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SOUTH EAST EUROPE 2020

JOBS AND PROSPERITY IN A EUROPEAN PERSPECTIVE

Anti-Corruption Assessment of Laws

("Corruption Proofing")

Comparative Study and Methodology

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Socrates: *But, Hippias, do you say that law is an injury to the state, or a benefit?*

Hippias: *It is made, I think, with benefit in view, but sometimes, if the law is badly made, it is injurious.*

Plato, Hippias Major, 284d

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** This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo declaration of independence.*

METHOD AND ACKNOWLEDGEMENTS

This publication is the result of research conducted between June and August 2014 under the guidance of the Secretariat of the Regional Anti-corruption Initiative. The research used information on 'corruption proofing' that was available online in English, French, Russian and Spanish; in addition, it used selected print sources. The author drafted several country chapters (Part 1) and the methodology (Part 2). He submitted the international country chapters to at least one relevant stakeholder in each country (anti-corruption agency or specialised civil society group) for further input. Several countries provided feedback on the country chapters. The country chapters from the region as well as the methodology were also subject to review by a regional workshop in held Montenegro in September 2014.

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EXECUTIVE SUMMARY

International research shows that **13 countries** have in place a method for reviewing whether their general legislation contains any corruption risks (Albania, Armenia, Azerbaijan, Kazakhstan, Korea, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan). Several more countries plan to introduce this tool inter alia Mongolia, Poland, Serbia and Turkmenistan. This method can be called "anti-corruption assessment of laws" or more simply "corruption proofing". It is a rather new discipline, coming into existence in the early 2000's.

Corruption proofing does not relate directly to corruption of the legislative process itself, such as bribery of legislators or questionable lobbying practices. It is targeted only at "**regulatory corruption risks**", which constitute existing or missing features in a law that can contribute to corruption regardless of whether the risk was intended or not. The method of corruption proofing can take many forms. It can target **draft** laws or **enacted laws**, statutes or bylaws. It only concerns central laws and/or local government regulations (e.g. Kazakhstan and Russia).

Sometimes, corruption proofing coincides with the legal drafting itself (Albania). In such cases it is done by the ministries drafting the law. More often, an external body, such as an anti-corruption agency, is responsible for corruption proofing. In such cases, the (external) **corruption proofing body** drafts an assessment report and provides **recommendations** to minimise corruption risks (e.g. Latvia and Korea). In no country is the legislator obliged to implement such recommendations yet normally the legislator must consider the recommendations: the corruption proofing body often monitors the compliance of the legislator with the recommendations. Ideally, assessment reports as well as status of **compliance** are available online to the public (e.g. Lithuania and Moldova).

Civil society plays an important role in corruption proofing. To this extent, it is important that draft laws are published at an early stage and that the state bodies tasked with drafting the law reach out to the public at large for input. Sometimes civil society takes on the task of reviewing laws for corruption risks and even develops its own methodology (e.g. Moldova and Ukraine). Guidance on sound legal drafting, transparent and participatory public decision making and sufficient rules on lobbying, political finance and ethics in legislation are indispensable preconditions for corruption proofing to have a significant impact.

PART I: COMPARATIVE STUDY

I. INTRODUCTION

1.1 How to Define Corruption Proofing

1.1.1 What it is not about: Corruption of the Legislative Process

Many corruption risks can appear along the **legislative process**. Citizens who want to profit from specific legislation may attempt to bribe ministry experts drafting legislation, bribe members of parliament, provide illicit financial contributions to political parties or electoral candidates or exercise pressure through questionable lobbying practices. In addition, politicians can be subject to conflict of interest related to their secondary profession or affiliation with particular groups and thus might vote for legislation favouring their private interests. All of these corruption risks are subject to international anti-corruption conventions and standards.

There is one more risk that appears at the end of the legislative process, namely the product of the process itself the **law** or **regulation** that could support corruption once coming into force. For example, a procedure for licensing businesses might be complicated and vague, and as a result motivate citizens applying for such a licence to resort to speed payments and the civil servants providing the licence to ask for bribes. None of the existing international anti-corruption conventions or standards addresses this type of corruption risk contained in the legislation itself.

Article 5 Para. 3 of the "United Nations Convention Against Corruption" calls on Member States "to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption."

However, the wording of this provision refers only to specific ("relevant") anti-corruption laws which "prevent and fight corruption", but not to an evaluation of all laws for corruption risks.[1]

1.1.2 What it is about: Corruption Risks in the Legislation itself

Nonetheless, for several years a new discipline has been in the process of evolving: **corruption proofing** of legislation. It is not about the risks of corrupting the legislative process but only concerns the risks enclosed in the final product of the legislative process. To this end, it does not matter whether the corruption risk was intended (**intended risk**) by the legal drafter or whether the corruption risk was the result of a lack of awareness (**unintended risk**).

There is no international or commonly agreed definition of corruption proofing. A comparative paper of 2008 describes it as follows: "Anti-corruption review of legislation and legal drafting is a preventive measure aimed at diminishing loopholes in a legal system."[2]

However, this definition seems to be too narrow: corruption proofing concerns not only loopholes but also many other shortcomings in form and substance. Therefore, corruption proofing should rather be defined along these lines:

> "Anti-corruption assessment of legislation is a review of the form and substance of drafted or enacted legal rules in order to detect and minimise the risk of future corruption that the rules could facilitate".

1.1.3 Terminology

The **terminology** of corruption proofing varies amongst the legislation of different countries (the methods referred to below each concern a different range of legal regulations under the listed terms).

- Anti-corruption assessment (Kazakhstan) – "Оценка коррупциогенности"
- Anti-corruption assessment (Latvia) – "Vērtēšanas pretkorupcijas"
- Anti-corruption assessment (Lithuania) – "Antikorupcinis vertinimas"
- Anti-corruption expertise (Kyrgyzstan) – "Антикоррупционная экспертиза"
- Anti-corruption expertise (Moldova) – "Expertiza anticorupție"

1 The UNODC's "Legislative Guide for the Implementation of the United Nations Convention Against Corruption", 2012, page 24, No. 67, does not point to a different direction than the wording of paragraph 3 <www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf>.

2 European Partners Against Corruption report, "Common Standards and Best Practice for Anti-Corruption Agencies", 2008, page 16 <http://www.knab.gov.lv/uploads/eng/epac_common_standarts.pdf>.

- Anti-corruption expertise (Russia) – "Антикоррупционная экспертиза"
- Anti-corruption expertise (Tajikistan) – "Антикоррупционная экспертиза"
- Anti-corruption expertise (Ukraine) – "Антикорупційна експертиза"
- Assessing Anti-corruption Impact (Armenia)
- Examining corruption-causing factors (Korea)
- Expertise of exposure to abuse (Azerbaijan) – "sui-istifadəyə məruz qalmasına dair ekspertizasının"

The OECD uses the terms "anti-corruption screening", "anti-corruption review of legal acts" or "review of anti-corruption compliance" in its monitoring reports.[3] These terms emphasise the review aspect. By contrast, the expression **corruption proofing** points also to the improvement of laws in terms of corruption risks. It does not derive from current legislation regulating the anti-corruption assessment of laws, but the term was coined by civil society,[4] donors[5] and academia.[6] Moldovan legislation used this term up until 2007, but later replaced it with "anti-corruption expertise".[7]

This Study will use the expression "corruption proofing" for the simple reason of reader-friendliness: it is short and stands out visually from the word anti-corruption, which is frequently used in the same sentence as corruption proofing but with completely different reference.

Similarly, the terminology for "regulatory corruption **risks**" differs.

- Corruption risks (Latvia) – "korupcijas riska"
- Corruption risks (Lithuania) – "korupcijos rizikos"
- Corruptogenic factors (Kyrgyzstan) – "корупційних фактори"
- Corruptogenic factors (Tajikistan) – "корупційних фактори"
- Corruptogenic factor (Ukraine) – "корупційних фактори"
- Corruptogenic factors (Russia) – "коррупциогенных фактори"
- Corruption factors (Armenia)
- Corruption-causing factors (Korea)

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3 See, for example, the below country chapters: Armenia (2.1.2) and Azerbaijan (2.1.3).

4 <http://www.capc.md/en/implemented_projects/expertise_3/>.

5 Council of Europe MOLICO Project: "The methodology for conducting corruption proofing of legislation was disseminated internationally as a best practice in preventing corruption (in front of the GRECO Plenary and at the international level)." <http://www.coe.int/t/dghl/cooperation/economiccrime/MoneyLaundering/projects/MOLICO/Outputs-AC_en.asp>.

6 Jeremy Pope, "Parliament and Anti-Corruption Legislation, Laws on Subjects in which Corrupt Actions Would be Likely to Occur if the Legislation is Not 'Corruption-Proofed'", in Rick Stapenhurst and others "The Role of Parliament in Curbing Corruption", World Bank Institute, 2006, pages 65-66 <http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/The%20Role%20of%20Parliment%20in%20Curbing%20Corruption.pdf>.

7 See Annex 9.5. below: Preamble to the Government Decision "On Anti-corruption Expertise on Draft Legislative and Normative Acts", No. 977 of 23 August 2006.

- Corruptogenic elements (factors) – Kazakhstan – "коррупционных элементов (факторов)"
- Elements (factors) of corruptibility (Moldova) – "Elementele (factorii) coruptibilităţii"
- Factors of abuse (Azerbaijan) – "sui-istifadə amilləri"

This Study will use the expression "regulatory corruption risks" for a number of reasons. "**Factor**" and "risk" do not mean the same. Factors have a causal relationship with actual corruption, whereas risks point only to the potential for corruption. As not all possible openings for corruption in legislation will actually lead to corruption, "risk" is the preferable term. "**Elements**", in turn, is a somewhat misleading term: corruption risks not only stem from (existing) features in laws but also from the lack of them, such as a lack of oversight. Element by contrast rather suggests the presence of something in a law. The addition "**regulatory"** is again necessary to delineate from other corruption risks.

As for statutes, bylaws and all of the other different levels of legal instruments, this Study will use the uniform expression "**laws**" if not otherwise indicated. It refers comprehensively to the, "system of rules which a particular country or community recognises as regulating the actions of its members and which it may enforce by the imposition of penalties."[8]

1.1.4 Similar but Different Tools

Corruption proofing is distinct from other forms of **regulatory assessment**. Amongst these other forms are regulatory cost/benefit analyses that juxtapose the cost/benefit of a regulation[9] and gender assessments that review how a law will affect the social reality of men and women.[10] Other forms also include human rights vulnerability assessments that review the compliance of drafts with human rights[11] and regulatory impact assessments that assess the effect a law will have on society as a whole.[12] However, corruption proofing is closely related to or even a sub-category of regulatory impact assessment: it assesses the impact that a regulation can have on incidents of future corruption.[13]

The general assessment of corruption risks is called "corruption **risk assessment**", "integrity assessment" or "identification of corruption risk

8 <http://www.oxforddictionaries.com/definition/english/law?q=law>.
9 See, for example, Australia, Department of the Prime Minister and the Cabinet, Cost Benefit Analysis, <http://www.dpmc.gov.au/deregulation/obpr/cost-benefit-analysis.cfm>.
10 Inter-Parliamentary Union. "Gender-Sensitive Parliaments", 2011 <www.ipu.org/pdf/publications/gsp11ex-e.pdf>; 2009 Spring Report of the Auditor General of Canada, (Training on Gender-based Analysis of Legislation and Policies) <http://www.oag-bvg.gc.ca/internet/English/parl_oag_200905_01_e_32514.html>.
11 CAPC, "Guide to Perform Vulnerability Expertise of Drafts Normative Acts in terms of Human Rights and Gender Equality", 2013 <http://www.capc.md/docs/Guide_expertise_human_rights_2013.doc>.
12 See, for example, OECD, Regulatory Impact Analysis <http://www.oecd.org/gov/regulatory-policy/ria.htm>.
13 See Bosnia and Herzegovina (2.2.3) below, where "corruption" is an aspect of the regulatory impact assessment.

factors".[14] Risk assessments review practises, procedures and structures within organisations and sectors or whole countries in order to identify risk factors that could facilitate corruption.[15] For example, a risk assessment of the education sector will analyse all relevant procedures and practices: schools and university applications, examinations, grading procedures, the award of diplomas, etc. To this end, a risk assessment will also always look at the regulatory framework in order to assess how it may facilitate any of the identified corruption risks in real life. Thus, risk assessments regularly provide recommendations on how to improve regulations.

In contrast, corruption proofing comes from the **opposite direction**: it does not start with real life processes and practices but with the legislation itself. Therefore, corruption proofing has to apply **specialised legal techniques** for reviewing and improving laws. Furthermore, at the end of a corruption proofing process only recommendations on how to improve the legal rules of a specific law stand, non-normative aspects or other regulation are not present. However, anti-corruption risk assessments of legislation also have to consider what challenges a law will meet in real life.[16]

In the example of a new law on education, such an assessment would have to take into consideration whether university professors exploit the fact that exams are not anonymous and thus they have the possibility to enter into corrupt agreements with students on the outcome of a written test.

Therefore, both general risk assessments and anti-corruption assessments of legislation should review real life procedures and practices as well as the regulatory framework. The starting point and focus of both disciplines are at opposite ends and therefore it is probably fair to say that both disciplines are related and that anti-corruption assessment of legislation is a **specialised form** of general anti-corruption risk assessments. However, corruption proofing might sometimes only look at **formal** aspects of a law and the risks stemming from it, whereas this would be insufficient for a risk assessment of the related sector.

Anti-corruption assessment of legislation is not to be confused with "assessment of **anti-corruption legislation**": anti-corruption legislation is specific legislation aimed at fighting corruption, either by preventing or by helping to repress it through investigation and sanctions. Such anti-corruption legislation is also subject of assessment, either by domestic anti-corruption bodies, civil society stakeholders or by international organisations. "Anti-corruption assessment of legislation", by contrast, has a much broader scope: it is a tool developed to review the entire legislation; this might include anti-corruption legislation but extends much further than this into any non-anti-corruption specific legislation.

14 Council of Europe Technical Paper "Corruption Risk Assessment Methodology Guide" by Quentin Reed and Mark Philp for the PACA Project, December 2010 <www.coe.int/paca>.

15 See, for example, the risk assessments carried out by the Council of Europe PACA Project in Albania <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/risk%20assessment_en.asp>.

16 Moldova, "Guide on Corruptibility Expert Review of Draft Legislative and Other Regulatory Acts", 2007 <http://www.capc.md/en/expertise_3/guide/>.

The closest to corruption proofing is the exercise of "crime proofing", "criminological expertise" or as it is sometimes called "crime risk assessment". Crime proofing tries to identify and minimise criminogenic factors in laws. This includes the crime of corruption. For example, in **Belarus** a Presidential Decree "On C riminological Examination of Draft Laws of the Republic of Belarus"[17] approved regulation "On the Procedure of Criminological Examination of Draft Laws of the Republic of Belarus"[18]. In No. 2, it counts corruption amongst the crime risks to be identified. The Scientific-Practical Centre[19], under the Prosecutor General, carries out the crime proofing including corruption.[20]

Similarly, a project funded by the European Union tried to "develop mechanisms for assessing the risk of crime due to legislation and its products in order to proof them against crime at an EU level".[21] The project published assessments of EU regulations and pointed out corruption risks.[22] However, crime proofing has no overlap with corruption proofing, except for listing corruption amongst the crimes to be identified. It has a narrow understanding of corruption as a criminal offence and there is no detailed methodology on regulatory corruption risks.

1.2 Potential and Limitations

Corruption proofing is aimed primarily at closing entry points for **corruption** contained in draft or enacted legislation. Its main potential is thus to prevent future corruption facilitated through bad legislation. Once corruption proofing becomes an established practice it will make legal drafters think ahead concerning what corruption risks the corruption proofing may uncover and how these risks can be avoided from the very beginning of the drafting process.

However, it has also the potential to improve the **quality** of the legislative drafting itself. Many of the tools used to minimise corruption risks will lead to clearer simpler and more consistent wording in legal drafts and to more well-reasoned and documented coherent and thought-through regulations. Practical experience from training even shows that rather "dry" rules of good legal drafting can come to life once public officials understand how even a small grammatical error in a health law can facilitate bribes and extortion from patients in an emergency room.

17 No. 244 of 29 May 2007 <http://pravo.levonevsky.org/bazaby09/sbor13/text13008.htm> Russian).
18 <http://criminologyclub.ru/PDF/17/17_5.pdf> (Russian).
19 <http://www.prokuratura.gov.by/main.aspx?guid=10944> (Russian).
20 Г.А.Василевич, Антикоррупционная экспертиза нормативных актов—требование времени (undated, probably in 2010) [G. A. Vasilevich, "Anti-corruption Expertise of Regulations – a Requirement of Our Time"] <www.law.bsu.by/pub/26/2_Vasilevich.doc> (Russian).
21 <http://www.ist-world.org/ProjectDetails.aspx?ProjectId=6916ff844154416f80d26c88c97d9ea5&SourceDatabaseId=7cff9226e582440894200b751bab883f>.
22 Final Report of Project MARC, 2006 <http://www.transcrime.it/wp-content/uploads/2013/11/MARC_Legislative_CRAM_Finale_report1.pdf>.

Corruption proofing further enriches **public debate** surrounding legal drafts. It gives an unusual perspective on legal drafts. Normally the focus in legislative

debates is on the different interest groups affected by a law; however, corruption proofing changes this view to the benefit of the general public by minimising corruption thus making corruption a standard feature of awareness in public debates. Ideally, corruption proofing would even mobilise the public, once certain corruption risks were made public. In this regard, not only the success of corruption proofing, namely a change to a drafted or enacted law, but also the **process** of the debate itself provides added value through corruption proofing. The public availability of a sound corruption proofing methodology certainly facilitates such processes.

Yet there are **limitations** to the effectiveness of this tool. First of all, corruption proofing cannot turn back a fully corrupted legislative process. Wherever the political elite has received a large political financial contribution, bribe or has other **powerful** interests at stake the chances are slim that this elite will back off when confronted by a corruption proofing report. In the end, it is nothing more than the opinion of one or several experts against an entire cabinet or against the majority in parliament.

It is also relatively easy to **attack** recommendations made in corruption proofing reports. As previously mentioned, they come from one or several experts and usually other experts can hold different opinions. Furthermore, there is always a myriad of policy arguments pro and contra certain legislation and a corruption proofing report might easily be drowned in controversial or distracting public debate.

Legislation is also mostly a question of high **specialisation** (financial market regulation, pharmaceutical oversight, international taxation, etc.), which neither the expert drafting the corruption proofing report nor the public is equipped to master sufficiently if at all. Similarly, the wording of a draft regulation might be the result of a **complex** negotiation process or a delicate legal balancing act into which the recommendations of a corruption proofing report might not easily fit.

In terms of **resources**, ministries and other entities in charge of drafting legislation in most countries are probably already at their limit keeping up with the demand for new legislative drafts and speed of the political process. At the same time, countries in particular need of corruption proofing are those with already rather weak and understaffed governance structures.

Corruption proofing is also limited in terms of the **predictability** of risks. Many corruption risks are obvious in a draft law, whereas a certain number of corruption risks will only materialise once the law is enacted and in ways that are hard if not impossible to foresee at the drafting stage. Such unforeseen consequences might even include adverse effects. For example, a corruption proofing report might identify as a corruption risk (for bribe giving) a public prosecutor who has the sole decision over closing an investigation; the recommendation of the report might lead to the appointment of a supervisory prosecutor to co-sign

the decision of closure. However, the actual result of this legal change could be that the opportunity for corruption increases as both the prosecutor and the supervisor prosecutor are in a position to ask for a bribe.

Despite all of the concerns that one could raise against corruption proofing in relation to the complexity of the legislative process itself, it is still **worth** the effort. Otherwise, one would have to question the benefit of any democratic public debate. If one looks at the statistics on how often corruption proofing has led to changes in (draft) laws in countries with a strong practice it is obvious that this tool can have a significant impact (see, for example, the statistics below at 2.1.5, 2.1.8 and 2.2.8).

1.3 State of Research

Whereas literature abounds for any other corruption tool, to date, corruption proofing has received little interest from international or academic organisations. The Manual for legislators[23] by Ann Seidman and others, from 2003, was probably the first publication to address the issue of preventing corruption in legal drafting. It more or less coincided with the first worldwide legislation on corruption proofing in Moldova in 2001 and Lithuania 2002.[24] However, as both countries had no methodology at that time the manual, independently from both countries, in a groundbreaking way over 12 pages, explored corruption risks and made recommendations as to how to avoid them in legislation. As the Manual does not use any of the familiar expressions for this corruption proofing exercise, this innovative publication references none of the research or methodologies developed later. Since that time there have been only two general international publications (in English language) on corruption proofing, both being rather short.

- Jeremy Pope, "Parliament and Anti-Corruption Legislation, Laws on Subjects in Which Corrupt Actions Would be Likely to Occur If the Legislation is Not 'Corruption-Proofed'", in Rick Stapenhurst and others, "The Role of Parliament in Curbing Corruption", 2006, pages 65-66.[25] The two page subchapter gives a brief introduction to what corruption proofing is.
- Alexander Kotchegura, "Preventing Corruption Risk in Legislation: Experience and Lessons from **Russia, Moldova** and **Kazakhstan**", a Conference Paper (draft) for the EGPA Annual Conference "Ethics and

23 Ann Seidman, Robert Seidman and Nalin Abeysekere, 2003, "Assessing Legislation - A manual for Legislators", 186 pages <http://iknowpolitics.org/sites/default/files/assessing20legislation20-2001.200320-20en20-20pi.pdf>.

24 See Chapter 9 "Enacting Legislation to Foster Good Governance", which looks into how "corrupt practices undermine good governance", "explanations for corruption", "limiting the scope of officials' discretion", and "accountability and transparency" (pages 155-168).

25 <http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/The%20Role%20of%20Parliment%20in%20Curbing%20Corruption.pdf>.

Integrity of Governance", held in Malta 2-5 September 2009,[26] is a thirteen page paper but only a first draft with essential parts missing, such as the chapter on Kazakhstan.

There are several books and articles on corruption proofing in Russian literature, such as those listed below.

- В. Н. Найденко, Ю. А. Тихомиров, Т. Я. Хабриева, Правовые акты: антикоррупционный анализ [V. N. Naydenko, Y. A. Tikhomirov, T. Ya. Habrieva, "Legislative Acts: Anti-corruption expertise"], Wolters Kluwers, 2009, 147 pages.
- Семенова Екатерина Игоревна, Сравнительно-правовой анализ законодательства стран снг по вопросам проведения антикоррупционной экспертизы нормативных правовых актов и их проектов [Semenova Ekaterina Igorevna, "Comparative Legal Analysis of Legislation in the CIS Countries concerning the Conduct of Anti-corruption expertise on Legal Acts and their Drafts"]. A paper for an Internet Conference at the Plekhanov Russian University of Economics (no date: probably November 2012).[27]

A further four international technical papers address corruption proofing within the national context.

- Council of Europe - PACA Project, addendum to the **Albanian** law drafting manual: "Avoiding Corruption Risks in Draft Legislation", April 2011.[28] The technical paper describes the different corruption risks within legislation and how techniques from the Albanian law drafting manual addresses these risks.
- Council of Europe/Swedish International Development Cooperation Agency (SIDA) - MOLICO Project, "Guide on Corruptibility Expert Review of Draft Legislative and other Regulatory Acts" 2007.[29] The Guide gives a detailed 42-page overview of corruption proofing in **Moldova**.
- Centre for Strategic Development and others, "Guidelines for Initial Assessment of Laws for Corruption Risk" 2007.[30] The 87-page guidelines provide a comprehensive overview of corruption proofing in the **Russian** Parliament (Duma).
- Transparency International **Ukraine** and others, "Civic Anti-corruption Expert Assessment Methodology: Short Guide" 2013.[31] The 49-page methodology instructs civil society experts on how to assess corruption risks in draft laws.

26 <www.law.kuleuven.be/integriteit/egpa/previous-egpa-conferences/malta-2009/kotchegura.pdf>
27 <http://sdo.rea.ru/cde/conference/6/file.php?fileId=18>.
28 <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Technical%20Papers/default_TP_2011_en.asp>.
29 <www.capc.md/docs/guide_capc_eng.doc>.
30 <www.cipe.org/regional/eurasia/pdf/CSRmethodolgy.pdf>.
31 <www.gm.undp.org/content/dam/ukraine/docs/DG/Methodology%20Civic%20Anticorruptio%20Expert%20Assessment.pdf>.

However, there is still no comparative research on corruption proofing let alone any comprehensive overview. A comparative study is thus **long overdue**.[32] The need for such a study becomes even more acute when one considers the fact that, despite the scarcity of international guidance, several countries are planning to introduce this tool (see 2.1.13 below).

[32] See the observation in the Council of Europe Technical Paper: "Opinion on Draft Law on Amendments to the Law of the Ukraine", "On the Principles of Prevention and Counteraction to Corruption", Strasbourg, 12 December 2012. Drafted by Tilman Hoppe, page 15 <www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/ukraine/2012/ECCU-BO-UA-1.2012-Amendments%20to%20Ukrainian%20AC%20law.pdf>.

2. EXISTING METHODOLOGIES

2.1 International

2.1.1 Overview

Country	Entity in charge	Legal and methodological basis
Armenia	Ministry of Justice	Government Decree No. 1205-N of 2009
Azerbaijan	Ministry of Justice	Law "On normative legal Acts"' of 2010
Kazakhstan	Ministry of Justice	Law "On Normative Legal Acts", as amended in 2011 Law Decree on "Rules of Legal Monitoring of Normative Legal Acts" of 2011 "Guidelines for the Monitoring of Legal Normative Acts" (Order of the Minister of Justice)
Korea (South)	Anti-Corruption and Civil Rights Commission	Corruption Prevention Act, as amended in 2006 Presidential Decree on Enforcement Analytical Framework (by Commission)
Kyrgyzstan	Parliament Ministry of Justice	Parliamentary "Standards for Conducting some Types of Specialised Screening of Draft Laws in Parliament" of 2008 Governmental "Instruction on the Procedure for Conducting Legal, Human Rights Protection, Gender, Environmental and Anti-corruption Screening of Draft Secondary Legislation" of 2010
Latvia	Corruption Prevention and Combating Bureau (KNAB)	Law on the Corruption Prevention and Combating Bureau of 2008 Draft guidelines for corruption risk assessment of regulatory acts

Country	Entity in charge	Legal and methodological basis
Lithuania	Special Investigation Service (anti-corruption)	Corruption Prevention Law of 2003 Methodology of the Special Investigation Service
Russia	Anti-Corruption Commission of the State Duma Civil society expert groups	Federal Law No. 172-FZ 'On Anti-Corruption Analysis of Legislation and Draft Legislation' of 17 July 2009 Guidelines for an Initial Assessment of Laws for Corruption Risks (by the Duma)
Tajikistan	Authority for the Fight Against Corruption Ministry of Justice All law making bodies	Law No. 925 "On Anti-corruption Expertise of Legal Acts and Draft Legal Acts" of 2012
Ukraine	Ministry of Justice Civil Expert Committee in the Parliament	Anti-corruption Law of 22 August 2014 (replacing earlier versions from 2009 and 2011) Methodology of the Ministry of Justice from 2010, as revised in 2013 Methodology for civil society
Uzbekistan	Ministry of Justice	Presidential Decree No. PP-1602 "On measures to Further Improve the Activity of the Ministry of Justice of the Republic of Uzbekistan" of 23 August 2011 Ministry of Justice Order No. 106 of 20 October 2011
Western Europe/ North America	Ministry of Justice and/or Parliament	General legal drafting guidelines (not anti-corruption specific)

2.1.2 Armenia

Armenia introduced corruption proofing in 2009 through Government Decree No. 1205-N "On Assessing the Anti-corruption Impact of Draft Legal Acts."[33] It tasks the Ministry of Justice with carrying out corruption proofing. The Decree consists mainly of a non-exhaustive list of 12 regulatory corruption risks:

1) unclear rights and duties of public officials;
2) excessive burdens on citizens to exercise their rights;
3) excessive discretionary powers;

[33] Of 22 October 2009 <http://www.arlis.am/DocumentView.aspx?docid=54520> (Armenian).

4) linguistic ambiguity;
5) regulatory gaps;
6) lack of or unclear administrative procedures;
7) lack of procurement procedures;
8) lack of sanctions;
9) lack of oversight;
10) unclear objectives of the law;
11) excessive regulatory powers;
12) delegated law making.

The Decree is based on Article 27.1 of the "Law on Legal Acts."[34] Article 27.1 foresees a **15-day period** for drafting the assessment and a 5-day period in case the draft law was already adopted after the first reading in Parliament. There is no obligation for the author of the draft law or parliament to consider the recommendations. The Decree contains a **template** structure.

In accordance with Article 27.1 of the "Law on Legal Acts", the body drawing up a draft law must subject it to **public debate**. Public debates take place following the publication of a draft law on the website of the author. State bodies may also organise open hearings, debates and public opinion surveys. A public debate lasts for 15 days.[35]

The Ministry of Justice began **implementation** of corruption proofing in January 2011. The Agency for Legal Expertise performs the task for the Ministry. The Agency comprises of 15 officials of which eight experts have corruption proofing as their main task. Reportedly, 1,500 to 1,700 legal acts were subjected to anti-corruption screening between January and September 2011. The Agency detected corruption risks in 10 to 15 cases.[36]

2.1.3 Azerbaijan

Azerbaijan introduced corruption proofing through its Law "On Normative Legal Acts" of 21 December 2010.[37] The Law (Article 63) distinguishes four basic categories of corruption risks:

1) abuse of authority in the implementation of laws (e.g. excessive discretionary powers, arbitrary powers and linguistic ambiguity);
2) legal gaps (lack of responsibility amongst officials or lack of supervision, lack of administrative procedures, lack of procurement

34 Of 3 April 2002 <www.translation-centre.am/pdf/Translat/HH_orenk/Legal_Acts/Legal_Acts_en.pdf> (English).
35 Decree No. 296-H of the Government of Armenia, 25 March 2010 <http://www.arlis.am/DocumentView.aspx?DocID=57300> (Armenian).
36 OECD/ACN second round of monitoring, Armenia, Monitoring report 29 September 2011, page 55 <http://www.oecd.org/corruption/acn/48965498.pdf>.
37 <http://www.constcourt.gov.az/laws/24> (Azerbaijani).

procedures, lack of freedom of information, ambiguous gaps and regulatory powers);

3) patterns of systemic corruption (laws containing the wrong objectives and priorities or with colliding provisions);

4) typical manifestations of exposure to abuse (lack of implementation mechanisms and unbalanced favouritism towards one interest group).

The Law contains an Annex with a **template** structure and an assessment report and list of the **regulatory corruption risks**. The author of a draft law has to **consider** the recommendations.

Reportedly, the **Ministry of Justice** carries out corruption proofing and attaches the assessments to all legal drafts. In 2012, **15%** of draft laws were returned to the authors together with recommendations.[38] The "National Anti-Corruption Action Plan 2012-2015" foresaw that in 2013 the Ministry of Justice would draft "**United rules** for abuse (corruption) exposure review of the draft legal instruments and legislation developed by the central executive authorities and other institutions entitled to draft legislation and legal instruments."[39]

2.1.4 Kazakhstan

In April 2011, the Ministry of Justice amended Law No. 213 "On Normative Legal Acts" of 24 March 1998 and for the first time introduced the concept of the "legal monitoring of normative legal acts".[40]

In Article 1 the Law defines legal monitoring as "the performance of state bodies, carried out on a permanent basis, for the collection, evaluation and analysis of information regarding the status of legislation of the Republic of Kazakhstan as well as forecasting the dynamics of its development and practical application in order to identify outdated laws and/or such against **corruption**-laws, and assessing the effectiveness of their implementation."

According to Government Decree No. 359 of 5 April 2011,[41] legislative initiatives and draft normative legal acts of the **President** of Kazakhstan are not subject to obligatory anti-corruption screening. The OECD has criticised this exception.[42]

Pursuant to Government Decree No. 964 of 25 August 2011 on "rules of legal monitoring of normative legal acts",[43] the Ministry of Justice coordinates the

38 OECD/ACN third round of monitoring, Azerbaijan, Monitoring report 25 September 2013, page 62 <www.oecd.org/corruption/acn/AZERBAIJANThirdRoundMonitoringReportENG.pdf>.

39 <http://www.commission-anticorruption.gov.az/upload/file/NACAP%20Azerbaijan%202012-2015%20Eng.pdf>.

40 <http://www.izrk.kz/images/stories/monit/npa.doc> (Russian).

41 "On Introducing Amendments and Addenda to Some Decisions of the Government of the Republic of Kazakhstan", Appendix No. 1 <http://adilet.zan.kz/rus/docs/P1100000359> (Russian).

42 OECD/ACN second round of monitoring, Kazakhstan, Monitoring report 29 September 2011, page 71 <www.oecd.org/countries/kazakhstan/48908325.pdf>.

43 <http://www.izrk.kz/images/pravila-ru.doc> (Russian).

activities of authorized bodies for monitoring legal regulations. The Ministry of Justice **procures** the task of corruption proofing to academic institutions on the basis of tenders.[44] The national budget pays for the tenders. Reportedly, the Ministry of Justice annually identifies institutions , which are authorized to perform anti-corruption screening. Thus, they often change. The OECD saw in this a risk of decreasing effectiveness of anti-corruption screening, since the experience gained in one year could not be used in another institution the following year. Furthermore, in the view of the OECD, an opinion by a state body would have more weight than one of an academic institution.[45]

In 2011, the Institute of the Legislation of the Republic of Kazakhstan (Institute) was responsible for the **corruption proofing** of legislation. Within the Institute, the Centre for Legal Monitoring (Centre) reviews legislation. Since 2012, the Centre has been split into two sectors: the Sector for Analysis and Legal Monitoring and the Sector for the Anti-corruption Examination of Enacted Normative Legal Acts.[46]

The main objective of the Sector for the Anti-corruption Examination of Enacted Normative Legal Acts is to analyse the extent to which regulatory acts could facilitate the committing of corruption offenses. The Sector for Analysis and Legal Monitoring develops recommendations for improvement with regard in particular to contradictions, collisions and gaps between different regulations, the duplication of norms, obsolete declarative phrases and norms that promote the committing of corruption offenses.

The Institute has developed "**Guidelines** for the Monitoring of Legal Normative Acts" (approved through Order No. 350 of the Minister of Justice on 28 October 2011),[47] intended for state bodies exercising legal monitoring of regulations. The Guidelines comprise 21 pages structured into four chapters:

- Chapter 1: General;
- Chapter 2: Conducting Legal Monitoring;
- Chapter 3: Rules for Sociological Surveys;
- Chapter 4: Methods of Assessing Corruption Risks of Normative Legal Acts.

According to Chapter 4, the task of assessing corruption risks includes:

- identification of corruption risk factors, such as regulatory shortcomings that create opportunities for corruption offenses;
- recommendations for eliminating corruption risks and revising draft laws;
- recommendations for including corruption prevention mechanisms;

44 Decree 359 of 2011, Appendix No. 1 (note 41).
45 OECD/ACN, ibid.
46 <http://www.izrk.kz/index.php?option=com_content&view=article&id=213&Itemid=93&lang=en> (English).
47 < http://www.izrk.kz/images/metod-recom-ru.doc> (Russian).

- evaluation of the impact of a normative legal act concerning the possible occurrence of corruption offenses;
- determination of the potential effectiveness of preventing the occurrence of corruption offenses;
- identification of areas of state bodies most prone to corruption;
- recommendations for systemic and organisational measures aimed at combating corruption offenses in a particular area and the elimination of existing corruption schemes;
- proposals for the elimination or reduction of corruption risk factors;
- identifying provisions inconsistent with national or international anti-corruption standards;
- promoting zero tolerance for corruption offenses amongst civil servants and citizens.

The corruption risk analysis consists of two stages.

- The first stage is a preliminary analysis of the normative legal act.
- The second stage involves a substantial corruption risk review.

The **first** stage (preliminary) analysis of normative legal acts touches on background questions related to corruption.

- Which relationships are governed by the normative legal act?
- Which corrupt practices prevail in this area?
- What are the existing corruption schemes?
- Are there any statistics on corruption offenses committed by public officials?
- Which areas in state bodies are most prone to corrupt practices?

Furthermore, the preliminary (first) stage of analysis includes a review of the regulatory shortcomings such as contradictory competencies, overlapping authority to develop regulations or to monitor their implementation, failure to identify a responsible public authority for implementation, absence of oversight and control mechanisms, and the absence of mechanisms for judicial redress.

The **second** stage of the analysis (substantial corruption risk review) focuses more on the specific regulatory risks of the Law:

- too broadly formulated discretionary powers;
- unclear definitions of competence through use of the word 'may';
- lack of or improper regulation of administrative procedures;
- improper definition of the roles, responsibilities and rights of public officials;

- gaps;
- conflicting regulations;
- unnecessary delegation of regulatory authority to another body;
- lack of adequate transparency;
- lack of monitoring mechanisms.

The Guidelines use several practical examples of real legislative acts and analyses them critically in order to demonstrate to the reader how the method works in practice. The assessments are **not** legally **binding** for the drafter of a law and there is not even the obligation to consider the recommendations. Furthermore, there are no **timelines** for drafting the assessment. The Guidelines of 2011 follow on from a **previous methodology** by the Inter-departmental Commission for Improvement of Legislation in the Anti-Corruption Area of 2007.[48] The relation between the Ministry of Justice Guidelines of 2011 and the methodology of 2007 by the Commission is not fully clear. An OECD report of 2011 as well as a current academic publication[49] from 2014 only mention the 2007 methodology but leave aside the more recently adopted Guidelines.

The 2007 methodology lists the following five factors of corruption:

1) latitude of discretionary powers;
2) excessive burdens for the implementation of citizens' rights;
3) lack of or improper regulation of administrative procedures;
4) lack of or improper regulation of competition (tender) procedures;
5) improper definition of the roles, responsibilities and rights of civil servants (officials).

The methodology lists the following sources for analysing the law:

1) the practice of the law, as prescribed by government bodies;
2) annual messages of the President and the Constitutional Council;
3) material of scientific and practical conferences, seminars and meetings on the enacted legislation;
4) questions by citizens to public authorities;
5) material provided by non-governmental organisations;
6) information from the media, including scientific publications;
7) results of sociological research on current corrupt practices and schemes;

48 Of 17 September 2007 <http://www.adilet.gov.kz/ru/node/15897> (Russian).

49 К. К. Вокаze, "Юридическая экспертиза в законотворческом процессе: проблемы и перспективы совершенствования" ["Legal Expertise in the Legislative Process: Challenges and Prospects for Improvement"], Право и государство [Law and Government], № 1 (62 and 67) 2014 <www.km.kazguu.kz/uploads/files/11%20%D0%92%D0%BE%D0%BA%D0%B0%D0%B7%D0%B5%2067-69.pdf> (Russian).

8) statistics;
9) previously carried out analyses on the same subject or similar subjects;
10) information on preventive anti-corruption measures contained in the laws of foreign countries;
11) other sources, dependent on the content of the (draft) legal act.

According to information provided by the Ministry of Justice, as of the end of June 2011 16 draft laws and over 1,000 legal acts of the Government and central state authorities had been reviewed. Out of the 1,500 comments 1,300 (87%) were taken into account, whereas the other 13% were rejected.[50]

Neither the draft laws or explanatory notes nor the results of corruption proofing are **published** on the Parliament website. Likewise, none of the legal acts of the Government or the results of their corruption proofing is available online.[51]

In addition to the corruption proofing mechanisms mentioned above there is also the Inter-departmental **Commission** for Improvement of Legislation in the Anti-Corruption Area. The Commission develops proposals for amending enacted laws with respect to corruption prone provisions. It sends the results of its analysis to the state authorities for further consideration. The Commission meets on a monthly basis.[52]

2.1.5 Korea

In 2006, South Korea introduced corruption impact assessments through an amendment to the **Corruption Prevention Act**. Article 12 No. 12 adds "examining corruption-causing factors in Acts and subordinate statutes" to the functions of the Anti-Corruption and Civil Rights Commission. The respective Article (Article 28) "Review of Corruption-causing Factors in Laws" includes the below passages.

(1) The Commission may review corruption-causing factors in acts, presidential decrees, prime ministerial decrees and ordinances of ministries and in other directives, regulations, announcements, notices, ordinances and rules in reference thereto, and may recommend that the head of the public organisation concerned take action to remove them.

(2) Matters regarding the procedure and methods of the review undertaken under paragraph (1) shall be prescribed by Presidential Decree.

The Presidential **Decree** defines (in Article 30) "review of Corruption-Causing Factors" as follows: Analysis of legal acts, "for the purpose of seeking out and removing potential factors which will likely correlate with corruption in the future

50 OECD/ACN second round of monitoring, Kazakhstan, Monitoring report 29 September 2011, page 71 <www.oecd.org/countries/kazakhstan/48908325.pdf>.
51 OECD/ACN, ibid.
52 OECD/ACN, ibid.

(hereinafter referred to as 'Corruption Impact Assessment')."[53] According to paragraph 2, "The Commission may draw up guidelines on the subjects of and criteria, methods and plans for the Corruption Impact Assessment to ensure its effectiveness".

The Commission drafted a comprehensive **methodology** (Technical Guide for the Implementation of the Corruption Impact Assessment) and last updated it in 2012.[54] It is available in English for the 2009 version (see Annex). The Guide does not contain any definition of "corruption", but does foresee the three main corruption factors and criteria shown below.

Factors	Criteria
Ease of compliance (demand)	Adequacy of the burden of compliance Adequacy of the level of sanctions Possibility of preferential treatment
Appropriateness of execution standards (supply)	Concreteness/objectivity of discretionary regulations Appropriateness of consignment/entrustment standards Clarity of financial support standards
Transparency of administrative procedure (procedure)	Accessibility and openness Predictability Possibility of conflict of interest

Thus, the Guide focuses more on **substance** related issues of corruption prevention than on linguistic or logical ambiguity. However, criteria such as the "concreteness/objectivity of discretionary regulations" and "predictability" also point somewhat in the direction of the ambiguity of the legal texts. The three factors follow the logic as to what extent corruption factors create an incentive for citizens to offer a bribe (demand for services) or for public officials to ask for a bribe (supply side of services) as well as to what extent there are risks in the interaction of both sides (procedural aspect). It is interesting to note that the Technical Guide contains a section on **Questions and Answers**.

A Corruption Impact Assessment of the **enacted legislation** is conducted on an annual basis. The Commission consults with different state bodes and establishes mid to long term corruption impact assessment plans. Thereafter, it conducts Corruption-Impact Performance Assessments based on the documents

submitted by each state body. Since 2006, the Commission has identified 402 types of corruption-causing factors in 24 existing laws.

53 Presidential Decree No. 20737 of 29 February 2008, "Of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission" <http://world.moleg.go.kr/fl/download/28548/8ZMSEPC5ON5ZNGR1F5JS>.

54 <http://www.acrc.go.kr/acrc/file/file.do?command=downFile&encodedKey=MTY4MDZfMQ%3D%3D> (Korean).

In addition, the Commission screens **draft laws** for corruption-causing factors. The tables below show the assessed bills from 2006 to 2010. During this period, the Commission received requests for the assessment of 5,534 legislative proposals for amendment. Among the 1,024 proposals assessed, the Commission identified 2,425 corruption-causing factors and recommended that the agencies concerned address these factors.

As for **administrative regulations**, the Commission performs their assessment together with the laws on which they are based. The Commissions makes its own selection of administrative regulations based on risk criteria and additionally requests government agencies to submit newly issued administrative rules every six months.

The assessment starts with respective state bodies preparing a draft law. They submit the proposal together with a form for **applying for an assessment** (see Annex, Technical Guide, "Application for Corruption Impact Assessment"). State bodies are obliged to provide the Commission with the **documents** necessary for the assessment. State bodies are also required to fill out a **self-assessment** checklist with detailed questions on possible corruption risks contained in the draft laws. This way, the author of the law is already forced to think about possible corruption risks when drafting the law. The Korean system of corruption proofing thus combines (inherent) corruption proofing at the time of drafting laws with extrinsic corruption proofing by an independent third party, namely the Commission.

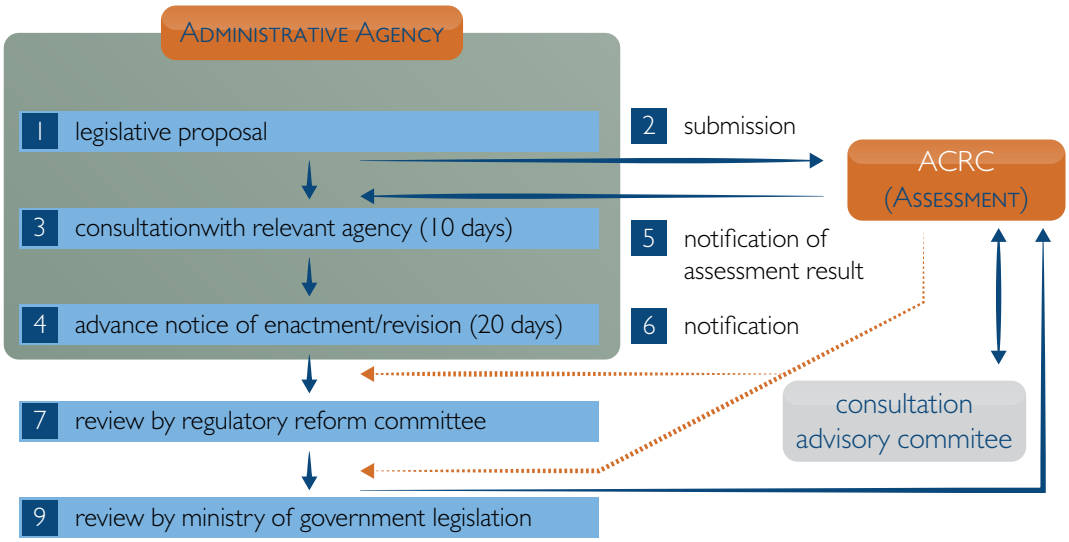
The Commission conducts its evaluation within a **period** of 30 days. In cases of emergency, the law setting process may proceed with the assessment report following later.

