Norwegian Ministry of Foreign Affairs

2016-2018 CORRUPTION PROOFING: EFFECTIVENESS, COSTS, IMPACT

STUDY

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This version of the report is a translation of the original, which was written in Romanina. 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.

CONTENTS

ABBREVIATIONS

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

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 the project 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, NAC subjected **2697 draft normative acts (32704 pages)** to corruption proofing. Draft ***GD*** accounted for the largest share in constant growth: from ***430 in 2016*** to ***628 in 2018***. The number of departmental acts subject to proofing also increased, while draft laws were in a relatively constant number. As for the distribution of the number of draft acts by years, we found that **most draft normative acts were promoted in 2018**.

Most of the draft acts examined by NAC during the reference period were in ***Field I "Constitutional and Administrative Law, Justice and Home Affairs" (479 drafts)***, followed by the fields ***"Budget and Finance" (163 drafts)*** and ***"Work, Social Insurance, Health and Family Protection" (162 drafts)***. Surprisingly, compared to the previous period (2010-2015), ***Field II "Economy and Trade"*** was less tackled in the normative initiatives, both of the Government and of the members of the Parliament.

The most significant risk factors are displayed in two generic groups:"***legislative coherence"*** and "***exercise of the powers of public entities,"*** followed by the "language formulations" ***group.*** At the same time, the most common risk factors remain to be: **ambiguous formulations that enable abusive interpretations (ranging from 12% to 14%), competition of legal norms (ranging from 10% to 15%), gaps in the law (ranging from 8% to 11%), powers that enable derogations and abusive interpretations (ranging from 10% to 22%), lack/ambiguity of administrative procedures (ranging from 8% to 14%).**

In ***2016, 25 (7%) GD liable to CP were approved in the absence of CPR***, and in **2017**, this increase is even more substantial, with ***82 GD (19%) being approved without CPR***. A slight improvement (of 4%) can be noticed **in 2018**, when only ***15% of GD*** were approved in the absence of CPR.

The top corruption risks found by the NAC experts in the draft laws subject to proofing is as follows:

- misuse of official position;
- conflict of interests and/or favouritism;
- active corruption;
- influence peddling;
- exceeding one's work duties;
- conflict of interests and/or favouritism;
- exerting undue influence.

An assessment of **the effectiveness of CPR recommendations** shows a high degree of acceptance thereof, the recommendations being accepted in a proportion of about **70%,** which means that the drafters of acts subject to proofing take into account CPR recommendations, and the draft normative acts will not encourage/favour the occurrence of corruption at the regulatory level.

The risk factors removed more frequently from the draft normative acts, as in the case of the previous Study findings, are those that can be remedied more easily and concern ***legislative coherence and linguistic formulation of the draft acts.*** At the same time, the drafters did not consistently and coherently remove the risk factors from the category ***performance of public entity duties.*** In particular, concerns are raised about the failure to remove the factors dealing with ***extensive regulatory duties, parallel duties, failure to establish the responsible public entity/subject to which the provision relates, as well as lack/ambiguity of administrative procedures.***

Mostly 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 subject to corruption proofing,** 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%.**

Despite the previous NAC recommendations and requests to comply with and provide sufficient time for the CP, in the period from 2016 to 2018, emergency proofing was requested **for about 131 draft normative acts**. The magnitude of emergencies gradually increased, as follows:

- **34** draft acts in 2016;
- **42** draft acts in 2017;
- **55** draft acts in 2018.

Even if NAC responded to the requests for urgent proofing of draft acts, however, there were multiple situations when the draft normative acts were approved/adopted by or even on the date of the draft act submission, and so, any NAC recommendations made post factum were ignored by the drafters.

Following an assessment of the corruption proofing activity of over 12 years as well as taking into account the latest developments in normative act drafting and promotion, the **typology of private interests has been revised and grouped into 5 categories,** as follows:

- Public property management (change of land use and use of uninhabitable areas);
- Public-private partnerships;
- Tax exemption;
- Environmental protection;
- Public procurement.

Compared to the typology used in the previous study, it was decided to revise/merge some categories for the 2016-2018 period, and a new category was established - "***Environmental Protection***."

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:

1. **Avoided costs - Total amount of costs calculated on draft acts rejected or withdrawn: MDL 1,340,340,946;**

2. **Imminent costs - Total amount of costs by draft acts passed: MDL 2,037,1187,304.**

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. In fact, some of the recommendations of this Study are congruent with the recommendations of the previous Study for 2010-2015.

METHODOLOGY OF THE STUDY

This Study is dedicated to a review of corruption proofing over 3 years: from 2016 to 2018.

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 the reference period. The effectiveness was measured by comparing the number of corruption risks formulated in CPR to the number of recommendations accepted and the risks removed by the drafters from the text of the drafts approved/adopted, 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 12 years - from 2006 to 2018 - 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 revised, taking into account the new areas of interest. 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 procurements.

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 ***Annex No. 3*** 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. PRELIMINARY CONSIDERATIONS

This Study represents a second intention to review the corruption proofing carried out by NAC since 2006. It is necessary to recall that this type of expert examination 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)[1] , 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. The **previous Study** of the effectiveness of corruption proofing and the costs of draft acts generating damages to the general public interest outlined a picture of the law-making process in the Republic of Moldova for 6 years (2010-2015), including from the perspective of drafters, areas, interests, typology of such interests and so on, and included a series of findings and recommendations addressed to the Moldovan public authorities, empowered to initiate and approve/ adopt normative acts.

This Study focuses on the review of the effectiveness of corruption proofing and the costs of draft acts with the potential to harm the public interest over the next period of **3 years - from 2016 to 2018** - and aims to highlight the main developments in the area, including a review to compare with the previous period, and to establish the degree of implementation and takeover of the recommendations from the previous review.

This Study's findings are mainly based on NAC corruption proofing reports (CPR) (***Section I. 1***), share and spread of risk factors (***Section I. 2***), corruption risks generated by risk factors and their categories **(*Section I. 3),*** effectiveness of remediation and removal of risk factors and corruption risks ***(Section I. 4),*** detection of promotions of private interests in norm-making and description of social consequences of laws whose promotion is affected by such interests, as well as draft normative acts promoted by neglecting transparency requirements in decision-making – on whose grounds it is possible for the public to participate – and sometimes neglecting the requirements of conducting corruption proofing, which must accompany the draft acts (***Section I.5***).

I.1. About Corruption proofing

According to Art. 25 of **the Law on Integrity No. 82/2017**, corruption proofing is a measure to verify the integrity in the public sector, which is the responsibility of 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.*

> **Article 35 of the Law on Normative Acts No. 100/2017** provides, *"(1) **Corruption proofing shall be mandatory for all draft normative acts** including the draft normative acts prepared by the Members of Parliament, and is intended to:*
> *a) ensure compliance with the provisions of draft national and international anti-corruption standards;*
> *b) prevent the emergence of regulations that would favor corruption, by developing certain recommendations to revise those regulations or to reduce their negative effects [...] Corruption proofing shall be conducted according to the methodology approved by the National Anticorruption Center. [...] After receiving the corruption proofing report, the drafter of the act shall complete the informative note to the draft law with the proofing findings and, where appropriate, shall include the objections and suggestions of the National Anticorruption Center in the summary.*

[1] Art. 28 of the Law on Integrity, No. 82/2017

For the reference period (2016-2018), one should note the intervention of some changes, including conceptual ones, in the normative framework on the process and stage of conducting corruption proofing.

The new **Law of Integrity**, No.82/2017, which replaced the Law on the Prevention and Fight against Corruption, has regulated the corruption proofing tool in a more detailed manner, establishing concretely the categories of acts that require subjection to corruption proofing, as well as the categories of normative acts that are exempted from such proofing[2]. It also mentions the subjects who have the obligation to refer normative acts, including draft laws initiated by the members of the Parliament, for proofing[3]. Another main change was related to the methodology for performing the corruption proofing: such methodology used to be approved by the Government, while under the provisions of the new Law 82/2017, the methodology is approved by the NAC College.

In order to implement these new requirements, in 2017, the NAC developed and approved a **new detailed methodology**[4] for the conduct of corruption proofing that *establishes the objectives and stages of the 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 line with Law 82, in 2017, the Parliament of the Republic of Moldova adopted a new **Law on Normative Acts - No. 100 of 22 December 2017**[5] which states that one of the stages of drafting normative acts is corruption proofing, which is mandatory for all draft normative acts.

Even if Law 100/2017 established the obligation of corruption proofing, however, in contrast to previous regulations, the drafters of normative acts may submit the draft act for proofing at any stage (except for the finalized version and after endorsement by all interested institutions), at the same, being apparently exempted from the obligation to argue the consideration or ignoring of the recommendations made in the CPR. Thus, Law 100/2017 provides in Art. 35 para. (6), "*after receiving the corruption proofing report, the drafter of the act shall complete the information note to the draft act with the information on the findings of such proofing* ***and, where appropriate, shall include the objections and suggestions of the National Anticorruption Center in the summary".***

Such an approach seems to substantially undermine the effectiveness, relevance and impact of the CPR, as the version proofed by NAC and the finalized versions 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.

Taking into account the change of the stage and rules of proofing through Law 100/2017, the NAC College revised the methodology for performing corruption proofing on 20 July 2018[6].

Since 2017, NAC has prepared its CPR using modernized software, which ensures the preparation of reports in a standardized format and offers 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,

[2] Art. 27 para. (2) of Law 82/2017 *"[...] have the obligation to submit for corruption proofing draft acts, except for: a) policy papers; 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"*.

[3] Art. 27 par.a (2) of Law 82/2017 *"Public agencies and public entities with the right of legislative initiative, and other public entities that prepare and promote draft legislative and normative acts (hereinafter in this article – the drafters) as well as the Secretariat of the Parliament […]"*

[4] Approved by the decision of the NAC College No. 6 of 20 Oct 2017 https://cna.md/public/files/decembrie_rea_2017/h.Col6din20.10.17.pdf

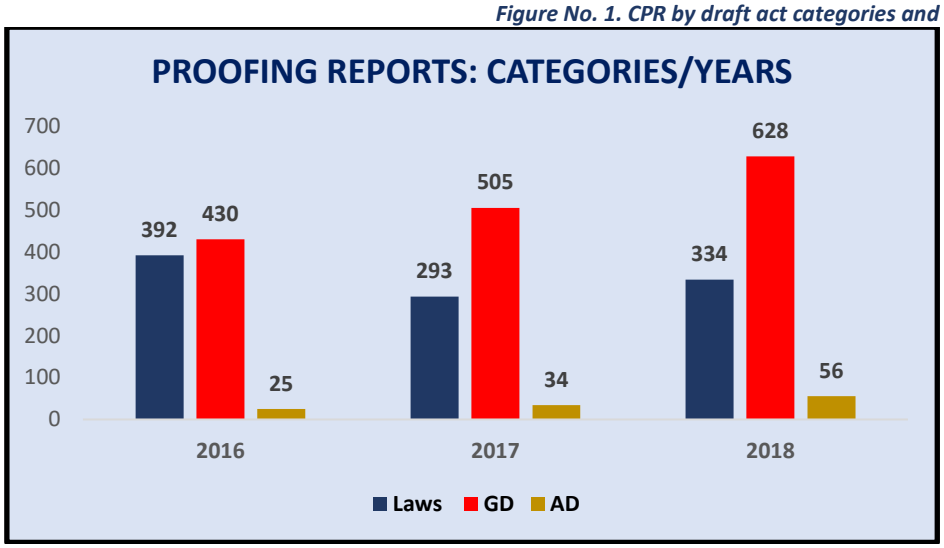
[5] The law establishes the categories and hierarchy of normative acts, principles and stages of law-making, stages and rules of drafting normative acts, the basic requirements for the structure and content of a normative act, the rules on entry into force and repeal of a normative act, tracking and systematization of normative acts, technical procedures applicable to normative acts, as well as the rules for the interpretation, monitoring of the implementation of the provisions and re-examination of a normative act. Entered into force on 12 July 2018

[6] https://cna.md/public/files/colegiu_3/hot.Coleg_CNA_3_din20.07.2018.PDF

corruption risks, risk factors, proofing effectiveness, etc. All synthesized data, presented in the sections below, are based on the information generated by the statistical module of the corruption proofing software "E-expertise".

