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STUDY

CORRUPTION PROOFING 2019-2020:

EFFICIENCY, COSTS, IMPACT

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This version of the report is a translation of the original, which was written in Romanian. Every effort has been made to ensure that the translation is a faithful reflection of the original. However, in all matters relating to the interpretation of specific terms, information, the original language version of the report shall prevail over this translation.

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ABBREVIATIONS

NAC	National Anticorruption Center
CP	Corruption proofing
Law 82	Integrity Law, No.82/2017
Law 100	Law on Normative Acts, No.100/2017
Methodology	Methodology for conducting corruption proofing
CPR	Corruption proofing expert report

EXECUTIVE SUMMARY

Corruption proofing (CP) is a corruption prevention tool applied by NAC since 2006. CP aims to identify the risks of corruption and the factors that generate them, in the draft legislative and normative acts, and to submit recommendations for their removal. The categories of factors that determine the occurrence of corruption risks refer to the shortcomings of a draft act in terms of formulation, legislative coherence, transparency and access to information, exercise of human rights and obligations, exercise of public authority duties, control mechanisms, liability and sanctions.

During the period under review by this study - **2019-2020**, NAC carried out corruption proofing of **1448 draft normative acts**. Draft **GD** had the largest share – **768**, followed by draft laws **- 577** and **103 departmental acts**. As for the distribution of the number of draft acts by years, we found that **most draft normative acts were promoted in 2020**.

From the perspective of the **drafters** of draft acts, we found that **MPs took the lead** in promoting draft normative acts, and most frequently, their normative intentions targeted **Area I** (a constant trend in the past 10 years) - **146 draft acts** and **Area V - 86 draft acts**. At the same time, in 2020 (pre-election year), the number of legislative initiatives of the President increased.

From the perspectives of the drafters and of proofing areas, specific for the reference period, especially the year **2020**, we found:

- **a three-time increase** in draft acts promoted in ***Area V*** *"Work, Social Insurance, Health and Family Protection"*. This increase is also significant in relation to the periods analyzed in previous CP studies, when the social area was at the top of regulatory concerns more around the elections;
- a larger number of draft acts were also initiated in ***Area II*** *"Economy and Trade"* compared to the previous periods, the substantiation being the need to support the business sector and the employees in this sector.
- an increase for ***Area IV***, the initiatives promoted in this sector, also being a reaction to the challenges in the education system and the area of culture that have been generated by the Covid19 pandemic and the inherent restrictions.

In 2019, the number of normative acts of the Government that **eluded corruption proofing** began to **increase**, their share reaching **30% in 2020.**

In 2019-2020, there is **an increase in the share** of 4 risk factors: ***lack/ambiguity of administrative procedures; harm to the interests contrary to the public interest***; ***legal gaps and unrealizable norms.*** At the same time, in 2020, we find a decrease in the share of the "ambiguous language" factor**.**

Top **corruption risks** found by NAC experts in draft laws is practically unchanged and looks like this:

1. misuse of one's official status;
2. exceeding service duties;
3. conflict of interests and/or favouritism;
4. passive corruption;
5. active corruption;
6. exerting undue influence;
7. influence peddling.

In 2020, some interesting aspects derive from the CPR findings:

- a triple number of draft acts bearing the risk of "***tax evasion***"as well as of "***swindling" actions***;
- an increased number of draft acts that can lead to ***failure to comply with the regime of gifts, violation of the legal regime of***

incompatibilities, influence peddling, and exerting undue influence.

From the perspective of areas vulnerable to corruption, we find that:

- more vulnerable to corruption risks are the areas "***Economy and Trade***"(II),"***Budget and Finance"*** (III) and ***Area IV "Education, Culture, Cults and Media***";
- the risks of ***abuse of service*** and of ***exceeding one's service duties*** can manifest themselves mostly poignantly in ***Areas II*** (Economy and Trade) and ***III*** (Budget and Finance)
- in 2020, the risk of ***passive and active corruption*** was most often detected in the draft normative acts in ***Area IV "Education, Culture, Cults and Media"*** and ***Area V "Work, Social Insurance, Health and Family Protection";***
- the risk of ***improper influences*** was more frequently in draft acts that intervened in area ***III "Budget and Finance".***

The evaluation of the **effectiveness of the CPR recommendations** denotes the preservation of the relatively high level of acceptance, the recommendations being accepted in proportion of **63%**.

The risk factors removed more frequently from the draft normative acts, as in the case of previous study findings, are those that can be remedied more easily and ***concern legislative coherence and language formulations of the draft acts***. An encouraging trend is the willingness of draft normative act drafters to abandon/remedy the risk factors related to ***exaggerated costs of the norms***, removal of ***blanket rules***, of the provisions establishing ***excessive or parallel duties of public entities*** as well as regulation of ***control mechanisms*** in draft acts.

As for corruption risks, in **2019-2020** we attest to the reluctance of the drafters to remove the risks of corruption related to:

- bribe giving and taking (private sector);
- irregular use of funds and/or assets;
- fraudulent obtaining of funds from foreign assistance;
- embezzlement of funds and/or assets

The typology of private interests and draft acts generating unjustified costs has been grouped into 7 categories, as follows:

- Public property management (change of land use and use of uninhabitable areas);
- Public-private partnerships;
- Tax exemption;
- Environmental protection;
- Public procurement;
- Electoral character;
- "COVID" draft acts.

A review of the draft laws according to the typology of the interests promoted shows that the law-making process is further affected by substantial flaws in what concerns the reasoning sufficiency of the normative solutions, and particularly of the economic-financial reasoning. The finding of the previous Study remains valid viz. that draft normative acts are not always subject to a regulatory impact assessment (when necessary) or contain the set of necessary acts required for certain categories of draft acts.

The summary of **costs of interest promoting draft acts** (when it was possible to evaluate, especially for the first category of draft acts) shows the following:

Avoided costs - Total amount of costs calculated on draft acts rejected or withdrawn:

MDL 1.539 billion;

Imminent costs - Total amount of costs by draft acts passed:

MDL 2.54 billion

The **conclusions and recommendations of the Study** were formulated to remove the general shortcomings of the regulation-making process in the Republic of Moldova as well as the shortcomings from the vulnerable areas that had been covered by the typology of interest promoting draft acts. Moreover, some of the recommendations of this Study reiterate the recommendations of previous research on this subject.

METHODOLOGY OF THE STUDY

This Study is designed to review the impact of corruption proofing over 2 years - 2019-2020 - and is the third study in this format that aims to look at NAC proofing from a number of angles.

The Study looks at the phenomenon of promoting individual/private/corporate interests to the detriment of the public interest through draft normative acts and how CPR of NAC can contribute to stopping the promotion of prejudicial interests. The Study also presents an assessment of the cost of damages caused by the draft normative acts qualified as promoters of interests.

The Study concerns **two broad categories of acts: Government decisions and laws, initiated by both the government and members of Parliament**. To cover the review topics of this Study, these categories of draft laws have been looked at by applying a series of filters, as follows:

a. drafters of normative acts;
b. CP areas;
c. status of acts: approved and published in the Official Gazette, withdrawn/rejected/ null and void;
d. quality of acts: liable or non-liable to CP;
e. status of acts: acts submitted and subject to CP and acts having evaded CP
f. risk factors and corruption risks.

A number of findings of the study concern **effectiveness of the CP by NAC** for 2019-2020. The effectiveness was measured by comparing the number of corruptibility risks formulated in CPR to the number of recommendations accepted and the risks removed by the drafters from the texts of the draft acts approved/passed, withdrawn, rejected or declared void.

Typology of private interests promoted by the draft normative acts was deduced by the NAC experts based on the experience of carrying out the CP during 14 years - from 2006 to 2020 - and refers to the areas/sectors of the normative framework in which the promotion of interests causing harm to the public interest has been most frequently detected. The typology for this Study has been partially revised, taking into account the evolution of the areas. Hence, for the purposes of this document, the following vulnerable areas have been identified:

- Public property management (change of land use and use of uninhabitable areas);
- Public-private partnerships;
- Tax exemptions;
- Environmental protection;
- Public procurement;
- Electoral character
- "COVID" draft acts.

An **assessment of the cost of damages** caused by the draft normative acts promoting interests was conducted based on **specially developed methodological benchmarks** for the subject-matter of this Study. According to these benchmarks, it was established that the assessment of damages during CP has different characteristics and depends on the area assessed/typology of the acts. Accordingly, each normative act can have different types of costs that are calculated individually, depending on the processes, resources, type of activities or subsequent effects of the proofed act. However, the methodological benchmarks have identified and fixed a number of common steps for all areas to be covered by experts and to facilitate the identification of the amount of the potential damage, and namely:

A. selection of cost-generating actions;
B. identification of actual costs of planned actions based on cost identification methods;

C. identification of the expected effects of the actions;

D. segregation of means from the total costs of damages identified;

E. determination of damages from the total calculated cost, depending on the confirmed elements.

We will note that all the calculations made and presented in this document relate exclusively to the case studies shown in the ***Annex*** of this document, which was made according to each category in the interest typology. The Annex contains cost assessments for the examples from the draft normative acts, when this was possible, and the list of missing data/information that prevented a cost assessment, when the assessment was impossible.

I. GENERAL FINDINGS: SAMPLE, RISK FACTORS, INTERESTS

This Study represents a continuation of previous review and synthesis of corruption proofing of draft normative acts, an activity carried out by NAC for about 15 years. The study aims to quantify and evaluate corruption proofing results for **2019-2020** (hereinafter – *proofing or, where appropriate, CP)*.

Previous studies on corruption proofing have successively covered two periods: 2010-2015[1], 2016-2018[2], and they provided a set of findings on:

- the quality and integrity of the normative creation process in the Republic of Moldova, a process looked at from the angle of corruption proofing and by applying several filters: category of drafters, areas, promoted interests, typology of such interests, etc.;
- corruption proofing effectiveness: the level of acceptance of NAC expert recommendations made by drafters draft normative acts;
- costs of draft acts promoting interests and potentially prejudicial to the public interest;
- (in)developments in areas and sectors criticised by NAC experts, etc.

The documents invoked *above* also included specific recommendations addressed to the public authorities of the Republic of Moldova, empowered to initiate and approve/adopt normative acts that have been necessary to remedy the deficiencies and inaccuracies detected during the CP exercise.

We recall that CP was introduced in 2006 as mandatory proofing of all draft normative acts *(except a) policy documents; b) individual acts on reshuffling; c) decrees of the President of the Republic of Moldova; d) Government instructions; e) Government decisions approving opinions on draft laws and decrees of the President of the Republic of Moldova; f) international treaties, acts granting full powers and expressing the consent of the Republic of Moldova to be bound by an international treaty)*, so that, before submission of the completed draft act to the Ministry of Justice for legal examination, the drafters of the acts had to request a corruption proofing from NAC.

Subsequent developments in the regulatory framework have changed the 2006 approach, an aspect reviewed in the previous Study. It is mainly about the new provisions of the Integrity Law, no.82/2017[3] and the Law on Normative Acts, no. 100/2017[4].

The passing of Law 100/2017 brought about

[1] See Study "Legislating Interests: *Quid Prodest* (Who Benefits)? Corruption Proofing Findings", Chisinau, 2017.

[2] See Corruption Proofing Study for 2016-2018: Efficiency, Costs, Impact, Chisinau, 2020

[3] Art.25 states that corruption proofing is a measure of integrity control in the public sector that falls under the responsibility of the NAC. Art. 27 of the same law provides that corruption proofing is done based on the Methodology for conducting the Corruption Proofing of Draft Legislative and Normative Acts, approved by the College of the National Anticorruption Center, which establishes the objectives and stages of corruption proofing, the description of the typology of risk factors that determine the occurrence of corruption risks and the detailed structure of the corruption proofing report.

[4] Article 35 of the Law on Normative Acts, no. 100/2017 stipulates, *"(1) Corruption proofing is mandatory for all draft normative acts, including for draft normative acts developed by MPs, and is intended to: a) ensure compliance with the draft provisions of national and international anti-corruption standards; b) prevent the appearance of regulations that would favor corruption, by developing recommendations for revising those regulations or for reducing their negative effects [...] Corruption proofing is performed according to the methodology approved by the National Anticorruption Center. [...] Upon receipt of the corruption proofing report, the draft act drafter shall complete the information note on the draft act with information on the findings of such proofing and, as appropriate, shall include a summary of the objections and proposals of the National Anticorruption Center.*

changes, including conceptual changes, to the normative framework on the corruption proofing process and stage. As mentioned in the previous Study: *"Even if Law 100/2017 established the obligation of corruption proofing, nonetheless, in contrast to previous regulations, the drafters of draft normative acts may submit the draft act for proofing at any stage (but not in its final version and after consultation with all interested institutions), at the same time, being apparently exempted from the obligation to reason their consideration or ignoring the recommendations made in the CPR. [...] Such an approach seems to substantially undermine the effectiveness, relevance and impact of the CPR, as the version proofed by NAC and the finalized version of draft acts may be consistently different, including at the conceptual level. At the same time, giving drafters discretion in whether or not to include the CP findings in the summary of opinions on the promoted draft acts further increases the risk of ignoring CPR findings and recommendations and substantially diminishes the efforts to prevent corruption and ensure integrity within the public sector."*

To mitigate the negative effect of this provision, the previous Study recommended to revise the provisions of Law 100/2017, a recommendation that is still valid in the context of this Study, since it has not yet been capitalized, with Law 100/2017 not having been revised.

To implement those two laws mentioned above, in 2017, the NAC developed and approved a new detailed Methodology[5] for the conduct of corruption proofing that establishes the objectives and stages of corruption proofing of draft legislative and normative acts, the typology of the risk factors that determine the occurrence of corruption risks and their description, the typology of corruption risks, as well as the detailed structure of the corruption proofing report.

In addition, since 2017, NAC has ensured the CPR preparation using modernized software, which ensures the preparation of reports in a standardized format that gives the possibility of collecting a significant volume of statistical data through the drafters of the acts proofed, draft act categories (laws or GD), regulatory areas, corruption risks, risk factors, proofing effectiveness, etc. All synthesized data, presented in the sections below, are based exactly on the information generated by the statistical module of the corruption proofing software "*E-expertise*".

This chapter focuses on the generalization and evaluation of the following aspects:

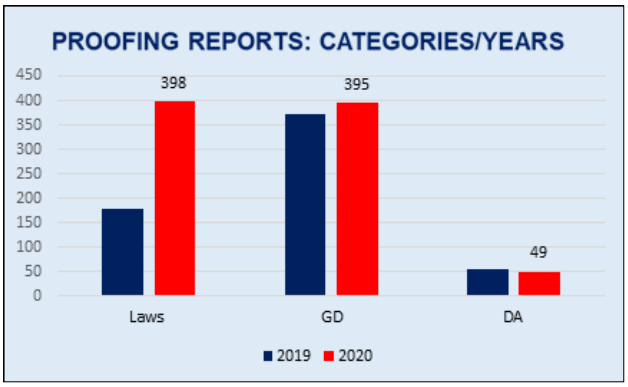
- REA sample in 2019-2020 in comparative aspects: by years, drafters, areas (*Section 1.1*);
- share and spread of Risk Factors in the draft acts subject to CP applying similar filters: years, areas, drafters (*section 1.2*);
- categories of corruption risks identified (*Section 1.3*);
- promotion of private interests with the potential to harm the public interest in draft normative acts (*section 1.4*), and
- description of the peculiarities of CP in 2019-2020, taking into account the political developments and the impact of the COVID 2019 pandemic on norm-making in the Republic of Moldova (*section 1.5.*).

I.1. 2019-2020 CPR sample

During the period under review (two years), NAC carried out corruption proofing of **1448** draft normative acts, of which:

- **768** GD,
- **577** laws and
- **103** departmental acts.

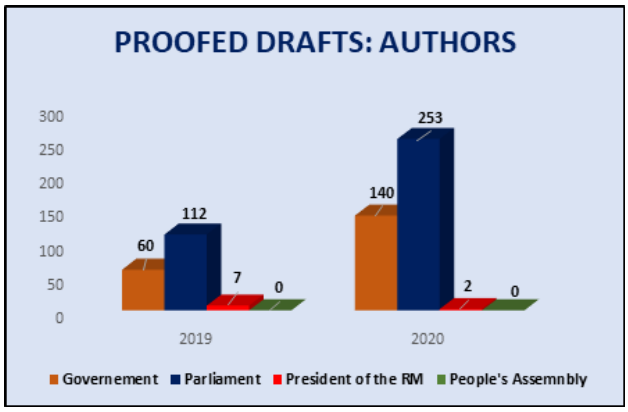
The distribution of draft normative acts by years and categories can also be viewed in Figure no. 1 below.



[5] The methodology was approved by the decision of the NAC College no.6 of 20 October 2017.

One can see that the number of draft acts submitted to CP increased in 2020, compared to 2019, a situation determined by political fluctuations in 2019 (formation and then restructuring of the parliamentary majority, respectively, succession of two governments) and, relative stability in 2020. Specific to 2020 is the practically equal number of GD and laws, while departmental acts were submitted for proofing with almost constant intensity.

The *e-Proofing* electronic template allows the tracking of draft laws from the perspective of the drafters (see Figure no. 2 below).



One can thus see that, in the period under review, the most active promoters of the **draft laws** were the MPs, while the Government was less present in the lawmaking area, compared to previous periods (2010-2015 and 2016-2018), given that it made and submitted fewer draft laws for proofing. To note, at the same time, that in 2019-2020, NAC did not proof any draft act promoted by the People's Assembly of Gagauzia.

