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European development bank mired in Moldovan legal drama



The European Bank for Reconstruction and Development (EBRD) denies using falsified paperwork to help its reposession of the country's only port, a year ahead of the war in Ukraine.

CHIȘINĂU—Prosecutors in Moldova are investigating potential fraud involving Europe's top development financiers in connection with a legal dispute over the country's only port.

The conflict arose when the European Bank for Reconstruction and Development (EBRD), headquartered in London, took over the Giurgiulești International Freeport in May 2021, from Thomas Moser, a former EBRD banker who was the manager of the port and became its owner following a separate legal tussle with the original Azerbaijani owner Rafig Aliyev.

Aliyev, through his company Bemol, a top Moldovan petrol station operator, is suing the EBRD in civil courts in Moldova. He also made criminal allegations of forgery against the bank's lawyers and other agents, and against Moser for embezzlement, which, Reporter can reveal, are under active investigation by Moldovan prosecutors.

"The prosecutor's office for combating organised crime and special cases is exercising criminal investigation" into two separate allegations relating to Bemol's complaints about the port, a spokesman for the institution told Reporter in a letter on June 7, 2022. These are one alleged instance of embezzlement and forming an organized criminal group dating from 2020, and a second investigation from 2021 of alleged forgery that implicates two or more people, the letter and further legal documents obtained separately by Reporter, show.

A bailiff and a notary public acting for the EBRD have been named as potential perpetrators of the forgery in a letter from the prosecutors dated in July 2021 and seen by Reporter, however, since no formal charges were brought, Reporter is not naming the two. Moser has already been accused publicly of embezzlement in local media and court papers but he was not formally charged either, and he told Reporter he is innocent.

Strategic asset



The location of the port – in proximity to Odesa and the Black Sea. Source: Wikimedia/ Open Street Maps

For the EU-aspiring government of Moldova, already beseiged by the fallout of Russia's invasion of Ukraine, an ongoing economic crisis and a huge refugee influx, the port dispute is a delicate problem, with no clear solution: the EBRD is the country's largest institutional investor, and the port is the only harbor in the country. Sitting at the geographical meeting point of Moldova, Ukraine and Romania, it allows cargo vessels access to the Danube river delta and then further to the Black Sea, enabling transport of vital commodities.

As Russia's naval blockade has stopped all maritime trade out of neighbouring Ukraine's Odesa, Giurgiulești has taken on a regional strategic importance, helping to export grain from Ukraine which is vital to global food supplies, as well as getting fuel into Ukraine to prevent its economy from fully collapsing as it fights Russian aggression.

To have such a marquee asset under a cloud of criminal allegations and civil claims both in Moldova and internationally (one recent trial was in Amsterdam, ending in Bemol's favour) is an added problem for pro-Western President Maia Sandu's administration, all the more so since it stressed

publicly that it cannot take sides or intervene in independent judiciary processes.

Whatever the outcome of the criminal probe and the wider battle over the rightful ownership of the port, Moldova's government, economy and population are likely to suffer. The country is already among Europe's most impoverished*.

Aliyev, through his spokesman, has confirmed for Reporter that if he does not recover his losses in local courts, he will use international treaties to sue the government in arbitration tribunals designed to protect foreign investors from unfair dispossession. Such a case could cost Moldova's long-suffering taxpayers tens of millions of euros, with Aliyev claiming he spent more than $50 million on the port over the years.

"Our foreign lawyers examined this course of action. Yes, the odds are big [in our favour]," the spokesman said. "But we, for the moment, are avoiding suing the state of Moldova, which we hold in high esteem and do not wish to damage, so that during these difficult times the state budget doesn't suffer because of us." The spokesman said Bemol has initiated around 10 civil actions in Moldova to reverse the takeover of the port, attacking various aspects of the EBRD's seizure and Mosr's stewardship of the company.

The EBRD forcefully denied all the allegations at length in a statement last year and, contacted by Reporter ahead of publishing this article, pointed out that a "discrepancy" that gave rise to one of the allegations of forgery was since "clarified" by the Ministry of Justice.

Bemol itself was accused in a media investigation of diverting state funds allocated for the development of the port's infrastructure to its own fuel business. It denies these allegations.

The dangers are high for all sides. The EBRD — a lending institution established by treaty and owned by 69 countries, plus the European Union and the European Investment Bank — has provided €1.4 billion to date to various projects in Moldova, far more than other foreign entities, and remains a key financing partner for the fragile state and embryonic private sector. Recent

projects include a €24 million loan for road and rail rehabilitation and a €20 million equity stake in a pipeline importing gas from neighboring Romania. The war in neighbouring Ukraine has put off other investors from entering Moldova, government officials said, making the country even more reliant on development finance from the likes of the EBRD, the World Bank and the International Monetary Fund.