Once the commission finds corruption risk factors it issues a written notification with the **deadline** for action to be taken. The head of the respective state body has to provide **reasons** in writing within the deadline if the recommendations cannot be implemented. Assessments can include a state body's "**internal rules** and bylaws".

Article 31 of the Decree opens the possibility for setting up an **Advisory Group** on the Corruption Impact Assessment in order to "ensure the professionalism and objectiveness of the assessment and to seek its advice on the assessment". The Chairperson of the Advisory Group is responsible for its organisation and operation. As of 2009, the Advisory Group already consisted of a pool of external experts of over 400 persons from academia, research centre and civil society groups that have a profound knowledge and experience in the assessment of corruption risks.

Article 32 ensures that the results of a corruption impact assessment are **communicated** to other state bodies, such as the Regulatory Reform Committee or the Ministry of Government Legislation. The Commission may conduct **surveys** for its assessments (Article 33) and can request **expert testimony** from relevant persons or public officials (Article 34). The flow chart below illustrates the entire assessment process.

(Graphic by the Anti-Corruption and Civil Rights Commission, 2009)[55]



Prior to issuing **recommendations** the Commission analyses the practices relevant for the respective law and consults the government agency concerned and, if necessary, external experts about the draft recommendations. It is interesting to note that the Commission also holds **public hearings** or discussions.

Corruption Impact Assessment on Draft Legislation

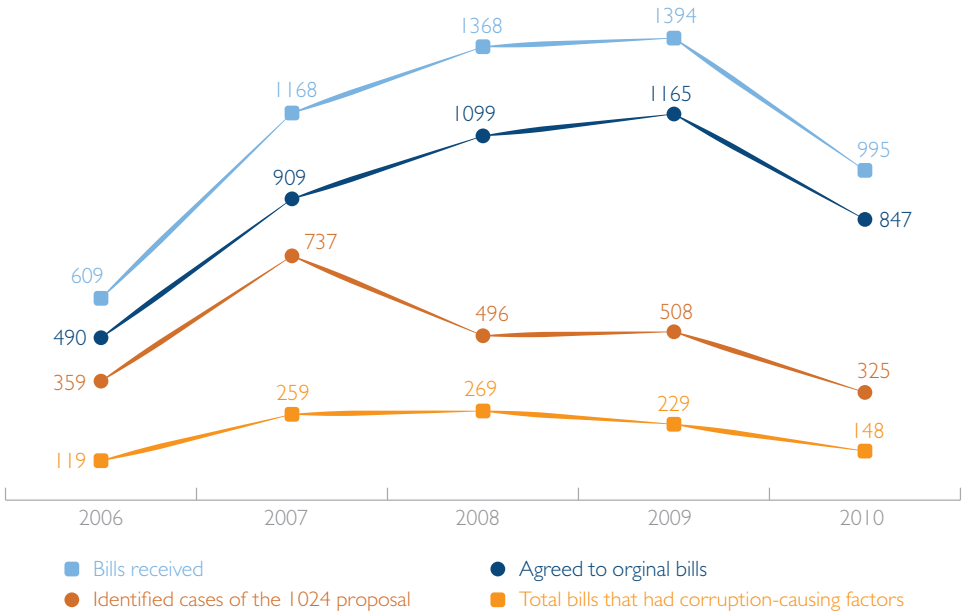
Year	Bills received	Assessment Completed		
		Agreed to orginal bills	Total bills that had corruption-causing factors	Identified cases of the 1024 proposal
2006	609	490	119	359
2007	1,168	909	259	737
2008	1,368	1099	269	496
2009	1,394	1165	229	508
2010	995	847	148	325
Total	5,534	4510	1024	2425

Source: ACRC Annual Report 2011.

In an interview, the Director of the Impact Assessment Division pointed out that 92 per cent of the Commission's suggestions on draft bills have been accepted by various public organisations and that the **acceptance rate** for the enacted laws

55 ADB/OECD Anti-Corruption Initiative 8th regional seminar: "Corruption Prevention", Macao, China 25-26 March 2009, Presentation by Hyungsok Kwok, Anti-Corruption International Cooperation Division, Anti-Corruption and Civil Rights Commission Korea, March 2009 <www.oecd.org/site/adboecdanti-corruptioninitiative/meetingsandconferences/42877427.pdf>.

Corruption Impact Assessment on Draft Legislation



Source: ACRC Annual Report 2011.

is much lower.[56] In order to increase the acceptance and implementation rates, the ACRC strengthens the quality of its assessments through seeking expert advice and training officials in charge of the assessment. It also establishes a close network of cooperation with the agencies concerned by holding workshops and meetings. Furthermore, it regularly monitors the agencies concerned in order to ensure that recommendations are incorporated into the revised or newly enacted laws and regulations.[57]

The Commission has also made efforts to support **local government** and voluntary corruption impact assessment for **public enterprises** (their internal regulations). As of 2009, more than 60,000 autonomous laws and regulations were in force and over 10,000 were enacted or revised annually. Therefore, the ACRC guides local government to establish and operate a system of self-assessment. To this end, the Commission developed a specific methodology for local government in 2014 comprising of a 195 page Manual on Corruption Impact Assessment for Local Government.[58]

The Commission regularly provides training for representatives of other state agencies. It also developed a "**Casebook** on Corruption Impact Assessment" in 2013 with practical case studies.[59] The Corruption Impact Assessment Division under the Anti-Corruption Bureau Department of the Commission has **16 staff**

56 The World Bank/Arsema Tamyalew, 2012, "A Review of the Effectiveness of the Anti-corruption and Civil Rights Commission of the Republic of Korea", page 33 <www.acauthorities.org/sites/aca/files/casestudy/Case%20study%20ACRC.pdf>.

57 ACRC Korea Annual Report 2011, page 59 <www.acrc.go.kr/eng/file/file.do?command=downFile&encodedKey=MTc5MjFfMg%3D%3D&ei>.

58 <www.acrc.go.kr/acrc/file/file.do?command=downFile&encodedKey=MjUwMjJfMg%3D%3D> (Korean).

59 <http://www.acrc.go.kr/acrc/file/file.do?command=downFile&encodedKey=MjYxMjRfMQ%3D%3D> (Korean).

(out of a total of 151).[60] The Commission **reports annually** on its Corruption Impact Assessment activities.[61]

One should also mention that the Commission shared its expertise with the Indonesian Corruption Eradication Commission in 2009 and the Mongolian Anti-corruption Agency in 2014.[62] However, so far, both countries have not yet installed similar mechanisms.

2.1.6 Kyrgyzstan

Kyrgyzstan has a **two-pronged** way of corruption proofing: one mechanism for draft statutes and another for the drafting of secondary legislation. There is no corruption proofing for enacted statutes.

According to Article 20 para. 1 of the Law "On Normative Legal Acts",[63] draft normative legal acts undergo various types of "scientific expertise", including anti-corruption.

"Draft normative legal acts on issues of constitutional rights, freedoms and duties of citizens, the legal status of public associations and mass media, the state budget, the tax system, environmental safety, combating crime, or introducing new types of business regulation, should be subject to legal, human rights, gender, environment, **anti-corruption** and other scientific expertise (depending on the legal basis that regulates the draft normative legal act)."

As for **draft statutes**, the "Standards for Conducting some Types of Specialised Screening of Draft Laws in Parliament"[64] of 2008 provide more detailed guidance on the areas where corruption proofing is **mandatory**.

"(1) Constitutional rights, freedoms and obligations, legal status of public associations and mass media, issues of state budget, tax system, the fight against law violations, and new types of state regulation of business activity.

(2) powers of public authorities their officials, including powers to establish legal norms, control powers, registration jurisdictional, regulatory powers." (at No. 3.4.1)

According to the Standards, corruption proofing consists of two stages: first, an assessment of compliance with **general** anti-corruption standards and, second, with specific anti-corruption standard (No. 3.4.4). General requirements are, in particular, constitutional principles that aim at combating corruption, policies on

fighting corruption, international treaties, and national anti-corruption laws (No. 3.4.5).

60 The World Bank/Arsema Tamyalew (ibid), page 17.
61 <http://www.acrc.go.kr/eng/board.do?command=searchDetail&method=searchList&menuId=020504>.
62 Information provided by the Commission to the author in August 2014.
63 Law No. 241 of 20 July 2009 <http://not-palata.kg/index.php?option=com_content&view=article&id=47:2010-12-16-09-41-40&catid=13:2010-12-16-03-55-26&Itemid=17> (Russian).
64 Parliamentary Resolution No. 75-IV of 18 January 2008 <http://www.awli-kg.org/images/docs/5i-standarti-jk-gender-ekspertisa-2008.doc> (Russian).

The special standards consist of avoiding **corruption factors** such as blanket referrals, extensive rights of regulatory power, excessive administrative burdens and discretionary powers as well as unclear powers of public officials. Other factors include a lack of competitive procedures, a lack of specialised detailed prohibitions and restrictions for officials, a lack of sanctions, a lack of procedures for access to information, a lack of oversight and conflict of interest (No. 3.4.6). The expert conducting the corruption proofing should point out any corruption factor and make **recommendations** on how to modify the law in order to minimise the corruption risk.

The new "Law on the Rules of Procedure of Parliament"[65] of 2011 defines how corruption proofing rolls out **procedurally**.[66]

- All submitted draft statutes should include a description of its **impact** on corruption (Article 47 para. 1, No. 2 lit. b).
- The **Expert Department** of the Parliament's Secretariat prepares an anti-corruption assessment of draft statutes before their initial consideration by the parliament's commissions and amendments made to a draft law in preparation for the second reading and of the revised draft statutes that takes into account objections of the President (if there are any) (Article 50). There are **no timelines** contained in the parliamentary regulations for providing the expertise.
- The Parliament's Rules of Procedure also allow independent experts and **civil society** organisations to submit their evaluations of draft statutes, including those on anti-corruption matters (Article 155). The relevant parliamentary commission has to consider such evaluations in a session with the participation of the authors of the evaluation. The commission then has to prepare a substantiated response explaining why it endorsed or rejected the proposals contained in the evaluation.

As for **secondary legislation**, in December 2010 the Government approved the "Instruction on the Procedure for Conducting Legal, Human Rights Protection, Gender, Environmental, Anti-corruption Screening of **Draft** Secondary Legislation."[67] It covers all draft normative legal acts, except for draft laws, that are subject to the parliamentary procedure described above. The Instruction covers draft normative acts of the President, Government, Parliament, National Bank and the Central Election Commission.

Under No. 18, the Instruction also provides **assessment criteria** for the corruption proofing. The "anti-corruption analysis" identifies in particular the following:

- discretionary powers (allowing a public official sole discretion to

65 Law No. 223 of 25 November 2011 <http://minjust.gov.kg/?page_id=10620> (Russian).
66 OECD/ACN second round of monitoring, Kyrgyz Republic, Monitoring report February 2012, page 50 <www.oecd.org/corruption/acn/49882439.pdf>.
67 Governmental Decree No. 319 of 8 December 2010 <http://cbd.minjust.gov.kg/%28F%28avRlKgRvINVheRl7XdDNXvytapMfAfL1lFMTjNNBlEb8z0bZUKYkOAO5LuAkGR5XPKcOd0p9W2TtNkmo1bRdtoFo8ryxqjQaDLgxPsrvYVZk3GcTkAtfaUy-HXYaThyn71YfBYc-0V0NUTxHnRou9UfhJxyjC3A-vYYBlqgh_MxQnzXR_rBWctYXzmLkqiuxM0%29%29/act/view/ru-ru/92342?cl=ru-ru> (Russian).

evaluate a certain fact or the execution of the law, the absence of or uncertain terms of a decision, duplication of powers of officials at the state and local self-government level and to decide to what extent the rights of the public official are determined);

- excessive barriers for citizens (burdensome procedures and limitations without justification);
- absence of clear definition of the rights of the applicant;
- linguistic ambiguity (linguistic corruption factors);
- excessive law setting powers;
- gaps that could be filled with arbitrary practices;
- lack of competitive procedures (procurement);
- lack of definition of the roles, responsibilities and rights of public officials;
- lack of oversight;
- lack of transparency and access to information;
- ambiguity through conflicting provisions;
- favouritism to the benefit of a certain group of people.

The "special legal analysis" reviews the following:

- compliance with constitutional principles that "aim to combat corruption";
- how a draft law interrelates and affects other regulations;
- compliance with international treaties.

An annex contains a standardised **template** for the review. There are no **timelines** in the Government Instructions for providing the expertise. All executive law making bodies are apparently responsible for corruption proofing. Within the Government, the Ministry of Justice is responsible for performing corruption proofing.[68]

Neither Parliament nor the Government **publish** the results of corruption proofing, a fact which the OECD criticised.[69] However, civil society organisations publish their expertise results on their own initiative.[70]

68 Government Resolution No. 764 of 15 December 2009 "On the Ministry of Justice of the Kyrgyz Republic" <http://online.adviser.kg/Document/?link_id=1001253946> (Russian); adopting the "Regulations of the Ministry of Justice of the Kyrgyz Republic" <http://minjust.gov.kg/?page_id=512> (Russian), which lists corruption proofing as one of the Ministry's functions (No. 6 lit. a, bullet point 6).

69 OECD/ACN, ibid.

70 See, for example, the Anti-corruption expertise of the Draft Law of the Kyrgyz Republic "On Civilian Control over the Observance of Human Rights in the Internal Affairs Bodies of the Kyrgyz Republic", of 28 September 2012. In addition, see those by the "Alliance of Women's Legislative Initiatives" <http://www.awli-kg.org/index.php?option=com_content&view=article&id=181:------l----------r&catid=36:publications-c&Itemid=65> (Russian).

The Government passed a Decree in 2013 defining how persons and organisations can obtain **registration** with the State for the conduct of corruption proofing.[71] According to number eight of the Decree, anyone with accreditation has the right to "1) participate as an independent expert in the examination of draft laws and regulations, 2) request the necessary expertise to obtain information from public bodies (with the exception of information of a confidential nature)".

Restricting the access of citizens in relation to assessing draft laws is obviously problematic in a democratic society. A comparable provision only exists in Russia (see Section 2.1.9 below).

The Government is currently drafting a law on the anti-corruption proofing of legal acts. [72]

2.1.7 Latvia

According to the "**Law** on the Corruption Prevention and Combating Bureau",[73] the Bureau has the function to "analyse regulatory enactments and draft regulatory enactments as well as propose to make amendments therein and submit recommendations for drafting new regulatory enactments" (Article 7 No. 10).

The Bureau has developed **Draft Guidelines** for anti-corruption evaluation of drafted and enacted laws. The Bureau has already piloted this unpublished internal working paper on a number of laws. For example, in the second half of 2013 the Bureau carried out a risk analysis of the Law "On Housing Issues" (concerning public housing).[74]

According to its Chapter I, as far as drafting is concerned, the Draft Guidelines apply to all **public officials** responsible for legal drafting, including local government. At the same time, the Draft Guidelines apply to all legal **sectors**.

In Chapter II, the Draft Guidelines define "regulatory areas, which are considered to be more **vulnerable to corruption**". These include areas where public officials have decision-making power, deal with financial resources, where transparency is limited (e.g. handling of confidential information) and legal drafting. They also define further "aggravating circumstances", such as the possibility "to act unilaterally", to exercise "a wide discretion" or "the lack of a monitoring mechanism". The Draft Guidelines furthermore list posts and regulatory mechanisms, which typically involve corruption prone activities such

71 Decree No. 413 of 15 July 2013 "On the Accreditation of Individuals and Legal Entities Engaged in Activities for the Specialised Types of Examinations of Draft Regulations (Legal, Human Rights, Gender, Anti-Corruption and Environmental)" <http://www.gov.kg/wp-content/uploads/2013/06/Proekt.doc> (Russian, draft version only).

72 OECD/ACN second round of monitoring, Kyrgyz Republic, Monitoring report February 2012, page 50 <www.oecd.org/corruption/acn/49882439.pdf>.

73 Latvian Law on the "Corruption Prevention and Combating Bureau" of 18 April 2002 with amending laws up until the end of 2008 (see section 10, para. 1, No. 10) <http://www.knab.gov.lv/uploads/eng/law_knab_eng.pdf>.

74 Information Report on the Activities of the Corruption Prevention and Combating Bureau from 1 July to 31 December 2013", see page 4 <http://www.knab.gov.lv/uploads/free/zinojumi/knabzino_030214.pdf> (Latvian).

as licensing or permission procedures, setting up fees or taxes or establishing a state institution's obligations.

Chapter III of the Draft Guidelines lays out how to prevent "corruption risks when developing **draft legislation**". Whenever any of the draft laws touches on any of the risk factors described in Chapter II the drafters have to "pay extra attention" to the necessity of preventing corruption.

To this end, Chapter III lays out several **general principles** for drafting a law such as ensuring "transparent" procedures, "clear and unambiguous" rules, inclusion of the "right to appeal procedures", limiting "official discretion", "sharing of responsibility" in decision-making and clear implementation and sanction mechanisms. This also includes appropriate use of "legal techniques" such as internal and external coherence of the law. There are also specific criteria for any possible tender procedure included in a law.

As for **administrative procedures**, Chapter III prescribes that a law needs to define the documents that must be submitted and the timelines, limits and fees. In the same way, licensing and similar procedures need to define the prerequisites for issuing, denying or cancelling the license, and the competent authority.

Furthermore, Chapter III touches on reasonable access to and management of data, **delegation** of powers to individuals or organisations and the **assignment** of experts.

Chapter III also underlines the importance of **public consultation** with a diverse range of civil society stakeholders.

The **Annex** of the Draft Methodology contains a **checklist** of red flags:

I) formal shortcomings of laws and regulations (such as vague discretion or ambiguous terms);

II) lack of clearly defined responsibilities and competencies;

III) lack of liability for violations;

IV) lack of effective and efficient implementation mechanisms;

V) lack of a coherent enforcement mechanism for sanctions;

VI) lack of clear sentencing guidelines and schisms between minimum and maximum sanctions.

There are no provisions in the Latvian Law to ensure that anti-corruption assessments are to a certain extent **binding** or to require that they are taken under **consideration** by the drafting entity and if so within a given **timeframe**.

2.1.8 Lithuania

Article 8 of Law number IX-904 on the "Prevention of Corruption in the Republic of Lithuania"[75] regulates "anti-corruption assessment of the existing or draft legislation" as shown below.

"Article 8. Legislation or draft anti-corruption assessment

1. Legislative promoter carries draft legislative corruption assessment, if held legislation intended to regulate social relations with regard to:

[17 specific areas, such as state-owned companies, subsidies or pharmaceutical sector – see full wording in Annex 9.4; in addition, there is the following catch-up category 18:]

18) In other cases, if the promoter of the legislation is of the opinion that the regulation may affect the extent of corruption.

2. The Special Investigation Service shall carry out the anti-corruption assessment of the effective or draft legislation, regulating social relations referred to in paragraph 1, on its own initiative or on the proposal by the President of the Republic, the Chairman of the Seimas, the Prime Minister, a parliamentary committee, a commission, a parliamentary group or a minister.

3. Anti-corruption assessment of draft or enacted laws may be assigned to (other) state authorities and (or) academic institutions.

4. Anti-corruption assessments of the enacted legal acts shall be carried out taking into account the practice of their application, and shall be submitted to the state or municipal institution, which adopted them or on whose initiative they were adopted. This institution shall determine whether it would be expedient to amend the legal act in question."

The 18 sub-paragraphs in paragraph 1 and paragraph 3 were an amendment to Article 8 in 2008.

The Special Investigation Service (STT), a repressive and preventive anti-corruption body,[76] started implementation of corruption proofing as early as 2002.[77] As for the methodology, it was originally contained in the general Regulatory Impact Assessment **Guidelines** of 2003,[78] where corruption risks

75 Of 28 May 2002, Article 8, paragraph 1, as amended in 2008; as amended by Law No. 2-117 of 2013 <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=212525> (Lithuanian, translation by author); the version as of 2002 is in English <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=212525>.

76 <http://www.stt.lt/en/>.

77 Annual report 2002, page 4 (Anti-corruption Assessment of Legislation as Part of Preventive Activities of the STT) <http://www.stt.lt/documents/STT%20veiklos%20ataskaita_2002.pdf> (Lithuanian).

78 Government Decree No. 276 of 26 February 2003, Official Gazette 5 March 2003, No. 23-975 <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=205970 > (Lithuanian); overview on amendments <http://www3.lrs.lt/pls/inter3/dokpaieska.susije_l?p_id=205970&p_rys_id=15> (Lithuanian).

were one out of ten possible impact areas. No. 9.6 "Effects of the corruption scale" (assessing the potential impact of the extent of corruption) consisted mainly of 24 questions including:

- Will the draft law hamper implementation of the Law on the Prevention of Corruption and Other Anti-corruption Measures?
- Will the draft law run counter to the current national anti-corruption programme?
- Will the draft law provide for legal recourse?
- Will the draft law provide for rotation of the public officials that decide on periodic inspections?

The STT adopted the "**Procedure** for Anti-Corruption Assessment of Draft or Enacted Legislation" in 2007, which it updated in 2013[79] and 2014;[80] the updates replaced the earlier versions.

The 2014 methodology contains an 8-page set of **definitions** (such as legislation, draft legislation, anti-corruption assessment of drafted or enacted laws, and promoter of legislation). It is interesting to note that the definition of **corruption proofing** is rather broad, going beyond corruption to include principles such as "fairness" and "honesty".

> "A review of drafted or enacted laws in order to identify existing or anticipated regulatory gaps that may lead to corruption as well as to act dishonestly, unfairly, secretly or subjectively" (No. 4.3).

It further regulates the details on how laws are selected and to whom tasks are assigned.

Furthermore, the procedure details the working steps (No. 13):

- taking into account the existing legal regulations and relations with the public in the field;
- predicting the impact that the legislation will have on relations with the public in regard to the prevention of corruption;
- assessing the current law, taking into account the legislation and the practice of the difficulties identified in cases of corruption and of the specific provisions of the instrument allowing for corruption;
- taking into account the legal framework and regulatory provisions;
- assessing whether the legislation or the provisions of the draft is consistent with the relevant legislation and/or their concrete expression;
- assessing whether the new legal regulations create additional opportunities for corruption as well as for behaving dishonestly, unfairly, secretively or subjectively and the need for the legislation or draft implementation of the legislation;
- taking into account whether an act or draft determines the entities

[79] Of 4 April 2013, Official Gazette 10 April 2013, No. 37-1827 <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=445931> (Lithuanian).

[80] Of 18 March 2014, Regulation No. 2014-03174 <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=467443> (Lithuanian).

whose activities are governed by the rights and duties defined by their competence;

- as far as possible, analysing the details of the act and of the cause for its drafting;
- collecting information (officially) available necessary for the assessment of an act from other STT units;
- assessing whether an act or draft determines the controlling of the entity and defines the forms of control [...];
- assessing whether there are rational and effective control procedures;
- assessing whether an act shall foresee sanctions, possibly in conjunction with other legislation.

The maximum **period** for an anti-corruption assessment is 15 days and the minimum is not less than 3 days.

The official assessment **report** by the STT shall include the following:

- evaluator's position, name and surname;
- title and number of the law;
- beginning and end of the assessment;
- comments by the STT;
- recommendations by the STT;
- other factors and circumstances as well as possible legal alternatives to regulation, such as observations, suggestions or proposed action, that the evaluator considers relevant.

In the event that there is a substantial change in the draft law, the STT (at its own initiative or at the initiative of the entities listed in Article 8 para. 2) can initiate a **re-evaluation** of the draft law.

The Procedure contains an annex with **key questions** that the evaluator needs to ask him/herself. Those listed below are among the 15 questions contained in the Annex.

- Do the objectives align with the provisions of the law?
- Does the regulatory scope of the law sufficiently cover the relevant area?
- Are there any obvious gaps that will allow for ambiguous interpretation?
- Are there adequate enforcement mechanisms, rights and obligations defined for the implementing entities?
- Are sanctions foreseen for cases of violation?
- Are there any mechanisms of control over the stakeholders?
- What considerations influenced the preparation of the law?
- Does the law provide only one entity with the power to grant benefits?
- Does the law provide for a transparent decision-making process?

The list of questions is non-exhaustive and open to further additions. The annex provides ten examples of what these further questions could be. Those listed below are included.

- Does the law expand the power of supervision?
- Does the law increase or restrict access to markets?
- Does the law foresee less decision-making processes?
- Does the law increase the risk of public officials coming into a conflict of interest?
- Does the law foresee the possibility of and grounds for appeal?
- Does the law abolish or reduce professional requirements for public officials?
- Are the functions and the distribution of tasks among staff defined?

From 2010 to 2014, the Anti-Corruption Assessment Division of the **Special Investigation Service** conducted anti-corruption assessments of (draft) legislation in a range of areas. These included energy, health and pharmacies, environmental protection, law enforcement, spatial planning and state oversight of construction, transport, public procurement, tax administration, political and economic activities, social security, education and science, land management, state governance and public administration. Each year, the Special Investigation Service drafts about **200 assessments**. The Anti-Corruption Assessment Division has five staff for this task.

So far, the STT has not made use of Article 8 para. 3 of the Law on "Prevention of Corruption", according to which "anti-corruption assessment of draft or enacted laws may be **assigned** to (other) state authorities and (or) academic institutions".[81] However, the STT has engaged members of civil society as well as members of parliament with special expertise in certain anti-corruption assessments.[82]

Corruption proofing does not rest on the shoulders of the STT alone. According to a government decree of 2014,[83] all law drafting entities of the government have the duty to take the corruption proofing methodology into account when

drafting laws in the areas defined by Law No. IX-904 on the "Prevention of Corruption".

The recommendations of the assessments are available **online** on the webpage of the Special Investigation Service.[84] Probably and far more importantly, the recommendations are available on the general official website for Lithuanian legislation; this is where all of the assessments are **linked directly** to the draft

81 Information provided to the author by the STT in July 2014.
82 Information provided to the author by the STT in July 2014.
83 Decree No. 243 of 12 March 2014 "On Anti-corruption Assessment of Draft Legislation" <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=467603&p_tr2=2> (Lithuanian).
84 <http://www.stt.lt/lt/menu/korupcijos-prevencija/teises-aktu-antikorupcinis-vertinimas/> (Lithuanian).

or enacted laws.[85] The size of the published reports varies mostly between one and three pages. According to Article 8 para. 2 of the Law on the Prevention of Corruption, the assessment is **not binding** upon the drafting entity. Article 8 para. 4 of the Law on the Prevention of Corruption implies that the entity in charge of making the law has a duty to **consider** the assessment report: "This agency shall determine whether it would be expedient to amend the legal act in question."

The legislative promoter has to provide feedback to the STT on the level of **compliance** with the recommendations within three months (No. 21 of the methodology). The methodology does not explicitly foresee the STT verifying this compliance feedback; however, the STT regularly reviews how the recommendations, compliance feedback and the final laws align. The compliance rate is extraordinarily high: according to the STT, the law making institutions considered about 90 per cent of its recommendations when adopting or revising laws.[86] This led to changes to the law in question in most cases, while in some cases the law making institution reflected on the changes but rejected them after providing a specific reason.

It is interesting to note that the recommendations can have impact even at the final stage of the legislative process. Take, for example, three cases in 2014 where the President of Lithuania accepted the recommendations of the STT as a reason not sign an adopted law into effect; he then sent it back to Parliament for further consideration.[87]

The STT provides regular **training** on corruption proofing: it trained 180 public officials in the methodology in 2014.

It is interesting to note that Moldova drew from the Lithuanian example (and some theoretical texts from Russia) when developing its methodology in 2006.

2.1.9 Russia

In 2007, the Duma's Anti-Corruption Commission, the Ministry of Economic Development and the Ministry of Justice of Russia adopted the "**Guidelines** for Initial Assessment of Laws for Corruption Risks".[88] The 87-page Guidelines are a co-product of two state institutions: the Centre for Strategic Development and the Institute for the Modernisation of Public Administration. From 2005 to 2006, the Centre for Strategic Development, the Institute for the Modernisation

85 <http://www.lrs.lt/pls/proj/dokpaieska.rezult_l?p_nr=&p_nuo=&p_iki=&p_org=2494&p_drus=356&p_kalb_id=1&p_title=&p_text=&p_pub=&p_met=&p_lnr=&p_denr=&p_es=&p_rus=1&p_tid=&p_tkid=&p_t=0&p_tr1=2&p_tr2=2&p_gal=&p_fix=n&p_gov=n> (Lithuanian).

86 Information provided to the author by the STT in July 2014.

87 Public Procurement Law No. I-1491 - presidential veto of 12 July 2014 <http://www3.lrs.lt/pls/inter3/dokpaieska.susije_l?p_id=477771> (Lithuanian); Presidential Decree No. 1K-1695, returned to Parliament for further consideration. <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463999&p_tr2=2> (Lithuanian); Presidential Decree No. 1K-1691 - presidential veto of 8 January 2014 <http://www3.lrs.lt/pls/inter3/dokpaieska.susije_l?p_id=463990> (Lithuanian).

88 <www.cipe.org/regional/eurasia/pdf/CSRmethodolgy.pdf>

of Public Administration and the Duma's Anti-Corruption Commission analysed eight (enacted) federal laws. The analysis revealed several corruption risks and provided recommendations, which reportedly led to significant changes to the legislation.

As a lesson learned, the Anti-Corruption Commission of the Duma decided not only to review the laws in force but also to facilitate the elimination of corruption risks already at the drafting stage of laws through the authors of the drafts. The 2007 Guidelines are a result of this process. Following a Decision of the Duma Council, a seminar and trainings conducted for members of the Duma, their staff and experts from the parliamentary administration explained how to use the guidelines when conducting an initial anti-corruption assessment of laws.

In 2008, the Federal Law "On Counteracting Corruption" of 19 December 2008 recognised "anti-corruption expertise of legal acts and their drafts" as one "major step" in the "prevention of corruption" (Article 6 para. 2). In 2009, Federal **Law** No. 172-FZ "On **Anti-Corruption Expertise** of Legislation and Draft Legislation" of 17 July 2009 regulated the details of corruption proofing.[89] An additional governmental Decree, "On Anti-corruption Expertise of Legal Acts and Draft Laws and Regulations" of 2010, revised in 2012 and 2013, complemented and partly contradicted Law No. 172-FZ.[90]

According to Article 1 para. 2 of the Law, corruption prone are:

"the provisions of the regulatory legal acts (drafts of the regulatory legal acts) establishing for a law enforcement official unreasonably wide limits of discretion or opportunity of unreasonable application of exceptions from general rules and also the provisions containing uncertain, exigent and (or) onerous requirements to citizens and organizations and thereby creating conditions which are conducive to corruption."

Corruption assessments are **obligatory** for any draft legal act. It is also obligatory once an **enacted law** shows signs of corruption risks.[91] The below entities are in charge of carrying out assessments according to the Law:

- Office of the Prosecutor of the Russian Federation;
- federal state executive bodies within the sphere of justice;
- federal state executive bodies, other state authorities and organisations, state bodies of the constituent entities of the Russian Federation and local self-government bodies pursuant to the methods determined by the Government of the Russian Federation.

89 <http://cis-legislation.com/document.fwx?rgn=28529>

90 Governmental Decree No. 96 of 26 February 2010, as revised by Decree No. 1334 of 18 December 2012 and Decree No. 274 of 27 March 2013 <http://regulation.gov.ru/articles/razdel_1/postanovleniem_pravitelstva_rossiyskoy_federatsii_ot_26_fevralya_2010_g__96_ob_antikorruptsionnoy_ekspertize_normativnih_pravovih_aktov_i_proektov_normativnih_pravovih_aktov.html> (Russian).

91 Tatishvili Tengiz, "Anti-Corruption Examination in the System of Measures Designed to Counteract and Prevent Corruption, Law and Modern States", 2013, No. 3, page 47 <http://cyberleninka.ru/article/n/anti-corruption-examination-in-the-system-of-measures-designed-to-counteract-and-prevent-corruption>

Article 3 Para. 2-4 of the Law divide **responsibilities** for corruption assessments of enacted and draft laws between different state bodies. If any corruption prone factors are found in regulatory legal acts (drafts of the regulatory legal acts) and the entity does not possess the competency itself to change the regulation then it shall inform the prosecution agencies (in Russia, the General Prosecutor is the central anti-corruption body[92] supervising, inter alia, an interdepartmental anti-corruption working group). In contrast, the **Decree** tasks the **Ministry of Justice** with corruption proofing for federal laws of all kinds.

According to Article 4 of the Law, the prosecutor prepares an expert opinion on the corruption risk with proposals to improve the legislation. The demand of the prosecutor to amend the regulatory legal act is:

> "Subject to **obligatory consideration** by the corresponding body, organisation or official not later than **within ten days** since receipt of the demand and shall be **recorded** according to the established procedure by the body, organization or official, which issued this act, in accordance with their competence. The demand of the prosecutor to amend the regulatory legal act delivered to the legislative (representative) state body of a constituent entity of the Russian Federation or to the representative local self-government body shall be subject to obligatory consideration at the next meeting of the corresponding body and shall be recorded according to the established procedure by the body, which issued this act, in accordance with its competence."

Academics have pointed out the limited expertise of prosecutors to review a wide range of legal issues.[93] According to **Decree** No. 96, the Ministry of Justice is in charge of the expert opinions; apparently, in practice, the Decree overrides the Law in this question with the Ministry of Justice carrying out the corruption proofing.

For low-level legal acts, such as decrees of the municipalities, the expert opinion is **binding** and the legal act will "not be subject to state registration" if it is **non-compliant** with the opinion (Article 4 para. 4.1 of the Law). Otherwise, opinions are "**advisory**" but "shall be subject to obligatory consideration by the corresponding body". The general procedure of the Government applies in the event of a **dispute** between two state entities concerning a corruption assessment (Article 4 para. 6 of the Law; No. 3 of the Decree). There are no **timelines** for drafting the assessment report.

According to Article 4 of the Law, "**civil society organisations** and citizens can carry out an independent anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts) at their own expense in accordance with the procedure specified by the regulatory legal acts of the Russian Federation."

92 <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/russia/initiatives/public-anti-corruption-initiatives.aspx>

93 А. В. Кудашкин, Проблемы организации и проведения органами прокуратуры антикоррупционной экспертизы, Журнал российского права, 2011, N 2 [A.V. Kudashkin, "Some Problems of Implementation of New Powers to Prosecutors during their Anti-corruption Expertise of Legal Acts", Russian Law Journal 2011] <http://nagg.ru/wp-content/uploads/2011/10/Kudashkin-A.V.-Problemyi-organizatsii-i-provedeniya-organami-prokuraturyi-antikorruptsionnoy-e%60kspertizyi.doc> (Russian).

It is worth noting that the Law states a freedom that goes without saying in most other European democracies. Furthermore, it is interesting that the Law foresees a "procedure for and conditions of **accreditation** of experts in the independent anti-corruption expert appraisal of regulatory legal acts (drafts of the regulatory legal acts)" to "be established by the federal state executive body in the sphere of justice."

Restricting the access of citizens to assess draft laws is obviously problematic in a democratic society. A comparable provision only exists in Kyrgyzstan (see Section 2.1.6 above). Allegedly over 700 independent experts had already been accredited by 2010, both individuals and legal entities.[94]

Even though the opinion by civil society groups is only "**advisory**'" it:

"shall be subject to **obligatory consideration** by the body, organization or official, to which it was sent, within **thirty days** since receipt thereof. According to results of consideration a reasoned response shall be delivered to the citizen or organization, who or which carried out the independent expert appraisal, except for the cases when the opinion does not suggest any methods for elimination of corruption risk factors."

A similar provision on civil society experts and their accreditation is found in the **Decree** (No. 4-7).

The Law does not contain any detail on **regulatory corruption risks**. To this end, the Decree contains the following list of corruption factors:

- excessive discretionary rights;
- definition of the powers of public officials by the formula "the right";
- option to establish unjustified exceptions to the general rule;
- excessive freedom for setting bylaws;
- adoption of regulations outside of the jurisdiction;
- legal gaps;
- lack of or incomplete administrative procedures;
- lack of procurement procedures;
- excessive administrative burdens;
- lack of clear regulation of the rights of citizens;
- linguistic ambiguity.

The list is verbatim more or less and copied from the **CIS Model Law** (see 2.1.14 below), with one exception: ambiguity from conflicting provisions. It is not clear whether this omission is due to an editorial error or a conscious choice;

94 Garry Minkh and Sergei Kabyshev, "Anti-Corruption Review of Legal Acts and Regulations in the Russian Federation", LEGES 2010/3, page 415 <www.bk.admin.ch/themen/lang/00938/02124/05358/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCGd4R6e2ym162epYbg2c_ JjKbNoKSn6A--&ei>.

in any event, it is obvious that conflicting provisions are a major challenge within Russian legislation.

In practice, the assessment of corruption risks in legal acts goes down to the **regional** and **municipal** level. For example, in order to bring regional and municipal regulations into line with federal Law No. 172-FZ the following took place:

- the regional Parliament of Krasnodar Krai passed a Law on 23 July 2009, No. 1798-KZ "On Fighting Corruption in Krasnodar Krai";
- the Governor of Krasnodar Krai decreed the resolution of 7 May 2009, No. 350, "On Anti-corruption Expert Evaluation of the Laws and Regulations passed by the Executive Branch of the Government in Krasnodar Krai and the Drafts of Laws and Regulations passed by the Executive Branch of the Government in Krasnodar Krai";
- the Mayor of Sochi (a city in Krasnodar Krai) passed an Order on 27 May 2009, No. 182, "On Approving the Procedures for Conducting Anti-corruption Expert Assessment of the Laws and Regulations Passed by the Sochi Municipal Administration and their Drafts".

However, Transparency International Russia **criticised** the **selection** of laws subject to corruption proofing as arbitrary. For example, in two spheres, arguably the most vulnerable to corruption, namely the federal Law "On the Police" and the federal Law "On Amendments to the Federal Law on Placing Orders for Goods, Carrying out Work and Rendering Services for State and Municipal Requirements" (Procurement Law), no corruption proofing took place.

Transparency International Russia levelled further criticism that the findings of corruption assessments are **not public** information. For example, the Ministry of Justice refused to provide Transparency International Russia with a copy of the findings from the anti-corruption assessment of the draft amendments to the procurement law. On 23 May 2011, Transparency International reportedly received a written response in which the Ministry refused to provide the NGO with the requested information. The Ministry argued that when it comes to legislation the Ministry of Justice does not have the right to send copies of its findings to organisations other than those state bodies responsible for developing the draft.[95]

There is a large set of literature available in Russian language, including commentaries on the Law. It stems mainly from the years 2007-2010.[96]

95 Transparency International press release: "The Ministry of Justice is holding a Secret Investigation", Thursday, 23 June 2011 <http://transparency.org.ru/en/news/the-ministry-if-justice-is-holding-a-secret-investigation>.

96 See the Bibliography of А. В. Кудашкин, Комментарий к Федеральному закону "Об антикоррупционной экспертизе нормативных правовых актов и проектов нормативных правовых актов" [A. V. Kudashkin, "Commentary on the Federal Law on Anti-corruption Expertise of Legal Acts and Draft Laws and Regulations"]. Wolters Kluwers, 2009, 208 pages (page 192).

2.1.10 Tajikistan

There was no systematic corruption proofing in Tajikistan until 2012. A Presidential Decree of 29 April 2008 assigned the function of corruption proofing to the Agency for State Financial Control and the Fight Against Corruption as does Article 19 of the Law "On the Agency for State Financial Control and the Fight Against Corruption" of 2008.[97] However, there was no methodology and various state bodies performed corruption proofing in a rather random manner.[98]

In 2012, **Law** No. 925 "On Anti-corruption Expertise of Legal Acts and Draft Legal Acts" came into force.[99] It covers all legislative acts, including those by the President (Articles 2 and 7). Corruption proofing is the task of state bodies as well as of civil society stakeholders. In both cases, recommendations are subject to mandatory consideration (Article 3). There are three different state bodies responsible for corruption proofing:

- the Authority for State Financial Control and the Fight Against Corruption (for all existing legal acts and their drafts);
- the Ministry of Justice (for enacted legal acts of ministries, state committees, other state agencies and local government);
- all law making bodies (for their draft normative legal acts).

The OECD criticised this multitude of bodies in a 2014 report.[100] It also points out that the data so far provides an unclear picture as to whether corruption proofing is actually being implemented to any significant degree.[101]

Article 5 para. 1 defines the following basic **regulatory corruption risks**:

- contradictions to the Constitution and other normative legal acts, international treaties, and government programmes in the field of anti-corruption;
- conditions for conflict of interest;
- preconditions for breaches of professional ethics;
- performance in a non-transparent manner;
- unreasonable power/regulatory powers and discretion for law enforcement bodies;
- possibility of unjustified use of exceptions to the general established rules;
- excessive barriers for citizens (burdensome procedures and limitations without justification).

97 Law No. 374 of 20 March 2008, as revised in 2013 <http://www.adlia.tj/base/show_doc.fwx?rgn=119756> (Russian).
98 OECD/ACN second round of monitoring, Tajikistan, Monitoring report 8 December 2010, page 44.<http://www.oecd.org/corruption/acn/istanbulactionplan/46822139.pdf>.
99 Of 28 December 2012 <www.mmk.tj/ru/library/antikorrupsioni.doc> (Russian).
100 OECD/ACN third round of monitoring, Tajikistan, Monitoring report 18 April 2014, page 85 f <http://www.oecd.org/corruption/acn/TAJIKISTAN-MonitoringReport-RUS.pdf> (Russian).
101 Ibid.

Article 10 gives **priority** to the application of corruption proofing in certain legal areas. This includes constitutional rights, relations between citizens and state bodies, law enforcement, land use, taxation, customs, antitrust, bankruptcy, foreign trade activities and foreign exchange control. It also covers the management of state property, public services, social and labour relations, forestry, water resources, environment, permits and the licensing system, security, regulation of enterprises, institutions and other organisations, the state budget, state funds, implementation of the national anti-corruption programmes (strategies), measures to strengthen anti-corruption, and draft policies. The OECD has pointed to the contradiction between Article 10 and Article 4, which makes corruption proofing mandatory for any draft law.[102] According to Article 11, state bodies are obliged to provide **assistance** to the corruption proofing entity.

Article 13 sets some requirements for **civil society** stakeholders to submit a corruption proofing report: natural persons require a law degree and need to have worked for at least five years in a relevant field. NGOs must comprise of at least three natural persons with the above-mentioned qualifications. In the event that a state body does not agree with the conclusions of civil society assessments, citizens can complain to the Agency for State Financial Control and the Fight Against Corruption.

It is interesting to note that Article 16 "Responsibility for Violation of this Act" states the following:

> "Individuals and legal entities shall be prosecuted in accordance with the laws of the Republic of Tajikistan for violation of this Act."

It is not clear how anybody could commit a criminal offence related to corruption proofing. Ironically, it seems that this provision is an example of a regulatory corruption risk itself as it leaves the reader wondering whether and under which conditions the **sanctions** actually apply. For example, the provision does not seem to be in line with the methodology (see No. 3.1.8) of the Moldovan National Anti-corruption Centre nor with No. 23.3 of the methodology of the Moldovan NGO CPA (see 2.2.8 below). According to the latter, sanctions should be formulated in a clear way; the negative example used by CPA in the methodology is formulated in a more concrete way than Article 16 referred to above.

Recommendations are subject to **consideration** and if a recommendation is not followed then this needs to be justified. There is no mechanism for measuring **compliance** with draft recommendations.

2.1.11 Ukraine

Ukraine introduced corruption proofing in 2009 through Article 13 of its Law "On the Principles of Prevention and Counteraction to Corruption";[103] in 2011,

102 Ibid.
103 Law No. 1506-VI of 11 June 2009 <http://zakon4.rada.gov.ua/laws/show/1506-17> (Ukrainian).

a revised version of the Law addressed corruption proofing under Article 15.[104] Article 15 underwent several revisions in 2013 and the beginning of 2014; this followed an expert opinion given by the Council of Europe published at the end of 2012.[105]

Article 15 Para. 1 defines **corruption expertise of legal acts** as:

> "detecting in draft and effective normative legal acts such provisions which may facilitate the commitment of corruptive offences, and drawing up recommendations on the removal thereof".