As mentioned in previous evaluations, corruption proofing of draft normative acts is carried out based on ***five areas of proofing*** that derive from the General Classifier of Legislation as follows:

Area I. Constitutional and Administrative Law, Justice and Home Affairs

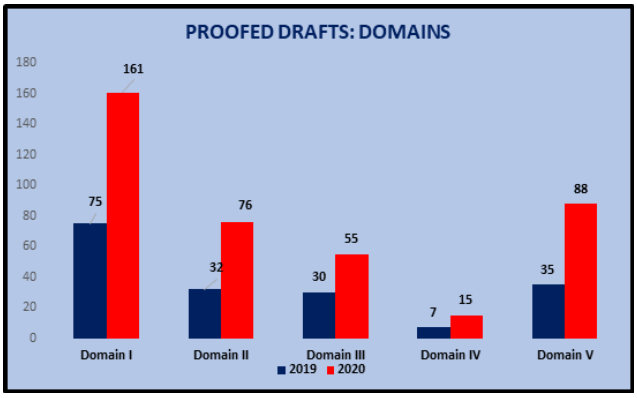
Area II. Economy and Trade

Area III. Budget and Finance

Area IV. Education, Culture, Cults and Media

Area V. Work, Social Insurance, Health and Family Protection

According to Figure 3 above, from the perspective of the areas of proofing, we note a preservation



of the trend described in previous studies[6] that most acts are from **Area I** *"Constitutional and Administrative Law, Justice and Domestic Affairs"* - **236 acts** in the reference period.

However, for 2019-2020, and especially for 2020, we find:

- a significant increase (of 3 times) in draft acts promoted in ***Area V*** *"Work, Social Insurance, Health and Family Protection"*. To note that this increase is also significant in relation to the periods reviewed in previous CP studies, when the social area was at the top of regulatory concerns more around the elections. It is also necessary to take into account the specifics of 2020 – a pandemic year (COVID19), which strongly influenced the nature of legislative initiatives, the drafters' attention being directed to strengthening the health system, as well as providing social support to people who were affected by the pandemic restrictions imposed on activities in the public and private sector.
- a larger number of draft acts were also initiated in ***Area II*** *"Economy and Trade"* compared to the previous periods, the substantiation being the need to support the business sector and the employees in this sector.

[6] The 2016-2018 Corruption Proofing Study: Efficiency, Costs, Impact held *inter alia"[...] most of draft acts proofed by the NAC in the reference period were from area I "Constitutional and Administrative Law, Justice and Home Affairs" (479 acts), followed by "Budget and Finance" (163 acts) and "Work, Social Insurance, Health and Family Protection" (162 acts). Surprisingly, compared to the previous period (2010-2015), Area II "Economy and Trade" was less tackled in the normative initiatives, both of the Government and of the Members of the Parliament."*

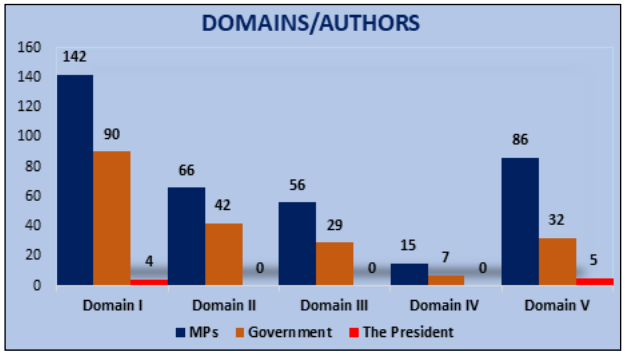
- an increase for ***Area IV***, the initiatives promoted in this sector, also being a reaction to the challenges in the education system and the area of culture that have been generated by the Covid19 pandemic and the inherent restrictions.

A review of the draft acts from the perspective of the drafters compared to the proofing areas shows more differences compared to previous studies[7]:

- MPs took precedence in the promotion of draft normative acts;
- most commonly, the normative intentions of **MPs** concerned **Area I** (a steady trend over the last 10 years) – **146 draft acts** and **Area V - 86 draft acts**;
- most draft acts of the **Government** concerned **area I** – **90 draft acts**, followed by Area II - 42 draft acts;
- the number of legislative initiatives of the President increased; 9 initiatives were registered during the reference period, 4 of which concerned **area I** and 5 **area V**, the social one. With reference to this trend, we note that 2020 was a presidential election year, and so, in light of the findings of previous studies, the promotion of social draft acts seems to have been imminent.

Figure No. 4.

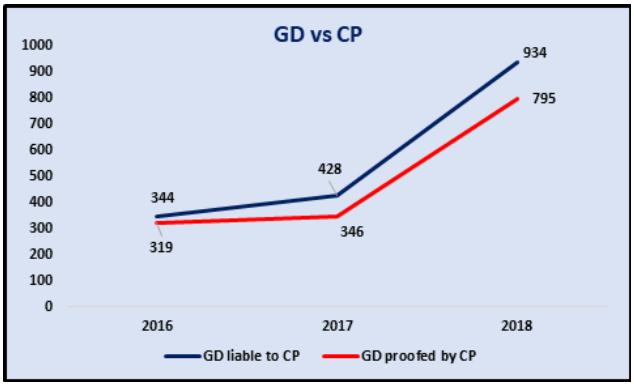
Areas of draft acts subject to CP: drafters



[7] According to 2016-2018 Corruption Proofing Study: Effectiveness, Costs, Impact *[...] the concerns of the most prominent actors in the law-making process (Government and Parliament) are largely similar, with some minor exceptions. Members of the Parliament promoted more draft acts than the Government in the area of "Education, Culture, Cults and Media", while the Government intervened with more initiatives in the area of "Economy and Trade". To note that the number of initiatives by MPs and by the Government was equal for the Social Area (Area V of proofing).*

In 2019-2020, the NAC continued the monitoring of Government web pages and meetings to identify the draft acts liable to CP; however, their drafters avoided/hesitated to submit them for corruption proofing. Hence, in what concerns the draft acts issued by the Government, the statistical picture is as follows:

Figure no. 5. GD liable to CPR vs. CPR



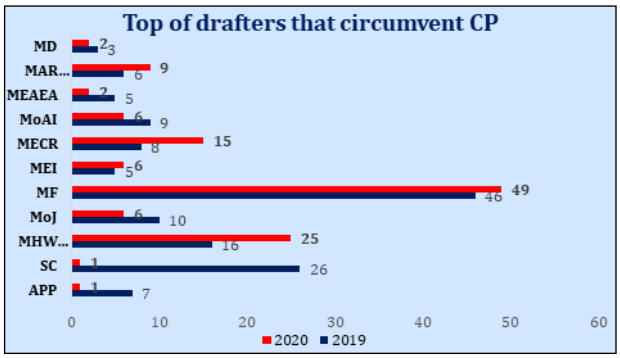
Previous studies[8] found some improvements in the submission of draft GD for corruption proofing, the gap being insignificant. However, the tracking trend over 5 years (2016-2020) shows that the disparities are widening: **100 (24%)** draft acts liable for proofing were not submitted for proofing **in 2019**, and 139 such draft acts **(30%) in 2020**. A potential explanation for such differences in 2020 would be the need for urgent/ exceptional regulatory interventions, dictated by the pandemic situation; however, no plausible arguments that would justify the circumvention of the corruption proofing phase can be identified for 2019, even if several metamorphoses have occurred at the government level this year.

From the perspective of the direct drafters of the normative acts that avoided submitting them for corruption proofing, we note the maintenance of the previously identified trend i.e. that most

[8] The 2016-2018 Corruption Proofing Study: Efficiency, Costs, Impact noted: "[..] *despite the negative trend recorded in the period from 2010 to 2014, "in 2015, only 12 draft laws (2%) issued by the government authorities were promoted in the absence of a CPR." Unfortunately, since 2016, this trend has again been falling. We note that* ***in 2016-25 (7%) of GD liable to CP were approved in the absence of a CPR****, and in* ***2017****, this increase is even more substantial –* ***82 GD (19%) were approved without a CPR****. A slight improvement (of 4%) can be noticed* ***in 2018****, when only* ***15% of GD*** *were approved in the absence of CPR.*

draft acts not subject to CP are initiatives of the Ministry of Finance (the 'champion' in evading CP in 2019 and 2020) and of the State Chancellery (SC) in 2019. We also note that, in 2019, most of the draft acts promoted by the Public Property Agency (PPA) were not accompanied by CPR. A negative trend is also found for the draft acts initiated by MARDE, MHLSP and MER, which in 2020 promoted several draft acts without CPR. For details see Figure 6 below.

Figure 6. Drafters that circumvent CP



Even if in some cases, as stated *supra*, eluding CP would have been justified by pandemic emergencies (valid for 2020), this state of affairs, however, arouses reasonable concerns, suspicions of promoting interests or norms with potential for corruptibility. Such a presumption seems to be valid, provided that CP was evaded by draft acts that regulated areas vulnerable to corruption risks, such as:

2019

- GD on the redistribution of some allocations approved by the State Budget Law for 2019 (drafter MoF);
- GD on the amendment of the Regulation on the Application of Tax and Customs Incentives to the import of special purpose means of transport, approved by Government Decision no. 474/2016 (drafter MoF);
- GD on the allocation of funds (drafter MHLSP);
- GD on the approval of the Methodology for Calculating Tariffs for services provided by the National Agency for Food Safety, as well as the Nomenclature of services provided by the National Agency for Food Safety and tariffs for them (drafter MARDE);
- GD on the organization of polling stations abroad (drafter MFAEI);
- GD on approving the Regulation on the Organization of Implementation of Renovation/ Endowment Projects of Early Education Institutions and of the Regulation on the Organization of the Implementation of Projects on Renovation/Construction of Sanitation Facilities in Primary, Secondary and High School institutions (drafter MHLSP)
- GD on taking responsibility for the draft law on amending art. 10 of the State Budget Law for 2019 no. 303/2018 (drafter MoF)
- GD on assuming the responsibility on the draft law on declaring the public utility for the works of national interest for the construction of the Central Customs Terminal and the reserved extension area (drafter MoF);
- GD on the amendment of Annex no. 18 to the Government Decision no. 351/2005 on the approval of lists of real estate public property of the state and the transfer of real estate (drafter Ministry of Interior)
- GD on the transfer of real estate and the conclusion of a contract (drafter APP)
- GD on amending the Government Decision no. 1001/2001 on the declaration of goods by business operators from the eastern districts of the Republic of Moldova (drafter MoF)
- GD on the finding of independent consultation of potential consumer guarantor (drafter MoJ)
- GD on taking responsibility for the draft law for amending Law no. 3/2016 on the Prosecutor's Office (drafter MoJ);

2020

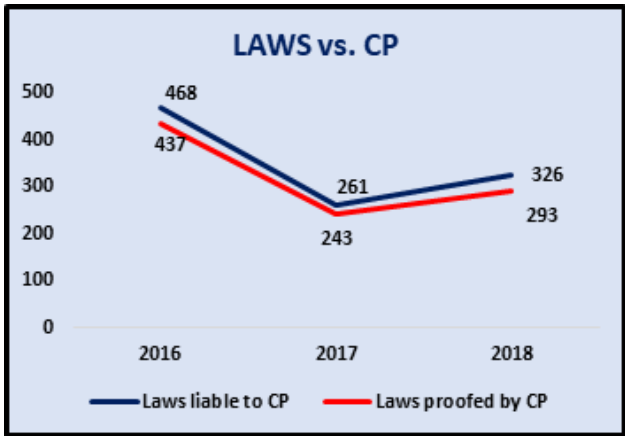
- GD on the approval of the Regulation on procedures for the examination and internal reporting of disclosures of illegal practices (drafter MoJ)
- GD on the prohibition of the export of certain products (drafter MoF)
- GD on the approval of the Regulation on the management of biological material (drafter MIA)
- GD on the transmission of goods (drafter MEI)
- GD on the Office for the Management of External Assistance Programs (drafter MoF)
- GD on the approval of the Methodology for budgetary funding of public higher education institutions (drafter MECC)
- GD on the transmission of real estate (drafter SC)

As regards the ***draft laws*** posted on the website of the Parliament, we note a trend diametrically opposite to the one found in the normative acts promoted by the government and an improvement in relation to the findings of[9] the previous Study:

[9] [...] *if in 2015 only 5% of the draft laws were promoted without CP, in the following years, this percentage increases to* ***7% (22 and 18 draft acts, accordingly) in 2016 and 2017****, and* ***in 2018, the gap doubles*** *compared to 2015 and* ***reaches 10% (33 draft acts****) from the draft laws that are examined without the requirment for corruption proofing.*

in **2019**, of the 186 draft normative acts subject to CP, **26** circumvented the proofing, while in **2020** just **15 draft (4%)** acts did not pass the corruption proofing screening.

Figure 7. Laws liable to CP vs. CPR



As examples of draft laws that avoided CP, we could invoke:

2019

- The draft law on amending some legislative acts (Law no. 156/1998 on the public pension system - art. 12, 13; Law no. 909/1992 on the social protection of citizens who have suffered from the Chernobyl catastrophe - art.7; etc;
- Draft law on amending Law No.131/2015 on public procurement (art.89)
- Draft law on amending some legislative acts (Law No. 291/2016 on the organization and conduct of gambling - art.18; Tax Code of the Republic of Moldova - art.295)
- Draft law for the interpretation of some provisions of the Law on the Prosecutor's Office;
- Draft law on amending some legislative acts (Law on the National Institute of Justice no.152/2006 - art.28; Law on the Prosecutor's Office no.3/2016 - art.20);

2020

- The draft law on amending the Air Code no.301 of 21.12.2017 (art.5, 6, 7 etc.)
- Draft law on amending some normative acts (Law on normative acts - art.III; Law on the Superior Council of Magistracy - art.24)
- Draft law on establishing measures during the state of emergency in public health and the amendment of some normative acts (Labor Code – art.73, 95, 104 etc.; Law on the unitary wage system in the budget sector-art.1; etc.
- Draft law on amending some normative acts (Code of Civil Procedure no.225/2003-art.236, 389; Administrative Code no.116/2018-art.226, 240; etc.)
- Draft law on amending Law No.1530/1993 on the protection of monuments (art.7, 10, 11, etc.)

In the context of previous reviews of the impact and effectiveness of corruption proofing, we will bring to the attention of normative act drafters the need to comply with the corruption proofing stage and remove the growing discrepancy between Government draft acts liable to CP and those not subject to proofing. We emphasize that this stage of the normative process - corruption proofing - is able to detect at the initial phase any slippage of the process (transparency, substantiation, including economic-financial, promotion of interests, etc.), to anticipate the risks of corruption and, implicitly, to prevent the occurrence of manifestations of corruption: disciplinary and ethical violations, contraventions and crimes.

I.2. Risk factors: weight and spread

As described in the previous Study for 2016-2018, **the Methodology for conducting CP** provides that ***risk factors*** are **the provisions of a draft act whose content may generate, upon application, the occurrence of corruption risks**. Annex no.4 to the Methodology includes the list/typology of **37 risk factors**, divided into 2 categories:

- risk factors generated ***by the defective language*** of the draft act and
- risk factors generated by ***lack of corruption prevention mechanisms in the draft act*** i.

The two categories, in turn, are divided into eight groups of risk factors as follows:

I. Language formulations
II. Legislative coherence
III. Transparency and access to information
IV. Exercise of a person's rights and obligations
V. Exercise of a public entity's duties
VI. Control mechanisms
VII. Liability and sanctions

The Table below statistically shows the work of identifying risk factors in draft acts submitted for CP between 2016 and 2018. According to a review of the data in the table below we deduce

the findings from the previous studies that the magnitude of risk factors is more intense in two generic groups: "legislative coherence" and "exercise of the powers of public entities", followed by the group "language formulations".

The trend is maintained that the most frequent risk factors are:

- **AMBIGUOUS FORMULATIONS THAT ALLOW ABUSIVE INTERPRETATIONS (VARIES FROM 12% TO 14%)**
  (the wording contained in the regulation which has a vague or ambiguous meaning and thus enables misinterpretations);
- **COMPETITION OF LEGAL NORMS (VARIES FROM 10% TO 15%)**
  (incompatibility of provisions of the draft act with other provisions of the draft act, other provisions of national or international law);
- **LEGAL GAPS (VARIES FROM 8% TO 11%)**
  (law-maker's omission to regulate aspects of social relations whose presence results from the objective reality or from other provisions of the same act);
- **POWERS THAT ADMIT DEROGATIONS AND ABUSIVE INTERPRETATIONS (VARIES FROM 10% TO 22%)**
  (duties of public entities that are formulated in an ambiguous manner, determining the possibility of interpreting them differently in different situations, including interpreting them in the preferred version or derogating from them);
- **LACK/AMBIGUITY OF ADMINISTRATIVE PROCEDURES (VARIES FROM 8% TO 14%)**
  (lacunary or confusing regulation of the mechanisms applied in the work of public entities).

