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**Legislating the interests:
quid prodest (who will benefit)?
Findings of the Anticorruption
Expertise**

2016

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LIST OF ABBREVIATIONS

NAC	National Anticorruption Center
AE	Anticorruption expertise
GD	Government Decision
NAC Methodology	The methodology for performing the anticorruption expertise of the draft normative acts, approved via the NAC Director Order No. 62 of 19 April 2013
AER	Anticorruption Expertise Report
SOFT	Electronic software used by NAC to draft expertise reports

EXECUTIVE SUMMARY

The Anticorruption Expertise (AE) represents a tool applied in the NAC since 2006 for preventing corruption. AE aims to assess the compliance of the draft legislative and normative acts' content with national and international anticorruption standards, so as to identify the regulations which favor or may favor corruption and to develop recommendations to exclude them or to diminish their effects.

Starting in 2006, the NAC concluded **3020 Anticorruption Expertise Reports (AER)**. Only **over the last 6 years (2010-2015), a number of 2739 AER** was concluded in relation to the draft legislative and normative acts, hence implying the review of over **30563 pages of drafts** performed by the NAC experts.

Over a number of years, many of the drafts initiated by the governmental institutions have dodged the anticorruption expertise: **in 2010 only 57% of the total number of governmental drafts passed through the filter of the anticorruption expertise; in 2012 only 43% of the governmental drafts were accompanied by AER**. The trend started to change in 2014, when **25%**, and in **2015 only 2% of drafts** issued by governmental authorities were promoted without any AER.

The Members of the Parliament have ignored until **2013** the binding condition to submit the drafts initiated by them to anticorruption expertise (**in 2010-2013 only 6% of the MPs' drafts were accompanied by AER**). **The year 2014** is practically a model one, as **only 5%** of the draft laws initiated by MPs have omitted the stage of the anticorruption expertise.

The highest incidence among the drafts submitted for AE was registered by the corruption factors from the category of **"Excessive discretions of public authorities"** – accounting for a total share of **42.2%** of the total corruption risks; followed by the category **"Ambiguous linguistic formulations"** – accounting for **21.0%**.

66.5% of the corruption risks were eliminated. The drafts' authors were more receptive in eliminating the risks under the category of **"Conflicts of legal regulations" (72.9%)** and **"Ambiguous linguistic formulations" (71.6%)**, (risks, which actually may be very easily remediated), and more reticent to eliminate the risks from such categories as **"Limited access to information, lack of transparency" (60.5%)** and **"Inadequate responsibilities and sanctions" (58.4%)**.

Over the last 6 years, an **increase** was registered for the draft legislative and normative acts **promoting certain interests**, from **6% in 2010** to **36% in 2015**. The most promoted were the particular/corporate interests contrary to the public interest during **2011 and 2013** when the share of the respective category of draft normative and legislative acts was **higher than 90%**. Most frequently, the interests were promoted in the area **III "Budget and finance"** and the area **IV "Labor, social insurance, health and family protection legislation"** and less in the area **V "Education and training, culture, cults, and mass-media"**.

During 2010-2015 multiple cases were registered when the anticorruption expertise was requested in extremely short deadlines, sometimes even in several hours. It should be noted that this phenomenon is constantly increasing. If during 2010-2011 this condition seemed to be a disparate practice, the negative trend got amplified over the next years, thus in 2014 and 2015 many of the drafts were sent to the NAC with the request to perform the anticorruption expertise within a period of 10 days. Thus, the huge and extremely important drafts with strategic connotations and major financial and social implications were sent to the NAC to be reviewed in a record-term.

Comparing the number of GD approved and published in the Official Gazette and qualified by the NAC experts as subject to anticorruption expertise with the number of AER drafted during the period of reference, it may be noted that **719 of GD** dodged the anticorruption expertise, which is **over 36% of GD that dodged the anticorruption expertise**, the majority being issued by the Ministry of Finance, State Chancellery, Ministry of Agriculture and Food Industry, Ministry of Economy, Land Resources and Cadaster Agency. At the same time, about **140 (which is 18% of the total number 792)** of draft laws of the Government were promoted with missing AER. Many of these draft laws referred to aspects from economic, financial, tax, customs areas and other.

The most of the **drafts issued by MPs, which dodged the AE**, refer to topics related to establishing different derogations and exemptions from paying fiscal and customs fees for introducing on the territory of the Republic of Moldova certain goods, mainly motor vehicles. The main beneficiaries of these exemptions were the central and local public authorities, different nongovernmental organizations, as well as religious cults. The MPs also focused on the fiscal and social areas.

The analysis of AE activity over a period of 10 years allowed deducing a **typology of the private interests, grouped in 7 categories**: exemption from fiscal fees and customs duties, debt forgiveness; change of land fields' destination; public-private partnerships; derogations from trade rules; creation of industrial parks; budgetary favoring of certain public authorities; other categories.

The analysis of drafts according to the typology of promoted interests reveals that the law-making process remains to be affected by substantial drawbacks related to sufficiency of normative solutions' reasoning, especially the economic-financial rational. The draft normative and legislative acts are not always subject to regulatory impact assessment (when it is necessary), as do not always include the binding set of necessary acts envisaged for certain categories of drafts.

The cost synthesis for drafts promoting certain interests (when the assessment was possible) shows **that costs were avoided for an amount of 198340,946 thousand MDL (costs related to rejected/withdrawn drafts)**. At the same time, costs amounting for **371187,304 thousand MDL could not be avoided (drafts promoting interests and causing damages when adopted, in spite of the risks signaled in the AER provided by NAC)**

Conclusions and recommendations of the study are formulated to eliminate the general deficiencies registered in the law-making process in the Republic of Moldova, as well as the deficiencies from the vulnerable areas envisaged in the typology of interests' promoting drafts.

METHODOLOGY

The present study is meant to analyze the impact of the anticorruption expertise over a period of 6 years: 2010-2015.

The study analyzes the phenomenon of promoting through draft normative and legislative acts certain particular/private/corporate interests in the detriment of the public interest and the way in which the NAC AER may contribute to stopping the promotion of interests causing prejudices. It also represents a first attempt to assess the costs of the damages caused through the draft normative and legislative acts promoting certain interests.

The study refers to **two big categories of acts: normative acts (Government Decisions) and legislative acts (laws initiated by the Government and Members of Parliament)**. To cover the analysis topics of the present study, the respective categories of drafts were analyzed applying a number of filters, such as:

- a. authors of normative/legislative acts;
- b. AE areas;
- c. acts' stage: approved and published in the Official Gazette, withdrawn / rejected / becoming void;
- d. quality of acts: subject or not to the AE;
- e. acts' status: acts submitted and subjected to AE and acts dodging the AE.

A number of findings of the study refer to the **NAC AE efficiency** during the period of reference. Efficiency was measured by relating the number of corruption risks formulated in the AER to the number of risks accepted and eliminated by authors from the text of approved/adopted drafts and withdrawn, rejected or drafts declared void (depending on the category of authors: Government or MPs).

The typology of private interests promoted through draft normative and legislative acts was deduced by the NAC experts based on the experience of performing AE over a period of 10 years - 2006-2015 - and refers to the areas/sectors of the normative framework susceptible to most frequent promotion of interests causing damages to the public interest. The respective typology is not conclusive and it may get developed in line with the AE activity progress, depending directly on the new potential interests which may emerge in other areas as well. The following vulnerable areas were identified for this study:

- a. Exemption from fiscal fees and customs duties, debt forgiveness
- b. Changing the destination of land fields
- c. Public-private partnerships
- d. Derogations from trade rules
- e. Creation of industrial parks
- f. Budgetary favoring of certain public authorities
- g. Other categories

The assessment of the cost of damages caused by the draft normative/legislative acts promoting certain interests was carried out based on certain **methodological benchmarks especially developed** for the goal of the respective study. According to these benchmarks, it was established that the damages' assessment within an AE process has different characteristics and depends on the assessed area/typology of acts. Respectively, every normative/legislative act may have different types of costs which are calculated individually, depending on the processes, resources, type of activities or subsequent effects of the act subject to expertise. Nevertheless, the methodological benchmarks have identified and established a number of common stages for all the areas which should be tackled by the experts and which facilitate the identification of the potential damage value, and namely:

- A. selecting the actions generating costs;
- B. identifying the real costs of planned actions based on the methods for costs' identification;
- C. identifying the effects envisaged as a result of actions' performance;
- D. segregating the means from the total costs identified as being of damaging nature;
- E. establishing the damage out of the total calculated cost, depending on confirmed elements.

It should be noted that all the calculations performed and presented in the respective document refer exclusively to the case studies shown in **Annex No. 4** of the study. The annex contains the assessment of costs for the examples from the draft normative/legislative acts, whenever it was possible, and the list of missing data/information which hindered the costs' assessment, when the assessment was impossible.

The synthesis of this missing information allowed developing a number of recommendations for the authors of draft normative and legislative acts, based on which, for every typology of normative/legislative acts, the authors will have to submit additional information and acts allowing an adequate assessment of costs involved in the draft and the eventual damage for the public interest. It is important to mention that for reasoning the conclusions related to certain important drafts with impact, it will be necessary to request additional data from information holders (Tax Inspectorate, Customs Service etc.) for specific periods.

Chapter 1.

PRELIMINARY CONSIDERATIONS

Corruption implies the use of attributed functions for personal interests. The law-making process implies the exercise of function by the subjects from the Government and Parliament. Can they use their functions of developing, promoting and adopting laws for their own private interests? In other words, can the law-making process be corrupt?

The Global Corruption Barometer (GCB) launched by Transparency International on 16 November 2016 (regarding the situation from 2015) established that the **legislative power** is perceived by the population of the Republic of Moldova as the ***institution which the most affected by corruption (76% of respondents)***, while the Presidency and the Government of the Republic of Moldova are perceived in the same way by 71% of respondents¹. The findings of the Public Opinion Barometer from October 2016 of the Institute for Public Policies regarding citizens' trust in different public authorities shows a dramatic decrease of the level of confidence manifested for these institutions over the last years and lead to the same conclusions: the lowest level of confidence is registered for the President of the country (4%), followed by the Parliament (7%) and Government (10%)².

Taking into account that the authority with the main attribution to make laws is perceived as being among the most corrupted ones, the National Anticorruption Center (NAC) decided to study how the important law-making function is affected by private interests.

The findings included in this study are mainly based on the Anticorruption Expertise Reports (AER) of the NAC (*section 1.1*), identification of cases when private interests were promoted within the law-making process, and description of social consequences of the laws the promotion of which is also affected by such interests (*section 1.2*), as well as the draft legislative and normative acts promoted by neglecting transparency rules in the decision-making process – based on which the public participation is possible – and sometimes by neglecting the rules for performing the anticorruption expertise, which should accompany on binding basis the drafts (*section 1.3*).

1.1. About the anticorruption expertise

The anticorruption expertise of draft legislative and normative acts represents the process of assessing the compliance of draft legislative and normative acts' content with the national and international anticorruption standards, for the purpose of identifying the regulations which favor or may favor corruption and developing recommendations for excluding or decreasing their effects.³

This type of expertise was introduced in 2006 as a binding expertise for all the draft legislative and normative acts (except for policy documents and acts of single

¹ https://files.transparency.org/content/download/2039/13168/file/2016_GCB_ECA_EN.pdf

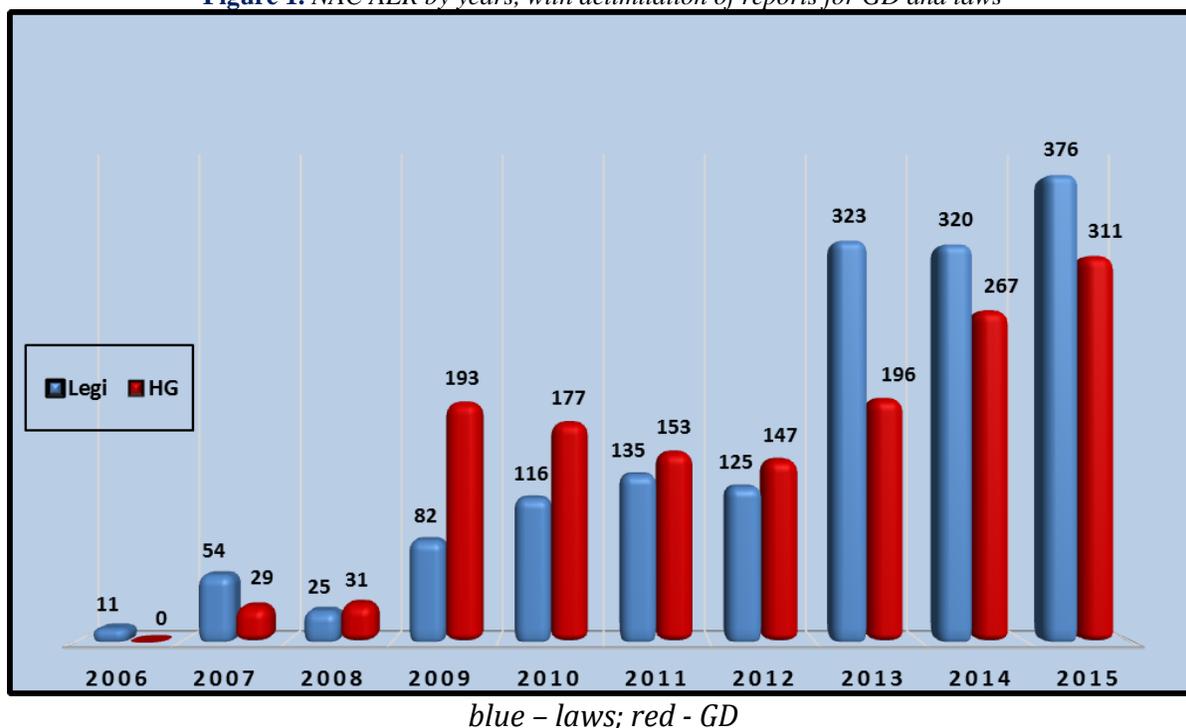
² See the report "Public Opinion Barometer – October 2016", http://ipp.md/public/files/Barometru/BOP_10.2016.pdf

