UNOFFICIAL TRANSLATION

THE REPUBLIC OF SERBIA THE AGENCY FOR PREVENTION OF CORRUPTION

THE METHODOLOGY FOR THE CORRUPTION PROOFING IN THE REGULATIONS

Belgrade, April 2021

Section I. General Provisions

Section II. Organization of the Corruption Proofing in the Regulations

Section III. Preparation of the Corruption Proofing Opinions in the Regulations

SECTION I. General Provisions

1. Legal basis for corruption proofing of the regulations in the Republic of Serbia

Corruption proofing of draft laws was carried out by the Anti-corruption Agency of Serbia (hereinafter referred to as "Agency") since 2012. However, an explicit legal basis in this sense was introduced with the adoption of the Law on Prevention of Corruption (Official Gazette of the RS no. 35/2019, 88/2019, and 11/2021 – authentic interpretation), which entered into force on September 1, 2020.

The law prescribes that the Agency:

• initiates the adoption or amendment of regulations,

• gives opinions on the assessment of the corruption risks in the draft laws in the areas that are particularly prone to corruption

• gives opinions on draft laws regulating issues covered by the ratified international treaties in the field of prevention and fight against corruption.1

The law additionally clarified that the Agency initiates the adoption of regulations for the elimination of corruption risks or for harmonizing regulations with ratified international agreements in the field of fighting corruption.

On the other hand, as for the assessment of corruption proofing of draft laws, the state administration bodies are obliged to submit draft laws to the Agency in areas prone to corruption and draft laws regulating issues covered by ratified international treaties in the field of fight against corruption, to give opinions on the assessment of the risk of corruption.[2]

The Methodology for the corruption proofing in the regulations (hereinafter referred to as "Methodology") was developed to secure implementation of the Agency's competencies in corruption proofing, i.e., drafting opinions on the assessment of the risk of corruption, but also to adopt regulations aimed at eliminating the risk of corruption in the regulations.

2. Terminology

For the Methodology, the following terms shall have the following meaning:

1) *corruption risk* – possible occurrence of a corruption act;
2) *corruption risk factor* – the provision of regulation (draft law or enacted regulation) which implementation could generate corruption risks;
3) *corruption proofing* – the process of assessment of corruption risks and factors generated in the regulations;

[1] Law on Prevention of Corruption, no.35/2019, article 6, item 12).
[2] *Ibidem,* article 35.

4) *corruption proofing opinion* – written assessment of the corruption risks and risk factors contained in the regulations, prepared by experts according to Annex 1;

5) *areas prone to corruption* – areas defined as such by this Methodology, in line with strategic documents of Serbia[3];

6) *expert – an* employee of the Agency assigned to carry out corruption proofing in the regulations;

7) regulations– draft laws, - include both draft laws that the state administration bodies are obliged to submit to the Agency by the law, to give an opinion on the assessment of the risk of corruption, as well as valid regulations whose amendments are initiated by the Agency or in connection with which the Agency initiates adoption of a new regulation;

8) public authority bodies - state administration bodies and holders of public authority.

3. Scope of corruption proofing in the regulations

3.1. The Agency, at the request of the state administration body, assesses the risk of corruption in the draft laws

a) in the *areas prone to corruption, out of which the following are foreseen as vulnerable*[4]:

- Health care system;
- Taxes;
- Customs;
- Education;
- Local government;
- Privatization;
- Public procurement;
- Police.

b) as well as in draft laws covered by ratified international treaties in the field of prevention and fight against corruption.

The Agency reviews the areas prone to corruption, at least once a year, to reflect possible changes in the strategic documents. The Agency publishes information on corruption-prone areas, in which state administration bodies are obliged to deliver the draft law to the Agency, to give an opinion on the corruption proofing.

3.2. The Agency ex officio assesses the risk of corruption in the enacted regulations (laws and by-laws) of the National Assembly of the Republic of Serbia (hereinafter: National Assembly), Government of the Republic of Serbia (hereinafter: Government) and any other public authority when there are findings that those regulations contain provisions that create risks of corruption. Opinion on the assessment of the risk of corruption in the enacted regulation is followed by an

[3] *Ibidem*, article 2 item 9).

[4] *Revised Action Plan for Chapter 23 adopted at the Government session on 10 July 2020*

initiative for adoption or amendment of the enacted regulation, to reduce the risks from corruption and remove the risk factors that generate them.

4. Principles of corruption proofing in the regulations

Corruption proofing is carried out by the following principles:

- transparency of corruption proofing opinions, ensured by publishing on the Agency's website;
- achieving a balance between the public interest and the private legitimate interests related to the regulations subject to corruption proofing;
- excluding favoring of the interests of the legal acts' authors and any other interested parties, except for public interest;
- independence and professional integrity of the Agency in performing corruption proofing;
- upholding observance of human rights and fundamental freedoms in the provisions of the regulations on which recommendations are formulated while conducting corruption proofing;
- avoiding recommendations in the corruption proofing opinions that could lead to the different interpretations and contradictory enforcement of the regulations;
- encouragement of public debates with civil society organizations, by state public authorities, on issues related to corruption in the preparation of draft laws, through raising awareness on the Agency's corruption proofing opinions.

5. Objectives of corruption proofing in the regulations

The Agency is guided by the following goals in conducting corruption proofing:

- prevention of corruption by excluding corruption risk factors from the regulations;
- informing public authorities and the public about risk factors and risks of corruption established in the regulations;
- Provide additional security to citizens that the regulations in the Republic of Serbia are in accordance with the public interest.

SECTION II. Organization of corruption proofing in the regulations

6. Basis and terms for corruption proofing in the regulations

The Agency will initiate the signing of a memorandum of cooperation with the Republic Secretariat for Legislation and the Ministry of Justice, and if necessary, with other public authority bodies to ensure that the draft laws from areas that are prone to corruption are submitted to the Agency for the corruption proofing. The draft law should be sent to the Agency for corruption proofing only in its final version, before adoption by the Government. The draft law that is forwarded to the Agency for assessment of the risk of corruption is submitted with supporting material by the Rules of Procedure of the Government ("Official Gazette of the RS", no. 61/2006 - revised text, 69/2008, 88/2009, 33/2010, 69/2010, 20/2011, 37/2011, 30/2013, 76/2014 and 8/2019 - Regulation).

The head of the authorized sector of the Agency will make the necessary contacts with the authorities from paragraph 1 of this point, the Government, the National Assembly, and other authorized proponents of the law, in all phases of the adoption of regulations, and will coordinate the collection of statistical data from point 9 of the Methodology, concerning issues related to regulations that are subject to corruption proofing.

The deadline for assessing the risk of corruption is ten working days from the date of receipt of the request by the state authority administration, with the possibility of extending that deadline to one month in cases where the draft laws are especially complex or extensive. In the case of an extension of the period of ten working days, the Agency is obliged to inform the state administration body that sent the request for corruption proofing in the draft law.

The Agency plans to draft annually a list of enacted regulations, on which the Agency issues corruption proofing opinions during that quarter or year.

7. Allocation of cases to the experts

The regulations on which the corruption risk assessment will be carried out will be distributed to the experts by the head of the authorized sector.