During the period under review by this study, NAC carried out corruption proofing of **2697 draft normative acts**. The distribution of draft normative acts by years and categories can be viewed in Figure no. 1 below

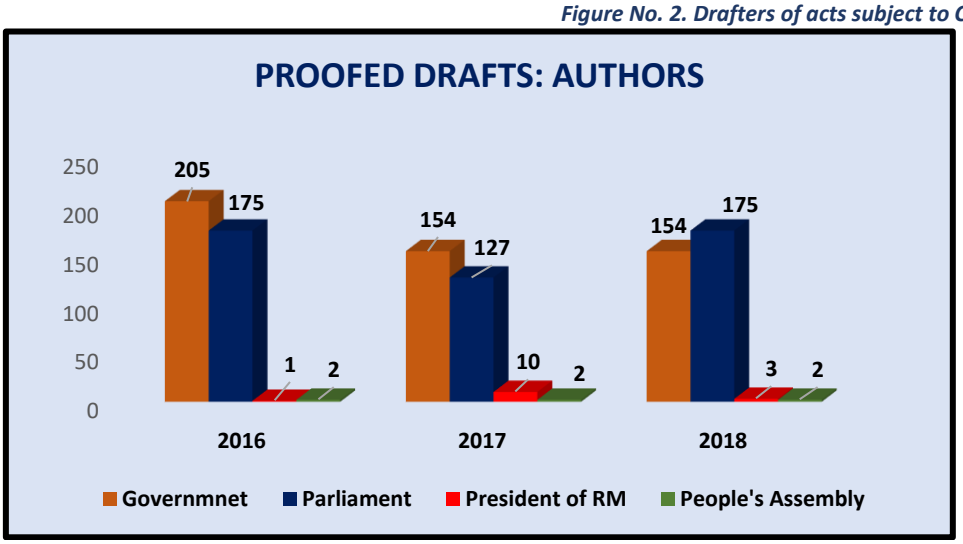
Figure No. 1. CPR by draft act categories and years



Hence, one can see that, in the corruption proofing work, the largest share belonged to draft ***GD***, which was in constant growth: from ***430 in 2016*** to ***628 in 2018***. The number of departmental acts subject to proofing also increased, while draft laws were in a relatively constant number. As to the distribution of the number of draft acts by years, we note that most draft normative acts were promoted in 2018, an explicable trend, including the fact that 2018 was an election year, and during such periods, the number of draft acts, especially in the economic and social areas, usually grows.

From the perspective of drafters of normative acts, we note the dominant role of the Government, which is the drafter of most acts subject to CP (see ***Figure No. 2*** below). However, in 2018, we note that Members of the Parliament became more active and, respectively, ranked among top drafters of normative acts, outrunning the Government in this regard.

Figure No. 2. Drafters of acts subject to CP



Corruption proofing of draft normative acts is carried out based on ***five proofing areas,*** which derive from the General Classifier of Legislation, namely:

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. *Labor, Social Insurance, Health and Family Protection*

Figure No. 3. Areas of draft laws subject to CP

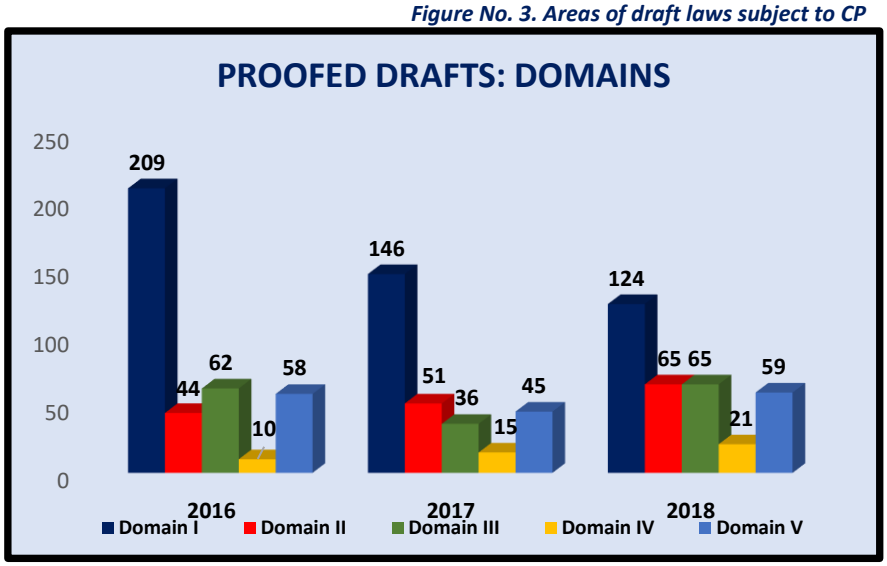
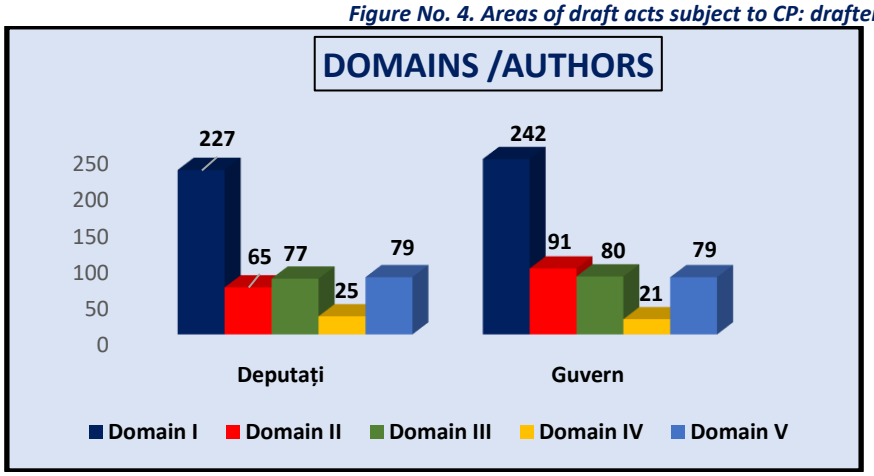


Figure No. 3 above shows the distribution of proofed draft acts by areas. Hence, most of draft acts proofed by the NAC in the reference period were from Area I *"Constitutional and Administrative Law, Justice and Home Affairs"* (*479 acts*), followed by *"Budget and Finance"* (163 acts) and *"Labor, 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.

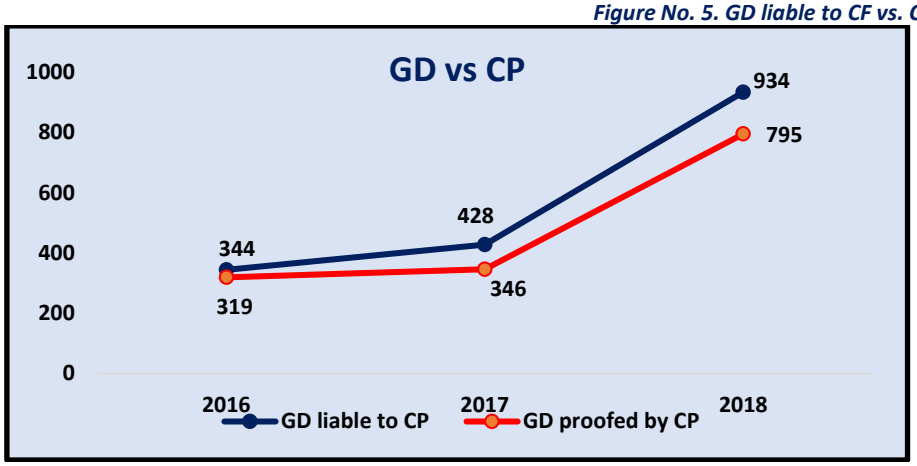
A review of the acts from the drafters' perspective related to the areas of proofing shows that the concerns of the most prominent actors of the legislative process (*Government and Parliament*) are, for the most part, similar, with some minor exceptions. Members of the Parliament promoted more draft 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).

Figure No. 4. Areas of draft acts subject to CP: drafters



During the evaluation period, 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, the following statistical picture was recorded:

Figure No. 5. GD liable to CF vs. CPR



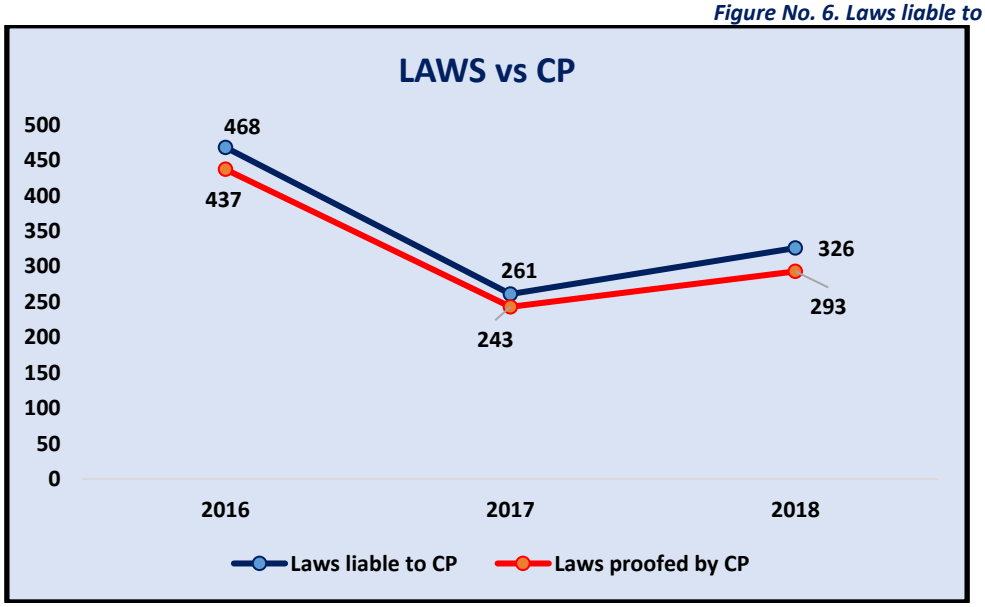
The **previous Study** noted that, despite the negative trend recorded in the period from 2010 to 2014, "*in 2015, only 12 draft laws (2%) issued by the government authorities were promoted in the absence of a CPR.*" Unfortunately, since 2016, this trend has again been falling.

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. However, this improvement is not enough and, respectively, further sustained efforts will be needed to impose and insist on the mandatory character of CP, including as a useful and necessary tool in ensuring the integrity of the public sector, as well as the quality and predictability of the regulatory framework.

With reference to the direct drafters of the normative acts who avoided submitting them for corruption proofing (see Annex no.1 to this Study), we note that most of the GD included in the list came from the Ministry of Finance, State Chancellery, Reform Implementation Center, and Land Resources and Registration Agency.

As concerns the ***draft laws*** placed on the website of the Parliament, we also found some involutions, in relation to the findings of the previous Study.

Figure No. 6. Laws liable to CP vs. CPR



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 requiring the corruption proofing.

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

- Law on Issuance of Government Bonds for the Execution of Payment Obligations derived from State Guarantees by the Ministry of Finance No. 807 of 17 Nov. 2014 and No.101 of 1 April 2015;
- Law on Customs Service;
- Law on Amending and Completing Law No.180 of 26 July 2018 on Voluntary Declaration and Tax Incentives (Art.3, 5, 9, etc.);
- Law on Unitary Wage System in the Budget Sector;
- Law for Additional Financial Support of Some Pension Beneficiaries;

As noted in the introductory part of this section, it seems that one of the causes that generated such involutions are the provisions of the new Law 100/2017 that, although stipulating that corruption proofing is mandatory, does not specify at what stage draft normative acts should be proofed and leaves it up to the drafters to include or not CP findings in the objections and recommendations to draft laws.

I.2. Risk factors: weight and spread

The new **CP Methodology**, following a ten-year implementation experience as well as the legislative and structural changes that have occurred, has rethought and resized some of the previous approaches of the proofing exercise. Corruptibility factors have thus become risk factors, which in turn generate corruption risks.