Table no.1 Number and share of risk factors in draft acts subject to CP

RISK FACTORS		2016	2017	2018	2019	2020
I. LANGUAGE FORMULATIONS						
1.	Introduction of new terms that do not have a definition in the legislation or in the draft act	0 (0%)	42 (1%)	42 (1%)	21 (1%)	21 (0,6%)
2.	Uneven use of terms	167 (5%)	133 (3%)	126 (3%)	49 (2%)	102 (3%)
3.	Ambiguous wording that allows abusive interpretations	380 (12%)	538 (14%)	600 (14%)	281 (15%)	375 (11%)
II. LEGISLATIVE COHERENCE						
4.	Defective reference rules	120 (4%)	141 (4%)	132 (3%)	44 (2%)	81 (2%)
5.	Defective blanket rules	25 (1%)	37 (1%)	15 (0,4%)	5 (0,2%)	8 (0,2%)
6.	Rules of law competition	484 (15%)	428 (11%)	437 (10%)	197 (10%)	334 (10%)
7.	Gap in the law	0 (0%)	311 (8%)	468 (11%)	235 (12%)	442 (13%)
III. TRANSPARENCY AND ACCESS TO INFORMATION						
8.	Insufficient access to information about the act subordinate to the law	0 (0%)	10 (0,2%)	7 (0,2%)	4 (0,2%)	1 (0%)
9.	Lack/insufficient transparency of public entities	86 (3%)	40 (1%)	92 (2%)	64 (3%)	61 (2%)
10.	Lack/insufficient access to public interest information	48 (1%)	33 (1%)	36 (1%)	17 (1%)	19 (0,5%)
IV. EXERCITAREA DREPTURILOR ȘI OBLIGAȚIILOR PERSOANEI						
11.	Excessive costs in relation to public benefit	0 (0%)	7 (0,2%)	14 (0,3%)	3 (0,2%)	7 (0,2%)
12.	Promoting interests contrary to the public interest	87 (3%)	140 (4%)	101 (2%)	33 (1,7%)	40 (1%)

13.	Harm to the interests contrary to the public interest	0 (0%)	95 (2%)	148 (3%)	92 (4,8%)	170 (5%)
14.	Excessive requirements for the exercise of excessive rights/obligations	139 (4%)	95 (2%)	69 (2%)	17 (0,8%)	27 (1%)
15.	Unfounded derogations from the exercise of rights/ obligations	81 (2%)	53 (1%)	43 (1%)	15 (0,7%)	29 (1%)
16.	Unjustified limitation of human rights	0 (0%)	47 (1%)	32 (1%)	7 (0,4%)	23 (0,7%)
17.	Discriminatory provisions	0| (0%)	79 (2%)	73 (2%)	21 (1%)	50 (1,5%)
18.	Excessive, improper duties or contrary to the status of the private entity/person	0 (0%)	49 (1%)	24 (0,6%)	7 (0,3%)	11 (0,3%)
19.	Stimulating unfair competition	0 (0%)	28 (1%)	20 (0,5%)	9 (0,5%)	18 (0,5%)
20.	Unrealizable norms	0 (0%)	35 (0,1%)	44 (1%)	31 (1,6%)	74 (2%)
V. EXERCISE OF A PUBLIC ENTITY'S DUTIES						
21.	Extensive regulatory duties	0 (0%)	74 (2%)	49 (1%)	11 (1%)	22 (0,6%)
22.	Excessive, improper duties or contrary to the status of private entity	0 (0%)	136 (3%)	128 (3%)	43 (2,2%)	58 (1,7%)
23.	Parallel duties	40 (1%)	31 (1%)	28 (1%)	10 (0,5%)	29 (0,9%)
24.	Non-determination of the responsible public entity/ subject to which the provision relates	0 (0%)	51 (1%)	26 (1%)	14 (0,7%)	41 (1%)
25.	Duties allowing derogations and abusive interpretations	719 (22%)	385 (10%)	416 (10%)	217 (11 %)	353 (10%)
26.	Establishing a public entity's right instead of an obligation	0 (0%)	60 (1%)	48 (1%)	14 (0,7%)	44 (1,3%)
27.	Defective cumulation of competences to be exercised separately	30 (1%)	10 (0,3%)	13 (0,3%)	9 (0,5%)	13 (0,4%)
28.	Non-exhaustive/ambiguous/subjective grounds for a public entity's refusal or inaction	61 (2%)	74 (2%)	63 (1%)	29 (1,5%)	96 (2,8%)
29.	Lack/ambiguity of administrative procedures	255 (8%)	368 (9%)	582 (14%)	326 (17%)	642 (19%)
30.	Lack of concrete deadlines/unjustified deadlines/ unjustified extension of deadlines	193 (6%)	141 (4%)	95 (2%)	46 (2,4%)	78 (2,3%)
VI. CONTROL MECHANISMS						
31.	Lack/insufficiency of control and surveillance mechanisms (hierarchical, internal, public)	125 (4%)	94 (2%)	57 (1%)	12 (0,6%)	12 (0,3%)
32.	Lack of/insufficient challenge mechanisms	28 (1%)	27 (1%)	11 (0,3%)	4 (0,2%)	8 (0,2%)
VII. LIABILITY AND SANCTIONS						
33.	Confusion/duplication of types of legal liability for the same infringement	2 (0,1%)	8 (0,2%)	5 (0,1%)	2 (0,1%)	3 (0,1%)
34.	Non-exhaustive grounds for liability	11 (0,3%)	8 (0,2%)	14 (0,3%)	2 (0,1%)	16 (0,5%)
35.	Lack of clear responsibility for violations	60 (2%)	50 (1%)	61 (1%)	21 (1%)	43 (1,3%)
36.	Lack of clear sanctions	68 (2%)	43 (1%)	50 (1%)	11 (0,5%)	26 (0,8%)
37.	Imbalance between violation and sanction	0 (0%)	9 (0,2%)	12 (0,3%)	1 (0%)	5 (0,1%)

A review of the data for 2019-2020 has emphasized an increase in the share of 4 risk factors: ***lack/ ambiguity of administrative procedures; harm to the interests contrary to the public interest***; ***legal gaps and unrealizable norms.*** At the same time, for 2020, we note a decrease in the share of the ***"ambiguous language" factor,*** an appreciable aspect, in the context in which ambiguous formulations are generators of other risk factors and, consequently, potential manifestations of corruption.

We will emphasize once again that the abundance of risk factors in draft normative acts represent the opportunities for abuse that considerably affect the quality of normative acts, do not ensure the predictability of norms and, respectively, affect the behavior of subjects targeted by the normative acts.

I.3. Corruption risks

The methodology and Annex no. 3 thereto establish the connection between the risk factors (as described in the section above) and the corruption risks generated by them. To keep in mind that ***corruption risks*** are *possible events of manifestation of corruption that will affect the achievement of the objectives of a public entity and the public interest will be affected by private interests.* In other words, the provisions of draft normative acts that contain/ promote risk factors can generate, or even generate ***manifestations of corruption[10]: acts of corruption or related acts, sanctioned by the Criminal Code and the Contravention code, as well as corruptible acts that are disciplined or contravened.*** The list of manifestations of corruption, as established by Law 82/2017 and that broadly represents the risks of corruption.

A review of CP in 2019-2020 reconfirmed the finding of the previous study viz. that "*corruption risks, their number and share, are intrinsically related to risk factors, the detection of which may lead to inherent risks of corruption.*" **Table No. 2** details the corruption risks identified by NAC experts during the corruption proofing carried out in 2017-2018.

[10] Law 82/2017 establishes that ***manifestations of corruption*** are: *corruption and related acts* whose sanctioning is provided for by the Criminal Code and the Contravention code *as well as corruptible acts constituting misdemeanors and disciplinary misconduct*. The list of acts of corruption and of related acts, as well as of corruptible acts is detailed in **art. 44-46 of Law 82/2017**.

Table No.2 Number of corruption risks identified in draft acts subject to CPR

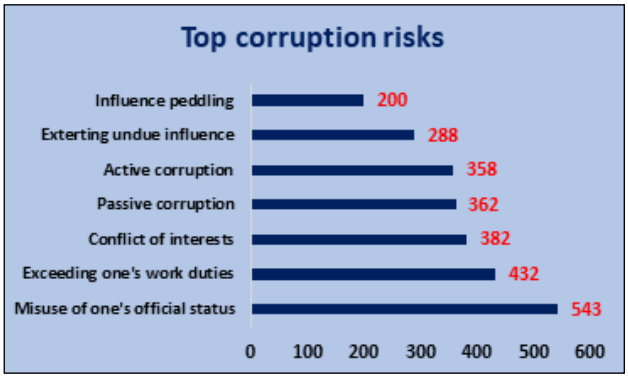
Corruption risks	2017	2018	2019	2020
Active corruption	377	412	230	358
Bribe giving	60	108	38	17
Passive corruption	384	411	230	362
Bribe taking	59	110	37	15
influence peddling	224	251	110	200
Misuse of one's official status	625	586	305	543
Exceeding service duties	457	449	248	432
Conflict of interests and/or favouritism	490	510	257	382
Illicit enrichment	33	55	47	90
irregular use of funds and/or assets	57	98	46	35
Embezzlement of funds and/or assets	68	76	21	18
Exerting undue influence	234	242	128	288
Failure to comply with the legal regime of gifts	5	20	29	80
Violation of the legal regime of limitations on advertising in civil service	4	2	-	-
Violation of the legal regime of incompatibilities in civil service	1	7	1	6

Violation of the legal regime of limitations in hierarchy in civil service	**6**	**2**	**-**	**1**
Violation of the rules on intolerance to integrity incidents	**0**	**-**	**-**	**-**
Violation of the rules of ethics and deontology	**0**	**0**	**-**	**-**
Violation of the rules on employment and promotion of public agents based on merit and professional integrity	**5**	**1**	**-**	**-**
Leakage of information with limited accessibility	**17**	**10**	**10**	**3**
Laundering of money from crimes	**31**	**-**	**1**	**1**
Tax evasion	**34**	**9**	**15**	**90**
Swindling	**35**	**20**	**25**	**72**
Forgery of public acts	**14**	**26**	**12**	**3**
fraudulent obtaining of funds from foreign assistance	**-**	**-**	**12**	**-**
General	**1018**	**1078**	**484**	**669**

Summary of data in Table No. 2 shows the relative stability and frequency of occurrence of several distinct categories of corruption risks. The top 7 corruption risks in the normative acts proofed by the NAC varies insignificantly from year to year and looks like this:

1. misuse of one's official status;
2. exceeding service duties;
3. conflict of interests and/or favouritism;
4. passive corruption;
5. active corruption;
6. exerting undue influence;
7. influence peddling.

Figure 8. Top corruption risks



The trend review of the number of corruption risks identified in the CPR proves some 'curious' developments in 2020, namely:

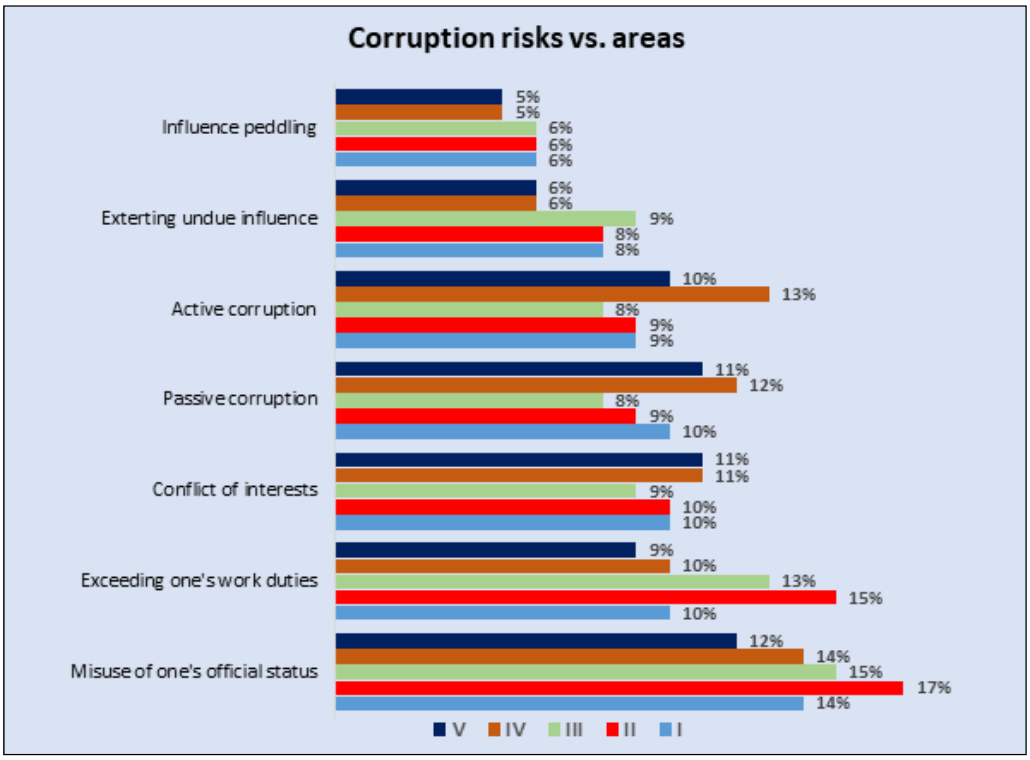
- a triple number of draft acts bearing the risk of "***tax evasion***"as well as of "***swindling" actions***;
- an increased number of draft acts that can lead to ***failure to comply with the regime of gifts, violation of the legal regime of incompatibilities, influence peddling, and exerting undue influence***.

Such trends could be explained both by the category and by the areas in which most draft acts have intervened, including in response to pandemic emergencies. At the same time, the trends could also be explained by the quality of the drafters of the initiatives and the interests pursued by them. Hence, looked at from the perspective of the areas where corruption risks were most pronounced in 2020, we find the distribution shown in the table below:

Figure 9 above shows that:

- more vulnerable to corruption risks are the areas "***Economy and Trade***"(II),"***Budget and Finance"*** (III) and ***Area IV "Education, Culture, Cults and Media***";
- the risks of ***abuse of service*** and of ***exceeding one's service duties*** can manifest themselves mostly poignantly in ***Areas II*** (Economy and Trade) and ***III*** (Budget and Finance)
- in 2020, the risk of ***passive and active corruption*** was most often detected in the draft normative acts in ***Area IV "Education, Culture, Cults and Media"*** and ***Area V "Work, Social Insurance, Health and Family Protection";***
- the risk of ***improper influences*** was more frequently in draft acts that intervened in area ***III "Budget and Finance".***

Figure 9. Corruption risks and areas



To reiterate the findings from the previous studies, "such corruption risks (even if they are virtual at draft act level), once the normative acts are adopted and implemented, are likely to create real situations and fertile ground for committing the harmful acts mentioned above. From this perspective, the preventive role of corruption proofing and its recommendations to be taken into account, is extremely important. In the long term, remediation and exclusion of corruption risks from draft legislation can contribute substantially to reducing the level of corruption and creating a climate of genuine integrity."

I.4. Promotion of interests

A review of the promotion of interests through draft normative acts is a constant element pursued in CPR since the launch of corruption proofing.

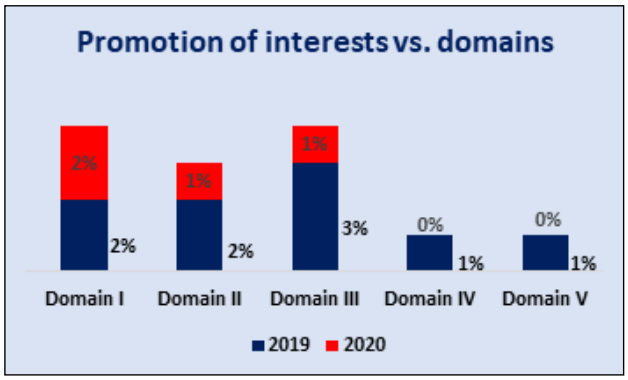
According ***to Annex No. 1 to the Methodology***: *"Any draft law promotes a certain interest: general interests, a group's or an individual's interests, however,* ***not every interest promoted by a particular drat act takes place with respect for the public interest"***.

Further, *Annex No. 5 to the Methodology "Detailed description of risk factors"* states:

Promoting interests contrary to the public interest represents an advancement of private interests (personal or group ones) by law, to the detriment of the general interest of the society, recognized by the state in view of ensuring its well-being and development. The danger of this risk factor lies in the fact that ***if the draft law is passed, a legalization of the realization of private interests will take place, in spite of and to the detriment of the legitimate interests of other subjects of law***. Promoting draft laws containing such risk factors ***constitutes abusive favoring of individuals and legal entities in obtaining benefits, who are offered help by subjective reasons (kinship, friendship or another affinity with the person responsible for drafting the act)***. Often, this risk factor can be treated as a way of discriminating against all other subjects of law in a similar legal situation but who cannot benefit from the positive effects of the draft act provisions that serve the interests of the individual or of the favored group (e.g. promotion of draft acts derogating from the general law, to exempt specific business operators from taxes; promotion of acts on debt forgiveness or removal of an asset from the exclusive public domain of the state in some business operators' interest).

In the period 2019-2020, the NAC experts qualified **73 draft normative acts** subject to CPR as **promoters of interests**, which represents **only 5%** of the total of 1448 draft acts subject to proofing. In this connection, we will note that the decreasing trend of the number of interest-bearing normative acts is maintained[11]. For the reference period (2019-2020), a review of the draft acts promoting private interests contrary to the general public interest proves the following distribution by areas:

Figure 10. Interests and areas



According to the information in the diagram, we notice that, most prominently, the interest promotion phenomenon stood out in the texts of draft acts promoted in area III "Budget and Finance" (4%) and in Area I "Justice and Human Rights". To note that Area II "Economy and Trade" was also an area in which a number of interest-promotion draft acts were registered, a trend also found in previous studies.

We note the trend of further decline in interest-promotion draft acts as in the ***previous study*** that held, [...]*the number of draft acts that have been promoting private interests is constantly decreasing and we could admit that such state of affairs is, among other things, due to corruption proofing. The drafters promoting interests (most often obscure ones) will avoid including them in the draft normative acts that are to pass the corruption proofing screening, an objective of which is to detect and remove private interests from the draft acts."*

From the perspective of detecting draft acts that promote interests, it is important to follow the phase of submitting draft acts for corruption proofing. Taking into account that, in the reference period (2019-2020), a number of draft acts approved by the government did not pass CP (see ***Figure 5*** above), and their share increased to 30% in 2020, we could admit that, in some situations, the drafters deliberately omitted the CP stage. To note that the justification of pandemic emergencies for omitting CP cannot be invoked for a number of draft acts, which had no connection whatsoever with actions of response to COVID2019 challenges in the Republic of Moldova.

Let us reiterate in context a main finding of the ***previous Study:*** "[...] *emergencies substantially affect the quality not only of proofing reports, but also of draft normative acts that, without passing the corruption proofing screening, are likely to generate, and even generate, risks of corruption and acts of corruption. Any draft law that is promoted at a rapid pace provokes suspicions regarding potential opaque interests, which distort the essence and purpose of normative acts. From this perspective, to ensure the quality of normative acts and remove the interests and risks of manifestations of corruption, it is important to comply with the legal terms of consultation, approval and proofing of draft normative acts, as established by Law 100/2018.*

I.5. Peculiarities of CP in 2019-2020

The period reviewed by this study was marked by a number of events produced not only at the national level, but also around the world. An alternation of three governments and the constitution of several parliamentary majorities took place in the Republic of Moldova in 2019. Obviously, such changes have influenced the quality, efficiency and predictability of normative acts, including CP intensity and performance.