After reaching the personnel capacity, the distribution of regulations and draft laws for corruption proofing to the experts will be conducted according to the expert specialization for certain areas.

More complex or extensive regulations can be assigned to a group of experts, appointing one of them as a lead expert, in charge of the distribution of the tasks within the group and verification of their performance.

8. Verification and publication of corruption proofing opinions in the regulations

The draft corruption proofing opinions shall be revised and verified by the head of the authorized sector and approved and signed by the Director of the Agency. During the verification process, the draft opinion may be returned to the expert for further improvement, noting the gaps between legislative and methodological rules that need to be followed.

Verified and approved corruption proofing opinions may be posted on the webpage of the Agency, with the legal act they refer to. In case of particularly sensitive findings contained in the assessment made in the corruption-proofing opinion, the Agency can decide to publish a press release on its website.

Corruption-proofing opinions in draft laws are sent to the requesting public authorities.

The corruption-proofing opinions in enacted regulations shall be used as a rationale for the Agency to draft changes and amendments to the regulations and submit them to the respected public authority.

9. Collection of statistical data related to corruption proofing opinions in the regulations

Experts from the authorized sectors shall be charged with continuous monitoring of the legislative process (public discussions on draft laws, meetings with representatives of the Government or the National Assembly of the Republic of Serbia - hereinafter: the National Assembly) and monitoring the Official Gazette of the Republic of Serbia (hereinafter: Official Gazette), for the analysis of the corruption proofing success, as an activity implemented by the Agency.

To measure the success of the assessment of corruption proofing in the regulations, the experts in charge of monitoring will determine what regulations, for which the Agency gave opinions on corruption proofing, would be adopted, and published in the Official Gazette, to determine what opinions were adopted, partially adopted, and not adopted.

An adopted opinion will be considered the opinion which recommendations have all been adopted, i.e., if all the established corruption risks and risk factors were removed from regulations. A partially adopted opinion will be considered the opinion with at least one recommendation that was not adopted, i.e., at least one identified corruption risk or risk factor was not removed from the regulation. The opinion that was not adopted would be the one for which none of the recommendations have been adopted, i.e., no risk of corruption or the risk factor was removed from the regulation.

Corruption risks and risk factors identified in the regulations that are in the form of proposals that were not yet adopted by the National Assembly, will not be taken into consideration during the corruption proofing assessments. However, regardless of whether the bill was adopted, the total amount of corruption risks and risk factors identified in all opinions on corruption proofing, represent indicators of the Agency's overall activities related to corruption proofing.

Experts in charge of constant monitoring of the legislative process will quarterly check information on the stage in which the regulations are subject to the corruption risk assessment. If information is not publicly available, the Agency will request information from a competent public authority body. All the recommendations by the Agency that were not accepted by the proponent, and therefore had submitted to the National Assembly a proposal for regulations in which the determined risk factors and risks of corruption were not removed, will be considered adopted if the final text regulations adopted by the National Assembly correspond to the recommendations of the Agency.

SECTION III. Preparation of corruption-proofing opinions

Preparation of the corruption proofing opinions in regulations

10. Stages of preparation of the evaluation of corruption proofing in regulations

The preparation of drafting opinions on corruption proofing in regulations implies the following successive stages:

1. Review of the normative framework in connection with the regulation;
2. Review of the rationale of the regulation;
3. Review of the assessed regulation;
4. Identification of corruption risk factors;
5. Identification of corruption risks;
6. Identification of information related to the lobbying of private interest;
7. Review of other relevant information;
8. Assessment of damage that could be caused by the regulation.

11. Review of the normative framework regarding the draft law

Prior review of the normative framework, about the draft law, enables the expert to compare the existing legal situation and the new legal situation envisaged by the draft, and to understand whether the proposed new legal situation in the draft law represents improvement or deterioration from a public interest perspective.

To better understand the area to which the draft law refers to, the expert with the assigned regulation will study the normative framework related to the draft law, before reviewing the draft law and the accompanying documentation.

Depending on the type of the assigned draft law, the expert studies the following normative frameworks:

• for draft laws on changes and amendments – changes and amendments regarding the laws in force

• for drafts of new laws that repeal current laws - current laws;

• for draft laws regulating certain matters for the first time - related laws from which arises the need for a draft law.

12. Review of the rationale of regulations

The expert will study the rationale of the regulation to determine its purpose, as well as the sufficiency and validity of the reasons justifying the main solutions in the regulation and, finally, true intentions of the proposer (if those intentions are different from the proclaimed ones).

The expert will note the goal indicated in the explanation and compare it with the purpose and goals in the text of the draft law (in the case of drafting new laws) to establish possible differences. During the subsequent consideration of the text of the draft law, the expert checks whether a text is fully in line with the objective highlighted in the rationale and/or in the draft law.

The expert will pay attention to whether the draft law has any unsaid or hidden points goals that contradict the proclaimed goal. Establishing unspoken goals serves as an indicator of the promotion of private interests that are contrary to the public interest or, at the very least, indicates to insufficiently explained draft law.

Regardless of whether the draft law is guided by some other goals besides those that are envisaged by the draft law and rationale, the expert should notice the most important and/ or problematic

provisions from a public interest perspective and check whether the rationale contains sufficient and valid reasons for those provisions.

Identifying the hidden, unspoken objectives of the draft law serves to point out the fact that the proposer might have some hidden agenda and is trying to mislead the public about the real intentions that are hidden in the draft law. The expert will pay special attention and will thoroughly check the claims made in the rationale regarding:

- compliance of the draft law with other domestic or international regulations;
- establishment of new public authorities;
- change of the existing structure of the public authorities duties;
- entities that will benefit from the draft law and in what way;
- entities that could be affected by the draft law and in what way;
- necessary financial resources for law enforcement.

13. Review of the assessed regulations

The expert must study the rationale of the regulation with the following questions in mind:

1. Can the provisions be interpreted in ambiguous ways?

2. What benefits could a malicious person have by interpreting the provisions in a way that benefits him/her (especially if it is an official person)?

3. How to qualify the action of a person benefiting from a favorable interpretation of regulation provisions?

By considering the regulations from the point of view of the above-mentioned questions, the expert will identify the risk factors that can lead to the risk of corruption (listed in the Annexes of the Methodology).

14. Identification of corruption risk factors

Considering the text of the regulation, the expert will identify provisions that can be considered as factors of corruption risks, according to annexes 3 and 4 of this methodology.

The expert can determine one or more corruption risks in each provision of the regulation. The expert can identify corruption risk factors also with the combination of multiple provisions of regulations, in cases where the risks created by those provisions become visible only under those provisions being interpreted together.

15. Identification of corruption risks

By studying the provisions that were assessed as corruption risk factors, the expert will predict risks of corruption that arise due to those factors, following Annex 5 of the Methodology.

Acting in a specified manner, the expert must enhance an understanding of ways the corruptive provision will enable or legalize corruptive acts.

In the case of enacted regulations, the expert will consider the implementation of the regulations in practice, the difficulties that arose during that period, the existing cases of corruption concerning those provisions, and in what way they enabled the occurrence of those cases.

