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**Review of Capacity-building in and Technical Assistance on  
Competition Law and Policy**

*Contribution*

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## Introduction

1. The provision of development assistance to developing countries continues to be substantial, playing a crucial role in supporting their growth and progress.<sup>1</sup> *The Review of capacity-building in and technical assistance on competition and consumer protection laws and policies* prepared by UNCTAD for its 21st session of Intergovernmental Group of Experts on Competition Law and Policy<sup>2</sup> highlights the importance of continuing efforts in providing development aid in the form of technical assistance to developing countries.
2. The Republic of Moldova has also benefitted from substantial assistance provided in different forms by its development partners. In 2022, the amount of technical assistance provided to Moldova increased in comparison to previous years<sup>3</sup>.
3. Over the years, the Moldovan Competition Council was the beneficiary of various technical assistance projects. Those projects were supported by different donors, including the European Union, World Bank, counterpart institutions from different countries, etc. They contributed to the development and adoption of the substantial regulatory framework in the area of competition and state aid in Moldova. These projects also played a pivotal role in creating and fostering the institutional development of the Competition Council, shaped its institutional structure, contributed to building the professional capacities of the staff of the Council, as well as laid the foundations of the existing enforcement practices applied by the Council in the activities. *The essential role of all these support efforts cannot be over-estimated.*
4. And yet, in the last several years, the Council has been going through a serious crisis characterized by very high levels of staff turnover, lack of qualified personnel, steady decrease of the total number of the staff members, and inadequate technical provisions. The staff turnover of the Competition Council in 2022 reached 28.2% (highest in years) with the average occupancy rate of only 50,8% of the total approved staff list<sup>4</sup>.
5. As a result, there is a real risk of losing a significant portion of the positive results achieved through previous capacity building and technical assistance efforts following the departure of many experienced employees and lack of sustainability of the investments made into the initial development of the Council.
6. Thus, hereby we would like to touch upon some of the challenges which may diminish the positive impact of the technical assistance efforts. UNCTAD remains one of the key platforms for international cooperation and technical assistance initiatives in the field of competition. Therefore, the session on technical assistance and capacity building provides an excellent opportunity to discuss some of the important issues related to the support provided to developing countries.
7. This contribution is predominantly based on the experience of the Moldovan Competition Council. Therefore, the conclusions presented herein may be subjective and country-specific. It will attempt to present some ideas on the possible causes of reduced effects of capacity

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<sup>1</sup> According to the OECD, in 2022, official development assistance (ODA) by the member countries of its Development Assistance Committee (DAC) amounted to USD 204.0 billion. Total ODA rose in 2022 by 13.6% in real terms compared to 2021. This was the fourth consecutive year ODA surpassed its record levels and one of the highest growth rates recorded in the history of ODA (See: ODA Levels in 2022 – preliminary data Detailed summary note; available at: <https://www.oecd.org/dac/financing-sustainable-development/ODA-2022-summary.pdf>)

<sup>2</sup> [https://unctad.org/system/files/official-document/cicplpd36\\_clp71\\_en.pdf](https://unctad.org/system/files/official-document/cicplpd36_clp71_en.pdf)

<sup>3</sup> The information on the aid provided to the Republic of Moldova can be found on the Aid Management Platform administered by the Foreign Assistance Department of the Ministry of Finance of Moldova: <https://amp.gov.md/portal/?language=en> (with some specific data visualized here: <https://amp.gov.md/TEMPLATE/ampTemplate/dashboard/build/index.html>)

<sup>4</sup> The Competition Council's Annual Activity Report for 2022, pag. 10 (available in Romanian here: <https://competition.md/public/files/Raport10d41.pdf>)

building activities and solutions for ensuring the sustainability of technical assistance efforts. This contribution is not intended to be a comprehensive research paper or an academic study. It rather aims to foster a discussion on the relevant topics among the agencies, potential development partners, donors, and institutions providing technical assistance support.

8. While recognizing the subjective nature of the insights shared herein, the discussions with representatives of competition agencies from other developing countries show that the issues faced by the Moldovan Competition Council have broader relevance and the respective challenges may be also present in other countries. Therefore, the ideas presented in this contribution can serve as a reference point for addressing some common issues and be potentially valuable for formulating capacity building initiatives in other jurisdictions.