The data in the sections above show that, in 2019, the number of normative acts of the Government

[11] According to the data of the previous study, one finds that *most commonly, private interests were promoted contrary to the public interest through draft laws, most of which were registered **in 2016: 34% of the draft laws proofed,** with a decreasing trend in the following years and reaching a share of only 10% in 2018. In the part related to **GD**, we also find a decrease in the share of interest-promoting draft acts: **from 21% in 2016 to just 3% in 2018**. A similar picture can also be seen regarding departmental acts: from 28% to 7%.*

that avoided corruption proofing began to increase, their share reaching 30% in 2020.

2020 was an atypical year for the whole world, as all countries faced the challenges generated by the COVID-2019 pandemic, with the authorities of all states having to intervene with several novel solutions, including regulatory ones to adequately respond to the problems generated by the global pandemic. The Moldova authorities also intervened with several regulatory initiatives centered on the pandemic topic.

According to NAC data, the following were subject to CP in 2020 – **15 draft normative acts** that proposed regulations related to COVID-19, and the following **distribution by areas** was found:

- Area I "Justice" **0**
- Area II "Economics" **2**
- Area III "Finance" **6**
- Field IV "Education" **1**
- Field V "Social" **6**

As can one see in the data above, most of the draft acts aimed ***to remedy the financial, social and health problems***, the distribution being justified by the nature of social relations that had to be regulated in the context of the pandemic. As an example, we invoke the following draft acts: *on amending the Labor Code and the Law on Temporary Disability Allowances and Other Social Insurance Benefits; on amending art. 58 of the Law on State Supervision of Public Health; on approving additional transparency measures on public procurement carried out to prevent, mitigate and eliminate the consequences of the coronavirus pandemic (COVID-19) for 2020; on establishing measures to defer the repayment of loans and other related payments contracted by individuals from non-bank credit organizations; on the moratorium on state control of micro, small and medium-sized enterprises; on establishing tax holidays for some categories of enterprises, etc.*

From the perspective of the drafters who initiated the draft normative acts subject to CP, we find the majority **12 (80%)** to have come from **MPs**, while **3 (20%)** were developed and promoted by the Government.

The corruption proofing of draft acts promoted in the segment of the establishment of reaction and protection measures in connection with the state of emergency and the state of emergency in public health showed that most of the draft acts contained **risk factors**:

- Unrealizable norms (in 9 of the 15 draft acts proofed);
- Legal gaps (8 draft acts);
- Ambiguity of administrative procedures (8 draft acts);
- Duties allowing derogations and abusive interpretations (3 draft acts)

For the most part, the risk factors stated were detected in the draft laws promoted by MPs. Such a situation is explained by the fact that the largest share of draft acts came from MPs (especially those in opposition), as well as the fact that legislators are more optimistic and generous in drafting laws, in contrast to the Government, which comes with a more technical and pragmatic approach. However, the government in crisis situations is the authority that has the operational and up-to-date information on the state of the budget and is better aware of the possibilities of financial coverage of the imminent costs for such categories of draft acts.

CPR highlighted the causal link between risk factors and potential corruption risks, which would have become imminent with the passing of draft acts. These are in particular: general risks of corruption (14 out of 15 draft acts), misuse of one's official status and exceeding service duties (5 draft acts); conflicts of interest and/or favouritism and undue influence (3 draft acts); as well as the risk of irregular use of funds or assets (2 draft acts). The corroborating analysis of the identified risk factors and corruption risks shows that when a draft act contains such risk factors as unrealizable norms, legal gaps and ambiguous administrative procedures, this increases the likelihood of corruption risks accordingly, especially those involving abuse or exceeding service duties.

To exemplify the proofing of specific draft acts of 2020 (proofing stages that apply to all draft normative acts according to NAC Methodology), we reproduce below an excerpt from the ***Proofing Report***[12] on the draft law on some applicable anti-

[12] Proofing Report No.ELO20/6549 of 10 April 2020

crisis economic and social measures to reduce the impact of the COVID-19 pandemic (tabled as a legislative initiative by a group of MPs):

Art. VII paras. (1) and (3) of the draft acts

Art. VII - *For the entire period of application of the state of emergency, at the request of individuals and business operators required to cease or limit their activity in accordance with the provisions of the decisions of the Extraordinary National Commission for Public Health no. 7 of 13 March 2020 and no. 9 of 15 March 2020 and the decisions of the Extraordinary National Commission for Public Health issued after the approval and entry into force of the Parliament Decision no. 55 of 17 March 2020 "on the declaration of the state of emergency": (1) Commercial banks: a) shall defer the payment of credit installments and/or interest by extending the term of the credit agreement by a period at least equal to the period of the state of emergency ; b) shall not calculate or apply interest, commissions or penalties for delay, or other payments for extending the terms of the credit agreement; (3) Application of a moratorium on payments related to bank and non-bank loans due.*

Objections: *There is inconsistency between the paragraphs of the same article: it establishes that banks shall postpone the payment of credit rates and/or interest without applying late penalties, on the one hand, and it provides for the application of a moratorium for payments related to bank and non-bank loans due, on the other hand. [...] it is not clear whether banks are required to defer the payment of rates or whether the application of a moratorium is necessary in this sense. Regarding the application of a moratorium, the draft act is incomplete, because it does not regulate the moratorium: who is competent to apply a moratorium, the period, the conditions, etc. [...] a conflict is an impediment in the correct application of the legislative provisions and creates premises for the application of a 'convenient' norm [...] related to the contradiction between the norms; one also finds an omission to regulate aspects of social relations, whose presence results from the provisions of the same act. The danger of [...] lies in the uncertainty of the effect of social relationships, in particular those related to the mechanisms of the realization of the rights, the obligations, the ambiguity of the duties of civil servants, and the administrative procedures by which they are responsible, etc., cases in which the competent authorities responsible for the enforcement of the law can take advantage of this weakness to commit an abuse.*

Recommendations: *We recommend to exclude contradictions between the provisions of para. (1) and (2) of art. VII in the draft act. We recommended to fill in art. VII para. (2) of the draft act with definite provisions, so that the legal regime of the proposed moratorium is clear.*

Risk factors:	**Corruption risks:**
• Gap in the law • Lack/ambiguity of administrative procedures • Rules of law competition • Non-determination of the responsible public entity/subject to which the provision relates	• Legalization of acts of: - misuse of one's official status - exceeding service duties

Summarizing the statements in this section, we find that the establishment of the state of emergency in 2020 boosted normative creation by MPs, especially of those in opposition. Despite the good intentions stated in the draft laws, CP found an abundance of unrealizable norms, legal gaps and norms that generated administrative ambiguity, which in turn would have led either to misuses of one's work duties or exceeding service duties, or to the use of non-compliant use of funds or patrimony. In this connection, one must keep in mind that law-making is a meticulous process, which must take into account not only the need to intervene with prompt and beneficial solutions, but also the need for such solutions to be well calibrated and take into account all long-term risks - social, financial, and especially the risks of encouraging corruption. If such risks are ignored, the noble intentions stated may fail and seriously damage the credibility of public authorities.

II. EFFICIENCY OF CORRUPTION PROOFING

This chapter provides a review of the efficiency of corruption proofing in 2019-2020, case studies on the relevance and importance of corruption proofing for fighting corruption as well as some findings on how to synchronize them.

We recall that the statistical module of the electronic system ***"E-proofing"*** allows to measure the effectiveness of removing risk factors and corruption risks from the draft normative acts by relating/contrasting the version proofed by NAC to the adopted version of the draft normative act. Also, while measuring efficiency, apart from the normative acts passed, the draft acts that have been rejected, declared null or withdrawn by their drafters are also taken into account. In such case, CP objections and recommendations are considered to have been taken into account and led to draft law rejection/withdrawal.

II.1. Efficiency review

Table no. 3 presents a five-year review trend of consideration of risk factors, providing a statistical table of the number of factors remedied and their share of acceptance.

Table no.3 Number and share of risk factors removed from the draft acts subject to CP

RISK FACTORS		2016	2017	2018	2019	2020
I. LANGUAGE FORMULATIONS						
1.	Introduction of new terms that do not have a definition in the legislation or in the draft act	-	18 (62%)	11 (55%)	8 (80%)	3 (37%)
2.	Uneven use of terms	108 (79%)	84 (82%)	54 (75%)	18 (78%)	22 (71%)
3.	Ambiguous wording that allows abusive interpretations	207 (79%)	288 (74%)	205 (66%)	98 (69%)	81 (63%)
II. LEGISLATIVE COHERENCE						
4.	Defective reference norms	58 (70%)	74 (73%)	53 (74%)	12 (63%)	23 (73%)
5.	Defective blanket rules	12 (63%)	19 (76%)	2 (67%)	0 (0%)	2 (100%)
6.	Rules of law competition	237 (72%)	195 (70%)	143 (64%)	64 (70%)	65 (62%)
7.	Gap in the law	-	149 (69%)	148 (59%)	57 (58%)	93 (63%)
III. TRANSPARENCY AND ACCESS TO INFORMATION						
8.	Insufficient access to information about the act subordinate to the law	-	6 (75%)	2 (50%)	1 (33%)	1 (100%)
9.	Lack/insufficient transparency of public entities	37 (60%)	18 (60%)	24 (54%)	18 (60%)	10 (38%)
10.	Lack/insufficient access to public interest information	24 (63%)	14 (64%)	9 (45%)	3 (37%)	5 (45%)

IV. EXERCISE OF A PERSON'S RIGHTS AND OBLIGATIONS						
11.	Excessive costs in relation to public benefit	-	0 (0%)	6 (100%)	1 (100%)	1 (100%)
12.	Promoting interests contrary to the public interest	30 (53%)	47 (55%)	33 (72%)	6 (50%)	7 (70%)
13.	Harm to interests contrary to the public interest	-	38 (65%)	51 (64%)	27 (71%)	50 (67%)
14.	Excessive requirements for the exercise of excessive rights/obligations	60 (61%)	43 (73%)	21 (60%)	5 (71%)	6 (75%)
15.	Unfounded derogations from the exercise of rights/ obligations	34 (56%)	20 (59%)	14 (67%)	1 (17%)	4 (57%)
16.	Unjustified limitation of human rights	-	11 (65%)	9 (56%)	0 (0%)	6 (75%)
17.	Discriminatory provisions	-	30 (71%)	28 (68%)	3 (60%)	8 (61%)
18.	Excessive, improper duties or contrary to the status of the private entity/person	-	19 (63%)	11 (73%)	1 (33%)	3 (100%)
19.	Stimulating unfair competition	-	12 (67%)	6 (67%)	2 (40%)	7 (78%)
20.	Unrealizable norms	-	21 (81%)	14 (67%)	8 (61%)	8 (44%)
V. EXERCISE OF A PUBLIC ENTITY'S DUTIES						
21.	Extensive regulatory duties	-	19 (63%)	7 (50%)	2 (33%)	2 (50%)
22.	Excessive, improper duties or contrary to the status of private entity	-	59 (73%)	35 (60%)	11 (92%)	15 (75%)
23.	Parallel duties	20 (71%)	13 (54%)	4 (33%)	3 (100%)	5 (83%)
24.	Non-determination of the responsible public entity/ subject to which the provision relates	-	19 (58%)	7 (50%)	5 (56%)	9 (82%)
25.	Duties allowing derogations and abusive interpretations	322 (63%)	170 (69%)	141 (66%)	57 (59%)	82 (63%)
26.	Establishing a public entity's right instead of an obligation	-	28 (70%)	22 (81%)	7 (78%)	14 (64%)
27.	Defective cumulation of competences to be exercised separately	19 (79%)	3 (60%)	1 (33%)	1 (100%)	2 (29%)
28.	Non-exhaustive/ambiguous/subjective grounds for a public entity's refusal or inaction	30 (65%)	32 (76%)	29 (83%)	8 (47%)	23 (68%)
29.	Lack/ambiguity of administrative procedures	114 (56%)	178 (72%)	182 (58%)	106 (65%)	130 (63%)
30.	Lack of concrete deadlines/unjustified deadlines/ unjustified extension of deadlines	87 (60%)	66 (65%)	32 (68%)	15 (62%)	25 (76%)
VI. CONTROL MECHANISMS						
31.	Lack/insufficiency of control and surveillance mechanisms (hierarchical, internal, public)	43 (52%)	46 (63%)	15 (54%)	3 (60%)	1 (100%)
32.	Lack of/insufficient challenge mechanisms	14 (74%)	12 (63%)	3 (75%)	1 (100%)	3 (75%)
VII. LIABILITY AND SANCTIONS						
33.	Confusion/duplication of types of legal liability for the same infringement	1 (100%)	4 (100%)	2 (67%)	0 (0%)	0 (0%)

34.	Non-exhaustive grounds for liability	**7 (87%)**	**4 (80%)**	**6 (75%)**	**0 (0%)**	**4 (80%)**
35.	Lack of clear responsibility for violations	**32 (74%)**	**24 (80%)**	**20 (57%)**	**6 (46%)**	**6 (55%)**
36.	Lack of clear sanctions	**31 (65%)**	**23 (79%)**	**12 (41%)**	**1 (33%)**	**0 (0%)**
37.	Imbalance between violation and sanction	-	**1 (100%)**	**0 (0%)**	**0 (0%)**	**1 (50%)**
Total		**1527 (66%)**	**1809 (70%)**	**1362 (63%)**	**559 (63%)**	**728 (63%)**

A review of the data in the table above reconfirms the **high level of CP effectiveness**, which means that the drafters of the acts proofed take into account CPR recommendations and the draft normative acts will not encourage/ favor the occurrence of corruption at the regulatory level. Hence, in 2019-2020 the share of **CP effectiveness of 63%** of recommendations accepted remained unchanged.

The table shows the following peculiarities for the period under review:

- in **2019** compared to previous periods, **the level of remediation**/removal of risk factors related to the following decreased:
  - lack of clear sanctions;
  - lack of clear responsibility for violations
  - non-exhaustive/ambiguous/subjective grounds for a public entity's refusal or inaction;
  - extensive regulatory powers;
  - stimulating unfair competition;
  - excessive, improper duties or contrary to the status of the ***private*** entity/person
  - unfounded derogations from the exercise of rights/obligations, as well as factors concerning
  - lack/insufficient access to public interest information/secondary legislation;
  - **in 2020**, we found decline of the level of acceptance of objections/recommendations on
  - introduction of new terms that do not have a definition in the legislation or in the draft act;
  - lack/insufficient transparency of public entities;
  - lack/insufficient access to public interest information;
  - unrealizable norms;
  - defective cumulation of competences to be exercised separately.

With reference to the categories of risk factors removed with more openness by the drafters of the draft normative acts, we note the constant trend of easier removal of factors related to ***legislative coherence*** and ***language formulation*** (with some shortcomings in 2020 regarding "introduction of new terms that do not have a definition" factors) of draft acts.

An encouraging trend is the willingness of draft normative act drafters to abandon/remedy the risk factors related to ***exaggerated costs of the norms***, removal of ***blanket rules***, of the provisions establishing ***excessive or parallel duties of public entities*** as well as regulation of ***control mechanisms*** in draft acts.

We reiterate that the remediation and removal of risk factors at the regulatory level is an effective means of preventing corruption, however, it is important that the authorities are responsive and act visionarilly in drafting, promoting and approving legal acts, anticipate long-term risks and at the application level, and take all necessary actions to eradicate and remove the risk factors.

As mentioned above, the risk factors in the draft acts subject to CP are corruption risk catalysts, expressly established by the NAC Methodology. The electronic module used to measure the effectiveness of removal of corruption risks from the acts reviewed proves the situation in ***Table No. 4*** below.

Table No.4 Number and share of corruption risks removed from the draft normative acts subject to CP

CORRUPTION RISKS	2017	2018	2019	2020
Active corruption	167 (67%)	137 (61%)	70 (62%)	79 (62%)
Bribe giving	30 (77%)	47 (70%)	5 (36%)	6 (60%)
Passive corruption	170 (67%)	135 (60%)	69 (62%)	81 (63%)
Bribe taking	31 (76%)	49 (71%)	4 (31%)	5 (56%)
Influence peddling	96 (64%)	91 (68%)	29 (60%)	48 (69%)
Misuse of one's official status	282 (69%)	194 (63%)	102 (67%)	129 (66%)
Exceeding service duties	216 (67%)	155 (66%)	72 (62%)	107 (66%)
Conflict of interests and/or favouritism	208 (64%)	172 (65%)	89 (67%)	81 (65%)
Illicit enrichment	16 (84%)	10 (59%)	16 (64%)	16 (67%)
Irregular use of funds and/or assets	17 (55%)	27 (51%)	8 (38%)	8 (57%)
Fraudulent obtaining of funds from foreign assistance	1 (50%)	5 (71%)	1 (12%)	-
Embezzlement of funds and/or assets	29 (62%)	28 (64%)	1 (11%)	5 (33%)
Exerting undue influence	102 (64%)	84 (67%)	50 (73%)	72 (71%)
Failure to comply with the legal regime of gifts	4 (80%)	4 (67%)	15 (79%)	16 (73%)
Violation of the legal regime of limitations on advertising in civil service	-	0 (0%)	-	-
Violation of the legal regime of incompatibilities in civil service	6 (67%)	0 (0%)	1 (100%)	-
Violation of the legal regime of limitations in hierarchy in civil service	3 (60%)	0 (0%)	-	-
Violation of the rules on intolerance to integrity incidents	-	-	-	
Violation of the rules of ethics and deontology	-	-	-	-
Violation of the rules on employment and promotion of public agents based on merit and professional integrity	-	-	-	-
Leakage of information with limited accessibility	0 (0%)	2 (50%)	5 (71%)	2 (100%)
Laundering of money from crimes	18 (82%)	-	-	-
Tax evasion	17 (81%)	3 (75%)	4 (80%)	16 (67%)

Swindling	**16 (67%)**	**2 (100%)**	**15 (83%)**	**15 (75%)**
Forgery of public acts	**2 (33%)**	**8 (53%)**	**1 (20%)**	**1 (100%)**
General	**512 (72%)**	**381 (65%)**	**148 (65%)**	**120 (60%)**
TOTAL (share)	68 %	64%	63%	64%

Based on the data above, we note in **2019-2020** a permanent trend towards acceptance of CP recommendations within limits comparable to previous years, *i. e.* – **64%**. At the same time, we note that the level of acceptance of CP recommendations to eliminate corruption risks is comparable and directly correlates with the level of removal of risk factors from draft acts. However, neither in 2019-202 was the performance of 2017 reached, when the level of remediation of corruption risks was 68%; on the contrary, ***there was a decrease of up to 63%*** (5 percentage points) in 2019. In this connection, to note that the decline in effective removal of corruption risks from draft normative acts further generates a number of concerns.