When some corruption risk factors are observed, the expert should determine how the specific provision creates the risk of corruption:

• by legalizing the corrupt act;

• favoring the execution of a corrupt act.

A corrupt act is legalized if the implementation of the provision leads to permission for that kind of behavior, excluding the possibility of the responsibility of the perpetrator, i.e., to initiate an investigation. Conversely, a corrupt act will be considered legalized by some provision if in the absence of that provision that behavior would be considered punishable and partly if it would imply the appropriate type of responsibility, as well as the initiation of an investigation.

The execution of a corrupt act is made possible if the implementation of the provision leads to a situation in which the conditions for the execution of corrupt acts easily arise. Such provisions create the idea to those that should act upon them, that in such conditions giving or receiving bribes, mediation in giving or receiving bribes, or doing other corrupt acts, becomes very easy. Although specific provisions do not make corrupt acts permissible, the responsibility for their doing is not excluded and the initiation of the investigation is not prevented, with these provisions corrupt criminal deeds are made easier. Those provisions are, simply an "invitation" to commit corrupt acts.

The expert will indicate the risks of corruption that were found in the regulation in the second section of the corruption proofing (see annexes 1 and 2 of the Methodology).

16. Identification of information related to lobbying of private interests

When the expert assessed that the author is hiding something, proposing insufficiently reasoned draft law and/or is trying to mislead the public regarding his/her true intentions, the expert may request information from other subdivisions of the Agency to confirm or refute the existence of the drafter's private interests in (i.e.: links between the representatives of the drafter and persons affiliated to business, political or other organizations).

If information related to illegal lobbying of private interests through the draft law is found, the Agency shall initiate misdemeanor procedures in accordance with the lobbying related regulations.

17. Review of other relevant information

The expert shall additionally investigate other categories of information, if possible:

- *Official data* (official publications, including reports of state and international institutions, case-law of national and international courts; data of the National Bureau of Statistics; archive materials, including sources with limited or no access);

- *Unofficial data* (print and online media; books, reports, studies, evaluations, etc. of private entities, local and international nongovernmental organizations; web pages, including portals, databases, and forums).

18. Assessment of possible damage caused by the draft law

When determining private interests during a draft proposal, the expert will examine whether there could be damage to property and non-property legitimate interests of individuals, the budget of the Republic of Serbia, the budget of local self-government units, or other public property.

When the expert assesses that there is a possibility of property damage, he/she will try to estimate the damage in the best possible way.

19. Preparation of the corruption proofing opinion in the regulations

The corruption proofing opinion contains the following sections:

I. Assessment of the corruption risks associated with the legislative process
II. Detailed analysis of corruption risks and risk factors in the provisions
III. Conclusions

The detailed structure of the corruption-proofing opinion is provided in Annex 1 (for draft laws and enacted regulations).

Annex 1

STRUCTURE OF CORRUPTION PROOFING OPINION (ON DRAFT LAWS AND ENACTED REGULATIONS)

CORRUPTION PROOFING OPINION ON THE [name of the draft law]

[Stating the author and the proposed category of the promoted draft legal act]

[Stating the authority, criteria, and legal basis for corruption proofing by the Agency. Stating the goal of conducting the corruption proofing]

I. Assessment of the corruption risks associated with the legislative process

1. Observance of transparency and public consultation standards

2. Declared and real goals. Identification of hidden, unstated goals

3. Public and private interests

4. Identification of risks of illegal lobbying

5. Relevance of the rationale to support the decisions in the draft law

II. Detailed analysis of corruption risks and risk factors in the provisions

<table>
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[text of objection, explaining why the provision qualifies as one/several risk factors and how these may lead to corruption acts, which would by the effect of the law either become legal or would favour the occurrence of corruption acts, although the corruptive acts are not allowed by risk factors]</td></tr>
<tr><td colspan="2">Recommendations:
[text of concrete recommendation that would overcome the problem described in the objection]</td></tr>
<tr><td>Risk factors:
• [introduce risk factors from the list]</td><td>Legalizing of corruption risks:
• [introduce corruption risks from the list]
Contribution to corruption risks:
• [introduce corruption risks from the list]</td></tr>
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</table>

III. Conclusions

[text of conclusions on the most important corruption risks associated to the promotion of the draft legal acts and on the main corruption risks generated by the draft legal act, as well as the overall statement of the expert's recommendations concerning the regulation].

Date: *Director of the Agency*

Name of the expert,
Head of the competent Sector

CORRUPTION PROOFING OPINION ON THE ENACTED LAW [name of the enacted law]

[Stating the authority, criteria, and legal basis for corruption proofing by the Agency. Stating the goal of conducting corruption proofing]

I. Assessment of the corruption risks associated with the legislative process

1. Declared and real goals. Identification of hidden, unstated goals

2. Public and private interests

3. Identification of risks of illegal lobbying

II. Detailed analysis of corruption risks and risk factors in the provisions

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</table>

III. Conclusions

[text of conclusions on the most important corruption risks associated with the promotion of the enacted law and on the main corruption risks generated by the enacted law, as well as the overall statement of the expert's recommendations concerning the regulation].

Date: *Director of the Agency*

Name of the expert,

Head of the competent Sector

Annex 2

INSTRUCTIONS TO FILL OUT EACH SECTION OF THE CORRUPTION PROOFING OPINION ON DRAFT LAWS [5]

CORRUPTION PROOFING OPINION ON THE DRAFT [name of the draft law]

[Stating the author and the proposed category of the promoted draft legal act]

[Stating the authority, criteria, and legal basis to carry out corruption proofing by the Agency. Stating the goal of conducting corruption proofing]

I. Assessment of the corruption risks associated with the legislative process

The shortcomings of the legislative process may serve as an indication of the true intentions of the drafters, anticipating most of the time the identification of corruption risk factors and corruption risks in the provisions of the legal act, promotion of private interests detrimental to the public interest, etc. For these reasons, the expert is bound to analyze the existence of risks of corrupting the legislative process from the perspective of: 1. Observance of transparency and public consultations standards, 2. Declared and real goal of the draft legal act. Identification of hidden, unstated goals, 3. Public and private interests advanced by the draft legal act, 4. Identification of risks of illegal lobbying, 5. Relevance of justification of the solutions offered by the draft legal act.

1. Observance of transparency and public consultation standards

Assessing the observance of the requirements related to transparency and public consultations is an anti-corruption requirement specific to the legislative process.

When drafting the opinion, the expert will assess the set standards of public participation in drafting and determination of the draft law on which the opinion is given, under the provisions of Article 77 of the Law on State Administration ("Official Gazette of the RS", no. 79/05, 101/07, 95 /10, 99/14, 30/18 - other laws and 47/18), Rulebook on good practice guidelines for public participation in the preparation of draft laws and other regulations and acts ("Official Gazette of RS", No. 51/19), as well as the provisions of Article 41 of the Rules of Procedure of the Government of the RS ("Official Gazette of the RS", no. 61/06 -official consolidated text), 69/08, 88/09, 33/10, 69/10, 20/11, 37/11, 30/13, 76/14 and 8/19 – other regulation).