³ Decision No. 977/23.08.2006 on Anticorruption Expertise of draft legislative and normative acts, point 1.

applicability); hence, before sending the final draft to the Ministry of Justice for concluding the legal expertise, the drafts' authors should request the NAC to perform the anticorruption expertise⁴. In this way, the NAC may provide its feedback only in relation to final drafts through endorsements sent by other public authorities and/or stakeholders, and in no wise may express itself within the expertise at the same time with such endorsements. The deadline envisaged for performing the anticorruption expertise is 2 weeks (10 working days), and in case of huge or complex drafts, or those that imply the review of additional materials, the deadline may be prolonged up to one month.⁵

Starting in 2006, the NAC concluded **3020** AER. **Figure 1** below shows the statistical data related to AER during 2006-2015, according to the category of reviewed act: GD or law, and distribution by year.

Figure 1. NAC AER by years, with delimitation of reports for GD and laws



Besides the draft laws and GD, the NAC has provided an expertise for **102** draft departmental acts during the same period of time.⁶

Only over the last 6 years (2010-2015), a number of **2739** AER were concluded in relation to the draft legislative and normative acts, implying the review of a volume of **30563** draft pages by the NAC experts.⁷

⁴ *Ibidem*, p. 15.

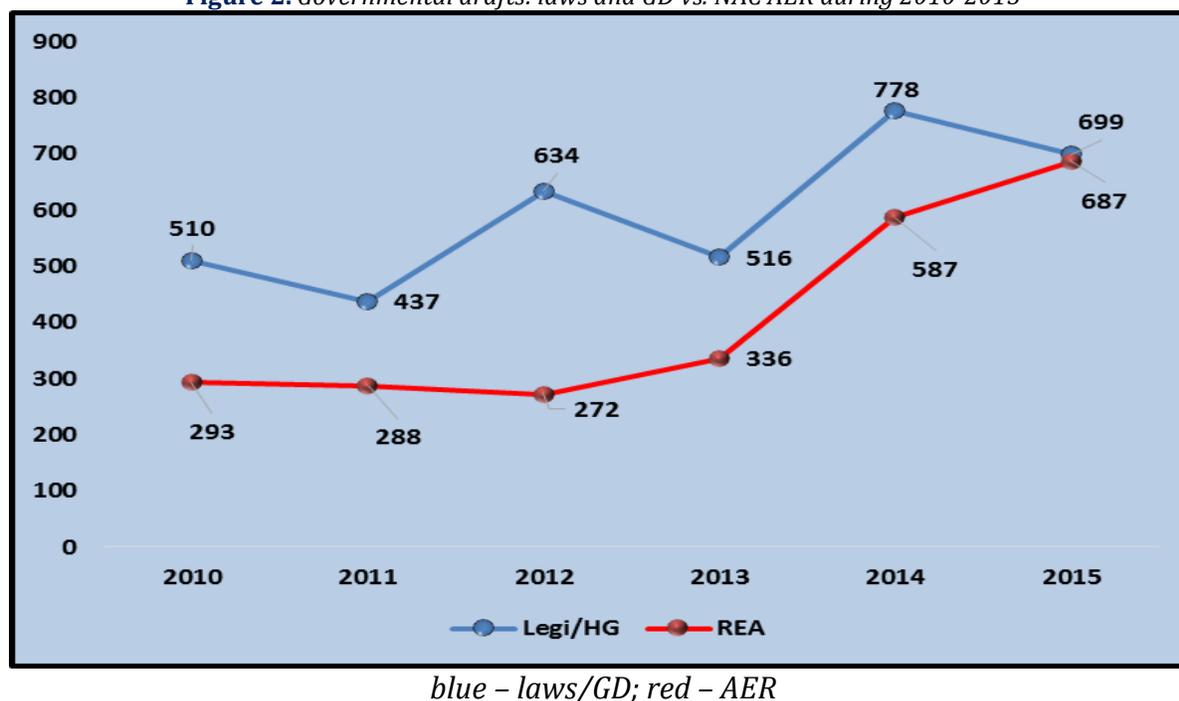
⁵ *Ibidem*, p. 9 and 10.

⁶ GD No. 1104 of 28 November 1997: departmental normative acts – acts of ministries, other central administrative authorities and public institutions, related to the citizens' rights and legitimate interests or inter-departmental acts, except for those that contain data attributed to state secret

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=295684> .

Figure 2 below presents the correlation between the number of AER and that of reviewed draft normative acts, **promoted by the Government** during 2010-2015.

Figure 2. Governmental drafts: laws and GD vs. NAC AER during 2010-2015



The data included in this figure represent the total number of draft GD and laws initiated by governmental authorities every year during the period of reference (2010-2015), qualified as being subject to anticorruption expertise and related to the real number of AER concluded in their relation. Analyzing the data inserted in this figure, it may be deduced that over a number of years, the majority of drafts initiated by governmental institutions dodged the anticorruption expertise. The years 2010 and 2012 being relevant in this respect:

- in 2010 only **293** out of **510** drafts initiated by the Government, subject to expertise, were reviewed in anticorruption expertise, respectively only **57%** of the total drafts of the Government passed the filter of anticorruption expertise;
- in 2012 only **272** out of **634** drafts initiated by the Government (laws and GD) and subject to AE passed the filter of anticorruption expertise, respectively **only 43%** of the total drafts of the Government were accompanied by AER.

This negative trend changed after 2013 when the NAC sent a number of letters to authorities insisting on the need to observe the rule of binding anticorruption expertise for draft normative acts. Hence, it is noted that in 2014 - **191 drafts (25%)**, and in 2015 only **12 drafts (2%)** issued by governmental authorities were promoted without AER.

⁷ This figure does not include the number of pages of documents accompanying the draft (informative note, reviews and endorsements, table of divergences, etc.), which are also reviewed when performing the AE.

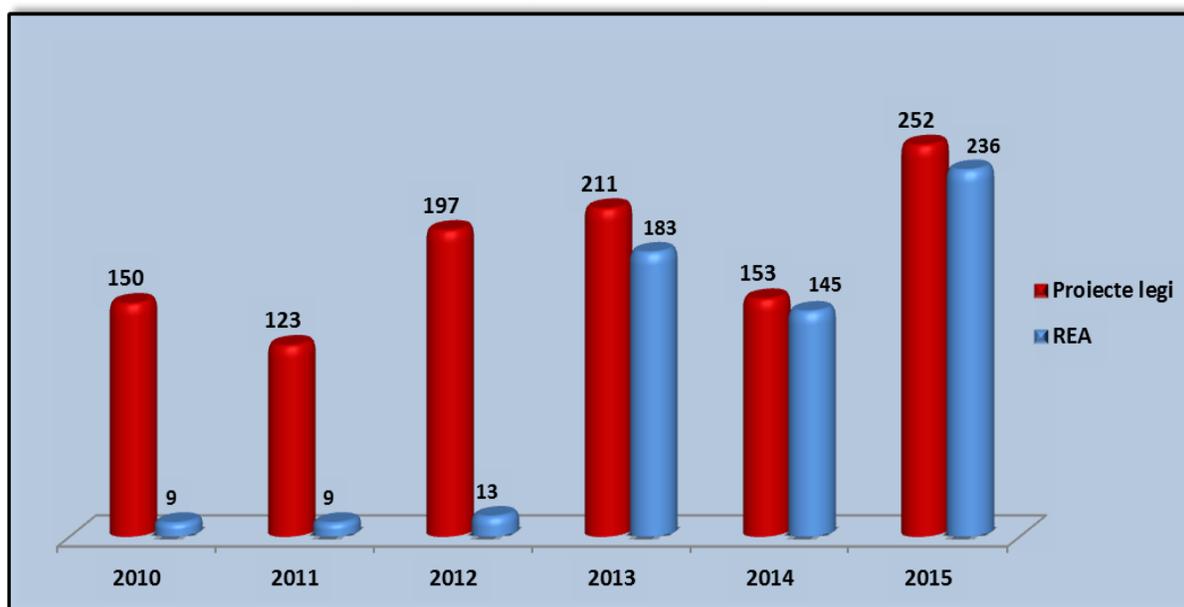
The sections below, as well as the annex of this study will present examples of GD, and laws initiated by the Government, which have dodged the anticorruption expertise, as well as the list of decisions which were approved by the Government and published in the Official Gazette, without requesting the NAC to perform the anticorruption expertise.

The statistical data related to the legislative initiatives of the MPs and the level to which the law-maker observes the obligation to submit their drafts to anticorruption expertise, are presented in **Figure 3** below. This figure presents the total number of legislative initiatives promoted by MPs and posted on the Parliament’s web page in correlation with the number of AER concluded by the NAC in relation to the respective initiatives. It may be noted that just like in case of the Government, until 2013 the MPs ignored the condition of binding expertise for the draft laws initiated by them, registering positive developments over the time.

During 2010-2012 only about **7%** of the MPs’ initiatives were accompanied by AER, as follows:

- in 2010 only **9** drafts (**6%**) out of 150 were accompanied by AER
- in 2011, again only **9** drafts (**7%**) out of 123 included AER in the file accompanying the draft;
- in 2012, **13** drafts (**6%**) out of 197 registered ones were subject to anticorruption expertise.

Figure 3. *MPs’ drafts vs NAC AER during 2010-2015*



red – draft laws; blue – AER

Since 2013, the statistical picture has changed substantially and the majority of MPs’ initiatives pass through the filter of the NAC anticorruption expertise. 2014 is practically a

model year in this respect, when only **8 (5%)** of draft laws initiated by MPs omitted the stage of anticorruption expertise. At the same time, 2015 registers a slight deterioration of the situation by one percentage point (**16 drafts, 6%**) in relation to the share of the MPs' drafts not submitted to anticorruption expertise.

It should be mentioned that the change of the internal parliamentary procedure for registering the drafts laws only after meeting the requirement to present all the relevant reviews, including the anticorruption expertise, was induced by a number of letters addressed by the NAC to the Parliament's leadership during 2007-2012⁸.

It seems that the legislator was receptive to the insisting requests of the NAC, and the binding rule to have a AER for registering a draft law in the Parliament was included in the Instructions for circulation of the draft legislative acts in the Parliament (p. 2.1.4, let. d)⁹. P. 2.2.7. of the same Instructions provides that “[...] *if the binding acts mentioned in the Instructions are missing, the file for registering the draft legislative act shall note the proposal to return the draft legislative act to the author/s, if the President of the Parliament does not decide otherwise*”.

Respectively, it may be noted that the imposed deadlines and the imminence of non-registering a draft, including due to lack of the AER, have disciplined the law-makers, who started practically all the times requesting the anticorruption expertise, with a decreasing number of cases when the respective stage is avoided.

Taking into account the above-mentioned, especially the positive developments at the Parliament's level, it is recommended for such restrictions to be imposed as well at the Government's level: a draft normative act (GD or law) will not be included on the agenda of the Government meeting without an anticorruption expertise. Even though it is frequently invoked that these are technical, operational, minor drafts, it is important for them to pass through the filter of anticorruption expertise, as in many cases, it is namely these “operational, inoffensive” drafts that represent classical samples of corruption, including for promotion of interests (see sections 1.2, 1.3 and chapter 3 of the study).

AE aims to identify the corruption risks which may affect the efficiency of normative and legislative acts' enforcement, the behavior of the persons enforcing them and to whom the respective rules are applied. These corruption risks are grouped in seven categories, as it is reflected in **Table No. 1 below**. The table shows the statistical synthesis of the most frequent corruption risks identified within the AER concluded for reviewed drafts, as well as the **level for remediating them** by letting the authors excluding such risks from the drafts¹⁰.

