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Assessment report

on the conformity of the Moldovan national anti-corruption system to major international standards related to corruption and integrity in private sector, including a set of concrete recommendations

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The aim of this report is to assess the conformity of the national legal and policy system, including legal and normative framework, vis-à-vis the major international standards in the fighting to corruption and increasing the integrity management in the private sector. The assessment intends to support and strengthen the capacity of the National Anti-Corruption Center (NAC) of Moldova in understanding and tackling corruption in business. The analysis takes into consideration both relevant information and documentation (including laws, policies and strategies), as well as available perceptions-based and qualitative data, gathered through a series of meetings with relevant national officials and practitioners held in Chisinau during June/July 2016. The final part of report provides conclusions and recommendations, which will help NAC to improve corruption prevention measures and integrity management in the private sector.

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1.Context and background

In Moldova corruption is usually perceived as a phenomenon primarily originated by and affecting the public sector in general, and in particular the areas of justice, health, education, police, central and local public administrations. Nevertheless, a more comprehensive approach to this problem demonstrates the involvement of and destructive effects on the private sector as well.

Controversies in the banking and financial sectors and questionable governmental decisions conceding control in several key sectors have recently rocked the country¹. Despite slight progress reported in some sector (see the 2015 World Bank Survey on Ease of Doing Business), efforts to tackle corruption, increase transparency in decision-making, cut bureaucracy, and uphold the rule of law have yet to make significant improvements in the investment climate.

Costs of corruption in private sector are huge and affect the quality of goods and services delivered to population, market competitiveness and economic rules, investment process, national public budget. Bribes paid by the economic agents for gaining public contracts determine a fraudulent increase of cost of such contracts and a decrease of quality. Public and business entities and political actors allegedly set illicit relations to gain public contracts and fund political parties. According to the Survey on Perception vs. Personal Experience with Corruption of Households and Business-people², the total value of bribes paid by businessmen in 2015 was estimated at MDL 381 millions (equal to approx. USD 19,213 million \$). Another similar research developed by the Transparency International-Moldova states that *"a part of the private sector operates in shadow economy, in which tax evasion is committed, which makes it vulnerable to the control bodies. The private sector is poorly protected by the state. The ethical standards of small enterprises are low. The big enterprises usually do not apply norms of corporate management. The private sector is insufficiently involved in the activity of working groups/councils in the frame of state bodies, in monitoring economic and anti-corruption policies."*³ The same tendency is demonstrated by several international ratings as well. The Index of Economic Freedom 2016, developed by the Heritage Foundation⁴, ranks Moldova as 117th out of 178 countries. Corruption was highlighted as one of the major challenges, while bureaucracy and lack of transparency often make opening and running a business costly and difficult. According to the Global Business Bribery Risk Index, developed by the non-governmental business association TRACE International⁵, Moldova occupies the place 130th out of 197. The highest risk score (70) was attributed for the interaction with Government, Moldova being placed in the group of countries with a high level of corruption risks. In spite of the fact that national legislation sets certain rules on the responsibility of legal entities of private law for a rightful, honorable and adequate entrepreneurial activity, incriminates corruption offences in private sector, including criminal liability of legal persons for corruption offences, application of the legal framework is unsatisfactory.

The UN Convention on Corruption (UNCAC), ratified in 2007 by the Parliament of the Republic of Moldova with law 158, provides that each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures. Moldova will be part of an external assessment of this chapter in the next round of evaluation. In 2011, the Government of Moldova, acknowledging the need to fight corruption, adopted the National Anti-corruption Strategy (NAS). NAS is the main anti-corruption policy document currently applied at the national level. The goal of the Strategy is to reduce the level of corruption in public and private sectors of the Republic of Moldova. National Anti-corruption Center has a clear mandate to prevent corruption, including development of viable tools to prevent corruption in private sector. NAC is endorsed to take part in developing and improving legal framework on prevention and fighting corruption and corruption related offences, promoting international anti-corruption standards. Despite the established anti-corruption framework, the number of cases involving prosecution of corruption did not meet international expectations (given corruption perceptions), and enforcement of existing legislation is deemed insufficient. The dismissal, in April 2013, of the government on corruption allegations has worsened the Moldovan society's perception of corruption. In 2014 Moldova dropped to 103rd place in the Transparency International Corruption Perception Index (CPI), scoring 35 out of

¹ Investment climate statement 2015 - US Department of State (www.state.gov/documents/organization/241877.pdf)

² Study conducted by UNDP in partnership with the Transparency International Moldova (see at <https://info.undp.org/docs/pdc/Documents/MDA/NAC%20Progress%20Report%202015.docx>)

³ See at http://files.transparency.org/content/download/1331/10309/file/2014_NationalIntegritySystem_Moldova_EN.pdf

⁴ See at <http://www.heritage.org/index/ranking>

⁵ See at <http://www.traceinternational.org/trace-matrix>

100. Moreover, the Transparency International Global Corruption Barometer shows (GCB) that 71 percent of Moldovans think that corruption is a very serious problem and 60 percent think that the Government's efforts to fight corruption are ineffective. At the same time, according to the GCB, 80 percent of Moldovan citizens believe that the most corrupt institution is the judiciary, followed by police (76 percent) and political parties (75 percent)⁶.

UNDP, through its project strengthening the corruption prevention and analysis functions of the National Anti-corruption Center (NAC) aims to strengthen the capacities of NAC in the analysis of corruption. To this end, this report intends to a) assess the conformity of national anti-corruption system, including legal, normative and policy framework, to UNCAC and other relevant international standards related to corruption and integrity in private sector and b) propose concrete recommendations for preventing corruption and integrity management in private sector (at legislative, normative, institutional and policy level) and a sample Code of ethics for small and medium enterprises.

2. Moldovan private sector: size, role and dynamics

2.1. General context

Moldova relies on the production, processing, and trade in agricultural products. Agriculture plays an important role for micro, small and medium enterprises (MSMEs). Besides registered MSMEs (which account for 97.6% of total registered agricultural enterprises), there are some 380,000 unregistered farms of various sizes, more than 98% of which are farms with less than 5 hectares. Trade is another important economic sector (40.5% of all MSMEs are engaged in trade, and they account for almost half of the total MSME turnover). Trade is still one of the main drivers of economic growth in Moldova in general and small/medium enterprises (SME) development in particular. Other large economic sectors include transport (12.9%) and real estate operations (10.4%), both of which are well represented by SMEs⁷. The informal sector represents an important part of the economy in Moldova. The vast majority of informal sector activities provides goods and services whose production and distribution are perfectly legal. Informal employment accounts for about 30% of total employment and is generated primarily by the agricultural sector, which accounts for two thirds of informal employment. To a lesser extent, the informal sector includes enterprises from the construction, trade, and industry sectors. The country's vulnerability to political instability and external economic shocks creates an unfavorable climate for investments and future development of the SME sector⁸. The financial sector in Moldova is dominated by commercial banks, which account for about 95% of total assets. Microfinance lenders and leasing companies represent an alternative but their market share is still insignificant. Capital markets are underdeveloped⁹.

2.2. The role of SMEs in the Moldovan market

SMEs in Moldova play an important role in terms of output and employment. In a consumption-oriented economy, trade still dominates and drives the SME sector. The agriculture and IT sectors have the largest potential for growth¹⁰. According to the National Bureau of Statistics (NBS), there were around 50,000 enterprises in 2012, 97% of which were MSMEs. A total number of 38,000 micro enterprises account for more than 75% of all enterprises. Small and medium enterprises hold

⁶ 2015 Investment Climate Statement – Moldova, US department of State (at <http://www.state.gov/e/eb/rls/othr/ics/2015/241665.htm>)

⁷ Moldova - Private Sector Financing And The Role Of Risk-bearing Instruments (EIB, 2013, http://www.eib.org/attachments/efs/econ_report_psf_and_the_role_of_rbi_moldova_en.pdf)

⁸ Idem. Key findings in the macroeconomic environment: · Slowdown in external demand and severe drought in 2012 interrupted Moldova's recovery from the global economic and financial crisis. · A significant inflow of remittances plays an important role in increasing household incomes, driving consumption demand, and thus stimulating consumption-oriented SME development. · Trade continues to be one of the main drivers for economic growth but agriculture is seen as having the biggest potential for expansion. · Reintroduction of corporate income tax in 2012 helped further fiscal consolidation but constrained SME performance. · Signing of an Association Agreement with the EU could significantly improve the political and macroeconomic environment and boost SME growth.

⁹ Idem. Key findings in the financial sector: · The financial crisis had a significant impact on Moldova's economy in general and financial sector in particular. Although lending activity resumed, credit quality remains a serious problem. · The microfinance sector is small but plays an important role for low income borrowers, especially in rural areas. · Private equity and venture capital activity is low, with no domestic funds established so far. · The securities market is underdeveloped, with a limited number of IPOs.

¹⁰ Idem. Key findings: · Total demand for MSME loans is estimated at EUR 1.4 billion, the largest part of which comes from micro-businesses. · Trade is still by far the leading sector, but the IT industry is considered to be one of the most dynamic in the country, while agriculture has much potential for expansion.

a share of 19% (9,500 enterprises) and 3% (1,550 enterprises), respectively. Despite an impressive growth of the number of large enterprises in recent years, their share has never been above 2.5% of total number of enterprises. The definition of micro, small, and medium enterprises is given by the Law on Support to the SME Sector and is based on three parameters: number of employees, annual turnover, and total assets.

Definition of micro, small and medium enterprises in the Republic of Moldova

	Average number of employees	Average annual turnover	Average annual total assets
Micro	up to 9	up to 9 million MDL	up to 9 million MDL
Small	from 10 to 49	up to 25 million MDL	up to 25 million MDL
Medium	from 50 to 249	up to 50 million MDL	up to 50 million MDL

Source: Law no.179/2916 on SMEs

In 2012, the MSME sector accounted for 58% of total employment. Since 2005, MSMEs' contribution to employment stood at 55-60% (which is a bit below the 60-70% share in OECD countries). Employment in MSMEs has steadily decreased between 2007 and 2011, as it did in large enterprises. The trend reversed in 2012, when employment in MSMEs increased by 2% over 2011. In 2012, the share of MSMEs in total turnover was 34%.

About half of the MSME turnover is generated by firms in the area of retail and wholesale trade. Despite their increasing number and ever growing turnover, MSMEs' share in total turnover has been decreasing over the last years due to a higher growth rate in the turnover generated by large enterprises¹¹. The total number of enterprises has been growing at 6.3% rate since 2005. The growth is primarily driven by micro enterprises, whose number increased by 12,000 units between 2005 and 2012. The share of MSMEs in total number of enterprises has been rather stable, fluctuating between 97% and 98% over the last eight years. Despite an impressive growth of the number of large enterprises (from 700 in 2005 to 1,240 in 2012), their share has never exceeded 2.5%. To be mentioned is the trend of further polarization in recent years, the reduction of an already thin share of medium enterprises from 5% in 2005 to 3% in 2012. The number of medium-sized enterprises decreased in 2007-2011 by 15% but saw a 2.3% increase in 2012. However, employment in medium-sized firms continues to decrease. This negative performance is mainly due to the financial crisis, which seems to have hit medium-sized enterprises particularly hard.

About 20,000 enterprises (or 40% of all MSMEs), carry out their activities in the field of trade. Since this economic sector generates high turnover, it accounted for 49% of total MSME sales revenues in 2012. Wholesale and retail trade is also the largest employer, accounting for 26% of total employment. Other important economic sectors include agriculture, processing industry, and real estate transactions.