This entire Law was repealed on 22 August 2014.[106] However, as the new Law had not been promulgated by the time of finalising this Study, analysis is based on the **previous version** of the Law (the future Law will regulate corruption proofing under Article 56).[107]

The **Ministry of Justice** and the **Parliament** are – in theory – the main bodies in charge of assessments. However, according to Article 15 para. 7, **civil society stakeholders** can also publish their anti-corruption expertise of existing legal acts or draft legal documents.

The Ministry of Justice has to define the procedure and methodology of its anti-corruption expertise as well as the procedure for publishing the results. The assessment is **compulsory** for anti-corruption **draft** laws, acts of the President and other normative legal acts developed by the Cabinet of Ministers, ministries and other central bodies of executive power. Furthermore, it is **mandatory** that the results of anti-corruption expertise of a legal act be taken under **consideration** when deciding on the adoption of the normative act.

The revision of **draft** and **enacted** laws is subject to an **annual plan** approved by the Ministry of Justice of Ukraine in the following areas:

- rights and freedoms of man and citizen;
- powers of the state and local government, persons authorised to perform the functions of the state or local government level;
- provision of administrative services;
- allocation and expenditure of the state budget and local budgets;
- competitive (tender) procedures.

104 Of 7 April 2011, No. 3206-VI, as amended by Law No. 224-VII of 14 May 2013 and Law No. 1261-VII of 13 May 2014 <http://crimecor.rada.gov.ua/komzloch/control/uk/publish/printable_article;jsessionid=283854580C8521CA94F7237CADA01D08?art_id=47714> (the previous version is in English). <http://zakon2.rada.gov.ua/laws/show/3206-17> (current version, Ukrainian).

105 Council of Europe, Technical Paper: Opinion on the Draft Law on Amendments to the Law of Ukraine "On the Principles of Prevention and Counteraction to Corruption", drafted by Tilman Hoppe, 12 December 2012 <www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/ukraine/2012/ECCU-BO-UA-1.2012-Amendments%20to%20Ukrainian%20AC%20law.pdf>.

106 Web portal of the Government of Ukraine press release of 22 August 2014 <http://www.kmu.gov.ua/control/uk/publish/printable_article?art_id=247544887> (Ukrainian).

107 Web portal of the Government of Ukraine press release of 22 August 2014 <http://www.kmu.gov.ua/control/uk/publish/article;jsessionid=2BF0466FB7EC1B8263FCD841CED45401.vapp63?art_id=247544887&cat_id=244276429> (Ukrainian).

Whenever an anti-corruption expertise identifies risk factors that may facilitate the committing of corruption offenses the expertise is subject to **mandatory disclosure**. Otherwise, the results of anti-corruption expertise of existing legal acts of the ministries and other central executive bodies shall be subject to **consideration prior to publication**.

The **Ministry of Justice** developed a **methodology** for corruption proofing in 2010,[108] which it amended in August 2013.[109] Implementation of corruption proofing started on a small scale in 2009, but only gained significant momentum in 2013 after civil society pushed for reforms. The annual report by the Ministry provides an overview and statistics on the laws reviewed. The Ministry of Justice reviewed 19 draft legal acts and provided recommendations on minimising corruption risks in 2013.[110] In addition, the Centre for Training and Qualification in the Field of Justice held three seminars on the procedure and methodology for anti-corruption expertise for representatives of the central executive bodies and the justice sector.

The methodology contains a general part with some definition of terms, such as "corruption risks" and "discretionary powers". It also provides some guidance on how to minimise a corruption risk. According to the methodology, one can distinguish the following four regulatory corruption risks:

1) unclear definition of the functions, rights, duties and responsibilities of state and local government and persons authorised to perform state or local government functions;
2) creating undue burdens for the recipients of administrative services;
3) gaps or ambiguities in administrative procedures;
4) gaps in or the absence of competitive (tender) procedures.

The methodology explains in detail the risk factors as well as how to address them for each of the four categories, in some cases providing brief examples. It is a comprehensive document of about 25 pages. There are no **timelines** for drafting the assessment report.

In addition to the Ministry's efforts, **civil society** has stepped up with its own methodology. The Civic Expert Council, established in March 2013, has 28 members and was called to help the Parliamentary Committee on Combating Corruption and Organised Crime implement its function: launching anti-corruption regulatory initiatives, commissioning research and preparing hearings, roundtables and other activities aimed at discussing anti-corruption policies. The Council comprises representatives of civil society organisations and groups that actively partake in corruption prevention initiatives alongside independent civic experts. Since 2013, the Civic Expert Council has conducted several assessments of draft laws that were subsequently tabled to the Parliament for adoption.[111]

108 Ministry of Justice Decree of 23 June 2010, No. 1380/5, "On Approval of the Methodology for Anti-corruption Expertise", as amended in August 2013 <http://zakon4.rada.gov.ua/laws/show/v1380323-10> (Ukrainian).
109 Ministry of Justice Decree of 5 August 2013, No. 1325/23857, "On Certain Issues of Anti-corruption Expertise" <http://zakon4.rada.gov.ua/laws/show/z1325-13> (Ukrainian).
110 Annual Report 2013, page 56 <http://www.minjust.gov.ua/file/36531> (Ukrainian).
111 <http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/02/06/civil-society-against-corruption-results-of-civic-expert-assesssment-of-draft-laws-.html>.

Transparency International Ukraine and other **civil society** organisations drafted and published a "Civic Anti-corruption Expert Assessment **Methodology**: Short Guide" in 2013.[112] The 49-page methodology instructs civil society experts on how to assess corruption risks in draft laws. "How to carry out a Civic Anti-corruption Expert Assessment? Recommendations"[113], a similar publication of the same year, complements the methodology with practical **step-by-step instructions**. The main components of the recommendations are described below.

- A typology of corruption risk factors (with these factors defined as "an individual provision or several provisions of a regulatory act, which, when implemented, will or may give rise to corruption").
- Instructions on how to draft an opinion using the following four steps:
  - formal analysis of the draft law;
  - substance analysis of the draft law;
  - conclusions on the implications of the risk factors;
  - recommendations on how to minimise the risks.
- Submission of the report to the state bodies.
- How to deal with stonewalling by state bodies.

Substance analysis of a draft law goes so far as to include **interviews** with "sector experts who work on issues to be regulated by the act" because "they can point out potential corruption risks of RA [regulatory act] application that do not arise directly from its content, but can result from distortion of relations in the area regulated by the act."[114]

2.1.12 Uzbekistan

Presidential Decree No. PP-1602 of 23 August 2011 "On Measures to further Improve the Activities of the Ministry of Justice of the Republic of Uzbekistan" mandates the Ministry of Justice with the mandatory corruption proofing of laws. By passing Order No. 106, on 20 October 2011,[115] the Ministry of Justice adopted the methodology of corruption proofing for all draft laws issued by the Cabinet of Ministers, the Parliament and the President as well as local government. It includes a set of corruption-factors, such as excessive discretion, ambiguous norm, and the absence of implementation mechanisms.[116] The methodology is contained in a separate document, but is not available online.

112 <www.gm.undp.org/content/dam/ukraine/docs/DG/Methodology%20Civic%20Anticorruptio%20Expert%20Assessment.pdf>.
113 <www.undp.org/content/dam/ukraine/docs/DG/Guidelines%20Civic%20Anticorruption%20Expert%20Assessent.pdf>.
114 Page 11.
115 <http://www.minjustuz.ru/ru/section.scm_sectionId=3504&contentId=39342.html> (Russian).
116 OECD/ACN joint first and second round of monitoring, Uzbekistan, Monitoring report 24 February 2012, page 42 <http://www.oecd.org/corruption/acn/49882461.pdf>.

2.1.13 Countries Introducing Corruption Proofing

In **Poland**, corruption proofing is part of the "Government Programme for Fighting Corruption 2014-2019".[117] Poland has been considering the introduction of this tool at least since 2008.[118]

In **Mongolia**, Article 18.14.1. of the Anti-Corruption Law provides that if it is determined that conditions conducive to corruption have emerged or that conflict of interest exists the Anti-Corruption Agency should demand revision and/or invalidation of orders, decisions, procedures and rules enacted by state bodies or officials. To date, the Mongolian authorities interpret this provision rather as aimed at general risk assessment than at corruption proofing of legislation. However, in April 2014 the OECD recommended, to "introduce anti-corruption screening of draft laws and other normative legal acts with publication of relevant findings."[119] Following this recommendation, in June 2014, Mongolian authorities invited representatives from the Anti-Corruption and Civil Rights Commission of Korea to share their experience in corruption proofing.[120]

The Anticorruption Agency in **Serbia** started development of a draft "Methodology for Legal Corruption Risk Assessment of Draft Laws and Bylaws" in 2012 with the assistance of a European Union project. The draft remains a work in progress and has therefore yet to be made public.

Turkmenistan adopted an anti-corruption law in March 2014, which introduces "anti-corruption expertise of legal acts of Turkmenistan and their drafts" as one of the "measures to prevent corruption" (Article 20).[121] One district adopted its own corruption proofing mechanism before the national law came into force. It is interesting to note that for lack of a national methodology, the District references the Russian Law and Decree on anti-corruption expertise in their entirety and has made it applicable in the Turkmen District.[122]

2.1.14 Commonwealth of Independent States (CIS)

The Inter-Parliamentary Assembly of the Commonwealth of Independent States recognised corruption proofing as early as 2008. On 25 November 2008, it

117 Monitor Polski Poz. 299, 28 April 2014, page 35 "Opinions on Regulatory Acts for Possible Corruption Risks". <http://isap.sejm.gov.pl/Download;jsessionid=2B95CED24E04D17A1F53400C858E8259?id=WMP20140000299&type=2> (Polish, translation by the author).

118 "In Poland, CBA is considering the introduction of a complex analysis of the existing and draft legislation", European Partners against Corruption Report "Common Standards and Best Practice for Anti-Corruption Agencies" 2008, page 16 <http://www.knab.gov.lv/uploads/eng/epac_common_standarts.pdf>.

119 OECD/CAN, "Anti-Corruption Reforms in Mongolia, Assessment and Recommendations" Report, April 2014, page 44 <http://www.oecd.org/corruption/acn/MONGOLIA-MonitoringReport-EN.pdf>.

120 Information provided by the Commission to the author in August 2014.

121 Law of 1 March 2014 "On Combating Corruption" <http://turkmenistan.gov.tm/?id=6030> (Russian).

122 Decree No. 197 of the Municipal Administration of Stavropol of 18 April 2013 "On Approval of the Anti-corruption Expertise of Legal Acts and their Drafts of the Turkmen Administration of the Municipal District of the Stavropol Territory" <http://turkmenskiy.ru/corrupted/korrdoc/1808/> (Russian).

adopted the Model Law "On Combating Corruption" and recommended its use to the national legislators.[123] In Article 3, the Model Law counts "anti-corruption expertise" among the "basic concepts" of fighting corruption and defines it as follows:

> "The activity of specialists (experts) of identification and description of corruption-factors contained in legal acts and their drafts; developing recommendations aimed at eliminating or limiting the effects of such factors. The basis and the process for anti-corruption expertise of legal acts shall be established by legislation of the State."

Article 13 assigns the task of corruption proofing to anti-corruption bodies:

> "The competence of the national anti-corruption bodies may include […] anti-corruption expertise of draft laws and other regulations."

In 2012, the Inter-Parliamentary Assembly adopted the **Model Law** "On Anti-corruption Expertise of Legal Acts and Draft Normative Legal Acts".[124] The Model Law **defines** corruption proofing and laws (Article 2).

It distinguishes two categories of **regulatory corruption risks**: excessive powers on the one hand, and vague or burdensome obligations for citizens on the other (Article 5).

The nine excessive powers are:

- excessive discretionary rights;
- definition of powers of public officials by the formula "the right";
- the option to establish unjustified exceptions to the general rule;
- excessive freedom of setting bylaws;
- adoption of regulations outside of the jurisdiction;
- conflicting provisions;
- legal gaps;
- lack of or incomplete administrative procedures;
- lack of procurement procedures.

The three risk factors of vague or burdensome regulations are:

- excessive administrative burdens;
- lack of clear regulation of the rights of citizens;
- linguistic ambiguity.

It seems obvious that this list of the Model Law has influenced national legislation in the CIS Member States, if one looks at the respective national lists of regulatory corruption risks (see for example Russia 2.1.9 above).

123 Resolution No. 31-20 <http://prokuratura.gov.by/sm.aspx?guid=10813> (Russian).
124 Resolution No. 37-12 of 17 May 2012 <http://old.iacis.ru/data/prdoc/12-a_2012.doc> (Russian).

In Article 6 the **priority** for corruption proofing is set out for the below laws.

1) Laws regulating relations between citizens and state bodies.
2) Business laws:
   - antitrust laws;
   - taxes;
   - bankruptcy;
   - foreign economics;
   - customs;
   - foreign exchange controls;
   - housing and communal services, building and road construction;
   - licensing.
3) Budget and procurement.
4) Provision of free public services.

Article 9 counts the following **subjects** as entitled to perform corruption proofing:

- office of the prosecutor;
- Parliament;
- executive bodies exercising functions in the field of justice;
- other state agencies, local government and their officials;
- anti-corruption bodies;
- legal and natural persons accredited to conduct an independent anti-corruption expertise.

It is interesting to note that the Model Law takes this rather restrictive approach towards the participation of **civil society** in corruption proofing. Articles 12 to 15 regulate the process of accreditation and civil society expertise. Article 15 calls for draft laws to be published online with a timeframe to allow for corruption proofing.

Recommendations are subject to **mandatory review** (Article 17), while anti-corruption assessments must be attached to draft laws during the legislative process. If a recommendation is not accepted then this needs to be justified and the justification attached to the draft law. However, there is no mechanism for measuring compliance with draft recommendations.

Ironically, Article 19 "Responsibility for Violation of Legislation on Anti-corruption Expertise of Legal Acts and Draft Normative Legal Acts" is in itself an **example** of a regulatory corruption risk:

> "Violation of legislation on anti-corruption expertise of legal acts and draft normative legal acts shall entail disciplinary, administrative and other liability under the laws of the state.
>
> The harm caused to the legitimate interests of citizens, society and state officials who carried out anti-corruption expertise of normative legal acts and draft laws and regulations, as well as to persons who have adopted the normative legal act, shall be compensated in accordance with the legislation of the state."

As stated earlier (see Tajikistan 2.1.10 above), it is not clear how anybody could commit a criminal offence related to corruption proofing or cause harm to any stakeholder. The provision leaves the reader wondering whether and under what conditions the **sanctions** actually apply. For example, the provision does not seem to be in line with the methodology (No. 3.1.8) of the Moldovan National Anti-corruption Centre nor with No. 23.3 of the methodology of the Moldovan NGO CPA (see 2.2.8). According to the latter, sanctions should be formulated in a clear way; the negative example used in the methodology by CPA is formulated in almost the same way as the above Article 19 para. 1.

2.1.15 Western Europe and North America

It is probably fair to say that specific corruption proofing methods are rather a phenomenon of Eastern European or Asian countries. None of the Western European or North American countries has any official tool similar to the "assessment of regulatory corruption risks". However, all countries more or less have general **legal drafting** guidelines, often with long standing traditions and a very refined level of detail.

The guidelines describe the entire **process** of law making from the planning of the law until its adoption, the different types of laws, the uniform conditional content and principles of constructing a law, typical provisions and the content of the explanatory note.

In addition, the guidelines all more or less contain rules aimed at avoiding **ambiguity** (which a corrupt user of the law could exploit). The legal drafting guidelines always contain provisions aimed at achieving a high quality of draft laws with a high degree of clarity and the predictability necessary for a rule of state law. These provisions only partly concern the style and ease of language of regulations (e.g. avoidance of participle phrases, double negation or gender-neutral formulations). This is not directly relevant to corruption risks; however, some parts of the legal drafting guidelines overlap with specific areas that corruption proofing mechanisms look at, such as the ambiguity of regulations, conflicting provisions, internal and external coherence, etc. Nonetheless, the word "**corruption**" does not appear even once in the aforementioned handbooks that can sometimes comprise several hundred pages in volume.

The assumption in these countries is probably that regulatory corruption risks are already minimised through a long standing and refined culture of standardised legal drafting and coherent **jurisprudence**, combined with a high number of well and **uniformly** legally **trained** staff in the ministries, parliament, interest groups, political parties and parliamentary factions. At the same time, a well developed academia, well informed civil society and professional media contribute to ensuring relatively corruption proof laws.

As for **language**, the handbooks contain very detailed rules such as the following:[125]

- rules aimed at reducing **ambiguity** (for example attachment ambiguity, the antecedents of pronouns, functional ambiguity (word order), unclear references, plural ambiguity, or the use of "and" and "or");
- rules aimed at reducing **complexity** (for example sentence length, the position of the verb, embedded subordinate clauses, chains of noun phrases, participle phrases, nominalisations or double negation);
- rules aimed at controlling **modality** and **tense** (for example the use of modal verbs, the use of the imperative or the use of the present tense);
- rules aimed at controlling the information **structure** (for example the use of the passive voice).

They also contain guidance on how regulations fit into the legal system without **contradiction**.[126]

- What is the relationship to other legislation?
- Is the draft internally coherent?
- Does the relationship between the general rule and the exceptions work logically?
- Does it avoid double and contradictory regulations?
- Is the regulatory objective expressed properly?
- Are references to other rules clear (fixed or dynamic references)?
- Are there obsolete regulations that need repealing?
- Are the provisions unambiguous?
- Are the rules easily applicable?

In addition, there are **standards** on how to draft different types of legislation and other regulations.[127] Obviously, the guidelines only concern the drafting of laws yet they are also a benchmark against which **enacted** laws can be measured.

125 Structured according to Stefan Höfler's, "Legislative Drafting Guidelines: How Different are they from Controlled Language Rules for Technical Writing?", in Tobias Kuhn, E. Norbert Fuchs "Controlled Natural Language", Third International Workshop, 2012, in Berlin/Heidelberg, pages 138-151 <http://dx.doi.org/10.5167/uzh-63553>.

126 "German Guide to the Form of Legal Acts", third edition 2008 <http://hdr.bmj.de/page_a.3.html> (German - an English translation is currently in preparation by the German Federal Ministry of Justice).

127 "German Guide to the Form of Legal Acts", third edition 2008 <http://hdr.bmj.de/page_c.0.html> (German - an English translation is currently in preparation by the German Federal Ministry of Justice).

The size and quality of the legal drafting guidelines differ. Often, the manuals offer normative as opposed to **didactical** guidance: they do not show any **examples** to illustrate what is meant in practice and nor do they show how one could **remedy** the situation in practice. For example, the **Austrian** manual does not use many examples and has 46 pages.[128] The **European Commission's** "Manual on Legislative Drafting" comprises 102 pages.[129] In Chapter III, it lays down "Drafting Rules" over 13 pages. In some instances, the Manual uses examples for illustration. The **German** "Guide to the Form of Legal Acts" has 298 pages and uses many examples for illustration.[130]

As for **public consultation**, the OECD evaluated 15 European Union Member States through the Better Regulation in Europe Project.[131] As of 2010, the OECD came to the following conclusion: "Consultation processes have improved, helped by e-government. Efforts are being made to reach out to all relevant stakeholders, where this is not already the case, and to deploy a range of processes to facilitate the task for consultees, though this is still a 'work in progress'. Tools and processes need attention – issues raised have included lack of feedback in some cases, uneven quality, keeping to the response time, need to vary the methods."[132]

A standard feature of advanced Member States is the "transparency" of the drafting process from the beginning and not just at the much later parliamentary stage as well as "proactive consultations and interaction" with the public using "new forms of communication and consultation […] along with the traditional consultation process".[133]

In Finland, for example, the Government Project Register (HARE)[134] provides "up-to-date information on ongoing legislative proposals. On the website, citizens, organisations and other stakeholders can subscribe to press releases by e-mail regarding the progress of specific legislative projects as well as give feedback on the projects."[135]

As for guidelines on public consultation, the OECD has pointed[136] to the revised "Code of Practice on Consultation"[137] in the United Kingdom as a good practice. It contains the below seven principles.[138]

128 "Österreichisches Handbuch 'Bessere Rechtsetzung'" <www.bka.gv.at/DocView.axd?CobId=31617> (German).
129 Of 1997 <http://ec.europa.eu/smart-regulation/better_regulation/documents/legis_draft_comm_en.pdf>.
130 "German Guide to the Form of Legal Acts", third edition 2008 <http://hdr.bmj.de/page_c.0.html> (German - an English translation is currently in preparation by the German Federal Ministry of Justice).
131 <http://www.oecd.org/gov/regulatory-policy/betterregulationineurope-theeu15project.htm>.
132 OECD, "General Perspectives from the First Reviews" <www.oecd.org/gov/regulatory-policy/44983092.pdf>.
133 An example in Finland: <http://www.intermin.fi/en/legislation/improvement_in_legislative_drafting>
134 <http://www.hare.vn.fi/> (Finnish).
135 <http://www.intermin.fi/en/legislation/improvement_in_legislative_drafting>.
136 Country Report Sweden, page 93 <http://www.oecd.org/gov/regulatory-policy/betterregulationineuropesweden.htm>.
137 <https://www.gov.uk/government/publications/consultation-principles-guidance>.
138 Country Report United Kingdom, page 81 <http://www.oecd.org/gov/regulatory-policy/betterregulationineuropeunitedkingdom.htm>.

- **When** to consult: Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- **Duration** of the consultation exercise: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. The BRE [Better Regulation Executive][139] estimates that between 75 and 80% of consultations last for at least 12 weeks and that nearly 100% either last for at least 12 weeks or have a ministerial sign-off for a shorter duration.
- **Clarity** of scope and impact: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected cost and benefit of the proposals.
- **Accessibility** of consultation exercises: Consultation exercises should be designed to be accessible to and clearly targeted at those people the exercise is intended to reach.
- The **burden** of consultation: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultee buy-in to the process is to be obtained.
- **Responsiveness** of consultation exercises: Consultation responses should be analysed carefully and clear feedback provided to participants following the consultation.
- **Capacity** to consult: Officials running consultations should seek guidance on how to run an effective consultation exercise and share what they have learned from the experience.

The participatory approach of making policies and laws at the level of the **European Union** and its Member States is enshrined in the Lisbon Treaty.[140] More specifically, Article 10 prescribes that:

> "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen."

Furthermore, Article 11 provides that:

1) "The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2) The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3) The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4) Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit

139 <https://www.gov.uk/government/groups/better-regulation-executive>.
140 <http://www.lisbon-treaty.org/wcm/>

any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties."

A White Paper of 2001 on "European Governance" by the European Commission aimed to reinforce the culture of consultation and dialogue at the EU level and thus increase the legitimacy of the decisions. It emphasises the importance of providing clear consultation documents, consulting all relevant target groups, leaving sufficient time for participation, and publishing results and providing feedback.[141] There are several further standards and comparative publications on public participation.[142]

Access to information can supplement public participation whenever documents related to certain drafted or enacted laws are relevant but not published. In this context, the "Aarhus Convention"[143] by UNECE and the Council of Europe "Convention on Access to Official Documents"[144] of 2009 are two international standards worthy of mention. The Council of Europe Convention is the first multilateral treaty that affirms and articulates an enforceable general right to information that can be exercised by all persons without need to demonstrate a particular interest in the information requested.[145] In the European Union, the "Charter of Fundamental Rights of the European Union" grants in its Article 42 the right of access to documents held by European Union institutions to [a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State."[146]

141 Eszter Hartay (ECNL), "Best Practice on Citizen Participation in WB and EU Member States", 2014 <www.kcsfoundation.org/repository/docs/03_03_2014_3974014_KCSF_2011_Best_practices_on_Citizen_Participation_in_WB_and_EU.pdf>.

142 European Centre for Not-for-Profit Law, "Comparative Overview of European Standards and Practices in Regulating Public Participation", 2010 <http://www.icnl.org/research/resources/ngogovcoop/>. The European Institute of Public Participation (EIPP), "Public Participation in Europe - An International Perspective", 2009 <www.participationinstitute.org/wp-content/uploads/2009/06/pp_in_e_report_03_06.pdf>.

143 UNECE Convention on Access to Information, "Public Participation in Decision-making and Access to Justice in Environmental Matters" of 25 June 1998 <http://www.unece.org/env/pp/welcome.html>.

144 Of 18 June 2009, ETS 205 <http://conventions.coe.int/Treaty/en/Treaties/Html/205.htm>.

145 <http://www.right2info.org/international-standards>.

146 OJC 364, 18 December 2000 <http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm>.

2.2 Regional (South East Europe)

2.2.1 Overview

Country	Corruption proofing	General drafting guidance	General public consultation	Ad hoc corruption proofing by
BiH	No	Yes	Yes	Civil society stakeholders
BG	No	Yes	Yes	Civil society stakeholders
HR	No	No	Yes	Civil society stakeholders
KO*	No	Yes	Yes	Civil society stakeholders
MK	No	Yes	Yes	Anti-corruption commission, civil society
ME	No	Yes	Yes	Civil society stakeholders
RO	No	Yes	Yes	Civil society stakeholders
RS	No	Yes	Yes	Anti-corruption commission, civil society

Country	Entity in charge	Corruption proofing: legal and methodological basis
AL	Ministries, drafters	Semi-official manual of 2011
MD	Anti-corruption agency, civil society	Law No 780-XV of 27 December 2001 "On Legislative Acts" Law No 317-XV of 18 July 2003 "On Normative Acts" Law No 1104-XV of 6 June 2002 "On the National Anti-corruption Centre" Government Decision "On Anti-corruption Expertise of Draft Legislative and Normative Acts" No 977 of 23 August 2006 Instruction by the President of the Parliament on the "Circulation of Draft Legislation in Parliament" of November 2012 Decision No. 62 of 19 April 2013 of the National Anti-corruption Centre

Albania

There is **no** legislative basis or **formal process** for corruption proofing in Albania. However, a semi-official manual "Law Drafting Manual - A Guide to the

Legislative Process in Albania"[147] of 2006 (updated 2010) contains an Addendum on "Avoiding Corruption Risks in Draft Legislation".

The **Law Drafting Manual** is the outcome of a joint programme between the Council of Europe and the European Commission for Albania. A working group consisting of representatives of the Albanian Parliament, Cabinet of Ministers, Ministry of Justice, Faculty of Law of Tirana and the Secretariat of the Council of Europe assisted by an independent expert drafted the Manual. The Manual was updated in 2006 with the assistance of EURALIUS (the European Assistance Mission to the Albanian Justice System). The objective of the Manual is to facilitate consistency and uniformity in Albanian legislation. It is intended to help guide and assist Albanian officials in the process of considering, drafting and adopting legislation. The Manual does mention avoiding corruption as one of the objectives of good legal drafting.

In 2010, the Council of Europe Project Against Corruption in Albania (PACA) amended the Manual through an **addendum** on "Avoiding **Corruption Risks** in Draft Legislation".[148] The PACA Project distributed the Addendum to the legal drafting departments in the ministries to be included in the Manual. To this end, the Addendum was designed as a small booklet to fit into a folder in the back of the Manual. It remains unclear though as to what extent the corruption proofing methodology is utilised in practice,[149] because there are no official statistics or other information on this subject matter. It is interesting to note that the Addendum was the result of **regional peer exchange**, because the author of the Addendum was one of the experts who significantly influenced corruption proofing methodology in Moldova.[150]

According to the Law Drafting Manual itself, it "does not cover the drafting of delegated (**subordinate**) legislation, including governmental and ministerial regulations. However, much of what is set out in the Manual may be applied by analogy to the preparation of delegated legislation and it is obviously just as important that such legislation is also of high quality."[151]

The 11-page Addendum addresses the following seven categories of **corruption risks** in legislation:

147 The 2010 version (available only in Albanian – "Manual i hartimit të ligjeve një udhërrëfyes për procesin legjislativ në shqipëri" – is not published online, only the 2006 English version) <www.legislationline.org/download/action/download/id/2029/file/Albania_Law_Drafting_Manual_2006.pdf>.

148 Online, only available in English <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Technical%20Papers/PACA_TP%2011%202011-Annex%20to%20the%20Legal%20Drafting%20Manual%20-%20April%2711.pdf>. The Albanian version "Shmangia e korrupsionit' në hartimin e duhur të legjislacionit për të shmangur krijimin e rreziqeve të korrupsionit në projekt-legjislacion" is not published online.

149 PACA Project Final Narrative Report 30 June 2013, page 26 <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Final%20Report/PACA%20Final%20Report.pdf>.

150 Ms Cristina Cojocaru, Council of Europe expert for the Addendum <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Technical%20Papers/default_TP_2011_en.asp>. Ms Cristina Cojocaru, expert for the Corruption Proofing Project, implemented by the Centre for the Analysis and Prevention of Corruption (CAPC) within the framework of the Joint Project of the European Commission and the Council of Europe "against corruption, money laundering and terrorist financing in the Republic of Moldova" (MOLICO) <http://www.capc.md/en/expertise_3/experts3/>.

151 Page 8.

- language;
- coherence of the draft and its interaction with other legislation;
- manner in which duties of public authorities are established and defined;
- justification, the public interest and the manner of exercising rights and obligations;
- transparency and access to information;
- accountability and responsibility;
- control mechanisms.

Under each category, the Addendum describes several more **detailed** corruption risks, such as, for example, the following three related to "Language":

- unclear/ambiguous expressions that allows for abusive interpretation;
- use of different terms for the same phenomenon or use of the same term for distinct phenomena;
- new terms that are not defined in the legislation or the draft.

The corruption risks are sometimes described using sample phrases. In relation to **minimising** the corruption risks, the Addendum mainly refers to the relevant sections of the Manual. For example, in order to avoid "unclear/ ambiguous expressions", draft laws "must meet the technical, legal and linguistic requirements established in Manual sections 3.1, 3.4.1, 3.4.6 and 3.4.12."[152]

In about seven cases, the Manual does not provide a solution for the corruption risk. In this case, the Addendum gives a generic recommendation. In reference to legislative "gaps" for example, the Addendum recommends the following: "legislative drafters should seek to ensure that draft legal acts regulate all important aspects of social relationships that are the subject of the draft or are created by the draft itself."[153]

The Addendum only deals with draft laws (as the Law Drafting Manual only concerns legal drafting). The corruption proofing coincides with the legal drafting; hence, there are **no** separate **opinions** on how a draft law is corruption proof. Consequently, there is **no publicity** on how the draft law complies with corruption proofing standards. As the Law Drafting Manual is mainly about formal aspects of laws, the substance of a draft laws is only subject to review in **general** terms. The Addendum thus addresses risks of "absent/unclear administrative proceedings", which is rather a substance than a formal question. Yet no **specific substance** aspects of a law are included, such as, for example, whether a draft law on procurement would meet international standards on public procurement.

152 Addendum, page 2 (point 1) <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Technical%20Papers/PACA_TP%2011%202011-Annex%20to%20the%20Legal%20Drafting%20Manual%20-%20April%2711.pdf>.

153 Addendum, page 3/4 (point 7).

The draft Strategy on the Fight Against Corruption for 2014-2017 is intended to promote the "systematic use of corruption proofing of legislation":

> "Often, the seed of corruption is planted from the drafting stage of laws and subordinate legal acts. The envisagement of complex procedures to receive a service, the envisagement of overlapping responsibilities and roles, the envisagement of long and unreasonable deadlines etc., are some of the examples of how laws and subordinate legal acts may become the cause for flourishing of corruption in different governance sectors. In these circumstances, in the fight against corruption it is very important for all public institutions that draft laws and subordinate legal acts adopt and use a methodology devoted to corruption proofing of legislation.
>
> Like the risk analysis, the corruption proofing of legislation is a novelty for the Albanian public administration. Recognising the potential of this approach in the fight against corruption, the government chose to make its systematic use a key objective of the Anti-corruption Strategy 2014-2017. Sector-based approaches to many other ministries and institutions have articulated concrete ideas and concrete means to achieve this objective. The Ministry of Energy and Industry proposes to review the existing legal framework and identify corruption gaps and balancing of stakeholders' interests. Also, the Concessions Treatment Agency seeks to develop a new legal framework for concessions using the corruption proofing method."

The Agency for Public Procurement and the High Council of Justice have also committed to conduct an anti-corruption/corruption proofing assessment and evaluation of their current legislation.

One further option for external corruption proofing of legislation is **public consultation** on draft laws. Currently, the Ministry of Justice or the line ministries publish all of their draft laws online. The decisions of the Council of Ministers are published in the Official Gazette. In addition, once a draft reaches Parliament it is available on its website. Parliamentary committees sometimes hold public hearings with members of the Council of Ministers, high representatives of state and public institutions, experts and representatives of civil society and interest groups.

Concerning public consultation rules and procedures, at the time of commenting on this draft the Council of Ministers has proposed a new legal initiative; currently, the Legal Commission of the Parliament is discussing the Draft Law "On Public Notification and Consultation". It aims to fulfil the commitment undertaken by Albania within the "Open Government Partnership". The Draft Law would regulate the process of public notification on draft laws, draft national and local strategic documents and policies of high public interest as well as ensure their public consultation. The Draft Law foresees an electronic registry of all draft legal documents as a focal point of consultation. The Draft Law also includes a deadline of 15 days (25 days for complex laws) for receipt of comments.

2.2.3 Bosnia and Herzegovina

There is no specific corruption proofing mechanism in Bosnia and Herzegovina. As in Albania, an international project supported the drafting of a 59-page "**Manual** for Legislative Drafting, Technical Requirements and Style" in 2006.[154] Several members of the Bosnia and Herzegovina Advisory Board for Legislative Reform, with support from the USAID/Justice Sector Development Project, led the preparation of the Manual.

As far as corruption risks in the legislature are concerned, the Manual addresses the structure, order and language of draft laws and can thus mitigate ambiguity. The Manual serves to facilitate implementation of the 2005 "Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina",[155] in particular their second part. The second part of the Uniform Rules deals with structure, form, style, modification and confirmation of regulations. A 2014 report by the Ministry of Justice suggests several improvements for the implementation of the Uniform Rules.[156]

The Manual does not explicitly mention corruption as something to be avoided through good legal drafting. However, the complementary Manual on Explanatory Memoranda [of draft laws][157] of 2013 does point out that any regulatory "problem may be exacerbated by laws and subordinate legislation that: a) are unclear, outdated or poorly drafted, [...] d) do not provide for accountability in their implementation, [...] or f) permit **corruption**".[158] It further recommends that, "risk/benefit considerations include [...] potential [of the regulation] for **corruption**."[159] Furthermore, "monitoring and oversight [of the implementation of enacted laws] fulfils a number of purposes: [...] investigates instances of poor administration, abuse, waste, **corruption** etc."[160]

Public consultation on draft laws is formally based on two regulations.

- The Council of Ministers "Regulations on Consultations in Legislative Drafting" of 2006.[161] The regulations establish the procedures to be followed by all ministries and other institutions of Bosnia and Herzegovina for consultation with the public and organisations.
- "Rulebook on Conducting of the Rules [sic] for Consultations in Drafting of the Legal Regulations in the Ministry of Justice of Bosnia and

154 Sarajevo, February 2006. Financed by USAID-JSDP (unfortunately, the pdf file is encrypted and no user can print the manual or copy any parts of it for reference) <www.usaidjsdp.ba/old_page/en/dokumenti/Components/Component3/legislative_drafting/Manual%20for%20Drafting%20Legislation.pdf>.
155 Official Gazette, No. 11/05 <www.bhdca.gov.ba/website/dokumenti/Propisi/Pravila_za_izradu_propisa_bos.pdf> (Bosnian)
156 Ministry of Justice "Report on the Implementation of the Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina", March 2014, page 19 <www.mpr.gov.ba/aktuelnosti/propisi/konsultacije/08%204%20Izvjestaj%20o%20primjeni%20Jedinstvenih%20pravila%20-%20EJ.pdf>.
157 <www.mpr.gov.ba/dokumenti/publikacije/EJ_Prirucnik_za%20izradu_obrazlozenja.pdf> (Bosnian).
158 Page 18.
159 Page 23.
160 Page 38.
161 Of 7 September 2006, Official Gazette of BiH 81/06 (Bosnian).

Herzegovina" of 2008.[162] The Rulebook prescribes the procedures for public consultation within the process of drafting legal regulations in the Ministry of Justice. This is in order to make the rules for consultation during the drafting of legal regulations more understandable and conductible.

The Regulations and the Rulebook call for the **publication** of all proposed laws and secondary legislation documents, the possibility for citizens to send written **comments,** within a **period** of at least 21 days, and for an **explanatory** document for any draft law. Individuals and organisations that express interest in normative legal activities have a right to be notified concerning draft regulations. A statement by the Ministry of Justice has to show the comments delivered during consultations and the **reasons** why the suggestions were either accepted or rejected. A report by the Ministry of Justice in 2014 suggests several improvements for public consultations, which suggests a lack of implementation of the existing rules.[163]

External assessments by **civil society** stakeholders include anti-corruption aspects in the past, an example being an open letter by Transparency International on the substance of a draft procurement law.[164]

2.2.4 Bulgaria

There is **no** explicit formal **corruption proofing** mechanism in Bulgaria. The main tools for avoiding regulatory corruption risks are general **legal drafting** principles and **public consultation**. The main principles for both aspects are contained in the "Law on Normative Acts"[165] of 1973 and its implementing Decree of 1974.[166] The Law underwent a major revision in 2007. Chapter 1 of the "Law on Normative Acts" and chapters 3 and 4 of the "Decree of 1974" address the issue of the **structure of laws** and their **formulation**. The regulations are quite detailed.

Public hearings are dealt with under Article 26 of the Law of 1973. All draft bills must be published on the website of the authority that prepared them, together with an explanation. The authority has to set a deadline for receiving opinions and suggestions. Upon publication of a law, citizens have at least 14 days to submit concrete proposals for improving the bill. The authority must consider the opinions and suggestions of the public and has to publish a summary of accepted and rejected proposals. An additional option for online publication of draft laws is the Public Consultation Portal at www.strategy.bg, where it is possible to

162 <http://www.mpr.gov.ba/web_dokumenti/Pravilnik%20za%20konsultacije%20en.pdf>.

163 Ministry of Justice of BiH report on the "Implementation of Rules of Consultations in Legislative Drafting in the Institutions of Bosnia and Herzegovina", March 2014, page 13 <www.mpr.gov.ba/aktuelnosti/propisi/konsultacije/15%204%20Izvjestaj%20o%20provodjenju%20Pravila%20za%20konsultacije%20-%20EJ.pdf>.

164 Open Letter against adoption of the new Law on public procurement, 25 April 2014 <http://ti-bih.org/en/7172/otvoreno-pismo-protiv-usvajanja-novog-zakona-o-javnim-nabavkama/>.

165 <http://www.lex.bg/bg/laws/ldoc/2127837184> (Bulgarian) version as of 2007.

166 Decree No. 883 of 2007 on the "Implementation of the Law on Normative Acts", State Gazette 46/2007 <http://econ.bg/Указ-883-за-прилагане-на-Закона-за-нормативните-актове_l.l_i.129392.html> (Bulgarian).

discuss the relevant drafts interactively. This internet page is maintained by the Administration of the Council of Ministers. In addition to the online publication of draft laws, the competent authorities can also initiate discussion with NGOs and experts from academia or civil society where all participants have the opportunity to share their views on the draft proposal.

Chapter 7 of the Decree of 1974 sets forth an ex-post review of the implementation of enacted laws. The body entrusted with implementation of the law normally carries out the review; all other institutions or administrative bodies are obliged upon request to provide assistance. The results of the review are compiled into a report, which can also include proposals for further improvement. There is no specific mention of the anti-corruption impact on laws in this provision; however, it is one possible entry point for consideration of this kind of impact.

In practice, **civil society** stakeholders submit critical reviews of legal drafts including anti-corruption aspects. An example is the "Position of Transparency International – Bulgaria on the Proposed Amendments of the Political Parties Act that Carry Heavy Limitations on the Activity of the Non-Parliamentary Political Parties."[167]

2.2.5 Croatia

Croatia has **no** explicit formal **corruption proofing** mechanism. There are also no regulations as to which unified **form** and structure the laws should adhere to (this question is solved through an established tradition of formal appearance and structure of laws maintained in particular by the Legislation Office of the Government). However, **public consultation** allows the public to comment on draft laws.

Public consultation is subject to the "Croatian Code of Practice on Consultation with Interested Public on Procedures of Adopting Laws, other Regulations and Acts"[168] of 2009. Its objective is to facilitate interaction with citizens and representatives of the interested public in the democratic process and encourage the more active participation of citizens in public life. The Code sets out principles for "timely **information** about the plan for enactment of laws", "**access** to and clarity of the content of the consultation process", "**time limits** for the implementation of Internet and other forms of consultations" and "**feedback** information about the effects of the consultations conducted."

In 2012, the "Government Rules of Procedure" were amended in order to integrate public consultation and reporting on the results of consultation. The new provisions oblige central state administrative bodies to submit adequate reports on conducted consultations together with draft laws when they refer them to the Government for adoption.[169] A complementary feature in this

167 Of 27 June 2013 <http://www.transparency.bg/media/cms_page_media/3/TI-Bulgaria.Position.Political.Parties.Act.27.06.2013.pdf>.
168 Of 21 November 2009, Reg. No.: 5030104-09-1 <www.uzuvrh.hr/userfiles/file/code of practice on consultation-croatia.pdf>.
169 <http://www.uzuvrh.hr/vijestEN.aspx?pageID=2&newsID=2136>.

context is the "Act on the Right of Access to Information" of 2013, which sets the obligation of public authorities to publish drafts of laws and bylaws that are subject to public consultation (generally for a period of 30 days before forwarding them to the next stage of the law making process).

Civil society stakeholders have made use of public consultation processes for pointing out corruption risks in draft or enacted legislation. For example, Transparency International Croatia has criticised several laws for creating corruption risks.[170]

Concerning public consultation, one should also mention the "Act on Regulatory **Impact Assessment"**[171] and the "Regulation on Implementation of the Regulatory Impact Assessment Procedure"[172]. The purpose of the RIA procedure is to analyse the positive and negative impacts of regulations on the respective economic sector, including the financial impact, aspects of social welfare, environmental protection and an outline of the fiscal impact, and in parallel consult the public and other interested parties. Such consultations last up to 30 days.

2.2.6 Kosovo*

The main tools in Kosovo* for avoiding regulatory corruption risks are general **legal drafting** principles and **public consultation**.

Government regulation No. 01/2007 "On the Work of the Government"[173] sets out in Chapter 3 the "**Basic Principles of Drafting** and Reviewing Draft Primary and Secondary Laws". According to Article 36, legal drafts must be "prepared in a manner that is consistent in appearance, structure and organization with the standard legislative format in use by the Provisional Institutions of Self-Government". Furthermore, legal drafts should "not create unnecessary, redundant, inefficient, wasteful or over-reaching bureaucratic or administrative structures, procedures, provisions, requirements or barriers", should "avoid the use of overly general, vague, ambiguous or imprecise provisions", and should "minimise the potential for jurisdictional conflict or overlap among public authorities". Most importantly, legal drafts should "minimise the potential for the abuse of governmental authority, power or discretion", which is in other words **corruption**.

170 Press release, 25 June 2013, "Lack of Public Trust in Political Parties Undermining Democracy in the Western Balkans": Transparency International "found significant gaps in both election campaign financing laws and the way they are implemented" <http://www.transparency.hr/en/article/lack-of-public-trust-in-political-parties-undermining-democracy-in-the-western-balkans/12>.

171 <http://arhiva.vlada.hr/hr/content/download/265130/3907420/file/1.%20RIA%20Law_NN%209011_EN.pdf> (English).

172 <http://arhiva.vlada.hr/hr/content/download/265131/3907429/file/2.%20RIA%20Regulation_NN%206612_EN.pdf> (English).

173 <http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=280&Itemid=70&lang=en>

** This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo declaration of independence.*

The legislative drafting **manual** "A Practitioner's Guide to Drafting Laws in Kosovo*"[174] provides additional guidance. The 101-page document stems from 2009 and is a product of the USAID Kosovo Justice Support Programme; Chapter 3 of the Manual deals with the "Order and Language" of legal drafts.

As for **public consultation**, no comprehensive formal procedure exists. The only mention of public consultation is in the Administrative Instruction 2/2006 "On Procedures for Drafting, Reviewing and Approving Draft Acts."[175] In Article 14, the Instruction tasks the legal office of each ministry to "consult with the public". Furthermore, government regulation No. 01/2007 "On the Work of the Government', under Article 36 para. 2, sets out the following **non-binding** mechanism:

> "The Prime Minister shall, before giving such guidance, discuss the concerned issues with, and obtain direction from, the concerned senior members of Government, who may – if they desire – seek the views and opinions of other advisors, outside experts, and the affected members of the private sector and Kosovo* society."