In the meaning of the Methodology, ***risk factors*** are the provisions of the draft acts whose content may generate, when applied, 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 VII 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

Table no. 1 below illustrates statistically 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 that the most significant risk factors are displayed in two generic groups: ***"legislative coherence"*** and ***"exercise of the powers of public entities",*** followed by the group ***"language formulations".***

To note that a similar statistical picture was also established by the previous Study. As a rule, the most common risk factors are:

- **Ambiguous formulations that admit 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
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%)**
2.	Uneven use of terms	**167 (5%)**	**133 (3%)**	**126 (3%)**
3.	Ambiguous wording that admits abusive interpretations	**380 (12%)**	**538 (14%)**	**600 (14%)**
II. LEGISLATIVE COHERENCE				
4.	Defective reference norms	**120 (4%)**	**141 (4%)**	**132 (3%)**
5.	Defective blanket rules	**25 (1%)**	**37 (1%)**	**15 (0.4%)**
6.	Rules of law competition	**484 (15%)**	**428 (11%)**	**437 (10%)**
7.	Gap in the law	**0 (0%)**	**311 (8%)**	**468 (11%)**
III. TRANSPARENCY AND ACCESS TO INFORMATION				
8.	Insufficient access to information about the act subordinated to the law	**0 (0%)**	**10 (0.2%)**	**7 (0.2%)**
9.	Lack/insufficient transparency of public entities	**86 (3%)**	**40 (1%)**	**92 (2%)**
10.	Lack/insufficient access to public interest information	**48 (1%)**	**33 (1%)**	**36 (1%)**
IV. EXERCISE OF A PERSON'S RIGHTS AND OBLIGATIONS				
11.	Excessive costs in relation to public benefit	**0 (0%)**	**7 (0.2%)**	**14 (0.3%)**
12.	Promoting interests contrary to the public interest	**87 (3%)**	**140 (4%)**	**101 (2%)**
13.	Prejudice to interests contrary to the public interest	**0 (0%)**	**95 (2%)**	**148 (3%)**
14.	Excessive requirements for the exercise of excessive rights/obligations	**139 (4%)**	**95 (2%)**	**69 (2%)**
15.	Unfounded derogations from the exercise of rights/obligations	**81 (2%)**	**53 (1%)**	**43 (1%)**
16.	Unjustified limitation of human rights	**0 (0%)**	**47 (1%)**	**32 (1%)**
17.	Discriminatory provisions	**0 (0%)**	**79 (2%)**	**73 (2%)**
18.	Excessive, improper duties or contrary to the status of the private entity/person	**0 (0%)**	**49 (1%)**	**24 (0.6%)**
19.	Stimulating unfair competition	**0 (0%)**	**28 (1%)**	**20 (0.5%)**
20.	Unrealizable norms	**0 (0%)**	**35 (0.1%)**	**44 (1%)**
V. EXERCISE OF A PUBLIC ENTITY'S DUTIES				
21.	Extensive regulatory duties	**0 (0%)**	**74 (2%)**	**49 (1%)**
22.	Excessive, improper duties or contrary to the status of private entity	**0 (0%)**	**136 (3%)**	**128 (3%)**
23.	Parallel duties	**40 (1%)**	**31 (1%)**	**28 (1%)**
24.	Non-determination of the responsible public entity/subject to which the provision relates	**0 (0%)**	**51 (1%)**	**26 (1%)**
25.	Duties allowing derogations and abusive interpretations	**719 (22%)**	**385 (10%)**	**416 (10%)**
26.	Establishing a public entity's right instead of an obligation	**0 (0%)**	**60 (1%)**	**48 (1%)**
27.	Defective cumulation of competences to be exercised separately	**30 (1%)**	**10 (0.3%)**	**13 (0.3%)**
28.	Non-exhaustive/ambiguous/subjective grounds for a public entity's refusal or inaction	**61 (2%)**	**74 (2%)**	**63 (1%)**
29.	Lack/ambiguity of administrative procedures	**255 (8%)**	**368 (9%)**	**582 (14%)**
30.	Lack of concrete deadlines/unjustified deadlines/unjustified extension of deadlines	**193 (6%)**	**141 (4%)**	**95 (2%)**
VI. CONTROL MECHANISMS				

31.	Lack/insufficiency of control and surveillance mechanisms (hierarchical, internal, public)	**125 (4%)**	**94 (2%)**	**57 (1%)**
32.	Lack of/insufficient challenge mechanisms	**28 (1%)**	**27 (1%)**	**11 (0.3%)**
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%)**
34.	Non-exhaustive grounds for liability	**11 (0.3%)**	**8 (0.2%)**	**14 (0.3%)**
35.	Lack of clear responsibility for violations	**60 (2%)**	**50 (1%)**	**61 (1%)**
36.	Lack of clear sanctions	**68 (2%)**	**43 (1%)**	**50 (1%)**
37.	Imbalance between violation and sanction	**0 (0%)**	**9 (0.2%)**	**12 (0.3%)**

The evolving review of risk factors indicates that the norms that generate ***a competition of rules of law*** and ***powers allowing derogations and abusive interpretations*** are ***declining***, while ***gaps in law, ambiguous wording and lack/ambiguity of administrative procedures are increasing***.

The persistence and spread of risk factors in draft normative acts considerably affects the quality of normative acts, does not ensure the predictability of norms, and, respectively, affects the behavior of subjects covered by normative acts.

I.3. Corruption risks in draft acts proofed

The methodology and Annex no. 3 thereto determine the connection between the risk factors and the corruption risks generated thereby. According to the meaning offered by the Methodology, ***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.*

Corruption risks, their number and share are intrinsically linked to the risk factors, or their detection in acts subject to CF can lead to an inherent occurrence of corruption risks.

Table No. 2 details the corruption risks identified by NAC experts during the corruption proofing carried out in 2017-2018.

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

Corruption risks	2017	2018
Active corruption	**377**	**412**
Bribe giving	**60**	**108**
Passive corruption	**384**	**411**
Bribery taking	**59**	**110**
Influence peddling	**224**	**251**
Misuse of official position	**625**	**586**
Exceeding one's work duties	**457**	**449**
Conflict of interests and/or favouritism	**490**	**510**
Illicit enrichment	**33**	**55**
Non-compliant use of funds and/or assets	**57**	**98**
Embezzlement of funds and/or assets	**68**	**76**
Exertion of undue influence	**234**	**242**
Failure to comply with the legal regime of gifts	**5**	**20**
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**
Violation of the legal regime of limitations in hierarchy in civil service	**6**	**2**
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 the employment and promotion of public agents based on merit and professional integrity;	**5**	**1**
Leakage of information with limited accessibility	**17**	**10**
Laundering of money from crimes	**31**	

Tax evasion	34	9
Swindling	35	20
Forgery of public acts	14	26
General	1018	1078

The summary of data in Table No. 2 outlines the next top corruption risks detected by the NAC experts in the draft laws proofed:

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

One should bear in mind that 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 prejudicial 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 Corruption proofing effectiveness

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.

We emphasize that efficiency is measured based on the draft normative acts adopted as well as on those that have been rejected, declared null or withdrawn by the drafters thereof.

Table No.3 *Number and* ***share of risk factors removed*** *from the draft acts subject to CF*

RISK FACTORS			2017	2018
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%)**
2.	Uneven use of terms	**108 (79%)**	**84 (82%)**	**54 (75%)**
3.	Ambiguous wording that admits abusive interpretations	**207 (79%)**	**288 (74%)**	**205 (66%)**
II. LEGISLATIVE COHERENCE				
4.	Defective reference norms	**58 (70%)**	**74 (73%)**	**53 (74%)**
5.	Defective blanket rules	**12 (63%)**	**19 (76%)**	**2 (67%)**
6.	Rules of law competition	**237 (72%)**	**195 (70%)**	**143 (64%)**
7.	Gap in the law	-	**149 (69%)**	**148 (59%)**
III. TRANSPARENCY AND ACCESS TO INFORMATION				
8.	Insufficient access to information about the act subordinate to the law	-	**6 (75%)**	**2 (50%)**
9.	Lack/insufficient transparency of public entities	**37 (60%)**	**18 (60%)**	**24 (54%)**
10.	Lack/insufficient access to public interest information	**24 (63%)**	**14 (64%)**	**9 (45%)**
IV. EXERCISE OF A PERSON'S RIGHTS AND OBLIGATIONS				
11.	Excessive costs in relation to public benefit	-	**0 (0%)**	**6 (100%)**
12.	Promoting interests contrary to the public interest	**30 (53%)**	**47 (55%)**	**33 (72%)**
13.	Prejudice to interests contrary to the public interest	-	**38 (65%)**	**51 (64%)**
14.	Excessive requirements for the exercise of excessive rights/obligations	**60 (61%)**	**43 (73%)**	**21 (60%)**

15.	Unfounded derogations from the exercise of rights/obligations	**34 (56%)**	**20 (59%)**	**14 (67%)**
16.	Unjustified limitation of human rights	**-**	**11 (65%)**	**9 (56%)**
17.	Discriminatory provisions	**-**	**30 (71%)**	**28 (68%)**
18.	Excessive, improper duties or contrary to the status of the private entity/person	**-**	**19 (63%)**	**11 (73%)**
19.	Stimulating unfair competition	**-**	**12 (67%)**	**6 (67%)**
20.	Unrealizable norms	**-**	**21 (81%)**	**14 (67%)**
V. EXERCISE OF A PUBLIC ENTITY'S DUTIES				
21.	Extensive regulatory duties	**-**	**19 (63%)**	**7 (50%)**
22.	Excessive, improper duties or contrary to the status of private entity	**-**	**59 (73%)**	**35 (60%)**
23.	Parallel duties	**20 (71%)**	**13 (54%)**	**4 (33%)**
24.	Non-determination of the responsible public entity/subject to which the provision relates	**-**	**19 (58%)**	**7 (50%)**
25.	Duties allowing derogations and abusive interpretations	**322 (63%)**	**170 (69%)**	**141 (66%)**
26.	Establishing a public entity's right instead of an obligation	**-**	**28 (70%)**	**22 (81%)**
27.	Defective cumulation of competences to be exercised separately	**19 (79%)**	**3 (60%)**	**1 (33%)**
28.	Non-exhaustive/ambiguous/subjective grounds for a public entity's refusal or inaction	**30 (65%)**	**32 (76%)**	**29 (83%)**
29.	Lack/ambiguity of administrative procedures	**114 (56%)**	**178 (72%)**	**182 (58%)**
30.	Lack of concrete deadlines/unjustified deadlines/unjustified extension of deadlines	**87 (60%)**	**66 (65%)**	**32 (68%)**
VI. CONTROL MECHANISMS				
31.	Lack/insufficiency of control and surveillance mechanisms (hierarchical, internal, public)	**43 (52%)**	**46 (63%)**	**15 (54%)**
32.	Lack of/insufficient challenge mechanisms	**14 (74%)**	**12 (63%)**	**3 (75%)**
VII. LIABILITY AND SANCTIONS				
33.	Confusion/duplication of types of legal liability for the same infringement	**1 (100%)**	**4 (100%)**	**2 (67%)**
34.	Non-exhaustive grounds for liability	**7 (87%)**	**4 (80%)**	**6 (75%)**
35.	Lack of clear responsibility for violations	**32 (74%)**	**24 (80%)**	**20 (57%)**
36.	Lack of clear sanctions	**31 (65%)**	**23 (79%)**	**12 (41%)**
37.	Imbalance between violation and sanction	**-**	**1 (100%)**	**0 (0%)**
Total		**1527 (66%)**	**1809 (70%)**	**1362 (63%)**
Total 2017-2018		**4698 (66.7%)**		

A review of the data in the table above shows a **high degree of CP effectiveness** , on average of **nearly 70%,**, 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.

However, during the 3 years assessed as part of this Study we note less optimistic trends. In particular, we note **the decrease in CP effectiveness, from 70% in 2017 to 63% in 2018**. One explanation would be the higher number of draft normative acts examined in alert by decision-makers (*see also* ***Section I.6*** *below*). Even if NAC responded to the requests for urgent proofing of draft acts, however, there were multiple situations when the draft normative acts were approved/adopted by or even on the date of the draft act submission, and so, any NAC recommendations made *post factum* were ignored by the drafters.

As concerns the categories of risk factors removed with more openness by the drafters of normative acts, we note these are the factors that can be easily removed and are related to ***legislative coherence*** and ***language formulation*** of draft acts. However, for these categories, too, we note that the effective removal of ***legal gap*** risks decreases in 2018, which indisputably contributes to the occurrence of corruption risks and, respectively, the materialization of corruption in the application of regulations. However, in the absence of clear and predictable regulations, the risk of corruptible actions increases, along with the discretion of officials empowered to apply the rules. In consensus with this statement is also the fact that the drafters did not consistently and coherently remove the risk factors from the

category ”***Exercise of a public entity's powers.”*** In particular, concerns are raised about the failure to remove the factors dealing with ***extensive regulatory duties, parallel duties, failure to establish the responsible public entity/subject to which the provision relates,*** as well as ***lack/ambiguity of administrative procedures.***

Another block of risk factors less targeted by the remediation efforts of the drafters concerns ***lack of/insufficient control and surveillance mechanisms (hierarchical, internal, public)***, which when tackled in common with ***lack of clear responsibility for violations*** and ***lack of clear sanctions***, could regrettably contribute to the tacit encouragement and perpetuation of manifestations of corruption. 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 generators of corruption risks, 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
Active corruption	**167 (67%)**	**137 (61%)**
Bribe giving	**30 (77%)**	**47 (70%)**
Passive corruption	**170 (67%)**	**135 (60%)**
Bribery taking	**31 (76%)**	**49 (71%)**
Influence peddling	**96 (64%)**	**91 (68%)**
Misuse of official position	**282 (69%)**	**194 (63%)**
Exceeding one's work duties	**216 (67%)**	**155 (66%)**
Conflict of interests and/or favouritism	**208 (64%)**	**172 (65%)**
Illicit enrichment	**16 (84%)**	**10 (59%)**
Non-compliant use of funds and/or assets	**17 (55%)**	**27 (51%)**
Fraudulent obtaining of funds from foreign assistance	**1 (50%)**	**5 (71%)**
Embezzlement of funds and/or assets	**29 (62%)**	**28 (64%)**
Exertion of undue influence	**102 (64%)**	**84 (67%)**
Failure to comply with the legal regime of gifts	**4 (80%)**	**4 (67%)**
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%)**
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%)**
Laundering of money from crimes	**18 (82%)**	
Tax evasion	**17 (81%)**	**3 (75%)**
Swindling	**16 (67%)**	**2 (100%)**
Forgery of public acts	**2 (33%)**	**8 (53%)**
General	**512 (72%)**	**381 (65%)**
TOTAL (share)	**68%**	**64%**

We find that the level of acceptance and remediation of corruption risks in draft normative acts is also quite high, in fact explainable by the fact that it is in direct connection with the level of removal of risk factors for the draft acts. However, for 2018, we found a ***decrease by 4 percentage points*** from ***68% to 64%.*** Even if this decrease seems insignificant, it still raises some concerns.