In **2019-2020**, we note the reluctance of the drafters to remove the risks of corruption concerning:

- bribe giving and taking (private sector);
- irregular use of funds and/or assets;
- fraudulent obtaining of funds from foreign assistance;
- embezzlement of funds and/or assets.

To note that the drafters' reluctance to remove the norms causing corruption risks and their tacit tolerance of the likely transformation of draft act risks found into real corruption acts is alarming. Given that the Republic of Moldova will continue to benefit from consistent external assistance, the acceptance of risks related to public assets management, including risks of fraudulent diversion of external assistance, in drafts normative acts puts at stake the image of the Republic of Moldova and affects the credibility of the responsible public authorities.

II.2. Anticipated corruption risks vs. materialized manifestations of corruption

Corruption proofing is an effective means for detecting potential corruption crimes as early as the stage of preparation and promotion of draft normative acts. This study aims to tentatively review the connection between prevention and combat actions carried out by the NAC. However, it is obvious that the reduction of corruption can occur when there is a combination of efforts, including of NAC subdivisions.

The risks anticipated in CPR must be reviewed and prevented, including through investigative and combat actions. At the same time, CPR can also serve as evidentiary material in cases of corruption under investigation, especially when CPR have reported normative acts aimed at favoring or legalizing manifestations of corruption.

In **2019-2020**, the Legislation and Corruption Proofing Division submitted the proofing reports on **four draft normative acts** promoting the interests and harming the public interest. All four draft acts concerned **area II "Economy and Trade"** and sought to change land designation, reorganize some enterprises, etc. From the perspective of the drafters, we note that only **1 was initiated by a MP**, while other **3 drafts** were promoted by **the Government** (the direct authors being PPA, MEI and MARDE).

A draft act of interest, which is at the intersection of the NAC areas of corruption prevention and combat is the draft *law on declaring public utility for works of national interest of construction, organization and access to the complex of multipurpose arena of national interest*, initiated by MEI, and aims at:

> *"providing the multipurpose arena complex of national interest with the necessary access and exit roads, in order to comply with the*

safety rules provided by the legislation in force for a cultural complex, designed to hold events with approximately 6,000 people and to allow correct and useful development of the area. While carrying out the project, a number of lands were identified, in the administrative territory of Stauceni village, located in the vicinity of the land intended for the multipurpose arena of national interest".

CPR of NAC[13] held:

"[...] although the purpose of the draft law is to provide the multi-purpose arena complex of national interest with the necessary access and exit roads, in compliance with the safety rules provided by the legislation in force for a cultural complex, designed for events with a large number of visitors, ***we found that its realization by initiating the expropriation of the real estate mentioned in the draft law may compromise the public interest****. [...]*

The presence of potentially corruptible norms *in the content of the draft law* ***will distort the real meaning of the purpose of the draft law*** *- to identify a legal, transparent and predictable mechanism for returning the respective real estate to the public domain of the state, with the formation of a consolidated real estate in the form of a public road, taking into account removal of the risk of endangering the public interest. [...]*

Although, theoretically, the provisions of the draft law regulate public interest aspects, ***the solutions proposed thereby contravene the legislation in force and the rule of law, which will favor the emergence of corruption****. In particular, we find norms contradictory to art.127 par.(4) of the Constitution, art.9 para. (2) letter e) of Law No.29/2019 on Delimitation of Public Property, art.13 para.(1) letter g) of Law No.121/2011 on Administration and Denationalisation of Public Property, art.471, art.539 of the Civil Code on the legality of the intervention of the solution proposed, to order an expropriation and compensation of the real estate owners from the funds decommissioned from the national public budget,* ***which may harm the public interest"****.*

[13] Proofing Report No.ELO19/6160 of 25 Nov 2019

The CP findings were submitted to NAC's Anticorruption Division, to be confirmed by additional data and evidence, following special investigative activities in the criminal case under the administration of the Anticorruption Prosecutor's Office. At the same time, to note that the draft law was not subsequently promoted, one reason being the corruption proofing that pointed out the risks of corruption.

In order not to harm the work on other operative cases, to note that the corruptibility issues invoked in other 3 CPR are currently being examined by NAC's Anti-Corruption Directorate, and all circumstances will be investigated, including who are the promoters of harmful interests behind the draft normative acts.

As mentioned above, the CPR findings on the risks of corruption that can turn into corruption manifestations/crimes, are to be handled with maximum diligence by all decision-makers. There are a number of manifestations of corruption that constantly appear in the statistics of criminal cases initiated by the NAC and which are mentioned every time in CPR. As an example, we note that in 2019 and 2020, the anti-corruption experts of the NAC frequently signaled legalization of misuse/exceeding service duties and exceeding one's powers through drafts normative acts, and that such risks were not removed each time by draft act drafters. According to data in ***NAC activity reports*** one can see that a good part of such virtual risks have turned into real corruption actions:

- 48 (in 2019) and 39 (in 2020) criminal cases for misuse of power or misuse of one's official status;
- 22 (in 2019) and 9 (in 2020) cases for exceeding one's powers or exceeding one's service duties.

To repeatedly validate the connection between anticipated risks and registered criminal cases, we recall that **in 2020, CPR found a tripling** of risk of **swindling** (see in this sense the finding in ***Section 1.3 of Chapter I of this Study***). The NAC Activity Report for 2020 notes that **swindling in 2020** entered the top of the most common corruption actions, **ranking 3rd (97 crimes)**, in contrast to 2019, when this crime component

was not even mentioned in the statistics of cases administered by NAC[14].

The data and findings of this section reconfirm once again the need to show maximum attention and diligence to CPR recommendations. Corruption proofing anticipates many illicit behaviors, including it can detect opaque interests in draft act texts. Remediation by the drafters of the provisions of draft acts with a pronounced risk of corruptibility contributes to a reduction of multiple subsequent costs when virtual risks turn into real corruption actions. This can avoid considerable human, logistical and temporal costs (necessary for the investigation, prosecution and judicial examination of corruption cases), as well as significant financial costs (compensation for damage, compensation for victims of corruption acts). Finally, the quality of the adopted normative acts, which will be screened for corruptible provisions, may contribute to increasing the level of trust in public authorities and strengthening the commitment of integrity for the whole society.

[14] See pages 10-11 of NAC activity report for 2019.

III. TYPOLOGY OF PRIVATE INTERESTS PROMOTED IN DRAFT LAWS

III.1 General considerations

The main objective of this Study was not so much to identify the interests, as this was done very well over the years in corruption proofing reports, but rather to try to identify their costs, and eventually to see what were the costs avoided as a result of the fact that some of the acts proofed were not passed.

The specifics of the draft acts proofed has led us to put greater emphasis on 7 thematic categories:

- **Public property management (change of land use and use of uninhabitable areas);**
- **Public-private partnerships;**
- **Tax exemptions;**
- **Environmental protection;**
- **Public procurement.**
- **Electoral character**
- **"COVID" draft acts.**

Hence, this chapter aims to assess the costs of damages that have been or may be caused by interest-promoting draft acts. This exercise is further a major challenge, given the lack of transparency in decision-making, lack of budgetary transparency, of the decisions of the Government and of the Members of the Parliament who promoted draft normative acts often ignoring the legal framework, particularly when at stake were private/group/corporate interests, etc. and in the absence of essential documents and information for cost assessment (for details see the "Costs" section for the examples included ***in the Annex to the Study***).

The Annex to the Study presents examples of CPR on draft laws qualified as promoters of interests, which have been systematized by the typology of interests, defined in this document. To note that these are only a part of the interest-bearing draft acts and do not fully cover all draft normative acts subject to CP and qualified by NAC experts as interest promoters.

The risk factors found in these acts referred to:

- insufficient reasoning;
- promotion of interests;
- harm to the public interest and budget;
- ambiguous content;
- excessive discretion;
- legal provision conflicts;
- lack of a regulatory impact assessment;
- lack of economic-financial substantiation;
- restricting citizens to free public services;
- lack of administrative sanctions;
- ambiguous and faulty language.

The following describes the categories of risks and harms that may arise from the inefficient management of public revenues and expenditures, separately. **Only by way of example, the draft acts reviewed, with direct economic implications, were public-private partnership draft acts, where the total amount of state property in these two years amounted to over MDL 2.4 billion.** . The most common argument from MPs is that such public-private partnerships will help solve social problems, and will contribute to the development of tourism and entrepreneurship. Moreover, such changes occurred outside the framework of government activity, without following the legal framework and as a precursor for state property to be bought at nominal price or alienated. The total amount of losses recorded was MDL 1.7 billion, and other over MDL 700 million have a high risk of alienation.

Following the cost analysis for the draft normative acts listed in the ***Annex to the Study***, it was decided to separate the draft normative acts into three categories:

Normative acts with cost elements liable to identification and cost assessment. The costs of interests in these draft acts were assessed and calculated according to the methodology presented (see the "Costs" section of the case studies presented in the Annex to the Study).

Normative acts with cost elements, but which can not be identified and evaluated. To a large extent, to identify the costs related to these normative acts, additional information was needed that is missing in the documents submitted (for example: the initial values of a characteristic (number of beneficiaries of an entrepreneur's patent for year x; funds accumulated due to imposition of fines for operations without using a cash machine) or their basic values (cylinder capacity of a car, amount of fines of a business operator liable to be canceled etc.) The most eloquent example in this case are changes that in one way or another affect the environment: changes to the Subsoil Code or to the Forest Code, changes related to waste management, water management. In the absence of estimates of the cost of natural resources and the assessment of the environmental and social-historical impact, it is practically impossible to assess what the monetary and image effects will be on this sector. To add here that in addition to the direct economic value, the use of forests and subsoil and country's limited water resources may have indirect environmental, health, access or sustainability effects that, unfortunately, are neglected.

Normative acts with impossibility of identifying costs. These normative acts either do not contain cost elements in the essence of the activities or the cost of the activities cannot be deduced from their content, whose amount can be assessed in larger exercises and which involve interviewing the main beneficiaries: confidence in institutions, competitiveness and its evolution in certain sectors, image losses, etc. One of the most relevant cases concerns the amendments to the Law on Public Procurement, where every fragmented decision, information gap, low capacity to manage sectoral issues means that, at this stage, in the absence of a large evaluation exercise, we are able to indirectly estimate such costs.

To note that the decision-making process, as noted in the previous Study, is further affected by the lack of systemic transparency, substantial flaws in the reasoning of normative solutions, particularly with regards to economic-financial argumentation. Draft normative acts are not always subject to a regulatory impact assessment (when necessary) or contain the set of necessary acts required for certain categories of draft acts. The summary of costs of interest promoting draft acts (when it was possible to evaluate, especially for the first category of draft acts) shows the following:

1. Avoided costs - Total amount of costs calculated on draft acts rejected or withdrawn:

MDL 1.539 billion;

2. Imminent costs - Total amount of costs by draft acts passed:

MDL 2.54 billion.

Despite the difficulties described above, CP can produce perceptible and quantifiable effects, and this exercise is able to stop the promotion of interests and prevent harm to the public interest and budget. It is important to note that the great amount of imminent costs was the large number of controversial decisions related to the management of public assets, private public partnerships.

III.2. Public property management

One of the most important development resources of public authorities is land. Unfortunately, the way land plots are managed does not ensure their use in the best way to meet the needs of their development, in particular, of the municipality of Chisinau. According to widely disseminated public information, municipal land

management has taken place, especially in the recent years in the "informal" space, with abusive takeovers of public and private land plots, there is inefficient management of municipally owned land, controversial decisions of the Chisinau Municipal Council, controversial decisions of the Public Property Agency and other CPAs.[15]

Description of the problem: Characteristic of CPAs and LPAs is the presence of preconditions for the occurrence of corruption, or the so-called administrative gaps, legal framework, practices that allow transactions with the land plots of public authorities to take place in an informal framework, with *ad hoc* imposed rules. The most important corruption risks identified in CPR include lack of transparency in land management; lack of a land management strategy; gaps in the current normative framework, which allow lease of land without organizing public tenders, upon direct request. The main risks of corruption in land privatization arise as a result of the use of administrative resources, either through influence peddling or administrative inactivity (responsible directorate's failure to fulfill its main tasks).[16] So how do public land plots get lost? The most common are cases of change of their designation and use in public-private partnership schemes.

A. Draft acts suggesting to change land designation, to achieve social-economic objectives. An example in this sense is the draft *decision of the Government, which was developed for the realization of the provisions of Art. XX, para.(2) of Law No. 302/2018 for Amending Some Legislative Acts and Law No. 29/2018 on Delimitation of Public Property and aims to ensure the effective management of public and private land of the state".*

The informative note related to this draft government decision argued the need to approve these changes by the fact that it would contribute to increasing budget revenues. Unfortunately, the draft act had no data on how revenues will increase to the budget if it had been adopted and how environmental risks were to be managed. In contrast, the actual losses for this judgment are at least MDL 4,4 million.

Example: *The draft government decision on amending some government decisions (Government Decision No.161/2019, Government Decision No. 222/2019, Annex no.9 to Government Decision No.351/2005)*

[15] https://www.anticoruptie.md/ro/investigatii/bani-publici/cum-se-pierd-terenurile-publice-din-chisinau-afacerea-terenuri-pentru-familii-nou-create

[16] https://cna.md/public/files/Expert-Grup-Evaluarea-impactului-coruptiei-asupra-bunei-guvernari-in-Administratia-Publica-a-mun-Chib0237.pdf

Drafter:	**Government, Public Property Agency**
Purpose of the draft act: *According to the Informative Note: "This draft government decision was developed for implementing the provisions of Art. XX, para.(2) of Law No. 302/2018 for Amending Some Legislative Acts and Law No. 29/2018 on Delimitation of Public Property and aims to ensure the effective management of public and private land of the state." At the same time, the drafter specified, "This draft act aims to amend the lists of public land of the state under the administration of the Public Property Agency, approved by Government Decision No. 161/2019 with a series of real estate items (land plots) identified after the approval of the Government Decision no.161/2019. Accordingly, we suggest completing: - The list of state-owned land, public domain, under the administration of the Public Property Agency (Annex no. 1) with 209 real estate items, of which 53 agricultural land plots listed in the Annex to Law no. 668/1995 for the approval of the List of units whose agricultural land plots remain the property of the state;*	
CPR and NAC expert:	Xenia VAMEȘ, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft act promotes the public interest to ensure the effective administration/management of the public and private land of the state by modifying the lists of public property of the state in the administration of the Public Property Agency, with a series of real estate items (land plots), which is in accordance with the public interest.	

Identified risks:	The informative note does not reveal information about all the interventions of the draft act in the current normative framework, which generates uncertainties as to the reason and purpose of some changes. The draft act was developed by the Public Property Agency to realize the provisions of Art. XX, para.(2) of Law No. 302/2018 for Amending Some Legislative Acts and Law No. 29/2018 on Delimitation of Public Property and aims to ensure the effective management of public and private land of the state. The draft act partially complies with the transparency requirements imposed by Law no.239/2008 on Transparency in Decision-Making. The drafter did not provide information to the public on the initiation of its development. The provisions of the draft act correspond to the purpose stated by the drafter in the informative note and is in accordance with the public interest. The draft act as written upon arrival for corruption proofing does not contain risk factors or corruption risks. The lack of indication of the amount of funds and their availability resulting from the price difference to be compensated in/from the state budget when exchanging lands is an ambiguity that risks causing a declarative character for the draft act and failure to achieve its goal.
Draft act status:	Approved
Cost assessment:	**Cost of shares:** Based on the arguments presented by the drafter in the informative note, the implementation of the draft act does not require the allocation of additional funds from the national public budget. According to the informative note, "The implementation of this draft act involves financial costs for the formation and registration in the Real Estate Register of the right of administration of the Public Property Agency on the land specified in the Annexes to GD no.161/2019. In addition, where in the process of exchanging goods according to GD no. 222/2019, price differences are found, the funds are to be paid into or from the state budget." This draft act is an abusive one on state property, especially in the context of changing uninhabitable areas with the area of more than 1400 sq.m. of state property on Armenească Str., center of Chișinău, for 666 sq.m. at 99 Decebal Str. In addition to the price differences of such properties on the market, even in terms of nominal prices, there are also significant differences in their areas. The actual losses in this case are at least EUR 74.3 thousand (due to the actual area difference, at nominal price) and can exceed EUR 230 thousand if we calculate this difference at market price (due to the area, access to infrastructure, etc.)

