MTender (Moldova) and ProZorro.Sale (Ukraine) to design and implement a digital solution that caters to the auctioning of assets by Moldovan actors, including commercial banks, enforcement officers and insolvency administrators. The expected impact of this solution is to prevent abuse, ensure equal access to sales data, increase the efficiency and cost-effectiveness of the recovery of debt in the country, and boost the number of potential buyers. It is likely that effective and transparent debt recovery would tremendously improve the resilience of the financial sector.

“Partnerships established by the EBRD with the Moldovan authorities were the driving force behind these reforms. These partnerships play a crucial role in ensuring that efforts to make Moldovan laws effective and its investment climate more attractive and trusted are truly impactful.”

## EMPOWERING THE GOVERNMENT TO ADOPT QUALITY LEGISLATION

While the quality of legislation does not guarantee good implementation, it remains a crucial component. This is especially true for countries that pursue European aspirations and make significant efforts to transpose EU laws into their domestic legislation. The transposition requires considerable emphasis on adaptation of legal norms rather than their replication from one legal system to another. Yet, this is not always feasible, for a variety of reasons. It has been reported that the shortcomings of the EU *acquis* transposition – experienced by the latest EU members – result mainly from the lack of administrative capacity and pre-accession policy alignment.<sup>10</sup>

The EBRD *Transition Report* country assessment for Moldova 2023-24 identified the same challenges in Moldova and prioritised the need to strengthen administrative and institutional capacities ahead of EU accession negotiations.<sup>11</sup> To minimise EU law transposition shortcomings in the post-accession period, the EBRD's Competitiveness, Governance and Political Affairs team has rolled out its flagship Reform Support Teams programme in Moldova with the support of the government of France and the European Union to increase the capacity of the key ministries and agencies to deliver on major EU accession reforms.

Drawing on the EBRD's experience – especially in Georgia, Ukraine and Uzbekistan – the Bank is embedding almost 40 reform experts for up to three years in the State Chancellery, the Ministry of Energy,

<sup>10</sup> See Knill and Tosun (2009).

<sup>11</sup> See EBRD (2023b).

the Ministry of Infrastructure and Regional Development, the Ministry of Environment, the Ministry of Economic Development and Digitisation, the Agency of Public Property and the Ministry of Agriculture and Food Industry.

The experts provide strategic advisory and day-to-day operational support with the EU chapter-screening process and the development of normative acts, with a primary focus on transposing the EU *acquis* into national legislation. The Reform Support Teams programme helps to build capacity within the government administration through a comprehensive, coherent and coordinated approach to reform implementation. The advantages of the programme go beyond capacity improvement. Recruitment campaigns target members of Moldova's diaspora community and young specialists who choose to return to Moldova with a wealth of international experience to contribute to

the European future of their country. It is also expected that the programme's roles will be integrated into the government administration in the longer term as part of the wider public administration reform.

## CONCLUSION

The EBRD has developed a unique role as both a major investor and development partner in Moldova. This has allowed the Bank to leverage its expertise in supporting much-needed reforms in the areas of commercial justice, enforcement of creditor rights, digital transformation and alignment with EU legislation. Partnerships established by the EBRD with the Moldovan authorities were the driving force behind these reforms. These partnerships play a crucial role in ensuring that efforts to make Moldovan laws effective and its investment climate more attractive and trusted are truly impactful. 🌐



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