[5] The instructions will accordingly be applied for filling out of the opinion on the assessment of the risk of corruption in the enacted regulations, bearing in mind the peculiarities of the structure of the said opinion, provided for in Annex 1.

2. Declared and real goals. Identification of hidden, unstated goals

In this section of the opinion, the expert will indicate the declared goal of the draft law provided in the rationale and as appropriate, in the text of the draft law (in case of enacted regulations, the experts will check the goal as stated in the text of the regulation). If the goal of the draft law is mentioned both in the rationale and in the text of the draft law – the expert will check whether these are any different and indicate them in the opinion.

To identify the real goal, the expert will scrutinize the draft law to understand whether it pursues another goal than the one declared in the rationale and/or in the text of the draft law. The expert will compare the declared goal with the real one resulting from the text of the draft law and will try to establish whether possible explanations of discrepancies found could be due to hidden intentions of the drafter or rather due to negligence shown in the process of preparing the text of the draft law. Regardless of the expert's opinion, inconsistencies will be mentioned in the opinion.

The determination of the declared goal of the draft law is very useful for corruption proofing, as it facilitates understanding of the relevance of the goal formally stated by the author. Thus, keeping the stated goal in mind, the expert is prepared to track whether all the provisions of the draft law serve the declared goal or whether other provisions in the legal act serve another, hidden, purpose. In the latter case, it is important to thoroughly assess these other provisions to be able to determine if this is a problem of poor drafting or if the drafter was not fully sincere in what he/she intends to achieve through the draft law.

3. Public and private interests

Any legal act promotes a certain interest: general interests, the interests of a certain group, or individual interests. However, not any interest promoted through a draft law is in line with the public interest. In this section, the expert will indicate, first, the private interests of which categories/groups or individuals/entities and, second, if the promotion of such private interests is done in the public interest or not. Should the expert evaluate that the private interests promoted by the draft are contrary to the public interest, this aspect should be emphasized and explained.

The expert may request the assistance of other subdivisions of the Agency if he/she ascertains that the legal act promotes private interests (group/corporate or individual) detrimental to the public interest. If the established links were based on concrete promoted private interests, the expert will also insert in the opinion additional information on these links.

If the expert cannot identify the subjects whose interests are promoted by the draft laws (i.e., when the business operator was not yet set or its shares were not yet sold to individuals/entities affiliated to the drafter etc.), the expert will limit him/herself to explaining why the promotion of such interests is contrary to the public interest.

Sometimes, the draft law promoting private interest contrary to the public interest may cause damage not only to the public interest in general but also to the legitimate private interests of certain categories of persons. It is very important to point out that aspect in the opinion. Not all the legal acts promoting private interests cause damage to concrete persons, but all the legal acts that will cause such damage promote private interest contrary to the public interest.

The expert will describe the possible damage and will establish the category of subjects whose legitimate interests could be prejudiced by the draft law. Furthermore, the expert will have to assess whether anticipated damages of the legal act are compliant with the public interest or not, meaning whether they are "a necessary evil" in a democratic society or not. Hence, the expert will weigh the advantages obtained for the public interest concerning eventual damage. If the expert considers that the eventual damages are more significant than the expected benefit, it shall mean that the legal act may not be considered as being promoted in line with the public interest.

4. Identification of risks of illegal lobbying

If the legal act promotes the private interests of certain private entities, the expert will check the information on the possible existence of a lobbying client and lobbyists and whether these were registered as such in the appropriate Register (of lobbyists or legal entities conducting lobbying), their previously submitted activity reports to the Agency, etc., according to the Law on Lobbying. The expert shall state any established violation in the opinion and the sanction that the Agency imposed or initiated concerning it.

5. Relevance of rationale to support the solutions of the draft law

Evaluating the solutions of the draft law is important in conducting corruption proofing. Main solutions to various aspects regulated in the draft law must have a justification in the rationale accompanying the draft.

The quality of the rationale serves as a good indicator of the quality of the draft law itself. Poor quality of the rationale is not necessarily an indicator of bad intentions pursued by the drafter, but rather of the fact that the drafting process was not allowed sufficient time (e.g.: because of the drafter's workload, limited time allowed for drafting imposed by the Government or National Assembly, etc.).

In any case, the expert should beware of the draft laws accompanied by a formally drawn up rationale, because frequently they are characterized by unintended corruption risks, such as faulty reference provisions, conflicting provisions, legal gaps, ambiguous linguistic formulations, lack of administrative procedures, etc.

The expert should be careful about the reasoning in the rationale that is insufficient or lacking from the rationale in support of important aspects of the draft law. Also, the expert should pay attention to situations when the reasoning in the rationale is not valid, meaning that it is false (e.g.: the rationale describes other consequences than those expected, the rationale contains safeguards that the draft complies with certain national or international regulations, while the draft neglects them or even contradicts them, etc.).

When the expert identifies one of the described situations (especially in the latter case), he/she will review in detail the respective provisions of the draft law and will try to establish if the author does not pursue other hidden intentions. These could also be provisions that are outside the scope of the declared purpose of the draft law (go beyond it or contradict it).

II. Detailed analysis of the risk factors and corruption risks in the provisions

This section of the corruption proofing opinion organizes all the comments and objections of the expert regarding the identified risk factors and corruption risks in a table, following the order of the provisions in the draft law subject to corruption proofing.

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• [introduce corruption risks from the list]
Contribution to corruption risks occurrence:
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</table>

The expert will indicate in every section of the table (from top to down, from left to right):

- **No.** – order number of the objection regarding a certain provision of the draft;
- **Art. __ par.__ let. _)** - the specific article and, as appropriate, the paragraph, letter, point, etc. to which the objection is made. If the objection refers to a set of provisions from the draft, which may be analyzed only together (combined), all these provisions will be indicated together with the first provision that appears in the order of the draft's review (e.g.: art.2 para. (3) and art.15 let. e)). If the expert has a separate objection to the same provision and a common objection with other draft's provisions, they will be indicated in separate sections of the table (e.g.: to no. 1 of the table - art.2 para. (3), and no. 2 of the table - art.2 para. (3) and art.15 let. e)).
- ***„…"*** – the text of the relevant provision for which the expert presents an objection will be indicated between inverted commas, underlining the problematic parts. If the provision is rather long, the expert may present only an extract, replacing the irrelevant parts of the provision which are not indicated with (…).
- **Objections:** - the expert will explain how the formulation of the provision creates risks for enforcing the provision which contains the indicated risk factors and how they lead to the occurrence of corruption risks.
- **Recommendations:** - solutions suggested by the expert for eliminating the risk factor and the corruption risk. The solutions provided by the expert should be as concrete as possible, suggesting a new formulation of the provision, which will complete/clarify, replace, modify, or eliminate the given text from the regulation. The expert may recommend only one or several solutions. When the expert considers that the legal act may fulfill its purpose through several alternative solutions, he/she will indicate all of them to the authority in charge of adopting them to be able to choose the most appropriate. Nevertheless, if the expert does not consider himself/herself sufficiently knowledgeable and/or if the provision

refers to a narrow-specialized area, due to which the expert cannot propose a new specific formulation, the recommended solution may be general regarding the modality in which the risk factors and identified risks may be excluded.