But the probe now places the EBRD's reputation in Moldova — and beyond — in question. If it's found in the wrong, it might decide to contest the outcome and scale back vital investment in Moldova, while also warning other powerful foreign entities to stay away from the country, government officials fear.

Meanwhile, the criminal and civil procedures are taking place in a judiciary system that's undergoing reform to strengthen its independence after years of political interference and corruption under previous governments, and the arrest under suspicion of abuse of powers of chief prosecutor Alexandr Stoianoglo in late 2021, whose case is ongoing. EBRD insiders have told Reporter that they don't believe the investigation against its contractors is being carried out in good faith by the prosecutor's office.

The EBRD has done a great deal of good in post-communist Eastern Europe, including, famously, administering the building of the cutting-edge dome over the damaged Chernobyl atomic plant, protecting the environment from harmful radiation still emanating from the exploded reactor.

It also had a modernising, positive impact on private sector governance in the region, including creating viable financial firms that contnue to underpin small businesses, at the same time promoting gender and pay equality, improved labour conditions and training for blue-collar workers.

But more than a few eyebrows have been raised about its behaviour in Moldova in at least the cases mentioned in this article, and more widely, it is arousing criticism for perceived undue aggression in its approach to making investments.

"We have long been concerned about how the EBRD operates in Moldova," a high-ranking government official told Reporter on the condition of anonymity.

“It is sometimes behaving more like a greedy private investor than a reputable development bank.”

At the same time, the official stressed, the government is loath to directly involve itself in the conflict and would prefer to see quick resolution in the courts.

A tale of two documents

At issue is whether the EBRD’s local legal representatives deliberately forged documents so that it could more easily take over the port from Bemol.

The EBRD is strongly pushing back against the allegations and says it has not been contacted by the prosecutor’s office. It also claims that its objective in the transaction was to “safeguard” the operations of the port for the greater good of the Moldovan economy.

“We categorically deny such allegations. The EBRD, its staff and lawyers abide by the highest ethical standards, integrity and good governance in all business operations,” the EBRD said in a statement to Reporter. “We reserve the right to take legal action, if and when necessary, against any defamatory, libellous or slanderous accusations.”

The scandal began in April 2021, shortly before the EBRD’s acquisition, when Bemol filed a criminal complaint that resulted in a state fraud prosecutor opening an investigation for embezzlement that’s ongoing and expanding to include suspicions of participation by public officials, documents obtained by Reporter show.

Bemol lost control of the port in May. The EBRD laid claim by purchasing Thomo Invest, a Cypriot firm that owned the asset, on grounds that Danube Logistics SRL**, an underlying holding firm was in arrears on debts to the EBRD, which has long supported the port financially. The purchase of Thomo Invest went through German national Thomas Moser, an EBRD ex-employee who had also worked for Bemol as port director.

The probe centers on whether the EBRD used a falsified document of debt registration that shows the EBRD as joint issuer of debt alongside another creditor, Moldova Agroindbank (MAIB). As joint issuer, the development bank would have the power to lay claim to the port if it fell behind on repayments.

But Bemol claims that paper is falsified. It points to another version of the document dated from 2013, previously listed with the justice ministry's database, which doesn't mention the EBRD. Instead, Bemol's copy shows MAIB as the sole creditor.

Bemol also argues that if the EBRD actually had possession of the debt guarantee registration document as early as 2013, as it claims, it could have used it in earlier debt restructuring rounds for the port before the May takeover. The fact that that it didn't suggests that the alleged forgery was timed ahead of the acquisition, in Bemol's telling.

The EBRD counters that the mismatch between the two versions is owing to a data transfer glitch that occurred when the ministry's archive was digitized. It claims the original paper version contained the names of both creditors — something that the EBRD signaled to the justice ministry. EBRD officials also showed Reporter a July 30, 2021 letter from a ministry official acknowledging technical errors in data transfers on the government's end. Meanwhile, the EBRD submitted its own version of the file to the public database, which was accepted. The ministry of justice separately confirmed that it issued the letter.

The prosecutor's office has declined to respond to detailed questions about the investigations or its interaction with EBRD employees or agents. But separately, in official writings made between April 2021 and the end of 2021 and seen by Reporter, it said it had a "reasonable suspicion" that forgery was committed with the involvement of "deciding factors at the European Bank for Reconstruction and Development." The prosecutor's office did not address the apparent IT glitch at the ministry in its responses to Reporter or in the internal paperwork seen by Reporter.