### **General comments on technical assistance**

9. The need for developing countries to integrate into global or certain regional markets has emphasized the importance of implementing and enforcing relevant competition laws.
10. It is claimed that most of the developing countries do have competition laws in place and the relevant national competition agencies (NCAs) that are in charge of enforcing those laws.<sup>5</sup> In many cases, the competition legislation in these countries is similar to the legislation existing in developed countries with more advanced competition policies. However, in order to draft the relevant legislation and create functional enforcement agencies, the developing countries need substantial technical assistance support. And such support is usually provided by various international donors, development partners, as well as by more experienced peer-institutions ready to support their colleagues from younger agencies.
11. However, it is important to acknowledge that competition agencies in developing countries often encounter specific challenges that can diminish the overall positive impact of the support provided. These challenges include lack of experience and expertise, limited resources in comparison to their counterparts in other jurisdictions, etc. Therefore, it is crucial for technical assistance initiatives to carefully consider these circumstances when tailoring the relevant support activities.
12. Over the years, the support provided to the Competition Council, allowed it to accumulate comprehensive experience in detecting and sanctioning anti-competitive agreements, pursuing abusive practices by dominant companies, and create and put in practice the relevant merger control mechanisms.<sup>6</sup>
13. Nevertheless, it is also worth mentioning that despite the substantial amount of the support and assistance that has been and is still being provided to the Competition Council, ensuring the long-term sustainability of the results remains a significant challenge. Some interventions fall short of expected outcomes, while measures aimed at creating lasting effects may yield only temporary results.
14. Having said that, it is important *not to interpret the above statement as an indication of the irrelevance of technical assistance* provided to competition authorities in developing countries. On the contrary, without such support, it would be impossible to implement any

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<sup>5</sup> Waked, Dina I., *Antitrust Goals in Developing Countries: Policy Alternatives and Normative Choices* (2015). Seattle University Law Review, Vol. 38, No. 3, 2015, pag. 945; Available at SSRN: <https://ssrn.com/abstract=2600034>

<sup>6</sup> The Competition Council is also entrusted with the powers related to the control of state aid. The technical assistance provided to it over the years has also covered the development of the national state aid legislation and aligning it to the relevant EU acquis, and create necessary instruments for the application of that legislation. Although this contribution predominantly focuses on antitrust and merger control aspects of the Council's activities, most of the comments provided herein, apply in equal measure to the state aid related practice of the Council.

competition policies and put in application related enforcement practices. However, these conclusions underscore the need to establish sustainable and effective technical assistance that addresses the specific needs of competition agencies and identify the root causes of potential inefficiencies. This approach will enhance the long-term impact of the support provided and ensure the relevance of technical assistance in implementing efficient competition policies in developing countries.

15. In the subsequent sections of this contribution, we will attempt to identify some of the issues that should be tackled to ensure the sustainability and effectiveness of technical assistance to competition authorities in developing countries. While we do not pretend to present an exhaustive analysis of all potential causes of inefficiencies and provide intricate solutions to address them, it aims to present several ideas and suggestions based on the experience of the Moldovan Competition Council. By considering these ideas, we would like to initiate a discussion on how we can enhance the efficiency of technical assistance programmes, ultimately paving the way for more strategic approaches in designing technical support and capacity building initiatives.

### **Ascertaining the objectives and identifying the needs**

16. The discussion on technical assistance for competition agencies should begin by solving key issues related to the formulation of comprehensive competition policies in developing countries and their underlying objectives.
17. While most of the countries have competition legislation and even actively apply it, the questions still remain as to the policy orientations to guide the enforcement strategies in different countries<sup>7</sup>. This consideration is particularly important, if we keep in mind the limits that exist at competition authorities in developing countries.
18. Although these countries often have the relevant competition laws in place and the established competition agencies that ensure the enforcement of those laws, the goals of competition policies may not be clearly defined (regardless of the goals expressly stated in competition legislation) or are defined without taking into consideration the specific limitations existing in the respective countries.
19. In many instances, competition agencies in developing countries face significant limitations in terms of their available resources, whether human, financial, or technical. As a result, they often struggle to meet the high expectations placed upon them and to effectively achieve the objectives outlined in their legislation. These expectations may be based on the lack of clear understanding of the role of competition agencies, but may also be the result of the fact that the competition objectives in the developing countries simply repeat similar objectives set out in the countries that served as models for developing the competition legislation in developing countries. However, due to the existing constraints, these agencies may be unable to achieve those objectives and, as a result, fall short of meeting the expectations placed upon them resulting in increased pressures from society or other government institutions, diminished public trust, and compromised efforts to foster fair competition in the market.
20. It is claimed that the developing countries “must assess their own needs and tailor their competition law enforcement in a way that particularly addresses what they consider important, be it development, growth, redistribution, or even poverty eradication”<sup>8</sup>. Yet the identification of those needs shall take into account all the relevant constraints that exist in such countries and the challenges that their public institutions encounter.