⁸ Letters No.17/28 „c” of 06 April 2007; no.17/2463 of 04 September 2007; no. 17/1975 of 24 July 2008; no. 17/66 „c” of 18 August 2008; no. 17/99 of 12 October 2012

⁹ The Instruction was approved via the Decision of the Permanent Bureau of the Parliament No. 30 of 7 November 2012. The text may be accessed on: <http://www.parliament.md/CadrulLegal/Instruc%C5%A3iuneprivindcircula%C5%A3iaproiectelordeact/tabid/197/language/ro-RO/Default.aspx>

¹⁰ Statistical data included in the table reflect the situation as of 1 November 2016 being valid for 2009-2016, according to the information generated by the statistical module of the reviewed software of the NAC for concluding AER.

Table No. 1. *Efficiency of identifying and remediating the corruption risks*

Categories of corruption risks	Share of corruption risks identified in AER		Frequency of eliminating the corruption risks as a result of the AER	
	no.	%	no.	%
I. Ambiguous linguistic formulations	1164	21.0%	834 of 1164	71.6%
II. Conflicts of legal norms	859	15.4%	627 of 859	72.9%
III. Cross-referred, blanket, and blank rules	235	4.2%	148 of 235	62.9%
IV. Excessive discretions of public authorities	2340	42.2%	1487 of 2340	63.5%
V. Excessive requirements for exercising persons' rights	240	4.4%	152 of 240	63.3%
VI. Limited access to information, lack of transparency	190	3.4%	115 of 190	60.5%
VII. Lack/insufficiency of control mechanisms	275	5.0%	186 of 275	67.6%
VIII. Inadequate responsibilities and sanctions	248	4.4%	145 of 248	58.4%
TOTAL	5551	100%	3694	66.5%

The table above reveals that the highest incidence in the drafts under AE is registered by the corruption factors from the category ***“Excessive discretions of the public authorities”*** accounting for a total share of **42.2%** of the total corruption risks, followed by the category ***“Ambiguous linguistic formulations”*** accounting for **21.0%**.

The NAC experts verified to what extent the authors of the draft normative and legislative acts took into account the formulated objections, registering that **66.5% of the corruption risks were eliminated**. The authors of the drafts were more receptive in eliminating the risks from the category ***“Conflicts of legal norms” (72.9%)*** and ***“Ambiguous linguistic formulations” (71.6%)***, (risks which actually can be easily remediated) and more reticent in eliminating the risks from the categories ***“Limited access to information, lack of transparency” (60.5%)*** and ***“Inadequate responsibilities and sanctions” (58.4%)***.

It should be noted that this efficiency was calculated by verifying the risks' elimination from the drafts which are already adopted and published in the Official Gazette, the drafts which are withdrawn, rejected, and those which become void.

Besides revealing the corruption risks within the AER, the NAC experts also review the fact of private (personal and/or group) interests' promotion through the draft legislative and normative drafts. Section 1.2 below tackles the incidence of drafts promoting private interests in a misbalance with the public interest, as well as additional analyses performed with these occasions.

1.2. Promotion of private interests in drafts

Point 2.1.5 of the Methodology for performing the anticorruption expertise¹¹ sets forth:

“Any legislative or normative act may feature certain interests/benefits, which may be of general, group or particular nature. During the assessment process, it is important to establish the interests promoted through the draft. At the same time, it is necessary to identify the persons that eventually will benefit from or will be affected as a result of the respective draft’s provisions enforcement. The information about these persons and the criteria for selecting them should be clearly expressed in the draft or its normative note. Special attention should be paid in case of the drafts promoting a group or individual interest. When the draft generates or damages a group or individual interest, it is important to verify if this measure observes the public interest”.

According to the mentioned methodology, the **public interest** is defined as a “*general interest of the society recognized by the state or through law for the purpose of ensuring its existence and development*”.

Even though the methodology does not define the meaning of “private interest”, the NAC experience, including from the perspective of the anticorruption expertise exercise, allowed deducing its meaning, hence ensuring as well the definition of the “legitimate private interest” and more explicit development of the “public interest” notion. The draft Integrity Law¹², adopted by the Parliament in the first reading on 28 July 2016 defines all these notions, as follows:

Private interest– *the interest of individuals (personal or group interest), of their close persons, or of legal entities (departmental, corporative or clientele-based) to exercise the rights and freedoms, including for the purpose of obtaining goods, services, privileges, advantages in any forms, and offer or promise of thereof;*

Legitimate private interest – *private interest enshrined in the Constitution, national legislation and international treaties to which the Republic of Moldova is a part and which does not affect the general interest of the wellbeing development of the society as a whole and the exercise of other persons’ legitimate rights and freedoms;*

Public interest – *the general interest for developing the wellbeing of the society as a whole and fulfilling the legitimate private interests, guaranteed through the functioning of public and private entities, as well as through the exercise of service duties of the given entities’ agents in strict compliance with the legal provisions, efficiently and reasonably from resource use viewpoint.*

Hence, the AER thoroughly analyze if the authors of the draft normative acts observe the public interest, if the private interests are promoted and if these interests are compatible with the public interest.

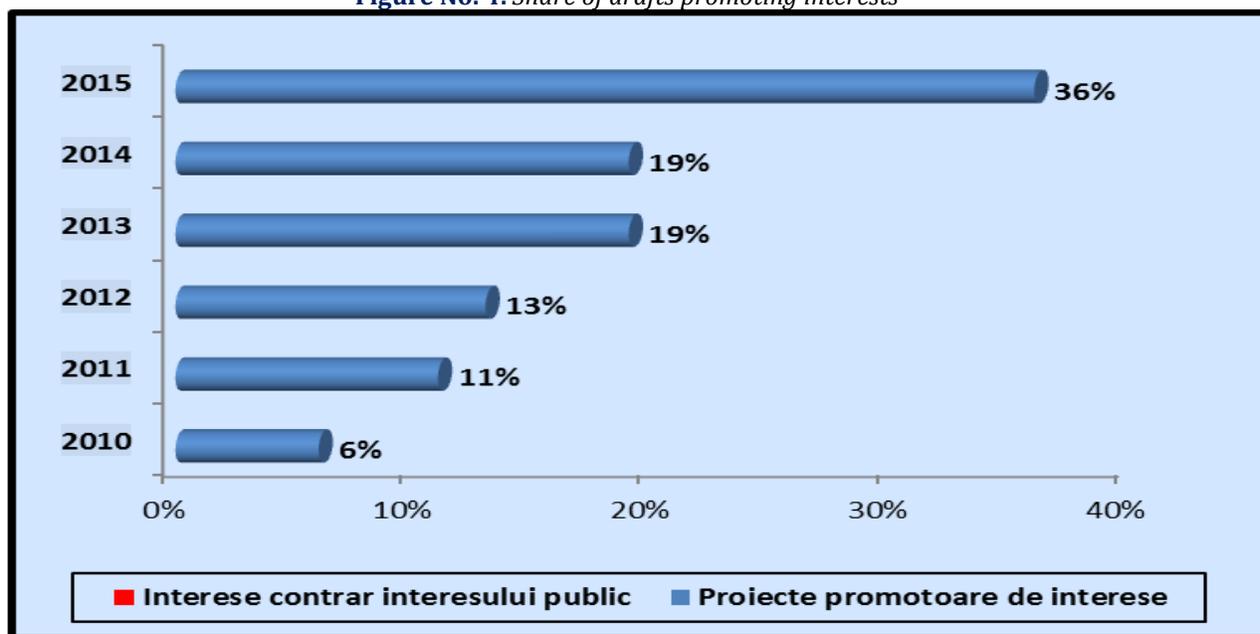
¹¹ http://cna.md/sites/default/files/expertiza_anticoruptie/metod.exp_ant_ordin62.cna.pdf

¹² Draft Integrity Law, registered in the Parliament with number 267 on 15 June 2016. May be accessed on: <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3288/language/ro-RO/Default.aspx>

According to the data generated by the statistical module of the NAC SOFT, an increase is registered over the last 6 years for the number of legislative and normative acts promoting certain interests from **6% in 2010** up to **36% in 2015**.

Figure 4 below shows the dynamics of the share of drafts promoting interests during 2010-2015 and the share of drafts in which these interests are contrary to the public interest. It may be noted that the particular/corporate interests contrary to the public interest were most intensively promoted in **2011 and 2013** where the share of this category of draft normative and legislative acts was **higher than 90%**. In 2014-2015, the intensity of interests' promotion decreased by 20%.

Figure No. 4. *Share of drafts promoting interests*



red – interests contrary to the public interest; blue – drafts promoting interests

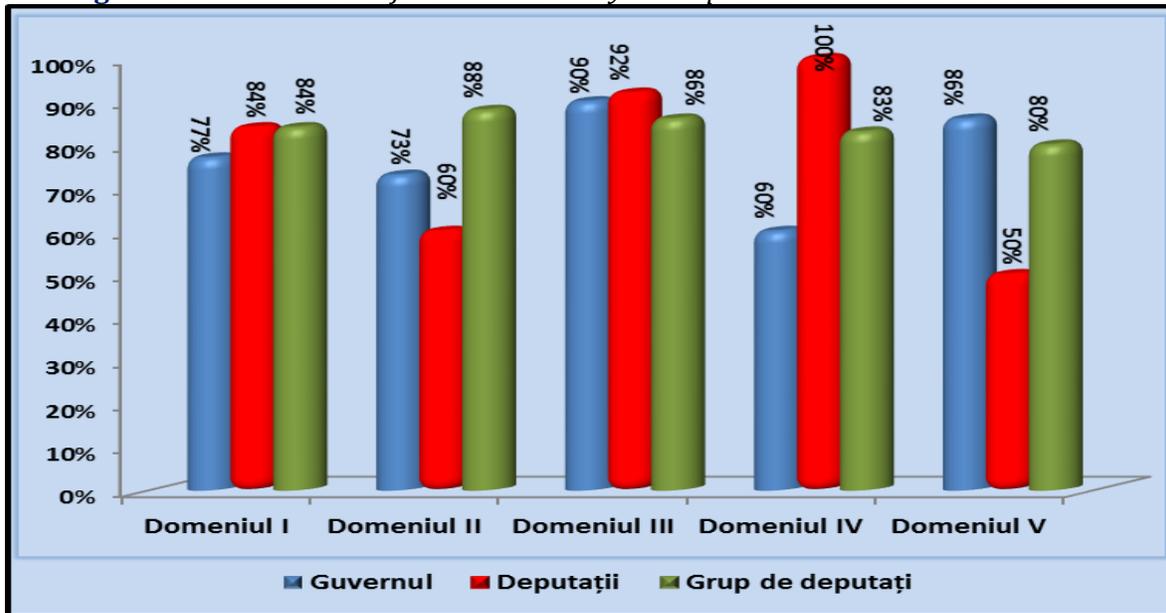
From the perspective of the areas¹³ and direct authors of the draft normative and legislative acts promoting interests contrary to the public interest, the situation indicated in **Figure 5** may be noted, and namely that:

- the interests were promoted most frequently in the area **III “Budget and finance”** and area **IV “Labor, social insurance, health and family protection legislation”** and less in the area **V “Education and training, culture, cults and mass-media”**;
- MPs were more concerned with **areas II, III and IV: “Budget and finance”, “Economy and trade”, “Labor, social insurance, health and family protection legislation”**, while the Government was relatively constant, being interested

¹³ According to the NAC Methodology, five AE areas were established: I. Constitutional and administrative law, justice and home affairs, human rights and freedoms; II. “Economy and trade”; III “Budget and finance”; IV “Labor, social insurance, health and family protection legislation”; V “Education and training, culture, cults and mass-media”.

practically in all the areas, but less in **area V “Education and training, culture, cults and mass-media”**.

Figure No. 5. Promotion of interests contrary to the public interest: areas and authors



blue – Government; red – MPs; green – group of MPs

1.3. Processes associated to promoting private interests in the drafts

The anticorruption expertise is binding based on article 22 of the Law on Legislative Acts and article 41 of the Law on Normative Acts of the Government and other central and local public administration. Most of the times, the drafts which hide certain interests are promoted without observance of legal provisions, such as: transparency in the decision-making process, observance of the endorsement deadline and/or expertise deadline for the draft legislative and normative acts, non-honest filling in of the objections and proposals for the draft, general omission of the AE stage from the draft normative act flow, and other.

Usually, the drafts promoting private interests are submitted without observing the deadline of 2 weeks for performing the anticorruption expertise, as established by law, or that of one month, in case of some voluminous or complex drafts. Thus, cases are registered when the author of the draft requests for the anticorruption expertise to be performed in 2-3 days, even in one day or several hours, motivating most frequently by their inclusion in the agenda of the Government meetings. The requests for performing the anticorruption expertise within tight deadlines or expertise “favorable” for the authors of the draft normative acts represent a reprehensible practice. Such interferences are qualified by the NAC experts as inadequate influences and are always registered in the NAC Register. Respectively, any requests for acceleration are considered void and even illegal.