To note that in addition to the corruption risks listed in the Table above, NAC experts have frequently identified corruption risks that may contribute to the manifestations/actions of:

- negligence at work;
- failure to enforce court judgments;
- violation of the legal regime of restrictions and limitations as related to the termination of one's mandate or employment relations;
- failure to take measures to ensure integrity within public entities;
- violation of the rules of appointment to civil service.

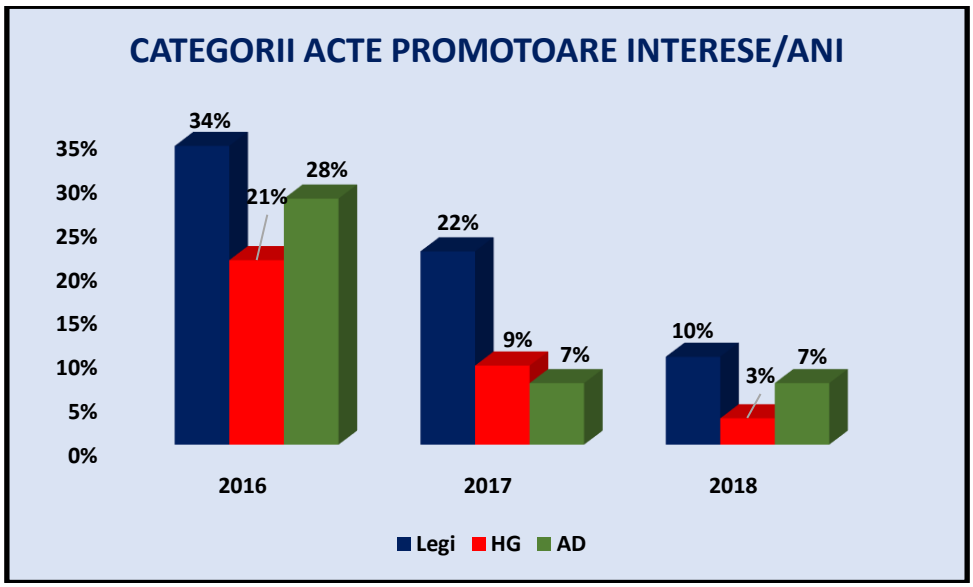
Similarly to the standardized risks provided by the CP methodology, nor have these additional risks, which may lead to systemic violations, including manifestations of corruption, been fully removed from the draft normative acts subject to CP.

The drafters reluctance to remove the norms causing corruption risks, such as tacit tolerance of the probability of turning the risks found at draft level into real corruption actions, is alarming because it aims at the full application of recent anti-corruption tools in the Republic of Moldova. Hence, allowing norms that can contribute to ***illicit enrichment, misuse of funds and/or assets, fraudulent obtaining of funds from foreign assistance, violation of the legal regime of advertising limitations in civil service, violation of the legal regime of incompatibilities in civil service, violation of the legal regime of restrictions in hierarchy in civil service, or forgery of public acts*** sabotages or even reduces their effective implementation to nil, suppresses the cultivation of an institutional integrity climate as as well of an integrity climate in the entire society.

I.5. Promotion of private interests in draft acts

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).

The summary of draft acts promoting private interests contrary to the general public interest shows the following distribution by years:



We find that most often private interests were promoted contrary to the public interest through ***draft laws***, most of them recorded **in 2016: 34% of the draft laws proofed,** with this trend decreasing 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%.

Compared to the findings of the previous Study, we note that the number of draft acts that have been promoting private interests is constantly decreasing and could admit that this state of affairs is due to corruption proofing, among other things. 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.

It is obvious that some private interests could persist and be promoted through draft legislation that has circumvented corruption proofing. However, the decrease in the number of draft acts that circumvent corruption proofing[7] (compared to the 2010-2015 period), can also be regarded as an element that diminishes the presence of private interests in draft laws.

I.6. Processes associated with the promotion of interests through draft normative acts

As found above as well as in *the previous Study*, the promotion of interests is often also associated with the drafters' 'rush' to move and have draft normative acts approved.

According to the assessments carried out by NAC, between 2016 and 2018, emergency proofing was requested for **about 131 draft normative acts**. Following the distribution of draft acts by years, we noticed that the magnitude of emergencies increased progressively, as follows:

- **34** draft acts in 2016;
- **42** draft acts in 2017;
- **55** draft acts in 2017.

Of the total of 131 draft normative acts, **97** were **draft government decisions**, and **34** were **draft laws**.

The most frequent direct drafters of the acts promoted in an alert regime were the State Chancellery, Ministry of Finance, Ministry of Economy and Infrastructure, Ministry of Justice, Ministry of Environment.

[7] See also Annexes No.1 and No. 2 to this Study

We find it necessary to invoke the following examples of important draft acts whose proofing was requested as a matter of urgency (1-3 days):

2016

1. ***Drafter: Ministry of Justice***. Draft law on moratorium on state control, registered by NAC on 1 Feb 2016. CPR submitted on 2 Feb 2016.
2. ***Drafter: National Bank of Moldova***. Draft law for amending and supplementing Law No.62 of 21 March 2008 on Foreign Exchange Regulation. Registered by NAC on 22 Feb 2016. CPR submitted on 24 Feb 2016
3. ***Drafter: Ministry of Finance***. Draft law on the State Tax Service. Registered by NAC on 18 April 2016. CPR submitted on 20 April 2016
4. ***Drafter: Ministry of Information Technology and Communications***. Draft law on amending and supplementing the Law on Citizenship of the Republic of Moldova No.1024-XIV of 2 June 2000. Registered by NAC on 19 April 2016. CPR submitted on 21 April 2016
5. ***Drafter: Ministry of Finance.*** Draft government decision on approving the Regulation on the Tax Obligation Settlement through Compensation and/or Restitution of Funds Registered by NAC on 16 Feb 2016. CPR submitted on 16 Dec 2016

2017

1. ***Drafter: Ministry of Finance***. Draft government decision on the transmission of state shares of the Joint-Stock Company "National Lottery of Moldova". Registered by NAC on 7 Feb 2017. CPR submitted on 7 Feb 2017
2. ***Drafter: State Chancellery.*** *Draft government decision* on the transfer of real estate (from the public property of the state, Ministry of Internal Affairs, management of Soroca Emergency Situations Directorate into the public property of Cosăuţi village, Soroca district) registered by NAC on 24 Feb 2017. CPR submitted on 27 Feb 2017
3. ***Drafter: State Chancellery.*** Draft law on the Government. Registered by NAC on 5 June 2017. CPR submitted on 8 June 2017
4. ***Drafter: Ministry of Justice***. Draft law on the Constitutional Court. Registered by the NAC on 28 Nov 2017. CPR submitted on 1 Dec 2017.
5. ***Drafter: State Chancellery.*** Draft government decision on the Control Body of the Prime Minister Registered by NAC on 5 Sept 2017. CPR submitted on 5 Sept 2017.

2018

1. ***Drafter: Ministry of Economy and Infrastructure.*** Draft government decision on transfer of land plot with building right (land plot with area of 0.2498 ha on 3 Meșterul Manole Str, "Grand Oil" SRL). Registered by NAC on 13 March 2018. CPR submitted on 15 March 2018.
2. ***Drafter: Ministry of Economy and Infrastructure.*** Draft government decision to amend Government Decision No.786/2017 on Acquisition of Citizenship by Investment. Registered by NAC on 23. March 2018. CPR submitted on 26 March 2018.
3. ***Drafter: Ministry of Economy and Infrastructure.*** Draft government decision on conclusion of a sale-purchase contract (State Company "Vestmoldtransgaz"). Registered by NAC on 27 March 2018. CPR submitted on 28 March 2018.
4. ***Drafter: Ministry of Justice***. Draft government decision for approval of methodology on identification of suspicious activities and transactions. Registered by NAC on 6 April 2018. CPR submitted on 6 April 2018.
5. ***Drafter: Ministry of Finance***. Draft government decision on designation of subjects of legal relations of unified electronic system for state monitoring of gambling. Registered by NAC on 7 Sept 2018. CPR submitted on 8 Sept 2018.

The list of examples above is not exhaustive and only shows samples of draft acts that were proofed as an emergency by the NAC experts. Regretfully, the following finding of the previous Study remains valid*: "[...] large, extremely important draft acts with strategic connotations and major financial and social implications were sent to NAC for consideration in record time. However, even if NAC complied with those deadlines and identified the vulnerable elements and potential risks, including corruptibility, the responsible authorities ignored those alerts and preferred to promote the draft acts without taking into account the reservations stated in the CPR"*.

To note that 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 expert examination of draft normative acts, as established by Law 100/2018.

II. TYPOLOGY OF PRIVATE INTERESTS PROMOTED IN DRAFT LAWS

General considerations

In this review, the main objective was not so much to identify the interests, which was done very well in the corruption proofing reports but rather to try to identify their cost, and eventually to see what were the costs avoided as a result of the failure to pass the proofed draft acts.

The specifics of the draft acts proofed has led us to put greater emphasis on 5 thematic categories:

- **Public property management (change of land use and use of uninhabitable areas);**
- **Public-private partnerships;**
- **Tax exemptions;**
- **Environmental protection;**
- **Public procurement.**

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 ***Annex 3***).

Annex 4 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 projects and do not fully cover all draft normative acts subject to CP and qualified by NAC experts as interest promoters.

The corruption risks found in these acts referred to:

- insufficient reasoning;
- promotion of interests;
- injury 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 linguistic formulations.

The following describes the categories of risks and harms that may arise from the inefficient management of public revenues and expenditures, separately. **Just by way of example, one of the draft acts reviewed, with direct economic implications, was the adoption of budgetary expenditures of an electoral nature, in 2018, amounting to MDL 960 million**. One of the most popular reasonings by MPs was that these changes have the role of ensuring a decent standard of living for the persons assisted. Moreover, these changes occurred outside the framework of the Government's activities, without financial coverage and without compliance with the legal framework.

Following the cost analysis for the draft normative acts listed in ***Annex 3 to the Study***, it was decided to separate the draft normative acts into three categories:

1. **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 Annex 3).

2. **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. 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 may have indirect environmental, health, access or sustainability effects that, unfortunately, are neglected.

3. **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 cannot 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:

3. **Avoided costs - Total value of costs calculated on draft acts rejected or withdrawn: MDL 1,340,340,946;**

4. **Imminent costs - Total value of costs by draft acts passed: MDL 2,037,1187,304.**

Therefore, 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 damage to the public interest and budget. It is important to note that the high amount of the imminent costs was the large number of controversial decisions adopted during the reference period (provision of state guarantees especially in the cases of Banca de Economii or Chișinău Arena, and the imminent losses due to the alienation of land in Chișinău, whose amount exceeds half a billion lei).

II.1. Public property management

According to the provisions of art. 101 of Law no. 121-XVI of 4 May 2007 on the Administration and Denationalization of Public Property, the central and local public administration authorities ensure the delimitation of public property assets, both by affiliation (between the state and the administrative-territorial units) and by areas (public and private domain). The manner of exercising the right of public property of the administrative-territorial units by the local public administration authorities takes place based on the Law on Property[8], the Law on Public Property of an Administrative-Territorial Unit no. 523

[8] http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312832

of 16 July 1999[9] and other laws in force. Law on Local Public Administration no.436-XVI of 28 Dec 2006 provides that property owned by administrative-territorial units are divided into public and private property. Executive local public authorities ensure, under the law, delimitation and separate tracking of public and private property. The difference between public and private domain ownership consists in the fact that the former may not be alienated to private third parties, but only used by the LPA (CPA) to meet the general interests of the community of the administrative-territorial unit. These can be parks, lakes, roads, and they may only be alienated by a court judgment. The land belonging to the private domain constitutes the land plots located in the public property of the administrative-territorial unit, having a strictly determined designation, other than meeting a general interest. The latter may be leased and/or sold.