Other documents obtained by Reporter show that prosecutors have designated Bemol and Aliyev as "harmed parties," or victims, in the proceedings, giving them the possibility of seeking further compensation.

Other Moldovan government officials familiar with the case have declined to comment on the IT glitch. But they say the EBRD should have at least clarified the matter of the discrepancy before launching the port acquisition.

The two contractors targeted in the criminal probe couldn't be reached for comment.

Mold-street.md, a business news website run by investigative reporter Ion Preaşcă, has published a feature this month containing previously unpublished documents that suggest the forgery probe by the prosecutor's office also extends to backdated contracts and the erroneous swap of similarly-named holding firms tied to the port between 2013 and 2016, at a time when Moser and Aliyev were themselves tussling for control.

Our man in Moldova

How Moser came to own and sell the port's holding company, from being merely a manager, is its own saga. Moser was at first an EBRD representative in Azerbaijan, where he met Aliyev and jumped ship to help him run his companies in Moldova.

He took over control of the Moldovan businesses in 2005 after Aliyev was imprisoned in Azerbaijan alongside his brother, Farhad, the former economy minister, for unrelated crimes of which he was later cleared, according to insiders and reports in local media. In order to protect his wealth from confiscation by the Azeri government, Aliyev made Moser the nominee owner of Bemol, which included the port.

By the time Aliyev was freed in 2013, Moser was not minded to give it back, prompting a civil suit from Aliyev which resulted in a judgment in 2021 of 177 million Moldovan lei (some $9 million) against Moser. By then Moser had left Moldova and he now lives in Austria from where he spoke to Reporter on WhatsApp to deny all allegations against him and say he has no intention of paying the amount ordered in court.

Asked if he planned to ever return to Moldova, he said: "Nope. No plan to spend anymore [sic] time in a country where „justice" can be bought."

Aliyev also accused Moser in another complaint of embezzling funds from the port for personal gain, which Moser denies, but the Moldovan Supreme Court accepted the thrust of these allegations in its civil decision irreversibly approving the damages claim against Moser.

Moser has last year sued Moldova in the European Court of Human Rights, accusing state officials of colluding illegally with Bemol. Citing "significant shortcomings of the Moldovan court proceedings that established Bemol's financial claim," along with purported involvement of state employees in fabricating evidence, he told Reporter he has submitted a claim requesting the nullification of the judgement and damages.

"In case this fabricated financial claim is enforced [anywhere] I will seek the compensation of the associated damages from the Republic of Moldova during the proceedings at the ECHR," Moser said, referring to the 177 million Moldovan lei.

"The claim for the compensation of alleged lost profits of Bemol was fabricated by Rafiq Aliyev after I refused to agree the sale of Danube Logistics to him," he said.

Thanks to the EBRD's financing of the port alongside Aliyev's own capital, Moser kept close ties to his former colleagues at the development bank.

In March 2021 Bemol used a bailiff to take over the port from Moser, citing the unpaid court judgment. Two months later, another bailiff made the port the official property of the EBRD, after it bought it from Moser for an amount both sides declines to disclose when approached by Reporter.

At the same time the EBRD has lobbied the Moldovan government hard for subtle changes to laws around money laundering controls and "ultimate beneficial owner" liabilities for debts of subsidiary companies in their portfolios, which local media said was done in order to get Moser off the hook from the court judgment.

The Mold-street website reported last week that, based on previously unpublished conversations between the EBRD's lawyers and the government, a

multi-year campaign by the EBRD to have Moldova's laws changed was unsuccessful because of warnings from the EU's local representative office that such moves would have broad implications including to "diminish the effect of this law."

As of April 2022, the EBRD's former communications staffer for Moldova, Olga Roșca (no relation to the author of this report), has been chief of staff to Foreign Minister Nicu Popescu.

Volker Recker, the senior EBRD banker on the team responsible for the port, has also since left the institution, though insiders say his departure was part of a wider programme of paid voluntary redundancy, rather than as a consequence of the Moldovan courtroom conflicts.

The day-to-day activity of the port has continued uninterrupted throughout the various legal proceedings.

Hollow Victoria?

For its part, the EBRD is not at its first racy brush with ethics, if not the law, in Moldova.

Before its involvement in the port issue emerged in public, in 2016, the EBRD said it wished to increase its stake in Victoriabank, a lender with a history of scandals, from under a third to 100%, effectively becoming the sole owner. The biggest share ownership then belonged to Insidown Ltd, a Cyprus shell company whose ultimate beneficial owner wasn't officially made clear. KPMG auditors at the time warned that the real owners of the bank are likely to be others than those appearing in the firm's regulatory disclosures.