Several ministries **publish** draft laws and regulations for public consultation on their websites.[176]

2.2.7 The Former Yugoslav Republic of Macedonia

There is no corruption proofing mechanism for all draft laws in the Former Yugoslav Republic of Macedonia. However, the **State Commission for Prevention of Corruption** is competent to provide opinions on laws "important for corruption prevention"[177] and "for prevention of conflict of interests."[178] Therefore, the State Commission regularly delivers opinions on relevant draft laws. To this end, state authorities developing relevant draft laws are obliged to submit their drafts to the State Commission for review.[179]

The State Commission ensures through its opinion that draft laws provide for the normative and institutional capacities to prevent corruption and conflict of interest. The corruption proofing results are also reflected in strategic anti-

174 <http://www.agora-parl.org/sites/default/files/legislative_drafting_manual.pdf>

175 <http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=57&Itemid=37&lang=en>

176 See, for example, the Ministry of Trade and Industry <http://www.mti-ks.org/en-us/Draft-law-for-public-consultation>.

177 Article 49 of the "Law on Prevention of Corruption", Official Gazette No. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010 <http://www.dksk.org.mk/en/index.php?option=com_content&task=view&id=15&Itemid=36>.

178 Article 21 of the "Law on Prevention of Conflict of Interest", Official Gazette No. 70/2007, 114/2009 and 6/2012 <http://www.dksk.org.mk/en/index.php?option=com_content&task=view&id=21&Itemid=37>.

179 Article 8 of the Government "Guideline for Cooperation between the State Management Bodies, Public Enterprises, Public Institutions and Other Legal Entities with State Capital and the State Commission for the Prevention of Corruption", Official Gazette No. 81/2004 and 135/2006 <http://www.pravda.gov.mk/ldbisreader/DocumentView.aspx?Type=1&ID=9192>. <http://www.pravda.gov.mk/ldbisreader/DocumentView.aspx?Type=1&ID=11904> (Macedonian).

** This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo declaration of independence.*

corruption documents of the State Commission that call for the amending of existing laws and the adoption of new laws.

The State Commission also takes part in the legislative **working groups** of ministries as well as in public debates on draft laws. From the start of the law drafting process, it raises attention on the risks of corruption and conflict of interest and suggests possible solutions. The State Commission took part in the working groups for the following laws in particular: the "Law on the Prevention of Corruption", the "Law on Conflict of Interest", the "Law on Lobbying", the "Election Code", the "Law on Financing of Political Parties", the "Law on Associations and Foundations", the "Criminal Code", the "Law on Criminal Procedure" and others. Information on corruption proofing activities is contained in the annual reports of the State Commission.[180]

In addition, the Former Yugoslav Republic of Macedonia has rules on **legal drafting** in the ministries (where most laws are drafted) and on **public consultation** on draft laws.

According to the "Rules of Procedure for Operation of the Government",[181] the **Secretariat for Legislation** is the central entity in charge of reviewing draft laws. Under the "Law on the Government",[182] the Secretariat is an independent expert service. The Secretariat ensures amongst other things the consistency of the legal system, the harmonisation of laws with the Constitution and international agreements, and the methodological uniformity of laws. To this end, it provides expert advice and opinion to other state bodies. The "Manual on Law Drafting Techniques"[183] of 2007 provides further guidance over 100 pages on the formalities and language of draft laws.

The Former Yugoslav Republic of Macedonia introduced **Regulatory Impact Assessment** (RIA) through the adoption of a methodology[184] in 2008. There is no specific mention of the anti-corruption impact of laws in this methodology; however, it is one possible entry point for consideration of corruption risks. Similar is true for the "Methodology for [ex post] assessment of **implementation** of laws"[185], which the Former Yugoslav Republic of Macedonia introduced in 2013.

As for **public consultation**, the "Rules of Procedure for Operation of the Government" define the "Cooperation of the Government with Public Enterprises, Public Institutions, Public Services, Political Parties, Companies, Civic Associations and Foundations".

180 See, for example, the "Annual Report on the Work of the State Commission for Prevention of Corruption in 2010", page 8 <www.dksk.org.mk/en/images/stories/PDF/godisen%20izvestaj%20dksk%202010_eng.pdf>; the annual report for 2009 does not inform on any similar activities for 2009 <www.dksk.org.mk/en/images/stories/PDF/annual_report_2009.pdf>; similar is the annual report for 2013 <http://www.dksk.org.mk/images/stories/pdf/godisni%20izvestai/god.izvestaj_2010.pdf> (Macedonian).

181 Of 2003 (Official Gazette No. 64/03) as amended in 2006 (Official Gazette No. 51/06) <http://arhiva.vlada.mk/files/doc/eng/strategic_documents/rules.pdf> (English).

182 Unofficial consolidated text of the "Law on the Government of the Republic of Macedonia" <http://mioa.gov.mk/files/pdf/dokumenti/zakoni/zvrm/Zakon_za_Vladata_na_Republika_Makedonija_kons_30012013.doc> (Macedonian).

183 "Прирачник за Номотехнички Правила" <www.legislationline.org/documents/id/15456> (Macedonian). It was developed with the assistance of the German GTZ (now GIZ).

184 Methodology on RIA, current updated version (Official Gazette No. 107/13) <https://ener.gov.mk/UserFiles/File/info/Metodologija%20za%20PVR%20107-13.pdf> (Macedonian).

185 <http://mioa.gov.mk/files/pdf/Ex_post_Metodologija.pdf> (Macedonian).

Article 123 para. 2 obliges the Government to "review proposals and initiatives" of civil society entities and to "draw conclusions". According to the Rules, draft laws are published on the National Electronic Registry of legal acts" (ENER)[186] and are subject to public commentary within 10 days of publication. In addition, five days prior to the process of Regulatory Impact Assessment starts it is announced on ENER and on the website of the responsible ministry.

2.2.8 Moldova

Moldova has been implementing and refining a **comprehensive practice** on anti-corruption assessment of legislation since 2006.

Legally, corruption proofing is - following amendments in 2006 - (see Annex 9.5 for excerpts in English) based on the below listed laws.

- Law No. 780-XV of 27 December 2001 "On **Legislative Acts**".[187] It states in Article 22 "**anti-corruption** expertise is mandatory for all draft legislative acts."
- Law No. 317-XV of 18 July 2003 "On **Normative Acts** of the Government and Other Authorities of the Central and Local Public Administration."[188] Article 41 states that according to this Law, "the draft normative act of the Government shall be submitted, in a mandatory manner, with an anti-corruption expertise to verify whether it complies with the national and international anti-corruption standards as well as to prevent the appearing new regulations that favour or might favour corruption".
- Law No. 1104-XV of 6 June 2002 'On the **National Anti-corruption Centre**'.[189] According to Article 4 lit. d and Article 5, the Centre has the function "to carry out anti-corruption expertise of draft legislative and draft normative acts of the Government and to verify their compliance with the state policy regarding the prevention and fight against corruption." Based on Article 6, the Centre has the right "to request and receive from public authorities informative and consultative support, necessary to carry out the anti-corruption expertise of draft legislative and draft normative acts of the Government."
- Government Decision "On **Anti-corruption Expertise** of Draft Legislative and Normative Acts" No. 977 of 23 August 2006.[190]
- The Instruction by the President of the **Parliament** on the "Circulation of Draft Legislation in Parliament"[191] (Annex[192]), which makes it mandatory to attach the anti-corruption expertise to draft laws.

186 <www.ener.gov.mk> (Macedonian).
187 <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=313239&lang=1> (Moldovan and Russian).
188 <http://lex.justice.md/index.php?action=view&view=doc&id=312810> (Moldovan and Russian).
189 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312733> (Moldovan and Russian).
190 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=317065> (Moldovan and Russian).
191 No. 30 of 7 November 2012 <http://www.parlament.md/CadrulLegal/Instruc%C5%A3iuneprivindcircula%C5%A3iaproiectelordeact/tabid/197/language/ro-RO/Default.aspx> (Moldovan).
192 <http://www.parlament.md/LinkClick.aspx?fileticket=e7bLJmVqVhM%3d&tabid=197> (Moldovan).

- Decision No. 62 of 19 April 2013 "On internally adopting the **Methodology** for conducting anti-corruption expertise of draft laws and regulations",[193] which replaced Decision No. 47 of 3 May 2007 of the Director of the National Anti-corruption Centre "On internally adopting the **Methodology** for conducting anti-corruption expertise of draft laws and regulations".

The **National Anti-corruption Centre** (NAC) - until 2013 called the Centre for Combating Economic Crimes and Corruption (CCECC) - developed its methodology in close cooperation with the civil society organisation the Centre for Analysis and Prevention of Corruption (CAPC). Consequently, NAC and civil society use an almost identical methodology for corruption proofing in their parallel and complementary work. International projects supported the development of the methodology, in particular the MOLICO Project run by the Council of Europe and the Swedish International Development Cooperation Agency (SIDA).[194]

NAC **piloted** its methodology in 2007 on several draft laws, adopted a revised version of it the same year and has applied it continuously ever since. Currently, the CNA has twelve staff working in one Directorate that deals with legislation and anti-corruption expertise. Government Decision No. 977 of 2006 foresaw a "coordination commission" to facilitate corruption proofing amongst the various institutions involved. However, in practice it has only met once.

The methodology used by civil society (CAPC) is contained in a "**Guide** on Corruptibility Expert Review of Draft Legislative and Other Regulatory Acts" of 2007. It is available in Romanian, English and Russian.[195] As the almost identical official methodology of NAC is only available in Moldovan language, the following explanations mainly follow the lines of the civil society Guide. However, it should be kept in mind that civil society only reviews draft laws tabled to Parliament and not draft laws that are adopted by government outside of Parliament.

The Guide is divided in two parts. The first chapter provides brief **definitions**, such as what "elements of corruptibility" in legislation are (i.e. regulatory provisions which favour or which may favour corruption). It also lists all categories of draft legislative acts and regulatory acts subject to the assessment. Furthermore, it also points out the particularities that each category entails for the assessment. The methodology is explicitly **only** applicable to **draft** laws (policy documents and ratification of international documents are excluded).

It is interesting to note that in Moldova (as an exception to the international standard) even regulatory decisions by the Government on **individual cases** are included. This concerns, for example, regulatory approvals by ministries such as those pertaining to telecommunications licences or approval of mergers. Local experts report that in practice it is very hard to figure out and appraise the relevant interests in such individual cases. Consequently, the NAC refused

193 <http://cna.md/sites/default/files/expertiza_anticoruptie/metod.exp_.ant_.ordin62.cna_.pdf> (Moldovan).

194 <http://www.coe.int/t/dghl/cooperation/economiccrime/MoneyLaundering/projects/MOLICO/Outputs-AC_en.asp> (English).

195 <http://www.capc.md/en/expertise_3/guide/>; English version: <capc.md/docs/guide_capc_eng.doc>.

to assess such individual decisions unless sufficient background information as made available. In this context, it was also questionable whether such individual regulatory decisions were actually legislative acts under Moldovan Law. Generally, such legislative acts are defined as regulating the rights or obligations of an unforeseeable number of individuals and instances.

The second chapter of the Guide is dedicated to the "Corruptibility Expert Review" itself. The reviews are divided into different categories of expertise (such as "Economy and Trade" or "Labour, Social Insurance, Healthcare and Family care").

Furthermore, it sets out guidance for the necessary **preparatory** analysis, in particular:

- on which **sources** of information the review should rely;
- other **legislation** in the field to be considered;
- **jurisprudence** influencing legislation;
- **statistical** and **sociologic** studies;
- relevant statements by the **Court of Accounts**;
- **functional** analysis of the main public body/ies in charge of implementing the law.

In section 4, the second chapter provides a list of "elements of corruptibility".

- Lack of a comprehensive justification of the need for drafting the act:
  - lack of justification of the draft, lack of scientific enquiry, etc;
  - negative contradictory and unqualified advisory notes or expert reviews;
  - lack of impact assessment;
  - producing the legal effects.
- Promotion of interests and benefits:
  - group or individual interests and benefits/damages;
  - group interest and state policies, constitutional and provisions of international acts.
- Interaction of the draft law with other legislative and regulatory acts:
  - reference provisions and carte blanche provisions (regulatory competence);
  - compliance with the provisions of Articles 4, 6, 54, 72 and 102(2) of the Constitution, of Law No. 64 of 31 May 1990 "On the Government", and other provisions;
  - compliance with the provisions of Articles 109-113 of the Constitution;
  - conflict of legal provisions, lacunas in law.

- Manner of exercising public authority duties:
  - extensive duties of regulation attributed to the competence of central and local public administration;
  - situations of parallel duties;
  - competence of the public authority to draft acts, to control their application and to sanction;
  - determination of competences when the expressions "is entitled" and "may" are used;
  - listed rights should comply with set obligations;
  - duties should be regulated in a sufficiently complete and clear manner in order not to allow unjustified derogations or various interpretations;
  - lack or ambiguity of administrative procedures;
  - lack of balance between responsibility and violation;
  - lack of transparency in the functioning of the public authority;
  - other elements of corruptibility.

For each corruptibility risk, the Guide provides several sub-categories. The Guide explains each sub-category and illustrates it for the reader with a **real-life example**. For example, sub-category 23.3 "Insufficient Regulation of the Liability of Public Servants" uses the following excerpt from a real law to exemplify how laws often formulate sanctions in a way that leaves the reader wondering whether and under what conditions they actually apply.

> "Example: The Law No. 345 of 25 July 2003 on national defence, in Article 42 (1) establishes that the failure of the citizens and persons with functions of responsibility to respect the provisions of the current law entails, *if the case, criminal, administrative or civil liability, according to the legislation*."

However, the example does not offer a suggested option on how the drafter could mitigate the corruption risk.

Section 5 structures the content of the Expert Review Report as follows:

- general assessment of the draft law;
- assessment of corruptibility elements in the draft legislative act;
- recommendations for minimising the corruption risk;
- annexes, if applicable.

Finally, in Section 6, the Guide provides the below template for an Expert Review Report.

EXPERT REPORT

ON THE DRAFT [NAME OF THE DRAFT]

General Evaluation

1. Author of the draft.
2. Category of the act: constitutional, organic or ordinary law; by-law (Decision of the Parliament, Ordinance, Decision of the Government, Decree of the President; Order of the head of the public authority).
3. Goal of the act.

Justification of the Draft

4. Informative note accompanying the draft.
5. Sufficiency of the reasoning contained in the informative note.
6. References to compatibility with EU legislation and other international standards.
7. Financial-economic justification of the draft.

Substantive Evaluation of Corruptibility

8. Compliance with national and international anti-corruption standards.
9. Establishing and promotion of interests/benefits.
10. Damages which might be inflicted through the enforcement of the act.
11. Compatibility of the draft with the provisions of the national legislation.
12. Linguistic formulation of the draft, general assessment of compliance with the requirements of legislative drafting rules.
13. Regulation of the activity of the public authorities.

Detailed Analysis of the Corruptibility of the Draft's Provisions

Objection no.	Article of the draft	Text of the draft	Expert's Objection	Corruptilility Element	Recommen-dations

The NAC drafts its reports using specific **software** developed for this exercise. Experts insert the recommendations into the software while assessing the draft law. The report itself is generated by the software. As soon as the legislative draft is adopted the NAC checks whether the recommendations have been taken into account and therefore in this way the software facilitates monitoring of compliance.

The author of the draft law has to consider the expert review, as stated under Article 42 of Law No. 317 of 2003.

> "(1) The authority that has elaborated the draft normative act shall finalize it in compliance with the submitted opinions.

(2) In case of conflicts, the authority which has drafted the draft normative act shall organize a debate with the participation of interested institutions and authorities for making the decision based on mutually acceptable principles. Otherwise the draft shall contain the point of view of the authority that has elaborated it and the list of conflicts shall be attached in a form of a table, containing the substantiation of the rejection of the proposals and the advisory notes."[196]

The table is used to monitor the impact of recommendations. According to Article 44 of Law No. 317 of 2003, the table must be published together with the draft law. This allows for scrutiny by civil society. For government laws, the State Chancellery reviews the impact of recommendations whereas a specialised committee performs this task for parliamentary laws.

However, an annex[197] to the Instruction by the President of the Parliament on the "Circulation of Draft Legislation in Parliament"[198] makes it **mandatory** to **attach** the anti-corruption **expertise** to the draft law. However, the requirement probably only applies to cases where such an expertise exists and does not give grounds for refusing a draft law when an anti-corruption expertise is not available. The background to this Instruction by the President of the Parliament is that initially when Members of Parliament draft a bill themselves they did not provide it to the NAC, probably because they considered themselves beyond the scope of NAC's control. This gap in corruption proofing received public attention and consequently the President of the Parliament made it mandatory to have an anti-corruption expertise attached to every draft bill.

Furthermore, the question of **urgent legislation** is interesting from a practical point of view. In Moldova, Parliament resolved this question by granting the NAC a shortened period of three days in which to provide the expertise. Such a brief timeframe is obviously too short to provide any in-depth assessment, at least for any law that involves new and complex questions. Regardless, the NAC has continued to provide the expertise but more in summary style in terms of length and depth.

Since 2012, the **NAC** has strongly increased by nearly 50% the number of draft laws and bylaws it corruption proofs. This increase is due to the amendment of the Parliamentary Presidential Instruction mentioned above (making corruption proofing by NAC mandatory for legislative initiatives of Members of Parliament).

NAC presented corruption proofing reports on 338 draft laws in the first six months of 2014, which implies the scrutinising of a total of 2,504 pages of legislative drafts. Although mandatory, 144 draft laws initiated by parliamentary deputies were not referred for corruption proofing expertise. Consequently, NAC only carried out its duties on conducting corruption proofing expertise reports for 70% of drafts.

196 See Annex 9.5 for the full version of the Law.

197 <http://www.parlament.md/LinkClick.aspx?fileticket=e7bLJmVqVhM%3d&tabid=197> (Moldovan).

198 No. 30 of 7 November 2012 <http://www.parlament.md/CadrulLegal/Instruc%C5%A3iuneprivindcircula%C5%A3iaproiectelordeact/tabid/197/language/ro-RO/Default.aspx> (Moldovan).

The corruption proofing reports identified 35% of drafts as lacking sufficient justification for their promotion, while 7% failed to comply with the rules of transparency within the decision-making process. Half of the drafts that entailed financial costs for their implementation lacked a specified source of funding. A quarter of the draft laws concerned regulation of business. Yet despite the fact that a regulatory impact analysis is required in such cases, only 2% of these drafts contained such an analysis. Therefore, in practice, many of these laws pursue regulations that can have an adverse effect on the business environment.

Of the drafts reviewed by NAC, 15% promoted the interests of certain groups or private individuals and several had the potential to damage the rights and interests of the public.

Overview on the results of corruption proofing by NAC in first half of 2014[199]

Corruption Risks	Frequency	In addition to other risks	Recommendations accepted
Ambiguous linguistic wording	14%	13%	**60%**
Conflicting provisions	22%	22%	**50%**
Faulty reference provisions	2%	2%	**0%**
Excessive administrative discretion	37%	46%	**86%**
Excessive requirements to fulfil rights	7%	5%	**100%**
Limited access to information	4%	3%	**0%**
Lack of control mechanisms	8%	5%	**40%**
Unclear responsibilities and lack of sanctions	6%	4%	**0%**
Total (impact of corruption proofing)			**68.5%**

The corruption risks most frequently identified by NAC were excessive administrative discretion (37%), conflicting provisions (22%) and ambiguous linguistic provisions (14%), allowing public officials to interpret the law abusively. At the same time, these are the categories where the draft authors most frequently accepted the recommendations made by NAC.

The categories of corruption risks less frequent and never remedied (at least in the reporting period) were faulty reference provisions, limited access to information, unclear responsibilities and lack of sanctions. Overall, the impact rate of the corruption proofing expertise by NAC equalled an acceptance rate of 68.5% for the NAC recommendations.

Anti-corruption assessment in Moldova has strong **civil society** support (aided by international donors). The Centre for Analysis and Prevention of Corruption (CAPC), which developed the methodology together with CCECC/NAC, has provided independent anti-corruption assessments on draft laws ever since. For

199 NAC provided the above table and all statistical information in this section to the author in August 2014.

example, the CAPC prepared a Corruptibility Expert Review for 65 draft laws in 2012: 55 drafts as selected from all drafts published on the website of the Parliament and 10 drafts upon formal request by the Ministry of Justice, the Centre for Human Rights, and the National Integrity Commission. The CAPC experts formulated objections on 1,127 corruptibility factors identified in all 65 drafts.[200] The numbers show that NAC is corruption proofing multiple more draft laws than CAPC. However, efforts by CAPC are considerable. It is worth noting that CAPC only reviews draft laws as published by Parliament, whereas NAC reviews draft laws adopted within government.

CAPC also published a report on the "Effectiveness of the Corruption Proofing Mechanism" for 2011[201] and for 2012.[202] Both reports show the extent to which the Parliament accepted objections on elements of corruptibility as identified by CAPC, shown in the table below for 2012.

No	Categories of corruptibility elements	Elements identified	Elements accepted	% of accepted Elements
I.	Interaction of the draft with other legal and regulatory acts	162	66	**40.7%**
II.	Manner of exercising public authority duties	101	62	**61.4%**
III.	Manner of exercising rights and obligations	19	4	**21.1%**
IV.	Transparency and access to information	11	9	**81.8%**
V.	Liability and accountability	11	5	**45.4%**
VI.	Control mechanisms	2	0	**0.0%**
VII.	Linguistic expression	107	71	**66.4%**
VIII.	Other elements of corruptibility	10	0	**0.0%**
TOTAL		**425**	**217**	**51.1%**

The total percentage for 2011 was slightly higher (54.4%). The 2011 report lauds "the **considerable number** of corruptibility objections, accepted by the legislator" and as a consequence the Parliament as "one of the most open local public authorities in the Republic of Moldova".

However, the report also points to the general **low quality** of draft laws:

"chronic insufficiency of the draft laws arguments; lack of economic and financial justification of the draft laws; miming and superficiality in harmonisation process of the national legislation to the *acquis communautaire*; abundance in the draft laws of the legal gaps, legal provisions competition and blank provisions."[203]

The report thus concludes the necessity to continue with anti-corruption assessments in order to increase the quality of laws. The Report for 2012 observed some **progress** achieved during the year including:

200 CCECC/NAC, "National Report on the Progress and Prospects in Repressing Corruption", 2012 page 11 <http://cna.md/sites/default/files/raport_national_2012_eng.pdf> (English).
201 <www.civilrightsdefenders.org/files/CAPC-Effectiveness-of-the-Corruption-Proofing-Mechanism-in-2011.pdf> (English).
202 <http://www.capc.md/docs/Study_corruption_proofing_2013.doc> (English).
203 Page 18.

"increasing rationale sufficiency of explanatory notes; more and more frequent invoking of some economic and financial evaluations, performed to support draft laws; full publication of documents accompanying the folder of draft legislative acts on Parliament webpage".

However, it still identified remaining challenges for the quality of legislation passed by Parliament.[204]

It is interesting to note that Moldovan experts from CAPC, partly in cooperation with the Council of Europe, have **exported** the methodology on anti-corruption assessments to several countries.[205]

2.2.9 Montenegro

There is no specific corruption proofing mechanism in Montenegro. Some aspects of corruption proofing are dealt with indirectly through guidance on **legal drafting** and by allowing **public consultation** to provide external comments on draft laws.

Pursuant to Article 31 para. 2 of the "Rules of Procedure of the Government of Montenegro",[206] the Secretariat for Legislation issued the "Legal and Technical Rules for **Drafting Legislation**".[207] These rules apply to drafting laws, other pieces of legislation and other acts of the Government of Montenegro. The line ministries are responsible for the drafting, proposal or adoption in order to ensure uniformity in drafting legislation, their quality and avoidance of legal and technical omissions and mistakes.

As for **public consultation**, the "Law on State Administration" under Article 80 obliges the Government to "consult with NGOs on legal and other projects, and regulations governing the manner of exercising the rights and freedoms of citizens". In addition, the '"Regulation on the procedure and manner of conducting public consultation in preparation of laws"[208] provides detail on the procedure for public consultation. Once a ministry announces a draft law on its website, the public is able to submit comments during the next 20 days. The ministry is not obliged to provide reasons for not following certain suggestions, unless there is a hearing in person (Article 12).

2.2.10 Romania

The main tools in Romania for avoiding regulatory corruption risks are general **legal drafting** principles and **public consultation**.

204 Page 21.
205 <http://alianta.md/eng/news/view/export-of-gathered-moldovan-experience-in-the-area-of-corruption-proofing/page:1> (English); for Serbia see section 2.2.11 below.
206 Official Gazette of Montenegro 48/09 (Montenegrin).
207 Official Gazette of Montenegro 2/2010 <http://www.szz.gov.me/files/1265290479.doc?alphabet=cyr> (Montenegrin).
208 Of 2 February 2012 <www.sluzbenilist.me/PravniAktPreuzimanje.aspx?tag={16F45D1E-4AA0-4C69-A589-2C4432EC8F77}> (Montenegrin).

Law No. 24/2000 "On the Legislative Technique Norms for Drawing up Regulatory Acts"[209] contains the main principles of good legislative **drafting**, including inter alia language, internal and external coherence and avoiding overlaps. It also provides guidance on legislative reasoning.

The "Law on Transparent Decision-Making by State Bodies and Local Government"[210] of 2003 regulates **Public consultation**. The Law aims to "increase the degree of accountability of public administration toward citizens as beneficiaries of the administrative decision; stimulate active participation of citizens in the administrative decision-making process and in the process of drafting normative acts; enhance the degree of accountability of the entire public administration."

2.2.11 Serbia

The Law mandates the **Anti-corruption Agency** to "launch initiatives for amending and enacting regulations in the field of combating corruption" and to "cooperate with other state bodies in drafting regulations in the field of fight against corruption" (Article 5 of the Law on the Anti-corruption Agency). This provision serves as the basis for the Agency to analyse laws and propose measures for eliminating regulatory corruption risks.

In view of this task, the Agency drafted a **methodology** for corruption risk assessment of legislation (Methodology) with the assistance of a European Union project. The Agency has already applied the Methodology in practice by analysing several draft laws. In addition, the Agency made the proposal to oblige law drafters to comply with the Agency's Methodology when drafting laws.

Furthermore, the "National Anti-Corruption Strategy" and the "Action Plan" foresee amendments to the **Rules of Procedure** of the Government and of the National Assembly that would make it mandatory for **explanatory notes** to contain an analysis of corruption risks. Under these amended rules, the Government would be obliged to submit draft laws and bills to the Agency for review for regulatory corruption risks. Therefore, whether law drafters complied with the Methodology or not the Government would have to submit the corruption proofing report by the Agency along with the draft bill to the National Assembly.

The Agency has analysed **34 draft laws** in the last two years**,** including two proposals for decrees. The Agency has submitted reports on regulatory corruption risks, including recommendations for improvements, to the authorities responsible for the draft laws. The Agency has also published these reports on its website and presented them at public events.

209 Republished in the Official Gazette, Part I, No. 260 of 21 April 2010 <http://www.dreptonline.ro/legislatie/legea_24_2000_normele_tehnica_legislativa_elaborarea_actelor_normative_republicata_2010.php> (Romanian); English version as of 2004: <http://lege5.ro/Gratuit/gmzdqnzvga/law-no-24-2000-on-the-legislative-technique-norms-for-drawing-up-regulatory-acts>.

210 Law No. 52/2003 republished in the Official Gazette, Part I, No. 749, of 3 December 2013 <http://www.euroavocatura.ro/print2.php?print2=lege&idItem=1125> (Romanian).

The Agency is not yet in a position to assess what **impact** these corruption proofing reports had on the law drafters (ministries etc), because at present law drafters do not notify the Agency on their compliance with the recommendations. However, in some cases, law drafters have cooperated with the Agency and accepted its suggestions and recommendations for eliminating regulatory corruption risks.

Some reviews by the Agency in the past were triggered by **media reports**. For example, the Agency reviewed two different laws in 2011 after media reports pointed to corruption risks related to the legislation.

In January 2011, the Ministry of Environment and Spatial Planning and the "Standing Conference of Towns and Municipalities" presented a draft **Amendment Act** to the "Planning and Development Act". The Amendment was supposed to render the legalisation of illegally constructed objects more simply and cheaply. At the same time, the media published the comments of experts who claimed that the Amendments would create opportunities for corruption. Subsequently, the Anti-corruption Agency published a statement suggesting that certain procedures and delegations of tasks could provide cause to potential abuse. Consequently, the Ministry of Environment and Spatial Planning invited the Agency to take part in a **working group** for **drafting** the Amendment.[211]

Furthermore, a newspaper published an article in January 2011 on the alleged "purchase" of disability pensions in the city of Novi Sad. The Anti-corruption Agency examined the practice, procedure and **regulations** for awarding disability pensions. As a result, the Agency suggested several measures. These included organisational and regulatory changes, such as introducing mandatory time limits for processing requests for expertise and defining procedures and criteria for the selection of medical experts and controllers. However, the Agency did not receive "any notification of any subsequent measures undertaken in order to suppress this practice."[212]

The above regulatory reviews concern the **substance** of the laws based on the two competencies of the Agency shown below, as defined in Article 4 of the Anti-corruption Agency Act:

> The Agency "cooperates with other government bodies in drafting regulations in the field of fight against corruption; [...] launches initiatives for amending and enacting regulations in the field of combating corruption".[213]

211 Annual Report of the Anti-Corruption Agency for 2011, Chapter 12.6 <http://liportal.giz.de/fileadmin/user_upload/oeffentlich/Serbien/20_geschichte-staat/Annual_Report_of_the_Agency_2011.pdf>.

212 Annual Report of the Anti-Corruption Agency for 2011, Chapter 12.5.1.

213 Published in Official Gazette No. 97/08 of 27 October 2008 <http://www.anticorruption-serbia.org/component/docman/doc_download/13-anti-corruption-agency-act-english> (English). An updated version, including amendments as published in Official Gazettes No. 53/10, 66/11-US and 67/13-US, can be found at <http://www.acas.rs/sr_lat/zakoni-i-drugi-propisi/zakoni/zakoni-o-agenciji.html> (Serbian).

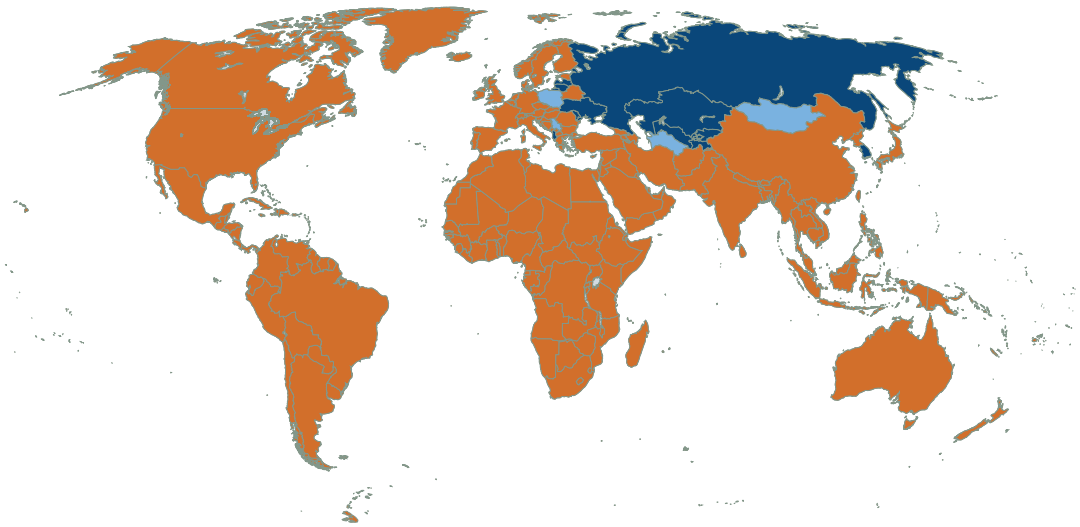
One should also mention that the "Unified **Drafting Methodology** Rules"[214] of 2010 already contain 21 pages of detailed guidance concerning the avoidance of imprecise legislative language and on structuring norms properly. The Methodology complements these rules substantially by specifically referring to corruption risks within the context of language and legal technique.

The "Rules of Procedure of the Government"[215] require public **consultation** where the proposed legislation "can change significantly the way in which a matter has been addressed legally or governs a matter of particular public interest" (Article 41 para. 1). A period of 30 to 45 days is allocated for the consultation. Where public consultation is not required, there is still the requirement to make the bill and associated material publicly available (Article 42). There is no explicit regulation on how state bodies should consider public feedback. A 2011 report by OSCE found that "as far as the development of policy prior to actually drafting any required implementing legislation is concerned, it appears [...] there is little civil society consultation".[216]

2.3 Summary and Conclusion

2.3.1 Comparative Overview

Thirteen countries already have a methodology for corruption proofing in place (marked in dark blue), while four more are about to introduce such a tool (marked in light blue).



214 Official Gazette No. 21/2010 <www.legislationline.org/download/action/download/id/4049/file/UNIFIED%20DRAFTING%20METHODOLOGY%20RULES_2010_en.pdf>.

215 <www.legislationline.org/documents/id/16068>.

216 OSCE, "Law Drafting and Legislative Process in the Republic of Serbia - An Assessment", December 2011, page 43 <www.legislationline.org/documents/id/16808>.

The table below is an overview of the specific tools for corruption proofing that exists in 13 countries worldwide

COUNTRY	AL	AM	AZ	KZ	KR	KG	LV	LT	MD	RU	TJ	UA	UZ
Formally introduced in	2011	2009	2010	2011	2006	2008	2008	2002	2006	2007	2012	2009	2011
Implemented since	-	2011	2011	2011	2006	2008	2008	2002	2006	2005	2008	2013	2012
1. Specific regulatory basis													
1.1. Statute	-	X	X	X	X	X	X	X	X	X	X	X	-
1.2. Sub-statutory law	-	X	-	X	X	X	X	X	X	-	-	-	X
1.3. Methodological instruction	X	-	-	X	X	X	Draft	X	X	X	-	X	X
2. Scope													
2.1. Drafts	X	X	X	X	X	X	X	X	X	X	X	X	X
2.2. Enacted laws	-	-	-	X	X	-	X	X	-	X	X	X	-
2.3. Statutes	X	X	X	X	X	X	X	X	X	X	X	X	-
2.4. Sub-statutory law	-	X	X	X	X	X	X	X	X	X	X	X	-
2.5. Central law	X	X	X	X	X	X	X	X	X	X	X	X	-
2.6. Regional law	-	X	X	X	X	X	X	X	X	X	X	-	-
2.7. Local law	-	X	X	X	X	X	X	X	X	X	X	-	-
2.8. Explanatory notes accompanying laws	-	-	-	-	-	-	-	-	-	-	-	-	-
3. Selection of laws													
3.1. Drafts													
3.1.1. All drafts	X	X	X	-	X	-	-	-	X	X	X	X	X
3.1.2. Risk based	-	-	-	X	-	-	X	X	-	-	-	-	-
3.1.3. List of legal areas	-	-	-	-	-	X	-	X	-	-	X	-	-
3.1.4. Upon request by other state bodies	-	-	-	-	-	-	-	X	X	X	-	-	-
3.1.5. Upon initiative by entity in charge	-	-	-	X	-	-	X	X	-	-	-	-	-
3.2. Enacted													
3.2.1. All enacted laws	-	-	-	-	X	-	-	-	-	-	X	-	-

Country	AL	AM	AZ	KZ	KR	KG	LV	LT	MD	RU	TJ	UA	UZ
3.2.2. Risk based	-	-	-	X	X	-	X	X	-	-	-	-	-
3.2.3. List of legal areas	-	-	-	-	-	-	-	X	-	-	X	X	-
3.2.4. Upon request by other state bodies	-	-	-	-	-	-	-	X	-	X	-	-	-
3.2.5. Upon initiative by entity in charge	-	-	-	X	X	-	X	X	-	X	-	X	-
3.2.6. Annual plan	-	-	-	-	X	-	X	-	-	-	-	X	-
4. Inherent or extrinsic methods													
4.1. Coinciding with legal drafting (inherent)	X	-	-	-	-	-	X	X	-	-	-	X	-
4.2. Separate from legal drafting (extrinsic)	-	X	X	X	X	X	X	X	X	X	X	X	X
5. Time of assessing draft laws													
5.1. Drafting process by ministry	X	-	-	-	-	-	-	-	-	-	-	X	-
5.2. Adoption of law by ministry	-	X	X	X	X	-	X	X	X	X	X	X	X
5.3. Adoption by government	-	-	-	-	-	-	-	-	X	X	-	X	-
5.4. Parliamentary process	-	-	-	-	-	X	-	X	-	X	-	X	-
6. Entity in charge													
6.1. Anti-corruption body	-	-	-	-	X	-	X	X	X	-	X	-	-
6.2. Ministry/ies or other executive body/ies	X	X	X	X	-	X	-	X	-	X	X	X	X
6.3. Parliamentary commission	-	-	-	-	-	X	-	-	-	X	X	X	-
6.4. Civil society	-	X	X	-	-	-	-	-	X	X	X	X	-
6.5. Additional coordination commission	-	-	-	-	-	-	-	-	X	-	-	-	-
7. Methodology													
7.1. Author													
7.1.1. State (central)	-	X	X	X	X	X	X	X	X	X	X	X	X
7.1.2. State (regional/local)	-	-	-	-	-	-	-	X	-	X	-	-	-
7.1.3. Civil society	-	-	-	-	-	-	-	-	X	-	-	X	-

Country	AL	AM	AZ	KZ	KR	KG	LV	LT	MD	RU	TJ	UA	UZ
7.1.4. International organisation	X	-	-	-	-	-	-	-	X	-	-	X	-
7.2. Definitions													
7.2.1. Corruption	-	-	-	-	-	-	-	X	X	X	-	X	n.k.
7.2.2. Regulatory corruption risk	-	-	-	-	-	X	-	X	X	-	X	X	n.k.
7.2.3. Other	-	-	-	-	-	X	-	X	X	X	X	X	n.k.
7.3. Risk factors													
7.3.1. Language (e.g., ambiguity)	X	X	X	X	-	X	X	X	X	X	X	X	X
7.3.2. Legal technique (e.g., coherence)	X	X	X	X	-	X	X	X	X	X	X	X	X
7.3.3. Preventive mechanisms (e.g., appeal)	X	X	X	X	X	X	X	X	X	X	X	X	X
7.3.4. List of corruption risks	X	X	X	X	X	X	X	X	X	X	X	X	X
7.4. Functional analysis	-	-	-	X	X	-	X	X	X	X	-	X	n.k.
7.5. Relevance of explanatory note	-	-	-	-	-	X	-	X	X	-	-	-	n.k.
7.6. Illustrated with examples	-	-	-	X	X	-	-	-	X	X	-	X	n.k.
7.7. Report													
7.7.1. Suggested structure of report	-	X	X	X	X	X	-	X	X	X	-	X	n.k.
7.7.2. Timeline for report	-	X	X	-	X	-	-	X	X	-	-	-	n.k.
8. Recommendations													
8.1. Binding (for all or some laws)	-	-	-	-	-	-	-	-	-	X	-	-	n.k.
8.2. Duty to consider	-	-	X	-	X	X	-	X	X	X	X	X	n.k.
8.3. Timelines for consideration	-	-	-	-	X	-	-	X	-	X	-	-	n.k.
8.4. Feedback	-	-	-	-	X	X	-	X	X	X	X	-	n.k.
8.5. Dispute resolution	-	-	-	-	-	-	-	-	X	X	X	-	n.k.
8.6. Follow-up on compliance	-	-	-	-	X	-	-	-	X	-	-	-	n.k.
9. Online publicity													

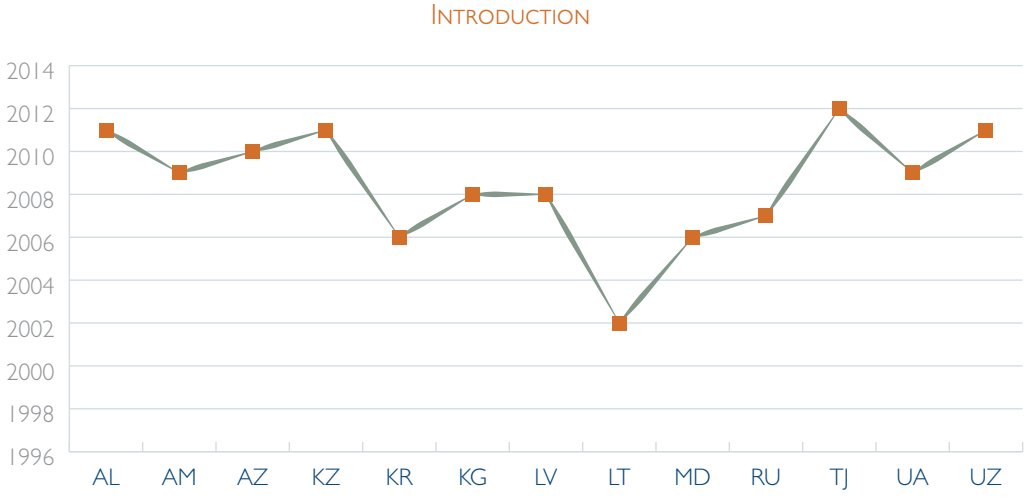
Country	AL	AM	AZ	KZ	KR	KG	LV	LT	MD	RU	TJ	UA	UZ
9.1. Individual reports	-	X	n.k.	-	X	-	-	X	X	-	n.k.	X	n.k.
9.2. Annual summary	-	-	-	-	X	-	-	X	X	-	-	X	n.k.
9.3. Statistical information on reviews	-	-	-	-	X	-	-	X	X	-	-	X	n.k.
9.4. Compliance information	-	-	-	-	-	-	-	-	X	-	-	-	n.k.
9.5. Methodology	-	-	-	X	X	X	-	X	X	X	-	X	-
10. Training on corruption proofing in drafting	X	n.k.	n.k.	n.k.	X	n.k.	-	X	X	-	n.k.	X	n.k.

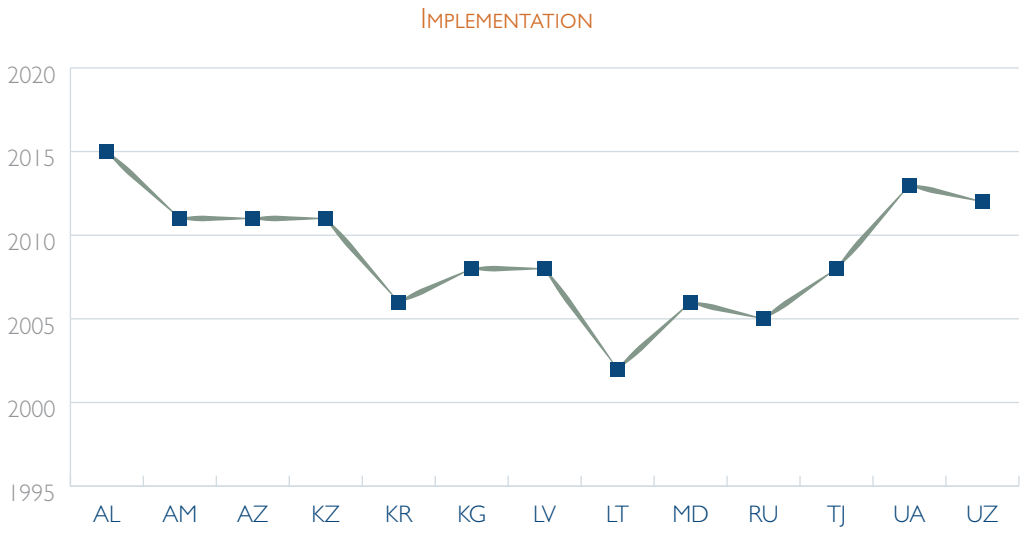
Annotations:

- n.k = not known (there is not enough data available, while an additional request to the country for specific information has not been answered).
- The term "Law" is used in the sense that it includes all levels of normative acts (formal legislation, bylaws, self-regulation, etc).
- The table above builds on the legal provision but might not necessarily reflect actual implementation.
- The table only reflects legislation specifically mentioning corruption proofing. For example, general anti-corruption legislation allowing an anti-corruption agency to "analyse anti-corruption risks and provide recommendations" would not justify this country showing an entry for corruption proofing for 1.1 "Statute".
- The table only reflects that explicitly mentioned in the laws and guidance of each country. For example, under 7.5 "Relevance of explanatory note" only those countries that explicitly take into account explanatory notes are listed, even if other countries probably make use of this legislative justification in practice.
- The table follows the statute whenever a statute provides different regulations to a methodology. For example, the Russian law differs on several points from the methodology adopted by the Parliament (Duma).
- Whenever the law or methodology mentions civil society stakeholders as part of the corruption proofing process No. 6.4 in the above table applies, regardless of whether accreditation is required.

For further narrative explanation of each of the main lines contained in the above table please see the next section (2.3.2).

The year when corruption proofing was introduced and or will be implemented in each country





The following is an overview on all ten countries from South East Europe, including eight countries that do not have a specific tool for corruption proofing. All these countries have general guidance for law drafting as well as mechanisms for general public consultation on legal drafts. Both mechanisms are suitable for civil society stakeholders to provide comments on draft laws from an anti-corruption perspective.