B. Draft acts that allow the use of rent as a precursor stage of land privatization. Land privatization takes place following public tenders or in cases provided by law, based on the lease. Considering that public lands are used as guarantor annually in public-private partnership contracts (around 100 ha of land in residential or public domain areas only in the cases studied), and the municipality or public institution leases this land out to a business operator based on previous lease contract, we can assume that the minimum losses recorded in such case amount to MDL 170 million, or almost 10%, of the total amount of public-private partnerships concluded during 2019 - 2020**.**

Example: *Draft Government Decision on Leasing Out*

Drafter:	**Government, Public Property Agency**
Purpose of the draft act: *The informative note states that the draft Government decision was developed following the requests received from "Grand Oil" SRL, "Palan" SRL and Melihova Ala on leasing out land plots of 5.0 ha, 2.7024 ha and 2.5974 ha from the land with cadastral no.0131120002, with the area of 89.2417 ha, public property of the state, public domain, in the use of State Company "CVC Milestii Mici" for the purpose of the location and arrangement of agro-industrial complexes (for agricultural infrastructure objectives) and tourism".*	
CPR and NAC expert:	Vadim CURMEI, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft government decision on leasing out some land plots was drawn up with a view to the leasing of some portions of land from the land plot with cadastral no. 0131120002, public property of the state. It is proposed to lease out three land portions to applicants for a term of 25 years. Following the examination of the content of the draft Government decision, to note that constructions are located on the land plot with the cadastral no. 0131120002, some of which have been transferred into private property, others have been put into operation by business operators/individuals, and some real estate items are objects of encumbrances for concluding mortgage contracts and obtaining funds from some financial institutions. In addition, of the total area of the land with the cadastral no. 0131120002, some portions of land were leased out to different business operators/individuals, including applicants of the draft acts booked.	
Identified risks:	**Risk factors:** • Gap in the law • Lack/ambiguity of administrative procedures **Corruption risks:** • General
Draft act status:	Approved
Cost assessment:	**Cost of shares:** The informative note states, "the implementation of this draft Government decision does not require the allocation of funds from the state budget." In addition to the fact that the Informative Note is deliberately ambiguous, leasing out of more than 100 ha can only be possible for temporary, baseless constructions, etc. In this case, it is a question of developing a long-term investment project, and the lease only serves as a precursor to the privatization of this land at nominal price. Given that the best price in this connection would be a little more than MDL 170 million (100.3 ha x MDL 1.6 million), the materialized loss is at least EUR 0.96 million (the average market price in the last three years of a construction land plot in Milestii Mici is EUR 1.5 thousand).

Although in essence, draft acts aim to solve some economic problems by streamlining some costs in this sector, the reasoning and suggestions made do not exceed the risks of damages that may exist in this regard in relation to environmental protection, private property protection etc.

Another specific problem is the management of real estate areas. The lack of a strategy and standards for the management of uninhabitable areas often enables abuses, given that when more than 50% of the areas managed by the authorities are unoccupied, institutions procure and lease in premises at the market price to ensure the functioning of the institutions. At present, at national and local levels:

- The lists of premises that can be privatized are not published
- The lists of vacant spaces that can be rented are not published
- No information is published on land that can be leased or privatized
- Reports on leased areas and leased land are not public
- Data on privatized areas and privatized land are not published
- Reports on municipal property and its forms of ownership and legal area are not public.

What this lack of transparency can lead to we can see in the CPR on the draft act for amending Law No.121/2007 on the Administration and Denationalization of Public Property (art.17, 18, 22 etc.)[17]

[17] https://cna.md/public/files/Expert-Grup-Evalu-area-impactului-coruptiei-asupra-bunei-guver-nari-in-Administratia-Publica-a-mun-Chib0237.pdf

Example: *Draft act for amending Law No.121/2007 on the Administration and Denationalization of Public Property (art.17, 18, 22 etc.)*

Drafter:	**Parliament**
Purpose of the draft act: *The draft act aims to extend the term of the lease contract from one year to 3 years of for unused assets of state/municipal enterprises and companies with full or majority public capital not included in the lists of assets non-liable to privatization, except for assets within industrial parks. The drafter notes in the informative note that the norm "does not correspond to the specific requirements of legal relations between state institutions and private agents, the maximum term of one year of the lease established by law causes uncertainty of legal relations in terms of development prospects and causes impediments in the activities practiced by the tenants." Similarly, through the draft act, the drafter suggests regulating a new procedure for the privatization of the uninhabitable rooms leased out, considering that the procedure established in art. 50 in the current wording "constitutes a derogation from the transparent procedures for alienation of state property." Hence, "making such changes will ensure the privatization of the uninhabitable rooms leased out according to the general provisions (...)."*	
CPR and NAC expert:	Vadim CURMEI, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft act aims to extend the term of the lease contract from one year to 3 years of for unused assets of state/municipal enterprises and companies with full or majority public capital not included in the lists of assets non-liable to privatization, except for assets within industrial parks. The drafter notes in the informative note that the norm "does not correspond to the specific requirements of legal relations between state entities and private agents, the maximum term of one year of the lease established by law causes uncertainty of legal relations in terms of development prospects and causes impediments in the activities practiced by the tenants." Similarly, through the draft act, the drafter suggests regulating a new procedure for the privatization of the uninhabitable rooms leased out, considering that the procedure established in art. 50 in the current wording "constitutes a derogation from the transparent procedures for alienation of state property." Hence, "making such changes will ensure the privatization of the uninhabitable rooms leased out according to the general provisions (...)." Some norms were found in the draft act that may generate risks of corruption. Hence, there is a mismatch between the provisions of the draft act and the provisions of art.13 of the law regulating property not liable to privatization, as well as to the procedure for privatization of uninhabitable premises.	
Identified risks:	**Risk factors:** • Rules of law competition • Gap in the law • Lack/ambiguity of administrative procedures **Corruption risks:** • General
Draft act status:	Withdrawn
Cost assessment:	**Cost of shares:** The informative note states, "the implementation of the provisions of this draft law will not involve budgetary expenditures." At the same time, in the absence of an inventory and a clear argument of the need for this measure, **we risk saying that it will be possible to privatize more than 43 million sq.m. that are currently leased out, under the lease agreement.** Suppose a nominal price of MDL 1 per sq.m. when leasing out these areas and privatization at a nominal price of MDL 1.1 per sq.m., the losses for the state property would be of **MDL 45 million.** Not to mention the fact that the provisions of this law would allow abusive, uncontrolled and irrational privatization of public property.

Conclusions:

The main risks of corruption in the management of public assets relate to:

I.Delimitation of public property;

II. Non-registration of immovable property;

III. Property tracking;

IV. Lack of transparency in municipal property management;

V. Inadequate information management.18

The lack of a systemic property management strategy and the faulty legal framework only indicate a lack of the authorities' interest in solving this issue. At the same time, this area is one that bears the greatest risks of a public property loss, **of over MDL 400 million every year.**

III.3 Public-private partnerships

Description of the problem: The implementation of public private partnerships (PPPs) is difficult in the Republic of Moldova, with serious deviations from the regulatory framework and good practices, a clear example being the concession of Chisinau Arena, the case being analyzed in the previous Study. Similarly, the institutional framework is not one that would ensure a good management of the system, which is the conclusion of one of the Court of Accounts' reports on this subject. The Court of Auditors' Report targeted and reviewed 9 PPP contracts,[19] 2 of which were the subject of previous CPR reviews. The term of execution in the case of these contracts was set for a period of 25 to 49 years. The amount of the property assigned from the management of public authorities to a private partner was of MDL 2.5 billion, resulting in investments by private partners within the audited contracts of about MDL 100 million.

In the period from 2019 to 2020, **6 PPP draft acts were reviewed by NAC**, and the conclusions were practically identical to those of the Court of Accounts.[20] Hence, for the proper functioning of the PPP system, decisions on all strategic priorities for investment projects should be made at a higher political level. There should be no institutional, procedural or accounting bias either in favour of or against PPPs. The current situation indicates that there is no interest from the relevant institutions to establish strategic priorities for PPP development. The National Council for Public-Private Partnerships did not ensure an evaluation of state policies for defining the general PPP framework at the country level and of the priorities in the field.

Hence, **of the 6 contracts reviewed in the CPR, all of them could have been carried out through a contract other than PPP**, and in the absence of country priorities for more than 90% of them, it is not clear how the maximum achievement of the public interest will take place. [21]

Risk management is also a particular problem. Good practices say that risk management must be handled by the partner who will suffer the most if a risk occurs. Risk management, at a formal level, is handled by the Ministry of Economy and Infrastructure (MEI), while the institution that would have to lose the most is the Ministry of Finance, which is excluded from the equation completely. Hence, although there is a risk matrix developed by the MEI, it has never been implemented by the authorities, and the Ministry continues to accept investment projects with serious problems in this regard.

In the current situation, where the risks are not well defined or measured and there are no contractual conditions for their transfer between the public and private partner, we draw attention to the high possibility that the public partner will bear the losses. A PPP procurement process must be one with the involvement of all actors and at all stages of its implementation. And if at the pre-tender (pre-operational) stage limited attention is paid, as the above situations have been described, then in the operational phase the action takes place exclusively between the private partner and the public institution. This neglect of the operational phase has endangered

[18] "https://www.legis.md/cautare/getResults?doc_id=124705&lang=ro"

[19] https://www.legis.md/cautare/getResults?doc_id=124705&lang=ro

[20] https://www.legis.md/cautare/getResults?doc_id=124705&lang=ro

[21] https://www.legis.md/cautare/getResults?doc_id=124705&lang=ro

the sustainability of some projects, especially in the conditions of the budgetary instability of the past 4 years. One of the worst cases has been the implementation of PPP within the Chisinau Arena Project, where the public partner did not honor its financial obligations due to a budgetary austerity, on the one hand, and the private partner exceeded the contractual framework by oversizing its services, on the other hand. The damages in this case alone amount to MDL 400 million.

A classic case was the implementation of a PPP in Bălți, where not only the financial obligation of the state but also the land adjacent to the construction of this object were set as guarantor of the state obligation.

Example: *CPR to the draft decision of the Government on the approval of the objectives, conditions of the public-private partnership on the reconstruction, modernization and development of the activities of the specialized sports school of tennis and the general requirements on the selection of the private partner.*

Drafter:	**Public Property Agency**
Purpose of the draft act: *The draft government decision aims to approve the objectives, conditions of the public private partnership on the reconstruction, modernization and development of the activities of the specialized tennis sports school and the general requirements on the selection of the private partner.* *According to point 2 of the draft act "the purpose of the public-private partnership is to increase the efficiency of use of public assets by strengthening the technical infrastructure and creating optimal conditions for the development of performance tennis in the Republic of Moldova by attracting private investments to the national sports infrastructure and modern training technologies based on a public-private partnership, by developing a feasible, profitable business in accordance with the law." The object of the public-private partnership is proposed to be the assets of the specialized sports school of tennis, the tennis court and the services provided by the school.*	
CPR and NAC expert:	Vadim CURMEI, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft act suggests approving the acceptance of the transfer of a land plot and of the construction located thereon from the public domain to the private domain of Bălți municipality. The informative note notes the lack of the need to use the land and the construction thereon in the educational area, which is why it is proposed to remove these assets from the public circuit by transfering them to the private domain of the local public authority. Without denying the principle of local self-government, we note that the informative note does not contain exhaustive information that would argue the appropriateness of public use of immovable property in question in the general interest. However, the drafter only notes, "it was found that the goods proofed are no longer used according to their original designation and it is not necessary to maintain them in education." In our opinion, the draft act refers to the finding of the cessation of the need to maintain in the public domain immovable property designated for the area of education, located in Bălți municipality.	
Identified risks:	**Risk factors:** • Gap in the law • Non-exhaustive/ambiguous/subjective grounds for • refusal or inaction of the public entity • Lack/ambiguity of administrative procedures • Lack of clear responsibility for violations • Promoting interests contrary to the public interest • Lack of clear sanctions **Corruption risks:** • General
Draft act status:	

Cost assessment:	Cost of shares:
	The informative note states, "the implementation of this draft normative act does not imply financial expenses." At the same time, according to point 7 of the draft act - *The investments made for the modernization of the specialized tennis sports school are provided by the private partner, which upon termination of the public-private partnership contract, are transferred to state property, management of the public partner, free of any burdens and encumbrances. At the same time, the term of the public private partnership (25 years), de facto transfers the management and utility of this private objective, without the public partner obtaining benefits. The risk in this case is not only the loss of current, but also future, income and of the ability to use this sport objective over this period.*

Conclusions:

The current public-private partnership system, in its current form, creates a gray area with high risks of corruption, where good practices are not followed. It is affected by the actions of the management of institutions implementing public-private partnerships, which do not comply with the legal framework, have low transparency in the system, an insufficient monitoring of contract stages by the public partners; failure to appoint persons responsible for contract execution; lack of specific regulations for tracking and reporting on the execution of contractual clauses by public and private partners, etc. Its reform is imperative or there is a risk of loss of public assets and of incurring subsequent contingent liabilities. **The amount of losses, only for the draft acts reviewed, is of over MDL 1.5 million.**

III.4. Environmental damage

The issue of the use of environmental resources, especially of mineral substances for earthworks in the construction of roads, railways, dams and for the prevention and cessation of dangerous geological phenomena has always been a topical issue, being the subject of investigative reports or of Court of Accounts audit reports,[22] and the delay in solving it has caused numerous damages to the environment and the state budget, with multiple cases of illegal use of the subsoil by private and state enterprises documented.

Problem description: Between 2016 and 2018, **NAC proofed 7 draft acts concerning environmental protection**, two of which directly targeted the use of widespread mineral resources other than from existing quarries in road rehabilitation works and construction of dams, which were draft acts with an irreversible impact on the environment. To solve this problem, after two unsuccessful attempts by a group of Members of the Parliament to promote changes to the Subsoil Code no. 3-XVI of 2 Feb 2009, on 17 May 2017, the Government registers the legal initiative no. 151 in the Parliament***(see example in Section I.1.***), which sought to regulate a simplified procedure for the use of the subsoil for public purposes.

Example: *CPR to the draft act for amending art.74 of the Land Code no. 828/1991*

[22] https://www.legis.md/cautare/getResults?doc_id=48607&lang=ro

Drafter:	Parliament of Moldova
Purpose of the draft act: *In the informative note, the drafter mentioned that the draft act aims to temporarily withdraw the land intended for the location of loan pits from the agricultural circuit, to facilitate the construction of public roads by free extraction of sedimentary rocks.*	
CPR and NAC expert:	Vadim Gheorghiță, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: Draft law for amending art.74 of the Land Code no.828/1991 is promoted by a MP, to facilitate the construction of public roads by temporarily withdrawing from the agricultural circuit of land designed for the location of loan pits, necessary for the free extraction of sedimentary rocks. In the drafting process, the legal provisions on transparency in decision-making were followed and the draft act meets the legislative technique rules. The draft act corresponds to the general public interest, as it will contribute to the construction and modernization of the public road network.	
Identified risks:	No factors or risks of corruption were identified in the norms of the draft act subject to corruption proofing.
Draft act status:	Approved
Cost assessment:	**Cost of shares:** Even if no sharp risks of corruption have been identified in this case, we would like to remind you that the environmental sector is extremely sensitive to acts of corruption and inefficient management. Hence, the Environmental Inspectorate calculated that the amount of the environmental damage exceeded MDL 240 million as a result of the irrecoverable loss of agricultural land, of over 1 million tons of arable land that was not used to cover such loan pits.*

* http://ipm.gov.md/ro/node/580

Note: Over the years, the NAC has given a number of opinions and recommendations to attempts to amend the Basement Code, especially on the issue of the timeliness to create loan pits.[23] With few exceptions, the draft acts contained norms that could have been interpreted, offering a discretion of action that could inevitably lead to environmental damage.[24] In the context of the changes made on 27 July 2018 by the adoption of Law No. 194, the state implements a public policy, for which a study is not made to prove the achievement of the objectives of efficiency, environmental protection, reduction of outsourcing, equity, etc. Thus, in addition to serious violations of the principle of competition, it creates a semi-legal framework through which illegal quarries and loan pits can be legalized. Even if no obvious risks of corruption have been identified, to point out that, from 2018 to 2020, following geological controls and state mining supervision on the rational use and protection of the subsoil, 114 reports were prepared on the assessment of environmental damage caused by the illegitimate extraction of useful mineral substances, ***the amount of the damage being assessed at more than MDL 80 million per year***. At the same time, the State Ecologic Inspectorate, as at 1 January, had identified 277 illegal quarries, estimating the damage caused to the environment at ***MDL 80,543,072***.[25]

Another sector no less affected, with draft acts that promote an actual legalization of corruption risks relates to waste management. The waste management sector is one of the least reformed sectors, essentially maintaining managerial approaches, which have long been overtaken by the economic and social realities of the Republic of Moldova. One of the draft acts with a high degree of corruptibility, which was adopted, although the CPR had strong arguments against it, is also the following:

Example: *CPR on the draft government decision for the approval of the regulation on waste transfers*

[23] https://www.cna.md/public/files/raport_expertiza/rea_gropi_imprumut.pdf

[24] https://www.md.undp.org/content/dam/moldova/img/Studiu%20EA%202016_2018_21.09.2020_final.pdf

[25] http://ipm.gov.md/ro/node/580

Drafter:	Government, Ministry of Agriculture, Regional Development and Environment
Purpose of the draft act: *In the informative note, the drafter noted that the act was developed under the provisions of art.64 of Law No.209/2016 on Waste, as well as for executing the Parliament Decision no.1599/1998 on acceding to the Basel Convention of 22 March 1989 on the Control of the Transboundary movement of Hazardous Waste and Its Disposal, and in accordance with Chapter IX. Environmental protection and natural resources and position 9.9.2 of the Annex to the Government Action Plan for 2020-2023, approved by Government Decision no. 636/2019.*	
CPR and NAC expert:	Vadim Gheorghiță, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft government decision for the approval of the regulation on waste transfers was prepared by the Ministry of Agriculture, Regional Development and Environment, to achieve the provisions of the normative acts in force in the field of waste management. In the drafting process, the legal provisions on transparency in decision-making were followed and the draft act meets the legislative technique rules. The draft act complies with the general public interest, as it will contribute to environment protection and health of the population, by ensuring integrated and sustainable waste management. The following corruption factors were identified in the norms of the draft act subject to corruption proofing: • ambiguous wording that allows abusive interpretations; • defective reference norms; • rules of law competition; • lack/ambiguity of administrative procedures. To prevent the occurrence of manifestations of corruption in the practical application of the draft act provisions, we consider it appropriate to prepare it in the context of the objections and recommendations of this corruption proofing report.	
Identified risks:	**Risk factors:** • Ambiguous wording that allows abusive interpretations • Lack/ambiguity of administrative procedures • Defective reference norms • Rules of law competition **Corruption risks:** • General • Encouraging or facilitating acts of: - active corruption - passive corruption - influence peddling - illicit enrichment - non-compliance with the gift regime - tax evasion - swindling
Draft act status:	Approved
Cost assessment:	**Cost of shares:** Normative acts with impossibility of identifying costs. Normative acts formulated in such a manner either do not contain cost elements in the essence of activities or the cost of activities cannot be deduced from their content. The amounts of such draft normative acts could be assessed in larger exercises that involve interviewing the main beneficiaries on trust in institutions, competitiveness and evolution in certain sectors, possible attacks on the dignity of the person, property rights, image losses, etc. In the informative note, the drafter mentioned that the implementation of the draft act provisions entails the following costs: - for administration of notifications; - for implementation (among them, customs control expenses). At the same time, the drafter mentions that the said expenses are to be financed from and within the limit of the allocations approved annually in the budgets of the authorities responsible for the implementation of the provisions of the normative act (included in the operating expenses of the public authority in the field of the environment).