Table No. 2 below shows that multiple cases existed during the period of reference (2010-2015) when the expertise was requested in extremely tight deadlines, in some cases even in several hours. It may be noted that this phenomenon is constantly increasing. If in 2010-2011 this practice was rather disparate, during the following years this negative trend gets bigger, thus in 2014 – many of the drafts are submitted to the NAC with the request to perform the anticorruption expertise within a deadline up to 10 days, without taking into account the volume and complexity of the drafts and accompanying materials.

As a rule, such requests came from the State Chancellery, as well as some CPA (Ministry of Economy, Ministry of Finance, Ministry of Justice and Ministry of Health). Some drafts were registered in the NAC already by the end of the deadline in which the authors were requesting the AER.

Table No. 2. Number of draft normative acts reviewed in emergency regime

Year	GD (no. of drafts / no. of days for expertise)		Laws (no. of drafts /no. of days for expertise)	
2010	4 drafts	2- 5 days	3 drafts	2-5 days
	2 drafts	6-10 days		
2011	1 draft	1 day	1 draft	1 day
	5 drafts	2-5 days	11 drafts	2-5 days
	4 drafts	6-10 days	1 drafts	6-10 days
2012	2 drafts	1 day	11 drafts	2-5 days
	1 draft	2-5 days	2 drafts	6-10 days
2013	3 drafts	2-5 days	10 drafts	2-5 days
			7 drafts	6-10 days
2014	1 draft	≤ 1 day	1 draft	≤ 1 day
	3 drafts	1 day	5 drafts	1 day
	24 drafts	2-5 days	20 drafts	2-5 days
	15 drafts	6-10 days	10 drafts	6-10 days
2015	25 drafts	1 day	2 drafts	≤ 1 day
	12 drafts	2-5 days	11 drafts	1 day
	13 drafts	6-10 days	12 drafts	2-5 days
			13 drafts	6-10 days

The analysis of the NAC expertise activity reveals an alarming fact: some promoters of draft normative acts have requested the AER not only within tight deadlines, but even *post-factum*, after the approval of the drafts by the Government or, having already a AER of the NAC, were mentioning in the table of synthesis of objections and recommendations about the lack of NAC objections or proposals. Several examples are submitted below when the deadlines for the AE and AER findings were ignored during the period of reference.

Example 1. *Draft author* – Ministry of Economy. The draft Government Decision on approving the concession of assets of the SE “International Airport Chisinau” and of the conditions for assets’ concession was subject to the anticorruption expertise in several hours (registered with NAC on **28.05.2013** (at noon), the anticorruption expertise was performed

on **28.05.2013** – AER on 7 pages (in the evening), approved during the Government meeting on **29 May 2013 without taking into account the objections expressed in the AER** and published in the Official Gazette the second day, on 30 May 2013.

Example 2. *Draft author* – Ministry of Health. The draft law to amend and complete certain legislative acts (contains norms regulating the area of tobacco control) – 28 pages. Registered with the NAC on 14 December 2013 (Saturday at 16.00 o'clock), the expertise performed on 16 December 2013 (Monday) – AER on 10 pages. Examined in the Government meeting on Tuesday, 17 December 2013 and approved in principle. On 23.12.2013 the Center registered the Government Letter No. 1123-721 of 20.12.2013 on reexamination within 10 days of the mentioned draft. The NAC provided additional opinion in the second AER on additional 7 pages. **The Government meeting did not take into account the NAC objections either from the first or the second AER.**

Example 3. *Draft author* – Moldova Academy of Science. The draft Government Decision for approving the Partnership Agreement between the Government and Moldova Academy of Science for 2013-2016, *71 pages*. Registered with NAC on 2 April 2013. The expertise was performed on 09.04.2013 – AER on 11 pages. **The objections from the AER were not taken into consideration.**

Example 4. *Draft author* – State Chancellery. Draft for amending and completing certain legislative acts (in the area of local public administration, very complex draft, on 16 pages). Registered in NAC on 28.08.2013. The author imposed the deadline of 5 days. The Anticorruption Report was concluded on 06.09.2013 on 10 pages with a number of objections and recommendations. But, the author noted in the table of divergences, **under the column of objections of the NAC – lack of proposals and objections.**

Hence, voluminous and extremely important drafts with strategic commutation and major financial and social implications were sent to NAC to be reviewed with record-deadlines. But, even though NAC met these deadlines and pointed out the vulnerable elements and potential risks, including the corruption risks, the responsible authorities ignored these alerts and preferred promoting the drafts without taking into account the reserves expressed in the AER.

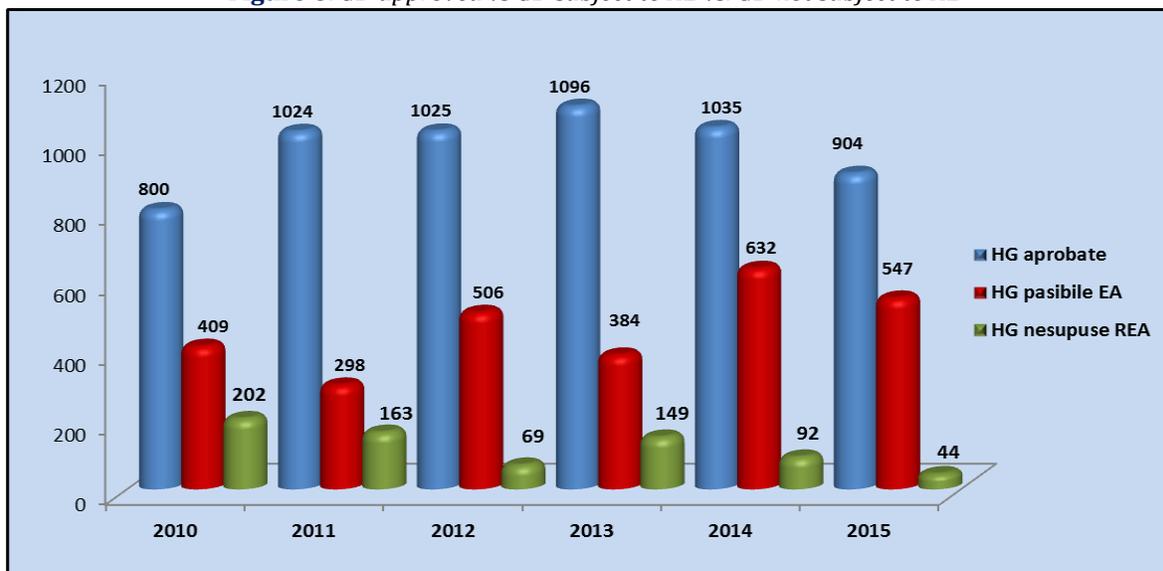
The analysis of the normative acts adopted during 2010-2015 (laws and GD) shows that the obligation to submit the drafts for AE is perceived by authorities rather as a formal and discretionary duty, being frequently ignored by the authors of draft normative acts. **Annex No. 1** of the study includes the list of the GD which dodged the AE during 2010-2015.

The analysis of the number of GD approved and published in the Official Gazette and qualified by the NAC experts as being subject to the AE with AER concluded during the period of reference shows that **719 GD** dodged the AE, which is **over 36% of GD avoiding the anticorruption expertise.**

Figure 6 below presents the correlation between the number of approved GD, the number of GD qualified by the NAC experts as being subject to anticorruption expertise and the number of GD which were not submitted to the NAC for AE by years. It may be noted that the most serious situation is registered in **2011**, when practically **77%** of GD did not pass through AE, as well as the years **2010 and 2014**, when **49%** and respectively **45%** of

drafts were not accompanied by AER. A relatively better situation from the perspective of observing the binding nature of the AE is registered in **2012 and 2015**, when only about **20%** of drafts dodged the anticorruption expertise.

Figure 6. GD approved vs GD subject to AE vs. GD not subject to AE



blue – approved GD; red – GD subject to AE; green – GD not subject to AE

Reviewing the list of GD not submitted to get an AE from **Annex No. 1** it may be noted that many GD that were supposed to pass through the AE filter, taking into account their nature, impact, interests, as well as potential risks, were not submitted for NAC review. As an example, the following GD may be invoked, which were of an incontestable importance from the perspective of the AE exercise:

1. **GD No. 449 of 02.06.2010** to establish the National Committee for Financial Stability
2. **GD No. 1050 of 10.11.2010** on transmission of a package of state shares
3. **GD No. 1069 of 12.11.2010** to amend the Regulation for reimbursing the excise duties, approved via the GD No. 1123 of 28 September 2006,
4. **GD No. 1137 of 15.12.2010** on filling in the List of organizations and enterprises of blind people associations, deaf people associations, and disabled people associations, exempted from VAT when importing raw material, materials, finishing items and accessories necessary for the production process,
5. **GD No. 586 of 29.07.2011** on certain measures related to making more efficient the process of administration and change of ownership of state public property assets
6. **GD No. 431 of 14.06.2011** on exempting some economic units from paying dividends in the state budget of a part of the net profit obtained in 2010
7. **GD No. 194 of 24.03.2011** on reorganization of some state enterprises and transmission of the state public property patrimony from the economic management of some joint stock companies;
8. **GD No. 69 of 02.02.2012** on some measures regarding the plan procedure for the Joint Stock Company "Termocom";
9. **GD No. 139 of 29.02.2012** for amending point 2 of the Regulation on Free Economic Zone "Ungheni-Business";

10. **GD No. 919 of 18.11.2013** on reorganization of some enterprises from the thermal-energy sector;
11. **GD No. 790 of 07.10.2013** for amending and completing the Regulation on refund of VAT;
12. **GD No. 780 of 04.10.2013** on reconfirmation of approval of the concession of assets of the SE "International Airport Chisinau" and concession conditions;
13. **GD No. 778 of 04.10.2013** on some measures for implementing the one-stop shop in performing the entrepreneurship activity;
14. **GD No. 611 of 19.09.2013** on changing the destination of certain land fields;
15. **GD No. 737 of 18.09.2013** on concluding a contract and allocation of financial means;
16. **GD No. 318 of 30.05.2013** for amending and completing the Regulation on selling-purchasing the afferent land fields;
17. **GD No. 203 of 18.03.2013** on transmission of certain land fields and initiation of the projects of public-private partnership for ensuring with dwelling the employees of Moldova Academy of Science;
18. **GD No.185 of 13.03.2013** on transmission of a residential institution;
19. **GD No. 183 of 13.03.2013** for amending and completing the Regulation for refunding the VAT;
20. **GD No. 182 of 13.03.2013** for approving the List of organizations and enterprises of blind people associations, deaf people associations, and disabled people associations, exempted from paying to the budget the VAT related to produced goods and rendered services;
21. **GD No.124 of 15.02.2013** for approving the Regulation on how to provide certain categories of facilities related to VAT according to the provisions of art.103 para. (7) of the Tax Code No. 1163-XIII of 24 April 1997 and art.4 para.(18) let. a) and let. b) of the Law No. 1417-XIII of 17 December 1997 for enforcing title III of the Tax Code;
22. **GD No. 12 of 10.01.2013** on reorganization of some state enterprises;
23. **GD No. 19 of 18.01.2014** on transmission and modification of destination of land fields;
24. **GD No. 135 of 24.02.2014** on modality of distribution of the means from the farmers' subsidizing fund;
25. **GD No. 244 of 02.04.2014** on reorganization of some state enterprises, modification and completion of the Government Decision No. 150 of 2 March 2010 approving the Regulation on organization and operation of "Moldsilva" Agency, its structure, and the limit number of employees in its central apparatus;
26. **GD No. 422 of 09.06.2014** for amending the Regulation on how to declare the customs value of goods entered on the territory of the Republic of Moldova;
27. **GD No. 485 of 26.06.2014** on change of destination of some land fields;
28. **GD No. 501 of 01.07.2014** on establishing the State Enterprise "Vestmoldtransgaz";
29. **GD No. 611 of 21.07.2014** on exempting an economic agent from paying to the state budget a part of the net profit obtained in 2013;
30. **GD No. 735 of 10.09.2014** approving the Regulation on how to provide financial support for fruit producers;
31. **GD No. 782 of 25.09.2014** approving the Regulation on how to exempt from VAT, customs duties and customs procedures fees applied to goods (services) imported and/or delivered on the territory of the country, meant for the Project "Rehabilitation of central streets and modernization of public lighting in the center of Chisinau municipality" and the Program of Priority Investments envisaged by the Feasibility Study or the Program for water supply and treatment of used waters in Chisinau municipality;
32. **GD No. 184 of 05.05.2014** on liquidation of some state enterprises;
33. **GD No. 72 of 31.01.2014** amending point 5 of the Regulation on selling – purchasing afferent land fields;
34. **GD No. 923 of 12.11.2014** approving the Regulation on operation of the National Park "Orhei";

35. **GD No. 947 of 17.11.2014** amending the Regulation on how to provide financial support for fruit producers;
36. **GD No. 952 of 17.11.2014** amending the Regulation on how to establish and pay social assistance;
37. **GD No. 385 of 16.06.2015** for enforcing the provisions of section 34/2 of the Customs Code of the Republic of Moldova;
38. **GD No. 854 of 16.12.2015** approving the List of goods and services imported and/or delivered for building the kindergarten in Cișmichioi village, Gagauzia ATU, with exemption from VAT, customs duties and fees for performing the Customs procedures

The majority of GD included in the above list were issued by the Ministry of Finance, State Chancellery, Ministry of Agriculture and Food Industry, Ministry of Economy, Land Resources and Cadaster Agency. It should be mentioned that the above list did not include the GD on change of land fields' destination – an area which is qualified by the NAC as extremely vulnerable from the perspective of potential interests and eventual damages. It should be mentioned that only **38 (5%)** of the GD included in **Annex No. 1** of the study referred to change of land fields' destination, but not of such GD was subject to the AE. As well, the list did not include all the GD which established different types of exemptions (payment of VAT, excise duties, etc.) for economic units, an area which is also part of the typology of normative acts which potentially promote interests and cause damages.