Breakdown of MSMEs by economic sector, 2012

Economic sector	Number of enterprises	Number of employees	Annual turnover
Agriculture, hunting and forestry	5.0%	12.1%	6.7%
Processing industry	9.8%	15.4%	13.0%
Electrical energy, gas and water	0.5%	0.9%	0.4%
Construction	5.5%	7.5%	7.3%
Wholesale and retail trade	40.5%	26.6%	49.7%
Hotels and restaurants	3.4%	4.0%	1.9%
Transportation, storage and communications	6.7%	7.6%	9.4%
Real estate transactions	17.2%	13.2%	7.1%
Other activities	11.5%	12.8%	4.5%

Source: NBS

Today Moldova ranks 52 in the World Bank's Doing Business, and has gained 3 positions from last year. Besides traditional bottlenecks (such as dealing with construction permits, getting electricity, and trading across borders, where no reforms have been made to improve the situation), some recent reforms made doing business more difficult.

¹¹ Official numbers of MSMEs shown above are based on the financial reports presented to NBS by legal entities and do not include individual entrepreneurs, patent holders or farmers, who represent an important proportion of microbusiness. Furthermore, as with any other official data, information on Transnistria is not captured.

Topics	DB 2016 Rank	DB 2015 Rank	Change in Rank
Starting a Business ✓	26	35	9
Dealing with Construction Permits	170	169	-1
Getting Electricity	104	100	-4
Registering Property	21	20	-1
Getting Credit	28	24	-4
Protecting Minority Investors	36	33	-3
Paying Taxes	78	69	-9
Trading Across Borders	33	32	-1
Enforcing Contracts	67	66	-1
Resolving Insolvency ✓	60	59	-1
✓ = Doing business reform making it easier to do business x = Change making it more difficult to do business.			

Source: WBG Doing Business ranking(www.doingbusiness.org/data/exploreeconomies/moldova)

3. Legal analysis

Although the international community is not unanimous on a single, comprehensive and definitive description of corruption, there are several examples of global and regional instruments that provide their own definition of corruptive acts. The numerous initiatives seek to provide support in detecting, preventing and punishing the different causes and cases of corruption, in order to eliminate or mitigate the negative effects and losses suffered by the victims.

3.1. International treaties

At the global level, the United Nation Convention against Corruption (UNCAC) has no doubt a place of prominence in comparison to all other instruments. The recognized primacy of this convention stems not only from the size and variety of the signatory State parties, but also from the extension, depth, as well as the binding and dissuasive strength of both its regulations and evaluation mechanism in place. In addition to the UNCAC, treaty primus inter pares, the list of other relevant international and regional acts to fighting corruption in the private sector worth mentioning are, in no particular order, the following:

1. Council of Europe Civil Law Convention on Corruption
2. Council of Europe Criminal Law Convention on Corruption
3. United Nations Convention against Transnational Organized Crime (UNTOC) (at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>)
4. World Bank Group Integrity Compliance Guidelines (at <http://www.worldbank.org/en/about/unit/integrity-vice-presidency/sanctions-compliance>)
5. OECD Convention on the Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) (at <http://www.oecd.org/dataoecd/4/18/38028044.pdf>)
6. OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, including Annex II Good Practice Guidance on Internal Controls, Ethics and Compliance (at <http://www.oecd.org/dataoecd/11/40/44176910.pdf>)

¹² Moldova is not a signatory of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery. However, Moldova is part of two regional anti-corruption initiatives: the Stability Pact Anti-Corruption Initiative for South East Europe (SPAI) and the Group of States against Corruption (GRECO) of the Council of Europe. Moldova cooperates closely with the OECD through SPAI and with GRECO, especially on country evaluations.

7. UNODC Country Review Report of the Republic of Moldova
8. Resolution of the Committee of Ministers of the Council of Europe: Agreement Establishing the Group of States against Corruption (at <http://conventions.coe.int/Treaty/EN/PartialAgr/Html/Greco9905.htm>)
9. Resolution of the Committee of Ministers of the Council of Europe: Twenty Guiding Principles for the Fight against Corruption (at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=593789&>)
10. International Chamber of Commerce (ICC) Rules on Combating Corruption (at <http://www.iccwbo.org/Data/Policies/2011/ICC-Rules-on-Combating-Corruption-2011/>)
11. ICC Guidelines on Whistleblowing (at <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/whistleblowing/>)
12. ICC Guidelines on Agents, Intermediaries and Other Third Parties (at <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/ICCThird-Party-Guidelines/>)
13. Council of Europe Recommendation CM/Rec(2014)7 on the protection of whistleblowers (at [http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2014\)7E.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2014)7E.pdf))
14. Partnering Against Corruption — Principles for Countering Bribery from the Partnering Against Corruption Initiative (PACI) (at http://www3.weforum.org/docs/WEF_PACI_Principles_2009.pdf)
15. Transparency International Business principles for countering bribery (at http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery)

Box 1. International standards and recommendations concerning corruption and integrity management in the private sector:

By cross-examining all these different legal instruments, guidelines and resolutions, one can conclude that the major **relevant grand recommendations** can be aggregated as follows:

- ✓ Enhance **accounting and auditing** standards and procedures;
- ✓ **Criminalization** of active bribery (of domestic and foreign officials, members of parliament, judges, including international organizations);
- ✓ Provide appropriate, proportionate and dissuasive civil, administrative or criminal **sanctions**, for both **natural and legal persons**.
- ✓ Promote **inclusive cooperation** between law enforcement agencies and private entities (offering awareness-raising seminars, points of contact, preventive advice);
- ✓ Create mechanism to protect and support in- and of-house **whistle-blowing**;
- ✓ Promote integrity in management of private entities through:
 - **codes of conduct** and corporate governance codes. Among others, the following behaviors should be penalized:
 - a) establishment of off-the-books accounts;
 - b) recording non-existent expenditures;
 - c) entry of liabilities with incorrect identification of their objects;
 - d) use of false documentation;
 - e) intentional destruction of bookkeeping documents earlier than foreseen; use of good commercial practices among businesses and in relation with the State.
 - **conflict of interest** regulations;
 - **internal, professionalized and certified audit controls**, with risk-based and size-appropriate review systems of adequacy and effectiveness of financial, operational and management control systems, and the legality of transactions;
- ✓ Enhance **corporate transparency** related to the organization, ownership, functioning and decision-making processes (through simplified administrative procedures; publication of information);
- ✓ Create a **specialized**, independent and appropriately funded body or **bodies for the prevention of corruption**;
- ✓ Disallow tax **deductibility** of expenses that constitute **bribes**;
- ✓ Procedures for **public procurement** shall be **transparent, competitive, objective**, as well as effective (i.e. risk- or fact-based) in preventing corruption.

¹³ Review by Bosnia Herzegovina and Norway of the implementation by the Republic of Moldova of articles 15 - 42 of Chapter III. "Criminalization and law enforcement" and articles 44 - 50 of Chapter IV. "International cooperation" of the United Nations Convention against Corruption for the review cycle 2010 – 2015

3.2. National pertinent legal acts

The national anti-corruption legal framework includes provisions of the Constitution, the Criminal Code and the Criminal Procedure Code, as well as specific laws of relevance. Different bodies are entrusted with anti-corruption action: the National Anti-Corruption Centre, the National Integrity Commission, the Prosecutor's Office, the Ministries of Justice and Internal Affairs, the Information and Security Service, the Court of Accounts and other institutional establishments.

List of most relevant laws and documentation concerning the fight of corruption:

1. Law No.1104/2002 on the National Anti-corruption Centre
2. Law No.1264/2002 on declaration and control of the income and ownership of the state dignitaries, judges, prosecutors, public officials and certain persons vested with managerial functions
3. Law No.9/2008 on Preventing and Combating Corruption
4. Law No.16/2008 on Conflicts of Interest
5. Law No.25/2008 on the Code of Ethics of the Public Official
6. Law No.158/2008 on Public Service and the Status of Public Officials
7. Law No.252/2013 on Approval of Regulation on Functioning of Anti-corruption hotlines
8. Law No.325/2013 on Assessment of Institutional Integrity
9. Law No.132/2016 on National Integrity Authority
10. The Criminal Code of the Republic of Moldova, Law No.985/2002
11. The Contravention Code of the Republic of Moldova, Law No.218/2008
12. Parliament's Decision No.154/2011 on approving the National Anti-corruption Strategy for 2011-2016
13. Parliament's Decision No.12/2012 on Approving the Action Plan for 2012-2013 for Implementing the National Anti-corruption Strategy for 2011-2015

3.3. Capacity to counter corruption in and by the private sector

Available information, statistics and data on the de facto functioning and implementation of regulations and their tangible effects on the private sector are close to zero. The few reliable though perceptions-based analyses available usually focus on corruption in the public sector¹⁴. While these studies aim at analysing the opinions and personal experiences of the representatives of business confronted with corruption in the public sector, the team was unable to find similar examinations focused more on understanding the private side of the same phenomenon. In other words, still little attention is dedicated at observing the behavior of the private players, among them or in interacting with the State, in order to better recognise, understand and combat the drivers of corrupted actions in Moldova. There is a generalized ambiguity regarding the magnitude, the type, the frequency and the impact of the wrongdoing perpetrated by players in the private sector. This limited knowledge and lack of understanding make it very difficult for the public authorities to respond appropriately and specifically to the demand for a fairly leveled and "corruption-free" market. Rather than using or creating tailor-made solutions, the risk is that too general, one-size-fit-all instruments are employed, which can lead to inefficient use of resources and poor results.

In this scenario, a very useful source of accurate and relevant information is the recent evaluation report on the implementation of the UNCAC¹⁵. In general, the conclusions indicate that while the Republic of Moldova has done considerable work in building a legal and institutional anti-corruption framework, implementation is still lax. Additionally, there is a lack of thorough and forward looking vision of reforms related to combating corruption, which seems leading to duplication of efforts. Such institutional fragmentation increases organizational overlap and reduces administrative efficiency in combating corruption in practice. There is national legislation aimed at promoting cooperation between the national competent authorities and the private sector, however challenges remain in establishing such cooperation among these players, including civil society. In practice, hotlines for reporting corrupt act do exist but, despite the few statistics

¹⁴ Among the available studies it is worth mentioning the paper of Transparency International – Moldova: "Sociological Study, Corruption in Republic of Moldova: Perceptions vs. Personal Experiences of Business People and Households" (2015).

¹⁵ The report analyses the implementation of Chapter 3 and 5 (Criminalization and law enforcement, and International cooperation, respectively). For the entire report see at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1600996e.pdf>

provided, it is uncertain whether the mechanism is performing to its full capacity. The UNCAC reports shows that the main pressing issues at stake can be listed below.

3.4. Liability of legal persons

Anti-corruption treaties either explicitly in the text (e.g. UNCAC) or in the explanatory materials, often clarify that the States may opt to establish criminal, administrative or civil liability. However, whatever option is chosen, legal persons must be subject to effective, proportionate and dissuasive sanctions. The latter requirement affects the choice of the liability type adopted in the national system. Criminal or quasi-criminal liability is often recognised as the most suitable legal construction for holding legal persons accountable for corruption, with administrative liability being an accepted alternative.