In conclusion, ***the activities of this sector are largely affected by group interests and narrow political influences.*** This has slowed the development of the sector, so that the resources generated by the sector are used in a non-transparent and inefficient way. A review of the topics related to ensuring transparency and of population's access to natural resources shows that ***the environmental field needs a deep and complex reform***. The amount of damage materialized due to management problems and lack of an understanding of how to manage resources is at least MDL 80 million annually as a result of documented irregularities and over MDL 30 million as a result of the misinterpretation of the draft acts promoted in the Parliament.[26]

III.5. Tax exemption

Description of the problem: Taxation is the only practical means of collecting revenues to finance government spending on the goods and services that the majority of the population requires. Creating a fair and efficient tax system is, however, far from simple, especially for developing countries wishing to integrate into the international economy. The ideal tax system in these countries should collect essential revenues without excessive government borrowing and should do so without discouraging economic activity and without deviating too much from the tax systems of other countries.[27]

Although the provision of tax incentives to promote investment is common in countries around the world, evidence suggests that their effectiveness in attracting incremental investment - above and beyond the level achieved if incentives had not been granted - is often questionable. That is because tax incentives can be requested in excess by existing enterprises, disguised as new ones, through nominal reorganization, and their costs can be high. Moreover, foreign investors, the main target of most tax incentives, base their decisions to enter a country on a number of factors (such as natural resources, political stability, transparent regulatory systems, infrastructure, skilled workforce), of which tax incentives are often far from being the most important ones. Tax incentives could also have doubtful value for a foreign investor, since the true beneficiary of the incentives may not be the investor, but rather the treasury of the home country. This can occur when any income saved from taxation in the host country is taxed by the investor's home country.[28]

Tax incentives may be justified if they address some form of market failure, in particular those involving externalities (economic consequences beyond the specific beneficiary of the tax incentive). For example, incentives designed to promote high-tech industries that promise to confer significant positive externalities to the rest of the economy are usually legitimate. By far the most compelling case for granting targeted incentives is to meet the regional development needs of such countries. However, not all incentives are equally suitable for achieving these goals and some are less cost-effective than others. Unfortunately, the most widespread forms of incentives identified so far tend to be the least meritorious, appear ad hoc, and do not have an economic argument.[29]

An example of this is Parliament's draft law on the establishment of a special and preferential taxation regime for payments made when testing employees for the SARS-CoV-2 virus. In this case, the informative note to the draft act goes against the requirements established in art.30 of Law No.100/2017 on Normative Acts. It requires to be supplemented with information/data on economic-financial substantiation. However, in the absence of a relevant economic-financial reasoning, the proposed regulations will not have the intended outcome of the draft act, or may remain only at the declarative level.

Example: *Draft law on the establishment of a special and preferential tax regime for payments made for testing employees for SARS-CoV-2.*

[26] https://www.legis.md/cautare/getResults?doc_id=48607&lang=ro

[27] https://blogs.imf.org/tag/tax-exemptions/

[28] https://www.imf.org/external/pubs/ft/fandd/2018/03/akitoby.htm

[29] https://www.imf.org/external/pubs/ft/issues/issues27/

Drafter:	Parliament of the Republic of Moldova
Purpose of the draft act: *According to the informative note, the draft act aims "[...] to support both employers and employees, once it will exclude the payment by employees of income tax and social and health insurance contributions. Both facilities (deduction of employer costs and employee exemption from tax and social payments) will thus contribute to the fight against the pandemic, by carrying out tests for as many people as possible (mass testing)."*	
CPR and NAC expert:	Xenia VAMEȘ, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft act promotes the public interest in encouraging and mass testing of the population by establishing a special and preferential tax regime for payments made when testing employees for SARS-CoV-2 virus, once employee payment of income tax and social and health insurance contributions are excluded. Both benefits (deduction of employer costs and employee exemption from tax and social payments) will thus contribute to the fight against the pandemic, by carrying out tests for as many people as possible (mass testing). The draft act partially complies with the transparency requirements imposed by Law no.239/2008 on Transparency in Decision-Making. The drafter did not provide information to the public on the initiation of its development. The informative note to the draft act goes against the requirements established in art.30 of Law No.100/2017 on Normative Acts. It requires to be supplemented with information/data on economic-financial substantiation. However, in the absence of a relevant economic-financial reasoning, the proposed regulations will not have the intended outcome of the draft act. At the same time, to pass the draft law, it is necessary to request the Government's point of view on the solutions promoted by the law, in accordance with art. 131 paras. (4) and (6) of the Constitution.	
Identified risks:	The draft act partially complies with the transparency requirements imposed by Law no.239/2008 on Transparency in Decision-Making. The drafter did not provide information to the public on the initiation of its development. The informative note to the draft act goes against the requirements established in art.30 of Law No.100/2017 on Normative Acts. It requires to be supplemented with information/data on economic-financial substantiation. However, in the absence of a relevant economic-financial reasoning, the proposed regulations will not have the intended outcome of the draft act.
Draft act status:	Approved
Cost assessment:	**Cost of shares:** Normative acts with impossibility of identifying costs. Such normative acts do not contain cost elements in the essence of the activities or the cost of the activities cannot be deduced from their content; this amount can be assessed in larger exercises.*

*Such assessments involve interviewing the main beneficiaries: trust in institutions, competitiveness and its evolution in certain sectors, attack at one's personal dignity, attack on property rights, loss of image, etc.

The costs of corruption in this specific case, apart from direct ones, also involve indirect costs or those that cannot be quantified, its value can be assessed in larger exercises and that involve interviewing the main beneficiaries: trust in institutions, competitiveness and its evolution in certain sectors, damage to property rights, image losses, etc.

Another example of an attempt to legalize tax evasion de facto was also the draft law for approving the Regulation on the Manner of Granting Benefits Related to Road Use Tax.

Example: *The draft law for amending the Tax Code no.1163/1997 (Annex no.3 in Title IX Road Fees etc.)*

Drafter:	Parliament of the Republic of Moldova
Purpose of the draft act: *The informative note states, "this draft act suggests amending Annex No. 3 "Road use fee for vehicles registered and unregistered in the Republic of Moldova whose total mass, mass load or sizes exceed the limits allowed" in Title IX "Road fees" of the Tax Code no. 1163/1997." The drafter mentions in the note, "the amendments proposed are based on the consequences of the approval of the amendments by Law no.146 of 14 July 2017 to Title IX Annex no.3 of the Tax Code, when the fee for road use by vehicles whose sizes exceed the allowed limits has increased fivefold."*	
CPR and NAC expert:	Vadim CURMEI, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The informative note does not contain any grounds for the amendments proposed to Annex no.6 and Chapter VII of Title IX of the Tax Code. The note makes no fair or objective comment on the timeliness and impact of these norms. Although the draft act is in the public interest, it is to be thoroughly reviewed by all subjects in the area regulated who are directly responsible for implementing the provisions as well as to be correlated with the line and budgetary-fiscal policies promoted and approved by the Government at state level. At the same time, some norms with confusing content were found in the draft act, which can lead to discretionary interpretations and the emergence of corruption risks. The draft act regulates in a confusing manner the procedure for establishing the conditions for benefiting from the tax reduction as well as the procedure for calculating the average monthly travelof motor vehicles.	
Identified risks:	**Risk factors:** • Uneven use of terms • Lack/ambiguity of administrative procedures • Rules of law competition **Corruption risks:** • General
Draft act status:	Approved
Cost assessment:	**Cost of shares:** Normative acts with impossibility of identifying costs. These normative acts either do not contain cost elements in the essence of the activities or the cost of the activities cannot be deduced from their content, whose amount can be assessed in larger exercises and which involve interviewing the main beneficiaries: confidence in institutions, competitiveness and its evolution in certain sectors, attack on the personal dignity of the person, attack on the property right, image losses, etc.

III.6. Public procurement

Description of the problem: **Public procurement is the process of acquisition by public authorities of certain products, works or services.** In fact, through the process of public procurement the state must obtain that minimum of products, works or services that guarantees its proper functioning, including to provide the population with public services and goods. Among these services and goods are medicine, education, ensuring public order, infrastructure, etc. For their procurement and delivery, the state uses the money collected in the form of fees and taxes from citizens, **so the money spent in the procurement process is also every taxpayer's money**. In reality, however, this perception disappears both among ordinary citizens and officials responsible for procurement, due to the erroneous interpretation of the public budget as something abstract. As a result, there is a temptation for officials to use public money in their own interests, and citizens make little effort to monitor how their money is spent. This creates an environment conducive to corruption in public procurement.

An equally important problem was that in the pandemic, a number of draft acts were registered, which would have contributed to the excessive and unnecessary limitation of the transparency of public procurement and even worse, to the limitation of the responsibility of the contracting authorities as well as of business operators.

Improving the transparency and effectiveness of state control in public procurement and improving the transparency and efficiency of public procurement underlay ***Law No.131/2015***

on Public Procurement and the launch of the Mtender project. The corruption proofing of draft laws that underlay the creation of the existing framework signaled a series of deficiencies, which remained unresolved and would have led to a series of systemic problems of system operation as well as to the materialization of corruption risks. Unfortunately, the recommendations made in 2 CPRs[30] dedicated to this topic were not taken into account by the relevant authorities which led, among other things, to the fact that:[31]

- The current legal framework allows for a number of violations on the part of both customers and contracting authorities;
- As a result, biased and non-transparent decisions are possible during the supervisory activities of the bodies authorised to exercise control in public procurement. The system of electronic procurement currently does not allow notification of control and law enforcement bodies on such cases.
- There is also a lack of consolidated information on how the supervisory and legal bodies respond to the company's respective requests. In addition, the Mtender procurement system does not currently have information on the payment on procurement agreements, which prevents proper monitoring of the efficiency and integrity of the implementation of such agreements.
- The Ministry of Finance does not have a ***de jure*** procedure of information interaction among the electronic procurement system, the information system of MoF and the adopted treasury system; exchange of data among these systems would allow both government actors and civil society to report the violations detected in the Mtender system online to the control and law enforcement bodies;
- In addition, problems persist on the part related to transparency of payments for procurement contracts; timely identification and prevention of violations and abuse of public procurement procedures through the automatic exchange of information among the Mtender e-procurement system, the single open data portal, and the treasury system.

[30] https://www.cna.md/exp_files.php?a=aWQ9NTQxMi-Z0eXBlPXJlcG9ydHM=
[31] https://www.cna.md/exp_files.php?a=aWQ9NTQ1MS-Z0eXBlPXJlcG9ydHM=

Example: *Draft law on procurements in the energy, water, transport and postal services sectors*

Drafter:	**Ministry of Finance**
Purpose of the draft act: *In the informative note, the drafter mentions that the draft act aims to align the national regulatory framework with the legal framework of the European Union acquis as well as to transpose the basic elements of the European Union Directive 2014/25/EU on procurement made by entities operating in the water, energy, transport and postal services sectors, and to repeal Directive 2004/17/EC, published in the Official Journal of the EU no. 94/243 of 28 March 2014.*	
CPR and NAC expert:	Vadim Gheorghita, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft law on procurement in the energy, water, transport and postal services sectors was drafted by the Ministry of Finance to align the national regulatory framework with the legal framework of the European Union Acquis. In the drafting process, the legal provisions on transparency in decision-making were followed and the draft act meets the legislative technique rules. The draft act meets the general public interest, as it will contribute to: - establishing a transparent and efficient mechanism for the procurement of goods, works and services in the fields of energy, water, transport and postal services; - establishing a mechanism for the resolution of appeals on the decisions of the contracting entities, as well as ensuring equal, impartial and non-discriminatory treatment by such entities. The following corruption factors were identified in the norms of the draft act subject to corruption proofing: - rules of law competition; - establishing a public entity's right instead of an obligation; - lack of clear responsibility for violations. To prevent the appearance of some inaccuracies in the practical application of the draft norms, we consider it appropriate to draft it in the context of the objections and recommendations of this corruption proofing report.	

Identified risks:	**Risk factors:** • Rules of law competition • Establishing a public entity's right instead of an obligation • Lack of clear responsibility for violations **Corruption risks:** • General • Encouraging or facilitating acts of: - influence peddling - conflict of interest and/or favouritism - illicit enrichment - undue influence - non-compliance with the gift regime - tax evasion - swindling - active corruption - passive corruption • Encouraging or facilitating acts of: - conflict of interest and/or favouritism - undue influence - non-compliance with the gift regime - tax evasion - swindling - bribe giving - bribe taking - influence peddling - illicit enrichment
Draft act status:	
Cost assessment:	**Cost of shares:** The informative note mentions, "the implementation of this draft act does not imply public financial costs

Another example is presented below and relates to the Regulation on the Procurement of Goods, Works and Services in a State Enterprise and a Joint-Stock Company with Full or Majority State Capital, a regulation that is absolutely necessary and useful but which is ambiguous in its formulation and does not solve the main problems of procurements in such institutions

Example: *The draft government decision for the approval of the regulation on the procurement of goods, works and services in a state enterprise and joint-stock company with full or majority state capital*

Drafter:	Government, Ministry of Economy and Infrastructure
Purpose of the draft act: *According to the informative note, "the draft government decision for the approval of the regulation on the procurement of goods, works and services in a state enterprise was prepared under art.8 para.(7) letter r) of Law No.246/2017 on the State Enterprise and Municipal Enterprise, and aims to provide support to state/municipal enterprises at the stage of drafting the Regulation on the Procurement of Goods, Works and Services at the State Enterprise."*	
CPR and NAC expert:	Ilie Creciun, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft act aims to approve a regulation for the procurement of goods, works and services by state or municipal enterprises and joint-stock companies with majority or full state capital. The regulation provides for five methods of procurement, and the principles by which these procedures take place are equality, equity, non-discrimination, etc. The informative note contains summary information for all compartments. Given the importance for the public interest as well as the complexity of the regulated social relations, the informative note does not meet the legal requirements. The draft act contains a number of risk factors that generate corruption risks. Accordingly, there were found legal gaps, ambiguous wording, gaps in and ambiguities of administrative procedures, discriminatory provisions and stimulating unfair competition, etc. Being inspired by different normative acts that regulate public procurement, the draft act does not represent a uniform and coherent regulation. In drafting the regulation, regulatory omissions took place in regard to all the procedures enshrined in this very draft act. In addition to the need to remove risk factors, the draft act needs to be revised conceptually by removing the provisions that contravene each other, regulating the normative voids and regrouping the structural elements of the normative act.	
Identified risks:	**Risk factors:** • Gap in the law • Lack/ambiguity of administrative procedures • Non-exhaustive/ambiguous/subjective grounds for refusal or inaction of the public entity • Lack/ambiguity of administrative procedures • Stimulating unfair competition • Rules of law competition • Lack of concrete deadlines/unjustified deadlines/unjustified extension of deadlines **Corruption risks:** • Encouraging or facilitating acts of: - conflict of interest and/or favouritism - undue influence • Legalization of acts of: - misuse of one's official status; - irregular use of funds and/or assets
Draft act status:	Approved
Cost assessment:	**Cost of shares:** The informative note states, "The implementation of this draft act does not imply financial costs. However, it further says, "The implementation of the draft act does not require an allocation of additional funds from the state budget," but obviously implies major risks of materialization of corruption risks, and not only those related to inefficient use of resources (amount of procurements of SC, MC in the last three years, exceeding MDL 10 billion) is related to at least the materialization of the minimum risks of loss of public money of MDL 1.5 billion, as a result of the risks identified above.

Monetary costs in public procurement, as a result of the system deficiencies listed above, are practically impossible to estimate individually but affect the public procurement system in general. Hence, at the country level, corruption costs are directly proportional to the amount and volume of total purchases in the country. At the international level, ***it is considered that the costs of corruption in public procurement vary between 20 and 25% of the total amount of public procurement***. Although this percentage varies from country to country, it can be much

higher in countries with a low ranking in this area, such as the Republic of Moldova and thus being more reasonable to apply the quota of 25%. In the case of the Republic of Moldova, however, estimating the costs of corruption in public procurement is hampered by the fact that there are no statistical data on all public procurement.

The authority publishing this data is the Public Procurement Agency but it compiles statistics only for competitive procurement procedures and not for low value contracts. In fact, at present in the Republic of Moldova it is not known exactly what the real volume of public procurement is. Indirect estimates of the volume of public procurement can be made using the BOOST public finance database, which can indicate the total amount of procurement. Based on available data and applying the average percentage of the cost of corruption in procurement of 25% ***it can be estimated that in 2016, this cost ranged from MDL 1.6 billion to 3 billion, which is 1.3% and 2.5% of the GDP.***

These costs of corruption in public procurement are only monetary and are largely due to high procurement costs due to favoring companies and lack of competition in procurement procedures. ***The given costs are those losses to the public budget that could have been avoided in a transparent and competitive procurement environment.***.

III.7. "COVID" draft acts.

Inevitably, emergency situations require the adaptation of the management process of public resources, and their character can serve as an opportunity for the emergence of corruption factors, especially since most of the draft acts promoted have had a) a character of modification of the legislative framework, b) a character of support of some groups of beneficiaries, which inevitably were outside the existing framework of control of public finances.

The first case dealt with changing the framework for conducting public procurement, when the NAC expressed concern that contracts could be awarded without any competitive tender and outside public control, warning the Government about the risk that taxpayer money could easily be wasted on overvalued equipment or inadequate services. In such circumstances, concerns were expressed about draft acts aimed at speeding up the procurement procedure, the timeliness of procurement through direct negotiations, without the publication of tenders, etc.