- **Risk factors:** - the expert will indicate all the risk factors of the analyzed provision, which may determine the occurrence of corruption risks, according to Annex 3 of the Methodology. The expert may identify several risk factors for one analyzed provision, even though they are part of different categories of factors. A detailed explanation of the risk factors is provided in Annex 4 of the Methodology.
- **Corruption risks:** - the expert will identify the corruption risks, the occurrence of which may generate the risk factors identified according to the list of corruption risks included in Annex 5 of the Methodology (e.g.: risk factor *"lack of specific deadlines"* which was identified may lead to the appearance of the following corruption risks: *"bribery", "trading in influence", "abuse of office"*).

This section II of the opinion shall be filled mandatorily only when the expert has objections regarding specific provisions of the draft law. If the expert did not identify risk factors and corruption risks, or if the expert has conceptual objections to the draft that do not relate specifically to a separate provision, this section of the opinion will be skipped. The expert will express all the other general considerations in the previous sections of the opinion.

III. Conclusions

In this section of the opinion, the expert will summarize all the major problems of the draft law, pointing out briefly the following aspects (only if they are problematic):

- Non-observance of transparency requirements,
- Insufficient and/or false reasoning contained in the rationale;
- Affecting the public interest through promoting private interests and, if the case, damaging of legitimate interests of other persons;
- Whether the draft law will achieve its expected goal, whether the drafter was sincere regarding the goals of the legal act;
- Contradictions with other laws, defective language of the draft, problems regarding the regulation of the activity of public officials/authorities,
- Mentioning the most frequent or the most problematic risk factors and corruption risks identified in the draft law.

Finally, the expert will note the main recommendations and will conclude if the draft, in the version proposed by the drafter, needs to be improved and which are the general risks if the draft law is not improved. The conclusion will contain examples and referrals to the specific provisions of the draft law, only for noting the major corruption risks it may generate. The conclusion should not exceed 2-3 paragraphs and should be accessible to the public (i.e.: drawn up in simple, accessible language, to facilitate easy usage for the Agency's press releases and media).

Annex 3

LIST OF CORRUPTION RISK FACTORS:

Category I. LEGAL WORDING AND COHERENCE	
1.	Use of undefined terms
2.	Irregular use of terms
3.	Unclear, unprecise, or ambiguous wording
4.	Faulty reference provisions
5.	Conflicting provisions
6.	Legal gaps
7.	Unfeasible provisions
Category II. TRANSPARENCY AND ACCESS TO INFORMATION	
8.	Lacking or insufficient transparency of a public institution
9.	Lacking or insufficient access to information of public interest
Category III. COMPETENCES, PROCEDURES, RIGHTS AND OBLIGATIONS	
10.	Unspecified subject the provision refers to
11.	Overlapping competences
12.	Improper duties for the status of the public authority
13.	Duties set up in a manner that allows abusive interpretations
14.	Setting up a right instead of a duty
15.	Unjustified exceptions from the exercise of rights/duties
16.	Non-exhaustive, unspecified, or discretionary grounds for decision-taking
17.	Allocating competences enabling conflict of interest
18.	Lack/unclear administrative proceedings
19.	Lack of specific terms / unjustified terms / unjustified extension of terms
20.	Unjustified limitation of human rights
21.	Discriminatory provisions
22.	Excessive requirements for exercising rights/duties
23.	Stimulating unfair competition
24.	Promotion of interests contrary to the public interest
25.	Infringement of interests contrary to the public interest
26.	Exaggerated costs for provision's enforcement as compared to the public benefit
Category IV. OVERSIGHT MECHANISMS	
27.	Insufficient supervision and control mechanisms (hierarchic, internal, public)
28.	Insufficient mechanisms to challenge decisions and actions of public institutions
Category V. LIABILITY AND SANCTIONING	
29.	Confusion/overlapping legal liability for the same violation
30.	Non-exhaustive grounds for liability to arise
31.	Lack of clear liability for violations
32.	Lack of clear sanctions for violations
33.	Mismatch between the violation and sanction

Annex 4

DESCRIPTION OF CORRUPTION RISK FACTORS

The corruption risks arising from the legislation are due to triggering factors, which are provisions worded in a certain manner or which follow a certain logic. Even though in most cases these risk factors are found in the legal texts without the direct intent of the drafters, they still preserve the same level of threat to the public interest that is purposefully included in the laws. The Methodology identifies a series of risk factors, classified into several categories. A detailed description of the factors generating corruption risks by categories is presented below.

CATEGORY I. Legal Wording and Coherence

1. Use of undefined terms

The use of undefined terms is the use of terms that are not clarified in the legislation, which are not defined directly in the assessed legal text, and which do not have a common widespread and uniform meaning for the public.

The danger of this factor derives from the occurrence of different practices of interpretation of these terms, practices which may be corruptive, especially when public institutions are expected to apply uniform rules, the wording of which contains such terms. Nevertheless, private entities may also take illegal advantage to promote their interests (through bribery) when legal texts are using undefined terms.

2. Irregular use of terms

Irregular use of terms represents the use of different terms (use of synonyms) referring to the same phenomenon or the use of the same term referring to different phenomena.

The danger of this risk factor derives from the fact that the application of non-uniformly used terminology may trigger vicious practices of interpreting the meaning of the norm, namely: treating the same phenomenon as different phenomena (because of the confusion created by calling it in different ways) or treating the same phenomenon as distinct phenomena (because of confusing the two terms the legal text is using to reference to the same thing). As a result, abuses may be generated by both public and private sector representatives.

3. Unclear, unprecise, or ambiguous wording

Unclear, unprecise, or ambiguous wording is the formulation from the assessed legal text which has a difficult-to-understand meaning and thus leaves space for corruptive interpretation.

The text of the legal text should comply with the requirements of clarity. The linguistic formulations turn into risk factors to the extent in which provide the possibility to apply a provision in preferred interpretation, depending on the interest of those responsible for implementation and/or control.

4. Faulty reference provisions

Faulty reference provisions are the provisions of the draft that refer in an interpretable, unclear, and imprecise way to other provisions/legislation.

The identification of such risk factors is possible if such expression is used: "in line with the legislation in force", "under the law", "in the established manner", "according to the legal regulations/in the area" etc., without referring to a specific act and when this is difficult to be established or cannot be established in general during the evaluation.

The expert should pay special attention to the cases of specialized legal acts, dedicated to a specific area, referring to the "legislation in the area", "special legislation" etc., especially if it is assumed that the given legal act represents in fact that specific legislation in the area, and it is not foreseeable for any additional narrower and specialized legislation to be adopted in the future.

5. Conflicting provisions

Conflicting provisions represent an incompatibility of the legal act's provisions with other provisions from the same legal act, with provisions of other national or international legislation.

The conflict may emerge between provisions of the same legal act (internal conflict of norms) and between the provisions of the legal act and the provisions of other national or international legislation (external conflict). An external conflict of legal norms may appear between the legal acts of the same legal force (between two organic laws), between legal acts of different levels (e.g.: between an ordinary law and an organic law), between codified and non-codified legal acts.