Country overview of the approach taken to regulate the liability of legal persons

Criminal liability	Administrative punitive liability	Quasi-criminal liability
Albania Bosnia and Herzegovina Croatia Estonia Lithuania "The former Yugoslav Republic of Macedonia" Moldova Montenegro Romania Serbia Slovenia	Bulgaria Russian Federation	Azerbaijan Latvia Ukraine
11	2	3

Source: OECD (2015)¹⁶

In Moldova, the Criminal Code (art. 26, Section 21, paragraph 3) provides for the criminal liability of legal entities (except for public authorities). Sanctions against legal persons include fines, deprivation of the right to practice certain activities and liquidation (section 63 of the Criminal Code). Article 521 and subsequent articles of the Criminal Procedure Code introduce special rules applicable to criminal proceedings against legal persons to allow charges initially brought against legal persons to be extended to their legal representatives for the same or related offences. While legal provisions are in place to implement article 26 of the UNCAC, it is difficult to assess whether those legal provisions are effectively enforced in practice, given that no case examples of criminal proceedings against legal entities can be found.

3.5. Whistleblowing systems

In the public sector, protecting whistleblowers can facilitate the detection of passive bribery, the misuse of public funds, waste, fraud and other forms of corruption. In the private sector, it helps authorities identify cases of active bribery and other corrupt acts committed by companies or their employees, and also helps businesses prevent and detect bribery in business transactions¹⁷. Whistleblower protection is thus essential to safeguarding the public interest and to promoting a culture of public accountability and integrity. The protection of witnesses and reporting persons is enshrined in many International conventions¹⁸. The general goal of these regulations is that individuals should feel safe to freely raise public interest concerns. Clear channels should be put in place for public interest reporting and disclosures and recourse to them should be facilitated through appropriate measures. The channels for reporting and disclosures comprise reports within an organization or enterprise (including to persons designated to receive reports in confidence).

Internal reporting mechanisms help making employees feel right and safe to divulge concerns, so they more likely prevent, investigate and eliminate mistakes, inefficiencies and malfeasance. Whistleblower systems help prevent damage to outside clients and partners, while saving costs and increase productivity. Organizational, production and in general

¹⁶ OECD (2015) Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, available at www.oecd.org/

¹⁷ OECD (2012) Whistleblower protection: encouraging reporting (see at <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf>).

¹⁸ Among others the UNCAC (articles 32 and 33) and the Council of Europe Recommendation CM/Rec(2014)7

business transparency can reinforce consumer protection, improve clientele trust and fidelity and build fairness in competition. Capable and professional points of reference, responsible for receiving and reacting to confidential information, should receive a clear and appropriately supported mandate inside any organization. In small enterprises, characterized by close relationship and a low level of confidentiality, such independence may be hard to achieve. For this reason, such companies may find more interesting and efficient to rely on external certified professionals, contracted to receive and treat such sensitive reports.

Most of the information and analysis available concern whistleblowers in the public sector. Witness protection measures are foreseen in both the Criminal Procedure Code and Law No.105/2008 on the protection of witnesses and other participants in criminal procedures. In the last UNCAC implementation assessment report¹⁹, the reviewing experts suggested the inclusion of all corruption offences in the category of at least “serious crimes”, with a view to making the provisions of Law No.105/2008 applicable to them as well. No specific information concerning the use of that law was provided in relation to offences established in accordance with the Convention. Article 18 of Law No.90-XVI/2008 on the prevention and combating of corruption and article 12/1 of Law No.25-XVI/2008 on the code of conduct for civil servants provide for protection measures for any civil servant who reports in good faith on the commission of corruption acts, violation of the rules on conflict of interest and declaration of income.

Moldova has produced one of the best-known whistleblower cases in Europe. The country, however, has limited practice or experience in dealing with whistleblower issues, including protecting them from retaliation. Whistleblower disclosures and complaints are not systematically tracked, and retaliation cases against civil servants who report corruption are not monitored²⁰. Despite the fact that in 2013 the government passed a new framework on whistleblowing (the aim of which is to provide disclosure channels for public employees, and to protect them from retaliation)²¹, there seems to be no legal protections for employees of private companies. Whistleblowers must provide their name and place of employment, but confidentiality seems guaranteed. Good faith is presumed unless proven otherwise. People who report knowingly false information, or who do not adequately protect a whistleblower, face disciplinary and criminal measures. To date, Moldova has not enacted a comprehensive whistleblower law. The government's National Anti-corruption Centre (NAC), however, succeeded in having certain laws amended in order to enact the Framework.

Several government institutions as well as NGOs deal with whistleblowing and anti-corruption more broadly. Law enforcement authorities have internal security departments to which people can report corruption. However not all hotlines are always functioning; most ministries do not have designated staff to operate the hotlines, nor to analyze the intelligence received; they do not present annual reports and statistics; and do not release the outcomes of complaints, do not track the number or outcome of whistleblower disclosures or complaints of retaliation.

In 2013 it has been approved a regulatory framework regarding the operation of the anti-corruption phone hotlines system²². According to the law, anti-corruption hotlines system comprises the following three levels:

1. national anti-corruption line – a phone line managed by NAC, by which information on acts of corruption, corruption related acts and other acts of corrupt behavior is received;
2. specialized anti-corruption lines – phone lines set up and managed by public authorities, by which information on acts of corruption committed by the employees of these authorities is received;
3. information lines - phone lines set up and managed by public authorities, by which these authorities disclose information about their work, and by which the authorities concerned may receive information on acts of corruption committed by their employees.

¹⁹ Implementation Review Group Seventh session (Vienna, 20-24 June 2016) Item 2 of the provisional agenda, Review of implementation of the United Nations Convention against Corruption, Executive summary (www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1600996e.pdf)

²⁰ Whistleblower Protection in Southeast Europe, RAI, 2015

(http://rai-see.org/wp-content/uploads/2015/07/Whistleblower_Protection_in_SEE.pdf)

²¹ In September 2013, Moldova's government passed a “Framework Regulation on Whistleblowers.” The measure created a system to provide civil servants with opportunities to report wrongdoing within public authorities and protect them from retaliation. Civil servants may report acts of corruption, and violations of conflict of interest and asset declaration rules. Results of any follow-up inquiry are to be sent to the whistleblower within 30 days.

²² Law 252/2013 on the Regulation of operating phone anti-corruption hotlines system

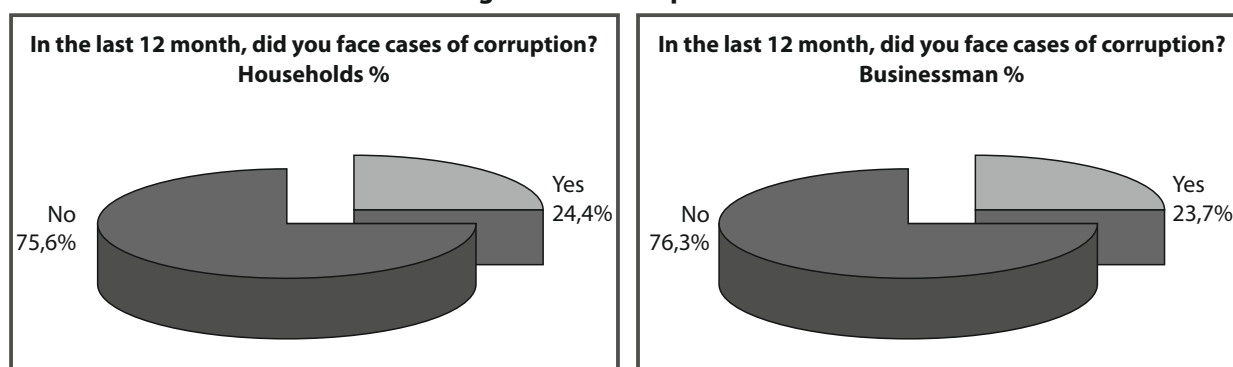
The system however seems to be inefficient from the perspective of a potential user. Such a system can demotivate potential users to report information about corruption acts. A person should take at least the following actions in order to report information about corruption acts through the system in question:

- the person shall study existing legislation in order to understand the differences between the three levels of reporting, and identify the phone line by which information he/she knows must be reported;
- the person shall classify and appreciate information he/she knows, taking into account the differences between the anti-corruption phone hotlines;
- the person shall seek and identify the phone number by which he/she can report the information he/she knows (it is important to take into account that the number of specialized and information institutional lines is very high).

In these circumstances, it is to be assumed that most people will not identify the number of anti-corruption phone hotlines by which he/she can report a corruption act or will refuse to follow the actions described below. Due to these complicated system, the information about corruption acts, although often known, it is not reported to the competent authorities. The data below demonstrates this affirmation.

In a 2015 survey by TI Moldova, of 513 business people and 1099 adult household representatives, the analysts noticed that compared to 2012 the number of those who affirm being confronted with cases of corruption has dropped

Facing cases of corruption



Compared to 2012, the number of those who affirm being confronted with cases of corruption has dropped

Respondents who faced corruption in the last 12 months, % of those interviewed

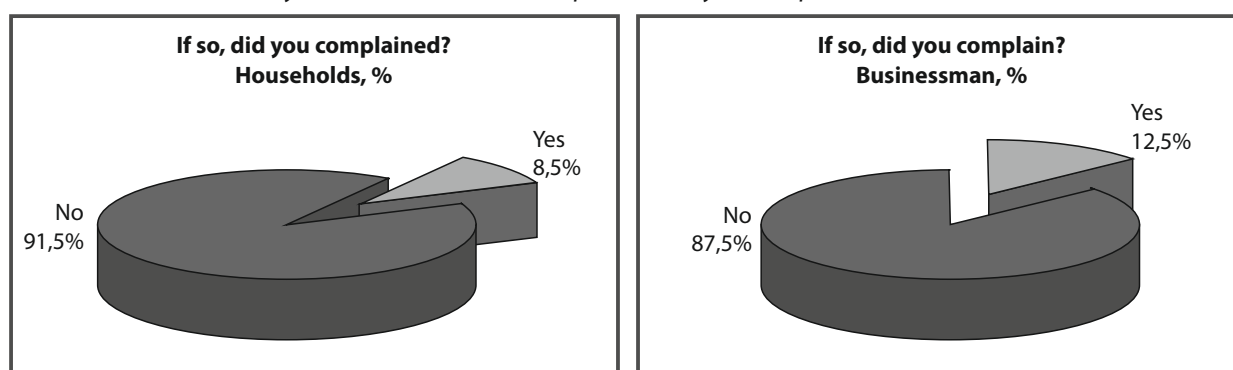
	2012	2014	2015
Households	37,2	30,9	24,4
Businessman	40,2	38,8	23,7

Source: TI – Moldova 2015²³

However, among businesspersons, the percentage of those that have voiced their concern to an authority is in slight decline.

Denouncing corruption

If you've encountered corruption, have you complained about it?



Respondents complained about corruption cases, %

	2012	2014	2015
Households	5,1	4	8,5
Businessman	4,6	13,6	12,5

Source: TI – Moldova 2015²⁴

²³ "Sociological Study, Corruption in Republic of Moldova: Perceptions vs. Personal Experiences of Business People and Households" (2015).