Country	AL	BiH	BG	HR	KO*	MD	MK	ME	RO	RS
1. Legal drafting guidelines										
1.1. Regulations	X	X	X	-	X	X	X	X	X	X
1.2. Manual/guidance	X	X	X	-	X	X	X	X	X	X
2. Participatory legal drafting										
2.1. Regulations	X	X	X	X	X	X	X	X	X	X
2.2. Transparency (publication of drafts etc)	X	X	X	X	X	X	X	X	X	X
2.3. Consultation	X	X	X	X	X	X	X	X	X	X

It is of note that even though all of the countries have some rules on legal drafting and participatory law drafting the extent and depth varies greatly.

2.3.2 Good Practice

Through comparison of the specific mechanisms for corruption proofing described above one can extrapolate certain examples of good practice.

Regulatory basis

A statutory provision ensures that all public stakeholders take part in the corruption proofing, in particular members of parliament who cannot be bound by a simple government decree. It is also the appropriate legal level for obliging state bodies to respond to assessments submitted by civil society stakeholders. An implementing sub-statutory bylaw is the right regulatory level for detailing the statutory provision. Depending on its length, the bylaw can contain the methodology itself; alternatively, an instruction manual is probably the better option as it can also work didactically, for example, by illustrating examples, something that a law normally cannot.

Scope

Obviously, corruption proofing should cover all sectors of the Law to the broadest extent possible. This not only allows for eliminating risks, even those in areas that might be off the usual track but still have relevance to corruption, but also promotes good law drafting as a general rule. A broad scope encompasses draft and enacted laws, including laws at all the regulatory level. In fact, it is often the bylaws that define the procedures, fees and time limits and concretise statutory discretion; all these relate to major corruption risks. Corruption schemes occur mostly or even solely at the local level such as, for example, public housing, public welfare and public procurement are often sectors that fall under the competence of local authorities.

A different question is whether the entity in charge of corruption proofing is able to deal with the entirety of laws. For this purpose, a mechanism on selecting and prioritising laws for review can align available capacities with the need for review.

Relevance of the explanatory note

The Moldovan methodology directs the reader's interest to the explanatory notes (or memoranda) for draft laws. These contain the objectives and justification of any given law. The methodology uses the explanatory note rather as a risk factor for the legislation it accompanies. Yet one should keep in mind that explanatory notes can have the same impact as the regulation itself. Courts regularly refer to the explanations when interpreting a law. Several western courts,[217] including constitutional courts,[218] recognise this technique. Therefore, explanatory notes in fact should not just be a tool for corruption proofing but also a subject of it.

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217 See, for example, France: Claire M. Germain, "Approaches to Statutory Interpretation and Legislative History in France", 13 Duke J. Comp. & Int'l L. (2003) 195, 202 f <http://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1233&context=facultypub>; United Kingdom: Francis Bennion, "On Statute Law, Part II: Statutory Interpretation", 1990, page 112 f <http://www.francisbennion.com/book/statutelaw.htm>; seen from a comparative perspective, A. Daniel Farber, "Hermeneutic Tourist: Statutory Interpretation in Comparative Perspective", 81 Cornell L. Rev. (1995) 513 <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2579&context=facpubs>.

218 See, for example, the Decision of the Constitutional Court in Germany of 30 June 2009, No. 323 and 383 <https://www.bundesverfassungsgericht.de/en/decisions/es20090630_2bve000208en.html> (English); Holger Fleischer, "Comparative Approaches to the Use of Legislative History in Statutory Interpretation", 60 American Journal of Comparative Law (2012) 401 <http://comparativelaw.metapress.com/content/lr77m72u194t8716/>.

Selection of laws

In the majority of countries, all draft laws are subject to corruption proofing. This makes sense even capacity wise, because draft laws already undergo various other assessments. It also ensures that at least all new laws will be corruption proof. If there is insufficient capacity to perform assessments on all draft laws then a risk-based selection is the second best option.

Risk-based selection criteria can include the following:

- abstract areas typically prone to corruption, such as procurement or law enforcement;
- areas based on high levels of actual corruption;
- laws that include corruption prone tools, such as the award of subsidies, collection of fees or carrying out regular inspections;
- laws with a high level of corruption risk factors. (This actually tells us something relevant about the need for a corruption review as all other criteria, such as the "actual levels of corruption" might turn out to have nothing to do with corruption risk factors in the legislation. The latter being more connected to the extremely low salaries of civil servants combined with the traditional lack of an ethics culture and organisational capacity. However, it requires a corruption analysis of the law and is therefore probably hard if not impossible to handle).

Additionally, there might be individual incidents where individuals or interest groups have attempted to manipulate a law through financial political donations, undue lobbying, bribery or other problematic influences. Whenever law enforcement or the media report on such incidents it can give cause for corruption proofing of the respective law.

The total number of enacted laws to select from is obviously very high in all countries. Yet Korea combined the ambitious goal of reviewing all enacted laws with an approach of implementing annual plans to select the enacted laws for review each year. To this end, laws with a high risk of corruption factors have priority.

To allow the entity in charge of revision of draft and enacted laws to act on its own initiative and not only at the request of other state bodies is certainly a good feature. This way, the corruption proofing entity can react to any corruption scandal or to any suspicion about any law carrying particular corruption risks.

Timing

Obviously, the drafters of any law should already take the principles of corruption proofing into account in order to avoid any corruption risk from the very beginning of the legislative process. Any external review normally starts with the law as adopted by a ministry. This allows for any corruption proofing recommendation to feed into the legislative process at an early stage when it is still a 'work in progress'. To ensure that all recommendations are followed through and that any changes along the process of debating the law in parliament are also corruption

proof, reviews should repeat throughout the whole legislative process. It is worth noting that in singular instances, even after adoption by parliament, a president might review a law and send it back to parliament based on concerns about corruption risks (as happened once in Lithuania).

There needs to be sufficient time for drafting anti-corruption expertise but also a maximum limit within which the expertise must be completed so that the legislative process can continue. Such time limits need to reflect the resources and timelines of individual countries. A maximum time of 15 days proved sufficient during more than ten years of practice in Lithuania. At the same time, there is sometimes a real need to pass urgent legislation within a matter of a few days, an example being cases of imminent financial crisis. In such cases, the time limit could be much shorter (for example 3 days as in Lithuania and Moldova). However, there might be cases where there is not even enough time due to legislation sometimes having to pass within a total of three days between cabinet resolution and adoption in parliament. In such a case, a thorough report could always be elaborated and submitted at a later date and if substantial shortcomings were found then the parliament could consider modifying the adopted "fast" version.

Entity in charge

Most countries entrust a specialised anti-corruption body with corruption proofing. Ukraine, which does not have such a body, tasks the Ministry of Justice (which is one of the main anti-corruption policy coordination bodies in Ukraine). In Albania, corruption proofing coincides with the legal drafting itself; therefore, naturally all law drafting bodies are responsible for corruption proofing.

However, if corruption proofing is done only at the drafting stage then there is no external check of whether the author of the law drafted it in a way favourable to him/herself or his/her colleagues. Furthermore, one cannot expect that all legal drafting units in all ministries can conduct anti-corruption expertise in the way that a specialised anti-corruption body usually does.

A parliamentary commission for corruption proofing laws is certainly helpful, if done in addition to a review performed at an earlier stage. In any event, civil society should play an important role. It is external to and independent from the state sphere and therefore offers a diverse range of expertise. Ideally, civil society stakeholders would even take part in corruption proofing in an institutionalised way, such as the Civic Expert Council of the Parliamentary Committee on Combating Corruption and Organised Crime in Ukraine or the Advisory Council of the Korean Anti-Corruption and Civil Rights Commission. In Kyrgyzstan, parliamentary commissions are obliged to hear representatives of civil society in person, if they have submitted an anti-corruption expertise on a draft law. However, any qualification or registration requirement for civil society stakeholders in order to submit opinion on corruption proofing seems to be problematic in a democratic society.

Lithuania and Moldova provide the reviewing entity with explicit powers to request and receive informative and consultative support for performing the corruption proofing from public authorities. Such a provision can facilitate

corruption proofing, but might not be necessary in all countries. General cooperation clauses related to legislation on the government or similar often deal with the obligation of cooperation and support. As for the qualification of experts performing the corruption proofing, it goes without saying that they should be lawyers (or similarly legally qualified staff). If not they then they would not understand the implications of legal technique and interpretation.

Authorship of methodology

In most cases, a central entity such as an anti-corruption body drafts a unified methodology for corruption proofing. Yet regional and/or local entities in some countries adopt their own methodology, usually based on the central one. Such an option can promote ownership of corruption proofing at the regional and local level. Civil society can step in with drafting a methodology – supported by international donors – whenever the state authorities do not fulfil their task of drafting one (see Ukraine). State authorities can also cooperate with civil society on the drafting of the methodology in order to ensure sufficient influence by stakeholders that are independent from the state.

Definition of corruption

Only some methodologies provide definitions of "corruption" and of other terms. This is certainly a helpful feature, as clarity on terms renders a document more understandable. It also makes certain that users of a methodology are all on the same page: some users might have a limited concept of corruption having only bribery in mind, whereas usually corruption proofing is meant to cover a much broader range of incidents such as abuse of office or violation of conflict of interest rules.

Regulatory corruption risks

In all of the countries, the regulatory corruption risks contained in the methodology relate to language (ambiguity), legal technique (coherence) and preventive mechanisms (e.g. the four-eye principle, and possibility for citizens to appeal, etc). There is also always a list of regulatory corruption risks, which is in fact the core part of any corruption proofing methodology. Some countries define additional regulatory corruption risks to give users more clarity. Although, there are shortcomings in most of the definitions (see 1.1.3 "Terminology" above).

In almost all countries, a functional analysis of how a law translates into practice complements the more legalistic perspective of corruption proofing. Such a functional analysis might extend to a full risk assessment of the sector the law concerns: analysis of the relations and processes in the sector, interviews with or surveys of affected stakeholders, etc. Many methodologies use real life examples to illustrate to the reader the corruption risks; this is a didactically valuable addition. Calling for laws "to be formulated in an unambiguous way" is not enough; guidelines need to show the main forms of ambiguity and more importantly how one can avoid this risk.

The main challenge of corruption risks is to compile them in such a way that any user can easily access and understand the structure. Sometimes the regulatory corruption risks appear as a rather unstructured list of all identified risks. Quite often, if not always, the methodologies mix risks stemming from ambiguity of

language or legal technique with risks stemming from substance issues (i.e. the lack of timelines in a procedure). Any methodology should clearly distinguish between both main categories of risk.

Substance related risks have nothing to do with ambiguity. A law can be very clear and unambiguous yet still show a lack of preventive mechanisms. In example, a complete and unambiguous lack of sanctions for conflict of interest violations might "allow" a public official to grant building permits to his/her relatives. Sometimes, the methodologies deal with substance issues only by repeating issues of ambiguity (e.g. pointing to the problem that sanctions worded in ambiguous terms, which is, however, not an issue of sanctions but a general problem of language).

The structure of substance issues should rather not follow anti-corruption terminology such as transparency, accountability or the demand and supply side of services, because such principles are rather abstract and outside the world of anti-corruption experts. Furthermore, from a didactical perspective, regulatory corruption risks should rather be structured according to the typical building blocks of any law, such as scope, procedure, implementation body and sanctions; these are categories familiar not only to the legal experts drafting laws but are also understandable to the public at large.

All methodologies inherently (without explicitly saying so) focus exclusively on public law. Yet there are private laws that merit attention in terms of facilitating corruption. For example, weak accounting and documentation rules in (private) business law can make it difficult to trace a bribe back to a company or to a particular individual in a company.

As for demonstrating how risks could materialise into actual corruption, the methodologies sometimes repeat the same information for each regulatory corruption risk. However, public officials abuse ambiguity in a law in the same way they exploit the lack of prevention mechanisms. A methodology should explain clearly and concisely how public officials exploit ambiguous or otherwise weak legislation. Otherwise, the methodology becomes bulky and tiring to read.

Assessment

Corruption proofing usually consists of the following working steps: preparatory work (researching background information on the law), analysis of corruption risks and drafting the report and recommendations. The assessment not only uses the law as a source but also for explanatory notes, background information and to some extent functional analysis of the law, including interviews with experts and/or stakeholders. A self-assessment checklist for authors of draft laws might be an interesting feature. Some assessment procedures also explicitly foresee public hearings on important or contested draft laws; however, the question is to what extent such hearings by the corruption proofing body would duplicate public hearing mechanisms by government bodies or parliament.

Report

Only half of the countries that foresaw extrinsic corruption proofing (i.e. not coinciding with the drafting but done by a separate stakeholder) suggested a

structure for the review report. However, such a unified structure is certainly helpful for ensuring that all assessments touch on certain basic questions, are more easily comparable in terms of quality and allow the informed reader to gain quick access to a particular category of information. A timeline for drafting the report would certainly help ensure that the corruption proofing report is available for the draft law to be submitted on time.

Recommendations for improving laws

Recommendations are not binding in any country. The reason is obvious: it cannot be that one state entity reviewing a (draft) law alone dominates the entire legislative process. From a constitutional perspective, only parliament can have the final say over formal legislation and only the competent executive or self-regulating body can have the final say over sub-statutory law. Yet it is interesting to note that in Russia a corruption proofing expert review can override a local regulation and that the respective regulation is invalid if adopted in contradiction to the expert review.

There are probably several constitutional questions that surround such a legal consequence, in particular that of self-regulating autonomy of local government in relation to the central government. Without the recommendations being binding, alternative mechanisms are necessary to ensure that the recommendations do not just end up in some drawer without having any impact. There must be a duty to consider the recommendations within a standard timeframe and the necessity to provide substantiated reasons should the entity drafting or setting the law not follow the recommendations. A powerful additional tool is monitoring to ascertain to what extent recommendations are followed-up. This is usually done through an analysis of recommendations on draft laws and their reflection in adopted laws or respectively for enacted laws and their amended versions.

Dispute resolution

Two countries have dispute resolution mechanisms. Yet as recommendations are not binding, from the perspective of international standards, there seems to be no need to require such a dispute mechanism.

Online publicity

It goes without saying that online publicity of individual corruption proofing reports opens the recommendations up to public scrutiny and debate. Ideally, the corruption proofing reports are linked to the draft or enacted laws on the official national website for publishing laws (see Lithuania). An annual summary of corruption proofing activities by the entity in charge is also a good practice andh shows accountability to the public. It allows civil society stakeholders to identify any enacted or draft law for corruption proofing that for any reason was not subject to corruption proofing; civil society stakeholders can then review the law.

Similarly, statistical information is a useful feature for the public to gain an impression of quantitative performance. Compliance reviews exist only in Moldova and, reportedly, also in Kazakhstan. Obviously, their online availability, as in Moldova, is important for such reviews to support public visibility and the relevance of this tool. The Ukrainian regulation of exempting reports with no

identified corruption risk from publication is problematic. Such a result also makes it very easy to avoid publication by drafting the report in such a way that it would not identify any corruption risks.

PART 2: METHODOLOGY

This Methodology contains four main parts:

- the actual **corruption proofing** process (Section 1);
- the **framework** for implementing corruption proofing (Section 2);
- a description of regulatory corruption **risks** (sections 3-5);
- an addendum on corrupted legislation (Section 6).

It is complemented in accordance with the "Ten Principles of Effective Corruption Proofing" (Section 7), which can serve as a benchmark for international monitoring exercises.

This Methodology is a basic structure containing all necessary elements, which can be adapted or amended to meet the needs of any country.

1. CORRUPTION PROOFING

This chapter describes the process of corruption proofing.

1.1 Definition

Corruption proofing of legislation comprises a review of the form and substance of drafted or enacted legal rules in order to detect and minimise future corruption risks that the rules could facilitate. There are various terms for this exercise, such as "anti-corruption expertise" or "anti-corruption assessment".

This Methodology will use the expression "corruption proofing" for the simple reason of reader-friendliness: it is short and visually stands out from the word "anti-corruption", which is frequently used in the same sentences as "corruption proofing" but with completely different reference.

1.2 Scope

Corruption proofing should cover the law to the **widest possible extent**. This not only allows for the elimination of the risks, even in areas that might be off the usual track but still have relevance for corruption, but also promotes good law drafting as a general rule. A wide scope encompasses draft and enacted laws as well as laws at all regulatory levels. It is in fact the bylaws that often define procedures, fees and time limits and which also concretise statutory discretion. Many corruption schemes occur mostly or even only at the **local level**. For example, public housing, public welfare and public procurement are sectors that often fall under the competence of local authorities. At the same time, experience shows that the risk of regulatory corruption increase the more one goes down to the local level as the private interests of local lawmakers become more intermingled with their public function.

Explanatory notes contain the objectives and justification of any given draft law. One should keep in mind that explanatory notes can have the same impact as the regulation itself. Courts regularly refer to the explanations when interpreting the Law. Several Western courts, including constitutional courts, recognise this technique.[219] Therefore, corruption proofing should include explanatory notes.

Generally, laws are defined as regulating the rights and/or obligations of an unforeseeable number of individuals and instances. This does not include regulatory decisions by the government on **individual cases**, such as on telecommunications licences or the approval of mergers. There are two main reasons for excluding individual cases from the scope of this Methodology:

- the **procedure** for and **content** of individual decisions are very different to that of laws; and
- if individual decisions are related to corruption then because they are already the **result of corruption**, rather than facilitating future corruption, they may be the result of bribery or conflict of interest but rarely allow for the future soliciting of bribes, such as a flawed law would do. The corruption proofing would have to focus on the past corruption itself, which is rather the task of law enforcement bodies that have the resources and procedures to exhaust all forms of evidence.

219 See, for example, the Decision of the Constitutional Court in Germany of 30 June 2009, No. 323 and 383 <https://www.bundesverfassungsgericht.de/en/decisions/es20090630_2bve000208en.html> (English); Holger Fleischer, "Comparative Approaches to the Use of Legislative History in Statutory Interpretation", 60 American Journal of Comparative Law (2012) 401 <http://comparativelaw.metapress.com/content/lr77m72u194t8716/>.

Example: *Article 31 Law on Procurement: Public officials or their family members cannot take part in tenders procured by the sector in which the official is employed.*

Explanatory note to the Law on Procurement: Article 31 shall prevent public officials and their family members from manipulating procedures in their favour when they fall into the competency of the public body in which they work.

Problem: *One should understand "sector" in Article 31 rather broadly as the field of work (health, environment, etc.) rather than the mere competency of one single "public body" (as defined in the Explanatory Note), which might be much narrower. When interpreting "sector", courts might refer to the Explanatory Note and opt for "public body" of the public official. Obviously, the public official and his/her family should not only be prohibited from tenders of the same agency but of a subordinated or related public body within the same field of work.*

Solution: *The Explanatory Note to the Law on Procurement: Article 31 shall prevent public officials and their family members from manipulating procedures in their favour when they fall into the* ***sector*** *of the public body they work for;* ***thus all tenders from all public bodies in the same field of work (health, labour, etc.) are included in the prohibition****.*

An administrative corruption proofing body with its limited access to intelligence by contrast would risk falsely exonerating stakeholders.

1.3 Prioritising Laws

How to Prioritise

In principle, **all** draft and enacted laws should be subject to corruption proofing. In this case, no criteria for selecting laws would be necessary.

A **second-best** option would be to review all draft laws and a prioritised selection of all enacted laws. A third-best, but **not recommended,** option would be to review only a selection of draft and enacted laws. Only the second and third best options should be a choice if there is not enough capacity to perform assessments for all laws.

For the second and third-best options, the corruption proofing body should select laws based on risks if any of the below criteria are met.

1) General criteria:

   a. legal areas typically **prone** to corruption, including procurement and political finance for all countries, and other sectors (depending on the country) such as law enforcement, health and education;

   b. laws that include corruption prone **mechanisms**, such as the awarding of financial advantage or of licences and permits, or the collection of fees and taxes, irrespective of whether the legal area is typically prone to corruption;

   c. areas with high levels of **perceived** or **actual** corruption according to national and/or international surveys;

   d. areas that national anti-corruption **action plans** prioritise for reform.

2) Individual incidents:

   a. media or civil society reports about corruption problems facilitated by a law or occurring in a legal area;

   b. notification by other authorities on corruption problems facilitated by a law or occurring in a legal area;

   c. large financial political donations by an interest group related to the legal sector (such as energy companies donating money to governing parties prior to the adoption of the law);

   d. a draft law subject to heavy lobbying by interest groups;

   e. stakeholders responsible for a draft law have a conflict of interest related to the law;

   f. law enforcement bodies or media reports provide intelligence on a certain law manipulated by suspects.

The body in charge for the selection of laws should at least investigate through simple research in order to ascertain whether there actually were any individual incidents. It is sufficient if it reacts to the knowledge of such incidents.

Private law should be subject to corruption proofing only in selected cases, whenever there is a regulatory corruption risk (see 5.2 below), in particular:

- **accounting** and auditing rules for companies (which could be abused to hide bribery payments);
- substantive or procedural rules on the transfer of **property** (that could be abused to raid someone else's assets).

Plans for a certain period (one year, three months, etc.) for the prioritisation of enacted laws in particular should document the selection of laws up for review.

Who Should Prioritise

This question arises if there is one central body for corruption proofing, such as an anti-corruption agency or the ministry of justice. All state bodies should be

entitled to request corruption proofing for a drafted or enacted law from this body. At the same time, however, the corruption proofing body must have its own discretion when prioritising additional laws for immediate review. In this way, the corruption proofing entity can react to any suspicion about a draft or enacted law carrying particular corruption risks even if the ministry responsible for that regulation would rather postpone or circumvent the review in order to avoid public criticism.

How to know about draft laws

The entity in charge of corruption proofing cannot rely only on draft laws tabled to parliament or on law projects announced in the media. The corruption proofing entity needs to ensure that it has regular contact with ministries and law drafting bodies on possible law drafting projects. This contact concerns in particular the ministry of justice, which in most countries is the central executive body coordinating law making. Regular quarterly meetings of a working group with representatives from different law making bodies and the corruption proofing entity might be a good option.

1.4 Timing

Corruption proofing should be possible at any stage of the legislative process:

- drafting process by ministries or other state bodies;
- adoption of a law by a state body;
- adoption by government;
- parliamentary process;
- after adoption.

The drafters of any law should already take the principles of corruption proofing into account in order to avoid any corruption risk from the very beginning.

Any external review normally starts with the law as adopted by a ministry. This allows for any corruption proofing recommendation to feed into the legislative process at an early stage where it is still a "work in progress". In cases of particular interest, corruption proofing experts should take part in the law drafting working group.

To ensure that all recommendations are followed through and that any changes along the process of debating the law in parliament are also corruption proof, reviews should repeat throughout the entire legislative process.

1.5 Sources

Sources of information for corruption proofing

- Legal information:
  - law/draft law;
  - explanatory note;
  - other laws related to the law in question;
  - jurisprudence on the subject matter;
  - law review articles on the subject matter;
  - certain areas of law, such as procurement, can use international standards and guidance or a comparison with foreign examples as a valid benchmark on whether a law is corruption proof.
- Functional analysis:
  - reports on corruption by anti-corruption bodies;
  - reports by the court of auditors on problematic loss of public funds;
  - results from mechanisms for citizens' feedback (hotlines etc);
  - media reports;
  - internet research;
  - surveys;
  - interviews with experts;
  - interviews with the stakeholders applying the law, as either a public official or private citizen.

The functional analysis aims mainly to identify answers to the following question: How can public officials and/or citizens in practice abuse the law and what can be done to prevent such abuses?

It is more or less the same exercise as performed for any corruption risk assessment (see Section 5 below).

1.6 Assessment

The corruption proofing review contains the steps listed below.

Step 1: **Research** and compilation of material (see the previous section).

Step 2: Identification of regulatory corruption **risks** (ambiguity and prevention gaps - see sections 4 and 5).

Step 3: Formulation of **recommendations** on how to avoid or mitigate the corruption risks (see the following section).

Step 4: Drafting and dissemination of the **report** (see the sections to follow).

Step 5: Follow-up on **compliance** with the recommendations (see Section 1.9).

1.7 Report

The assessment report consists mainly of three parts.

Key data
Key data includes the law and its objectives. For this part, the assessment report may simply refer to other documents such as the explanatory note.

Analysis
Analysis of regulatory corruption **risks** is structured mainly by the two main categories: "ambiguity" and "prevention gaps" (see sections 3 to 5 below). The analysis should give a brief explanation wherever it is not obvious how the fault in the regulation could lead to corruption. In addition, should there be indications of "corrupted legislation" the report should also point this out (see section 6 below).

Recommendations
Recommendations should include **alternative formulations** of the law in order to illustrate how one can mitigate the corruption risk. This would also facilitate acceptance of the recommendations, as the criticism would be constructive. In other words, it is easy to criticise but not always so easy to come up with a better proposal.

Abstract recommendations such as "enhance the accountability of public officials" or "include provisions on a more concretely defined procedure" are insufficient. In principle, neither the alternative formulations nor any other part of the recommendation is **binding**. If this were the case then the corruption proofing body would supersede the prerogative of the law drafting or setting state body. It cannot be that one state entity reviewing a (draft) law alone dominates the entire legislative process (which would be a corruption risk itself). There can be exceptions for sub-statutory laws if under constitutional principles it is possible for one state entity to hold legal oversight over another entity (such as a ministry of local government has over laws set by local government).

One should always keep in mind that corruption risks do not stem from regulation alone but also from causes outside regulation. Conversely, one cannot and should not try to fight corruption through recommendations on regulation alone, but rather keep in mind other components that prevent corruption (e.g. fostering a culture of ethics, incentivising public officials to comply with regulations, raising public awareness, etc).

Timeline
There should be a standardised **timeline** for assessment reports, for draft laws in particular, so that the legislative process can continue. At the same time, there needs to be sufficient time for drafting an anti-corruption expertise. Such time limits need to reflect the resources and timelines of the legislative processes in individual countries. A maximum time of 15 days should be sufficient in general. At the same time, there is sometimes a real need to pass **urgent legislation** within a matter of a few days, an example being cases of imminent financial crisis. In such cases, a thorough report could always be elaborated and submitted after the adoption of an urgent law. If there are substantial shortcomings then parliament could consider modifying the adopted "fast" version of the law.

1.8 Dissemination

The assessment report should be made available to the following entities (if separate):

- the state body that **requested** the corruption proofing;
- the state body that is or was in charge of **drafting** the law;
- **ministry of justice**, so it is aware of the different assessments going on and can ensure uniform legal drafting;
- **parliament**, so it can review the recommendations and possible need for action;
- office of the **president**, so that it can also ensure compliance.

The assessment report could be **sent** directly to all entities or **attachment** to the draft regulation made mandatory; in this way, each entity along the legislative process is able to take note of it as soon as the draft reaches it.

1.9 Compliance

As recommendations from corruption proofing reports are not binding, it is important that there are alternative mechanisms for achieving compliance.

Responsible entity
There needs to be a clear definition of who is responsible for implementing the recommendations. This should always be parliament in the case of legislation and the law setting body in the case of bylaws. Obviously, any entity handling a draft before it reaches parliament or the law setting body can and should try to take the recommendations into account.

Duty to consider
The law setting body has a duty to consider the recommendations. In case it does not want to comply with the recommendations, it should indicate so explicitly and provide a brief explanation why.

Compliance feedback
In all cases, the responsible entity should provide feedback to the corruption proofing entity on the level of compliance with each recommendation. Ideally, the assessment report will have a standardised feedback sheet attached to it to facilitate compliance feedback by the law setting body.

This feedback is only a self-assessment of compliance. This dialogue will help the corruption proofing entity better understand how its recommendations are addressed and to reflect on its own position. There should be a timeline for the law setting body to provide feedback. For **draft** laws, feedback should be given shortly after adoption of the law at the latest. Naturally, for **enacted** laws the timeline must be more generous but still fixed in order to ensure that the enacted law is actually being reviewed.

Compliance review
The feedback given to the corruption proofing entity is only a self-assessment of compliance. The law setting body might be of the opinion that it implemented the recommendation(s), whereas others, including the corruption proofing entity, might see it differently. Hence, an external compliance review should complement the self-assessment by the law setting body. This could be done in a number of ways:

- the **corruption proofing** entity should always review whether it concurs with the self-assessment of the law setting body;
- **civil society** organisations could review compliance either on behalf of the corruption proofing body or on their own initiative;
- any interested citizen (general **public)** could review the recommendations and their implementation if given access to the recommendations and the final version of the law.

For **draft** laws, as long as the law is not adopted, the compliance review should be done as soon as possible; in this way the law setting body can still feed in the result of the compliance review before the law is adopted. Naturally, the timeline for **enacted** laws will be more generous but should still be fixed.

1.10 Online Publicity

Online publicity supports compliance with the recommendations for the below stated reasons.

- **Methodology**: Obviously, publicity on the methodology allows everybody from the public or private sphere to understand what corruption proofing concerns and to apply it.
- **Selection** of laws: The public needs to know which laws have or have not been selected for assessment; this will allow civil society stakeholders to step in concerning any law, in addition to the ones already assessed by state bodies, they may wish to assess.
- **Assessment** reports: These allow the public at large to know what the recommendations comprise and this publicity can put a certain amount of pressure on the law setting body to comply with the recommendations.
- Compliance **feedback**: The law setting body will also report to the public if the compliance feedback is published. It will thus have an incentive to provide sensible reasons for not following the recommendations.
- Compliance **review** reports: The public can judge for itself to what extent the non-compliance is well reasoned.

To this end, individual corruption proofing **reports** and in particular their recommendations should be available online for public scrutiny and debate. The same is true for **compliance** feedback and compliance review reports.

In addition, an **annual summary** of corruption proofing activities by the entity in charge would support accountability to the public. It would allow civil society stakeholders to identify any enacted or draft law for corruption proofing that for any reason was not the subject of corruption proofing and have civil society stakeholders review the law. Furthermore, **statistical information** is a useful feature that allows the public to get an impression of the quantitative performance.

2. IMPLEMENTATION FRAMEWORK

Any methodology requires the support of a framework for its implementation. Therefore, the points described below require consideration.

2.1 Regulatory Basis

A statutory provision ensures that all public stakeholders take part in the corruption proofing (including compliance reviews). It is also the appropriate legal level for obliging state bodies to respond to assessments submitted by civil society stakeholders. An implementing sub-statutory bylaw is the right regulatory level for detailing the statutory provision. Depending on its length, the bylaw can contain the methodology itself; alternatively, an instruction manual is probably the better option as it can also work didactically by illustrating examples: something that a law normally cannot.

2.2 Entity in Charge

Through different functions, laws and stages of the process different entities are responsible for reviewing corruption risks.

Legal drafting
At the law drafting stage, all entities drafting laws, in particular ministries and other executive bodies, have to comply with legal drafting standards to avoid corruption risks. This concerns in particular the risk category "ambiguity", because no special knowledge on corruption prevention mechanisms is necessary for this corruption risk.

Draft and enacted statutes and bylaws
When a country has a specialised body for preventing corruption this body should be in charge of reviewing draft and enacted statutes and bylaws. This body could be an (executive) anti-corruption agency or commission or a parliamentary commission for corruption issues. If there is no such specialised body then the ministry of justice still seems to be the natural second best option, because

usually it would have appropriate knowledge of general regulatory impact assessment. The specialised anti-corruption body or the ministry of justice may establish an advisory council for this task in order to ensure diversity of expertise and specialisation.

Civil society
It goes without saying that citizens can review draft or enacted laws at their free discretion. However, it makes sense to define their role within the process because this would oblige the law setting body to consider their recommendations and provide feedback. Ideally, civil society should be part of any formal mechanism for corruption proofing; this could be as an advisory council to the anti-corruption body or a parliamentary commission. If they have submitted an anti-corruption assessment earlier representatives of civil society should appear in person and be heard at public hearings.

The advantage of civil society taking part in corruption proofing is obvious: they are not part of the state bodies and can therefore more easily take a different stance. At the same time, civil society should only complement state efforts: good legislation is the prime responsibility of the state and state bodies generally have more access to the information needed to assess the background of a law.

Regional and local level
Whenever a country has regional and/or local governments the respective law drafting and setting bodies at the regional and local level should be responsible for the corruption proofing of draft and enacted laws.

Experts
As for the qualification of experts performing the corruption proofing in state bodies, it is clear that they should be lawyers (or similarly legally qualified staff). Otherwise, they would not understand the implications of legal technique and interpretation. The corruption proofing entity may enlist a pool of external experts to help with highly specialised or technical laws.

2.3 Responsibility for Methodology

A central anti-corruption body should draft a methodology for corruption proofing. The drafting process should be participatory and consultative. It should include state bodies from different sectors and different levels of government as well as representatives from academia and civil society. This will help ensure sufficient influence by stakeholders that are independent from the state. Regional and local bodies might adopt this methodology through a separate decision and might modify the methodology according to their needs. However, it seems rather unlikely that the methodology would require adaptation for regional or local needs. Civil society can step in with drafting a methodology – possibly supported by international donors – whenever the state authorities do not fulfil their task of drafting one.

2.4 Set of Definitions

The methodology should provide a set of definitions including "corruption" and other terms: clarity on terms renders a document more understandable. It also makes sure that the users of a methodology are all on the same page. Some users might have a limited concept of corruption having only bribery in mind, whereas usually corruption proofing covers a much broader range of incidents such as abuse of office, embezzlement or violation of rules pertaining to conflict of interest. To a large extent the definitions will depend on country specifics such as how, for example, corruption is defined in the national legislature and which entity is chosen as the oversight body.

2.5 Cooperation with Other Authorities

The corruption proofing entity will need to cooperate with other entities in two respects:

- it needs to be aware of projects on draft laws; and
- it needs to have access to all background information concerning a law.

A regulatory framework on corruption proofing needs to reflect both aspects.

2.6 Training

Corruption proofing is a concept that requires training for those unfamiliar with it. In particular, the entities responsible for drafting laws at all levels need to be aware of corruption risks stemming from "ambiguity" or from "prevention gaps"; this also applies to members of parliament and parliamentary staff. Ideally, the training will also include the larger perspective of good governance and integrity in public decision-making as described below.

Training should be interactive and make use of practical exercises. Ideally, it will include simulated reviews of laws.[220]

220 For three examples see Ann Seidman, Robert Seidman and Nalin Abeysekere, "Assessing Legislation – A Manual for Legislators", 2003 page 165 f <http://iknowpolitics.org/sites/default/files/assessing20legislation20-2001.200320-20en20-20pi.pdf>.

2.7 Related Issues

Corruption proofing requires certain preconditions without which even the best methodology will risk failing to achieve any significant impact. Therefore, the points below require consideration.

2.7.1 Sound Legal Drafting

Corruption proofing cannot replace a general culture of sound legal drafting it can only build on an existing one. There needs to be refined guidance on uniform legal drafting implemented as part of a general legislative culture or there needs to be extensive training on legal drafting. Section 2.2 of Part 1 (Comparative Study) lists international examples of comprehensive guidelines on sound legal drafting.

2.7.2 Transparent and Participatory Law Making Process

A culture of participation of civil society in the legislative process will ensure that a diverse group of stakeholders will detect **corruption risks**. Transparency and participation will also prevent corruption risks from making their way into legislation as law setting bodies will be aware that civil society can take on its watchdog function at any time.

Yet civil society stakeholders can only review corruption risks in a meaningful way if draft and enacted laws are published **online**. The level of transparency of laws tabled with parliament remains insufficient and at this stage it is often already too late for meaningful participation. Hence, public bodies need to inform the public as soon as possible about the **planned drafting** of laws. Such public consultation mechanisms need to be proactive and public bodies should be obliged to consider and **respond** to suggestions by civil society stakeholders.

Transparency and public consultation mechanisms need to be in line with international standards, such as the following:

- United Kingdom's revised "Code of Practice on Consultation",[221] as recommended by the OECD;[222]
- European Union "Lisbon Treaty",[223] (Article 10 and Article 11);

221 <https://www.gov.uk/government/publications/consultation-principles-guidance>; Country Report United Kingdom, page 81 <http://www.oecd.org/gov/regulatory-policy/betterregulationineuropeunitedkingdom.htm>

222 Country Report Sweden, page 93 <http://www.oecd.org/gov/regulatory-policy/betterregulationineuropesweden.htm>

223 Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community, of 13 December 2007 <http://ec.europa.eu/archives/lisbon_treaty/index_en.htm; http://www.lisbon-treaty.org/wcm/>

- "White Paper on European Governance" [224] of 2001 by the European Commission.

There are several more standards and comparative publications on public participation.[225]

2.7.3 Lobbying

A democratic society is based on a pluralism of interests. Thus, all members of society are constantly "lobbying" for what they want: citizens organise into peers associations and political parties, choose their representatives in parliament, claim their rights from administrative bodies, take to the street for manifestations and hold referendums. In real life, however, not all members of society have the same capacity to make themselves heard. Some stakeholders have more money to put into lobbying activities, while others have privileged access to decision makers. Thus, equal interests compete with unequal means for the attention of public officials. The regulatory framework for public decision-making needs to prevent any excessive distortion of political competition by people with money or privileged access and lobbyists to public officials. This could mean a specific lobbying regulation or sufficient consideration given to the challenges of ethics and transparency during the lobbying process.

In 2010, the **OECD** member countries adopted "The **10 Principles** for Transparency and Integrity in Lobbying";[226] furthermore, the **Council of Europe's** European Committee on Legal Co-operation (CDCJ) commissioned a study in 2013 in order to determine the feasibility of preparing a European **legal instrument** on a framework for lobbying.[227] Based on the study, the Council of Europe could adopt a legal instrument as early as 2015. International **NGOs** support the formulation of international standards: The Sunlight Foundation published "International Lobbying Disclosure Guidelines" in 2013, while[228] Access Info Europe published its position on "Lobbying Transparency via Right to Information Laws" that same year.[229]

2.7.4 Political Finance

Financial political donations are probably the strongest way of influencing legislation in a legal way. Therefore, transparency on donations from businesses

224 Eszter Hartay (ECNL), "Best Practices on Citizen Participation in WB and EU Member States", 2014 <www.kcsfoundation.org/repository/docs/03_03_2014_3974014_KCSF_2011_Best_practices_on_Citizen_Participation_in_WB_and_EU.pdf>

225 European Centre for Not-for-Profit Law, "Comparative Overview of European Standards and Practices in Regulating Public Participation", 2010 <http://www.icnl.org/research/resources/ngogovcoop/>; European Institute of Public Participation (EIPP), "Public Participation in Europe – An International Perspective", 2009 <www.participationinstitute.org/wp-content/uploads/2009/06/pp_in_e_report_03_06.pdf>

226 <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=256&InstrumentPID=+250>.

227 Parliamentary Assembly Recommendation 2019 (2013) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19951&lang=en>.

228 <http://sunlightfoundation.com/policy/lobbying/guidelines/>.

229 <http://www.access-info.org/en/lobbying-transparency/526-lobbying-report>.

through interest groups to political parties and certain limitations on donations are necessary. Certainly, political finance legislation needs to prohibit donations in exchange for legislative favours.

In the past, the Council of Europe has been the main standard setter in this area. In 2003, the Committee of Ministers to Member States adopted the "Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns."[230] The Council of Europe's Venice Commission and the OSCE/ODIHR adopted the "Guidelines on Political Party Regulation"[231] in 2010, which in chapter XII contain detailed recommendations on the "Funding of political parties".

2.7.5 Ethics in the Legislative Process

Ethical misconduct of legislators can be a strong risk of corrupting legislation. There needs to be comprehensive criminal sanctions for bribery of deputies as well as an ethical framework. International conventions against corruption cover the aspect of bribery, while there are several handbooks and standards on ethics.[232]

230 <https://wcd.coe.int/ViewDoc.jsp?id=2183>.

231 OSCE/ODIHR and Venice Commission, "Guidelines on Political Party Regulation", Strasbourg, 25 October 2010, Study No. 595/2010, CDL-AD(2010)024, Chapter XII <http://www.venice.coe.int/docs/2010/CDL-AD%282010%29024-e.asp>.

232 Global Task Force on Parliamentary Ethics, "Handbook on Parliamentary Ethics and Conduct – A Guide for Parliamentarians", 2009/2010 <www.gopacnetwork.org/Docs/PEC_Guide_EN.pdf>; GOPAC "Anti-Corruption Assessment Tool for Parliamentarians - User guide" <http://gopacnetwork.org/Docs/AntiCorruptionAssessmentTool_EN.pdf>; OPPD, "Parliamentary Ethics, A Question of Trust", 2011 <www.agora-parl.org/node/8871>.

3. OVERVIEW: REGULATORY CORRUPTION RISKS

3.1 Definition

Regulatory corruption **risks** are defined for the purpose of this methodology as follows:

> "Regulatory corruption risks are existing or missing features in a law that can contribute to corruption, no matter whether the risk was intended or not".

Corruption includes all forms as targeted by the United Nations Convention Against Corruption: criminal acts (bribery), trading in influence, abuse of function, embezzlement, violating provisions concerning conflict of interest, favouritism and improper party financing.

As for the statutes, bylaws and all other different levels of legal instruments, this methodology will use the uniform expression "**laws**", if not indicated otherwise. It refers comprehensively to the "system of rules which a particular country or community recognises as regulating the actions of its members and which it may enforce by the imposition of penalties".[233]

3.2 How Risks find their way into Regulations

Stakeholders contributing to the drafting and adoption of a law may either **intend** to create corruption opportunities for themselves and/or others or are **unaware** of the risks they create through bad legal wording or through not fully considering what the law could also do to prevent corruption. Different stakeholders have different opportunities, intentionally or through negligence,

[233] <http://www.oxforddictionaries.com/definition/english/law?q=law>.

to cause the incorporation of regulatory corruption risks at each stage of the law making process. This applies to the following:

- drafters of the law;
- decision makers in the drafting entity (minister, deputy minister, etc);
- decision makers in the government (president's or the office of the prime minister and the cabinet);
- decision makers in parliament;
- professional lobbyists or individual citizens through their influence can cause corruption risks to appear in a regulation at all stages.

3.3 When Risks become Actual Corruption

Ultimately, there are just **two** categories of regulatory corruption risks: "ambiguity" and "a lack of preventive mechanisms".

Ambiguity can be the result of unclear language or of incoherent legal technique; in both cases, the lack of clarity provides any user of the law with the chance to twist the **interpretation** of the law to their own corrupt favour. For example, a public official can argue that an unclear regulation of a customs procedure allows him/her to delay imports (making informal "speed payments" a necessity). At the same time, it can deprive citizens of the option to obtain legal redress in court: when it is unclear as to what a legal rule means the chances of winning a lawsuit against the State are slim. This is even more acute in countries with a highly corrupt **judiciary**: ambiguous laws make it easier for judges to ask for bribes. Thus, in the end, ambiguous regulations allow corruption to collect **twice**: through the administration and the judiciary.

A law can be very clear and unambiguous yet still show a lack of **preventive mechanisms**. This allows the user of the law to commit corruption with a reduced risk of being held liable. For example, a complete lack of sanctions for conflict of interest violations might "allow" a public official to grant building permits to his/her relatives.

Both public officials and citizens can take advantage of regulatory corruption risks.

- **Public officials** can use a faulty regulation as a pretext to demand bribes; for example, when the language of a law is unclear as to whether an applicant has the right to be granted a licence a public official can be "generous" with the interpretation of the law if the applicant is similarly "generous".

- **Citizens** can use faulty regulations to seek advantages that the law is not intended to grant. As in the above example, the unclear language of the law can thus incentivise a citizen to offer a public official a bribe in exchange for a "generous" interpretation of the law.

Corruption does not only occur in relations between public officials and citizens, but can also occur amongst public officials or private citizens.

- **Public to public** corruption: A public official can use faulty regulations to grant another public official (with the same political party affiliation) an unjustified promotion.
- **Public** embezzlement: A public official can use the lack of documentation requirements in a regulation to divert administrative fees collected from citizens to his own pockets.
- **Private to private** corruption: A citizen can use faulty regulations to deprive another citizen of property, one example being a civil law suit. This practice is known in some countries as "private or corporate raids".[234]

A lack of prevention mechanisms facilitates corruption by public officials or citizens in **three directions**.

- It can hinder the full **implementation** of a law and thus allow a public official or citizen to go after their corrupt business without the Law getting in their way (lack of implementation mechanism, lack of competency, etc).
- It can create additional opportunities for corruption by furnishing public officials with unnecessary **powers** that they can then "sell" for money (complicated or double procedures, lack of timelines, etc).
- It can leave gaps that can prevent corrupt stakeholders being held **accountable** (lack of judicial review, lack of sanctions, etc).

234 Thomas Firestone, "Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia", 38 Denv. J. Int'l L. & Pol'y (2010) 555 <http://djilp.org/wp-content/uploads/2011/08/Firestone.pdf>.

4. RISK CATEGORY I: AMBIGUITY

The word "ambiguous" means: capable of being understood in more senses than one.[235] Ambiguity in regulations comes either from bad language or from bad legal technique. In both cases, the reader of a law is left to wonder what the correct interpretation of the law is. Corrupt readers of the law will easily jump on this opportunity and exploit it to their advantage.

All guidance on the use of clear language and uniform legal technique when **drafting manuals** or laws on normative acts has but one aim and that is to avoid ambiguity. In other words, to make what the law means as clear as possible to the reader.