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<sup>7</sup> Waked, Dina I., *supra note 5*; pag. 946.

<sup>8</sup> *ibid.*; pag. 947.

21. Therefore, when developing various technical assistance programmes, the misconceptions surrounding the role of NCAs in developing countries, as well as the level of general awareness with regard to their capabilities and limitations shall be addressed first in order to formulate effective development strategies, ensure sustainability of the assistance provided and avoid potential inefficiencies of the capacity building programmes.

*Searching for the relevant objectives in the Republic of Moldova*

22. In the case of the Republic of Moldova, the process of European integration and accession to the European Union determines the general policy objectives in various areas, including competition.

23. The EU-Moldova Association Agreement (hereafter - the Association Agreement)<sup>9</sup> states that both the European Union and the Republic of Moldova recognise the importance of free and undistorted competition in their trade relations and provide for the obligation of maintaining comprehensive competition laws which effectively address anti-competitive agreements, concerted practices and anti-competitive unilateral conduct of undertakings with dominant market power and provide effective control of concentrations as well as maintaining an operationally independent authority with adequate human and financial resources in order to effectively enforce the competition laws (*see arts. 334-335 of the Association Agreement*).

24. The Moldovan Competition Law no. 183/2012<sup>10</sup> specifically states in its preamble that it transposes into Moldovan law the provisions of Articles 101-106 of the Treaty on the Functioning of the European Union, the provisions of the Council Regulation (EC) No. 1/2003, and partially the provisions of the Council Regulation (EC) No. 139/2004. The Treaty on the Functioning of the European Union and the related regulations are also expressly mentioned in the Association Agreement as relevant “competition laws” that shall be implemented under the Agreement by the Parties thereto.

25. Following the above provisions of the Moldovan Competition Law and the Association Agreement, ensuring the transposition of the European *acquis* into Moldovan competition legislation and the enforcement of this legislation may be viewed as general objectives of the competition policy in the Republic of Moldova. The necessity for the Competition Council “*to build a solid track record of enforced decisions in the areas of antitrust, merger control and State aid*” has been expressly mentioned by the European Commission when considering the measures to be taken by the Republic of Moldova as a newly recognized EU candidate state.<sup>11</sup>

26. These objectives of aligning the legislation and ensuring the relevant enforcement track record as such may be regarded as the general goals of the national competition policy. Most of the technical support provided to the Moldovan Competition Council over the years generally aimed at implementing these objectives through the development of the new competition legislation and creating and building the capacities of the Competition Council as the national agency responsible for the enforcement of the relevant legislation.

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<sup>9</sup> Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, signed on 27 June 2014; Available here: [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=uriserv%3AOJ.L\\_.2014.260.01.0004.01.ENG](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=uriserv%3AOJ.L_.2014.260.01.0004.01.ENG)

<sup>10</sup> Accessible in Romanian via the following link: [https://www.legis.md/cautare/getResults?doc\\_id=133198&lang=ro](https://www.legis.md/cautare/getResults?doc_id=133198&lang=ro) or in Russian: [https://www.legis.md/cautare/getResults?doc\\_id=133198&lang=ru](https://www.legis.md/cautare/getResults?doc_id=133198&lang=ru)

<sup>11</sup> *Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on the Republic of Moldova's application for membership of the European Union*, 01/02/2023; COMMISSION STAFF WORKING DOCUMENT SWD(2023) 32 final, pag. 20; Available here: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD\\_2023\\_32\\_Moldova.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_32_Moldova.pdf)