During the period of reference, besides GD, the Government has also promoted a number of laws (*see details in Figure 2 of the study*) and many of them have also avoided the AE. The list of laws initiated by the Government and adopted by the Parliament, but which did not undergo the AE, is included in **Annex No. 2** of this study. The performed assessment allows concluding that about **140 (which is 18% of total number of 792)** of draft laws of the Government were promoted without an AER. The following laws are considered to be among the most relevant examples from the perspective of this study:

1. **Law No. 177 of 15.07.2010** on amending and completing the Law No. 113-XV of 13 March 2003 on measures to recover the economic-financial situation of the livestock enterprises
2. **Law No. 72 of 04.05.2010** on amending and completing certain legislative acts (Law regarding the Government, the Parliament Rules of Procedure, transparency aspects)
3. **Law No. 56 of 25.03.2010** on amending certain legislative acts (introducing and taking out goods from the territory of the Republic of Moldova, Customs Code)
4. **Law No. 138 of 01.07.2010** on amending Annex No. 3 of the Law No. 336-XIV of 1 April 1999 on restructuring the debts of the enterprises from the energy sector
5. **Law No. 73 of 15.04.2011** on amending and competing certain legislative acts (joint stock companies, real estate market)
6. **Law No. 161 of 22.07.2011** on implementation of the one-stop shop for performing entrepreneurship activity
7. **Law No. 190 of 30.09.2011** on additional measures for ensuring financial stability
8. **Law No. 184 of 27.08.2011** on amending and completing certain legislative acts (financial institutions, securities' market; CPC etc.; declared unconstitutional)
9. **Law No. 5 of 15.01.2012** on amending certain legislative acts (Law of financial institutions, securities' market, CPC, Enforcement Code, etc.) (riders)
10. **Law No. 42 of 15.03.2012** on transmission of real estate into use
11. **Law No. 197 of 19.11.2015** on import of transportation means (Cristian Center)
12. **Law No. 31 of 07.03.2013** on amending and completing certain legislative acts (Law on financial institutions, Law on NBM, etc.)

13. **Law No. 324 of 23.12.2013** on amending and completing certain legislative acts (budgetary-fiscal policy)
14. **Law No. 204 of 12.07.2013** on amending and completing the Law No. 121-XVI of 4 May 2007 on administration and change of ownership of public property
15. **Law No. 89 of 29.05.2014** on amending and completing the Law No. 419-XVI of 22 December 2006 on public debt, state guarantees and state re-crediting
16. **Law No. 184 of 28.09.2014** on amending and completing certain legislative acts (Tax Code)

Many of the draft laws from the above list referred to aspects related to the economic, financial, fiscal, customs, and other areas. It may be noted that the *series of legislative initiatives related to the functioning of the financial-banking system were promoted without anticorruption expertise* (p. 7-9, 12 of the above list). At the same time, the Government hesitated all the times to submit for anticorruption expertise the draft laws on the state budget, social insurance budget and health insurance budget (including the rectification ones), as well as the laws regulating the annual budgetary-fiscal policy. Even if apparently these initiatives were very technical and would not generate corruption risks, nevertheless the AE is binding also for the drafts from the annual fiscal and budgetary planning, which should be submitted to the NAC for expertise, as the respective laws have a strong impact on the society development, security and business stability, taxation system, and implicitly on citizens' wellbeing.

Annex No. 3 of the study presents the list of laws initiated by MPs during 2010-2015 – laws adopted without AER. Some of the relevant laws which avoided the AW are listed below:

1. **Law No. 116 of 17.07.2010** on amending and completing the Law No. 62-XVI of 21 March 2008 on foreign currency regulation
2. **Law No. 42 of 17.03.2011** on amending the Annex of Law No. 451-XV of 30 July 2001 on regulation of entrepreneurship activity based on license (casinos)
3. **Law No. 195 of 15.07.2010** on amending and completing certain legislative acts (bank secret)
4. **Law No. 193 of 15.07.2010** on amending and completing certain legislative acts (declared unconstitutional)
5. **Law No. 101 of 28.05.2010** on import of specialized transportation means for the Free International Airport "Mărculești"
6. **Law No. 177 of 28.07.2011** on import of certain goods (Făleşti Church, 8 bells)
7. **Law No. 269 of 30.11.2012** on amending and completing the Law No. 135-XVI of 14 June 2007 on limited-liability companies
8. **Law No. 243 of 02.12.2011** on import of a car (for the evangelist church from Rîșcani)
9. **Law No. 10 of 22.03.2013** on change changing land fields from the forestry fund for the purpose of building the Center for Supporting Trans-border Business Environment – Training, Exhibition and Symposium
10. **Law No. 209 of 04.10.2012** on import of some bells
11. **Law No. 113 of 16.05.2013** on import of some motor vehicles (15)

Most of the draft issued by MPs refer to establishing different derogations and exemptions from paying fiscal fees and customs duties for introducing on the territory of the Republic of Moldova of certain goods, mainly motor vehicles. The basic beneficiaries of such exemptions were the central and local public authorities, different NGOs, and religious cults. The MPs tackled as well the fiscal area (especially in the legislature from 2010-2014,

see the list of laws from **Annex No. 3** in this respect) and social area. Some controversial drafts which subsequently were contested at the Constitutional Court, and which had a negative impact on the state budget, were also adopted by the MPs without AER. In this respect, it is worth mentioning especially the Law No. 42 of 17.03.2011 on amending the Annex of Law No. 451-XV of 30 July 2001 regulating the entrepreneurship activity through licensing, based on which the fees for casino maintenance was “surprisingly” decreased. Chapters II and III will present a more detailed analysis regarding the typology of the interests promoted through draft laws, the “cost” of these interests, as well as the MPs’ areas of concern, especially during the electoral campaigns.

The conclusion of this chapter lists the following **FINDINGS**:

- the workload of the NAC in performing the AE activity is constantly increasing from year to year;
- respectively, the number of draft normative and legislative acts avoiding the anticorruption expertise is decreasing, with some exceptions for the acts issued by the Government. In case of the Government, it is extremely difficult to track the path of the drafts promoted by authorities, registered and introduced in the Government’s agenda. As a rule, the drafts included on the Government’s agenda may be accessed only one-two days before the meeting itself of the Ministers’ Cabinet;
- the efficiency of corruption risks’ remediation registered a good trend, but drawbacks still exist in relation to the corruption factors from the following categories “Limited access to information, lack of transparency” and “Inadequate responsibilities and sanctions”;
- even though the number of drafts promoting interests is constantly increasing, nevertheless the share of drafts promoting private/group/corporate interests in the detriment of public interest is decreasing;
- a negative trend is revealed more significantly over the last years (2014-2015): increased number of requests to review drafts in emergency regime, in record deadlines, less than in 10 days. This fact affects indirectly the quality of AER, as well as the efficiency of eliminating the corruption risks by the authors of the drafts (in case of the drafts promoted in urgent and *quasi-transparent* conditions, the remediation level of the corruption risks identified by the AER is rather small, and in some cases the authors ignore the objections/proposals formulated in the AER; sometimes the drafts’ authors even “cheat”, invoking lack of any objections and recommendations from the NAC in the respective synthesis);
- the majority of drafts promoting private interests continue to be submitted namely through such accelerated procedures and with no transparency.

Taking into consideration the findings of this chapter, the following **RECOMMENDATIONS** are suggested:

- to develop a section on the web page of the Government especially dedicated to draft normative acts promoted by authorities (the web-page of the

Parliament may serve as an example, it allows monitoring the path of the drafts registered in the legislative authority);

- to exclude the vicious practice applied by the authors of draft normative and legislative acts of requesting AER in shorter deadlines than the ones set by the law;

- to establish directly the binding nature of the AER for the draft normative acts subject to AE: the draft is not included on the agenda of the Government meeting without the anticorruption expertise, hence the practice of avoiding the AE stage in drafts' promotion will be excluded.

Chapter 2.

TYPOLOGY OF PRIVATE INTERESTS PROMOTED IN THE DRAFTS. COST OF INTERESTS

This chapter tackles the typology of interests promoted by draft laws and normative acts – typology deduced from analysis of AER over a period of six years – 2010-2015. The below sections of this chapter present the most frequent manifestations of interests' promotion in the detriment of the public interest, grouped as follows: exemption of fiscal fees and customs duties, debt forgiveness; change of land fields' destination; public-private partnerships; derogations from trade rules; establishment of industrial parks; budgetary favoring of certain public authorities; other categories.

The chapter is completed with *Annex No. 4* of this study, which lists a series of concluding examples extracted from the AER in relation to the drafts promoting interests, specifying the authors of the drafts, the goal invoked by them, formulated findings, damages and risks identified by experts, as well as damage costs' assessment (when possible).

2.1. Exemption of fiscal fees and customs duties, debt forgiveness

The first category from the typology of interests promoted by the drafts is the ***establishment by laws of derogations and exemptions of fees, excise duties, and other charges, as well as debt forgiveness for certain categories of subjects***. It should be mentioned that favoring certain categories of legal subjects by providing them exemptions of fiscal fees/customs duties discriminates other legal subjects in similar legal situation.

Over the time, such legislative/normative acts inevitably lead to endangering the enforcement of the national legal framework in the area. Exceptions in many cases become a practice for a some parts/groups of the society trying through different ways to promote different drafts, hence avoiding the payment of legal fees imposed in such situations. Over the time, the advantages of such drafts (developed in the interest of a group of persons by invoking an apparent public interest) decrease, and the disadvantages increase (non-payment of legal fees in the national budget), hence the elimination of such practices is inevitable.

Currently, there is no adequate mechanism to monitor the imported goods according to the suggested purpose (in case of legislative acts allowing the introduction in the Republic of Moldova of some goods by derogation from the national legal framework – by exemption from paying the import duties – the risk exists for abuses to appear by disposal finally the imported goods).

The analysis of the AE activity over 6 years reveals that the most prominent exemption from fiscal fees and customs duties is registered in case of import of certain goods and motor vehicles.

Table No. 3 Motor vehicles introduced with exemptions: no., years

No.	Year of draft promotion	No. of motor vehicles introduced in the country with exemptions	No. of legislative initiatives / year
1.	2010	35	11
2.	2011	105	16
3.	2012	33	10
4.	2013	30	14
5.	2014	13	6
6.	2015	12	10
TOTAL		228	67

It may be noted from the table that over a period of six years, a number of **228** motor vehicles were introduced on the territory of the country in “favored” regime, and a number of 67 laws were adopted in this respect. 2011 seems to be the most prolific year, when by adopting 16 laws, the Parliament allowed the entering with exemption of 105 motor vehicles.

It should be noted that this practice of exemption from fiscal fees and customs duties is constantly criticized in the AER, all the times invoking the fact that “[...] *these norms set forth the derogations from the general rule and favor a certain category of legal subjects, discriminating other legal subjects, who are in similar legal situation and who comply with national legislation by paying the import duties. We consider that frequent and abusive exceptions from the legislation in force does not represent a convenient remedy for supporting one or another category of subjects, and from another point of view – it affects negatively the public budget. In this context, attention should be paid to the fact that over the last period of time, it is more frequent when drafts are promoted to regulate derogations from the Customs Code and Tax Code. Through such derogations, the citizens are actually encouraged to violate the general rule and under different pretexts to identify the legal means for avoiding the general legal framework*”¹⁴.

An analysis performed by the NAC Analytic Division regarding the fate of the transportation means imported with derogations from the Tax Code and Customs Code identified a case when the imported motor vehicle was for a public association, but besides the nominated owner, a mandate was issued as well for another individual – other than the one indicated in law. In another case, the motor vehicle introduced without paying the fees on the territory of the RM was transferred to another owner than the one mentioned in the law, and other cases.