²⁴ Idem

Reasons for not addressing / reporting corruption cases (multiple choice answers)

	Households, %	Businesses, %
Did not know to whom to address it to	12	10,6
It would have taken too much time	15,4	16,3
Nothing would have changed	48,8	43,3
it would have created more problems	37,9	51,9
Other	0,4	0

Share of respondents that do not know whom to address in cases of corruption, %

	2007	2008	2012	2014	2015
Households	19,3	10,4	6,8	12,5	12
Businessman	7,3	3,5	4,8	5,2	10,6

Source: TI – Moldova 2015²⁵

3.6. Specialized authorities and inter-agency coordination

According to the last UNCAC implementation assessment report (2015) for Moldova, the National Anti-Corruption Centre appears to be the central, responsible and specialized body in the prevention and fight against corruption with, among others, inquiring (non-investigative) functions. The Centre has organizational, functional and operational independence in accordance with the terms established by the law. For more appropriate investigation, the Law (No.294-XVI/2008) established specialized prosecutor's offices with anti-corruption tasks. Additional efforts and projects to reform the prosecution service remain ongoing. In addition, it is worth mentioning that an entire section (article 18) of the project law on Integrity (currently pending at the Parliament), is dedicated to the “non-admission, denunciation of corruption acts, and protection of integrity of whistleblowers”. Although an incidental reference is made to private entities²⁶, the article cannot be considered satisfactory in establishing a complete binding framework for the protection and support of whistleblower in the private sectors. The UNCAC reviewers met among others with representatives of the “internal protection and anti-corruption unit” at the Ministry of interior affairs. The department has signed memorandum of understanding with the National Anti-Corruption Center, local NGOs, as well as the Department of information and internal protection of the Romanian MIA. In addition to monitoring and investigating internal affairs, the unit has also a reach outside the institution, and aims at increasing integrity and prevent corruption (with a focus on petty crimes) in the society in general. When managing these “external” cases, after gathering prima facie intelligence, the information is forwarded to the anti-corruption prosecutor office, for further and full investigation. The interlocutors provided data confirming that the department is organized in sub-sections, dedicated to: prevention and operational management (5 persons); combating corruption (30 persons); internal security; witnesses protection; operative insurance; analytic section; special techniques; public relations and secretariat. The staff participates to workshops and trainings, including with peer police authorities involved in the prevention and combating of corruption. While the Republic of Moldova has done considerable work in building a legal and institutional anti-corruption framework, good implementation is lacking. Another problem seems to be the lack of a comprehensive vision of reforms related to combating corruption, which leads to duplication of effort. Such institutional fragmentation increases institutional overlap and reduces institutional efficiency in combating corruption in practice. There is national legislation aimed at promoting cooperation between the national competent authorities and the private sector, especially Law No.190-XVI/2007 (reporting of any suspicious activity or transaction of money-laundering). According to some interlocutors, challenges remain in cooperation between the authorities and the private sector, including civil society. In practice, hotlines are in place to enable citizens to report corrupt acts. Despite the mild negativity of the conclusion, the report lists some successes and good practices such as: the wider scope of application of sections 333 and 334 of the Criminal Code on bribery in the private sector (compared to article 21 of the Convention): it is not limited to “in the course of economic, financial or commercial 8 V.16-00996 CAC/COSP/IRG/I/4/1/Add.35 activities”, but may also cover cases involving “social or other non-governmental organizations”.

²⁵ Idem

²⁶ “Article 18. Non-admission, denunciation of corruption acts, and protection of integrity whistleblowers: (1) (...) The heads and the public agents who know about the corruption acts, illegal practices and ethics-missing practices which threat the public interest and occur within the public entities they are part of and/or within the private entities they have service relations with, but no direct involvement, shall be entitled to (...) e) to send the information contained in the integrity warning regarding the corruption acts, illegal practices, and ethics-missing practices threatening the public interest, which occur within the public entities and/or private entities which the public agent – integrity whistleblower has service duties with, if (...)”emphasis added.

These successes are linking to some challenges in the implementation, namely:

- Ensure more effective enforcement of sections 333 and 334 of the Criminal Code on the criminalization of bribery in the private sector (article 21).
- Ensure effective enforcement and implementation of the national provisions regulating the criminal liability of legal persons (article 26).
- Further enhance cooperation between the National Anti-Corruption Centre and other stakeholders involved in anti-corruption processes, especially in the areas of conducting training on combating corruption and the investigation and prosecution of offences established in accordance with the Convention (article 38) and the adjudication of related cases before the court
- Facilitate and encourage further cooperation between the national authorities and the private sector, including civil society, to detect, investigate and prosecute corruption more effectively (article 39).

3.7. Achievements and deficiencies

During the meetings held by the reviewers for this report with representatives of the private sector, including the research centers and CSOs, the opinions were almost unanimous in pointing at the public sector as the main source and reason of the corruption. More specifically, a series of areas of concern have come up during the different discussions, among which are the following:

a) Banking sector

Concerning the most problematic market segments, the one that stood up during the discussions was the banking sector. There is no doubt that the recent and very notorious billions dollars (equivalent to more than one-eighth of the country's GDP) stolen case²⁷ remains the single, most repeated anecdote mentioned by interviewees of both sides, in order to explain and justify the common distrust of Moldovan citizens towards banks, and the credit system in general. Not surprisingly, the case has led to street protests that somehow resist till these days. Notwithstanding the fact that the case is still pending, serious conclusions can certainly be drawn on the lack of morality and of the elementary monitoring mechanism that characterize this environment. Regardless of the legal decisions that will follow, this is a crystal clear example of the total absence of ethics, transparency, accountability and integrity of both the professionals and the officials that should control and prevent such failures. As a matter of fact, the size, duration, complexity and quality of the scheme cannot be explained but by a sophisticated, extended, well organized connivance between actors from both the public and the private sectors. In other words, a type of arrangement that may be possible only through the collusion of numerous and diverse players, representative of different sectors and affiliations, as well as hierarchical levels and interests. The scheme must have been so well planned and performed that is revealing of very deep and endemic flaws. The result is an unprecedented loss and almost unbearable burden for the already unstable public finances, whose negative effects will affect the local economy for decades to come.

b) The Corporate Governance Code

During the discussions with the different local practitioners they referred to the existence of regulations imposing a code of corporate governance.

The initial version of the Corporate Governance Code in Moldova has been approved in 2007. Later, in December 2015, the National Commission of Financial Market (NCFM) approved a new Corporate Governance Code. The new Code transposes the best international practices and forms a solid framework containing regulations on corporate relationships. By adopting a new code, the NCFM aimed to ensure compliance with the national rules on corporate governance in joint stock companies with the international corporate governance standards and OECD principles. The Code is looking to

²⁷ Among many see examples of report from BBC (www.bbc.com/news/magazine-33166383), and Reuters (<http://www.reuters.com/article/us-moldova-protests-filat-idUSKCN0S91BY20151015>)

²⁸ Opinion gathered during the series of interview with local stakeholders, Chisinau June 2016.

²⁹ Resolution of the NCFM no.28/6 dated 1 June 2007

³⁰ Resolution of the NCFM no.67/10 dated 24 December 2015

ensure protection of rights and interests of shareholders, create an efficient system to guarantee the protection of funds invested by the shareholders³¹.

The existence of a code of corporate governance is undoubtedly welcome. However, the corporate governance code has a limited area of application, being compulsory for the entities that have relevance to the capital market only. According to Resolution 67/10 of 24 December 2015, the Corporate Governance Code shall be applied by public interest entities only, which comprise financial institutions, insurance companies, leasing companies and companies whose securities are traded on a regulated market (such as corporations or entities operating in the sectors of "public interest"), and the SMEs remain excluded by this code. Moreover, the Corporate Governance Code is adapted to the needs of corporations and financial institutions. It sets up high corporate and ethical standards and requirements, which cannot be applied by SMEs because it would represent an unnecessary burden.

c) Business control

The Resolution of the Ministry of Finance no.63/2009 requires auditing companies to report to the NAC, in accordance with the Law no.190/2007, any suspicious activity which may refer to money laundering and terrorist financing. In addition, pursuant to the Resolution auditing companies shall report the same information to a special auditing committee of the Ministry of Finance. The auditing committee has competence in supervising the independent external auditors (about 260 auditors, grouped in approximately 120 companies). Despite this rather strict and clear regulation, the interlocutors have reported that in the past years there has not been one single case of corruption reported to NAC or the committee by any auditor. In addition, we have learned that the most recurrent type of violation encountered by the auditors appears to be the lack of ordered management and maintenance of books. There is no criminal or civil penalty, nor a fine for this violation; the only available sanction is a warning to the auditors (legal or natural persons)³². The auditors report annually to the auditing committee of the Ministry of Finance their procedures of checking the quality of auditing work. In turn, auditing committee runs a procedural check, investigating whether all pertinent procedures have been followed. During the procedural check the committee verifies the accuracy, completeness or veracity of the information received. The committee may apply sanctions or supplementary actions if identifies infringements of law. The activity report of the committee, the information about the audit market, the sanctions imposed by the committee is published annually on the website of the Ministry of Finance. While the law³³ requires that the quality, extension and depth of the auditing controls is based on the size, structure or sector of activity of the audited corporation, in practice is not clear whether these dispositions are always implemented.

In addition to independent external auditing, the fiscal authority has a "unit for fiscal integrity and fight to corruption". The team members are in constant contact with the NAC, they participate in annual meetings, and attend common seminars and training. Each year, the authority is capable of training and update about 500 comptrollers (out of the 1.800 total, nationwide). After participating and successfully passing the tests, the public officials are awarded certification of proficiency. The authority and its group of comptrollers are responsible for controlling and keeping 4 types of registers, namely: a) evidence of gifts; b) inaccurate influence; c) conflict of interests and d) personal interests. In addition to on-site verification, the authority has an open hotline (at the phone number 1525, equipped with an automatic answer machine) and receives a mailbox³⁴, for receiving complaints and information in an anonymous fashion. Every information related to a possible case of corruption is immediately transferred to the NAC, for further consideration.

Concerning the penalties available in case of violation, these may be distinguished into two categories, according to the type of the enterprise audited:

- a) For public/ly participated entities: there is a disciplinary commission that reports the case to the Minister, for decision. Sanctions range from a simple warning, to dismissal, and information forwarded to the NAC, when relevant.

³¹ National Commission of Financial Market. Annual Report 2015

³² The auditors sanctioned by the auditing committee would be prohibited to audit the annual financial statements of state enterprises and joint stock companies where the state owns at least 50% in capital (Article 13 of the Law on State Enterprises, Article 89 the Law on Joint Stock Companies)

³³ Paragraphs 14, 18 and 19 of the Resolution of the Ministry of Finance no.43/2014

³⁴ The local interlocutors reported that in the year 2012 they received 99 letters, in 2013 there were 108, in 2014 there were 121 letters, and in 2015 the letters were 115.

- b) For limited liability corporations: the Minister can decide to remove and replace the representative of the State sitting in the board of directors.

A very similar system for integrity and corruption screening is in place within the customs authority. The unit for internal security is in charge of checking that all customs officers act in accordance to both the law and specific regulations, and they do not commit corrupt actions. In addition to the customs officers, the body has also jurisdiction in monitoring the actions of the customs brokers, which are the typical intermediary agents between the public entity and the customers (transporters, delivery agencies and companies). Although the internal security unit has no investigative powers per se, every time a case of possible corruption is discovered or brought to its attention, the intelligence is passed to the NAC, for further consideration and action.

d) Codes of conduct for SMEs

For the time being, the Moldovan legislation does not require private enterprises to adopt a code of conduct. Nonetheless, the reviewers were informed that there is an existing project of law for integrity pending at the Parliament. Under its chapter V, the act makes specific reference to code of ethics as a tool to build integrity in the private sector. As it stands in its current reading, the law requires business association to adopt or develop a code of practice in compliance with both the domestic legislation, and international standards and best practices.