Another type of draft acts promoted in the context of the pandemic have been ones to support some categories of beneficiaries, or to compensate expenses or losses, especially for entrepreneurs. In both cases, although the NAC does not deny the importance and urgency of such measures, corruption risks were identified, but, more importantly, in the absence of economic reasoning, it would not have been possible to implement most of the draft acts proofed, or they would have only contributed to the administrative burden of the Government. As an example can also be mentioned the draft government decision for the approval of additional transparency measures on public procurement carried out to prevent, mitigate and liquidate the consequences of the coronavirus (COVID-19) pandemic for 2020, promoted by the Ministry of Finance. *The CPR on the draft Government decision approving additional transparency measures on public procurement to prevent, mitigate and eliminate the consequences of the coronavirus (COVID-19) pandemic for 2020* expressly states, *"Although the draft act provisions regulate matters of public interest, some of them are worded in a confusing manner, running the risk of discretionary interpretation and application, which will favor the appearance of manifestations of corruption. In particular, there is a regulatory gap and an ambiguous wording so that the proposed draft act does not correlate with the provisions of relevant regulations setting requirements for the need to approve Government decisions under the law, as well as the removal of corrupt norms that will avoid circumvention of reporting on procurement made in accordance with the simplified procedure in the context of the coronavirus (COVID-19) pandemic for 2020, which risks compromising meeting the public interest, ensuring full transparency and real integrity of public procurement in accordance with the measures to prevent, reduce and remove the consequences of the coronavirus (COVID-19) pandemic by 2020."*

More details are illustrated below:

Example: *The draft government decision on approving additional transparency measures on public procurement carried out to prevent, mitigate and liquidate the consequences of the coronavirus (COVID-19) pandemic for 2020*

Drafter:	**Ministry Of Finance**
Purpose of the draft act: *According to the informative note: "This draft Government decision has been prepared to establish a mechanism for increased transparency on public procurement to prevent, mitigate and eliminate the consequences of the coronavirus (COVID-19) pandemic by 2020"*	
CPR and NAC expert:	Maia GONTA, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft act was developed by the Ministry of Finance and aims to approve additional transparency measures on public procurement to prevent, reduce and eliminate the consequences of the coronavirus (COVID-19) pandemic for 2020, to establish an effective mechanism for reporting and informing the contracting authorities of public procurement carried out in accordance with measures to prevent, mitigate and eliminate the consequences of the coronavirus (COVID-19) pandemic for 2020. Although the provisions of the draft act regulate issues of public interest, some of them are worded in a confusing manner, running the the risk of discretionary interpretation and application, which would favor the emergence of manifestations of corruption. In particular, there is a regulatory gap and an ambiguous wording so that the proposed draft act does not correlate with the provisions of relevant regulations setting requirements for the need to approve Government decisions under the law, as well as the removal of corrupt norms that will avoid circumvention of reporting on procurement made in accordance with the simplified procedure in the context of the coronavirus (COVID-19) pandemic for 2020, which risks compromising meeting the public interest, ensuring full transparency and real integrity of public procurement in accordance with the measures to prevent, reduce and remove the consequences of the coronavirus (COVID-19) pandemic by 2020.	
Identified risks:	**Risk factors:** • Gap in the law • Harm to interests contrary to the public interest • Unrealizable norms • Ambiguous wording that allows abusive • interpretations • Harm to interests contrary to the public interest • Duties allowing derogations and abusive interpretations • Lack/ambiguity of administrative procedures Rules of law competition **Corruption risks:** General • Encouraging or facilitating acts of: - conflict of interests and/or favouritism - irregular use of funds and/or assets - undue influence - passive corruption - active corruption • Legalization of acts of: - misuse of one's official status - exceeding service duties
Draft act status:	Approved
Cost assessment:	**Cost of shares:** Based on the arguments presented in the informative note as well as on the provisions of the draft act, we find that its implementation does not involve financial expenses from the state budget. In this regard, the informative note states, "The implementation of the draft act does not imply additional financial costs."

To note that, with small exceptions (the draft acts that led to the modification of the public procurement framework were passed but the consequences will be evaluated in another evaluation exercise), the COVID draft acts were withdrawn following a negative corruption proofing. At the same time, as noted before, we will be able to discuss about the possible inefficiencies and risks of corruption, materialized during this period, in another evaluation exercise. However, to note that it is imperative to review the way crises are managed, so that to have a clear picture of the responsibilities, those responsible, the range of freedom or constraint of the institutions that manage public resources.

III.8 Electoral character

The NAC experience in applying the corruption proofing tool for over 12 years has shown that MPs' and Government's concern with law-making matters significantly increases during election years, especially in the electoral and social sectors.

As mentioned in Chapter I of this Study, two election campaigns took place in 2019 and 2020. Accordingly, the main law-making authors (the Government and the Parliament) excelled in promoting and adopting socially oriented draft normative acts that were meant to create a sense of concern of the decision-makers with the electorate. At the same time, the multiple changes to the legal framework on the election process are specific to this period.

During the reference period, the NAC experts reviewed at least 7 draft normative acts, which aimed to provide benefits or contained interventions in the election process rules. All 7 draft acts derived from the MPs and with predilection concerned the social area (5 draft laws), and two draft laws targeted each of the following: the election area, economic area and the budget/finance area.

Most of the election draft acts were promoted by the MPs of the ruling coalition at that time and aimed at revising the provisions of the Election Code and the secondary regulatory framework on elections. On the economic side, the draft acts were initiated to support the domestic producers as well as to help relax some control procedures. There were also 2 draft laws that proposed amendments to the law on the single system of salaries in the budget system. To underline that the CPR does not assess the appropriateness of promoting some or other changes but rather seeks to identify the risk factors and corruption risks that can generate corruption manifestations when applied.

It is indisputable that law-making is one of the basic missions of the MPs, as they are called to represent, promote and protect the interests of the voters. However, the reviews developed by the NAC amply demonstrate that the magnitude of the concern grows around the elections and populist draft acts without adequate financial coverage are promoted more insistently.

To note that in addition to the fact that election draft acts create unrealistic legitimate expectations of the population as a whole, they usually have no financial coverage and practically double the workload of the authorities in endorsing and proofing such acts, including the workload of NAC experts. An example of an unrealistic draft act, with procedural gaps and identified risks of corruption was the ***draft law on amending and supplementing some legislative acts (Criminal Code; Election Code - failure to implement the election program in the exercise of the mandate).*** The draft act by its nature is declarative and cannot be applied from a legal point of view. The lack of arguments that would support the public interest of this draft act as well as the obvious risks of abuse of the norms that could have been interpreted in a discretionary manner, made the opinion following the NAC proofing to be a negative one. See below for more details:

Example: *the draft law on amending and supplementing some legislative acts (Criminal Code; Election Code - failure to carry out the election program in the exercise of the mandate)*

Drafter:	Parliament of the Republic of Moldova
Purpose of the draft act: *According to the informative note, the aim of the draft act is "[...] to hold politicians accountable to the public for their electoral promises, to defend the interests of citizens and not to allow them to be deceived in election campaigns."*	
CPR and NAC expert:	Xenia VAMEȘ, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: The draft act was prepared by a group of MPs and aims to hold politicians accountable to citizens in terms of their election promises, to defend the interests of citizens and not to allow them to be deceived in election campaigns. The draft act partially complies with the transparency requirements imposed by Law no.239/2008 on Transparency in Decision-Making. The drafter did not provide information to the public on the initiation of its development. The provisions of the draft act do not ensure the public interest, because they are not based on any sociological or other analysis, thus having a declarative and a priori character that is not applicable in terms of criminal law and judicial practice. The drafter's arguments do not sufficiently justify the need for drafting the act, as the requirements of art. 30 of Law no. 100/2017 on Normative Acts are not met. In this sense, the informative note needs to be supplemented with arguments based on international standards governing the electoral field and international practice, arguments that would show that the only way to hold political actors accountable for not fulfilling their election promises is to hold them criminally liable.	
Identified risks:	The draft act contains factors and risks of corruption generated by the incomplete nature of the provisions, and for the effective application of the norms proposed by the draft act, it is necessary to review and exclude potentially corruptible norms shown in the corruption proofing report. **Risk factors:** • Unrealizable norms • Lack of clear responsibility for violations • Rules of law competition **Corruption risks:** • General
Draft act status:	
Cost assessment:	**Cost of shares:** Based on the text of the informative note, the implementation of the provisions of the draft act proofed does not require the allocation of additional funds from the national public budget. In this regard, according to the drafter, "The implementation of the draft law does not imply financial allocations from the budget." At the same time, the nature of the draft act, without a more complex evaluation and with the corruption factors listed, makes us include this report in the category of 'normative acts with the impossibility to identify costs'. Such normative acts do not contain cost elements in the essence of the activities or the cost of the activities cannot be deduced from their content; this amount can be assessed in larger exercises.*

*Such assessments involve interviewing the main beneficiaries: trust in institutions, competitiveness and its evolution in certain sectors, attack at one's personal dignity, attack on property rights, loss of image, etc.

Another example, which in itself does not expressly imply financial damages but could have led to other effects, such as image loss, loss of trust in institutions, is the one below. De facto, an idea that could have contributed to good electoral competition was transcribed into a draft act with many gaps and risks of corruption. See more details below, but also in the ***Annex*** to the Study:

Example: *Draft decision for approving the Regulation on Funding Initiative Groups for Collecting Signatures in Support of a Candidate for an Elective Office or for the Initiation of a Referendum*

Drafter:	Central Election Commission
Purpose of the draft act: *According to the informative note, the draft act aims to "[...] approve a new regulation following the amendment of Article 41 of the Election Code, which will ensure an improvement of election procedures for a better work of the initiative groups, including during presidential elections, which were set for 1 November 2020 by Decision of the Parliament of the Republic of Moldova No. 65/2020."*	
CPR and NAC expert:	Xenia VAMEȘ, Main Inspector, Expert of the Legislation and Corruption Proofing Division
Extracts from CPR: Looking at the norms developed, we found that the draft law suggest approving the Regulation on Funding Initiative Groups for Collecting Signatures in Support of a Candidate for an Elective Office or for Initiating a Referendum. We thus find the purpose stated by the drafter in the informative note to correspond to the real purpose of the draft act. The draft act was developed by the Central Election Commission and aims to approve a new regulation following the amendment of Article 41 of the Election Code, which would ensure an improvement of election procedures for a better work of the initiative groups, including during presidential elections, which were set for 1 November 2020 by Decision of the Parliament of the Republic of Moldova No. 65/2020.	
Identified risks:	The draft act contains factors and risks of corruption generated by the flawed nature of the provisions, such as: faulty reference rules, legal gaps, duties that allow derogations and misinterpretations, lack/ ambiguity of administrative procedures, on how to determine the general ceiling of means which can be transferred to the "Initiative group" account. **Corruption risks:** • General • Encouraging or facilitating acts of: - conflict of interests and/or favouritism • Legalization of acts of: - misuse of one's official status;
Draft act status:	Withdrawn
Cost assessment:	**Cost of shares:** Normative acts with impossibility of identifying costs. Such normative acts do not contain cost elements in the essence of the activities or the cost of the activities cannot be deduced from their content; this amount can be assessed in larger exercises.*

* Such assessments involve interviewing the main beneficiaries: trust in institutions, competitiveness and its evolution in certain sectors, attack at one's personal dignity, attack on property rights, loss of image, etc.

Amount of damages/irregularities: As an estimate, about MDL 1.1 billion from the expenses intended to support the assisted persons and salary increases had an electoral character and do not contribute in substance to solving the sectoral substantive problems. Amendments to the Election Code, the holding of early elections, in turn, led to an increase in electoral expenses by over MDL 150 million (including the cost of early elections, changes in procedures, increasing the budget of the Central Election Commission in recent years).

Conclusions:

Some general considerations are pertinent in a discussion about the management of public spending in election years. The first concerns maintaining the budget deficit at the level mentioned in the law and avoiding voluntary decisions to increase it. The second conclusion concerns the lack of efficiency and the fragmentary nature of such spending, which only partially offsets the "savings" of previous years in this sector at the expense of taxpayers and assisted persons. At the same time, amending election laws in election years may contribute to increased cases of misuse of power by the Legislature, inefficient spending and destabilization of the general political situation as a whole.

IV. CONCLUSIONS. RECOMMENDATIONS

This chapter reflects the main findings, conclusions and recommendations contained in the Study. We note that most of the conclusions and recommendations below were also valid for previous studies dedicated to CP, recommendations that remain pending and must be taken into account by normative act initiators and promoters.

CONCLUSIONS

- the provisions of the new Law 100/2017 have affected the relevance and importance of corruption proofing. Although it provides for mandatory corruption proofing, however, it does not specify the stage of proofing of draft normative acts and leaves it to the discretion of the drafters to include or not the CP findings in the summary of objections and recommendations to draft normative acts;
- the new approach to the Methodology for specifying corruption risks generated by risk factors could produce changes of substance. The risks of corruption, even if they are virtual at the draft act level), once the normative acts are adopted and implemented, are likely to create real situations and fertile ground for committing the harmful acts mentioned above. From this perspective, the preventive role of corruption proofing and of its recommendations to be taken into account is extremely important. In the long term, remediation and exclusion of corruption risks from draft legislation can contribute substantially to reducing the level of corruption and creating a climate of genuine integrity;
- the establishment of the state of emergency in 2020 boosted the normative creation by MPs, especially of those in opposition. With reference to this category of draft acts, CP found an abundance of unrealizable norms, legal gaps and norms that generated administrative ambiguity, which in turn would have led either to misuses of one's work duties or exceeding service duties, or to irregular use of funds or property;
- CPR remains an effective means of detecting potential corruption offenses as early as at the stage of drafting and promoting draft normative acts, anticipates many illicit behaviors, including can detect opaque interests in draft texts. Accordingly, given that the Republic of Moldova will continue to benefit from consistent external assistance, the acceptance of risks related to public assets management, including risks of fraudulent diversion of external assistance, in drafts normative acts puts at stake the image of the Republic of Moldova and affects the credibility of the responsible public authorities;
- at the same time, CP exercise was able to anticipate and avoid an imposing volume of potential damages (from rejected or withdrawn draft act), even in relation to those that could not be avoided, in conditions of political instability, but also of the pandemic;
- draft normative acts are further promoted with disregard for legislative technique rules: i) none of the acts promoting interests had a relevant, adequate and sufficient reasoning; ii) when necessary, the draft acts were not accompanied by a regulatory impact assessment; iii) most draft acts promoting interests do not contain mechanisms for subsequent control; iv) lack of liability and sanctions is also typical for the category interest promoting draft acts;
- lack of an understanding of the public interests to be achieved through the use of ***public-private partnerships***, makes this mechanism ***misused in favour of private interests***. For most draft laws that have

established public-private partnerships, the mandatory stages and conditions for their promotion were not observed and absolutely all such draft acts could have been carried out through other much safer and more lucrative instruments for the state budget;

- the promotion of interests in other categories, especially those related to tax exemption, occurs spontaneously, ad hoc, which already represents an alert signal for the NAC experts;
- in the absence of all accompanying and necessary documents to promote draft acts in distinct areas, it is extremely difficult to assess the costs of potential damage, or some benchmarks that could be identified by experts may be speculative and distort reality;

In this context, we reiterate the recommendations of the previous Study that could generate major changes:

RECOMMENDATIONS:

- to ensure the quality of normative acts and remove the interests and risks of corruption events, it is important to comply with the legal terms of consultation, endorsement and proofing of draft normative acts, as established by Law 100/2018.
- we reiterate the need to examine and approve, in a priority manner, the draft law to amend Law 100/2018, to revive the importance of corruption proofing, by expressly stating that the corruption proofing of draft act occurs only for the draft regulations already finalized following consultations and endorsement procedures by the authorities concerned;
- One must keep in mind that law-making is a meticulous process, which must take into account not only the need to intervene with prompt and beneficial solutions, but also the need for such solutions to be well calibrated and take into account all long-term risks - social, financial, and especially the risks of encouraging corruption;
- we reconfirm the need to show maximum attention and diligence to CPR recommendations. The risks anticipated in CPR must be reviewed and prevented, including through investigative and combat actions. At the same time, CPR can also serve as evidentiary material in cases of corruption under investigation, especially when CPR have reported normative acts aimed at favoring or legalizing manifestations of corruption;
- remediation by the drafters of the provisions of draft acts with a pronounced risk of corruptibility contributes to a reduction of multiple subsequent costs when virtual risks turn into real corruption actions. This can avoid considerable human, logistical and temporal costs (necessary for the investigation, prosecution and judicial examination of corruption cases), as well as significant financial costs (compensation for damage, compensation for victims of corruption acts). Finally, the quality of the adopted normative acts, which will be screened for corruptible provisions, may contribute to increasing the level of trust in public authorities and strengthening the commitment of integrity for the whole society;
- compliance by the drafters of the draft normative acts with the requirements for the mandatory character of economic-financial substantiation, and if lack of such substantiation is found, this will entail grounds for not registering and not reviewing the draft act;
- a similar condition is also to be set for draft acts to be accompanied by a regulatory impact assessment;
- in the field of public-private partnership it is necessary to review how exactly this form of draft act implementation is chosen, review the institutional framework, and if the decision is made to implement a PPP project, all draft acts must be accompanied by an ex-ante analysis (a realistic anticipation of new provisions), which would demonstrate the predictability and viability of the norms, in order to exclude the risk of prejudice to the public interest, in particular by prejudicing the field of public property

of the state and of territorial administrative units, their budgets and the interest of the society expressed by providing quality services at a reasonable, accessible, competitive and transparent price as a result of the public-private partnership implementation.

- Taking into account that most of the acts of the typology enshrined in this Study are adopted/approved by derogations from the general rules or establish important benefits for the subjects of such acts, **it is appropriate that subsequent control mechanisms be fixed in each of such acts, including adequate and dissuasive sanctions for violations of the conditions laid down in the draft normative acts**.