From the perspective of **costs of the damages caused** through this category of exemptions, it is necessary to analyze some statistical data disaggregated at the level of transportation means under permanent evidence in other states during the period of the year of reference (import year) or the annual average value for the previous years, for the purpose of identifying the basic value and the scope of legal changes’ applicability. It is also necessary to clarify the value of the fees paid before introducing the exemptions – information which usually is not identified in the informative notes of the normative acts, hence it is practically impossible to calculate in such conditions the cost of the potential damages.

¹⁴ AER No. 257-G-15 of 04.05.2015 for the draft Law on importing a motor vehicle

At the same time, the estimate value of the means which will not be accumulated by the state budget as a result of the applied exemptions is calculated as a difference between the estimated value to be obtained from paying for the vignette and the estimative decrease of the taxes received from the import duties and other legal fees. The estimative decrease of taxes received from the import duties and other legal fees is calculated as the difference between the value of taxes and fees obtained during the previous year and the estimative value to be obtained during the year when modifications are introduced.

Another category under the respective typology of normative/legislative acts includes the normative acts through which the enterprises, structures from the private sector are **exempted (debt forgiveness) from certain payments to the national public budget**. An eloquent example of draft inducing damages in this respect is the Law on taking over some debts by the state, no. 167 of 21 July 2014. The example below reflects the AER findings at the stage of draft promotion.

Example: Draft law on extinction of debts to the national public budget, sent for a AER to the NAC on 6 June 2014.

Author of the draft:	A group of MPs (V.Ioniță, A.Dimitriu, N.Olaru, A.Aghache, Iu.Chiorescu, V.Strelet, O.Bodrug and others)
Aim of the draft:	<p>The aim of the draft law is for the state to take over a debt of 25 million MDL of the Monastery Complex “Curchi” to the Limited Liability Company “Glorinal”, as well as for the state to extinct this debt due to the Limited Liability Company “Glorinal”. At the same time, it is envisaged to extinct the debts of the Limited Liability Company “Glorinal” due to the national public budget for the income taxes, social insurance contributions, individual social insurance contribution, compulsory health insurance contribution, and breakdown for developing the normative documents in constructions, for the VAT for an amount of 14 million MDL, for extinction of debts accumulated in the process of executing the reconstruction and rehabilitation works (25 mln. MDL) of the Monastery Complex “Curchi” with architectural monuments of national importance from Curchi village, Orhei rayon.</p> <p>Another suggested aim of the respective draft is to cancel the fiscal penalties and sanctions (fines) calculated for the Limited Liability Company “Glorinal” according to the situation when the respective law enters into force, for not paying on time the charges to the respective budgets. For the purpose of fulfilling the aims mentioned above, derogations from a big number of legislative acts are promoted, including the Tax Code of the Republic of Moldova, the Law on Social Insurance Public System No. 489-XIV of 08.07.1999, Law on the amount, modality and deadlines for paying the compulsory health insurance premiums No. 1593-XV of 26.12.2002, the Law on quality in constructions No. 721-XIII of 02.02.1996 and other.</p>
AER and NAC expert:	No.324 of 10 July 2014, Senior Inspector Vitalie Muntean
Extracts from AER:	<p><i>“This draft is perceived as a draft promoting the interests of the Limited Liability Company “Glorinal”. In the context of observing the public interest, we consider it vital to elucidate the following: On 12.07.2013 the Parliament of the Republic of Moldova adopted the Law No. 199 on exempting from paying certain taxes, contributions, premiums, and breakdowns, as well as on cancelling the late payment interests and fines related to them, which subsequently was declared to be unconstitutional by the Constitutional Court via the Decision No. 6 of 13.02.2014. As reason for declaring the respective law unconstitutional, the Curt invoked non-observance of provisions from para. (4) art. 131 of Constitution, according to which any amendment inducing reduction of</i></p>

budgetary revenues, may be adopted only after being accepted by the Government. Attention was paid to the fact that fiscal amnesty of a certain economic unit from paying taxes and fees, the legislator established actually **a different treatment in relation to one company as compared to other legal entities performing the same type of activity**. The legal provisions which provide fiscal amnesty just to one economic unit create privileged situation for an enterprise which works on a market open for competition. The VAT exemption for the economic unit from this example cannot be reported to the debts formed in the process of executing the reconstruction and rehabilitation works for the monastery complex and other [...]

The author did not provide reasons which would enhance the justification for draft promotion, did not present any analytical information of the debts established between the subjects (the monastery complex, the company, and the state), for instance – an audit of the situation in general. The clauses of the contract for renovating the complex were not revealed so as to determine if in conditions of uniform enforcement and observance of such clauses, it would have been possible to accumulate exaggerated debts to the state budget. The author did not tackle the opportunity of identifying other alternative ways for settling the given situation, for instance – deferral of debts' payment and other, but opted for exemption in general from payment of such debts, thus generating the risk of compromising/endangering the principle of free competition. [...]

We consider that a legal precedent is created, allowing other economic units not to comply with the fiscal legal framework regarding the binding payment of taxes and charges, implying the violation of provisions set in art. 6 para. (8) let. c) of the Tax Code – fiscal equity, which provides for equal treatment of individuals and legal entities, working in similar conditions for ensuring equal fiscal burden. The establishment of such a precedent will serve as a prerequisite for avoiding the legal framework so as not to contribute to the national public budget and/or not to observe the commitments and obligations of different interested tax-payers. [...]

The provisions of the draft have a negative impact on the national public budget, and the operation of the invoked amounts, according to the legislation, should be correlated with the budget law for the corresponding year.”

Identified risks:	Insufficient reasoning, prejudicing the national public budget, favoring and promoting the interests of an economic unit, violation of the principle of fiscal equity, creating a defective legal precedent.
Status of the draft:	Adopted. Law No. 167 of 21.07.2014 ¹⁵
Cost assessment	<p>Debt of the Monastery Complex “Curchi” to the Limited Liability Company “Glorinal” - 25000000 MDL</p> <p>Debt of the Limited Liability Company “Glorinal” to the national public budget - 14000000 MDL</p> <p>Fiscal penalties and sanctions of the Limited Liability Company “Glorinal” for not paying to the budget of the above-mentioned payments - ? MDL (the informative note did not include any information regarding the volume of applied penalties and sanctions)</p> <p>Total cost: 11000000 MDL + fiscal penalties and sanctions of the Limited Liability Company “Glorinal”</p>

Inherent risks for the drafts establishing derogations from the general rules, exemptions from different public agents and private structures from paying certain fees, taxes, as well as forgiving debts refer to:

¹⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354339>

- prejudicing the national public budget;
- non-reasoning the losses for the national public budget as a result of adopting such a draft decision – no estimated calculations are presented of the charges which will not be paid to the state budget;
- lack of adequate reasoning for the drafts with derogations;
- favoring and promoting the interests of the economic units/nongovernmental organizations/Christina organizations;
- violation of the principle of fiscal equity;
- lack of control mechanisms;
- inadequate responsibilities and sanctions;
- creation of defective precedents.

2.2. Changing the destination of land fields

Another topic of interest for the Government, as well as for MPs is the **change of land fields' destination**. Chapter XI of the Land Code, No. 828 of 25 December 1991¹⁶, provides for the basic conditions and the subjects deciding on: changing the destination of agricultural fields; changing the destination of the fields of superior quality; changing the modality of agricultural fields' use; temporary withdrawal of certain fields from the agricultural and forestry circuit; changing the category of the fields with special destination.

It should be noted that changing the destination of land fields is important from the perspective of the subsequent price of these land fields, which varies depending on the destination of the field; hence the costs of the fields may drop or increase substantially when transferring them from one category to another. In this context, the Law No. 1308 of 25 July 1997 on the normative price and the modality of selling-purchasing land and its Annex (tariffs for calculating the normative price of land (per a degree-hectare unit) in MDL)¹⁷. An example is provided below with the summary of the AER for a draft focused on changing the destination of a land plot – if adopted, this draft would have generated damages for a value of **1 million Euro**.

Example: *The draft law to amend the Annex to the Law No. 668-XIII of 23 November 1995 for approving the list of units whose fields meant for agriculture remain in state property, sent to NAC for AER on 13 March 2014.*

Author of the draft:	Government, Ministry of Agriculture and Food Industry
Aim of the draft:	The draft law for amending the annex to the Law No. 668-XIII of 23 November 1995, for approving the List of units whose fields meant for agriculture remain in state property is developed by the Ministry of Agriculture and Food Industry for excluding a field plot of 1.5 ha from the administration of the Institute of Fruit Growing, Codru town, Chisinau municipality and disposal of the respective land as a field afferent to "Beto-Plus" Ltd.
AER and NAC expert:	No. 181 m of 24 April 2014, Main Inspector Ion Pruteanu

¹⁶ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313324>

¹⁷ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313289>

Extracts from the AER:

"We consider that the reasons invoked by the author in the reasoning note do not justify the need to develop and promote the draft. [...]"

The draft raised the expert's suspicions because the draft promoted in an obvious way the interest of a specific economic unit by amending the legal framework for excluding from the state's exclusive public area a land field with agricultural destination managed by the Research Institute for Fruit Growing. Requesting additional information from the author of the draft, it was determined that the Research Institute for Fruit Growing concluded in 2006 a leasing contract with the "Beto-Plus" Ltd for the land fields envisaged in the draft for a period of 10 years, violating the legal provisions, which do not allow the use of such land fields for other purposes than the agricultural ones. The NAC has also determined that the cadaster number indicated in the contract was wrong. In this respect, a number of clarifications was requested from the MAFI, but the later avoided to provide them.

The following remarks were made in the AER in relation to the respective draft:

"For the purpose of elucidating the created situation, the Center initiated its own investigations and came up with its own conclusions:

1. Although the respective field has the status of agricultural field, the Fields' Leasing Contract No. A-49-06 of 24 May 2006, according to chapter I "Object of the Contract", p.1, p.2 stipulate that the leased fields will be used for positioning industrial objects – installations for preparing concrete and drying wood". Hence, from the very start, the decision-makers of the Research Institute for Fruit Growing, duly represented by the director - M. Rapcea violated the legislation in force on how to use agricultural fields, accepting an activity that has nothing to do with the agricultural area. In this respect, art. 36 of the Land Code of 25.12.1991 provides directly that the "land fields with agricultural destination, regardless of the ownership form, are used for carrying out activities for the purpose of obtaining agricultural products and for placing agricultural infrastructure objects".

2. Upon the request of the NAC employees to submit documents related to the organization and conduct of the tender from 14.11.2011 for purchasing real estate (constructions, storage, scales) located on the field envisaged in the draft, the representatives of the "Beto-Plus" Ltd and Ministry of Agriculture and Food Industry could not provide confirming documents regarding the legality of the tender organization. Based on the accumulated information, it was determined that when the tender was organized, the goods located on the respective territory, including the storage with the basement for storing the fruits and other buildings, as well as the land field of 1.5 ha were used by the institute in the agricultural process and it was not necessary to lease the given territory. In relation to the organization and conduct of the tender, the NAC verifies the accuracy of the information regarding the fact that only one economic unit participated in the tender – "Beto-Plus" Ltd and if the procedure set by the law was violated.

3. When reviewing the situation on the spot, it was determined that the area of 1.5 ha is used for storing the raw material for manufacturing the concrete, parking the special technical quarry vehicles, capital foundations for equipment meant for manufacturing the concrete. Hence, the agricultural field with fertile layer was totally covered with construction materials, materials for manufacturing concrete, and this fact will hinder the use in future of the respective land for agricultural purpose (photos annexed)¹⁸.

4. Based on the mentioned leasing contract, the lessor offered and the lessee took over the field afferent to the carpentry workshop and of the building used by the production team no. 1 on 14, Costiujeni Street, Codru town with a total area of 1.5 ha. Although the mentioned objects are not part of the respective contract, they have been used free of charge during the period of reference by the "Beto-Plus" Ltd. [...]

Based on the above-mentioned, we consider it inappropriate to promote the draft law for amending the Annex of the Law No. 668-XIII of 23 November 1995, approving the List of units whose fields

¹⁸ Photos were annexed to the AER sent to the author of the draft.

meant for agriculture remain in state's property and the purpose of which is to exclude the land field of 1.5 ha from the administration of the Institute of Fruit Growing, Codru town, Chisinau municipality and disposal of this land field as a land plot afferent to "Beto-Plus" Ltd. Hence, through procedures that seem to be legal at first glance (initially the lease of the territory, afterwards the procurement of objects, and later the procurement of land), they try to deprive the state of 1.5 ha for a derisory price. If the respective land plot is sold according to the Law No. 1308 of 25.07.1997 on the normative price and modality of selling-purchasing land, the buyer will pay the amount of 39.126 MDL or 2111 Euro. [...]