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 Chișinău. 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 Chișinău Municipal Council, controversial decisions of the Public Property Agency and other CPAs (especially the institutions subordinated to the Ministry of Education, Culture and Research).

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 ones 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). 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 law for amending and supplementing some articles of the Land Code no.828-XII of 25 December 1991 (art.71 and art.83)[10], which suggests amending the Land Code so that the change of the designation of agricultural land also takes place based on the request of the land holder, with the consent of the owner. Another change concerns the extension of exceptional situations of withdrawal of high quality agricultural land from the agricultural circuit. This draft act is part of a wider initiative that provided for the regulation of the way in which loan pits are and/or can be managed, in particular those intended for the execution of road sector works, and their impact can only be seen cumulatively.

The information note related to this draft law argued the need to approve these changes by the fact that this will enable companies in the sector to maintain more than 1 thousand jobs and will contribute to increasing the revenues of such companies by 50 million lei annually. 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.

Example: Draft law amending and supplementing the Subsoil Code

Drafter:	Ministry of Environment
Purpose of the project: *to regulate in the Subsoil Code the realization and use of loan pits, namely the definition of loan pits, identification of beneficiaries, purpose and scope of regulation, participants, types, deadlines, right*	

[9] http://lex.justice.md/document_rom.php?id=C8E304A4:037190E8

[10] The CPR and the text of the draft act can be found here: https://cna.md/report_view.php?l=ro&id=5450

and transmission of the right to use loan pits (rights and obligations of the beneficiaries), design of loan pits, as well as the control over the use of loan pits and the liability for infringements of the legislation on the use of loan pits.[11]	
CPR and NAC expert:	*CPR No. ELO 17/4125 of 15 May 2017* Dorina Galamaga, Senior Inspector, Division for Legislation and Corruption Proofing
Objections: Looking at the term of 'loan pit beneficiary', one establishes it is rendered insufficiently and equivocally, which can generate misinterpretations. [...] the term only lists the beneficiary subjects but fails to mention the amount, meaning, significance of the introduction of this term, so that it is compatible with the legislative act in force and gives a clear conception of the new category of subjects proposed in the draft law. [...] there is a confusion in the express determination of the subject in terms of the use of the phrase "or the road administrator", since the legislation in force concisely renders the competent authority for road administration. [...] there is a lack of clarity regarding the capacity of beneficiaries as regards national road administrators, local road administrators and private road administrator, which can be individuals, legal entities and public administration authorities (central and local). [...] the phrase "road/pier administrator" includes both legal entities and local public administration authorities, and the separate enumeration by category creates confusion, which gives the norm an ambiguous character. The risk lies in the fact that, ***in application, the concept of 'beneficiaries of loan pits" may be interpreted differently with favouring certain subjects with a view to benefiting from the right of use of loan pits.*** [...] given that the category of beneficiary subjects of loan pits can be interpreted discreetly, there is a risk that the persons responsible for granting the right to use loan pits may favor certain subjects by committing active/passive acts of corruption. [...] ***Regulations are found that generate internal conflicts and can lead to abusive interpretations.*** Obtaining a positive opinion in the state environmental expertise or impact assessment cannot neglect the other steps in the technical project preparation. Each public entity/authority involved shall exercise the powers assigned to it by law. Hence, ***equivocal wording of the norm renders an ambiguous character that may constitute a ground established by law for not complying with the entire procedure and or not having all the positive opinions from all the institutions involved but to preparing the technical project with prejudice to the general interest of the society.*** [...] the period of use of loan pits is uncertain and is a bad reference and blanket rule. Reference is made to the term to be established in an act (technical project), approved in the established manner, developed by *"an organisation licensed in the field, as commissioned by the beneficiary of the works" (according to pt. 11 of the draft act (art.56[1]para.(1)).* ***This uncertainty and ambiguity gives the possibility to the beneficiary of the works to modify the term of use of the works, whenever a 'legal' need arises for the excavation of useful mineral substances. [...] neither the norm nor the draft acts sets a precise deadline for the use of loan pits, which generates uncertainty and discretionary application of the norm by the beneficiary entity of loan pits.*** Use of the words "technical (technological) project documentation" or "technical (technological) project documentation" in point 8 and point 13, give the norms an equivocal character, since the draft act does not define this term. The draft act contains such terms as "thematic project" and "technical (technological) work project". [...] ***attention is drawn to the lack/ambiguity of administrative procedures as well as the lack/inadequacy of supervisory and control mechanisms.*** [...] a conflict of norms occurs with the provisions of the Subsoil Code when establishing the body authorized to carry out controls in the field of use of loan pits, which diminishes the efficiency and effectiveness of controls on the use and protection of loan pits, as well as technical (technological) project documentation, approved in the established manner [...].	
Identified risks:	• **General** • **Legalization of acts of:** ▪ exceeding one's work duties ▪ misuse of official position ▪ conflict of interests and/or favouritism ▪ influence peddling ▪ undue influence ▪ irregular use of funds and/or assets • **Encouraging and facilitating:** ▪ bribe giving ▪ bribery taking ▪ active corruption

[11] Full text of CPR and of draft act can be found at: https://cna.md/report_view.php?l=ro&id=4373

	▪ passive corruption
Project status:	Withdrawn
Cost assessment:	It is a normative act with cost elements but which cannot be identified and evaluated due to the fact that the necessary additional information - environmental damage assessment, number of loan pits, land areas removed from the agricultural circuit, social and economic impact - is missing in the documents submitted. **Potential amount of irregularities:** In accordance with the reply letter of the Ministry of Agriculture, Regional Development and Environment no. 01/01-4560 of 29 Sept 2018 (annex), in the period from 2010 to 2017, following geological controls and state mining surveillance on the rational use and protection of the subsoil, 114 reports were prepared on the assessment of the damage caused to the environment by illegitimate extraction of useful minerals, **the amount of the damage being valued at MDL 214,514,399.** At the beginning of 2019, the State Ecologic Inspectorate identified 277 illegal quarries, with areas ranging from 0.1 ha to 11 ha, estimating **the damage to the environment at MDL 30,543,072.** Most of these, are *in fact*, loan pits.

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 10 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 16 million, or almost 10%, of the total amount of public-private partnerships concluded during 2017 - 2018**.** However, the losses are much greater. For example, under lease agreements, for the land located at 9/13 Studenților Str. and on Kiev Str., where land with a total area of 1.6 ha was privatized at the normative price for the capital's center in 2016 (MDL 2.98 million), while the market price of land in this area is EUR 820 per sq.m. **The losses in this particular case amounted to MDL 26.24 million.**

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. Hence, this involves simplifying the procedures by which the so-called 'loan pits' may be used, in the absence of a mining perimeter. The lack of a mining perimeter in fact makes it impossible to monitor the use of mineral resources, enables avoiding land reconditioning work and, indirectly, enables favoring private interests at the expense of public interest.

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 leads to we can judge from the CPR on **the draft government decision on real estate procurement**

Drafter:	State Chancellery
Purpose of the draft act: *strengthen the premises necessary to ensure the operation of public institutions deployed in the building located in Chișinău, at 73 Ștefan cel Mare și Sfânt Bd., according to Government Decision No. 982 of 15 Nov 2017, which provides for the assignment of the construction with the cadastral number 0100205.007.01, area of 3398.9 sq.m. from the management of the General Directorate for Government Building Administration to the management of the Prosecutor General's Office of the Republic of Moldova".*	
CPR and NAC expert:	CPR No. EHG 18/5031 of 16 May 2018[12] Maia Gonța, Senior Inspector, Legislation and Corruption Proofing Division
Objections: [...]***information inconsistency of the draft act***. In this sense, point 1 provides for the procurement of real estate with a total area of 1743.9 sq.m. but the Annex provides the list of uninhabitable premises, privately owned, located at 73 Ștefan cel Mare și Sfânt Bd. Chisinau, with the total area of the real estate of 1256.1 sq.m., which contravenes pt. 1 of the draft law proposed. Similarly, contrary to official data, the area of the property proposed for purchase is incorrectly indicated, with the cadastral no. 0100205.07.01.022. In the "Cadastre" information system it has an area of 233.0 sq.m., while the annex to the draft decision indicate the area of 195.8 sq.m. [...] according to the official data from the extracts of the "Cadastre" Information System, active prohibitions are recorded in regard to the real estate with the cadastral numbers 0100205.007.01.001, 0100205.007.01.003, and 0100205.007.01.005. [...] there is a prohibition ordered by a ruling of the enforcement agent in regard to the real estate with the cadastral no. 0100205.007.01.022 [...]considering that the draft act aimed at "real estate procurement," ***a regulatory gap is found in terms of the applicable (competent) law to regulate the legal relations that have arisen.*** We note that the procurement by public entities of real estate in the private domain is regulated expressly and in detail by the relevant legal framework, such as the Law on Expropriation for Public Utility No. 488/1999, which establishes in a transparent and unequivocal manner the procedure and conditions for achieving the relationships that have emerged. [...] ***in the absence of legal grounds for ensuring the procurement procedure for the respective goods, impediments will appear in achieving the purpose set, through the fact that the responsible public authority will be excessively empowered*** to create procedural rules that will apply in case of owners' refusal to conclude the sale-purchase contracts or if they disagree with the proposed price as well as an estimation of the maximum price limit that can be proposed by the responsible public agents, etc. [...] ***the regulation of the norm in the proposed wording grants possibilities of application of the norm in the preferred interpretation, depending on the interest of those responsible for the implementation and control of application***, and regarding the danger of corruptibility of this element, situations may appear where ***the public agents empowered to apply that norm may commit abuses by wasting public funds*** or, on the contrary, they may find themselves in the situation where the application of the norm becomes impossible due to lack of resources, which may lead to a damage to the public interest. [...] will limit the transparency of the functioning of the public entities concerned in order to achieve the purpose set of strengthening public institutions, and ***will not ensure the objectivity and impartiality of the public agents responsible for organizing and carrying out the procurement procedures for the respective goods***, effective use of public money and minimizing the risks of corruption[...]***the lack of transparency in the procurement of the respective goods will enable corruption to increase in a biased manner by rigging of contract award procedures as well as by favoring certain subjects;***. [...]***through a non-transparent procedure, fraud and corruption in this area will increase, and failure to apply the provisions of the Law on Expropriation for Public Utility Cause no. 488/1999 in the transfer of goods and property rights from private property to public property, which have real assets and the property rights over them as the subject-matter, possibilities are generated to derogate and***	

[12] https://cna.md/report_view.php?l=ro&id=5230

abusively interpret the subsequent application of the mechanism for awarding such types of contracts. [...]***once the draft act suggested has insufficient substantiation under which to achieve the purpose set, there is a risk of promoting the private interests of the public entities responsible for implementing the act, who will be tempted to make decisions "convenient" to their own interests in negotiating the sale-purchase price of the respective goods***, following a prior agreement with the owners of the respective goods, ***which will prejudice the public interest, considering that the real estate procurement will take place from the state budget***. [...]	
Identified risks:	• **General** • **Encouraging or facilitating acts of:** ▪ misuse of official position ▪ exceeding one's work duties
Project status:	**Withdrawn**
Cost assessment:	**Amount of damages** in this case may consist of: a) immobilization of public resources for the procurement of 1743.9 sq.m., whose market price amount for the ultra-center area is at least **41.5 million lei** and b) if a fictitious procurement of such areas takes place, with the procurement of only 300 sq.m. we are talking about an embezzlement of funds of almost **MDL 40 million.** To add here also the extremely high risk of arbitrating the expropriation case, with coverage of legal costs.

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.

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 300 million every year.**

II.2 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 Chișinău Airport, 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 Accounts' report focused on and reviewed 69 PPP contracts, 7 of which were concluded by the central public authorities, and 62 - by the local public authorities, and related to the areas of sanitation (40 contracts), health (13 contracts) and infrastructure (6 contracts). The deadline for 49 contracts was set for a period of 49 years, and for 20 contracts it varies from 12 to 25 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 of MDL 1.1 billion by private partners in the contracts audited.

In the period from 2016 to 2018, **9 PPP draft acts were reviewed by NAC**, and the conclusions were practically identical to those of the Court of Accounts. 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 not enough leadership and 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 9 contracts reviewed in the CPR, 8 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.

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 (MoE), 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 MoE, it is not 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, the Court of Accounts draws 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 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 Republican Clinical Hospital where, due to a budgetary austerity, the public partner did not honor its financial obligations, and on the other hand, the contractual framework was exceeded by oversizing health services. The damages in this case alone amount to MDL 300 million.