4.1 Language

Roughly, there are two different types of ambiguous language: **word** choice and **sentence** construction.[236] The construction of different languages in particular entails different risks in the detail. Slavic (Croatian, Serbian, etc.), Indo-European (Albanian) or Romanic (Romanian) languages have different rules and freedoms on the use of articles, adverbs, word order, plurals and participles. However, the following general rules of good legal writing apply for all languages:[237]

- use short sentences (one thought one sentence);
- key points at the beginning;
- only one main clause and no more than one subordinate clause (if possible);
- main ideas in the main clause;
- prefer verbs and avoid nouns;
  avoid attribute chains, especially extensive participles, use relative clauses instead;

235 Sanford Schane, "Ambiguity and Misunderstanding in the Law", 26 Thomas Jefferson Law Review, 2002 167 <http://idiom.ucsd.edu/~schane/law/ambiguity.pdf>.

236 For reasons of didactical simplicity, fine print of linguistic science is left out in this context; for further detail see, for example, Stefan Höfler and Alexandra Bünzli, "Controlling the Language of Statutes and Regulations for Semantic Processing, Presentation", <https://files.ifi.uzh.ch/hoefler/hoeflerbuenzli2010splet.pdf>; Stefan Höfler, "Legislative Drafting Guidelines: How Different are they from Controlled Language Rules for Technical Writing?", in Tobias Kuhn, Norbert E. Fuchs, "Controlled Natural Language", Third International Workshop 2012, Berlin/Heidelberg, pages 138-151 <http://dx.doi.org/10.5167/uzh-63553>.

237 "German Guide to the Form of Legal Acts", third edition, 2008 <http://hdr.bmj.de/page_b.1.html#an_62> (German; an English translation is currently in preparation by the German Federal Ministry of Justice).

- avoid passive voice and use active voice;
- say it shorter (erase filler words - use short words).

There are countless schemes for making language unclear; however, in terms of corruption risks, the common main principles outlined below apply.

4.1.1 Words

General and legal expressions can have more than one meaning. Therefore, for each word must represent either a commonly shared understanding or a clear legal definition.

Example: *Jurisdiction will be determined by the place of the citizens' residence.*

Problem: *What does residence mean concretely – actual or registered place of living?*

Solution: *Jurisdiction will be determined by the place where the citizen is **actually living** at that time.*

*Jurisdiction will be determined by the place of residence of the citizen, which means the **registered** legal domicile.*

*Jurisdiction will be determined by the place of residence of the citizen. Residence is defined under **Statute X**.*

One should not use words that are not widely in use or understood or that have not found general acceptance in the language:

- archaic words;
- neologisms (newly coined words, such as "to Photoshop");
- foreign words and phrases;
- abbreviations.

Where it proves difficult to adopt this advice, one should consider defining the word. One word should have only **one meaning** in a law.

The use of **singular and plural** can also be a source of ambiguity.

Example: *The Minister shall establish procedures for the types of appeal specified in this article.*

Problem: *Must the Minister establish a different procedure for each type of appeal or one single procedure for all, or can the Minister choose between both options?*

Solution: *The Minister shall establish **a** procedure for **each** type of appeal specified in this article.*

4.1.2 Phrases

The main forms of ambiguity related to the construction of a sentence (syntax) are the described below.

It is unclear as to which part of a sentence a word is **attached** (attachment ambiguity).

> **EXAMPLE:** *The applicant submits the application with a confirmation by the director.*
>
> **PROBLEM:** *"Submits upon confirmation by the director" or "application accompanied by a confirmation by the director"?*
>
> **SOLUTION:** ***Upon** confirmation by the director, the applicant submits the application.*

A phrase or word refers to something **previously mentioned**, but there is more than one possibility (anaphoric ambiguity).

> **EXAMPLE:** *The agency representative and the applicant agree on the modalities of the procedure; subsequently, he/she confirms the agreement in writing.*
>
> **PROBLEM:** *Who is "he/she"?*
>
> **SOLUTION:** *The agency representative and the applicant agree on the modalities of the procedure; subsequently, the agency representative confirms the agreement in writing.*

Due to the free **word order**, it can be unclear which noun phrase is the subject and which is the direct object of a sentence (functional ambiguity).

> **EXAMPLE:** *Special procedures apply for business applicants in writing.*
>
> **PROBLEM:** *Procedures or applicants in writing?*
>
> **SOLUTION:** *Special procedures **in writing** apply for business applicants.*

The relation can be unclear in possessive phrases such as "the inspection of the agency" (relational ambiguity).

> **EXAMPLE:** *The inspection of the agency opens the procedure.*
>
> **PROBLEM:** *"Inspection of the agency" or "inspection by the agency"?*
>
> **SOLUTION:** *The inspection **by** the agency opens the procedure.*

The use of **past** or future **tense** can give cause to ambiguity. Normally a law should use the present tense.

Example: *Every captain will have to submit the following documents to the director before entering a port.*

Problem: *Will this obligation be only in the future?*

Solution: *Every captain submits the following documents to the director before entering a port.*

Adverbs clarify the **discourse structure** of a sentence. The distinction between "and" and "or" is particularly relevant with lists of conditions ("**and/or**" ambiguity).

Example: *The application is admissible if*

- *the applicant is at least 14 years old,*
- *the parents give their consent, or*
- *another legal guardian gives his/her consent.*

Problem: *If the applicant is 14 years old, is consent by parents or a legal guardian additionally necessary?*

Solution: *The application is admissible if*

- the applicant is at least 14 years old, ***or***
- the parents give their consent, or
- another legal guardian gives his/her consent.

The application is admissible if

- the applicant is at least 14 years old, ***and***
- the parents or another legal guardian give their consent.

One needs to pay attention to other similar adverbs: "insofar", "whereas", "unless", "such as" and "in particular". Under **legal doctrine**, these adverbs usually mark the relation between abstract rules and concrete examples, between extending and limiting statements or between enumerative statements.

A law should not connect phrases with "and/or" or "respectively" as these are ambiguous. The law should make it explicitly clear if it does not matter whether conditions are met alternatively or cumulatively.

EXAMPLE: *The following incidents led to the closure of the business: lack of hygiene and/or lack of health certificate for the cook.*

PROBLEM: *Are both incidents necessary to close the business?*

SOLUTION: *The following incidents, **alternatively or cumulatively**, led to the closure of the business: lack of hygiene and/or lack of health certificate for the cook.*

Wordiness is not only a question of bad style but can also be a cause of ambiguity.

EXAMPLE: *The regulations in Articles 10 and 12 apply accordingly.*

PROBLEM: *What is the difference between the regulations in Articles 10 and 12 and the Articles themselves?*

SOLUTION: *Articles 10 and 12 apply accordingly.*

Similar to wordiness, **non-normative statements** are also sources of ambiguity as it will not be clear as to what extent they constitute rights and obligations (declarative statements such as descriptions, explanations, justifications, background information or pleas). Statements of purpose are also problematic, unless they occur in a special article at the beginning of the text or if they are necessary for the interpretation of a provision.

4.2 Legal Coherence

Legal coherence refers to the logical and orderly relationship of different provisions in the same law or of different laws with each other. Whenever the relationship is not clear, this ambiguity can constitute a corruption risk.

4.2.1 Conflicting Provisions

Two or more legal provisions can conflict with each other. Conflicts can appear within one and the same law (internal conflict) or between different laws (external conflict). External conflicts can occur in the hierarchy of norms on the same level or between different levels (decree versus statute, constitution or international law). Theoretically, the norm on the higher level supersedes lower level norms; however, a conflict can create ambiguity.

Example: *Article 10 Decree on Asylum Procedures: "Once all statutory requirements for the political status of the refugee are fulfilled, the agency may grant asylum."*

Article 15 Constitution: "Political refugees have a right to asylum."

Problem: *Article 10 Decree reads as if the agency has discretion, contradicting the clear right in the Constitution.*

Solution: *Article 10 Decree on Asylum Procedures: "Once all statutory requirements for the political status of the refugee are fulfilled, the agency **must** grant asylum."*

4.2.2 Inconsistent Terminology

Terminology must not only be consistent within one law (see Section 4.1.1 above) but also between different laws. One word should have only **one meaning** not only in one law but also in the entire legal framework of a country. If this is not possible, then the deviation needs clear indication.

Example: *The applicant is liable for the submission of the following documents.*

Problem: *"Liable" is an expression used in tort and criminal law, indicating different legal consequences.*

Solution: *The applicant is **obliged** to submit the following documents.*

Consistent use of terminology is also important for general words with a defined sense in **legal doctrine**, such as:

- "can", "shall", "must";
- "is presumed" versus "is considered";
- "always" versus "in principle".

4.2.3 Unclear References

Provisions referring to other provisions of the same or other laws must have a clear and sensible meaning. Examples of bad practice are: "in compliance with the legislation in force", "under the law", "in the prescribed manner", "according to the legal provisions", "following the rules/procedure/term set by the Ministry/another authority", "other exceptions/conditions/acts established by law", etc.

EXAMPLE: *The agency renders the decision subject to timelines as prescribed by law.*

PROBLEM: *It is unclear whether timelines are prescribed by this law or another (which) law?*

SOLUTION: *The agency renders the decision subject to timelines as prescribed* ***in Article 10 of the Law on Administrative Procedures.***

4.2.4 Regulatory Gaps

Regulatory gaps are defined as follows: "The situation in which existing legal rules lack sufficient grounds for providing a conclusive answer in a legal case [...]. No available correct answer guides the decision."[238]

A gap can occur if there are conflicting rules (for this alternative see 4.2.1 above) or because the law is open-textured.

EXAMPLE: *Article 10 – "Invalidity of local elections" – Election Law: Elections are invalid if any of the following conditions is met: ...*

PROBLEM: *There is no provision to regulate the exercising of local governance after local elections have been quashed.*

SOLUTION: *Elections are invalid if any of the following conditions is met: ...*

The previously elected local government continues until elections are re-peated.

238 The Blackwell Dictionary of Western Philosophy 2004, "Legal gap" <http://www.blackwellreference.com/public/tocnode?id=g9781405106795_chunk_g978140510679513_ss1-19>

5. RISK CATEGORY II: PREVENTION GAPS

A prevention gap is the lack of a mechanism in a regulation that would **incentivise** against or **deter** the occurrence of corruption.

Example: *Article 2 Conflicts of Interest Law: In case of a violation of conflict of interest provisions in Articles 1-9, the disciplinary commission can administer the following sanction: written warning.*

Problem: *The lack of any other sanction than a written warning will probably not **deter** unfaithful public officials from violating rules.*

Solution: *Article 2 Conflict of Interest Law: In case of a violation of conflicts of interest provisions in Articles 1-9, the disciplinary commission **must** administer **one of** the following sanctions: written warning, **reduction of salary, demotion or dismissal.***

Example: *Article 1 para. 2 Conflict of Interest Law: A public official has to abstain from any conflict of interest situation as described in para. 1.*

Problem: *The law depicts conflict of interest situations as a taboo, not as something the public official and his/her superiors have to deal with in a reasonable and transparent way. Thus, the law even lacks an incentive for a public official to report conflict of interest situations.*

Solution: *Article 1 para. 2 Conflicts of Interest Law: A public official has to **report** any conflict of interest situation as described in para. 1 to **his/her superior. The following rules apply for managing the conflict of interest: [...]***

Of course, **ambiguity** can make any weak prevention mechanism even weaker. Therefore, ambiguous language or legal technique on the one hand and prevention gaps on the other often interrelate.

Example: *Article 2 Conflict of Interest Law: In case of a violation of conflict of interest provisions in Articles 1-9, the disciplinary commission can administer the sanctions as prescribed by law: written warning.*

Problem: *If, for example, the code on disciplinary offences foresees further sanctions the above law would be ambiguous – is a written warning the only sanction, or are there other "sanctions as prescribed" by the code on disciplinary offences?*

Solution: *Article 2 Conflict of Interest Law: In case of a violation of conflict of interest provisions in Articles 1-9, the disciplinary commission can administer the sanctions as foreseen in* ***Article 12 of the Code on Disciplinary Offences (Law No. 456).***

Yet ambiguity and prevention gaps are both **distinct** corruption risks: Even the clearest law without any ambiguity can still lack mechanisms for preventing corruption.

Example: *Article 2 Conflict of Interest Law: In case of a violation of conflict of interest provisions in Articles 1-9, the disciplinary commission can administer the following sanction: written warning.*

Problem: *The law is not ambiguous at all; still, the lack of any sanction other than a written warning will probably not* ***deter*** *unfaithful public officials from violating rules.*

Mechanisms for preventing corruption are manifold. The "UN Anti-corruption Toolkit"[239] lists on 280 pages different preventive tools for an entire national framework against corruption. Many of these measures do **not** depend on **regulation**; this concerns, for example, tools such as "result oriented management", "using positive incentives to improve employee culture and motivation", "integrity pacts", "public awareness raising and empowerment", "media training and investigative journalism", "national integrity and action-planning meetings" or "anti-corruption action plans".

Not all of them are relevant in the context of regulations. Thus, one needs to identify those risks that are relevant within the context of regulatory corruption. Obviously one cannot exhaustively list all regulatory corruption risks as they are as manifold and ever changing, as are laws. However, they are all variations of the same basic forms of risk.
Detecting any gaps in corruption prevention systems is actually the objective of general corruption risk assessment.

239 UNODC, third edition, 2004, 592 pages <www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf>

This section on prevention gaps is therefore likely to reflect, in a condensed form, parts of what publications on corruption risk assessment describe at length, such as:

- the Regional Anti-corruption Initiative "Corruption Risk Assessment in Public Institutions" of 2014;[240]
- the Council of Europe Technical Paper "Corruption Risk Assessment Methodology Guide" by Quentin Reed and Mark Philp for the PACA Project, December 2010;[241]
- the USAID Corruption Assessment Handbook, 2006;[242]
- Tilman Hoppe/Council of Europe "Designing and Implementing Anti-corruption Policies" of 2013: Chapter 3.2 "Assessing the Strength of Governance Measures"[243] (in English and Russian).

5.1 Public Laws

Compared globally, most corruption occurs within the public sphere.[244] Thus, **public law** is the main source of corruption risks. Public law comprises constitutional law, administrative law, taxation law and criminal law as well as all procedural law.[245] The main function of public law is to regulate one of the following:[246]

- licensing, permits, certificates;
- subsidies and grants;
- public procurement;
- inspections and audits;
- Revenue and fee collection;
- management of state property;
- regulation;
- law enforcement.

240 <http://www.rai-see.org/publications.html> (planned publication).
241 <www.coe.int/paca>.
242 <www1.worldbank.org/publicsector/anticorrupt/USAIDCorAsmtHandbook.pdf>.
243 <http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Publication/Handbook%20on%20AC%20policies_EN%20(2).pdf>.
244 See, for example, the results of Transparency International's "Global Corruption Barometer" for 2013, which draws on a survey of more than 114,000 respondents in 107 countries, page 3: "Public institutions entrusted to protect people suffer the worst levels of bribery. […] The democratic pillars of societies are viewed as the most corrupt." <http://www.transparency.org/gcb2013/report/>.
245 Jonathan Law, Elizabeth A. Martin, "Oxford Dictionary of Law", seventh edition 2003 <http://www.oxfordreference.com/view/10.1093/acref/9780199551248.001.0001/acref-9780199551248>.
246 See Council of Europe Technical Paper "Corruption Risk Assessment Methodology Guide" by Quentin Reed and Mark Philp for the PACA Project (December 2010), page 16/Annex 1 <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/PACA_en.asp>.

The main general corruption risks within any of the above areas stem from three factors.[247]

- **Discretion**: if its scope is unnecessarily broad then a public official can take advantage of it. Public officials can normally exercise discretion as to the procedure and to the substantive decisions (such as granting a permit).
- **Accountability**: if a public official has nothing to fear from abusing the law then this increases the risk of corruption.
- **Transparency**: if the actions of a public official remain outside the eyes of the public then it is easier to abuse the law.

Obviously, there is the additional and decisive **ethical** component: none of the above risks will materialise where public officials have a clear incentive and motivation to act ethically.[248] However, ethics is something that is not so much a question of regulation (arguably not even a question of the "right" code of ethics) but more so a question of implementation. It is therefore not a "regulatory" corruption risk.

The most important ways to limit the level of a public officials' **discretion** by regulatory means are by:

- limiting the **issues** upon which a public official may decide (a law should only permit a public official to decide on specified issues);
- limiting **who** may supply input and feedback;
- limiting the substance **criteria** that influence the decision;
- the binding effect of **precedents (**such a requirement is normally set in a general law on administration or a ministerial decree).

The most important ways to create **transparency** are:

- online publishing of all regulations, internal decrees and decisions;
- written reasons for decisions;
- clarifying whether decisions are public in accordance with the freedom of information legislation;
- public notification concerning meetings, plans and public documents.

Transparency creates **accountability** to the public and therefore the following tools are important:

247 See, already in this sense: Ann Seidman, Robert Seidman, Nalin Abeysekere, "Assessing Legislation – A Manual for Legislators", 2003, Chapter 9, pages 155-168 <http://iknowpolitics.org/sites/default/files/assessing20legislation20-2001.200320-20en20-20pi.pdf>.

248 Tilman Hoppe /Council of Europe, "Designing and Implementing Anti-corruption Policies" 2013 (English and Russian), Chapter 3.2 "Assessing the Strength of Governance Measures", page 20: "The American Supreme Court, however, is the most obvious example for the limits of this formula: the Court enjoys a monopoly of final judicial decision-making, wide discretion and virtually no formal accountability; according to Klitgaard, the Court would be expected to be highly corrupt or very prone to corruption, which does not seem to square with reality." <http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Publication/Handbook%20on%20AC%20policies_EN%20(2).pdf>.

- documentation of all decisions;
- internal administrative review by the next level in hierarchy;
- external judicial review;
- oversight of decisions by external instances, such as supervising authorities, citizen's councils or ombudsmen;
- financial accountability through regular audits.

Discretion, accountability and transparency are all more or less relevant in the **typical components** of any public law:

- competencies (Which public body is in charge?);
- powers (What powers does the body have to carry out its tasks?);
- procedures (What are the steps towards a decision?);
- decisions (What are the criteria for deciding on the substance matter?);
- oversight (Who, supported by sufficient transparency, controls the public body?);
- sanctions (What happens in the event of a violation?);
- judicial review (Can citizens ask the courts to review administrative decisions?).

Regulatory gaps in corruption prevention are best structured according to these typical **components**. In this way an expert conducting corruption proofing can systematically review the law by following its typical components rather than abstract principles such as "discretion", "accountability" or "transparency".

5.1.1 Competencies

Unidentified competency
This prevention gap often occurs when the drafters of a law want to show action, but without really meaning it: a full set of regulations is put in place yet there is no authority for implementing the law. This prevention gap often coincides with ambiguous legal language or technique, only vaguely hinting at the body in charge for implementing the law.

Example: *Article 10: This law is implemented by the competent ministry/agency.*

Problem: *Is there another rule clearly determining which ministry is competent? Would all users of the law know about this rule?*

Solution: *Article 10: This law is implemented by the competent ministry/agency, **as defined in Annex 1 of the Law No. 401 On Government.***

*Article 10: This law is implemented by the a**gency for environmental protection.** [more concrete and thus a better solution]*

Unidentified scope
Competency requires definition in such a way that it comprises all aspects of a law.

Example: *Article 10 Code of Disciplinary Offences: The agency for the civil service is responsible for investigating all disciplinary offences.*

Problem: *Who is responsible for administering sanctions?*

Solution: *Article 10 Code of Disciplinary Offences: The agency for the civil service is responsible for investigating all disciplinary offences* ***and administering sanctions.***

Delayed identification
The legislator might delegate the identification to an executive body; however, the danger of this approach is that the identification of the competent body for implementation might never take place.

Example: *Article 8 Energy Law: The Ministry of Energy will determine the competent body by decree.*

Problem: *Why can the legislator not define the competent body itself? Until when would the Ministry come up with a decision? What are the criteria for this decision?*

Solution: *Article 8 Energy Law:* ***The Environmental Agency is the competent body for implementing this law.***

Delayed setting-up
The competent body for implementation might not exist at the time of adoption of the draft law. This entails the risk that delays in the implementation of the law might prompt the legislator to delegate the identification to an executive body. The danger of this approach is that the identification of the competent body for implementation might never take place.

Example: *Article 8 Energy Law: The Environmental Agency is the competent body for implementing this law.*

Problem: *In case the Agency does not exist yet and for more time to come, which body is in charge intermittently?*

Solution: *Article 8 Energy Law: The Environmental Agency is the competent body for implementing this law; until it is set up, the Ministry of Energy is the intermittent competent body.*

Competency of further regulation

Often laws delegate the power to regulate further details of a procedure or of the criteria for a decision to an executive body. The executive body might either intentionally exploit this power to facilitate corruption opportunities or inadvertently draft faulty bylaws.

Example: *Article 13 Procurement Law: The Procurement Agency regulates further details of the tender procedure.*

Problem: *The law does not provide any guidance as to what those details are. The legislator itself should define key parameters.*

Solution: *Article 13 Procurement Law: The Procurement Agency* ***defines templates for submitting tenders.***

There is obviously a need for delegating law making to executive bodies. Key points of legislation, in terms of corruption risks, are often embodied in such bylaws, such as timelines for procedures, fees or formal requirements for applications. Therefore, corruption proofing needs to extent to bylaws.

Overlapping competencies

There might be more than one body competent for the implementation of the same task. This can lead to a lack of implementation or to abuse of citizens through repeated (overlapping) administrative inspections. Such a regulatory fault is a case of ambiguity (see Section 4.2.1 above).

Split competencies

Sometimes, several bodies are each competent for a different aspect of a law. Such split competencies can entail the risk of a lack of implementation, as each body might point to the other when it comes to delicate situations.

> *For example, GRECO noted in one of its evaluations: "The multiplicity of bodies has adverse effects in so far as it prevents a single body from assuming effective responsibility for the process. As a result, each body depends on the others and awaits their reports or findings. The outcome is that none of the bodies seems to have a comprehensive global picture […].*[249]

Conflict of interest

A conflict of interest involves a conflict between the public duty and private interests of a public official, wherein the official's private capacity interest could improperly influence the performance of his/her official duties and responsibilities.[250] Usually, conflict of interest is subject to special legislation. However, even with such legislation in force, conflicts of interests are a standard challenge for any public law.

249 Third Evaluation Round, Evaluation Report on Moldova, "Transparency of Party Funding" (Theme II), GRECO Eval III Rep (2010) 8E, Strasbourg, 1 April 2011, at No. 73 <http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp>.

250 OECD, "Managing Conflict of Interest in the Public Service – A Toolkit", 2005, page 13 <www.oecd.org/gov/ethics/49107986.pdf>.

Example: *Article 12 Procurement Law: Bidders with a criminal record and family members of public officials working at the procuring entity are excluded from bidding.*

Problem: *Family members are only a fraction of those persons with whom a conflict of interest could arise. One could think of the public officials themselves, their close friends or their business partners.*

Solution: *Article 12 Procurement Law: Bidders with a criminal record and those* ***with conflict of interest, as defined in Article 12 of the Public Service Law****, are excluded from bidding.*

5.1.2 Powers and Resources

It is important that a public body have all powers and resources necessary for carrying out its tasks.

Example: *Article 5 Law on State-owned Companies: The Ministry of Economics has the following powers for exercising oversight on state-owned companies: 1) reviewing annual reports, 2) attending board meetings and 3) requesting the convening of extraordinary board meetings.*

Problem: *The Ministry has no right to request any other information than what is contained in the annual reports.*

Solution: *Article 5 Law on State-owned Companies: The Ministry of Economics has the following powers for exercising oversight over state owned companies: 1) the right to review annual reports, 2) attend board meetings, 3) request the convening of extraordinary board meetings,* ***4) request any information on the company from the board of directors, 5) conduct special audits of the company and 6) nominate or dismiss members of the board.***

Resources also include **financing**. Whenever a draft law entails financial costs, the corruption proofing body needs to verify whether there are sufficient funds, as foreseen for its implementation, as otherwise the law will remain, if at all, no more than an expression of good will.

5.1.3 Procedures

Certain procedures apply to any decision under public law. Whenever a public authority can exercise too much discretion, corruption risks occur.

Undefined steps
The steps of any procedure must be clear.

Example: *Article 5 Law on Construction: The agency issues a decision on the building permit once it is has processed the application.*

Problem: *What does "processed" entail? Can the agency ask for further documentation? Does the agency consult with other state bodies? Etc.*

Solution: *Article 5 Law on Construction: The agency issues a decision on the building permit once it is has processed the application,* ***including one or all of the following steps: [...]***

Undefined timelines
There need to be clear timelines, otherwise public officials can delay procedures and citizens are incentivised to pay speed payments.

Example: *Article 5 Law on Construction: The agency issues a decision on the building permit once it is has processed the application.*

Problem: *Is there a maximum time for the process?*

Solution: *Article 5 Law on Construction: The agency issues a decision on the building permit once it is has processed the application* ***within the maximum time of three months.***

Undefined fees
There needs to be a clear set of fees.

Example: *Article 5 Law on Passports: The agency issues the passport for a fee between €10 and €100 depending inter alia on the urgency of the issuance.*

Problem: *It is unclear what fee corresponds to which case.*

Solution: *Article 5 Law on Passports: The agency issues the passport for a fee of €10* ***in regular cases, €50 in case of issuance within 3 days and €100 for issuance within 24 hours.***

Repetition of inspections
The threat of abusively repeated inspections is a common tool to extort bribes from citizens. Conversely, citizen might also want to bribe their way out of an inspection. Thus, there needs to be a clear set of criteria on how often, whom and how thoroughly to inspect a business or person.

Example: *Article 14 Tax Code: The tax administration can carry out regular inspections.*

Problem: *Is there a maximum number for the inspections per period? How are the targets of these inspections selected?*

Solution: *Article 14 Tax Code: The tax administration can carry out regular inspections.* ***A regular inspection can occur only once every three years. The inspected tax subjects are selected as follows: [...]***

Multi-stop procedures

Citizens often have to interact with several agencies and this renders procedures not only cumbersome but multiplies corruption risks.

Example: *Article 9 Law on Business Registries: The applicant needs to submit documentation by the following authorities: civil registry, tax authorities, criminal conduct registry, and bankruptcy registry.*

Problem: *For each procedure, there is a corruption risk.*

Solution: *Article 9 Law on Business Registries:* ***The business registry will obtain all documentation from the following authorities:*** *civil registry, tax authorities, criminal conduct registry, and bankruptcy registry.*

Competition for limited state resources

When the state distributes resources it often meets a higher demand than it can offer. This concerns the procurement of services, job vacancies or subsidies. In such cases, it is important to have transparent procedures with objective criteria for distribution. The sources outlined below provide information on preventing corruption in competitive procedures.

5.1.4 Decisions

Public law obliges or entitles private or public entities; therefore, the criteria for these obligations and rights need to be clearly formulated in order to limit discretion.

Example: *Article 12 Construction Law: A building not compliant with this law can be demolished.*

Problem: *Does any violation of the law, even a small formality, entail this risk?*

Solution: *Article 12 Construction Law: A building can be deconstructed* ***if not compliant with the following provisions of this law: [...]***

5.1.5 Oversight

Any public body requires oversight or supervision by a body of higher authority, if only by the general public. Any public law thus needs to ensure that there is sufficient executive, parliamentary or civil society oversight. Judicial oversight is an additional preventive mechanism (see 5.1.7 below).

Transparency and civil society oversight
Oversight by civil society is often subject to special laws, in particular laws on public consultation and laws on freedom of information.

Example: *Article 12 Telecommunications Law: The Regulatory Agency is an independent body of law.*

Problem: *What does "independent" mean? Is there no oversight by a public entity? What is the relation to the public?*

Solution: *Article 12 Telecommunications Law: The Regulatory Agency is a body of law independent from other executive bodies,* ***but reports to Parliament as follows: [...] The Regulatory Agency also reports bi-annually to the public including the following information: [...]. All its decisions are subject to disclosure under the Freedom of Information Act. Its Oversight Council includes representatives from civil society as defined by Article 8 of the Law on Public Consultation.***

Separation of tasks
If all decision-making power is concentrated in one place then there are no horizontal checks or balances amongst public officials.

Example: *Article 12 Procurement Law: The planning, award and accounting of a public contract should be implemented by the same public official.*

Problem: *The rule makes it relatively easy for a public official to manipulate the tender to favour a certain party and to hide any procurement fraud.*

Solution: *Article 12 Procurement Law: When public contracts are awarded, the planning and description of requirements shall* ***be kept separate*** *in organisational terms from both the implementation of the award process and from the subsequent accounting.*

Rotation
An effective means to deal with the danger of corruption is staff rotation. This personnel management tool should be used extensively in areas especially vulnerable to corruption. Doing so requires that staff are willing to take on

different functions at regular intervals – as a rule, the period of assignment should not exceed a few years – even if this usually results in more work (time needed to familiarise oneself with new tasks).

Example: *Article 19 Procurement Law: The planning, award and accounting of a public contract should be implemented by a dedicated procurement unit in each state body.*

Problem: *The rule lacks any provision on job rotation, thus allowing potentially corruptive relationships to evolve.*

Solution: *Article 19 Procurement Law: The planning, award and accounting of a public contract should be implemented by a dedicated procurement unit in each state body. The staff in this unit should rotate to a new function outside the unit at least every five years.*

5.1.6 Sanctions

Sanctions can be a problem in different directions:

- undefined or **excessive** sanctions can help public officials to extort bribes from citizens;
- weak or missing sanctions (for **citizens**) can facilitate corruption by citizens;
- weak or missing sanctions (for **public officials**) can facilitate corruption by public officials.

Example: *Article 12 Trade Law: Maintaining a business in violation of registry requirements is punishable by a fee of up to 5 annual turnovers of the business.*

Problem: *What does "violation of registry requirements" mean – any formal violation? Which "annual turnovers" are meant – current ones, past ones or projected ones? 5 annual turnovers as a fee would normally kill any business.*

Solution: *Article 12 Trade Law: Maintaining a business in violation of registry requirements in Article 8 para. 1 is punishable by a fee of up to **0.5** annual turnover **of the year in which the offence occurred, determined by the following factors: [...]***

Good legal drafting guidelines normally contain detailed instructions on how to draft provisions on sanctions.[251]

[251] See, for example, the two page "Annex 2" to the "German Guide to the Form of Legal Acts", third edition, 2008 <http://hdr.bmj.de/anhang_2.html> (German; an English translation is currently in preparation by the German Federal Ministry of Justice).

5.1.7 Judicial Review

Judicial review is important as a safeguard against arbitrariness of the executive power. A comprehensive scope of judicial review and clear modalities are important.

Example: *Article 12 Construction Law: Refusal to issue a building permit is subject to full legal review.*

Problem: *What if the agency issues a building permit that is insufficient? What if the agency fails to take any action? What if the agency issues other decisions, such as one for the demolition of an "illegal" building? What does "legal review" mean and, in particular, which court is competent?*

Solution: *Article 12 Construction Law: A violation* ***of any right under this law is subject to legal appeal through the administrative courts.***

Article 12 Construction Law: All decisions under ***Articles 4-9 are subject to legal appeal through the administrative courts.***

5.1.8 Sector Specific Safeguards

The above list of prevention gaps shows some of the main categories yet it is not an exhaustive list. Each sector works with different rules and practices. For example, for a teacher and a doctor some corruption risks are similar and some different. Similarly, public financial management and public procurement each require a multitude of specific safeguards to be corruption proof. There are sources of information for each sector. See the following references for more detail and examples:

- Regional Anti-corruption Initiative, "Corruption Risk Assessment in Public Institutions" (2014);[252]
- UNODC, "UN Anti-corruption Toolkit" (third edition) (2004);[253]
- UNODC, "Technical Guide to the UNCAC" (2009) (English and Russian);[254]
- OSCE, "Best Practices in Combating Corruption" (2004) (English and Russian);[255]
- Transparency International, "Confronting Corruption: The Elements of a National Integrity System", TI Source Book (2000) (English);[256]
- UNODC/UNCAC, "Self-assessment Checklist" (in English and Russian);[257]

252 <http://www.rai-see.org/publications.html> (planned publication)
253 <www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf>
254 <www.unodc.org/unodc/en/treaties/CAC/technical-guide.html>
255 <www.osce.org/eea/13738>
256 <www.transparency.org/publications/sourcebook>
257 <www.unodc.org/unodc/en/treaties/CAC/self-assessment.html>

- OECD, "Managing Conflict of Interest in the Public Service: A Toolkit" (2005); "Specialised Anti-corruption Institutions. Review of Models" (2006) (in English and Russian); "Lobbyists, Government and Public Trust" (2009); "Asset Declarations for Public Officials: A Tool to Prevent Corruption" (2011) (in English and Russian); "Bribery Awareness Handbook for Tax Examiners" (2009) etc;[258]
- USAID, "Corruption Assessment Handbook" (2006) Annex 3, page 94 - "Diagnostic Guides: Checklists of Corruption Risks for Different Sectors" (customs, health, political parties, etc);[259]
- U4 Anti-Corruption Resource Centre ;[260]
- Council of Europe Technical Paper, "Corruption Risk Assessment Methodology Guide" by Quentin Reed and Mark Philp for the PACA Project (December 2010), page 16/Annex 1;[261]
- Council of Europe, "Project Against Corruption, Money Laundering and Financing of Terrorism in the Republic of Moldova" (MOLICO) - English translation of the draft "Methodology of Corruption Risk Assessment in Public Institutions";[262]
- PROVIDUS/CBSS Working Group on Democratic Institutions, "Corruption Prevention in Public Administration in the Countries of the Baltic Sea Region" (2008).[263]

Not all of the specific risks listed in the above sources are relevant from a regulatory perspective, but many are.

There are also many standards available for each specific sector, such as procurement:

- Business Anti-Corruption Portal;
- Public Procurement Due Diligence Tool;[264]
- OECD, "Enhancing Integrity in Public Procurement: A Checklist" (2008);[265]
- Chr. Michelsen Institute, "The Basics of Integrity in Procurement: A Guidebook" (Version 3, 23 February 2010);[266]
- UN/Global Compact, "Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers" (June 2010);[267]

258 <www.oecd.org/corruption/keyoecdanti-corruptiondocuments.htm>.
259 http://transition.usaid.gov/our_work/democracy_and_governance/technical_areas/anticorruption_handbook/index.html>.
260 <www.u4.no/>.
261 <www.coe.int/paca>.
262 <www.coe.int/t/dghl/cooperation/economiccrime/moneylaundering/projects/molico/AC/Output1.6/912%20MOLICO%20Nat%20%20Legisl%20_methodology%20of%20corruption%20risk%20assessment.pdf>.
263 <http://www.mfa.gov.lv/data/file/petijumi/corruption_prevention.pdf>.
264 <http://www.business-anti-corruption.com/tools/due-diligence-tools/public-procurement-tool.aspx>.
265 <http://www.oecd.org/gov/ethics/enhancingintegrityinpublicprocurementachecklist.htm>.
266 <www.cmi.no/file/?971>.
267 <www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/Fighting_Corruption_Supply_Chain.pdf>.

- Transparency International, "Handbook for Curbing Corruption in Public Procurement" (February 2006).[268]

However, it would go beyond the scope of this Methodology to list such sources for each field of public law; however, they are available for research through the various anti-corruption platforms on the web.

5.2 Private Laws

In contrast to public law, **private law** concerns relationships between private individuals. However, one needs to keep in mind that private law can also facilitate corruption. There are three main schemes how this can occur.

- **Private to public** corruption: Weak accounting and documentation rules in (private) business law can make it difficult to trace a bribe back to a company or to a concrete individual within a company. A lack of civil liability of a private company for bribe giving by one of its employees might set the wrong incentive.
- **Public** embezzlement: Often, many or most of the same rules apply for private businesses as for state companies. If private business law contains weak accounting and documentation rules it can be easier for public officials to embezzle money from a state company.
- **Private to private** corruption: A citizen can use faulty regulations to deprive another citizen of property, for example in a civil law suit. This practice is known in some countries as "private or corporate raids".[269] Usually, the raider bribes public officials, such as prosecutors or judges, to facilitate his/her raid. A typical case would be a businessperson who bribes a judge to order to gain an injunction against a competitor with the final aim to put him or her out of business.[270]

Out of the above schemes, the below three main entry points for corruption appear.

Weak accounting and documentation rules

The Council of Europe's Civil Law Convention on Corruption calls in its Article 10 for "the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position" and "for auditors to confirm that the annual accounts present a true and fair view of the company's financial position."

268 <http://www.transparency.org/whatwedo/pub/handbook_for_curbing_corruption_in_public_procurement>.

269 Thomas Firestone, "Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia", 38 Denv. J. Int'l L. & Pol'y (2010) 555 <http://djilp.org/wp-content/uploads/2011/08/Firestone.pdf>; see note 234, previously mentioned. See also Valts Kalnins and others/Council of Europe, "Proposals for Strengthening the Prevention of the Misuse of Public Authority in the Corporate Sector in the Russian Federation", 2014, and "Comparative Analysis on Preventing Misuse of Public Authority in the Corporate Sector", 2014 <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/PRECOP/PRECOP_TP_default_en.asp>.

270 Ibid.

Weak rules on property transfers

Property rules are contained in classic property laws but also in company law (ownership) or regulations of intellectual property. The ways in which regulations can facilitate the raiding of another citizen's property are manifold, as shown in the examples below.

Example: *Article 18 Civil Code: The buyer does not acquire property if he/she knew at the time of acquisition that the seller was not the owner.*

Problem: *Even if the buyer did not know anything about the seller's ownership what if the transaction was full of signs pointing to fraud?*

Solution: *Article 18 Civil Code: The buyer does not acquire property if he/she knew* ***or should have known*** *at the time of acquisition that the seller was not the owner.*

Weak judicial procedure

Not only substantive law but also procedural law can facilitate corrupt raids on property. Procedural law concerns not only civil procedure but, for example, also bankruptcy regulations.

Example: *Article 23 Bankruptcy Code: The insolvency administrator sells the goods of the debtor according to a plan approved by the court.*

Problem: *To enhance checks and balance, creditors and debtors should also have some say in the sale of goods.*

Solution: *Article 23 Bankruptcy Code: The insolvency administrator sells the goods of the debtor according to a plan approved by the court* ***and subject to objections by the creditors and debtors in accordance with Article 23a.***

Example: *Article 24 Civil Procedure Code: The effect of a decision extends to third parties insofar as their rights and obligations are subject to the decision.*

Problem: *The third parties might not have had any chance to influence that decision.*

Solution: *Article 24 Civil Procedure Code: The effects of a decision extend to third parties insofar as their rights and obligations are subject to the decision,* ***if they have notified of the procedure as soon as the third party relevance was known or should have been known to any of the parties.***

At least from the perspective of corruption, civil procedure law contains many public law elements whenever it regulates how the civil parties have to submit

to a public authority (the court). However, here it is listed in order to alert the reader of this Methodology to the fact that not only "classic" public law, such as administrative law, can facilitate corruption but also civil procedure. In continental law, some countries treat civil procedure as public whereas others deem it as private.[271]

In contrast to public law,[272] in private law regulatory corruption risks materialise for similar reasons: **discretion** (abuse by a judge in a civil law suit), lack of **transparency** (such as accounting rules) or lack of **accountability** (insufficient judicial review).

271 James G. Apple and Robert P. Deyling, "A Primer on the Civil-Law System", Federal Judicial Centre, 1995, page 23 <www.fjc.gov/public/pdf.nsf/lookup/CivilLaw.pdf/$file/CivilLaw.pdf>.

272 See above 5.1 "Public Laws".

6. ADDENDUM: CORRUPTED LEGISLATION

Risk categories I (Ambiguity) and II (Prevention gaps) are all about the facilitation of **future** incidents of **corruption**. Yet there is a third category, which does not concern the facilitation of future corruption but still relates to corruption. An example:

An industrial group provides a campaign donation to the governing political party. In exchange, the government passes an exemption in the tax law that grants the industrial group a tax favour.

The tax favour itself in this case would not represent corruption, because it does not constitute bribery, embezzlement or abuse of office. Any future tax favours granted based on the law in question would formally in fact be **fully legal**, even if the earlier political financial donation had been given in exchange for the tax exemption. Therefore, the regulation would not "contribute to corruption" like any future bribery or embezzlement. On the contrary, the corruption would normally have already fully taken place before the regulation came into force (bribery of legislators, political finance violation, etc). Hence, (other than risk categories I and II) this case of corrupted legislation would:

- not set risks for any **future** corruption incidents;
- only follow a corrupt act in the **past**.

In other words, such "corrupted laws" represent the damage done by corruption rather the corruption itself. Exactly because of this damage, corruption proofing should not blind itself to such incidents but point out any such indications. **Indicators** for such corrupted legislation can be found in particular in the below stated areas.

- Illegal activities:
  - violation of **lobbying** rules by interest groups **(**see 2.7.3 above);
  - **political finance** violations by anybody profiting from a law **(**see 2.7.4 above);
  - procedural violations during the legislative process, in particular on **transparency** (see 2.7.2 above);

- **ethics** violations by legislators, such as the provisions on conflict of interest (see 2.7.5 above);
- incidents of **bribery**.

Legal activities can still point to hidden corruption in the legislative process:

- suspicious **privileges** in the law for certain interest groups;
- large (but legal) **financial political** donations by anybody profiting from a law **(**see 2.7.4 above);
- extraordinary (legal) **lobbying** activities by interest groups **(**see 2.7.3 above);
- lack of **transparency** of the legislative process (even if formally within legal limits), such as hiding certain financial aspects of the impact of a draft law (see 2.7.2 above);
- **ethical** challenges (despite compliance with the rules) where prominent legislators with stakes in companies profiting from a law abstain from voting, but the question of their de facto influence remains (see 2.7.5 above);
- obvious disadvantage to or waste of **public funds**, such as
  - the allocation of public property to private owners below market value or
  - the over-financing of public institutions with a known record of embezzlement or illicit enrichment (as stated in reports by the court of auditors for example).

An external corruption proofing body should always look out for any of the above indicators and should list any such indicators in its **assessment report**. This would certainly not compel any conclusion, but it might lead to further examination by law enforcement bodies or civil society and could in the case of draft laws alert members of parliament. It is clear that a corruption proofing body normally would neither have the mandate nor the power to investigate such indicators any further, unless it had law enforcement competencies (such as the National Anti-corruption Centre in Moldova).

At the same time, one should keep in mind that not every privilege or preferential treatment of an interest group is necessarily a sign of a corrupted legislative process. All laws of this world are an expression of what certain interest groups want. The democratic process is built on the assumption that particular interests prevail in the end. Only if there are indications that the legislative process has been (formally) corrupted should the corruption proofing body point this out. Anything else would represent interference with **general politics**.

7. TEN PRINCIPLES OF EFFECTIVE CORRUPTION PROOFING

Principle 1: Scope

Corruption proofing should be possible for all draft laws, enacted laws, laws of all regulatory levels (statutes and bylaws), laws of all regulatory sources (central, regional, local as well as parliamentary and executive including presidential acts) and of all sectors (administrative, criminal and private law). It should also include explanatory notes as they can play a decisive role in interpreting law.

Principle 2: Prioritisation

Ideally, laws are subject to review in their entirety. Any necessary prioritisation should be risk-based, such as legislation from corruption prone areas involving corruption prone transactions, or from areas with real incidents of corruption. All state bodies and the entity in charge of corruption proofing should be entitled to select laws for review.

Principle 3: Regulatory corruption risks

Corruption proofing reviews mainly cover two categories of regulatory corruption risks: "ambiguity" in language or legal technique and "prevention gaps", such as a lack of defined timelines for procedures. In addition, the corruption proofing body should take note of any indication that the legislative process itself may have been corrupted.

Principle 4: Timing

Corruption proofing should take place at all stages of the legislative process. This includes drafting at the ministerial level, adoption by government, the parliamentary process and the signing into effect.

Principle 5: Responsible entity

At the law drafting stage, all entities drafting laws, in particular ministries and other executive bodies, have to comply with legal drafting standards that avoid corruption risks. Similarly, parliamentary committees should take part in reviewing corruption risks. In addition, a specialised body for preventing corruption should be in charge of reviewing draft and enacted statutes and bylaws. The specialised body should coordinate with other state bodies in order to receive early information on draft laws and to obtain background information on legislation. Clearly, citizens should be able to review drafted or enacted laws freely and at their discretion; there should be no qualification or registration requirements hindering their free participation.

Principle 6: Recommendations

The law making institutions should have the obligation to consider the recommendations made by the corruption proofing entity. The law making institutions should also provide feedback as to which recommendations they have incorporated and the reasons for not implementing other recommendations. In cases where civil society has submitted an anti-corruption assessment their representatives should be heard in person at public hearings.

Principle 7: Compliance

The corruption proofing entity needs to monitor compliance with the corruption proofing recommendations. Ideally, the assessment report will have a standardised feedback sheet attached to it in order to facilitate compliance feedback by the law making body.

Principle 8: Online publicity

Online publicity is an essential component of corruption proofing and concerns the methodology, the selection of laws, the assessment reports (including those by civil society), the compliance feedback, the compliance review reports, annual summaries of corruption proofing activities and statistical information.