27. However, the existence of such generally formulated goals may create the impression that there is an established and functioning competition authority modeled by similar European agencies which is expected to perform in the same way as its European counterparts demonstrating (with some support) similar results. Based on multiple discussions that we have had with various national stakeholders, we can say that such a view is very wide spread in Moldova. The specific circumstances and conditions in which the Moldovan Competition Council operates is not always taken into account.
28. Therefore, a number of actions might be necessary to foster a comprehensive dialogue and consensus-building among key stakeholders and to establish a clear understanding of the objectives and priorities in the activity of the competition agency given its limited resources.
29. Thus, it may be important first to undertake advocacy activities and engage in consultations with key stakeholders, including governmental institutions, business community, civil society organizations, and the general public with regard to the objectives of the competition policy at the initial stages of designing any complex technical support programmes for competition authorities in developing countries. Likewise, it is essential to inform these stakeholders about the mandate and existing limitations of competition authorities, ensuring a shared understanding of the role they play in achieving the policy objectives.
30. It is crucial to address the existing misconceptions by engaging in a dialogue with stakeholders and highlighting the actual limitations faced by the agencies in tackling complex issues in developing countries. It should be acknowledged that certain challenges require the expertise and resources that sometimes only strong and well-established competition agencies possess. Despite the fact that some types of anti-competitive behavior or some market failures can be present in both developing and developed countries, some of those practices or situations in the market can only be handled by well-resourced and very experienced agencies with the sufficient number of highly trained and professional personnel. By fostering a better understanding of these realities, more realistic expectations can be set, and the unique contributions of competition agencies in achieving broader economic objectives can be appreciated.

#### *Assessing the needs*

31. According to *UNCTAD's technical cooperation strategy*<sup>12</sup> (par. 19-(a)), UNCTAD technical cooperation will be demand-driven, based on beneficiaries' needs. The focus on the needs is a crucial element of all technical assistance initiatives.
32. However, in developing countries, competition agencies often encounter challenges in accurately assessing and formulating their needs, especially in cases where there is no consensus and shared understanding regarding the objectives of competition policies implemented by national agencies. As mentioned earlier, this lack of clarity can hinder the effective design and implementation of tailored technical assistance programmes aimed at addressing specific challenges and fulfilling the unique requirements of the country's competition policy.
33. A starting point for determining the capacity building needs of NCAs in developing countries may be peer-reviews – a well-established and widely recognized instrument for assessing competition policies and agencies around the world, which can play an important role in defining key objectives for competition policies in developing countries. However, for peer-reviews to bring real value, they should employ non-standard approaches that would go beyond a one-size-fits-all approach. This implies adapting the review process to the unique context of specific countries and their economies, considering institutional capacity-building needs following the assessment of the country's economic and social realities.

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<sup>12</sup> UNCTAD technical cooperation strategy, TD/B/69/CRP.1, 21/06/2022; available here: [https://unctad.org/system/files/official-document/tdb69\\_crp1\\_en\\_1.pdf](https://unctad.org/system/files/official-document/tdb69_crp1_en_1.pdf)

34. The failure to consider specific circumstances and tailor the objectives of peer-reviews or other types of complex gaps and needs assessment to the unique context of developing countries can reduce significantly the value of such assessments. It can lead to a superficial understanding of the challenges faced by agencies in these countries and hinder the formulation of meaningful objectives for competition policies.
35. If the economic realities, the social, political, and institutional contexts in which younger agencies operate are not taken into account at the initial stages of comprehensive needs assessment, then the subsequent technical assistance efforts may render ineffective. Generic recommendations that follow from the experience gained in other countries may not always be practically applicable if provided without the local context being considered. It can also lead to a lack of ownership and commitment to the implementation of the suggested recommendations.

### **Capacity building through professional trainings – what should we focus on?**

36. Capacity building activities as part of technical assistance provided to competition agencies in developing countries often consist of professional trainings provided to the staff of the agencies on specific issues related to their core functions. They are often (although not always) short-term and focus on some narrowly formulated topics.
37. However, such traditional short-term professional trainings on specific problems can often be inefficient for the purposes of long-term capacity building. Their narrow focus can limit their effectiveness, particularly if the staff being trained lack a solid foundation in competition.
38. In many developing countries there are no specialized courses on competition taught at the faculty level. A lot of newly hired employees may come with very limited knowledge of competition-related issues (if any), sometimes with just some general knowledge of law or economics. As a result, their capacity to absorb the information provided as part of the short-term limited trainings will be reduced and the knowledge received may be hard to be applied in practice. This may result in a lack of significant and sustainable effects on the capacity of the competition agency despite substantial investments into providing the respective trainings.
39. Therefore, to address these challenges, efforts should be made to develop comprehensive basic training programmes for the staff of competition agencies.
40. Certainly, specialized short-term trainings and other capacity-building activities aiming at the development of professional skills and knowledge of the staff of agencies from developing countries still play a crucial role for increasing the qualification and growing the level of specialized expertise of individual professionals. However, the efforts on providing such types of training will only produce the expected results if coupled with the substantial basic training.
41. Another form of capacity building which can produce great results in terms of professional development of individual staff members can be shadowing, which implies direct learning from experienced professionals by observing and closely cooperating with them on a daily basis. In cases of job shadowing the 'trainee' observes, accompanies, and helps the 'mentor' in his/her regular working environment while performing their current tasks. It provides an opportunity to gain firsthand experience and insights over a longer period of time, which will ensure that the knowledge and skills gained will have a lasting effect for trainee's professional growth.
42. However, this form of capacity building activities aiming at specific professionals may require significant investments into individual staff members of NCAs. Although, some partners which provide shadowing opportunities may cover most of the costs involved, in some cases,