This law aims at filling an important practical and legislative lacuna. Despite the fact that few associations have attempted to adopt common ethical principles for business³⁵, questions still remain concerning both the quality of such codes, and the level of the implementation. While these initiatives shall receive full unbiased recognition and support, there is still large space for improvement, in order to achieve a completely safe and satisfying level of integrity. On one hand, it seems there is a need for the codes of ethics to be reviewed and harmonized in light of commonly recognized international standards and best practices, in order to make them more homogenous, organic and organized around few clearly established and implementable goals, including an explicit and unequivocal focus on anti-corruption; on the other hand, additional organizations and public institutions (such as the chamber of commerce, as well as NGOs and CSOs involved with private sector players) should adopt the same kind of codes, as an integral part of their statutes and bylaws. These actions combined may ensure more coherence and inclusion of solid corporate integrity.

e) Bureaucratic complexity, opacity and disorganization

The influence of the public sector and bureaucracy on the private business remains a recognized major obstacle. On top of this constant and intrusive impact, the problem is the massive size and inefficiency of the State entities that continue to provide service in a very inefficient way. Part of the inefficiency is without doubt the lack of preparation, motivation and training of public officials, that continue to receive extremely low salaries, which create the opportunity and incentive to demand for bribes in exchange of public services. Not only the quality of the public institutions is inadequate, but the size of the public sector is unsustainable and unreasonable. During the bilateral meetings, the interlocutors reported that in Moldova there are approximately one thousand “public” entities (either publicly owned, or run or affiliated to a public institution, working in very disparate fields. Also, according to the law, there should be a total of 30 publicly controlled authorities, which in reality have somehow expanded to a total of 70 entities. There are reports of state-owned enterprises having an advantage over privately-run businesses in Moldova. Either from government representatives sitting on their boards or from their dominant position in their industry, state-owned companies are generally seen as being better positioned to influence decision-makers than the private sector, and they use this perceived competitive advantage to prevent open competition in their particular sector.

The employees are claimed to be poorly selected and trained, underpaid and as a consequence highly disengaged and demotivated. The private sector has no alternative but to deal with and rely on this inefficient bureaucracy in order to receive the necessary services. To give but one example, in Moldova one can count a total of 400 (four hundred) “permissible acts”, which are certificates, authorizations, licenses and in general any permit granted by a public body to a private individual or company. What makes the system even more complex and corruption-prone is that in almost every case the procedure for applying, bidding and receiving the permit involves some human interaction, between the applicant and the civil servant. The lack of digitalization and possibility of direct contact between the low-paid official and the

³⁵ See the ‘Code of conduct and principles’ of the American chamber of commerce (<http://www.amcham.md/?go=aboutus&sub=principles>) and the ‘Code of ethics’, by the European business association (at <http://eba.md/eng/pages/code-of-ethics>).

businessmen in need, are all ingredients for the creation of corruption and bribery. Although some plans exist in order to reduce and rationalize the existing red-tape, concrete, enforceable actions are lagging behind and remain a promise on paper.

f) Unfair competition

Unfair competition (which typically is the misuse of someone else brand, but also the abuse of inside information and know-how) represents a fairly minor yet hideous crime, according to the law on competition (183/2012). Although it is not the most recurrent violation the competition authority is dealing with, it still an important problem, mainly because the lack of instruments in combating it. As a matter of fact, the competition authority has little power in investigating criminal cases, other than those more typically civil or quasi-administrative falling within their purview (such as anti-competitive agreements, actions or omissions; abuse of dominance; mergers and acquisitions). In addition, the sanction for usual violations (up to 5% of annual revenue), is much higher than the one available for unfair competition (0.5% of revenue). Part of the problem is also the statutory inability to sanction legal persons.

4. Conclusions and recommended actions

4.1. General consideration

The signing of the association agreement with the European Union, which brings the wide range of funds and supporting programs, represents an unprecedented window of opportunities for Moldova and its private sector, for a full and sustainable evolution into a fairer and strong market. This is probably the most valuable chance presented to Moldova since the beginning of the crisis to finally recover economically, and reverse a trend that has the risk to become chronic stagnation. Needless to say, economic and social reforms cannot be adopted without a committed political support, including from the different players of society, among which the business has an active role of prominence.

As correctly indicated in the informative memo attached to the draft law on Integrity, the need to develop and consolidate the national system of integrity and fight against corruption derives from the commitments that the Republic of Moldova Government has subscribed with partners at international level, and in particular with the European Union. For what is relevant for this analysis, we commend the fact that the Government has engaged in a holistic action that aims at building public integrity and a climate of zero-tolerance towards corruption. Although these commitments are surely born under the right auspices, and seem to point to the correct goals, the Government must respect its commitments, and make sure that concrete implementation follows the word of the law. In view of the current and specific difficulties encountered in tackling corruption in and by the private sectors, and in light of international standards and best practices, a series of actions could be effective in order to mitigate such risk or reduce the occurrence and impact. The activities should be organically addressed, with involvement of both the representatives of public authorities and the private sector. They should be part of a systemic, thorough and deeply engaged strategy, aiming at tackling and eventually eradicating corruption inside and from the private sector. It is also important that the recommendations below to be implemented as the "soft law" - by stimulating and supporting economic agents to respect them, and without being imposed as mandatory rules.

4.2. Upgrading external public complaint and internal reporting mechanisms

The introduction of practical and easily accessible public complaint mechanisms to handle reports about corrupt activities can help to enhance the accountability and transparency of public and private sector entities. At the same time, they constitute an important channel for smaller businesses to raise their voice against corruption. The objective of a public complaints mechanism is to enable anyone who becomes aware of acts of corruption or general maladministration to report it to competent authorities. Generally, business people may use three different routes to report acts of corruption: filing complaints through company internal procedures, approaching public agencies and using the media to publicize a case. Increasing the level of reporting of corruption among smaller businesses would help to ensure that similar patterns of offences are uncovered and that appropriate corruption prevention strategies are identified and implemented. Why public reporting systems often do not work for smaller businesses? There is a series of challenges that national anti-corruption authorities and other stakeholders need to tackle in order to make reporting mechanisms more accessible and effective for SMEs, namely: Lack of awareness; Limited access to public agencies, including anti-corruption agencies;

Lack of confidence; Blocked resources; Fear of reprisals; Limited literacy skills; Improving the legal awareness and access to justice of small and medium-sized enterprises; Cases of petty corruption not always investigated.

Recommendations:

- **Awareness-raising and education.** Even though awareness-raising forms part of almost all national anti-corruption strategies, some of the main reasons why businesses do not report corruption (namely the view that it would not change anything and the lack of knowledge about where and how to report) reveal obvious shortcomings in this domain. The public authorities, particularly NAC, must continue and broaden awareness-raising activities by encouraging public and economic agents to report corruption acts.
- **Protection of small and medium-sized enterprises that report corruption.** If reporting by SMEs is to be encouraged, appropriate safeguards need to be in place to protect those who report their suspicions and experiences from reprisals. The problems faced by businesses in that context have been documented in a number of studies, which have looked at entrepreneurs who have reported corruption in public sector agencies. The difficulties relate to whistle-blowers being discriminated against or being subjected to harassment, intimidation or reprisals as a consequence of reporting what they believe to be illegal conduct. The public authorities to regularly assess to what extent the channels by which information on corruption is received insure the protection of persons using the channels, and do not allow disclosure or leaks of the persons' identity. Specific protection measures must be established and applied depending on whether the submitted information has led to an investigation, or on the stage of the investigation.
- **One-stop-shop for reporting corruption acts.** The para.3.5 of this report describes deficiencies related to the anti-corruption hotlines system. In particular, the report highlights the shortcomings that a person wishing to denounce acts of corruption will meet. In order to eliminate these shortcomings, it is recommended to set up a single national phone line, by which all categories of information will be reported, received and addressed. The single hotline shall be identified through a simple and memorable phone number that will be promoted and placed in all relevant resources of public authorities. Such a phone line will serve as a one-stop-shop, having the role to receive, classify and forward the call depending on category of the received information.
- **Internal reporting lines.** Public authorities should stimulate and recommend economic agents to apply internal reporting whistleblowing systems. Businesses shall have a point of reception (phone line, email, mailbox) where their employees can report corruption acts. It is obvious that these measures are realistic for large and in particular, cross-border companies, whereas implementation of these measures could be problematic for SMEs. For these reasons, the public authorities should stimulate sectoral business associations to create such points to receive information related to corruption.

4.3. Cooperation between anti-corruption authorities and business associations, chambers of commerce and non-governmental organizations

In a situation with a low degree of cooperation between anti-corruption authorities and business associations, chambers and NGOs, the latter organizations collect complaints from local entrepreneurs and arrange regular meetings with anti-corruption authorities or other relevant public institutions for general discussions about problems faced by businesses and the situations in which bribes are frequently extracted from companies. If there is what could be categorized as a medium degree of cooperation, business associations, chambers of commerce and NGOs collect complaints and reports from SMEs and forward them to national anti-corruption agencies for investigation. If, however, there is a high degree of cooperation, business associations, chambers of commerce and NGOs collect complaints and reports from businesses, screen for eligibility (ensuring that they concern a case of corruption and no other offences) and completeness (ensuring that all required information is available) before forwarding them to anti-corruption agencies for investigation. In light of the Moldovan situation, it is considered of crucial importance and that all relevant stakeholders build an inclusive network, in which both public authorities and associations of local businesses can confront and discuss points of collaboration.

Recommendations:

The proactive role of NAC. The NAC must take a leading role in boosting cooperation activities. A first step in this direction might be the creation of an advisory committee on anti-corruption, which will comprise business

representatives and any related authority. The Committee may be either a separate initiative of NAC or a subcomponent of other larger entities (e.g. the Economic Council of the Prime-Minister). The Committee should become a dialog platform between the private and the public sectors, where parties examine issues related to corruption. In this regard the experience of other authorities who have created similar committees (e.g. the RIA Working Group of the Ministry of Economy) might serve as a good example.

4.4. Pro-active role of business associations

Business associations that bring together SMEs from a certain geographical region or business sector can do a lot to increase the efficiency of anti-corruption initiatives launched by individual enterprises. One of the most important ways that such associations can support SMEs is by acting as a focal point for and a channel and coordinator of collective action. They can also serve as platforms that reach mutual agreements, make commitments to ethical standards—including collective agreements to establish and honour a code of conduct—and carry out other joint actions to prevent corrupt practices.

In addition to organizing and facilitating collective action, business associations in some countries have launched forms of corporate citizenship awards for different categories of companies in recognition of ethical business conduct and compliance with anti-corruption standards. Such contests are voluntary and, if linked to certain incentives—for example, easier access to financing — can attract many applicants. Chambers of commerce can also assist SMEs in their fight against corruption through the activities mentioned above. They can, for instance, educate entrepreneurs and help them to recognize the longer-term costs of corruption compared with the short-term gains derived from, for example, bribing an inspector in order to avoid certain taxes. In many SMEs, human resource constraints mean that managers may not be in a position to consider the implications of corrupt practices. Examples of measures to consider by business associations, trade unions and chambers of commerce can make a significant contribution by:

- Organizing and facilitating collective action and providing opportunities for networking and information exchange
- Helping SMEs to reach collective agreements such as anti-corruption standards, ethical business principles and codes of conduct
- Setting up help desks and complaint boards for members
- Forming confederations of business associations to have a stronger influence (lobbying for change) at higher levels of authority

NGOs can also assist SMEs in combating corruption by conducting research, publishing information, educating businesses, raising awareness and taking on some of the tasks suggested for business associations above. The usefulness of NGOs in that respect usually depends on the strength and outreach of the respective NGO and the level of trust that it commands in the business world. In terms of awareness-raising, for example, various surveys and interviews have shown that some SMEs would highly value the establishment of a neutral NGO that publishes proved corruption practices anonymously in the mass media. In this case, examples of measures to consider NGOs can make a significant contribution by are:

- Conducting research, collecting and disseminating data and carrying out regular assessments of the scope and dynamics of corruption affecting SMEs
- Providing education and training on anti-corruption measures to entrepreneurs
- Carrying out awareness-raising campaigns
- Disclosing the corrupt practices of public officials and other companies
- Organizing contests and awards for ethical business practices
- Publishing information on good and bad practices
- Providing legal assistance
- Setting up whistle-blower hotlines

- Business-to-business assistance

Recommendations:

- **Creating a network of pro-active business associations.** Authorities responsible for combating corruption will not be able to ensure a continuous and individual interaction with all economic agents. However, a larger and more active interaction can be achieved through business associations. Is important NAC to identify the business associations that will act as coordinators, maintain continuous contacts with them (possibly through the Committee on anti-corruption) and stimulate active interaction between the associations and their members.