Principle 9: Broader framework on transparency and integrity

In order to achieve a significant impact, corruption proofing requires a sound regulatory framework. This concerns good general legal drafting, transparent and participatory law making, lobbying, political finance and ethics in the legislative process. It is particularly important that law projects and first drafts are made public as soon as possible and not just tabled to parliament.

Principle 10: Training and public awareness

Interactive, practical training on corruption proofing is necessary for all state bodies in charge of drafting laws of all levels. Furthermore, the public needs to be made aware of the methodology of corruption proofing in order to carry out its watchdog function effectively and to participate in public consultations in a meaningful way.

8. ANNEX I: CHECKLIST OF CORRUPTION RISKS

1. Ambiguity

1.1 Language

1.1.1 Word choice

1.1.2 Construction of sentences

1.1 Legal coherence

1.1.1 Conflicting provisions

1.1.2 Inconsistent terminology

1.1.3 Unclear references

1.1.4 Regulatory gaps

1.1.5 Uniform structure of laws

2. Prevention gaps (public laws)

2.1 Competencies

2.1.1 Unidentified competencies

2.1.2 Unidentified scope

2.1.3 Delayed identification

2.1.4 Delayed setting-up

2.1.5 Competency for further regulation

2.1.6 Overlapping competencies

2.1.7 Split competencies

2.1.8 Conflict of interest

2.2 Powers and resources: It is important that a public body have all powers and resources necessary for carrying out its tasks.

2.3 Procedures

2.3.1 Undefined steps

2.3.2 Unidentified timelines

2.3.3 Unidentified fees

2.3.4 Repetition of inspection

2.3.5 Multi-stop procedures

2.3.6 Competitions for limited state resources

2.4 Decisions (excessive discretion)

2.5 Oversight

2.5.1 Transparency and civil society oversight

2.5.2 Separation of tasks

2.5.3 Rotation

2.6 Sanctions: availability of effective, proportionate and dissuasive sanctions

2.7 Judicial review: comprehensive scope and clear modalities

2.8 Sector specific safeguards: as necessary by sector specific corruption risks

3. Prevention gaps (private laws)

3.1 Weak accounting and documentation rules

3.2 Weak rules on property transfers

3.3 Weak judicial procedures

4. Addendum: Corrupted legislation

4.1 Illegal activities

4.1.1 Violation of **lobbying** rules by interest groups

4.1.2 **Political finance** violations by anybody profiting from a law

4.1.3 Procedural violations during the legislative process in particular on **transparency**

4.1.4 Ethical violations of legislators (such as provisions on conflict of interest)

4.1.5 Incidents of **bribery**

4.2 Legal activities (can still point to hidden corruption of the legislative process)

4.2.1 Suspicious **privileges** contained within a law (for certain interest groups)

4.2.2 Large (but legal) **financial political** donations by anybody profiting from a law

4.2.3 Extraordinary (legal) **lobbying** activities by interest groups

4.2.4 Lack of **transparency** of the legislative process (even if formally within legal limits)

4.2.5 Ethical challenges (despite all compliance with rules)

4.2.6 Obvious disadvantage to or waste of **public funds**

9. ANNEX II: LEGAL PROVISIONS AND GUIDELINES (SELECTION/EXCERPTS)

The following is a selection of laws/guidelines and excerpts from laws that are available in unofficial English translation by various local sources (partly edited by RCC/RAI).

9.1 Kazakhstan

Excerpt from Law No. 213 "On Normative Legal Acts" of 24 March 1998, as amended in April 2011.[273]

Article 1: Basic concepts used in this Law
In this Law the following main concepts apply:

[...]
12-1) Legal monitoring of normative legal acts - the performance of state bodies, carried out on a permanent basis, for the collection, evaluation, and analysis of information regarding the status of legislation of the Republic of Kazakhstan, as well as forecasting the dynamics of its development and practical application in order to identify outdated laws and/or such against **corruption**-laws, and assessing the effectiveness of their implementation.

9.2 Korea

Excerpt from the "Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission"
Act No. 8878, 29 February 2008, amended by Act No. 9342, 7 January 2009, Act No. 9402, 3 February 2009[274]

273 Law No. 213 <http://www.izrk.kz/images/stories/monit/npa.doc> (Russian - translation by author).
274 <www.acrc.go.kr/file/file.do?command=downFile&encodedKey=ODdfMQ>.

Article 12 (Functions)

"The Commission shall perform the following functions: [...]

12. Examining corruption-causing factors in Acts and subordinate statutes".

Article 28 (Review of Corruption-causing Factors in Laws)

(1) The Commission may review corruption-causing factors in Acts, Presidential Decrees, Prime Ministerial decrees and Ordinances of Ministries and in other directives, regulations, announcements, notices, ordinances and rules in reference thereto, and may recommend that the head of the public organization concerned take actions to remove them.

(2) Matters regarding the procedure and methods of the review undertaken under paragraph 1 shall be prescribed by Presidential Decree.

Presidential Decree "Of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission"[275]

No. 20737 of 29 February 2008.

Article 30 (Review of Corruption-Causing Factors)

(1) In accordance with Article 28 of the Act, if and when the Commission analyzes and reviews the act, presidential decree, prime ministerial decree or ordinance of ministry, and the directive, regulation, announcement, notice, ordinance or rule delegated by them (hereinafter referred to as "the acts and subordinate statutes") for the purpose of seeking out and removing potential factors which will likely correlate with corruption in the future (hereinafter referred to as "Corruption Impact Assessment"), it shall consider any of the following:

1. Likelihood of Corruption

a) Whether there is room for the misuse of discretionary power that contributes to corruption

b) Whether the criteria for application of the acts and subordinate statutes and the procedure for the use of public office are clarified and unbiased

c) Whether a proper anti-corruption mechanism is in place to control the misuse of discretionary power

2. Ease of Observance of the Acts and Subordinate Statutes

a) Whether there are provisions with which ordinary citizens, enterprises, associations, etc. are hard to comply

b) Whether the kind and severity of sanctions for violation of the acts and subordinate statutes are appropriate

275 <http://world.moleg.go.kr/fl/download/28548/8ZMSEPC5ON5ZNGR1F5JS>.

c) Whether there is a probability that preferential treatment will be given, and whether preferential treatment, if any, is given in a proper and fair manner

3. Transparency of Administrative Procedure

a) Whether opportunities, where necessary, are given for involvement in the administrative procedure and related information is disclosed sufficiently

b) Whether it is possible to predict what must be prepared for public administrative service; what procedure must be followed; how long it will take to complete the procedure; what outcomes will be; etc.

4. Other Matters on the Possibility of Corruption Occurring

1) The Commission may draw up guidelines on the subjects of and criteria, methods and plans for the Corruption Impact Assessment to ensure its effectiveness, and it may communicate the guidelines to the head of a public organization as prescribed by Article 2.1.(a) and 2.1.(b) of the Act.

2) If the Commission carries out the Corruption Impact Assessment on the acts and subordinate statutes in accordance with Paragraph (1) herein, it may ask the head of a public organization to submit materials necessary for the assessment pursuant to Article 29 (1) of the Act. In that case, the organization head shall cooperate as prescribed by Article 29 (4) of the Act.

3) In case the Commission recommends pursuant to Article 28 (1) of the Act that the head of a public organization take action to remove factors which will likely contribute to corruption, it shall give him or her written notification with the deadline for actions to be taken.

4) If the head of a public organization is advised pursuant to Paragraph (4) herein to follow the recommendations for institutional improvement and yet finds it difficult to take necessary actions as recommended, he or she shall give the Commission written notification of the reasons within the deadline for actions to be taken.

5) If the Commission finds it necessary to conduct the Corruption Impact Assessment of the acts, which a central government agency or local government wants to enact or revise, it may request materials for the assessment from the agency or local government. In that case, the head of the agency or local government shall cooperate in good faith and the Commission shall give the head of the agency or local government written notification of the assessment findings without delay.

6) If a local government enacts or revises an ordinance or a rule, the head of the local government may, where necessary, request the Commission to conduct the Corruption Impact Assessment in accordance with Paragraph (1) herein.

7) If the Commission is asked to conduct the Corruption Impact Assessment in accordance with Paragraph (7) herein, it shall immediately send a written report on the results to the head of the local government.

8) When deemed necessary, the head of an public service organization under Article 2. 1. (d) of the Act may request the Commission to carry Corruption Impact Assessment on their organization's internal rules and bylaws (including rules and bylaws they want to enact or revise). The Commission shall give the head of the organization a written notification of the assessment findings as soon as it conducts Corruption Impact Assessment.

Article 31 (Advisory Group on the Corruption Impact Assessment)

1) The Commission may form and run an advisory group on the Corruption Impact Assessment to ensure the professionalism and objectiveness of the assessment and to seek its advice on the assessment.

2) Matters on the organization and operation of the advisory group shall be determined by the Chairperson following the resolution of the Board.

Article 32 (Notification of the Results of Corruption Impact Assessment to an organization)

1) In cases where the results of Corruption Impact Assessment are related to the Regulatory Impact Analysis undertaken under Article 7 of the Framework Act on Administrative Regulations, the Commission may communicate the matter to the Regulatory Reform Committee so that it can use the results as a means of assessing and reviewing regulations.

2) In cases where the results of Corruption Impact Assessment serve as a reference to deliberation of proposed acts and subordinate statutes and to amendment and improvement of acts and subordinate statutes pursuant to Article 21 and 24 of Rules on Legal Work Operation, the Commission may communicate the matter to the Ministry of Government Legislation so that it can use the results in its legal works.

Article 33 (Request for Public Organization's Explanation)

1) When requesting a public organization to explain any reason or submit materials and/or documents pursuant to Article 29 (1) 1 of the Act, the Commission shall deliver a written notice to the public organization concerned.

2) When conducting a diagnostic survey of a public organization pursuant to Article 29 (1) 1 of the Act, the Commission shall give advance notification to the public organization as to why, when, where and by whom the survey will be conducted; provided, however, that if there is an urgent reason or a concern that the purpose of the survey might be undermined, the foregoing shall not apply.

3) The employee of the Commission responsible for the survey pursuant to Paragraph (2) shall present the certificate of authority to the person concerned.

Article 34 (Request for Attendance of Interested Parties)

1) If the Commission is to demand that an interested party, a reference person or a public official concerned make appearance and statement before the Commission in accordance with Article 29 (1) 2, it shall give them written notification till and including seven days before their appearance.
2) An interested party, a reference person or a public official concerned, who received written notification in accordance with Paragraph (1) herein, may express their opinions either by appearing before the Commission or in writing until the day before they are supposed to appear.

Technical Guide for the Implementation of the Corruption Impact Assessment (2009)

The following is a previous version of the Technical Guide of 2009 as only this somewhat outdated version is available in English. Currently, a revised and more detailed edition of 2012 is in force with a length of over 200 pages.[276] However, the assessment criteria are still more or less the same, as is the overall procedure.

The Regional Anti-corruption Initiative is grateful to the Anti-Corruption & Civil Rights Commission of the Republic of Korea for their kind consent to publish the 2009 Guide as follows. The formatting did slightly change partly from the original version due to the copying into this document.

276 <http://www.acrc.go.kr/acrc/file/file.do?command=downFile&encodedKey=MTY4MDZfMQ%3D%3D> (in Korean language only).

Technical Guide for the Implementation of the Corruption Impact Assessment

2009

Anti-Corruption and Civil Rights Commission
Republic of Korea

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I Overview

The Corruption Impact Assessment is an analytical framework designed to identify and remove factors causing corruption in bills and proposed amendments as well as existing legislation. In other words, it is an institutional mechanism to analyze and eliminate factors that are highly likely to contribute to corruption from the very stage of drafting laws and regulations. In this sense, the Assessment can be considered a corruption prevention mechanism that seeks possible solutions to corruption from an institutional , not individual, perspective.

Development and dissemination of various mechanisms to eliminate each type of corruption-causing factors will facilitate selection of policy alternatives that are less likely to give rise to corruption. Over the long term, the Corruption Impact Assessment is expected to raise policymakers' awareness of the importance of corruption prevention and cause each agency to redouble its efforts to thwart corruption.

The Corruption Impact Assessment took effect in April 2006 according to the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission[277*]. Under Article 28 (1) of the Act, the ACRC reviews all forms of legislation ranging from acts, presidential decrees, ordinances, directives, regulations, public notifications, and administrative rules, identifies corruption risks, and recommends that the public organization concerned take actions to get rid of such risks.

The ACRC distributes the Corruption Impact Assessment Guidelines to all government agencies and provides training for public officials on the procedures for conducting and applying for assessments. It also publishes Corruption Impact Assessment Cases Collection every year.

II Assessment Criteria

The Corruption Impact Assessment is based on a systemic framework, which was designed to examine corruption factors in regulations or laws in terms of "demand," "supply," and "procedure." The evaluation framework consists of three corruption-causing factors: "ease of compliance" with laws and regulations, "propriety of discretion," and "transparency of administrative procedures." Each of these three factors is further broken down into three criteria.

277 * See Chapter VII: "Relevant Provisions".

Evaluation factors and criteria for the Corruption Impact Assessment

Factors	Criteria
Ease of compliance (demand)	▪ Adequacy of the burden of compliance ▪ Adequacy of the level of sanctions ▪ Possibility of preferential treatment
Appropriateness of execution standards (supply)	▪ Concreteness/objectiveness of discretionary regulations ▪ Appropriateness of consignment/ entrustment standards ▪ Clarity of financial support standards
Transparency of administrative procedure (procedure)	▪ Accessibility and openness ▪ Predictability ▪ Possibility of conflict of interest

III Assessment framework

The ACRC

Under Article 28 (1) of the Act and Article 30 of the Enforcement Decree, the ACRC conducts the Corruption Impact Assessment by analyzing corruption risks in proposed and existing laws and regulations, and make recommends for the government agencies concerned to eliminate those risks. It monitors and oversees how the government agencies concerned implement the recommendations made by the ACRC.

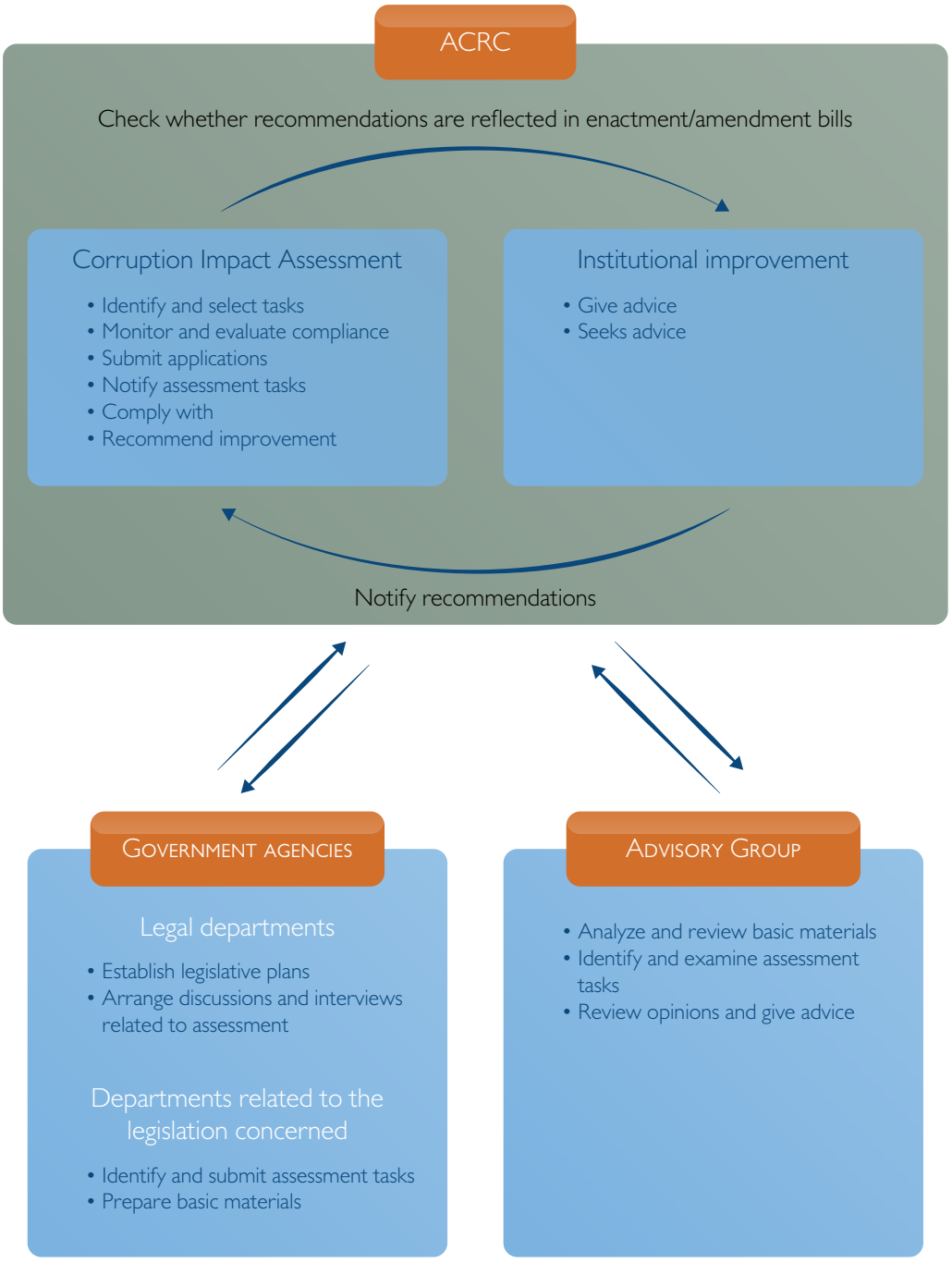
Advisory Group

Under Article 24 of the Act and Article 31 of the Enforcement Decree, the ACRC has been working with a pool of experts with ample experiences and knowledge on each area to enhance effectiveness in conducting the assessment and ensure the professionalism. These experts give advice regarding corruption factors in laws and institutions and reviews the opinions submitted by the government agency which applied for an assessment.

Government agencies

Government agencies that are entitled to enact or amend acts, administrative regulations, ordinances, regulations or guidelines are encouraged to set up and implement an internal system to improve competent laws and regulations. They

prepare and submit to the ACRC an application for assessment and other required documents. They make efforts to implement the improvements recommended as a result of assessment.



IV Procedures for the Corruption Impact Assessment

Corruption Impact Assessment for proposed legislation

Application for assessment

Government agencies entitled to enact and revise legislation must prepare a legislative proposal subject to evaluation as well as basic materials necessary for such evaluation. After examination and verification of the relevant materials by their legal departments, those agencies should submit them to the ACRC upon commencement of consultation on the bill with the agencies concerned. If an affiliated or subordinate agency is in charge of enforcing legislation, the agency is required to prepare materials for assessment and submit them to the ACRC after they are reviewed and confirmed by the relevant agencies in higher echelons with the authority of enactment and revision.

The assessment form (Annexed form 1) contains a self-assessment checklist to lessen the burden of assessment, render it easier to identify corruption-causing factors, and facilitate objective and standardized evaluation by type of legislation.

When applying for an assessment of proposed amendments, the government agency concerned is required to fill out and submit a basic application form for assessment (Annexed form 1) to the ACRC. In the case of proposing enactments, it is additionally required to submit to the ACRC a detailed application form for CIA (Annexed form 2).

Review and recommendation by the ACRC

The evaluation by the ACRC is conducted within the timeframe for existing legislative procedures in order to prevent any delay in such procedures. Evaluation begins during consultation by the agencies concerned (10 days) and is completed by the preliminary announcement of legislation (20 days). Therefore, the assessment should be finished within 30 days of submission of legislative proposals to the ACRC. However, in case of emergency, preliminary announcement of legislation may precede the completion of the ACRC's evaluation.

The emphasis of evaluation is placed on making institutional improvements with a view to removing corruption risks and factors. Assessment results are, therefore, used to improve relevant bills or legislation and establish institutional devices including sub-laws, rather than to directly withdraw unreasonable bills or existing laws.

In addition, the evaluation process of proposed legislation guarantees consultation with the relevant agencies, as well as collection of opinions from interested parties to ensure fair and effective evaluation.

The Corruption Impact Assessment Advisory Group has been in operation to promote professionalism and objectivity in the assessment. It consists of a pool of external experts (over 400 persons) from academia, research centers, and civil society groups that have ample knowledge and experience in corruption and assessment issues. (Figure 1)

After the assessment is completed, the ACRC notifies the agency concerned of the assessment results in writing (Annexed form 4). The assessment results are classified into four categories: agreed to the original bill, improvement required, withdrawal required, and referential remarks.

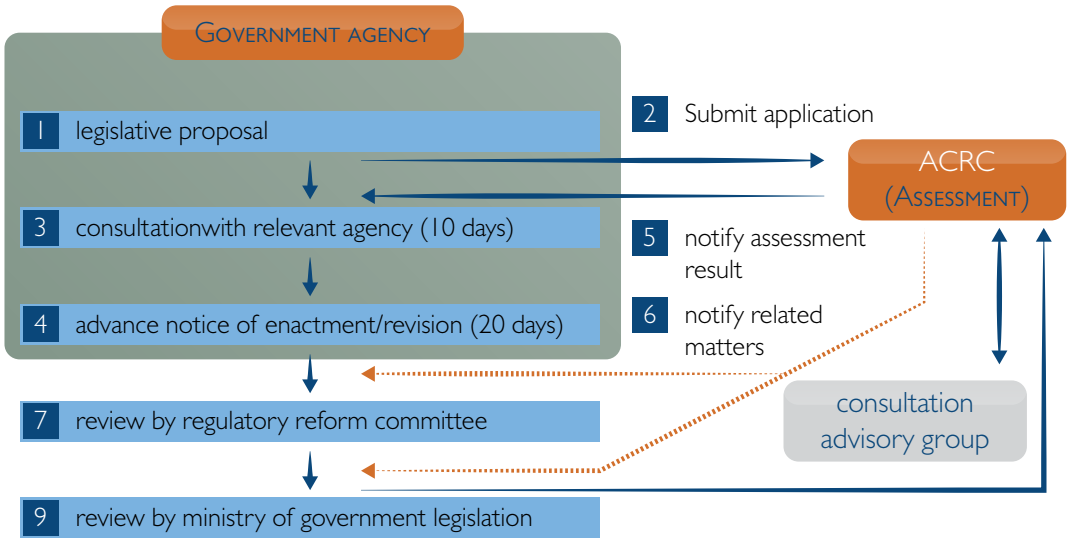
Under Article 32 of the Enforcement Decree, in case that the result of assessment is related to regulatory impact or can be used for reference for the review of bills and improvement of laws, the ACRC notifies the result to the Regulatory Reform Committee and the Ministry of Government Legislation, respectively.

Implementation of the ACRC's recommendations

The agency concerned must notify the ACRC of any revisions made to follow the ACRC's recommendations before it applies for a review by the Ministry of Government Legislation. When the agency deems it difficult to follow the ACRC's recommendations, it must notify the ACRC of the reasons in writing and request re-assessment (Article 30.5 of the Enforcement Decree).

The ACRC monitors the implementation of its recommendations by the government agencies concerned and reflects their performance in the Anti-Corruption Initiatives Assessment, an annual evaluation of anti-corruption efforts made by public sector organizations. The government agencies concerned are required to submit to the ACRC a report on the implementation of the ACRC's recommendations twice a year (31 May and 30 November).

Figure 1: Corruption Impact Assessment for **legislation to be enacted/ amended**



Corruption Impact Assessment for existing legislation

Selection of laws and regulations to be assessed

The Corruption Impact Assessment for existing legislation is conducted on an annual basis according to the ACRC's comprehensive, long-term assessment plans. More specifically, the ACRC finalizes the subjects of assessment for each agency through consultation, establishes comprehensive, long-term assessment plans, and performs an assessment on the basis of basic materials prepared and submitted by each agency.

Every year, each agency determines the tasks for the Corruption Impact Assessment and reports them to the ACRC. Then, the ACRC finalizes assessment tasks based on an overall review of the tasks reported by each agency and consultation with said agency.

Target areas of assessment are those pertaining to administrative actions that involve interactions with the public. Assessment targets include laws and regulations on authorization, permission, guidance, crackdowns, aid and contracting. However, the assessment does not cover matters pertaining to administrative agencies' internal operation (staff organization, salaries, record-keeping, etc.) as well as those related to constitutional organizations.

Review and recommendation by the ACRC

The agency must prepare and submit to the ACRC basic materials for assessment related to the selected tasks (Article 30 (3) of the Enforcement Decree). While reviewing these materials, the ACRC may examine additional documents including records on punishments, inspections, and investigations and reports on handling civil petitions, and conduct onsite reviews.

The ACRC prepares recommendations for improvement based on an analysis of the implementation status of legislation and assessment results and consults the government agency concerned about the draft recommendations. For important issues, the ACRC may collect opinions from related agencies, interested parties, and experts through public hearings or discussions.

According to the findings from the assessment, the ACRC give the agency concerned a written notification of its recommendations with the deadline for actions to be taken (Article 30 (4) of the Enforcement Decree).

Implementation of the ACRC's recommendations

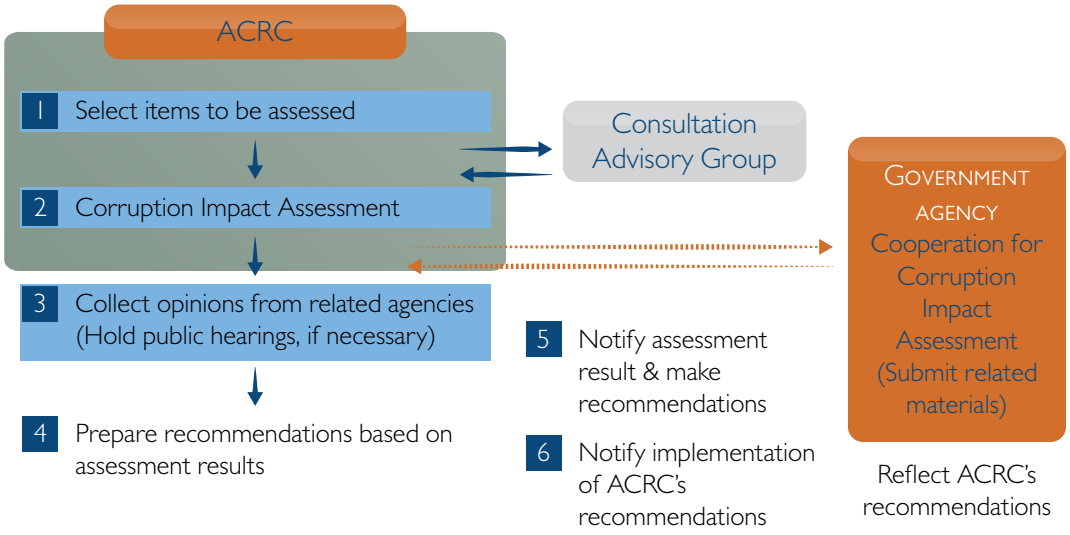
If the agency concerned is advised to follow the ACRC's recommendations within the deadline and notify the ACRC of the actions taken before applying for a review by the Ministry of Government Legislation. When the agency finds it difficult to take actions recommended by the ACRC, it must give the ACRC a written notification of the reasons within the deadline for actions to be taken (Article 30 (5) of the Enforcement Decree).

The ACRC monitors the implementation of its recommendations by government agencies, and intends to guarantee the efficacy of the corruption impact assessment scheme by reflecting assessment results in its regular Anti-Corruption Initiatives Assessment and disclosing those results to the public.

Conclusively, the findings from corruption impact assessment are utilized in pushing for institutional improvements. The corruption impact assessment, therefore, functions as an advance analysis system for efficient institutional improvements. When assessment results indicate a need for improvement, ACRC formulates measures to implement the institutional improvements and recommends the implementation of such measures to each agency concerned.

The government agencies concerned are required to submit to the ACRC a report on the implementation of the ACRC's recommendations twice a year (31 May and 30 November).

Figure 2. Corruption Impact Assessment for existing legislation



Corruption Impact Assessment for administrative regulations (directives, regulations, notices & announcements)

Assessment of existing administrative regulations

Given the large number of administrative rules, ACRC conducts assessments on laws and their subordinate administrative rules issued by government agencies together. Among existing administrative regulations, the ACRC selects the regulations which involve high corruption risks including excessive or unreasonable regulation, and conducts corruption impact assessment of those regulations.

Additionally, it requests government agencies to submit newly-issued administrative rules every six months and carries out intensive assessments on those rules. Administrative agencies have an obligation to prepare and submit assessment materials to the ACRC upon request by the ACRC (Article 30 (3) of the Enforcement Decree). The ACRC may conduct a preliminary review of materials related to the assessment, and onsite inspection.

The ACRC prepares recommendations for improvement based on an analysis of relevant practices and assessment results and consults the government agency concerned about the draft recommendations. For important issues, the ACRC may collect opinions from related agencies, interested parties and experts through public hearings or discussions.

According to the findings from the assessment, the ACRC give the agency concerned a written notification of its recommendations with the deadline for actions to be taken (Article 30 (4) of the Enforcement Decree).

Assessment of proposed enactment or amendment of administrative regulations

When an administrative agency intends to formulate or revise the following administrative rules, they are required to apply for corruption impact assessment by the ACRC before it begins consultation with related agencies:

- in case that the agency intends to formulate or revise administrative regulations of which the ACRC recommended or decided to recommend improvements as a result of its assessment of existing regulations; and
- in case that it is difficult to improve administrative regulations on its own in the process of enactment or amendment.

The ACRC shall complete the assessment of proposed enactment or amendment of administrative regulations within 30 days and notify the results to the agency concerned in writing (Article 30 (4) of the Enforcement Decree).

Implementation of the ACRC's recommendations

If the agency concerned is advised to follow the ACRC's recommendations within the deadline and notify the ACRC of the actions taken. When the agency finds it difficult to take actions recommended by the ACRC, it must give the ACRC a written notification of the reasons within the deadline for actions to be taken (Article 30 (5) of the Enforcement Decree).

The ACRC monitors the implementation of its recommendations by government agencies on a regular basis, and reflects assessment results in its regular Anti-Corruption Initiatives Assessment and disclosing those results to the public.

The government agencies concerned are required to submit to the ACRC a report on the implementation of the ACRC's recommendations twice a year (31 May and 30 November).

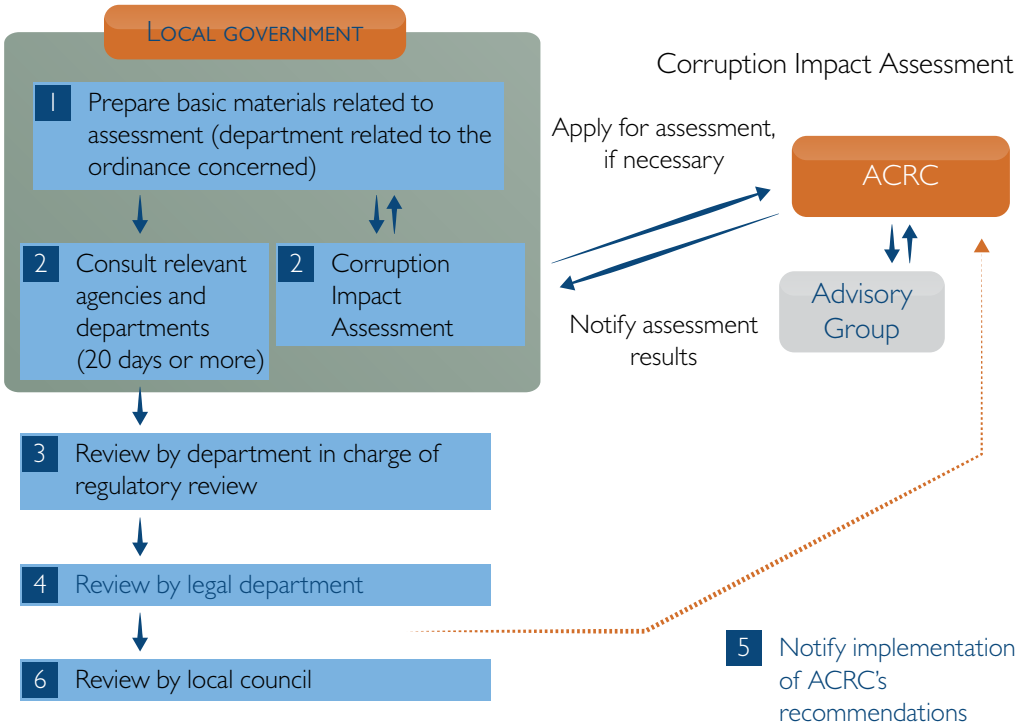
When submitting to the ACRC a report of implementation related to laws and decrees, government agencies are advised to submit a report related to administrative regulations at the same time.

Corruption Impact Assessment for local government ordinances & public company regulations

The anti-corruption act and its enforcement decree provide that the ACRC shall conduct corruption impact assessment of local government ordinances and internal regulations of public corporations in case that it receives requests for assessment.

More than 60,000 autonomous laws and regulations are now in force, and over 10,000 are enacted or revised annually, so a comprehensive evaluation by the ACRC was not viable. Considering such large volume and the purpose of local autonomy systems, the ACRC is guiding local governments to establish and operate a self-assessment system.

Figure 3. Corruption Impact Assessment for local government ordinances to be enacted/amended



Procedures for the Corruption Impact Assessment by type of legislation

Legislation under assessment		Government agency concerned	ACRC
Acts and decrees	Proposed enactment/ amendment	▪ Submit a proposal for amendment and a basic application to ACRC ▪ Submit a proposal for enactment and a detailed application upon request by ACRC	▪ Start an assessment upon the commencement of consultation with related agencies, and complete the assessment within the period for an advance notice of legislation expires
	Existing	▪ Submit related materials upon request by ACRC	▪ Select assessment areas and conduct an assessment ▪ Conduct an assessment of related administrative rules
Administrative regulations	Proposed enactment/ amendment	▪ Apply for ACRC's assessment - in case of difficulty in self-assessment - in case of enactment or amendment of administrative regulations related to the existing regulations of which ACRC recommended improvement	▪ Complete an assessment of administrative regulations within 30 days

Legislation under assessment		Government agency concerned	ACRC
		▪ Submit a proposal for amendment and a basic application to ACRC ▪ Submit a proposal for enactment and a detailed application upon request by ACRC	
	Existing	▪ Submit related materials upon request by ACRC	▪ Select assessment areas and conduct an assessment ▪ Conduct an assessment of relevant laws and decrees
Local government ordinances	Proposed enactment/ amendment	▪ Apply for ACRC's assessment when necessary ▪ Conduct a self-assessment	▪ Conduct the requested assessment of ordinances ▪ Develop and distribute a self-assessment guidelines
	Existing	▪ Submit related materials upon request by ACRC.	▪ Select assessment areas and conduct an assessment.
Internal regulations of public corporations		▪ Apply for ACRC's assessment when necessary. ▪ Conduct a self-assessment.	▪ Conduct the requested assessment of regulations. ▪ Develop and distribute a self-assessment guidelines.

V FAQ

Q. Diverse anti-corruption mechanisms have already been implemented. Why was the Corruption Impact Assessment newly introduced?

A. Most of the existing anti-corruption mechanisms focus on end-of-pipe measures such as detection of and punishment for individual corruption cases. Such measures have limitations in preventing corruption especially in areas with structural weakness. This highlights the necessity of a system which can effectively prevent corruption throughout the whole process of administration by eliminating corruption-causing factors from the very first stage of drafting laws and regulations; and substantially enhance transparency in the formulation and execution of policies by helping public institutions identify and remove those factors that are likely to contribute to actual occurrence of corruption.

Q. It seems quite difficult to quantify the impact of corruption. What methodology is used for the Corruption Impact Assessment?

A. Various impact assessment systems rely on quantitative analyses of the socio-economic impact of development projects on such factors as the environment, traffic and population. However, the Corruption Impact Assessment qualitatively analyzes corruption-causing factors in laws and institutions for the purpose of establishing measures to eliminate these factors. This assessment system scientifically analyzes corruption-causing factors in legislation based on 9 assessment criteria, including propriety of discretion (supply), easiness of compliance with laws and regulations (demand), and transparency of administration (procedure).

It utilizes a checklist-type evaluation form and facilitates objective and standardized evaluation by type of legislation, which renders it easier to identify corruption-causing factors. In particular, for issues with far-flung effects or different interests at stake, they are reviewed or consulted by outside experts, ensuring the objectivity and reliability of assessment results.

Q. Why does the assessment include administrative rules which do not directly govern public life?

A. The Corruption Impact Assessment is a systematic evaluation mechanism covering not only laws and regulations but also relevant administrative rules. Corruption-causing factors are also found in sub-laws such as instructions and notifications. There are, however, few external control mechanisms over administrative rules enforced by individual institutions although they are directly related to the lives of the public. In this sense, the Corruption Impact Assessment thoroughly reviews and systematically improves administrative rules in relation to relevant laws.

Q. Is there any possibility that this assessment system may delay the enactment or amendment of laws?

A. To avoid any delay in enactment or amendment of laws, the assessment is conducted within the timeframe for existing legislative procedures. The analysis and evaluation by ACRC should be finished within 30 days from the stage of consultation with the agencies concerned to the stage of the preliminary announcement of legislation. However, ACRC may allow the assessment to be postponed for a certain period of time in case of unavoidable circumstances, including shortened procedures for consultation and preliminary announcement due to emergency concerns.

Q. How do you assess corruption impact on existing legislation?

A. For existing legislation, ACRC establishes a comprehensive mid-and long-term plans for the Corruption Impact Assessment. Every year, individual agencies submit the list of laws and regulations concerned as well as the assessment targets to ACRC. Then, ACRC finalizes the assessment targets based on an overall review of the materials submitted by each agency and consultation with relevant agencies, and establishes a mid-and long-term plan for the Corruption Impact Assessment. After each agency submits necessary materials on the target legislation, ACRC conducts the Corruption Impact Assessment.

Q. Does ACRC conduct the assessment on the bills proposed by lawmakers?

A The Corruption Impact Assessment covers all legislation, except for the enactment or amendment of laws proposed by lawmakers. The assessment system places its focus on the formation of effective measures to eliminate corruption-causing factors in proposed laws, ensuring that the purpose of lawmaking by the National Assembly is not compromised.

Q. What are the grounds for local governments to evaluate their ordinances and rules for themselves?

A. The Corruption Impact Assessment was introduced as a nationwide assessment system so that ordinances and rules should also be reviewed for corruption-causing factors such as deviation from the superior law or excessive discretion. Considering the vast volume of autonomous laws and the purpose of local autonomy, it is effective for local governments to make an assessment on their own. However, upon request from local governments, ACRC may conduct an assessment on ordinances and rules and report the assessment results to the local governments so that they can utilize the results to improve relevant ordinances and rules.

Q. Are the results of the assessment legally binding?

A. Based on the assessment results on legislative proposals, ACRC notifies relevant agencies of its opinion on proposed amendment or enactment in the forms of agreement or recommendation for improvement. Although the assessment results are not legally binding, ACRC gives full consideration to experts' opinion and consults with relevant agencies before finalizing the results. Therefore, ACRC's recommendations are highly appreciated and accepted by most institutions.

VI Relevant provisions

Act on Anti-Corruption and the Establishment and Operation of the Ant-Corruption and Civil Rights Commission

Article 28: Review of Corruption-causing Factors in Laws

The Commission may review corruption-causing factors in Acts, Presidential Decrees, Prime Ministerial decrees and Ordinances of Ministries and in other directives, regulations, announcements, notices, ordinances and rules in reference thereto, and may recommend that the head of the public organization concerned take actions to remove them.

Matters regarding the procedure and methods of the review undertaken under paragraph (1) shall be prescribed by the Presidential Decree.

Enforcement Decree of the Act on Anti-Corruption and the Establishment and Operation of the Ant-Corruption and Civil Rights Commission

Article 30: Review of Corruption-Causing Factors

If and when the Commission analyzes and reviews corruption-causing factors in accordance with Article 28 of the Act in acts, presidential decrees, prime ministerial decrees or ordinances of ministry, and the directives, regulations, announcements, notices, ordinances or rules delegated by them (hereinafter referred to as "acts and subordinate statutes") (hereinafter referred to as "Corruption Impact Assessment"), it shall consider any of the following:

Likelihood of Corruption:

- Whether there is discretionary power that contributes to corruption
- Whether the criteria for application of acts and subordinate statutes and the procedure for the use of public office are objective and concrete
- Whether a proper anti-corruption mechanism is in place in exercising discretion

Ease of Compliance with Acts and Subordinate Statutes

- Whether there are provisions with which ordinary citizens, enterprises, associations, etc. are hard to comply
- Whether the kind and severity of sanctions for violation of the acts and subordinate statutes are appropriate

- Whether there is a probability that preferential treatment will be given, and whether preferential treatment, if any, is given in a proper and fair manner

Transparency of Administrative Procedure

- Whether opportunities, where necessary, are given for involvement in the administrative procedure and related information is disclosed sufficiently
- Whether it is possible to predict what must be prepared for public administrative service; what procedure must be followed; how long it will take to complete the procedure; what outcomes will be; etc.

Other matters on the possibility of the occurrences of corruption

The Commission may draw up guidelines on the subjects of and criteria, methods and plans for the Corruption Impact Assessment to ensure its effectiveness, and it may communicate the guidelines to the head of a public organization as prescribed by Article 2.1.(a) and 2.1.(b) of the Act.

If the Commission carries out the Corruption Impact Assessment on acts and subordinate statutes in accordance with Paragraph (1) herein, it may ask the head of a public organization to submit materials necessary for the assessment pursuant to Article 29 (1) of the Act. In that case, the organization head shall cooperate as prescribed by Article 29 (4) of the Act.

In case the Commission recommends pursuant to Article 28 (1) of the Act that the head of a public organization take action to remove factors which will likely contribute to corruption, it shall give him or her written notification with the deadline for actions to be taken.

If the head of a public organization is advised pursuant to Paragraph (4) herein to follow the recommendations for institutional improvement and yet finds it difficult to take necessary actions as recommended, he or she shall give the Commission written notification of the reasons within the deadline for actions to be taken.

If the Commission finds it necessary to conduct the Corruption Impact Assessment of the acts and subordinate statues, which a central government agency or local government agency intends to enact or revise, it may request materials for the assessment from the agency. In that case, the agency head shall cooperate in good faith and the Commission shall give the agency head written notification of the assessment findings without delay.

If a local government enacts or revises an ordinance or a rule, the head of the local government may, where necessary, request the Commission to conduct the Corruption Impact Assessment in accordance with Paragraph (1) herein.

If the Commission is asked to conduct the Corruption Impact Assessment in accordance with Paragraph (7) herein, it shall immediately send a written report on the results to the head of the local government.

If the head of a public service-related organization under Article 2.1(d) of the Act finds it necessary to conduct the Corruption Impact Assessment of internal regulations including company rules (including internal regulations to be formulated or amended), it may request the Commission to conduct the Corruption Impact Assessment. In this case, the Commission shall conduct the Corruption Impact Assessment and immediately send a written report on the results to the head of the public service-related organization.

Article 31: Advisory Group on the Corruption Impact Assessment

The Commission may form and run an advisory group on the Corruption Impact Assessment to ensure the professionalism and objectiveness of the assessment and to seek its advice on the assessment.

Matters on the organization and operation of the advisory group shall be determined by the Chairperson following the resolution of the Board.

Article 32: Notification of the result of the Corruption Impact Assessment to related agencies

1) If the Corruption Impact Assessment produces results which are related to the Regulatory Impact Analysis undertaken under Article 7 of the Basic Law for Administrative Regulations, the Commission may communicate the matter to the Regulatory Reform Committee so that it can use the results in reviewing regulations.
2) If the Corruption Impact Assessment produces results which are related to the Regulatory Impact Analysis undertaken under Article 21 and 24 of the Legislative Affairs Management Regulations, the Commission may communicate the matter to the Ministry of Government Legislation so that it can use the results in legislative affairs.

Annexed form 1: Application for Corruption Impact Assessment (Basic)

Serial number (For ACRC Use only)	Application for Corruption Impact Assessment (Basic)		
Title of legislation	(Title of system:)		
Status	☐ Enactment ☐ Amendment ☐ Existing		
Type	☐ Act ☐ Presidential decree ☐ Prime ministerial decree ☐ Ministry ordinance ☐ Ordinance ☐ Regulation ☐ Educational regulation ☐ Administrative regulation		
Related administrative regulations	*List the name(s) of all administrative regulations (announcements, directives, regulations, rules, instructions, etc.) formulated by your organization to implement superior laws or regulations.*		
Government organization in charge	Name of organization		
	Department in charge of coordination	Name of Department	
		Official in charge	Name: Position: Phone number:
	Department in charge of implementation	Name of Department	
		Official in charge	Name: Position: Phone number:
Legislative timeline	Consultation with related agencies	Agencies to be consulted	
	Consultation period	From: / / To: / / (days)	
Procedures for collecting opinions	1. Review by the department in charge of legal affairs 2. Public hearings or seminars		
Attachments	1. Proposed or existing legislation including a table comparing existing and new provisions 2. Statement of opinions about corruption risks and reference materials (optional)		

	Organization	Department	Position	Name	Phone number
Applicant					

Self-Assessment Checklist

Factors	Criteria	Response	Related legislation
1. Ease of compliance	Adequacy of the burden of compliance	☐ Adequate	
		☐ High	
		☐ Very high	
	Adequacy of the level of sanctions	☐ Adequate	
		☐ Low	
		☐ High	
	Possibility of preferential treatment	☐ None	
		☐ Slight	
		☐ Some	
		☐ High	
2. Propriety of execution standards	Concreteness and objectiveness of discretionary regulations	☐ Concrete & objective	
		☐ Somewhat abstract & subjective	
		☐ Very abstract & subjective	
	Appropriateness of consignment/entrustment standards	☐ Appropriate	
		☐ Wide	
		☐ Narrow	
		☐ Don't know	
	Clarity of financial support standards	☐ Clear	
		☐ Somewhat clear	
		☐ Unclear	
3. Transparency of administrative procedure	Accessibility and openness	☐ High	
		☐ Low	
	Predictability	☐ High	
		☐ Low	
	Possibility of conflict of interest	☐ High	
		☐ Low	

** Please attach to this form a statement of opinions and reference materials if you find that the proposed or existing rules need improvement after examining each assessment criteria.*

1. Ease of compliance

1-1. Adequacy of the burden of compliance

In light of social norms, is the level of costs and burden to comply with the legal obligations appropriate?