The draft promotes interests and damages the public interest. The draft's beneficiary is "Beto-Plus" Ltd, which attempts to buy the land plot of 1.5 ha for a normative price, so as to sell it subsequently with a market price or to use it for personal interests, **prejudicing the state for about 1 million Euro**. On the other hand, the position and the interest of the Ministry of Agriculture and Food Industry are not clear in promoting this draft. If the Law No. 668-XIII of 23.11.1995 is amended and the respective land field is sold to the "Beto-Plus" Ltd, the normative price for a degree-hectare unit of agricultural land would account for 621,05 MDL (according to the tariffs set in the Law No. 1308-XIII of 25.07.1997 regarding the normative price and the modality of selling-purchasing land). Including the area of 1.5 ha of the land plot marked as afferent is exaggerated in comparison with the total area of the constructions of 0.05 ha.

Based on the above-mentioned, we consider that the exclusion of the given land plot from the list of agricultural fields remaining as state property and selling it to the "Beto-Plus" Ltd for a normative price would prejudice the interests of the state, which would miss a considerable revenue."

Identified risks:	Insufficient reasoning and submission of inaccurate information by the draft's author, promotion of private interests of an economic unit ("Beto-Plus" Ltd) and prejudicing of public interest. Exercise of inappropriate influences over the NAC expert during the AER performing.
Status of the draft:	Withdrawn by the author (Ministry of Agriculture and Food Industry)
Other comments:	When the given draft was under the NAC review, a prosecutor from the General Prosecutor's Office tried to intervene so as to determine the NAC expert to conclude a positive AER. The inappropriate influence was denounced to the subdivision of internal security of the NAC, which was notified about the respective case and the subdivision of internal security of the Prosecutor's Office. The facts elucidated about the draft were sent to other NAC subdivisions for performing special investigations.
Cost assessment	The normative cost of actions – 1.5 ha of agricultural land = 39126 MDL / 2111 Euro The market cost of actions – 1.5 ha of land afferent to constructions = 18540000 MDL / 1000000 Euro

As it may be noted from the AER summary indicated in the table above, the AE process allowed identifying a scheme for promoting the interests of certain private persons in the detriment of the public interest. Schematically, the interests of this draft law may be illustrated as shown below.

In some cases, these risks were accompanied also by exercise of inappropriate influence over the NAC experts while performing the AER.

2.3. Public-private partnerships

The area of public-private partnerships is a vital one for the economic development of the country. The aim of the state and administrative-territorial units in establishing public-private partnerships is to ensure an efficient management of public property in different areas of activity, in conditions of deficit financing and austere budgets of public institutions. The quality increase of services or goods suggested for public-private partnerships is sometimes doubt because of development, in many cases, of “speedy” public-private partnerships by promoting some group/individual interests when adopting such normative acts, without being supported by concluding reasons for the appropriateness of such partnerships. As well, promotion is carried out by avoiding the legal framework regulating the procedure of initialing a public-private partnership draft. In many cases, the public-private partnership drafts were approved, without being supported by well-reasoned feasibility studies, without including the goods proposed for the public-private partnership in the list of goods approved at the level of the Government (Government Decision 476/2012²⁰), without having the support of the authorities directly involved in the implementation, and most seriously, without having a clear vision over the legal consequences as a result of public-private partnership project implementation.

One of the most relevant examples regarding the public-private partnerships promoted in non-transparent conditions and without observing the legal conditions is the draft normative act of the Government based on which the concession of the SE “International Airport Chisinau” was decided. The draft was subject to AE, and the following findings were submitted:

Example: *Draft GD approving the concession of the assets of the SE “International Airport Chisinau” and of the conditions for assets’ concession, sent for the NAC AER on 28 May 2013*

Author of the draft:	RM Government, Ministry of Economy
Aim of the draft:	The draft was developed for the purpose of approving the concession of assets under the economic management of the SE “International Airport Chisinau” and of the conditions for assets’ concession. At the same time, the draft has norms regulating the procedure and conditions for organizing and conducting the closed competition for selecting the concessionaire. The author considers that by promoting the respective norms, necessary conditions will be created to attract investments in developing the airport infrastructure.
AER and NAC expert:	No. 297 of 28.05.2013, Main Inspector Vadim Curmei
Extracts from the AER:	<i>“In the informative note annexed to the draft, the author makes a superficial reference to the existence of a study developed by NACO, but when analyzing the note, it is not possible to</i>

²⁰ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344004>

distinguish all the key elements of a feasibility study [...].

The author does not refer in the informative note to the fact if the draft implementation will need allocation of financial means from the state budget [...].

According to the draft “the risks related to carrying out the concession envisaged in the concession contract will be distributed among the contracting parties according to the legal provisions during the entire validity period of the concession contract”. Thus, **it is not excluded that the state or the contracting authority – Ministry of Economy will be in the situation of compensating some damages which occurred as a result of the risks of contract implementation.** In these conditions, the issuing body will identify these risks of the contract and will express its position regarding the existence or non-existence of financial resources available at the moment for covering them. [...]

There is a **risk that the development and promotion of the draft will be dictated by certain group interests, manifested by carrying out non-transparent selection procedure based on criteria and conditions which are not objectively justified in relation to some of bidders, and which will not ensure their full and effective equality in rights.** [...]

The entire procedure for initiating, carrying out and executing the contract of public-private partnership should be conducted in a transparent way, and the issuing body (Government) should pay more attention to the content of the feasibility study and viability, in general, of the public-private partnership project”.

Identified risks:	The urgent nature of draft promotion denotes the risk of carrying out a non-transparent selection procedure based on criteria and conditions, which are not objectively justified, but dictated by certain group interests; Prejudicing the state budget – according to the draft – the risks afferent to performing the concession will be distributed among the contracting parties; Prejudicing the state budget – the draft does not refer to the situation of the claims and crediting debts of the IAC, as they are not part of the concession object; Discretions in relation to how the participation fee and participation guarantee charge are levied; Discretions provided to the Selection Committee for establishing the selection conditions and criteria; Discretions regarding the repeated competition only with the presence of one bidder – non-transparent competition.
Status of the draft:	Approved. GD No. 321 of 30 May 2013 ²¹
Other comments:	AER was concluded within two hours . The expert was “imposed” to comply in a record time, otherwise the draft would have been promoted without AER.
Cost assessment	Cost assessment may be carried out only if a feasibility study is submitted including the basic financial information.

AE has identified a series of **risks, including corruption**, which practically are presented all the times in drafts related to **establishing public-private partnerships**. The following should be mentioned in particular:

²¹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=348166>

- **lack of feasibility studies**, or non-publishing or non-assurance of access to such studies;
- **lack of endorsement** from the Public Property Agency²²;
- **avoiding the coordination of drafts** with the National Council for Public-Private Partnership²³. Actually, based on the NAC experience in the AE area, it may be noted that this consultative body is inefficient, although it has been established especially for consolidating the efforts in efficient organization of public-private partnerships, and one of its duties is to coordinate the public-private partnership projects of national interest;
- **non-transparent conditions after concluding the public-private partnerships**, as the public partner establishes the Committee for selecting the private partner, and also develops the documentation necessary for organizing the competition for selecting the private partner, which includes: informative note, terms of reference for carrying out the public-private partnership project (description of the public-private partnership object, conditions for carrying out the public-private partnership) and the draft contract²⁴;
- **lack of an efficient mechanism for monitoring and control** from the bodies empowered by the state to implement uniformly the legal framework regulating the procedure for initiating and implementing a public-private partnership;
- **indolence and even in some cases abuses of public officials** of different levels, representatives of different bodies of the state meant to verify and contract the cases of violation of legislation related to public-private partnerships.

2.4. Derogations from trade rules

The Law No. 231 of 23 September 2010 on Internal Trade²⁵ regulates the legal framework for carrying out trade activities by developing the network of distributing commercial products and services, observing free competition, protection of life, health, security, and economic interests of consumers. Rules on organization of trade, selling of certain categories of products are also included in other related legislative acts, which should be observed by the authors of draft normative/legislative acts and should be carefully monitored by experts during the AE process.

In its expertise activity, the NAC frequently identified drafts establishing derogations from general trade rules, which in their essence, endangered the market economy rules.

²² According to art. 14 para. (1) let. b¹ of the Law No. 179/2008 on Public-Private Partnership – the Agency has the competence to endorse the feasibility studies for public-private partnerships

²³ Established in line with art. 16 of the Law 179-XVI of 10.07.2008 on Public-Private Partnership, working based on the Regulation approved via the Government Decision 245 of 19.04.2012

²⁴ NAC performs the AE of the GD drafts related to approval of objectives of the public-private partnership projects of national interest and of the general requirements for selecting the private partner, as well as of the conditions of the public-private partnership, and the contract clauses and norms included in the terms of reference, The Center does not have the duty of making expertise for such clauses. These clauses are not known by the directly responsible authorities either.

²⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366254>

Examples of AER findings from this category are presented in **section 2.4 of Annex No. 4 of the Study**. One of these examples establishing derogations from trade rules is presented below:

Example: *Draft Law for amending and completing certain legislative acts (Law No. 461/2001, Tax Code), legislative initiative No. 442 of 07.11.2013, sent for to NAC for AER on 13 November 2013.*

Authors of the draft:	MPs: Ion Balan, Veaceslav Ioniță
Aim of the draft:	According to the author, the draft is developed for the purpose of creating by the state of a favorable environment in the area of fuel costs, so as to foster the development of local enterprises, allowing the economic units to reinvest saved money in the turnover of their own companies.
AER and NAC expert:	No. 672 - G of 22 November 2013, Main Inspector Vadim Gheorghită
Extracts from the AER:	<p><i>"The draft is defective in relation to the role and the place of economic units as final users on the internal market of oil products, according to the provisions of the Law on the market of oil products. [...]</i></p> <p><i>According to the provisions of the draft, the sanction for violating the provisions regarding the interdiction to dispose oil products, imported based on the authorization of final user, will cover just the cancellation of the respective authorization, providing the right to obtain a new authorization after a period of 2 years, when the economic units will have the possibility to repeat the committed illegality. But, even in case of cancelling the authorization of final user, the author envisaged the right of the National Agency for Energy Regulation to indicate in its cancellation decision a certain date since when the decision will produce legal effects, for instance after one or several months, a period during which the economic unit, based on the authorization of final user, will continue to perform unimpeded actions of smuggling oil products. [...]</i></p> <p><i>The author superficially mentions in the draft about monitoring the use of oil products imported based on the authorization of final user, which is entrusted to the Ministry of Finance, Ministry of Internal Affairs, Customs Service and State Main Tax Inspectorate. From practical point of view, the provision is not applicable, as the economic units "beneficiaries" of the draft provisions do not have the obligations set for the participants on the oil products' market, and namely: protection of rights and legitimate interests of the oil products' consumers (art.5 of the Law No. 461/2001; transport of oil products (art.17 of the Law); storage of oil products (art.18 of the Law); record keeping of oil products (art.22of the Law)."</i></p>
Identified risks:	Insufficient and incorrect reasoning. Promotion of interests, favoring smuggling of oil products, endangering the economic and ecologic security of the state, as well as of the security of RM citizens.
Status of the draft:	The draft law became void ²⁶
Cost assessment	To perform the cost assessment, it is necessary to identify the volume of oil products consumed by the category of economic units, which could apply for obtaining the authorization of final consumers out of the total consumers of oil products on the date the AE is performed. At the same time, to support the AER reasoning with the value of the estimated prejudice in case of possible illegalities, in the process of cancelling the authorizations, it is necessary to identify at least the estimated number of issued authorizations and the estimated number of cancelled authorizations.

²⁶<http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2004/language/ro-RO/Default.aspx>

In case of the drafts establishing derogations from the general trade rules, the most frequent **risks identified in the AER** referred to:

- insufficient and inaccurate reasoning;
- promotion of interests;
- favoring the manifestations of the underground economy (smuggling of oil products);
- admission of legal gaps, non-regulation of activities of certain economic units, which practice through their activity a type of combine trade – retail and wholesale;
- lack of detailed administrative procedures;
- creation of preconditions for avoiding the payments to the state budget (especially in case of patent holders);
- prejudicing the general public interests – non-payment of legal fees;
- decreased collection of fees to the budget;
- endangering the economic and ecologic security of the state, as well as of the security of RM citizens.

2.5. Creating industrial parks

The establishment of industrial parks became possible when the Parliament of the Republic of Moldova adopted the Law No. 182 of 15 July 2010 on Industrial Parks²⁷. According to the law, the aim of the industrial parks is: a) to attract local and foreign investments; b) to set competitive sectors in industry based on modern and innovational technologies; c) to carry out economic activities in line with the development opportunities specific for the respective area, including more efficient use of public patrimony; d) to develop small and medium enterprises; e) to create jobs.