In any of the situations, the conflict hinders the accurate enforcement of legal provisions and creates preconditions for the subjective or abusive selection of a "convenient" provision, which might be applied according to the private (corruptive) convenience at stake.

6. Legal gaps

The legal gaps are the legislator's omission to regulate aspects of social relations that already exist, or will be generated by the legal act. The gaps create a "legislative vacuum".

The legal gaps generate uncertainty in social relations and are dangerous especially if they avoid establishing mechanisms for exercising rights, fulfilling obligations, exercising duties of public officials, regulating important aspects of administrative procedures, etc.

In all these cases, the public authorities in charge of implementing the legal act may use this gap to commit abuses, such as granting or declining an entitlement, depending on the individual's readiness to pay off such an interpretation of the gap in the legal act.

7. Unfeasible provisions

Unfeasible provisions are provisions that cannot be enforced, as they contradict reality.

The unfeasible provisions have the effect of "false promises". The corruptive danger of this risk factor is the uncertainty in the social relations that unfeasible provisions create, especially if such uncertainty affects the mechanisms of the legal act's enforcement. In such cases, public officials in charge of the respective regulations might be tempted to use this deficiency to commit abuses.

II. Transparency and Access to Information

8. Lacking or insufficient transparency of a public institution

Lacking or insufficient transparency in a public institution is the shortcoming of the regulations in guaranteeing necessary transparency in the functioning of public institutions.

This risk factor predetermines the future activity of the public institution being performed in a non-transparent context.

Lacking insufficient transparency in the functioning of public institutions can be spotted when provisions related to:

- ensuring public access to information on the implementation of the legal act –
- publication of progress and or other mandatory reports –
- securing transparency of the public institutions using IT resources (web pages, open databases, online forms for the interaction with the public institution, etc.) –are either missing or underdeveloped.

9. Lacking or insufficient access to information of public interest

Lacking or insufficient access to information of public interest is the missing or deficient regulation in the regulation of the possibility for a person to find out or to be informed about data, facts, circumstances of personal or general interest, which, normally, should be easily accessible without undertaking of burdensome efforts.

The presence of this risk factor in the regulation affects the mechanisms through which information of public interest is to be delivered to the interested persons. Thus, even though a given piece of information is of interest to the public, its delivery to the public is not secured, as the legal act does not set a clear-cut obligation to this end. Such provisions imply the possibility for the public institutions to maintain the information obscure, without a legitimate cause. The person interested in obtaining the information could explore corruptible methods for accessing the respective information, instead of accessing it in an already provided format by the public institution.

This risk factor is frequently identified jointly with other risk factors, such as ambiguous wording and unclear administrative procedures.

III. Competences, Procedures, Rights, Obligations, and Interests

10. Unspecified subject the provision refers to

The unspecified subject the provision refers to represents the omission of the legal act to indicate the person, authority or entity meant, while the context is not univocal in this regard.

The danger of this risk factor is posed by the fact that either several possible subjects will claim the provision meant to them or no subject will acknowledge responsibility under the provision, thus creating difficulties for individuals and legal entities to exercise their rights and legitimate interests.

The unspecified subject the provision refers to is frequently identified jointly with other risk factors, such as ambiguous wording and unclear administrative procedures.

11. Overlapping competences

The overlapping competencies are those duties of a [usually public] entity that are similar or identical to the duties of other public authorities.

Overlapping *competencies* generate conflicts of competencies between the public authorities simultaneously empowered with identical duties, either through both authorities claiming they are competent to act under these duties or both authorities declining responsibility for them.

Overlapping *competencies* sometimes arise when the adoption of certain decisions is entrusted to several public authorities (joint decisions). The risks posed by this factor are amplified when legal provisions double the competencies of public officials from the same authority or different authorities, as well as when several public officials and public authorities are responsible for the same decision or action.

12. Improper duties for the status of the public authority

Improper duties for the status of the public authority are those duties that exceed the competencies and are not specific to or contravene the status of the authority empowered with such duties.

Improper duties for the status of the public authority may generate conflicts of interest, conflicts of competencies, or conflicts of rules in the activity of the authorities empowered with such duties. The corruption risks generated by this risk factor are, on one hand, the provision of illicit remuneration (giving bribes) by other persons who pursue the fulfillment of their interests before the authorities empowered with improper duties, and on the other hand – taking bribes and abuse of office from such authorities.

To identify this risk factor, it is necessary to check whether the rules instituting the respective public authority, its legal status, and duties resulting from it are under the additionally set duties in the scrutinized provisions that are analyzed.

In most cases, this risk factor appears together with conflicting provisions, overlapping competencies, etc.

13. Duties set up in a manner that enables exceptions and abusive interpretations

Duties set up in a manner that enables exceptions and abusive interpretations are those duties of the public authorities that are formulated ambiguously, providing the possibility to interpret them differently in different situations, including interpreting them in a preferred version or derogating from them.

Unclear formulation of the duties generates the possibility for the public official to choose the most convenient interpretation of his/her duties, without taking into consideration other legitimate interests and the spirit of the law.

14. Setting up rights instead of duties

Setting up a right instead of a duty is setting in a discretionary manner (right, power) a certain competence, in situations when the legitimate expectation of citizens/society is for the public authority/official to proceed imperatively (follow an obligation, duty).

Legal provisions containing this risk factor offer discretion to public officials to act upon their will instead of fulfilling the duties they should perform. Such discretions may be used abusively to seek undue reward.

This risk factor is amplified when criteria for establishing in which cases the public agent "is entitled" or "is able" and in what cases he/she is excused not to fulfill his/her competencies are missing. This risk factor may be identified together with other factors, such as non-exhaustive, ambiguous, or subjective grounds for decision-making.

15. Unjustified exceptions from the exercise of rights/duties

Unjustified exceptions from the exercise of rights/duties are provisions introducing exceptions to a given rule when reasons for the need to introduce such exceptions are unclear or lacking.

Provisions establishing ungrounded derogations from the exercise of rights/duties are like "legislative doors" through which the public official may "exit" avoiding taking care of legitimate expectations and claims of the citizens. This factor generates corruption -risks due to unjustified discretion the public authority/official enjoys in deciding whether to apply the derogation, forcing individuals to provide corruptible incentives to the public official to avoid the exception, upon which the duration, manner, or even the possibility of exercising the legitimate rights or interest depend.

Frequently, the rules establishing ungrounded derogations appear in combination with faulty reference provisions (e.g.: "with exceptions set via the Regulation of the responsible public authority").

16. Undefined, unspecified, or discretionary grounds for decision-taking

Unidentified, unspecified, or discretionary grounds/criteria for decision-making is the partial/unclear/discretionary setting of cases in which a public authority/official may take a decision, including to refuse or omit carrying out certain duties.

Usually, the listing of grounds/criteria in these cases is left open, through faulty reference provisions to some vague pieces of legislation, or to grounds determined through an internal administrative act of the public authority.