4.5. Improving business processes and ethics

In terms of improving business processes and ethics, encouraging entrepreneurship and promoting sustainable business growth, there are numerous examples of successful partnerships between SMEs and multinational companies (in particular those forming part of the United Nations Global Compact network)³⁶. In the context of assisting SMEs to combat corruption, those partnerships can be enhanced in a variety of ways. For example, anti-corruption toolkits may include provisions on the assessment and monitoring of the extent to which partners in business (agents, suppliers, etc.) adhere to ethical standards. Bearing in mind that the business case is one of the most important elements of any anti-corruption strategy for SMEs, compliance standards can work well with smaller companies if their supply chain partners—in many cases their main customers—demand adherence to the standards as a condition for doing business with them. In addition to requiring certain forms of ethical conduct, larger companies can also assist SMEs in their individual corruption-related problems by utilizing their greater bargaining power and making themselves heard by the Government. Large multinationals that have invested heavily in a certain geographical region are good partners in that respect. Another option to consider is the convening of regular round tables to exchange experiences and discuss problems as well as action plans and strategies with other businesses. In this aspect, examples of measures to consider are:

- Developing a system for promoting business ethics and anti-corruption standards across supply chains, involving the introduction of a system of incentives and sanctions
- Engaging supply chain partners in the conclusion of anti-corruption agreements
- Seeking alliances with multinational companies in order to make use of their influence and bargaining power to support SMEs in their fight against corruption
- Convening regular round tables with supply chain partners with the objective of exchanging experiences, discussing problems and assessing possibilities for joint action
- Launching anti-corruption initiatives within selected industries and firm clusters
- Forming specific stakeholder alliances (e.g. with banks, information communication technology (ICT) providers and large companies) to encourage a certain group or sector of smaller firms to fight corruption through special incentives
- Involving ICT service providers (telecommunications and IT companies) and gaining their support for specific anti-corruption initiatives (specifically in the areas of training and awareness-raising)
- Exploring possibilities of engaging financial institutions in helping SMEs fight against corruption (e.g. by facilitating access to credit to reward good business practice or to enable entrepreneurs to take legal action)
- Strengthening business coalitions by articulating particular requirements for SMEs
- Initiating negotiations to adapt existing codes of conduct to the needs of smaller businesses

³⁶ <https://www.unglobalcompact.org/>

4.6. Internal prevention and control mechanisms for SMEs

Additional measures should be adopted by businesses, independently of other actors, to prevent and sanction corrupt conduct and an assessment of their potential for application in SMEs. While those tools can be useful for certain businesses, it is clear that the majority of SMEs in developing countries would not be able to survive in a corrupt environment by simply proclaiming a zero tolerance policy. The tools presented below can be applied by SMEs that are able to refrain from corruption without facing competitive disadvantages or being driven out of business and should be applied in parallel to anti-corruption efforts by the Government and intermediary institutions.

Recommendations:

- **Internal policies for economic agents.** NAC should stimulate economic agents to implement internal policies oriented to prevent and monitor internal corruption acts. The policies in question should be simple in implementation and involving no costs, but they shall be effective. In practice, it is recommended NAC to develop the template of a checklist, which will include the main aspects that an economic agent should implement. This document will serve as a mechanism to check the level of implementation of policies, but also as a training tool for economic agents. Annex II could serve as a template of a such checklist.

4.7. Codes of conduct

A code of conduct (or ethical business principles and standards) prohibiting all forms of corruption is often implemented by companies around the world to demonstrate their commitment to fighting corrupt conduct. However, there is evidence that smaller businesses either do not feel comfortable introducing such codes or do not expect any gains or advantages from doing so. In particular, SMEs express concern that such codes are unlikely to help them to cope better with a corrupt business environment because they put them at a disadvantage compared with a competitor that is not adhering to the code. However, if adopted throughout an entire business section and addressed to a larger group of SMEs, such codes could be a valuable tool to promote integrity in industries that are dominated by smaller firms. A code of conduct is an important management tool for establishing and articulating a company's values, responsibilities, obligations and ethical ambitions and the way it functions. It also serves as a reference in support of day-to-day decision-making, as it clarifies the corporate mission and principles, linking them with standards of professional conduct. A code of conduct can only be effective and useful in practice if it is disseminated, implemented, monitored and embedded at all levels so that behavior is influenced.

A code of conduct should:

- State a company's core values and principles that should guide decisions;
- Specify methods for addressing specific issues that are in line with corporate values;
- Describe how employees can seek guidance in ethically unclear or demanding situations;
- Detail how to report breaches of the code;
- Provide a set of incentives and sanctions that ensure compliance.

Also, it should be drafted in a way to:

- Be clear about the objectives that the code is intended to accomplish;
- Seek support and input for the code from employees at all levels of the company;
- Reflect relevant laws and regulations;
- Write in a simple and clear manner, avoiding legal jargon and passive voice;
- Make reference to real-life situations (particularly next to definitions of what is forbidden);
- Include practical examples;
- Include resources for further information and guidance;

- Make it user-friendly, otherwise it will not be used.

Recommendations:

- **Adopt Code of conduct.** It is recommended NAC to develop and adopt a Code of conduct that will disseminated through the website of the NAC, and serve as a model for economic agents.
- Adherence of economic agencies to the Code of conduct. CNA will urge firms to adhere to the code of conduct. However, the code will have a recommendatory character, and adherence of economic agencies to the Code will be voluntary.

4.8. Internal structures for ethics

Internal systems for ethics – a subdivision or an employee (“ethics officer”) of the enterprise – need to be in place to assure employee compliance with established standards, codes or policies. They should include staff training, evaluations of compliance, appropriate resources for the ethics officer and employees and protection for people who report misconduct or actions that they perceive as contrary to the principles of the code. For smaller companies, that might not be an option because relations between employees are more informal and, because of the relatively small number of employees working in an SME, anonymity cannot be guaranteed. The introduction of an open-door policy or the establishment of anonymous complaint boxes are possible alternatives. In addition, as mentioned above, the reporting system could rely on external resources and professionals, who will not be part of the staff, but that could be contacted every time a suspicious malfeasance arises.

4.9. Training of general public and employees of economic agents

Training for SME owners and employees is often cited as an important tool for effective corruption prevention. Employee education and training is an ongoing process. The first stage of raising awareness among employees can be coupled with training workshops. The second stage is to turn awareness of the issues into action by implementing good practice and changing behavior

Staff involvement in awareness-raising will help people understand the importance of the challenge of overcoming corrupt practices. Representatives from different divisions can also help disseminate good practice through their own teams and by involving staff in the review process and reporting procedures. Although ideal, holding a one- or two-day workshop could be over-cumbersome and expensive for SMEs. Alternatively, good information (through posters or leaflet) that reminds the personnel the zero-tolerance policy of the company could be an effective instrument to build a culture of trust and transparency, especially in small environments.

Particular attention should be given to the training of the appointed “ethics officer”. Since he or she will be the first point of reference for employees seeking guidance, the officer needs to have a good understanding of the issue. Since more intensive regular training sessions can constitute a high cost for the SME, the officer could attend expert meetings or keep contacts (through a dedicated website or email list) to gain more insight into relevant issues.

Recommendations:

- Drafting and public dissemination of training materials. NAC shall stimulate and facilitate training of the employees of businesses. However, organizing seminars can be cumbersome and costly for both SMEs and NAC. In these circumstances, the best option is NAC to develop and place on its website relevant training materials. It is important these materials to be brief and highly instructive, and provide practical solutions for various situations related to anti-corruption legislation.
- Creating an information platform on the website of NAC. We recommend NAC to create an informative section on its website, which will contain training materials, practical guidance and model documents for economic agents (checklist, the model code of conduct).

4.10. Maintenance of books, records, financial statement disclosure

Companies should ensure that all records involved in their activity be retained for an agreed number of years with timetables for the destruction of main ledgers and supporting records. The legislation should clarify what constitutes a

document or source of information and the original documents or information be retained (originals of documents such as contracts, agreements, guarantees and titles to property may be required for other purposes including presentation as evidence to courts). The companies should be committed to avoid off-the-books accounts; recording of non-existent expenditure; the entry of liabilities with incorrect identification of their objects; the use of false documents; and the intentional destruction of bookkeeping documents earlier than foreseen by the law.

The actions listed above are just an example of readily available tools that could increase the integrity of the private sector, and in particular of the small and medium enterprises. It is well understood that any step must be part of an entire system, which requires continued attention and engagement by both the public authorities and representatives of the business. Actions from one side without the other will result in waste of resources and frustration, with possible polarization of these two wings.

Annex I: review on the status of compliance of the existing law with the common international standards in preventing and combating corruption in the private sector

Practical challenges	Pertinent int'l treaty article, with description and technical guidelines	Rec. #	Detailed options	Level of intervention (legislative/ normative, institutional/organizational, policy level or other)	Responsible entity	mandatory or preferable	Country compliance (high, medium or low) Indicate relevant rule/law
Civil, administrative or criminal penalties for the private sector	<p>UNCAC Article 12.1.a</p> <p>UNCAC Technical guidelines: In reviewing their legislation or regulatory regime, States may wish to turn to the work of international organizations or entities for guidance or inspiration. The International Standards of Auditing (ISA) are currently undergoing a revision process.</p> <p>ISA 240 has recently been revised and focuses on the behavior expected from an auditor who is confronted with fraud during the certification of financial statements which is likely to enhance the contribution of the profession to the prevention and detection of corruption. In principle, it is for the business world to implement those standards, but States can no doubt support this process in various ways. States Parties are likely to have appropriate criminal sanctions against individuals involved in corruption in the private sector.</p>	1	Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and	legislative/normative	State / Companies	Mandatory	<p>Medium</p> <p>Relevant Law: -Accounting Law No.113/2007 -Law on Auditing Activity No.61/2007 -National Accounting Standards -National Auditing Standards Contravention Code (Art.295)</p>
	<p>CoE Criminal law convention on corruption (CrLCC) Article 2 - Active bribery of domestic public officials Article 4 – Bribery of members of domestic public assemblies Article 6 – Bribery of members of foreign public assemblies Article 5 – Bribery of foreign public officials Article 9 – Bribery of officials of international organisations Article 10 – Bribery of members of international parliamentary assemblies Article 11 – Bribery of judges and officials of international courts</p>	2	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.	legislative	State	Mandatory	<p>High</p> <p>Relevant Laws: -Articles 15-17 of the Law No.90/2008 on Preventing and Combating Corruption -Articles 324, 325, 333 and 334 of the Criminal Code</p>