A serious case was the implementation of the PPP within the Stăuceni Multipurpose Arena, 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 No. EHG 18/4949 of 14 April 2018 to the draft government decision on the approval of the objectives and conditions of the public-private partnership for the design and construction of the multipurpose arena of national interest and the general requirements for the selection of the private partner

Drafter:	Ministry of Education, Culture and Research
Purpose of draft act: *To approve the objectives and conditions of the public-private partnership for the design and construction of a multipurpose arena of national interest and the general requirements for the selection of the private partner.*	
CPR and NAC expert:	CPR No. EHG 18/4949 OF 14 April 2018, Vadim CURMEI, Head of Section of the Legislation and Corruption Proofing Division
Extracts from CPR: With reference to the norms contained in the public-private partnership objectives and conditions, it is considered that the author should consider the timeliness of establishing a maximum term for the implementation of the public-private partnership contract, or point 6 provides only a deadline - "the duration of the implementation of the public-private partnership contract is at least 10 years." The minimum limit established increases the risk of discretionary setting by the Commission of a maximum limit for the selection of the private partner following a negotiation of the contractual clauses. Hence, based on some agreements, it will be possible to establish one or another term without clearly pre-established criteria. […] ***no norms have been found on how the private partner will recover its investments. An express failure to regulate such issues increases the risk that, based on the norms of the contract, the public partner may return far beyond the investments made taking into account the term of the public-private partnership contract, the input of the public partner, and the manner of management of the public-private partnership object***. This is necessary in order to protect public funds by not allocating a surplus in this respect.	

[...] it is found that ***the draft act does not contain general norms that would regulate certain rights and obligations of the public partner as well as the private partner. The absence of general norms will leave it up to the parties to the contract to negotiate all the rights and obligations.*** [...] the legal gaps identified should be removed, so that to have a public-private partnership in effective, transparent conditions, with respect for the public interest**.**	
Identified risks:	General
Project status:	Approved
Cost assessment:	The **amount of damages** is calculated as the sum of the costs of land deforestation + the amount of the land related to the construction according to the market price. Such losses are of **over MDL 798 million** and they are permanent losses. It is also unclear how this object will be used after the ten-year period has expired. A simple calculation shows that the investor will recover its investment in the first 8 years of its use, without being motivated to develop and take risks outside this period.

Note: Amount of damages/irregularities: For the PPP draft acts reviewed, the amount of calculated damages is of over MDL 1,420 million, and the potential damage is of over EUR 300 million, according to the Court of Accounts data.

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 1.420 million.**

II.3 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, 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. On 16 March 2018, the Government withdraws its own initiative, even if the issue of land use (sandy clay) for road embankment remains unresolved (to note that the draft acts had not been subject to corruption proofing. On 20 July 2018, the legislative initiative no. 277 of the Members of the Parliament was registered in the Parliament, one almost identical to the initiative no. 81 of 4 March 2016, and 7 days after its registration, on 27 July 2018, the Parliament of the Republic of Moldova approves the draft act no. 277 in two readings, which becomes Law no. 194 of 27 July 2018. Below, we look at the amendments made to the Subsoil Code by Law no. 194 of 27 July 2018, published in the Official Gazette on 24 Aug 2018, and the possible improvement options for achieving the public policy objectives set out by the main parties engaged in issuing opinions to the legal initiative no. 151 of 17 May 2017.

Drafter:	A group of Members of Parliament
Purpose of draft act: *According to the information note, the draft act aims to "expedite the implementation of the provisions of Law No.150 of 29 June 2012 on the Declaration of Public Utility of National Interest for the Rehabilitation and Extension of Some National Roads and Law No.17 of 6 March 2014 on the Declaration of Public Utility of National Interest for the Rehabilitation, Modernization and Extension of Some National Roads."*	
CPR and NAC expert:	CPR no.ELO17/3962 of 6 March 2017[13] Dorina Galamaga, Inspector, Legislation and Corruption Proofing Division
Objections: The norm defines a new term in the Subsoil Code by referring to the coordination system "Molref-99". Looking at the national legislation, namely the Order of the Agency for Land Relations and Cadastre no. 185/2001 on the Approval of Normative Acts, such as the *Regulation on the Transition to the Global Coordination and Reference System and related Cartographic Projections*, the name of the term "MOLDREF 99" stands out, *which is "the coordinate system with the parameters mentioned in the Regulation in the TMM projection with the coordinates of the points of the National Geodetic Network determined by GPS measurements in the 1999 campaign."* Hence, the drafter uses a different term than the current normative act. ***This term render the norm an ambiguous character. The risk lies in the fact that, when applied, unevenly used terminology may lead to vicious practices of interpretation and application of the norm.*** There have been several attempts to regulate "loan pits". We can illustrate with the Order of the Ministry of Transport and Road Infrastructure no.86/56 of 18 April 2016 on the Approval of the Instruction on How to Use Loan Pits, which established provisions contravening the Subsoil Code, subsequently being repealed. ***The phrase "without the assignment of the mining perimeter, under the conditions determined by the Ministry of Environment" reveals an uncertainty regarding its interpretation and application.*** Two equivalent conclusions derive from this ambiguous wording: - the use of subsoil for the realization and use of loan pits *may be* performed in accordance with technical projects in the conditions determined by the Ministry of Environment (first aspect), or - their realization and use *may be* performed without assigning the mining perimeter, in the conditions determined by the Ministry of Environment (second aspect). If we look at the norm in terms of the first uncertain aspect, we highlight that the norm conflicts with Art. 9 letter i) of the Subsoil Code, which provides that the Government, and not the Ministry of Environment, shall be responsible for establishing the use and protection of the subsoil, development and approval of standards, norms and the corresponding rules. The second uncertain aspect, set out above, creates a conflict among Art.13 para. (2), Art.22 paras. (5) - (11) and Art.64 of the Subsoil Code, which expressly stipulates that the right of use over the subsoil sector shall be realized within the limits of the sector assigned to the subsoil beneficiary in the form of a mining perimeter, and the use of the subsoil for purposes unrelated to useful mineral extraction, shall be carried out within the limits of the mining perimeter according to the technical projects. Hence, ***there is a danger that the draft act may impose excessive powers in favor of the Ministry of the Environment, which contradicts the legislation in force.***	
Identified risks:	• **General** • **Encouraging or facilitating acts of:** ▪ misuse of official position ▪ exceeding one's work duties
Project status:	
Cost assessment:	Cost of shares: 4,721 ha arable land x MDL 1.6 mill/ha, nominal price = **MDL 0.64 mill** 4.721 ha arable land x USD 20,000/ha, market price = **USD 94.420 thous = MDL 1.83 mill.**

What did actually happen? In 2010, the Republic of Moldova, with the EU (EBRD, EIB, European Commission) support, started an extensive road rehabilitation process. During 2010-2011, the German company Kocks GmbH, in association with Universinj SRL, prepared the technical projects for the national roads that were to be rehabilitated from loans granted by international financial institutions.

[13] Full text of CPR and of draft act can be found at: https://cna.md/report_view.php?l=ro&id=4205

In the process, design companies did not take into account the provisions of the Subsoil Code no. 3 of 2 Feb 2009, indicating in the projects the potential "loan pits" in the immediate vicinity of the roads, and not the existing quarries, as sources of supply of sandy clay for road embankment. In such circumstances, the designers indicated quarries that did not exist and that had to be authorized in accordance with the Subsoil Code no. 3 of 2 Feb 2009, as sources of obtaining the mineral substances necessary for embankments. The beneficiary, represented by the State Company Road State Administration (RSA) accepted austere quality projects without taking into account the need to adjust them to the legal provisions in force of 2 Feb 2009.

Amount of damages: 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. Between 2010 and 2017, following geological controls and state mining supervision on the rational use and protection of the subsoil, 114 reports were drawn up on the assessment of environmental damage caused by the illegitimate extraction of useful mineral substances, ***the amount of damages being estimated at MDL 214,514,399***. 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 30,543,072***. In just one of the loan pits cases (Todirești), ***the damage exceeds MDL 5 million, and the costs of land reconditioning amount to another MDL 6 million.***

Another sector no less affected, with draft acts that promote an actual legalization of corruption risks is management of the forest and hunting funds. The forestry 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 the draft law on hunting and hunting fund.

Drafter:	Anatolie GORILĂ, Member of Parliament
Purpose of the draft act: *although a number of general objectives have been invoked in the text of the draft information note, however, a review of the act shows that the drafter wants to grant a right of succession to the long-term use of hunting animals to users who have previously practiced this activity and assume all responsibilities for the protection, reproduction and rational use of wild animals. The entire responsibility for keeping hunting animals received for use is borne for the hunting grounds stipulated in the contract*	
CPR and NAC expert:	CPR No. ELO18/4906 of 28 March 2018[14] Cristina DIACENCO, Main Inspector, Legislation and Corruption Proofing Division
Objections: [...] ***we consider it necessary to expressly establish that the hunting fund is a public good that cannot be subjected to any process or forms of privatization***. We note that the Regulation of the Hunting Fund in force (Annex No.1 of the Animal Kingdom Law no.439/1995) contains norms prohibiting privatization or transfer to another form of ownership than the public one. [...]the right to make decisions on land that may also be private property contravenes Art.316 of the Civil Code [...] there is a risk of falsification of the data in the applications since the draft act does not expressly provide for the acts based on which the hunting funds are created. ***Faulty references represent a risk of corruption, and the lack of exhaustive establishment of the documents forming the aforementioned applications will reduce the transparency of the hunting fund management. Similarly, the norms proposed will make it impossible to hold accountable the persons guilty of fraudulently applying the powers granted by this draft act (in particular the persons responsible for preparing the applications).*** [...] The provisions of the draft act establish the exclusive right to represent all Moldovan hunters abroad for the Civic Association "*Society of Hunters and Fishermen of the Republic of Moldova*". ***The draft act provisions clearly promote the interests of the Civic Association "Society of Hunters and Fishermen of the Republic of Moldova", in violation of the free competition principle. These statements can be deduced from other provisions of the***	

[14] Full text of CPR and of draft act can be found at: https://cna.md/report_view.php?l=ro&id=5137

draft act, such as (Art. 24, 26, 28 etc. of the draft act), which grants the right to the Civic Association "*Society of Hunters and Fishermen of the Republic of Moldova*" (which is a non-governmental organization) to develop regulations to establish the hunting rules, to organize a "*hunter's exam*", to insert and hold forms for hunter cards etc.

[...] the implementation of unitary policies in the field of biodiversity conservation and wildlife protection (art. 6 para. (3) of the draft act) must be exclusively in the competence of the administrator (specialized central public administration authority), hunting associations being entitled to contribute to this process by the measures to be taken by them in the management of the hunting fund.

The cumulation of several competencies for one civic/non-governmental structure contributes to the creation of control and dependence for the other hunter associations present or to be established, which is contrary to the general interest and contrary to the principle of "free association of hunters" declared.

Several factors of corruption were identified in the draft act, among which: the proposed provisions conflict with the norms of several legislative acts in force: 1) Criminal Code, 2) Contravention Code, 3) Criminal Procedure Code - in the part related to liability for violation of the provisions of a legal act; 4) Law on Natural Resources no.1102/1997 - in the part that regulates the management of the hunting fund, etc., lack of transparency in granting the right to manage the hunting fund and selection of the contracting hunting society, ambiguous exposures regarding approval of normative acts regulating the hunting process, ***lack of a standard model of the "hunting fund management contract", etc.***

Identified risks:	• **General** • **Encouraging or facilitating acts of:** ▪ active corruption ▪ passive corruption ▪ forgery of public acts • **Legalization of acts of:** ▪ misuse of official position ▪ conflict of interests and/or favouritism
Project status:	Adopted
Cost assessment:	Corruption costs represent the amount of annual revenues of Moldsilva, **MDL 417 mlln each year,** of which: **MDL 238 mlln - value of leased hunting land**. In addition to the direct costs that could be calculated, there are also costs that cannot be assessed in their essence only from the content of the draft act, whose amount can be assessed as part of larger exercises and that involve interviewing the main beneficiaries: institutions, business operators, evaluation of the amount of the attempt on the property, image losses, etc.

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, population access to forests and the location of communal forests, the value and role of forests, governance and management of the sector shows ***that the forestry sector needs a deep and complex reform***.

II.4 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.[15]

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

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.[16]

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.[17]

An example in this sense is the draft decision of the Government on completing the list of business operators entitled to extend the period of payment of VAT and customs duty, for the period of the production cycle, but not more than 180 days, on raw material, materials, accessories, primary packaging and imported accessories for the exclusive manufacture of goods for export, approved by Government Decision no. 359 of 26 May 2014 (“Capital Tobaco" SRL, “IHCEKO” SRL, “GrupBiz-SV” SRL).