Check list	Answer
Do those who are subject to the regulation understand well the existence and contents of the provisions that may cause some burdens?	☐ Yes ☐ No
Do those who are subject to the regulation regard the level of compliance burden as appropriate?	☐ Yes ☐ No
Are regulations inevitable to achieve certain administrative goals?	☐ Yes ☐ No
Are regulations designed to resolve problems limited to certain areas unnecessarily extended to the general public?	☐ Yes ☐ No
When compliance burden is deemed excessive, can it be eased or replaced?	☐ Yes ☐ No

1-2. Adequacy of the level of sanctions

Are the content and level of sanctions appropriate, compared with those pursuant to similar laws?

Check list	Answer
Considering similar rules and social impact of the acts subject to regulation, are sanctions really necessary?	☐ Yes ☐ No
Considering social harm caused by the violations, are sanctions excessive or too weak without reasonable reasons?	☐ Yes ☐ No
If sanctions are too excessive compared with similar rules, are there any reasonable grounds for that?	☐ Yes ☐ No
If sanctions are too weak compared with similar rules, are there any reasonable grounds for that?	☐ Yes ☐ No
When sanctions are too weak, is there any possibility that it may be beneficial to certain groups of people who are subject to the regulation concerned or reduce the deterrence effect?	☐ Yes ☐ No
When a violation constitutes an act of corruption, is the level of sanctions enough to prevent the recurrence of corruption?	☐ Yes ☐ No
Is there any means other than the sanctions concerned to control violations including corruption?	☐ Yes ☐ No

1-3. Possibility of preferential treatment

Is there any possibility that certain classes, businesses, groups or individuals benefit from the application of the law?

Check list	Answer
Is there any possibility that the rule or administrative action pursuant to the rule may result in giving favor or benefit to certain people?	☐ Yes ☐ No
Do major beneficiaries or parties concerned know the existence and contents of related rules well?	☐ Yes ☐ No
Do major beneficiaries or stakeholders think that favor is provided fairly and rationally?	☐ Yes ☐ No
When favor is most likely to happen, should it be given inevitably?	☐ Yes ☐ No
Is there any other way to achieve administrative goals other than attaining them through giving favor?	☐ Yes ☐ No
When favor is inevitably offered, are criteria for giving it fair and rational?	☐ Yes ☐ No
Compared to administrative goals desired to be achieved, is favor provided excessively without reasonable reasons?	☐ Yes ☐ No
If favor is deemed excessive, can it be reduced in degree or is there any other way to replace it?	☐ Yes ☐ No
Are specific measures needed to control favor that can cause corruption?	☐ Yes ☐ No

2. Propriety of discretion

2-1. Clearness of discretionary regulations

Are the subject and scope of discretion, and the process for exercising discretion clearly and definitely defined?

Check list	Answer
Do the rules or subordinate rules clearly specify who exercises discretion?	☐ Yes ☐ No
Do the rules clearly stipulate requirements for exercising discretion, or criteria or considerations for discretion?	☐ Yes ☐ No
Is the object on which discretion is exercised clearly stated in the rules?	☐ Yes ☐ No
Is the scope and limit of discretion clearly specified in the rules?	☐ Yes ☐ No
If matters related discretion is vaguely stipulated, is there any reasonable reason for that?	☐ Yes ☐ No
Is there a possibility of discretion being abused or exercised arbitrarily due to unclear rules on discretion?	☐ Yes ☐ No

2-2. Appropriateness of the scope of discretionary power

Is the scope of discretion appropriate in light of international and domestic norms?

Check list	Answer
Is the scope of discretion too broad or narrow in light of social norms or customs?	☐ Yes ☐ No
If the scope of discretion is too broad or narrow in light of social norms or customs, is there reasonable reason for that?	☐ Yes ☐ No

2-3. Concreteness and objectiveness of discretionary standards

Are the standards for performance of duties related to the discretion or requirements for exercising the discretion specific enough to be applied to real situations and objective enough to be translated as the same by a third person?

Check list	Answer
Do organizations and stakeholders who are subject to the rules understand discretionary standards in the same way as administrative staff in charge does?	☐ Yes ☐ No
Are matters that are presented as specific discretionary standards or detailed considerations directly applicable without additional explanation or detailed criteria?	☐ Yes ☐ No
If the level of objectiveness and concreteness of discretionary standards is low, is there any reasonable reason for that?	☐ Yes ☐ No
Are specific measures needed to prevent adverse side effects that can be caused by deficiency of objectiveness and concreteness in discretionary standards?	☐ Yes ☐ No

3. Transparency of administrative procedure

3-1. Accessibility and openness

Does the exercise of discretion or performance of duties guarantee participation by citizens, businesses, or organization? Is there a system for information disclosure?

Check list	Answer
To enhance transparency in work process, are there any specific measure for the involvement of stakeholders and collection of opinions from them, other than those specified by laws on administrative procedures?	☐ Yes ☐ No
If there is a specific measure, is it effective? In reality, can stakeholders or service users access information, participate in work process and have their voice heard?	☐ Yes ☐ No
Can only a limited number of stakeholders have access to information or participate?	☐ Yes ☐ No
Do stakeholders know or understand that they can access information or participate?	☐ Yes ☐ No
Do stakeholders think that they can access and utilize institutional participation system?	☐ Yes ☐ No
Do stakeholders think that valid information is provided through information disclosure system?	☐ Yes ☐ No
If there is no participation measure or information disclosure system, or organization concerned claims that such system is not needed, are there any reasonable reasons?	☐ Yes ☐ No
If there is no specific measure, is there a need to come up with a system to increase accessibility and openness?	☐ Yes ☐ No

3-2. Predictability

Is it easy for citizens to get information on and predict required papers, steps, administrative procedures, handling period and the results?

Check list	Answer
Can expressions in the rules be easily understood by the general public?	
Difficult expressions and use of jargons can undermine understanding and predictability of the general public. Is there any reasonable reason to inevitably use them?	☐ Yes ☐ No
When requirements, procedures and deadline needed to apply for public service are not met, are there any clear steps to take?	☐ Yes ☐ No
When provisional permission systems such as conditional permissions or preliminary permissions are used, are there any provisions on the possibility of provisional permission, requirements for application, application procedures, and deadlines?	
When consultation with and approval of administrative agencies are needed, is it clear who are administrative agencies concerned, what are criteria for consultation and approval, and how long will it take to deal with the matter?	☐ Yes ☐ No
Do citizens need help from public officials in order to understand work process or work criteria?	☐ Yes ☐ No
If predictability of administrative process is low, is there reasonable reason for that?	☐ Yes ☐ No
Is there a need to come up with measures to enhance predictability to prevent possible adverse side effects?	☐ Yes ☐ No

3-3. Corruption control system

Is there a system to control the occurrence of corruption that may arise from the attempts to evade obligations or to seek favor or from the possibility of face-to-face contacts?

Check list	Answer
Is any specific corruption control system put in place?	☐ Yes ☐ No
Do organizations, stakeholders and experts subject to the rule regard the corruption control system as effective?	☐ Yes ☐ No
Is objection filing process easy and simple for service users to utilize?	☐ Yes ☐ No
Are there any provisions on handling period and notification of the results?	☐ Yes ☐ No
Are there any provisions on specific procedures or measures to explain why certain objections cannot be dealt with?	☐ Yes ☐ No
Are there any occurrences of corruption regarding the work pursuant to the rule concerned?	☐ Yes ☐ No
Does the result of Integrity Survey show high frequency of gratuities and low practicality of standards and procedures, degree of information disclosure, and ease of making complaints?	☐ Yes ☐ No
If there is no corruption control system, is there reasonable reason for that?	☐ Yes ☐ No
If there is no corruption control system, do organizations, stakeholders and experts subject to the rule concerned think that there should be one?	☐ Yes ☐ No

Annexed form 2: Application for Corruption Impact Assessment (Detailed)

Application for Corruption Impact Assessment (Detailed)

1. Ease of compliance

1-1. Adequacy of the burden of compliance		
In light of social norms, is the level of costs and burden borne by citizens, businesses or organizations to comply with the legal obligations appropriate?		
a. Adequate	b. High	c. Very high

Major contents of provisions related to the burden of compliance

No.	Relevant provisions	Obligations	Major organizations subject to obligation (Contact information)

Additional explanation: Necessity and validity of the burden of compliance

1.	

Reference materials

1.	

1-2. Adequacy of the level of sanctions		
Are the content and level of sanctions appropriate, compared with those pursuant to similar laws?		
a. Adequate	b. Low	c. High

Major contents of provisions for sanctions

No.	Relevant provisions	Acts of violation	Current status of sanctions

Additional explanation: Necessity and adequacy of the level of sanctions

1.	

Reference materials

1.	

1-3. Possibility of preferential treatment
Is there any possibility that certain classes, businesses, groups or individuals benefit from the application of the law?
a. None b. Slight c. Some d. High

Major contents of preferential provisions

No.	Relevant provisions	Beneficiaries	Major contents

Additional explanation: Reason for and adequacy of preferential treatment

1.	

Reference materials

1.	

2. Propriety of discretion

Description of discretion

No.	Relevant provisions	Description of discretion

2-1. Clearness of discretionary regulations		
Are the subject and scope of discretion, and the process for exercising discretion clearly and definitely defined?		
a. Clear	b. Somewhat clear	c. Unclear

Clearness of discretionary regulations

No.	Name of discretion (Relevant provisions)	Official with discretionary authority	Procedures & requirements for exercising discretion	Scope and level of discretion

Additional explanation: Reason for unclearness in discretionary regulations

1.	

Reference materials

1.	

2-2. Appropriateness of the scope of discretionary power			
Is the scope of discretion appropriate in light of international and domestic norms?			
a. Appropriate	b. Wide	c. Narrow	d. Don't know

Appropriateness of the scope of discretionary power

No.	Relevant provisions	Scope of discretion

Additional explanation: Reason for excessive or insufficient discretion

1.	

Reference materials

1.	

2-3. Concreteness and objectiveness of discretionary standards		
Are the standards for performance of duties related to the discretion or requirements for exercising the discretion specific enough to be applied to real situations and objective enough to be translated as the same by a third person?		
a. Concrete & objective	b. Somewhat abstract & subjective	c. Very abstract & subjective

Concreteness and objectiveness of discretionary standards

No.	Relevant provisions	Discretionary standards	Interested parties

Additional explanation: Reason for lack of concreteness and objectiveness in discretionary standards

1.	

Reference materials

1.	

3. Transparency of administrative procedure

Workflow

3-1. Accessibility and openness
Does the exercise of discretion or performance of duties guarantee participation by citizens, businesses, or organization? Is there a system for information disclosure?
a. Available b. Not available

System for guaranteeing participation and information disclosure

No.	Relevant provisions	Description

Additional explanation

1.	
2.	

Reference materials

1.	
2.	

3-2. Predictability
Is it easy for citizens to get information on and predict required papers, steps, administrative procedures, handling period and the results?
a. Predictable b. Unpredictable

Predictability of administrative procedures

	Relevant provisions	Description
Preparation required		
Procedures		
Result		
Time required		

Additional explanation: Reason for low predictability

1.	
2.	

Reference materials

1.	
2.	

3-3. Corruption control system	
Is there a system to control the occurrence of corruption that may arise from the attempts to evade obligations or to seek favor or from the possibility of face-to-face contacts?	
a. Available	b. Not available

Mechanism for corruption control

Relevant provisions	Description

Additional explanation: Reason for lack of corruption control mechanism

1.	

Reference materials

1.	

Annexed form 3: Corruption Impact Assessment Basic Report Form

Title: Amendment bill on "Enforcement Decree of the Act on Contracts to Which the State is a Party"

Existing provisions	Proposed provisions	Assessment result
Article 10 (Methods for Competition) *(1) Competition under the provisions of Article 7 of the Act shall be conducted by method of tender or auction.* *(2) The head of each central government agency or the public official in charge of contracts, if it is deemed necessary for the sale of movables, may put such movables to an auction in accordance with the method of tender under the provisions of this Decree.*	***Article 10 (Methods for Competition)*** *(1)* _____ *(2)* _____ *(3) The head of each central government agency or the public official in charge of contracts, if it is deemed necessary for the purchase of goods, may put such goods to a descending-price auction in accordance with the method of tender under the provisions of this Decree.*	*Improvement required*

Annex form 4: Corruption Impact Assessment Detailed Report Form

Title: Amendment bill on "Enforcement Decree of the Act on Contracts to Which the State is a Party"

- Provisions under assessment

> **Article 10 (Methods for Competition)**
>
> (1) Competition under the provisions of Article 7 of the Act shall be conducted by method of tender or auction.
>
> (2) The head of each central government agency or the public official in charge of contracts, if it is deemed necessary for the sale of movables, may put such movables to an auction in accordance with the method of tender under the provisions of this Decree.
>
> (3) The head of each central government agency or the public official in charge of contracts, if it is deemed necessary for the purchase of goods, may put such goods to a descending-price auction in accordance with the method of tender under the provisions of this Decree.

- **Assessment criteria**: *Propriety of discretion / Concreteness and objectiveness of discretionary standards*
- Description of the proposed/existing provisions
  When *the head of each central government agency or the public official in charge of contracts intends to make a contract he/she shall conclude a contract through open competition either by tender or auction. However, in case of the purchase of goods, a descending-price auction can be used.*
- **Problems**
  The requirement for putting goods to a descending-price auction ("if it is deemed necessary") is too abstract and general to ensure transparent and impartial execution of budget by the contracting official. Therefore, concrete standards need to be added to this provision.
- **Conclusion**: *"Improvement required"*
  Detailed and concrete standards and procedures for descending-price auction need to be determined by the ordinance of the ministry concerned.

*** Recommended improvement**

Proposed provisions	The ACRC's recommendations
(3) The head of each central government agency or the public official in charge of contracts, if it is deemed necessary for the purchase of goods, may put such goods to a descending-price auction in accordance with the method of tender under the provisions of this Decree.	*(3) The head of each central government agency or the public official in charge of contracts, ~~if it is deemed necessary for the purchase of goods~~, may put such goods to a descending-price auction in accordance with the method of tender under the provisions of this Decree.* *(4) Detailed standards and procedures necessary for a descending-price auction pursuant to Paragraph 3 shall be determined by the Ordinance of the Ministry of Strategy and Finance in consideration of the characteristics, competitiveness, and budget for purchase of the goods concerned.*

Annex form 5: Corruption Impact Assessment Result Notification Form

Serial number	08-1257		
Corruption Impact Assessment Result Notification			
A. Legislation under assessment			
Title	*Amendment bill on "Enforcement Decree of the Building Act"*		
Government agency concerned	*Ministry of Land, Transport & Maritime Affairs (Housing Policy Division)*		
B. Assessment criteria			
Factors	Criteria	Number of items	Assessment result
1. Ease of compliance	1-1 Adequacy of the burden of compliance		
	1-2 Adequacy of the level of sanctions		
	1-3 Possibility of preferential treatment		
2. Appropriateness of execution standards	2-1 Concreteness and objectiveness of discretionary regulations	*1*	*Improvement required: 1*
	2-2 Appropriateness of consignment/ entrustment standards		
	2-3 Concreteness and objectiveness of discretionary standards		
3. Transparency of administrative procedure	3-1 Accessibility and openness		
	3-2 Predictability		
	3-3 Possibility of conflict of interest		
C. Conclusion			
Description of the proposed/existing provisions: *The main purpose of the amendment is to promote the construction of buildings which may improve the scenic beauty of the city with creative designs by relaxing restrictions on the height of such buildings.* *Assessment result: One item for improvement was identified in respect of "clearness of discretionary regulations."*			
D. Required improvements			
Problems: *The proposed amendment is aimed at relaxing restrictions on the height of buildings in Article 60 and 61 of the Building Act "in case that the building may create the scenic beauty of the city through creative designs or it is a multiplex housing complex, and that this is acknowledged by the party who has a right of permission." This is an ambiguous provision and may allow the abuse of discretionary authority of the party with a right of permission.* *The ACRC's recommendations: Consider enhancing transparency in decision-making process by making sure that the possibility of creating "the scenic beauty of the city through creative designs" is judged by a building review committee.*			
E. Other remarks			
None			
The Anti-Corruption and Civil Rights Commission hereby notifies the agency above of the results of the Corruption Impact Assessment pursuant to Article 28.1 of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission and Article 30.6 of its Enforcement Decree. *Date: 15 December 2008* **Chairman of the Anti-Corruption and Civil Rights Commission**			

9.3 Latvia

Law on the Corruption Prevention and Combating Bureau of 18 April 2002 with amending laws until end of 2008[278]

Chapter III Competence of the Bureau

Section 7. Functions of the Bureau to Prevent Corruption

(1) In order to prevent corruption, the Bureau shall perform the following functions: [...]

10) analyse regulatory enactments and draft regulatory enactments, as well as propose to make amendments therein, submit recommendations for drafting new regulatory enactments [...].

9.4 Lithuania

Law No. IX-904 on "Prevention of Corruption of the Republic of Lithuania"[279]

Article 8. Anti-corruption Assessment of the Existing or Draft Legislation

1. The sponsor of a law has to carry out legislative corruption assessment, if the law intended to regulate social relations with regard to:

1) Property and companies owned by the state or municipalities [...];
2) Public budget revenues or expenses [...];
3) Subsidies, grants, refunds, annuities, allowances, bonuses and other benefits paid from state or local government budgets;
4) The European Union's Structural Funds assistance;
5) The procurement of goods or services, or granting concessions;
6) The provision of citizenship by way of exception;
7) Entrance exams for a person working in the civil service, office organization, appraisal, qualification, certification, and rotation requirements for working in the civil service, entrance, termination or extension;
8) The registration of persons or things in public records;
9) Securities, documents, forms, stamps, official signs of technological safety [...];
10) Restrictions of free market [...];
11) Goods or services provided under a public contract;
12) Product safety requirements [...];

278 <http://www.knab.gov.lv/uploads/eng/law_knab_eng.pdf>.

279 Of 28 May 2002, as amended in 2008, and by Law No. 2-117 of 2013 <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=212525> (Lithuanian, translation by author); version as of 2002 (in English) <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=212525>.

13) Licenses, permits for commercial activity [...];
14) Manufacturing, storage, purchase and sale;
15) Investigation of violations [...];
16) Land use, planning and construction [...];
17) Pharmaceuticals and medicine [...];
18) In other cases, if the promoter of the legislation is of the opinion that the regulation may affect the extent of corruption.

2. The Special Investigation Service shall carry out the anti-corruption assessment of the effective or draft legislation, regulating social relations referred to in paragraph 1, on its own initiative or on the proposal by the President of the Republic, the Chairman of the Seimas, the Prime Minister, a parliamentary committee, a commission, a parliamentary group or a minister.

3. Anti-corruption assessment of draft or enacted laws may be assigned to (other) state authorities and (or) academic institutions.

4. Anti-corruption assessments of the enacted legal acts shall be carried out taking into account the practice of their application, and shall be submitted to the state or municipal institution, which adopted them or on whose initiative they were adopted. This institution shall determine whether it would be expedient to amend the legal act in question.

9.5 Moldova

Excerpt from the Law No 780-XV of 27 December 2001 on legislative acts[280]

Article 22. The expertise of the draft legislative act
(1) In order to assess a draft legislative act, the following expertise is to be carried out: legal, corruption-proof, economic, financial, scientific, ecological and of other type, including the assessment of its compatibility with the communitarian legislation, depending on the nature of the regulated social relations, as well as a linguistic expertise.

[...]

(3) The corruption-proof expertise is mandatory for all the draft legislative acts, contributing to the following purposes:

a) a) to ensure the compliance of the draft with national and international anticorruption standards;
b) b) to prevent appearing new regulations that favor or might favor the corruption, by drafting recommendations in order to eliminate the above mentioned regulations or diminish their effects.

280 <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=313239&lang=1> (Moldovan and Russian).

Excerpt from the Law No 317-XV of 18 July 2003 on normative acts of the Government and other authorities of the central and local public administration[281]

Article 41. Expertise

(1) The draft normative acts shall be submitted, in a mandatory manner, to the legal expertise to verify whether or not these contravene the Constitution of the Republic of Moldova, the national legislation, the communitarian legislation, international treaties which the Republic of Moldova is part to, as well as the norms of the legislative techniques.

(2) The draft normative act of the Government shall be submitted, in a mandatory manner, with a corruption-proof expertise to verify whether it complies with the national and international anti-corruption standards, as well as to prevent appearing new regulations that favor or might favor the corruption.

(3) Upon the decision of the drafting authority, as well as upon the decision of the competent authority to issue the above, the draft normative act might be also submitted to financial, economic, ecological and other types of expertise. The following people shall be involved as experts: organizations, as well as citizens, that had not directly participated to the drafting, foreign specialists and international organizations.

Excerpt from the Law No 1104-XV of 6 June 2002 on the National Anti-corruption Centre[282]

Article 4. The attributions of the Centre

(1) The attributions of the Centre are as follows:

[…]

d) to carry out anti-corruption expertise of draft legislative and draft normative acts of the Government, as well as of other legislative initiatives presented to the Parliament, to verify their compliance with the state policy regarding the prevention and fight against corruption.

Article 5. The obligations of the Centre

When carrying out its attributions, the Centre is bound to:

[…]

c) undertake actions to prevent, identify and counteract corruption and protectionism, inclusively through anti-corruption expertise of draft legislative and draft normative acts of the Government, as well as of other legislative initiatives presented to the Parliament, observing the principles, criteria and procedures that ought to be complied with when carrying out the above expertise.

281 <http://lex.justice.md/index.php?action=view&view=doc&id=312810> (Moldovan and Russian).

282 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312733> (Moldovan and Russian).

Article 6. The rights of the Centre

(1) When carrying out its attributions and obligations, the Centre enjoys the right:

[...]

j) to request and receive from the public authorities informative and consultative support necessary to carry out the anti-corruption expertise of draft legislative and draft normative acts of the Government, as well as of other legislative initiatives presented to the Parliament.

Government Decision On anti-corruption expertise of draft legislative and normative acts, No. 977 of 23 August 2006[283]

* * *

Note: As in the title and in the text of the decision, as in the Regulation, words "corruption-proofing expertise" and "legislative acts", shall be replaced, respectively, by the words "anti-corruption expertise" and "legislative and normative acts" in conformity with Government Decision No 313 dated 17 March 2007, in effect since 30 March 2007

With the purpose to create an efficient mechanism for the corruption–proofing expertise of the draft legislative and normative acts, the Government

DECIDES:

1. To approve:

The Regulation on the organization of the process of anti-corruption expertise of draft legislative and normative acts, in conformity with annexes No 1;

The nominal composition of the Coordinating Commission for the process of anticorruption expertise of the draft legislative and normative acts shall be as per annexes No 2.

[Point 1in the edition of the Government Decision No 313 dated 17 March 2007, in effect since 30 March 2007]

2. The Centre for Combating Economic Crimes and Corruption, within a one month term, shall draw up and approve the Methodology for the anti-corruption expertise of draft legislative and normative acts.

21. It is set forth herewith that in case of dismissal of any member of the Commission from the currently occupied public function, his/her attributions within the Commission shall be taken over by people newly assigned to the respective functions, with no new Government decision being issued.

[Point 21 introduced through the Government Decision No 313 dated 17 March 2007, in effect since 30 March 2007]

PRIME-MINISTER Vasile TARLEV

Countersigned:

Minister of Internal Affairs Gheorghe Papuc

Minister of Economy and Trade Valeriu Lazar

283 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=317065> (Moldovan and Russian).

Minister of Finances Mihail Pop

Minister of Justice Victoria Iftodi

Chisinau, August 23d, 2006.

No 977.

Annexes No 1

To the Government Decision

No 977 dated August 23d, 2006

Regulation on the organization of the process of anti-corruption expertise of draft legislative and draft normative acts

The present Regulation sets forth the organizational framework for the process of anticorruption expertise of the draft legislative and normative acts, and namely: the general principles for the conduct of the expertise, the domains of the expertise, the authority in charge to carry out the expertise and deadlines and criteria for the fulfillment of the expertise.

I General provisions

1. The anti-corruption expertise of draft legislative and normative acts (hereinafter – the expertise) represents the assessment process of the compliance of the content of any draft legislative and normative act with the national and international anti-corruption standards, called to identify norms that favor or might favor the corruption and to draw up recommendations in order to eliminate or diminish the effects of those norms.

1^1. In the present Regulation, by normative acts we ought to understand the normative acts of the Government in the sense of article 2 of the Law No 317-XV dated 18th July 2003 on normative acts of the Government and other authorities of the central and local public administration.

[Point 1^1 introduced through the Government Decision No 313 dated 17 March 2007, in effect since 30 March 2007]

2) The main principles of the expertise are as follows:

- legality – compliance of the content of regulations with the purpose of the law and hierarchically superior norms;
- transparency and stability of regulations;
- participation of the civil society to drawing up and conducting the expertise of draft normative and legislative acts;
- elimination of any influence on the authors of draft legislative and normative acts, with the purpose to promote the quality of legal norms and not to admit possibility to favour the authors of those drafts or other interested people;
- elimination of norms that might generate contradictory interpretation or enforcement of the legal provisions.

3) The expertise shall be carried out with regard to draft legislative and normative acts, drawn up by the authorities of the central public administration.
4) The expertise shall be carried out as with regard to basic draft legislative and normative acts, as with regard to draft legislative and normative acts that amend, complete or abrogate existing legislative and normative acts.
5) Draft legislative and normative acts, regulating any relationship in the below domains, shall be subject to the anti-corruption expertise:

- Constitutional and administrative Law, justice and internal affairs, human rights and liberties;
- Economy and trade;
- Budget and finances;
- Education and schooling, culture, cults and mass media;
- Labour legislation, social insurance, healthcare and family protection;

II The authority in charge to carry out the expertise

6) The Centre for Combating Economic Crimes and Corruption (hereinafter - the Center), shall be the authority in charge to carry out the expertise
7) The authority – author of the draft is bound to contribute to the conduct of the expertise of any draft legislative and normative act, inclusively through consultations and advising with qualified specialists in the regulated field.
8) The Centre might involve specialists from relevant highest education institutions and representatives of the non-governmental organizations, acting in the respective field, in the conduct of the expertise.

III Deadlines for the conduct of the expertise

9) The draft legislative and normative act, submitted for expertise, shall be examined within 10 working days.
10) In case that the draft is too large or too complex, or in case that it is required to study additional materials, this term shall be extended up to a month.
11) The term starts devolving on the day of submittal and registration of the draft at the Centre.

IV Way to conduct the expertise

12) The examination of the draft legislative and normative act shall be carried out based on the following criteria:

- the share, within the content of the draft, and the eventual effect of the norms of reference and blanquettes;
- the level of regulating attributions, transmitted to the competence of the public administration authorities;

- identification of any conflicts of the legal norms;
- the level of responsibilities and attributions established for the public servants;
- the assessment of administrative procedures provided for control (internal or hierarchically superior);
- the level of requirements, imposed to beneficiaries by certain norms/ rights;
- the level of transparency of the activity of public administration authorities.

13) The Report on the Anti-corruption Expertise of draft legislative and normative acts shall be issued in conformity with the Methodology, drawn up and approved by the Centre.

14) Authorities and institutions, to whom the draft legislative and normative act was submitted for warning/opinion in the established order, based on their functional competence, besides any substantial objections on the draft legislative and normative act, shall separately reveal and assess any elements of corruptibility of the above legislative and normative act, in conformity with the criteria, set forth in point 12 of the Methodology, as mentioned in point 13 of the present Regulation.

15) Before submitting the finalized draft to the Ministry of Justice, following the established order, in conformity with the objections and proposals of the interested institutions, forwarded in the warning process of the draft, this shall be submitted to the Centre for the anticorruption expertise.

16) Within the expertise process, the Centre carries out the following:

- analyses the level of compliance of draft provisions with national and international anticorruption standards;
- analyses the level of compliance between the provisions of the draft and other legislative and normative acts in the same domain.

17) The conclusions of the expertise ought to contain recommendations related to ways of overcoming or diminishing the identified corruption risks.

18) The authority that had drawn up the draft, shall examine the objections and proposals related to the corruptibility aspects, as expressed in the opinions and expertise of the interested authorities, and, when finalizing the draft, decides whether to take those into consideration or reject them.

19) In case of rejection of observations, the authority that had drawn up the draft, shall issue an informative note, justifying the reasons for rejecting the recommendations contained in the expertise.

20) After the warning/opinions and expertise, within the terms and conditions of the present Regulation, the draft legislative and normative act, prior to its submittal to the Government, shall be submitted in a mandatory manner to the Ministry of Justice.

21) When carrying out the legal expertise based on the submitted materials, the Ministry of Justice presents its opinion on the observance of procedures, requirements and conditions of the anti-corruption expertise, having the right to add grounded objections and proposals to the opinions.

22) Any observations and proposals of the Ministry of Justice, regarding the compliance with the procedures, requirements and conditions for the conduct of the anti-corruption expertise, shall be taken into consideration when finalizing the draft legislative and normative act. Non-acceptance of the abovementioned shall be justified in the informative note.

23) In case of any divergences of opinions or non-acceptance of conclusions, observations and proposals, both the draft and the divergences shall be submitted to the Coordinating Commission for the process of anti-corruption expertise of legislative and normative acts, to agree on the modality to eliminate the factors that might generate corruption.

24) The Coordinating Commission shall be composed of representatives of the Ministry of Economy and Trade, Ministry of Finances, Ministry of Internal Affairs, Prosecutor General's Office, the Intelligence and Security Service. The Chairperson of the Commission is one Vice Minister of Justice, the Secretary of the Commission is the Deputy Director of the Centre for Combating Economic Crimes and Corruption. The nominal composition of the Coordinating Commission shall be approved by the Government.

25) The Decisions of the Coordinating Commission shall be adopted with a majority vote of its members and shall be signed by the Chairperson and the Secretary of the Commission. The submitted materials and the decisions of the Commission are to be attached as annexes to the accompanying file to draft legislative and normative acts.

26) The Commission shall hold its sessions as many times as necessary, upon the request of the authority that had drafted the document. The session of the Commission shall be considered as deliberative if the majority of its members attended it.

27) The Secretariat functions for the Coordinating Commission shall be carried out by the Centre, which will ensure the best development of Commission's sessions.

Annex No 2

To the Government Decision

No. 977 dated 23 August 2006

NOMINAL COMPOSITION

of the Coordinating Commission for the process of anti-corruption expertise of draft legislative and normative acts

ESANU Nicolae, Vice Minister of Justice, Chairman of the Commission

IVANCOV Andrei, Deputy Director of the Centre for Combating Economic Crimes and Corruption, Secretary of the Commission

CUZA Iurie, Head of the Legal Division, Ministry of Economy and Trade

BALAN Andrei, Deputy Head of the Legal Direction, Ministry of Finances

TIMOFTI Irina, Deputy Head of the Legal Direction, Ministry of Internal Affairs

COVAL Valentin, Head of the Legal Division, General Prosecutor's Office

BEZUSCA Oleg, Head of the Anti-corruption Division, Intelligence and Security Service.

[Annexes No 2, introduced through the Government Decision No 313 dated 17 March 2007, in effect since 30 March 2007]

Excerpt from the Instruction by the President of Parliament on the "Circulation of draft legislation in Parliament"[284], Annex[285]

2.1.4. Draft legislation submitted as parliamentarian legislative initiative is submitted to Parliament along with the following mandatory documents: [...]

d) legal expertise and anti-corruption expertise, which are presented subsequently in accordance with the resolution of the Parliament's President.

[284] No. 30 of 7 November 2012, http://www.parlament.md/CadrulLegal/Instruc%C5%A3iuneprivindcircula%C5%A3iaproiectelordeact/tabid/197/language/ro-RO/Default.aspx (Moldovan).

[285] http://www.parlament.md/LinkClick.aspx?fileticket=e7bLJmVqVhM%3d&tabid=197 (Moldovan, translation by author).

9.6 Russia

17 July 2009 # 172-FZ

**FEDERAL LAW
ON ANTI-CORRUPTION EXPERT APPRAISAL
OF THE REGULATORY LEGAL ACTS AND OF THE DRAFTS OF THE REGULATORY
LEGAL ACTS**

Adopted by the State Duma on 3 July 2009
Approved by the Federation Council on 7 July 2009
(as amended by the Federal Law of 21 November 2011 # 329-FZ)

Article 1

1. This Federal Law established legal and organizational bases of anti-corruption expert appraisal of the regulatory legal acts and drafts of the regulatory legal acts aimed at finding out corruptogenic factors in them and at their further elimination.

2. The corruptogenic factors are the provisions of the regulatory legal acts (drafts of the regulatory legal acts) establishing for a law enforcement official unreasonably wide limits of discretion or opportunity of unreasonable application of exceptions from general rules and also the provisions containing uncertain, exigeant and (or) onerous requirements to citizens and organizations and thereby creating conditions which are conducive to corruption.

Article 2

The main principals of organization of anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts) are:

1) obligatoriness of the anti-corruption expert appraisal of the regulatory legal acts;

2) appraisal of the regulatory legal act in conjunction with other regulatory legal acts;

3) feasibility, objectivity and verifiability of results of the anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts);

4) competence of the persons carrying out the anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts);

5) cooperation of the federal state executive bodies, of other state authorities and organizations, of state bodies of the constituent entities of the Russian Federation, of local self-government bodies and of their officials (hereinafter

referred to as – bodies, organizations, their officials) with civil institutions when carrying out the anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts).

Article 3

1. The anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts) shall be carried out by:

1) the prosecutor's office of the Russian Federation – in accordance with this Federal Law and the Federal Law "On Prosecutor's Office of the Russian federation" according to the procedure established by the Prosecutor General of the Russian Federation and pursuant to the methods determined by the Government of the Russian Federation;

2) the federal state executive bodies in the sphere of justice - in accordance with this Federal Law according to the procedure and pursuant to the methods determined by the Government of the Russian Federation;

3) by bodies, organizations and officials - in accordance with this Federal Law according to the procedure established by the regulatory legal acts of the corresponding federal state executive bodies, other state authorities and organizations, state bodies of the constituent entities of the Russian Federation, of local self-government bodies and pursuant to the methods determined by the Government of the Russian Federation.

2. The prosecutors when performing their powers shall conduct the anti-corruption expert appraisal of the regulatory legal acts of the bodies, organizations and their officials on the issues relating to:

1) rights, freedoms and duties of a human being and a citizen;

2) state and municipal property, state and municipal service, budget, tax, customs, forest, water, land, town-planning, environmental, licensing legislation and legislation regulating activity of state corporations, foundations and other organizations to be created by the Russian Federation on the basis of the federal law;

3) social guarantee for the persons who fill (filled) state and municipal positions, state service or municipal service positions.

3. The federal state executive bodies in the sphere of justice shall conduct the anti-corruption expert appraisal of:

1) drafts of federal laws, drafts of decree of the President of the Russian Federation and drafts of resolutions of the Government of the Russian Federation to be developed by the federal state executive bodies, by other state authorities and organizations, - when carrying out anti-corruption expert appraisal thereof;

2) drafts of concepts and statements of work connected with development of drafts of federal laws, draft amendments of the Government of the Russian

Federation to drafts of federal laws prepared by the federal state executive bodies, by other state authorities and organizations, - when carrying out anti-corruption expert appraisal thereof;

(as amended by the Federal Law of 21 November 2011 # 329-FZ)

3) the regulatory legal acts of the federal state executive bodies, other state authorities and organizations affecting rights, freedoms and duties of a human being and a citizen and establishing legal status of an organization or being interdepartmental, and also charters of municipal formations and municipal legal acts concerning the making of amendments to charters of municipal formations - during their state registration;

4) the regulatory legal acts of the constituent entities of the Russian Federation – when monitoring application thereof and making entries to the federal register of the regulatory legal acts of the constituent entities of the Russian Federation.

(as amended by the Federal Law of 21 November 2011 # 329-FZ)

4. The bodies, organizations and their officials shall carry out the anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts) adopted by them when carrying out anti-corruption expert appraisal and when monitoring application thereof.

5. If any corruptogenic factors are found out in the regulatory legal acts (drafts of the regulatory legal acts), then the bodies, organizations and their officials, the competence of which does not include acceptance of measures aimed at eliminating them, shall inform the prosecution agencies thereof.

6. The anti-corruption expert appraisal of the regulatory legal acts adopted by the reorganized and (or) discontinued bodies, organizations shall be carried out by the bodies, organizations, which are delegated with the powers of the reorganized and (or) discontinued bodies, organizations, when monitoring application of these regulatory legal acts.

(Part 6 is introduced by the Federal Law of 21 November 2011 # 329-FZ).

7. The anti-corruption expert appraisal of the regulatory legal acts adopted by the reorganized and (or) discontinued bodies, organizations, the powers of which are not delegated during reorganization and (or) discontinuation, shall be carried out by the body, the competence of which includes functions related to formulation of state policy and to normative legal regulation in the corresponding sphere of activity, when monitoring application of these regulatory legal acts.

(Part 7 is introduced by the Federal Law of 21 November 2011 # 329-FZ)

8. If any corruptogenic factors are found out in the regulatory legal acts of the reorganized and (or) discontinued bodies, organizations, then the bodies and organizations, which are delegated with the powers of the reorganized and (or) discontinued bodies, organizations, or the body, the competence of which

includes functions related to formulation of state policy and to normative legal regulation in the corresponding sphere of activity, shall accept the decision to develop a draft of the regulatory legal act which is directed for exclusion of the corruptogenic factors from the regulatory legal act of the reorganized and (or) discontinued bodies, organizations.

(Part 8 is introduced by the Federal Law of 21 November 2011 # 329- FZ)

Article 4

1. The corruptogenic factors found out in the regulatory legal acts (drafts of the regulatory legal acts) shall be reflected:

1) in a demand of the prosecutor to amend the regulatory legal act or in a production of the prosecutor before a court according to the procedure specified in the procedural legislation of the Russian Federation;

2) in a n opinion to be prepared when conducting the anti-corruption expert appraisal in the cases specified in Parts 3 and 4 of Article 3 of this Federal Law (hereinafter referred to as – opinion).

2. The demand of the prosecutor to amend the regulatory legal act and the opinion should specify the corruptogenic factors found out in the regulatory legal act (a draft of the regulatory legal act) and should suggest methods of elimination thereof.

3. The demand of the prosecutor to amend the regulatory legal act shall be subject to obligatory consideration by the corresponding body, organization or official not later than within ten days since receipt of the demand and shall be recorded according to the established procedure by the body, organization or official, which issued this act, in accordance with their competence. The demand of the prosecutor to amend the regulatory legal act delivered to the legislative (representative) state body of a constituent entity of the Russian Federation or to the representative local self-government body shall be subject to obligatory consideration at the next meeting of the corresponding body and shall be recorded according to the established procedure by the body, which issued this act, in accordance with its competence.

4. The demand of the prosecutor to amend the regulatory legal act can be appealed in accordance with the established procedure.

4.1. The opinions, which are prepared during the anti-corruption expert appraisal, shall be binding in the cases specified by Clause 3 of Part 3 of Article 3 of this Federal Law. If any corruptogenic factors are found out in the regulatory legal acts of the federal state executive bodies, of other state authorities and organizations affecting rights, freedoms and duties of a human being and a citizen and establishing legal status of an organization or being interdepartmental, and also in charters of municipal formations and in municipal legal acts concerning the making of amendments to charters of municipal formations, then the said acts shall not be subject to state registration.

(Part 4.1 is introduced by the Federal Law of 21 November 2011 # 329-FZ)

5. The opinions, which are prepared during the anti-corruption expert appraisal, shall be advisory and shall be subject to obligatory consideration by the corresponding body, organization or official in the cases specified by Clauses 2 and 4 of Part 3 of Article 3 of this Federal Law.

(Part 5 is introduced by the Federal Law of 21 November 2011 # 329-FZ)

6. The discrepancies arising when appraising the corruptogenic factors specified in the opinion shall be settled in accordance with the procedure established by the Government of the Russian Federation.

(as amended by the Federal Law of 21 November 2011 # 329-FZ)

Article 5

1. Civil institutions and citizens can carry out an independent anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts) at their own expense in accordance with the procedure specified by the regulatory legal acts of the Russian Federation. Procedure for and conditions of accreditation of experts in the independent anti-corruption expert appraisal of the regulatory legal acts (drafts of the regulatory legal acts) shall be established by the federal state executive body in the sphere of justice.

(as amended by the Federal Law of 21 November 2011 # 329-FZ)

2. The opinion according to results of the independent anti-corruption expert appraisal should specify the corruptogenic factors found out in the regulatory legal act (a draft of the regulatory legal act) and should suggest methods of elimination thereof.

3. The opinion according to results of the independent anti-corruption expert appraisal shall be advisory and shall be subject to obligatory consideration by the body, organization or official, to which it was sent, within thirty days since receipt thereof. According to results of consideration a reasoned response shall be delivered to the citizen or organization, who or which carried out the independent expert appraisal, except for the cases when the opinion does not suggest any methods for elimination of the found out corruptogenic factors.

President

of the Russian Federation

D.MEDVEDEV

Moscow, Kremlin

July 17, 2009

172-FZ

9.7 Ukraine

Excerpt from the Law On the Principles of Prevention and Counteraction to Corruption (of 7 April 2011, No. 3206-VI)[286]
[Note: this Law has been repealed on 22 August 2014 and replaced by a new version of the Law which will regulate corruption proofing in its Article 56 once it comes into force][287]

Article 15. Anticorruption examination of legal acts

1. Anti-corruption expertise is carried out on enacted and draft legal acts in order to identify factors that may contribute to or facilitate the commission of corruption offenses, with recommendations for their elimination.

The procedure and methodology for conducting anti-corruption expertise and the publication of the results is determined by the Ministry of Justice of Ukraine.

2. The anticorruption expertise by the Ministry of Justice of Ukraine, except for anti-corruption expertise of draft legal acts, are submitted to the deputies of the Parliament of Ukraine, is reviewed by the Committee on fighting corruption.

3. Subject to mandatory anti-corruptive expert examination shall be draft laws of Ukraine, acts of the President of Ukraine, and other normative-legal acts prepared by the Cabinet of Ministers of Ukraine, ministries and other central bodies of executive power.

The results of anti-corruption expertise of a legal act shall be considered when deciding on the adoption of the normative act.

4. Anti-corruption expertise of legal acts is carried out on enacted laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers in the following areas in accordance with an annual plan that is approved by the Ministry of Justice of Ukraine:

1) The rights and freedoms of man and citizen;

2) The powers of state and local governments, persons authorized to perform the functions of the state or local government;

3) The provision of administrative services;

4) The allocation and expenditure of the state budget and local budgets;

5) Competition (tender) procedures.

286 As amended by Law No. 224-VII of 14 May 2013 and Law No. 1261-VII of 13 May 2014 <http://crimecor.rada.gov.ua/komzloch/control/uk/publish/printable_article;jsessionid=283854580C8521CA94F7237CADA01D08?art_id=47714> (previous version in English); <http://zakon2.rada.gov.ua/laws/show/3206-17> (current version in Ukrainian, translation by author).

287 Ukrainian Government web portal, press release of 22 August 2014 <http://www.kmu.gov.ua/control/uk/publish/article;jsessionid=2BF0466FB7EC1B8263FCD841CED45401.vapp63?art_id=247544887&cat_id=244276429> (Ukrainian).

Anti-corruption expertise of legal acts of public authorities which are subject to state registration is performed during such registration.

5. Whenever results of anti-corruption expertise identify factors that may contribute to or facilitate the commission of corruption offenses, they are subject to mandatory disclosure.

6. Results of anti-corruption expertise of enacted legal acts of ministries and other central executive bodies shall be subject to consideration of publication (adoption).

7. Upon the initiative of individuals, associations, or legal entities anti-corruption expertise of existing legal acts and draft legal documents can be made public.

Public anti-corruption expertise of existing legal acts, draft legal acts and publication of the results can be carried out by relevant individuals, associations, legal entities or other stakeholders not prohibited by law.

RegionalCooperationCouncil

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