			(This rule extends to foreign public officials, member of any domestic, foreign and international public assemblies, as well as officials and judges of international organizations)				
	CoE Criminal law convention on corruption (CrLCC) Article 7 – Active bribery in the private sector	3	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.	legislative	State	Mandatory	High Relevant Law: ·Article 334 of the Criminal Code
	CoE Criminal law convention on corruption (CrLCC) Article 8 – Passive bribery in the private sector	4	Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.	legislative	State	Mandatory	High Relevant Law: ·Article 333 of the Criminal Code
Civil, administrative or criminal penalties for the private sector	UNCAC Article 12.1.b UNCAC Technical guidelines: Courts and other regulators should have the authority to impose a range of other sanctions, which may include financial penalties, compensation and confiscation penalties, debarment,	5	Each State Party shall where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures”	legislative	State	Mandatory	High Relevant Law: Articles 98 (2) d) and e), 106 and 1061 of the Criminal Code (regarding

	<p>supervision or closure of companies, disqualification of directors and suspension of professional accreditation of, for example, company accountants and lawyers.</p> <p>CoE Criminal law convention on corruption (CrLCC)</p> <p>Article 19 – Sanctions and measures</p> <p>1) Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.</p> <p>2) Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.</p> <p>3) Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.</p>						<p>· compensation and confiscation penalties)</p> <p>· Articles 333, 334 and 335 of the Criminal Code (regarding imposing fines, imprisonment, debarment, supervision or closure of companies, disqualification of directors and suspension of professional accreditation)</p> <p>· Articles 21 (3), 333, 334 and 335 of the Criminal Code (sets up criminal liability of legal persons)</p>
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Measures to promote cooperation between law enforcement and the private sector	<p>UNCAC Article 12.2.A</p> <p>“Measures to achieve these ends, MAY include, inter alia:</p> <p>a) Promoting cooperation between law enforcement agencies and relevant private entities;</p> <p><u>UNCAC technical guidelines:</u></p> <p>Article 39 discusses the promotion of cooperation between law enforcement agencies and relevant private entities.</p> <p>While there may be no specific duty to report crime to law enforcement legal entities – although some countries may require the reporting of money-laundering – States Parties should encourage legal persons to report corruption-related crime to law enforcement authorities, even though a statutory obligation on all private individuals and legal entities to report crimes to the law enforcement authorities may be preferable.</p>	6	Law enforcement in its turn should: consider designing and offering awareness-raising seminars,	Legislative Institutional and policy	State	Preferable	High
		7	establishing single points of contact	Legislative institutional	State	Mandatory	High

		8	as well as providing preventive advice.	policy	State	Preferable	High Relevant Law: -Article 4 (1) e) of the Law No. 1104/2002 on the National Anti-corruption Centre (provides that the NAC shall ensure the conducting of assessment for corruption risks within public authorities and institutions by providing training, advice, monitoring and data analysis on corruption risk assessment, and to coordinate the development and fulfillment of integrity plans)
	CoE Civil law convention on corruption (CiLCC) Article 9 – Protection of employees		Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.	Legislative	State	Mandatory	Low Law: N/a Law on Preventing and Combating Corruption and Law on the Code of Ethics of the Public Official set up provisions oriented to ensure protection against revenge for public servants denouncing corruption acts. However, these provisions do not apply to non-public officials.
Prevent corruption involving the private sector	UNCAC Article 5. Preventive anti-corruption policies and practices <u>UNCAC technical guidelines:</u> States Parties should require – or invite stock exchanges or other regulatory agencies to require – such standards and procedures to be part of any listing rules for publicly quoted companies.” These should be integrated as an ethics and business conduct programme to help ensure that a company’s staff, regardless of what they do and where they work,	9	In terms of promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, the main areas are: codes of conduct	Normative/Organizational	State & Companies	Mandatory	Low Law: N/a
		10	guidance on corruption	Policy	State	Preferable	Low Law: N/a

	understand and apply the entity's values and principles to their everyday conduct, relationships and decision-making, and comply with legal, organizational, professional and regulatory policies.	11	corporate governance codes	Legislative and policy	Companies	Preferable	High Law: ·Article 31 (2) a) of the Accounting Law ·The template of the Corporate Governance Code (CG Code is mandatory for the public interest company and recommendatory for other private entities)
		12	conflict-of interest regulations	Legislative	State / Companies	Preferable	High Law: ·Articles 85 and 86 of the Joint Stock Companies Law No.1134/2007 ·Law No.16/2008 on Conflicts of Interest
		13	internal audit controls.	Legislative	State	Preferable	Low Law: N/a Internal audit controls rules are mandatory for some specific activities only (banking, investment services), and are not applicable to ordinary companies
	UNCAC Article 10. Public reporting Review of administrative procedures "Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:"	14	(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;	Legislative	State	Mandatory	High Law: ·Law No.239/2008 on Transparency in the Decision-Making Process (imposes various transparency requirements during the decision-making process by all public agencies)

							<ul style="list-style-type: none"> Article 13 of the Law No.235/2006 on Basic Principles Regulating Entrepreneurial Activity (imposes ex-ante regulatory impact assessment)
		15	(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and	Legislative and institutional	State	Mandatory	High Law: <ul style="list-style-type: none"> Law No.239/2008 on Transparency in the Decision-Making Process (imposes various transparency requirements during the decision-making process by all public agencies) Articles 13 and 19 of the Law No.235/2006 on Basic Principles Regulating Entrepreneurial Activity (imposes ex-ante regulatory impact assessment)
		16	© Publishing information, which may include periodic reports on the risks of corruption in its public administration	Legislative	State	Mandatory	High Relevant Law: Article 5 l) of the Law No.1104/2002 on the National Anti-corruption Centre (provides that the NAC shall submit, each year until March 31, a report to the Parliament and the Government accounting for its activity. The annual report shall be published on the Center's website one month prior to being submitted to the Parliament and the Government)

<p>UNCAC Article 6. Preventive anti-corruption body or bodies</p> <p>CoE Criminal law convention on corruption (CrLCC)</p> <p><u>Article 20 – Specialised authorities</u></p> <p>Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.</p>	17	Each State Party shall, in accordance with the fundamental principles of its legal system, a) ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:	Legislative	State	Mandatory	High
	18	a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;	Legislative	State	Mandatory	High
	19	b) Increasing and disseminating knowledge about the prevention of corruption.	Policy	State	Mandatory	Medium
	20	2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article: a) the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.	Legislative	State	Mandatory	High
	21	b) The necessary material resources and specialized staff,	Legislative	State	Mandatory	High

		22	c) as well as the training that such staff may require to carry out their functions, should be provided.	Institutional	State	Mandatory	High Relevant Law: -Article 9 (1) h) and other articles of Law No.1104/2002 on the National Anti-corruption Centre -The National Anti-corruption Strategy for 2011-2016 (Parliament's Decision No.154/2011)
		23	1. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption	Policy	State	Mandatory	N/a
Standards and procedures to safeguard the integrity of the private sector	<p>UNCAC Article 12.2.B</p> <p>Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities.</p> <p>UNCAC technical guidelines: While the extent of Government regulation of the private sector may be the subject of debate, the private sector itself should be aware of the need for corporate integrity, business ethics and corporate social responsibility to stakeholders (such as customers, clients, citizens, employees and shareholders).</p> <p>The ability to deal with issues of business conduct and/or shape the activities around the responsibilities and duties of an organization are, however, complex challenges. Business organizations exist to make a profit. At the same time, businesses</p>	24	Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including: codes of conduct (or ethics or corporate governance programs) for the correct, honorable and proper performance of the activities of business	Legislative and policy	State	Preferable	High Law: -Article 31 (2) a) of the Accounting Law -The template of the Corporate Governance Code (CG Code is mandatory for the public interest company and recommendatory for other private entities)
		25	the prevention of conflicts of interest	Legislative	State	Preferable	Medium Law: -Articles 85 and 86 of the Joint Stock Companies Law No.1134/2007 (conflict of interest rules shall apply by the Joint Stock Companies only)

	increasingly have obligations imposed on them by stakeholders – including regulators, suppliers, buyers and the public at large – that go beyond the profit motive. One of the methods that organizations are utilizing to address these seemingly differing obligations is through the development of codes of conduct, or ethics or corporate governance programmes, and a closer alignment with the requirements and expectations placed on the public sector. Several sets of principles or models have been developed in recent years to provide useful sources of inspiration.	26	for the promotion of the use of good commercial practices among businesses	Internal regulations	Companies	Preferable	Low Law: N/a
		27	for the promotion of the use of good commercial practices in the contractual relations of businesses with the State;	Internal regulations	Companies	Preferable	Low Law: N/a
Transparency in the establishment and management of corporate entities	UNCAC Article 12.2.C Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities. States Parties should ensure that:	28	there is a public agency legally responsible for the approval of the formation and the registration of companies, as well as for receiving their accounts.	Legislative	State	Mandatory	High Law: ·Law No.220/2007 on state registration of legal entities and individual entrepreneurs
		29	Company registration procedures and information for legal entities registered in each country should ensure that full details of those involved are included and verified.	Legislative	State	Mandatory	High Law: ·Law No.220/2007 on state registration of legal entities and individual entrepreneurs
		30	Public agencies should be authorized to obtain (through compulsory powers, court-issued subpoenas etc.) information about the legal and natural persons involved when illicit activity is suspected or when such information is required by the agencies and others to fulfil their regulatory functions.	Legislative	State	Mandatory	High Law: ·Articles 34 and 341 Law No.220/2007 on state registration of legal entities and individual entrepreneurs ·Articles 6 e) and 25 (1 a) of the Law No.1104/2002 on the National Anti-corruption Centre

Preventing the misuse of procedures regulating private entities	UNCAC Article 12.2.D Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities; States Parties should ensure that all procurement requirements for public contracts adhere to policies and practices derived from the provisions of article 9. CoE Civil law convention on corruption (CiLCC) Article 8 – Validity of contracts 1. Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void. 2. Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.	31	In particular, entities should be made aware of the implications of failing to abide by the requirements, including debarment or rendering contracts void.	Legislative	State / Companies	Mandatory	High Law: ·Article 220 (1) of the Civil Code
		32	States Parties should review the continuing need for certain types of licenses and permissions where the provision has no direct government or strategic relevance, where there is the potential for misuse and where private sector forces may be more effective regulators of activity. Where relevant, consideration should be given to the processes for streamlining obtaining licenses and permissions, including “one stop shops”, to develop clear and widely available service standards. These standards should be made available to all applicants to define the level of service they can expect, the documents required and the remedies available if the issuing agency fails to comply with them.	Legislative, institutional and policy	State	Mandatory	High Law: ·Law No.235/2006 on Basic Principles Regulating Entrepreneurial Activity ·Law No.161/2011 on implementing one-stop shop for entrepreneurial activity ·Regulatory Reform of Entrepreneurial Activity Strategy for the years 2013-2020
Post-employment restrictions for public officials in the private sector	UNCAC Article 12.2.E Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure; (b) Timely reporting on revenue and expenditure; (c) A system of accounting and auditing standards and related oversight;	34	States Parties should consider prescribing measures that would have specific consequences for public officials who attempt to: Use their office to favour potential employers; Seek employment during official dealings; Misuse confidential information gained through public employment; Represent private interests on a matter for which they were responsible as a public employee; Represent (within a specified time period) private parties on any matter in front of the specific office or agency in which they had previously been employed.	Legislative	State	Mandatory	Medium Law: ·Article 20 of the Law No.16/2008 on Conflicts of Interest