Drafter:	Ministry of Economy
Purpose of draft act: *reviewing in essence the provisions of the draft law, one notes that its purpose is to assign the right to extend the payment periods for VAT and customs duty to some business operators ("Capital Tobaco" SRL, "IHCEKO" SRL, "GrupBiz-SV" SRL) , for the period of the production cycle, but not more than 180 days, for the raw material, materials, accessories, primary packaging and accessories imported for the exclusive manufacture of goods for export.*	
CPR and NAC expert:	CPR No. EHG17/4012 of 27 March 2017[18] Cristina Chistol, Senior Inspector, Legislation and Corruption Proofing Division
Objections: ***In 2016, GRUPBIZ-SV SRL recorded modest economic and financial results***, had ***2 employees and was registered as VAT payer only on 1 April 2016***. The company paid taxes and fees in the total amount of MDL 21.881 and has a tax debt on the goods that, while being used, cause environmental pollution in the amount of MDL 2,084. At the same time, according to the provisions of point 14 of the Regulation approved by Government Decision No.146 of 26 February 2014: "14. To qualify for inclusion in the list, business operators must cumulatively meet the following conditions: (a) be producers of goods intended for export and have the production capacity necessary for their manufacture; b) the production cycle of goods for which the extension of the term of payment of VAT and customs duty is requested shall not exceed 180 days; c) have no debts to the national public budget". Hence, ***taking into account the provisions of point 14 letter c) of the Regulation approved by Government Decision no. 146 of 26 February 2014, one notes that GrupBiz-SV SRL did not meet the conditions for benefiting from the said facilities, and the approval of the draft act in the proposed wording may constitute exceeding the limits of the normative framework and harming public interests.***	
Identified risks:	**Legalization of acts of:**

[16] https://www.imf.org/external/pubs/ft/fandd/2018/03/akitoby.htm
[17] https://www.imf.org/external/pubs/ft/issues/issues27/
[18] Full text of CPR and of draft act can be found at: https://cna.md/report_view.php?l=ro&id=4254

	▪ misuse of official position ▪ exceeding one's work duties ▪ laundering of money from crimes ▪ tax evasion ▪ lack of explicit references to the purpose of the draft act submitted.
Project status:	Approved, GD no. 291 of 5 May 2017
Cost assessment:	Although the cost in this particular case is insignificant, its approval in the absence of a good economic argument and compliance with good budgetary practices has allowed the creation of regrettable precedents that will be applied in other cases.

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 government's draft decision for approving the Regulation on the Manner of Granting Some Categories of VAT Benefits.

Drafter:	Ministry of Economy
Purpose of draft act: *establish mandatory requirements for organisations and undertakings/companies of the blind, deaf and disabled to benefit from VAT exemption on the import of raw materials, supplementing materials, items, accessories necessary for the production process itself and from exemption from the payment of VAT on the delivery of goods produced and provision of services.*	
CPR and NAC expert:	CPR No. EHG17/4296 of 17 July 2017[19] Cristina Chistol, Senior Inspector, Legislation and Corruption Proofing Division
Objections: Enterprises and organizations bear full responsibility for the correctness of the data presented, according to the legislation in force. The provisions highlight the categories of liability applicable to enterprises and organizations for the correctness of the data presented, ***or in the normative acts, the basis of liability must be formulated coherently, with the differentiation of the respective category of liability - disciplinary, contravention, civil or criminal.*** ***The deficiency in this determines the declaratory nature of the norms relating to the responsibilities of the subject concerned***, may ***determine difficulties subsequently at the stage of implementation of the norm in practice and insufficient accountability of the target subjects*** for compliance with legal provisions. [...] After examining the requests and verifying that the conditions provided for in this Regulation are met, the State Tax Service shall prepare a report on the acceptance or refusal of the request for VAT exemption (hereinafter - report) and shall forward the report in question to the Ministry of Finance and Customs Service. The above-mentioned norm does not regulate the deadline for the preparation of the report on the acceptance or refusal of the request for VAT exemption and for submitting it to the Ministry of Finance and Customs Service, ***which may determine the conditions for the subjective interpretation of the matters provided by the responsible public entity/agencies. The lack of concrete deadlines always leaves room for abusive interpretations by the public agents. Hence, an excessive discretion of the public agent arises to assess and determine in each case separately terms that are convenient for him. The discretion in question may be misused by the public agent to obtain undue rewards to be determined to delay/expedite the exercise of legal obligations. The given actions can also be carried out by persons who have influence/claim to have influence on the public agent responsible for the processes nominated above, in order to make them perform the functional duties in a way favorable to a particular person/group of persons and thus favor them***. [...] ***the proposed wording may tempt the person concerned to resort to corrupt methods to determine the responsible public entity/agent to delay/expedite the exercise of legal obligations.*** [...] examining the legality of the actions of the entity in general and of the responsible public agents in particular will be difficult, or ***the norm admits the arbitrary exercise of the prescribed right, which makes it impossible to prove and criminalize any abuses committed by responsible public agents.***	

[19] Full text of CPR and of draft act can be accessed at: https://cna.md/report_view.php?l=ro&id=4540

[...] ***does not regulate the obligation of the STS to ensure the sequence of the actions initiated*** and the immediate initiation of exclusion from the list in case of non-submission by the enterprise of the report within 10 calendar days. Failure to regulate the given aspects may lead to uncertainty regarding the mechanisms for the performance of work duties by the entities concerned and exercise of control over the beneficiaries and facilities. [...] ***preconditions are created for the discretionary exercise of work duties by responsible public agents.*** [...] The proposed norm ***sets out how the public entity should act in a discretionary manner*** (as an empowerment) when the legitimate expectation of the citizen/society is that the public entity should act in an imperative manner (obligation, duty), ***which may condition multiple risks of corruption related to the process regulated***. To note that according to the legislative technique norm, the content of the amendments must have a dispositional character. [...]one notes that ***examining the legality of the actions of the entity in general and of responsible public agents in particular will be difficult, or the norm admits an arbitrary exercise of the right prescribed***, which determines the impossibility of proving and criminalizing possible abuses committed by responsible public agents.	
Identified risks:	● **Encouraging or facilitating acts of:** ▪ active corruption ▪ passive corruption ▪ influence peddling ▪ conflict of interests and/or favouritism ▪ undue influence ● **Legalization of acts of:** ▪ negligence at work ▪ misuse of official position ▪ exceeding one's work duties
Project status:	Withdrawn
Cost assessment:	It is an act with cost elements, but which cannot be identified and assessed because the necessary additional information is missing in the documents submitted (e.g. the number of beneficiaries of such discounts, the funds accumulated following the application of VAT) or their basic values (cylinder capacity of a car, the amount of cars, etc.).

II. 5 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.

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 dedicated to this topic were not taken into account by the relevant authorities which led, among other things, to the fact that:

- The system has only been partially completed, the low professional capacity of the persons responsible for the public procurement procedure remains of current interest, which results in a poor and biased selection of the winning bidders and an eventual under-utilization of funds;
- 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.

Example: *Draft law to supplement Article 4 of Law No.131/2015 on Public Procurement*

Drafter:	Member of Parliament
Purpose of draft act: *establish an exception from the application of general and unified rules in the field of public procurement, in this sense, we signal suspicion that the provisions of the draft act may promote a hidden goal of legalizing a camouflaged mechanism for circumventing public procurement procedures when concluding contracts that have as public procurement of goods and services in health as their subject-matter.*	
CPR and NAC expert:	CPR No. ELO18/5169 of 28 June 2018[20] Dorina GALAMAGA, Senior Inspector, Legislation and Corruption Proofing Division
Objections: [...] Reviewing the community normative framework, such as Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works, Goods and Services Contracts, published in the Official Journal of the European Union no.L 134 of 30 April 2004 and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing of Directive 2004/18/EC, published in the Official Journal of the European Union no.L 94/65 of 28 March 2014 ***we find no exception for the contracts reserved in the draft act or similar from the application of such directives***. Taking into account the commitments undertaken by the Republic of Moldova in the Association Agreement and the provisions of the acquis of the European Union in the field of public procurement as well as the international agreements on public procurement, we establish ***that the draft acts promotes the establishment of an exception in the field of public procurement that will facilitate the award of contracts that have as their subject-matter the procurement of goods and services in health through a non-transparent procedure, which will increase fraud and corruption in this field***. [...] ***reduce the transparency of the operation of the Centralised Public Procurement Centre and access to information of public interest when assigning contacts for the procurement of goods and services in health,*** since the mechanism for informing stakeholders about the initiation, the list of goods and the organization of procurement procedures in this regard is not clear. [...] ***the lack of transparency in the procurement of goods will lead to increased risks of rigging, mimicking the procedures for awarding contracts, as well as favoring certain 'convenient' subjects at 'advantageous' prices to the detriment and harm to the public interest.*** [...] ***unclear legal liability for violation of the proposed regulatory provisions***. [...] ***lack of clear stipulations of responsibilities and sanctions for the subjects involved in the award of contracts that have as subject-matter the procurement of goods and services in health may result in a continued***	

[20] Full text of CPR and of draft act can be accessed at: https://cna.md/report_view.php?l=ro&id=5412

commission of illegal violations and abuses in the field. Hence, the liability for violating the provisions is a priority element in disciplining the subjects responsible for the application of the norms. [...] by establishing the right of the Center for Centralized Public Procurement in Health not to apply the provisions of Law No.131/2015 in awarding contracts that have as subject-matter the procurement of goods and services in health instead of an obligation, ***possibilities arise for derogating and misinterpreting the subsequent application of the mechanism for awarding such types of contracts***. ***There is a risk that a non-transparent and obscure administrative procedure will be created when procuring health goods and services, whereby public agents will only favor certain subjects when concluding contracts, which will encourage or facilitate the commission of acts of corruption, acts related to acts of corruption and corruptible acts, making it impossible to hold them legally liable.***	
Identified risks:	● **General** ● **Encouraging or facilitating acts of:** ▪ passive corruption ▪ bribery taking ▪ bribe giving ▪ illicit enrichment ▪ fraudulent obtaining of funds from foreign assistance ▪ undue influence ▪ active corruption ▪ non-compliant use of funds and/or assets ● **Legalization of acts of:** ▪ influence peddling ▪ misuse of one's official status ▪ embezzlement of funds and/or assets ▪ exceeding one's work duties ▪ - conflict of interests and/or favouritism
Project status:	**Withdrawn**
Cost assessment:	

Another example of a draft act affected by corruption in the field of public procurement was also ***the draft law to supplement Article 4 of Law No.131 of 3 July 2015 on Public Procurement,*** promoted by a group of Members of the Parliament and proposing *an exemption from the public procurement procedure for the contracts concluded by the public institution "Public Services Agency", which have as object the procurement of goods and services, works, in order to create its subdivisions (multifunctional centers) based on the principle of one-stop shop for the provision of public services*.

the CPR noted, "*based on the existing national normative framework, the commitments assumed by the Republic of Moldova in the Association Agreement, as well as the provisions of the European Union acquis in the field of public procurement, it results that the provisions of the draft act contradict them and make an exception from the general rule, which will facilitate the award of contracts for goods, services and works for the creation of subdivisions of the PI "Public Services Agency" through a non-transparent procedure, which contravenes the rules and principles of public procurement*".