17. Allocating competencies enabling conflict of interest

Allocating competencies enabling conflict of interest represents empowering a public authority/official with such competencies the exercise of which opens possibilities for broad discretionary powers and chances of abuse (for instance: to set rules, to control observance of these rules, and to impose sanctions for their violation).

This risk factor generates the possibility for the public official to seek bribes, for instance, to avoid control and/or sanctions for violating the rules set by the public authority he/she works for, and which therefore would not oppose.

18. Lack/unclear administrative procedures

Lacki/unclear administrative procedures are the inadequate or confusing regulations of the mechanisms applied in the activity of public authorities.

When the administrative procedures are regulated insufficiently or ambiguously, the dangerous discretion of a public official appears in relation to his/her responsibility to improvise procedural rules convenient to him/her and contrary to the public interest. Lack/ambiguity of the administrative procedures appears when the text of the regulation mentions of even implies that a certain mechanism exists, but:

- does not develop it;
- uses vague reference provisions to unclear legislation establishing such procedures;
- transfers the task of regulating the administrative procedure or a part of it to the public authorities directly responsible for applying it;
- uses ambiguous formulations to describe it;
- sets forth the public agents' discretions regarding different aspects of the procedure, without determining the criteria to be used.

19. Lack of specific terms / unjustified terms / unjustified extension of terms

Lack of specific terms / unjustified terms / unjustified extension of terms is an inadequate regulation of administrative terms. A concrete administrative term is missing when it is not established, not set, or stated due to ambiguous or confusing conditions.

The lack of specific terms always leaves space for abusive interpretations by public officials. Their excessive discretion allows them to assess and set in every separate case term which would be convenient for him/her, for his actions, as well as for the actions of other legal subjects to whom these terms are applicable.

Setting unjustified terms or unjustified extension of terms imposes too long or too short administrative terms, which complicate the fulfillment of rights and interests, both public and private.

Terms are too long when the actions to be carried out within these terms are very simple and do not need too much time or considerable effort. At the same time, the pursued interest may be of a nature that does not stand long waiting periods for a decision to be taken. When the provisions allow the public institution to act excessively long term, the interested persons will be tempted "to purchase" taking of the respective measures by the public officials in charge.

The terms are too short when the actions to be carried out are too complicated or need longer periods to be fulfilled than the term that was established. Setting short terms for public institutions inevitably leads to their violation and, therefore, frequently to individuals and legal entities – to exploiting the illegal possibilities to harness their legal rights and legitimate interests.

20. Unjustified limitation of human rights

Unjustified limitation of human rights hinders possibilities to exercise without impediments the individual rights and freedoms prescribed by internal (usually constitutional) and international legislation.

This risk factor entails undermining the guarantees of fulfilling the rights set in the Constitution of the Republic of Serbia, special laws, and ratified international instruments in the area of human rights, when admissible grounds to limit these rights are absent, meaning that it is not a measure which is necessary in a democratic society for national security, public safety, economic wellbeing of the country, protection of order and prevention of crimes, protection of health and morals, or protection of others' rights and freedoms.

In most cases, this risk factor is identified together with other risk factors, such as conflicting provisions, excessive requirements for exercising rights/duties and infringement of interests contrary to the public interest.

21. Discriminatory provisions

Discriminatory provisions are those provisions that create a certain situation in the advantage or disadvantage of a subject or a category of subjects, based on criteria of sex, age, type of ownership, and other criteria.

The provisions will be considered discriminatory in two cases. First is when similar advantages are not created for other individuals or legal entities, with comparable merits. Second is when the subjects whose situation is worsened by the legal act, who have similar characteristics with those of other individuals or legal entities, are approached by the legal act differently.

Frequent examples may be found in legal acts establishing fiscal amnesties. The danger of this factor is that the legal acts affected by it will most probably generate feelings of injustice in society and will plant doubts concerning politicians' credibility and impartiality.

22. Excessive requirements for exercising rights/duties

Excessive requirements for exercising rights/duties are the exaggerated requirements set in the regulations concerning the persons/entities exercising their rights and/or fulfilling their duties within an administrative procedure and/or before a public authority body.

The corruption risk generated by this factor occurs when the person/entity finds it too difficult to follow the set requirements and is tempted to use corruption to secure the exercise of its rights and/or fulfillment of its duties.

The excessive nature of the requirements set for exercising the rights/fulfilling the duties occurs when there are too many requirements, which are complicated to fulfill as compared to the nature of the right/duty to be exercised/fulfilled, or when the burden of these requirements is exaggerated as compared to the public authority's/official's required actions to consider (such as the establishment of excessive fees, or when the incurred costs for the public authority's consideration are minimum).

The requirements are also excessive when the list thereof is not exhaustive and leaves to the public official's discretion for the establishment of additional requirements to allow the specific individual/legal entity to exercise the rights / to fulfill the duties.

23. Stimulating unfair competition

Stimulating unfair competition is setting rules undermining equal possibilities for businesses to be active on the market, in favor of one business operator or a small group of businesses.

The danger of this factor lies in the creation of chances for abuses of the dominant position of the market, of monopolies, anti-competitive agreements, and ultimately – for increasing the costs incurred by the citizens – final consumers of goods and services. The corruption risks that may be generated by this risk factor are bribery and favoritism of decision-makers from the public or private sectors to provide access/create conditions for being active in the respective market. Moreover, situations of conflicts of interest and illegal lobbying could be an issue in different phases of adopting the regulation, from its drafting, to draft proposal of the law in the National Assembly.

This risk factor frequently identifies together with the promotion of interests contrary to the public interest, infringement of interests contrary to the public interest, exaggerated costs for the provision's enforcement as compared to the public benefit, discriminatory provisions, and excessive requirements for the exercise of rights/duties. etc.

24. Promotion of interests contrary to the public interest

Promotion of interests contrary to the public interest is advancing private interests (personal or group ones), in a manner that is detrimental to the general interest of the society, recognized by the state to ensure its wellbeing and development.

That risk factor derives from the fact that once the legal act is adopted, the achievement of certain private interests will be legalized, even though they would harm the legitimate interests of others. Such legal acts are abusively favoring individuals and legal entities in obtaining benefits, due to subjective reasons (illegal lobbying, kinship, friendship links, or other connections with the author of the legal act).

This risk factor is frequently a way to discriminate against all the other legal subjects found in a similar legal situation, that cannot benefit from the positive effects of the legal act, which serves the interests of the favored person or group (e.g.: legal provisions that institute exceptions from the general law, such as exemption from fees or taxes of certain businesses; passing legal acts intended to forgive debts or to remove from exclusive state property an asset in the interest of a given legal entity).

25. Infringement of interests contrary to the public interest

Infringement of interests contrary to the public interest is the infringement of legitimate private interest (individual or group ones), to the detriment of the general interest of the society, aimed at ensuring its well-being and development.

The danger of this risk factor lies in the legalization of the permanent or temporary damages of the legitimate interests of certain individuals or groups, while the given sacrifice does not contribute to fulfilling an objective of general and common interest.

In most cases, this risk factor is identified together with the promotion of interests contrary to the public interest, excessive requirements for exercising rights/duties, or unjustified limitation of human rights.