	<p>(d) Effective and efficient systems of risk management and internal control; and</p> <p>(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.</p> <p>All States Parties should have formal procedures governing the move of public officials on resignation or retirement to those private sector entities with whom they have had dealings while in public service or for whom they may hold confidential or commercial information or where they may be employed to influence their former employers or colleagues. Such procedures should apply to both appointed and elected officials.</p> <p>Definitions of post-public employment activities and the procedures governing movement should be clear and understandable. States Parties may wish to consider:</p> <p>Permission being included in all terms and conditions of appointment; The right to impose conditions on use of information and contact with previous employers; The right to notify private sector competitors of a move of a significant public official to a rival firm; The right to debar any private sector entity from dealings with a State Party if any conditions are breached.</p> <p>In drafting such provisions, States Parties should consider: Length of time for any restriction; The precise level or group of officials subject to restrictions; Defining with some precision the area in which representation is not permitted by former officials.</p>						
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Internal auditing and certification procedures	<p>UNCAC Article 12.2.F Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.</p> <p>States Parties should ensure that auditing standards and private sector frameworks for the establishment of parameters for internal controls provide clear guidance and procedures on the core functions of internal audit in the private sector. These should be broadly stratified as: Legal entities should be legally obliged to keep proper financial records and prepare regular financial statements.</p> <p>CoE Criminal law convention on corruption (CrLCC) Article 14 – Account offences Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration: a) creating or using an invoice or any other</p>	35	a basic audit process reviewing the effectiveness with which assets are controlled, income is accounted for and expenditure is recorded; with penalties for late or incomplete submission to be placed on those entities under obligation to submit accounts.	Legislative	State	Preferable	High Law: • Article 89 of the Joint Stock Companies Law No.1134/2007
		36	guidance (by themselves or through stock exchanges, financial regulators or representative associations) on the level and size of internal audit capacity by size and turnover of the entity, as well as the level of professional training and accreditation necessary or required to perform adequately their audit functions.	Legislative	State	Preferable	High Law: • Law on Auditing Activity No.61/2007 • Accounting Law No.113/2007 (art.2 and 41)
		37	a system-based audit, reviewing the adequacy and effectiveness of financial, operational and management control systems	Normative	State	Preferable	Medium Law no.61/2007 on Auditing Activity (art.2)
		38	audits reviewing the legality of transactions and the safeguards against fraud and corruption;	Normative	State	Preferable	Medium • Law no.61/2007 on Auditing Activity (art.5 alin.(4)) • ISA 240
		39	a full risk-management-based audit	Organizational	State	Preferable	Low N/a
		40	For larger companies, such as those legal entities that are publicly traded, as well as large non-listed or privately held companies with substantial international business, there should be a requirement to have	Normative	State	Preferable	Medium • Law no.61/2007 on Auditing Activity (art.4) • Accounting Law No.113/2007 (art.2)

	accounting document or record containing false or incomplete information; b) unlawfully omitting to make a record of a payment.		accounts externally audited and published on an annual basis.				
		41	Such accounts should be registered with a public agency responsible for the registration of companies and their accounts.	Legislative	State	Preferable	High Law: • Law No.220/2007 on state registration of legal entities and individual entrepreneurs
		42	More detailed external audit requirements will be required for publicly quoted companies as specified by stock exchanges and financial regulators.	Legislative	State	Preferable	High Law: • Article 89 of the Joint Stock Companies Law No.1134/2007 • Law no.61/2007 on Auditing Activity (art.4) • Accounting Law No.113/2007 (art.2)
		43	States Parties should work with representative accounting professional bodies to promote wider training, qualifications and continuing professional development.	Legislative	State	Preferable	High Law: • Articles 15 f), 18 (5) c), 29 (2) d), 31 (3) b) and i) of the Law on Auditing No.61/2007
Maintenance of books, records, financial statement disclosure and accounting and auditing standards	UNCAC Article 12.3 In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention. The legislation should make specific reference in terms of legal	44	The establishment of off-the-books accounts	Legislative	State	Mandatory	High Law: • Accounting Law No.113/2007 • Articles 244 and 335 ¹ of the Criminal Code
		45	The making of off-the-books or inadequately identified transactions	Legislative	State	Mandatory	High Law: • Accounting Law No.113/2007 Articles 244 and 335 ¹ of the Criminal Code
		46	The recording of non-existent expenditure	Legislative	State	Mandatory	High

	definitions, requirements and sanctions to:						Law: • Accounting Law No.113/2007 Articles 244 and 335 ¹ of the Criminal Code
	<p>CoE Civil law convention on corruption (CiLCC) Article 10 – Accounts and audits 1. Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position. 2. With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.</p>	47	The entry of liabilities with incorrect identification of their objects	Legislative	State	Mandatory	High Law: • Accounting Law No.113/2007 Articles 244 and 335 ¹ of the Criminal Code
		48	The use of false documents	Legislative	State	Mandatory	High Law: • Accounting Law No.113/2007 Articles 244 and 335 ¹ of the Criminal Code
		49	The intentional destruction of bookkeeping documents earlier than foreseen by the law	Legislative	State	Mandatory	High Law: • Accounting Law No.113/2007 Articles 244 and 335 ¹ of the Criminal Code
		50	States Parties should ensure that there is appropriate legislative provision to ensure that all records involved in the activity of an entity be retained for an agreed number of years with timetables for the destruction of main ledgers and supporting records.	Legislative	State	Preferable	High Law: • Accounting Law No.113/2007 Articles 244 and 335 ¹ of the Criminal Code
		51	The legislation should clarify what constitutes a document or source of information and the original documents or information be retained (originals of documents such as contracts, agreements, guarantees and titles to property may be required for other purposes including presentation as evidence to courts).	Legislative	State	Preferable	High Law: • Accounting Law No.113/2007 Articles 244 and 335 ¹ of the Criminal Code

Prohibition of tax-deductibility of bribes and related expenses	UNCAC Article 12.4 The prohibition of tax deductibility of “bribes” includes bribes to foreign public officials. The prohibition against claiming a tax deduction for bribe payments should be extended to individuals. The prohibition against claiming a tax deduction for a bribe payment needs to be clearly stated, and the tax authorities must be careful to ensure that bribe payments cannot be concealed under legitimate categories of expenses, such as “social and entertainment costs” or “commissions”. The role of tax measures in the detection of corruption offences can only be served if State revenue or tax authorities are obligated or at least permitted to report their suspicions of corruption to the law enforcement authorities.	52	Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.	Legislative	State	Mandatory	High Law: • Articles 23-42 of the Tax Code
	UNCAC Article 26. Liability of legal persons	53	1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.	Legislative	State	Mandatory	High Law: • Article 68 of the Civil Code • Article 17 of the Administrative Code • Articles 21 (5) and 333-335 of the Criminal Code
		54	2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.	Legislative	State		
		55	3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.	Legislative	State		
		56	4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions	Legislative	State		

	CoE Criminal law convention on corruption (CrLCC) Article 18 – Corporate liability	57	<p>1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <ul style="list-style-type: none"> –a power of representation of the legal person; or –an authority to take decisions on behalf of the legal person; or –an authority to exercise control within the legal person; <p>as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.</p>	Legislative	State		
		58	<p>2) Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.</p>	Normative	State		

		59	3) Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.	Normative	State		
Prohibition of tax-deductibility of bribes and related expenses	UNCAC Article 9.1 Article 9. Public procurement and management of public finances 1. Each State Party shall , in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:	60	(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;	Legislative / Normative	State	Mandatory	High Law: <ul style="list-style-type: none"> • Law No.131/2015 on Public Procurement • Various regulations approved by the Government (Nos. 665/2016, 668/2016 665/2016, 669/2016 etc.)
		61	(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;	Legislative / Normative	State	Mandatory	High Law: <ul style="list-style-type: none"> • Law No.131/2015 on Public Procurement Various regulations approved by the Government (Nos. 665/2016, 668/2016 665/2016, 669/2016 etc.)
		62	(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;	Legislative / Normative	State	Mandatory	High Law: <ul style="list-style-type: none"> • Law No.131/2015 on Public Procurement Various regulations approved by the Government (Nos. 665/2016, 668/2016 665/2016, 669/2016 etc.)
		63	(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established	Legislative / Normative	State	Mandatory	High Law: <ul style="list-style-type: none"> • Law No.131/2015 on Public Procurement

			pursuant to this paragraph are not followed;				Various regulations approved by the Government (Nos. 665/2016, 668/2016 665/2016, 669/2016 etc.)
		64	(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.	Legislative / Normative	State	Mandatory	High Law: • Law No.131/2015 on Public Procurement Various regulations approved by the Government (Nos. 665/2016, 668/2016 665/2016, 669/2016 etc.)
	UNCAC Article 9.2 2. Each State Party shall , in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:	65	(a) Procedures for the adoption of the national budget;	Legislative	State	Mandatory	Medium (Low) Law: • Law No.847/1996 on on budget system and budget process
		66	(b) Timely reporting on revenue and expenditure;	Legislative and institutional	State	Mandatory	Medium Law: • Law No.847/1996 on on budget system and budget process
		67	(c) A system of accounting and auditing standards and related oversight;	Legislative / Normative	State	Mandatory	High Law: • Accounting Law No.113/2007 • Law No.261/2008 on Court of Accounts • Law No.847/1996 on on budget system and budget process • National Public Sector Accounting Standards
		68	(d) Effective and efficient systems of risk management and internal control; and	Legislative / Normative / Policy	State	Mandatory	High Law:

							<ul style="list-style-type: none"> • Law No.229/2010 on Public Internal Financial Control • National Standards for Internal Control in the Public Sector (Resolution of the Ministry of Finance No.189/2015) • The program for development of public internal financial control for the years 2014-2017 (Resolution of the Government No.1041/2013)
		69	(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.	Legislative	State	Mandatory	High Law: <ul style="list-style-type: none"> • Accounting Law No.113/2007 • Articles 244 and 335¹ of the Criminal Code
	UNCAC Article 9.3 3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, aiming:	70	to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.	Legislative	State	Mandatory	High Law: <ul style="list-style-type: none"> • Accounting Law No.113/200 • Articles 244 and 335¹ of the Criminal Code
		71	and to prevent the falsification of such documents.	Legislative	State	Mandatory	High Law: <ul style="list-style-type: none"> • Accounting Law No.113/2007 • Articles 244 and 335¹ of the Criminal Code

CHECKLIST

Measures for assessment of anti-corruption policies implemented by the economic agents

- ☐ provide trainings regarding anti-corruption measures to the employees of your company (see www.cna.md/instruire)
- ☐ inform the employees of your company about the anti-corruption hotline by which information on corrupted actions can be reported
- ☐ adopt an internal Code of Conduct and inform the employees of your company about its provisions
- ☐ create and hold an internal resource (mailbox, phone line or email) by which information on corrupted actions can be reported
- ☐ explore periodically recommendations in field of anti-corruption, issued by NAC (see www.cna.md/recomand)
- ☐ appoint a person that shall be responsible for the anti-corruption and ethics policies in your company
- ☐ ...

Important: Use this checklist to identify the anti-corruption measures that are recommended to be implemented by your company.

The use of this check list is not compulsory and do not trigger the liability of your company. However, the checklist will help your company to avoid corruption acts and unethical behavior.

In addition to the measures above, you can apply any other legal measures aiming to prevent and combat corruption acts committed by the employees of your company.

For more information see www.cna.md/afaceri