More details are illustrated below:

Example: *Draft law to supplement Article 4 of Law No.131 of 3 July 2015 on Public Procurement*

Drafter:	A group of Members of Parliament
Purpose of the draft act: *According to the information note, the draft act is prepared to "ensure the functionality of the institution created, including for the creation of subdivisions - multifunctional centers."*	
CPR and NAC expert:	CPR No. ELO17/4521 of 31 Oct 2017[21] Xenia VAMES , Head of Section, Legislation and Corruption Proofing Division
Objections:	

[21] Full text of CPR and of draft can be accessed at: https://cna.md/report_view.php?l=ro&id=4760

[...] Exceptions to the public procurement procedure under Law no.131/2015 on Public Procurement in the contracts for the procurement of goods, services and works for the creation of the Agency's multifunctional centres ***determines the lack of a transparent mechanism for the functioning of the public entity, responsibilities and the mechanism of supervision and control over its operation, as there is a lack of information based on which administrative procedures goods, services and works will be procured.*** According to art.6 of Law no.131/2015 "Regulation of public procurement relations is carried out based on the following principles: a) efficient use of public money [...]; c) ensuring competition and combating unfair competition in the field of public procurement [...] (h) equal treatment, impartiality, non-discrimination as regards all bidders and economic operators." Hence, ***there is a dangerous discretion of the persons responsible for implementing the provisions of the draft act to establish norms convenient to their own interests, prejudicing the institution's budget through a non-transparent/non-compliant use of public money, and favoring certain business operators by stimulating unfair competition.*** Establishing a right instead of an obligation for the Public Institution "Public Services Agency" not to apply the requirements of Law no. 131/2015, except for the public procurement procedure, ***determines the possibility of creating "legal levers" of activity that will allow derogations and abusive interpretations of its powers, and will make it impossible to hold accountable the decision-makers who on implementation will be aware of their impunity for abuses committed in the application process, and thus will perpetuate the acts of abuse and excess of duties, as well as funds embezzlement.***	
Identified risks:	• **General** ● **Encouraging or facilitating acts of:** ▪ active corruption ▪ bribe giving ▪ passive corruption ▪ bribery taking ▪ influence peddling ● **Legalization of acts of:** ▪ embezzlement of funds and/or assets ▪ misuse of one's official status ▪ exceeding one's work duties ▪ conflict of interests and/or favouritism
Project status:	Withdrawn
Cost assessment:	The cost of corruption in this case cannot be estimated directly. In addition to the lack of data and the reluctance of entrepreneurs to report, there is an information gap that the PSA could not solve. At the same time, the impact and consequences of corruption in public procurement are not limited only to direct losses to the public budget but are much broader and affect the entire population. Among the main consequences and negative impacts of corruption in this area can be mentioned: **long-term financial costs to the public budget**. Budget losses due to corruption in public procurement are not reduced to the inflated price of some works, but also to higher allocations for their subsequent maintenance. **Negative Impact on the health and safety of the population.** Corruption in public procurement can lead to the fact that public authorities will procure non-qualitative products, including those intended for direct consumption by the population. **Negative Impact on the competition.** Corruption practices become known over time to the business environment, which discourages many from participating in public procurement. The corruption barrier primarily affects small and medium-sized enterprises that need experience and financial resources to grow further. This inhibition negatively affects the number of jobs created, investment in innovation and the growth prospects of companies that do not have direct access to public officials and budgetary resources.

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.***.

II.6. Conclusions and recommendations

Draft acts from all categories of the typology shown above were promoters of interests to the detriment of the public interest; all draft acts have in common the element of prejudice to the national public budget.

- The CP exercise was able to anticipate and avoid an imposing volume of potential damages (from rejected or withdrawn projects), even in relation to those that could not be avoided;
- The quality of the normative act is extremely low: 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;
- The lack of an understanding of public interests to be achieved through the use of ***public-private partnerships***, makes this mechanism to be ***misused in favor of private interests***. In the case of most draft acts through which public-private partnerships were established, the obligatory stages and conditions for their promotion were not observed: feasibility studies were lacking, financial calculations were not presented, the necessary opinions and coordinations were not obtained (or at least they were not published);
- The promotion of interests in other categories, especially those with electoral tinge, than those shown in the above typology, 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, in particular:

i. compliance by the authors of the draft normative acts with the requirements for the mandatory character of economic-financial substantiation, the lack of such substantiation serving as basis for the failure to register and review the draft act;

ii. a similar condition is also to be set for draft acts to be accompanied by a regulatory impact assessment;

iii. 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.

Similarly, taking into account that most of the acts of the typology enshrined in this chapter 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**.

III. POLITICAL INTERESTS AND THE NORMATIVE PROCESS IN ELECTION CAMPAIGNS

III.1. Promotion of electoral draft acts

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, 2018 was an election year. 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.

During the reference period, the NAC experts reviewed at least ***11 draft normative acts***, which aimed to provide benefits or contained interventions in the election process rules. All 11 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 social draft acts were promoted by the members of the parliamentary opposition of that time and aimed at revising the provisions of the legislation on pensions, allowances and social benefits. 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 two draft laws that proposed changes related to the conduct of electoral processes. 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.

III.2. Cost of electoral draft acts

A review of the draft acts promoted by the Government in the same period demonstrates the presence of similar tendencies to that of the MPs, namely, the promotion of draft acts of an electoral shade, taking into account that 2018 was a pre-election year. In this connection, even before the approval of the draft budget for 2018, the question arose whether or not the draft budget was electoral.[22] What does an electoral budget mean, given that by definition, all public budgets have electoral objectives, because budgets are the basic tools by which parties implement the governing program? To note that the use of the phrase 'electoral budget' with a negative connotation occurs only when, out of desire to achieve the above-mentioned results, one does not take into account the economic realities at the respective time.[23] Hence, in terms of this review, an electoral budget would be a budget through which the Government comes to implement policies that would bring in more votes to the ruling parties at the price of creating an (immediate or future) over-indebtedness, or to establish a risk of significant inefficiency of allocation of resources at that time or in the future.

As a rule, **the hallmarks of a draft budget with an electoral tinge** are:

[22] http://www.budgetstories.md/principalele-aspecte-si-tendinte-ale-bugetului-public-national-pentru-2018/
[23] http://aceproject.org/ace-en/focus/core/crb/crb05

i. planning revenues that are too optimistic in relation to the economic realities;
ii. avoiding tax increase reforms or spending reductions in circumstances where such measures are crucial to ensuring fiscal sustainability;
iii. abnormal increase in the budget deficit compared to previous years; or/and
iv. increasing expenditures on social programs, public sector salaries, etc., to the detriment of other policies with the risk of creating immediate or future imbalances.

What happened was that more resources were allocated to certain groups of beneficiaries to obtain electoral support at the risk of creating efficiency or sustainability issues in the sector. Hence, between 2016 and 2018, the Government and the members of the parliamentary majority promoted at least 6 draft acts that in one way or another involved increasing the spending on social protection of certain categories of citizens (pensioners, families with many children, veterans) by increasing the amounts of specific payments and allowances. As a basic argument for the promotion and adoption of draft acts was declared the desire to ensure a decent living for these categories of citizens. The total amount of the deficit to be covered from the state budget by transfers to the state social insurance budget, ***in 2019 alone, was more than MDL 1.1 billion lei the budget measures adopted in 2018***.[24]

All such proposals (see Annex) had no financial coverage, which is contrary to the legal framework in action. Moreover, to cover such expenses, the budget deficit was increased, contrary to the law, from 2.5% of GDP, to 2.75% of GDP, which constitutes a risk of future budgetary stability and a flagrant violation of the commitments with international financial institutions.

And although we do not deny the importance of ensuring a decent standard of living for all citizens of the country, the fact that not all indexations of such payments and allowances were observed during the years before the election year but they only partially offset in the last year, fragmentarily and outside the budget forecasts, may be an additional argument in favor of their electoral character.

Description of the problem: The increase in spending in 2018 was a populist one, without economic coverage, by failing to comply with the legal framework, which seriously endangered the stability of public funds. A review of current non-personal expenses reveals that, in 2018, about 90% of such expenses were focused on two categories: transfers to the population (about 97% are from the social protection group) and payment for goods and services (of which about 50% are to health). The share of goods and services recorded the largest increase (7.6 p.p) compared to 2017. If we take into account that the increase in this quota was made at the expense of social payments, the need to justify such a decision is obvious. Moreover, this situation shows clearly that all the losses in the public procurement system were actually at the expense of pensioners and assisted persons.

The lessons that have not been learned from the crisis of 2009 or from the situation of 2014 are that blind pursuit of political interests, without taking into account the economic realities and the rules of budgetary prudence, can seriously disrupt and worsen the subsequent level of public spending. And this is usually more painful for the society and also leads to unnecessary financial losses. In our view the main objective in the field of budgetary stability must become to maintain the deficit around 2.5% of GDP, with ***compliance with the provisions of the law on budgetary fiscal liability***, in periods of low-moderate growth and transition onto budget surplus in periods of stronger growth. This is also argued by the reduced capacities of the authorities to spend financial means efficiently, in the conditions of their rapid growth. In such conditions, the authorities are no longer as demanding on spending money, and the efficiency and effectiveness of the use of financial means decreases. This phenomenon is also amplified by the high level of corruption.

[24] Informative note to the draft state budget law for 2019

CORRUPTION PROOFING REPORT on the draft government decision on the approval of additional social facilities for political repression victims.

Extras: *However, in the absence of regulations to justify the availability of funds necessary for the implementation of the provisions proposed, namely, to supplement the package of health services, to perform an annual rehabilitation treatment in the Hospital of the Wellness Curative and Recovery Association of the State Chancellery may jeopardize the achievement of the public interest and the intended purpose.*

"The implementation of the amendments to the Regulation on the registration and distribution of rehabilitation/recovery tickets granted to the elderly and disabled, approved by Government Decision no. 376 of 6 May 2010, will require allocation of additional funds from the state budget in the amount of MDL 430,300 thousand annually (331 persons/MDL 1300 annually - an increase by 20% / MDL 430,300 thousand). The implementation of the provisions on additional health services for the victims of political repressions does not require additional funds, because they will be provided from the resources of the compulsory health insurance funds."

The amount of damages: The amount of MDL 430 thousand is small, but, in addition to not generating changes, it threatens the dignity of the assisted persons targeted in the project, such measures reduce the trust of institutions and damage the image of both the Ministry and the victims.

Therefore, taking into account the lessons of 2009, 2014, 2018, it is important that the deficit level for 2020 remains within the range provided for by the law. Unfortunately, the Parliament does not comply with the provisions of the Law on Public Finance and Budgetary Liability, which provides a legal mechanism to avoid voluntary decisions on the level of the budget deficit.

Amount of damages/irregularities: **As an estimate, about MDL 1.1 billion** from the expenses intended to support the assisted persons had an electoral character and do not contribute in substance to solving the sectoral substantive problems.

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.

IV. CONCLUSIONS AND RECOMMENDATIONS

This chapter reflects the main findings, conclusions and recommendations contained in the Study. To note that some of the conclusions and recommendations below were also valid for the similar Study that looked at NAC's corruption proofing activities for the period from 2010 to 2015, recommendations that were not taken into consideration by the initiators and promoters of the normative acts.

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 authors 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 prejudicial 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;
- 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.
- the level of acceptance and remediation of corruption risks in draft normative acts is also quite high, explainable in fact, as it is in direct connection with the level of removal of risk factors for the draft acts. However, for 2018, we found a decrease by 4 percentage points from 68% to 64%. Even if such a decrease seems insignificant, it still raises some concerns and all the necessary diligence must be used to eliminate all the “normative loopholes” for the occurrence of corruption events;
- the drafters' reluctance to remove the norms that cause risks of corruption is alarming, as it concerns the full application of recent anti-corruption instruments in the Republic of Moldova, and the indolence of the drafters of normative acts sabotages and even reduces to zero their effective implementation, suppresses the cultivation of a climate of institutional integrity, but also of a climate of integrity in the entire society;
- assessing the costs of damages that have been or may be caused by interest-promoting draft acts is further a major challenge, given the lack of transparency in decision-making, lack of budgetary transparency, Government decisions and MPs who have often promoted draft regulations, ignoring the legal framework, especially when private/group/corporate interests, etc. were at stake. and in the absence of documents and information essential for the evaluation of costs, the quality of the normative acts remains of a low quality: i) none of the draft 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 interest-promoting draft acts do not contain subsequent control mechanisms; iv) lack of liability and sanctions is also typical for the category of interest-promoting projects;
- the summary of the costs of draft acts promoting interests (when an assessment was possible) showed that costs amounting to MDL 1,340,946 thousand (for withdrawn or rejected draft acts) were avoided, while MDL 2,037,187,304 were imminent costs/products for the draft acts passed, despite the criticism contained in CPR;
- draft normative acts from all categories of the typology shown above were promoters of interests to the detriment of the public interest; all draft acts have in common the element of prejudice to the national public budget.
- The CP exercise was able to anticipate and avoid an imposing volume of potential damages (from rejected or withdrawn projects), even in relation to those that could not be avoided;

- the lack of an understanding of public interests to be achieved through the use of ***public-private partnerships***, makes this mechanism to be ***misused in favor of private interests***. In the case of most draft acts through which public-private partnerships were established, the obligatory stages and conditions for their promotion were not observed: feasibility studies were lacking, financial calculations were not presented, the necessary opinions and coordinations were not obtained (or at least they were not published);
- the promotion of interests in other categories, especially those with an electoral tinge, occurs spontaneously, ad hoc, which already represents an alert signal for the NAC experts;

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.
- at the same time, it is important that the authorities are responsive and act visionarilly in drafting, promoting and approving normative acts, anticipate long-term risks and at the application level, and take all necessary actions to eradicate and remove the risk factors.
- it is reasonable to launch debates and draw up strict benchmarks for the management of public spending in election years, taking into account the findings of the study on the growth of electoral draft acts around the elections;
- compliance by the authors of the draft normative acts with the requirements for the mandatory character of economic-financial substantiation, the lack of such substantiation serving as basis for the failure to register and review 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.
- it is appropriate that post-approval control/adoption mechanisms be fixed in each of such draft acts, including adequate and dissuasive sanctions for violation of the conditions provided for in the draft normative acts, 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,