This didn't stop the EBRD transacting with Insidown in 2018 for its shares in Victoriabank, through a shell company the EBRD held in the Netherlands in joint ownership with Romania's Banca Transilvania (BT). BT later became the controlling sharheolder of Victoriabank.

Banca Transilvania is a top Romanian lender which the EBRD also co-owns. The price offered for the Insidown stake was around $43.5 million, according

to media reports, and the declared owner at the time was a Russian businessman.

However, media investigations, and, later, judicial ones, pointed to oligarch Vladimir Plahotniuc as Insidown's true owner when the transaction with the EBRD and BT happened. It is unclear if the EBRD was aware of Plahotniuc's involvement and it declined to answer detailed questions about the stiuation from Reporter ahead of publication.

Plahotniuc is one of the most controversial figures in Moldova's history. The founder and former leader of the Democratic Party of Moldova (PDM), which held power until 2019, is now on the run, having fled after a parliamentary coalition drove him out of power. He was also sanctioned for corruption by the United States in 2020, and is now wanted in Moldova for arrest for alleged involvement in the "theft of the century" – a fraud that saw around $1 billion disappear from three top banks in Moldova in 2014, bankrupting them and prompting an emergency government bailout.

This scam also involved complex leding operations from Victoriabank, which took advatage, allegedly illegally, of state subsidies meant to backstop the country's collapsing banking system. Plahotniuc was himself accused of taking over Victoriabank's shares in a type of illegal scheme known in the region as a "raider attack".

No doubt, Victoriabank became a well-run, stable and transparent business after the EBRD and BT took it over. But the way the deal was conducted created legal jeopardy for the Romanian bank, which owned the majority stake and which in 2019 found itself subject to a freezing order from Moldovan prosecutors to the tune of 1.9 billion Moldovan lei (close to $100 million), due to Victoriabank's alleged involvement in the 2014 scandal. The order itself was criticised by independent experts as "apparently abusive".

A well-connected lawyer in Moldova, who has been following the Victoriabank and port deals, said on condition of anonymity due to fear of upsetting the EBRD, which he sometimes works with, that "the EBRD has been acting as though the ends justifies the means. Personally I happen to agree with them that both assets are better off in their hands than the previous owners', but

still, the port scandal especially is on another level of risk compared to anything they have done before, such as the Victoriabank affair."

A local banking analyst also speaking anonymously fearing EBRD reprisals, was blunter: "How does the EBRD know it didn't in fact take part in an act of indirect money laundering?" he told Reporter about the EBRD's acquisition of Victoriabank. "The uncertainties around the beneficial ownership of those shares should have been enough to keep them away from the deal."

In response to questions from Reporter about this deal, an EBRD spokeswoman pointed out that the development lender was never the controlling shareholder of Victoria, but she did not address the specific points raised around due diligence. "We remain a minority shareholder and support Victoriabank strongly," she said, also pointing to a press release issued at the time.

The aforementioned Victoriabank assets remain frozen, and the legal conflicts surrounding the harbour are likely to carry on for years, potentially spilling into international courts with Aliyev, or Moser, or both, as plaintiffs.

In the meantime, President Sandu and her young, embattled team may come to regret the day that, long before they even thought of gaining power, the once-landlocked country decided to dredge the Danube to gain access to shipping through the Black Sea.

In that regard, one short statement on the presidency's website in July last year has been interpreted by observers in Eastern Europe as a shot across the bows.

In a conversation with the then-new chief of the EBRD, Odile Renaud-Basso, "the representatives of the presidential institution in Chișinău wished to mention the importance of aligning, in the future, the business priorities of the EBRD with the national priorities of the Republic of Moldova."

(With thanks to B.M. and E. M. for their help editing this article.)

*the article was corrected to reflect that, while Moldova is among Europe's poorest countries, it has not been the poorest for several years, despite lazy

media stereotyping kindly brought to our attention by a sensitive reader.

**the article was corrected to accurately reflect the name of the underlying holding company that was in arrears to the EBRD.

June 15, 2022 Matei Rosca Articles

arbitration, banca transilvania, bemol group, corporate fraud, corporate litigation, ebrd, economic crime, european bank for reconstruction and development, financial crime, giurgiulesti, giurgiulesti port, griurgiulesti harbour, insidown, moldova, plahotniuc, rafig aliyev, victoriabank

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