26. Exaggerated costs for provisions' enforcement as compared to the public benefit

Exaggerated costs for provisions' enforcement as compared to the public benefit are the financial and material costs incurred from public or private sources of funds, necessary to implement the provisions, the amount of which is higher as compared to the advantages obtained by the society or specific individuals/entities as a result of the provision's enforcement.

The danger of this risk factor lies in wasting the public means or the means of the private subjects for building benefits, advantages, and interests of reduced value. When the exaggerated costs are incurred by the private subjects, they are tempted to overcome the legal requirements, using "cheaper" corruption methods.

On the other hand, whenever these costs are to be incurred from public money, the public authorities empowered to implement the legal act may commit abuses or may end up in a situation when the application of the respective legal act is claimed to be impossible because of lack of resources.

IV. Oversight Mechanisms

27. Insufficient supervision and control mechanisms (hierarchic, internal, public)

Insufficient supervision and control mechanisms (hierarchic, internal, public) is the inefficiency of regulations regarding the oversight and control of public authority's activity in vulnerable areas (exposed to corruption risks) of public official's activities, representing areas of high interest for citizens.

When assessing the control mechanisms, the provisions regarding internal control and hierarchic control are reviewed, as well as the provisions on public reporting of progress/activity. Attention should also be given to procedures for ensuring public control in the public institution's area of activity.

This risk factor is frequently identified in regulations which:

- lack of clear procedure to control the implementation of the regulation's provisions;
- lack or prescribe inadequate restrictions and/or interdictions on the public official to perform activities related to property and/or financial relations;
- lack parliamentary, judicial, and administrative control in a certain area;
- lack provisions on public control, on possibilities to file petitions and claims, directly or through civil society organizations, etc.

28. Insufficient mechanisms to challenge decisions and actions of public institutions

Lack/insufficiency of mechanisms to challenge decisions and actions of public institutions is the omission or inadequate nature of internal or judicial procedures to contest the decisions and actions of public institutions, as well as of their representatives.

The danger of this risk factor comes from the absolute and incontestable discretion of the public institution to treat a certain problem of private or public interest, without providing the interested persons the possibility to exercise any form of adequate control over the actions of the public institution.

This risk factor may be identified together with other factors, such as conflicting provisions and legal gaps, lack/ambiguity of administrative procedures, lack/insufficiency of transparency in the functioning of a public institution, lack/insufficiency of access to information of public interest and unjustified limitation of human rights.

V. Liability and Sanctions

29. Confusion/overlapping legal liability for the same violation

Confusion/overlapping legal liability for the same violation is setting the liability for violations for which the legislation already established other types of liability or simultaneously establishing several types of liability for the same violation.

Confusion/overlapping legal liability for the same violation leads to the appearance of corruption risks posed by the wide discretion of the fact-finding and sanctioning body in deciding on holding the subject liable through different types of liability or on holding the subject liable according to all types of established liability at the same time, while the subject who has committed the violation is tempted to resort to corruption to influence the respective decisions.

30. Non-exhaustive grounds for liability to arise

Non-exhaustive grounds for liability to arise are the grounds for liability that are formulated ambiguously or the list of which is left open, to admit diverse interpretations of the cases when liability may occur.

The danger of this risk factor implies wide discretion of the institution in charge of determining the existence of a specific ground to hold someone liable – a discretion which may be used by it to make the perpetrator understand that it could interpret the ambiguous and/or non-exhaustive provision in his/her interest or his/her detriment. In these circumstances, the person will look for methods to corrupt the public official to interpret favorably the given provision. Moreover, the unclear ground to hold liable may be used by the perpetrator for solving the problem through a "private arrangement" even without a public official suggesting it.

31. Lack of clear liability for violations

Lack of clear liability for violations is the omission or ambiguity in regulating the liability of the individuals/entities for violating the provisions of the regulation.

This drawback makes the provisions on liability simply declarative, leading to the impossibility of applying practically these provisions and hence to insufficient accountability.

When responsibility for violations of the legal act's provisions is determined by the use of faulty reference provisions, without specifying at least the area of the legislation the reference is made to, it usually determines the appearance of another risk factor – lack of clear sanctions for violations.

32. Lack of clear sanctions for violations

Lack of clear sanctions for violations is the omission to set sanctions for violation of legal provisions or ambiguity of sanctions for committed violations.

When there is a lack of clear sanctions for violations of the regulation's provisions, there appears the risk for perpetrators to acknowledge their impunity, and to continue with the perpetration of violations.

33. Mismatch between the violation and sanction

The mismatch between the violation and sanction represents the establishment of some sanctions that do not match the severity of the damages deriving from the committed violations.

The mismatch between the violation and sanction is manifested either through establishing mild sanctions as related to the severity of the regulated violation or by setting harsh punishments in case of violations with reduced social danger.

Establishing sanctions that are too mild for severe violations generates the same corruption risks as those that appear in case of lack of clear sanctions for violations meaning that the perpetrators will acknowledge their impunity and will continue abusing the legal provisions.

Establishing sanctions that are too harsh for minor violations leads to injustice concerning the sanctioned perpetrators, who, once acknowledge the harsh punishment to serve, may resort to corruption methods to avoid sanctioning, while the public official acknowledging that the sanction is exaggerated for the respective type of violation, will be easier to be "convinced", considering that he/she does a "good thing".

Annex 5

LIST OF CORRUPTION RISKS:

- Abuse of Position of a Responsible Person (art.227 Criminal Code)
- Abuse Concerning Public Procurement (art.228 Criminal Code)
- Abuse in Privatization Procedure (art.228a Criminal Code)
- Conclusion of a Restrictive Agreement (art.229 Criminal Code)
- Accepting Bribes in Conducting of Business Activity (art.230 Criminal Code)
- Giving Bribe in Conducting of Business Activity (art.231 Criminal Code)
- Money Laundering (art.245 Criminal Code)
- Abuse of office (art.359 Criminal Code)
- Violation of Law by a Judge, Public Prosecutor, or his Deputy (art.360 Criminal Code)
- Dereliction of Duty (art.361 Criminal Code)
- Unlawful Collection and Payment (art.362 Criminal Code)
- Improper Use of Budget Funds (art.362a Criminal Code)
- Fraud in Service (art.363 Criminal Code)
- Embezzlement (art.364 Criminal Code)
- Unauthorized Use (art.365 Criminal Code)
- Trading In Influence (art.366 Criminal Code)
- Soliciting and Accepting Bribes (art.367 Criminal Code)
- Bribery (art.368 Criminal Code)
- Revealing an Official Secret (art.369 Criminal Code)
- Failure to Report Property or Provision of False Property Information (art.101 of the Law on Anticorruption)
- Offences of Public Officials (art.103 of the Law on Anticorruption)
- Offences of a Responsible Person within a Body of Public Authority (art.104 of the Law on Anticorruption)
- Misdemeanor Offences of Legal Entities Conducting Lobbying, Lobbyists and Lobbying Clients (art.34 of the Law on Lobbying)
- Criminal Offences and Misdemeanors regulated by the Law on Financing of Political Activities.