such costs still have to be at least partially covered by the agency whose employees participate in these programmes (eg. *per diems*). Given that such programmes may sometimes last for weeks or even months in the countries with high costs of living, even partial coverage of the relevant costs for such individual staff members may constitute a substantial financial burden for smaller agencies.

43. In cases, where the agencies would be ready to incur these costs, they may face the risk of the trained staff leaving the agency shortly after receiving the relevant training and gaining some skills and knowledge which are in demand in the job market. This phenomenon creates risks not only for the agencies where these specialists work, but also for the partners who provide the respective trainings as they usually want to ensure sustainability of investments.

### **Sustainability: challenges of capacity building activities within unstable institutions**

44. Technical assistance programmes are expected to have lasting effects and sustainable impact. However, achieving sustainability of the results is often a great challenge.
45. Several factors may increase the risks that technical assistance projects will not yield sustainable results and reduce the long-term success of capacity building efforts. The major problem that many public institutions in developing countries (competition agencies included) face is the high level of staff turnover and the inability to retain trained and qualified personnel. The competition for skilled and well trained professionals is usually very high in such countries.
46. For various reasons, competition agencies in developing countries may not have the levels of salaries that would be competitive not only in comparison to private companies, but also to other public institutions (particularly sector regulators). As a result, competition agencies may lose competition in the job market to other employers being unable to recruit young talents or retain experienced professionals. As specified above, in 2022, the Moldovan Council faced some of the highest levels of staff turnover in years.
47. This constant staff turnover hampers the continuity and stability of capacity building initiatives, shatters agencies' institutional memory as knowledge and expertise are lost when trained personnel leave. As a result, the substantial investments made into developing specific institutions and their capacities may get lost.
48. Many developing countries often rely on external funds provided by donors or development partners to implement technical assistance programmes. However, once the external funding ends, there is often a lack of domestic financial resources to ensure continuity, maintain the required equipment and software, and support ongoing capacity building efforts.
49. To overcome these challenges and risks, it is crucial to consider them at the initial stages of designing technical assistance programmes. The idea of ensuring long-term sustainability should be at the core of the majority of capacity building initiatives.
50. Moreover, technical assistance programmes should emphasize the importance of stakeholders' engagement and ownership from the beginning. Some bigger programmes that imply substantial investments might be launched only after having obtained firm commitments from the major governmental stakeholders with regard to ensuring and maintaining competitive salaries to the staff of the beneficiary institutions and providing all necessary resources for continuing the activities started within the projects.
51. It is crucial to include financial sustainability plans in the process of designing technical assistance programmes, to seek ways to secure long-term funding from domestic sources, including government budgets or other sustainable financing mechanisms. By creating a sense of ownership and shared responsibility, there is a greater likelihood of sustained commitment and support for the long-term success of the programs.

## **Conclusions**

52. As mentioned above, this contribution does not present a complex research paper on the issues related to the design and implementation of various technical assistance programmes for competition agencies in developing countries. It only attempts to present some ideas related to capacity building activities in such countries, the challenges that agencies and implementing partners may face, and initiate a further discussion regarding the aims of technical assistance provided to younger competition agencies in economies in transition.
53. The primary aim of technical assistance provided to competition agencies in such countries should not attempt at creating institutions that would be able to perform the same tasks and have the same functionalities as well-established competition authorities in developed countries.
54. The agencies in developing countries operate in a different political, economic, and social context. They usually lack the resources that are necessary to perform even certain functions that may be deemed fundamental and basic in developed countries.
55. All these factors shall be taken into account when formulating competition policies and designing relevant technical assistance strategies.