The law envisages that the industrial park is a delimited territory having technical and production infrastructure, in which economic activities are performed, mainly industrial production, provision of services, leverage of scientific research and/or technological development in a regime of specific facilities so as to harness human and material potential of a specific region. In September 2011, through its Decision 652, the Government approved the Regulation on how to organize the competition for selecting the residents and investment projects for industrial parks, as well as the Model-Report regarding the activity carried out within the industrial park.

The facilities provided by the industrial parks lead to creation of an increased number of such parks. *Inter alia*, such unique facilities may be mentioned: exemption from compensating the losses caused by excluding the land fields from the category of fields with agricultural destination; free-of-charge transfer or commissioning of public property goods to administrating enterprises; the right to privatize the land fields in public property

²⁷ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335841>

affluent to constructions; fiscal facilities; financial allocations; and periodical facilities: applying by the administrating enterprise the decreasing coefficient down to 0.3 of the tariff to the annual payment for leasing the land field in public property or of the basic tariff for annual leasing of goods in public property, established by the state budget law for the respective year; optimization of state controls over the activity of the industrial parks' residents by performing the planned controls according to the annual timeline approved via a Government Decision or unplanned controls, performed with the approval of the Ministry of Economy according to the legislation in force; allocation as appropriate of financial means for creating the technical and production infrastructure, etc.

The way in which the draft normative acts on establishment and administration of industrial parks were developed, reasoned and promoted also represents a vulnerable area, constantly criticized in the EAR (*see sections 2.5 of the Annex No. 4 of the Study*).

Example: *Draft Government Decision on providing the title of industrial park to the "Venador-Prim" Ltd and changing the destination of some land fields*

Author of the draft:	Government, Ministry of Economy
Aim of the draft:	According to the author, the envisaged goal of the respective draft is to boost the development of the national industrial sector by creating a new industrial park ("FAIP"), which will be subsequently administrated by "Venador-Prim" LLC
AER and NAC Expert:	No.791 of 28 August 2014, Inspector Cristina Chistol
Extracts from the AER:	<p><i>"The draft provisions promote the individual interests of "Venador-Prim" LLC (to which the tile of industrial park is attributed and the right to subsequently administrate it). In this respect, the good faith and solvency of the mentioned commercial company may be just presumed, as its statutory capital is minimal (according to the legal organization form- LLC), established recently in 2013, it does not have a crediting history to be appreciated. [...]</i></p> <p><i>Promotion of the draft in the suggested text, created clear advantages only for "Venador-Prim" LLC for a period of 30 years of operation of the industrial park "FAIP" (exemption from compensation of the losses caused by exclusion of the land fields from the category of the fields with agricultural destination according to the Law on the normative price and the way of selling-purchasing land; provision of fiscal facilities; optimization of state controls over the activity of the residents of the industrial parks by carrying out planned controls according to the timetable approved annually via Government Decision of unplanned controls, carried out with the approval of the Ministry of Economy according to the legislation in force, etc.). [...]</i></p> <p><i>The good faith and solvency of "Venador-Prim" LLC may be just assumed, because the statutory capital of the company is minimal (corresponding to its legal organization form - LLC), being recently established in 2013, it does not have a crediting history that could be assessed. At the same time, the achievement of expected state benefits is not sure, and if eventually the title of industrial park is withdrawn from "Venador-Prim" LLC, there is the risk of prejudicing the interests of the State, due to the fact that although "Venador-Prim" LLC did not comply with the obligations assumed in front of the state by obtaining the title of industrial park, it actually benefited from exemption from the compensation of the damages caused by excluding the land fields from the category of fields with agricultural destination according to the Law on the normative price and the modality of purchasing-selling land. [...]</i></p> <p><i>The phrase "in case if over a period of two years since the publication of the present decision, it will be not initiated" provides to this norm a general nature, and it is impossible to delimit the actions which are to be carried out by the administration. As a consequence, it is impossible to qualify the</i></p>

sufficiency of the actions undertaken by the administration of the park and to sanction it if it does not comply with the commitments assumed when being attributed the title of industrial park. Interpreting “ad literam” the norm proposed by the author, it can be noted that there is a disproportional regulation of the volume of responsibilities and activities to be undertaken by the administration over the period of 2 years, as the established deadline is more than enough not only for initiating the set-up of the infrastructure of the industrial park, as well as for performing directly the works, in a certain pre-established volume. [...]

We consider it appropriate and logical to establish the responsibility of “Venador-Prim” LLC and to come up with a provision through which the respective company will be sanctioned (by withdrawal of the title of industrial park), if during a period of two years the creation of the technical and production infrastructure of the industrial park “FAIP” was not initiated. As the same time, it should be noted that at the moment of attributing the title of industrial park, the “Venador-Prim” LLC will benefit from exemptions (according to art. 12 para. (1) let.a) of the Law No. 182 of 15.07.2010 on Industrial Parks), from the compensation of losses caused by exclusion of land fields from the category of fields with agricultural destination, according to the Law on the normative price and the modality of selling-purchasing land. If eventually the title of industrial park is withdrawn, as provided in the provisions of the draft, the parties will not be restored within the situation existing before the issuance of the decision regarding the creation of the industrial park, as although the destination of the given fields was modified, these fields will not be used for building the park’s infrastructure.

In this case, the owners of the given fields, continue to benefit from facilities (the expenses for exclusion from the agricultural circuit will not be compensated), although they did not fulfill the obligations assumed in front of the state, in relation to provision of the title of industrial park. As a consequence, if the competent authority withdraws the title of industrial park, the fact that “Venador-Prim” LLC will benefit from the given facility is not justified and is not fair, and the state budget will be prejudiced”.

Identified risks:	Insufficient and inadequate reasoning, prejudicing the interests of the state, prejudicing the public budget, promotion of interests, fiscal facilities for a certain economic unit.
Status of the draft:	Approved. GD 918 of 7 November 2014 ²⁸
Cost assessment	5 ha of built field x 10000 Euro/are = 5,000,000 Euro Exemptions from compensation of expenses for excluding from the agricultural circuit Exemption of fees and taxes Facilities for controls’ carrying out

The synthesis of AER findings and objections points out the following **risks associated to the drafts through which industrial parks are established:**

- insufficient and inadequate reasoning;
- prejudicing the interests of the state and the public budget;
- promotion of interests;
- fiscal reliefs for a certain economic unit;
- lack of responsibilities and sanctions for violation of conditions;
- substantial imbalance between the interests of the state and the subjective interests of the ex-administrator of the industrial park which is obviously favored;

²⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355621>

- legislative drawbacks, which create preconditions for some subjects to avoid the normative framework and to benefit in bad faith from conditions facilitating the activity²⁹;
- gaps and institutional dysfunctions that may determine sub-performance while managing investment projects and may prejudice the general public interest.

2.6. Budgetary favoring of certain public authorities

Another category under the typology of the drafts promoting interests would be the drafts establishing facilitating rules or conditions, additional benefits favoring a public authority in relation to other authorities, as well as in relation to the public interest.

The respective facilitation may be expressed by unreasoned establishment of some institutions, structures, entities, under the subordination of public authorities and transferring to such entities of some competences that refer directly to the administration area of public authority. Examples of this typology of interests are included in ***section 2.6 of Annex No. 4*** of the study.

As an example of favoring a specific authority may serve the below extract from the AER for the draft GD on establishment of the SE “Center of Training in Finance”.

Author of the draft:	Ministry of Finance
Aim of the draft:	According to the author, the aim of the draft is to ensure continuity in developing sustainable training institutional capacities, for the adjusting the knowledge to the changes emerged in the normative and legislative acts for enhancing the skills of the specialists in the area of public finances’ management. The result envisaged to be achieved after establishing the respective Center, according to the analysis performed by the Ministry of Finance, is the effective implementation of the changes occurred during the public finance management reform by training the specialists in the area of public finance management, as well as assurance of continuity in developing sustainable training institutional capacities.
AER and NAC expert:	No. 547-m-1 Main Inspector Natalia Cheptea
Extracts from AER:	<i>“We consider it unjustified the author’s opinion in which the informative note specified that “the</i>

²⁹ According to the Law No. 182/2010 the withdrawal of the title of industrial park implies only the termination of the regime of allowances provides to the industrial park according to the law. The administrating enterprise is obliged to pay the counter-value of the value for the facilitation provided according to art.12 para.(1) of the Law No.182/2010 only in case when the administrating enterprise does not fulfill the duties and the obligations provided by the Law No. 182 of 15 July 2010 and in case when there is a final and irrevocable decision of a court establishing that the majority of holders of the title of industrial park resident do not perform the objectives assumed through the contracts concluded with the administrating enterprise. Even if the title of industrial park is withdrawn, the administrating enterprise will further have the “results” of the facilities it benefited previously according to the status of an enterprise administrating the industrial park. These facilities may be: land fields for constructions (the destination of which was modified simultaneously / as a result of providing the title of industrial park to a subject, which according to the frame-law was exempted from compensation of prejudices related to its exclusion from the agricultural circuit), real estate of public property, which were disposed of free pf charge to the administrating enterprise when establishing the industrial park, facilities related to privatization of the land field afferent to constructions, benefiting from a favoring regime related to the state control over the activity of the park, as well as some fiscal reliefs, financial means allocated for the development of technical and production infrastructure.

training public officials in the Republic of Moldova is at a low level, because the educational institutions provide theoretic training services within central and local public administration, as well as the fact that currently there is no educational institution which would be able to ensure practical training in financial area". Based on expressed things, as well as an argument in favor of invoked situation, it is established that there is a number of competent educational institutions and associations in the Republic of Moldova which train specialists in the area of public finance: Public Administration Academy under the President of the Republic of Moldova, Academy of Economic Studies, Consultancy Center, Center of Economic Development and Public Affairs, Center of Financial and Budgetary Analysis, Institute of Continuous Information, etc. Hence, a number of specialists from different areas of national economy benefit from the services of these institutions and centers, who are trained by specialists of high qualification and with the capacity to organize and perform continuous training of the specialists in the area of public finance management at the highest level. [...]

Taking into account that state policies promote optimization of functional activities and decrease of administrative costs, this implies the exclusion of the possibility to establish a new body subordinated to the Ministry of Finance. [...]

As well, the economic-financial aspect of the draft is not justified. According to the calculations performed by the author, for the operation of the State Enterprise "Center of Training in Finance", an amount of 632 000 MDL is necessary, of which 105 000 MDL are distributed for maintenance expenses and 527 000 MDL for personnel expenses. In our vision, the financing source is not justified. The author specifies that during the first year of activity, the Center is going to be finance from investments and donations, and this is not a reason in establishing the source for financing the State Enterprise, as the activity of the respective body is presented as a continuous process and not for a certain period of time (as it would be according to the draft). [...]

According to the Law No. 847-XIII of 24 May 1996 on the Budgetary System and Budgetary Process, the public authorities cannot admit expenses which are not envisaged in the annual budget law".

Identified risks:	Insufficient, unjustified and inaccurate reasoning, unjustified financial costs, establishment of parallel duties.
Status of the draft:	Withdrawn (Suspended promotion)
Cost assessment	<p>Minimum expenses - 632 000 MDL, annually</p> <p>The following is not specified:</p> <ul style="list-style-type: none"> - Construction costs - Placement - Infrastructure - Equipment - Working materials / office stationery

Risks related to the typology of the drafts favoring public authorities, identified in the AER:

- insufficient, inaccurate, and unjustified reasoning;
- unjustified financial expenses;
- establishment of parallel duties;
- prejudicing the public interest;
- conflicts of legal norms;
- lack of clarity in relation to terms of procedure;

- discretionary duties;
- promoting interests contrary to the public interest;
- lack of transparency in the operation of the institution;
- excessive rights;
- affecting the interests of individuals;
- non-observance of international standards,
- prejudicing the national budget.

2.7. Other categories

Additionally to the area of interest expressed in sections 2.1-2.6 of this chapter, some risks/vulnerabilities were identified as well in other sectors, but they cannot be grouped in a distinct, separate category. The topics tackled by the drafts from other categories referred to the following: transmission for industrial harnessing of a deposit located on an area of 21.2 ha; empowering the MIA with the competence to provide a set of additional services for fee (see the example below), a law on oil, amending the competences of the authorities from the ATU Gagauzia, etc.

Generally speaking, the respective drafts emerged in *ad-hoc* manner and had no point of contact with the governance programs and existing realities. Actually, it can be admitted that these drafts really represent classic models of promoting individual, corporate, and institutional interests, being obviously contrary to the public interest.

Example: *Draft Government Decision for approving the Nomenclature of permits issued to individual and legal entities and the tariffs for such permits, the Nomenclature of services provided for fees and the tariffs for such services, as well as the Regulation on how to set and use the special means of the subdivisions of the Ministry of Internal Affairs, sent to NAC for AER on 7 November 2013.*

Author of the draft:	Government, Ministry of Internal Affairs
Aim of the draft:	According to the author, the aim of the draft is to ensure the enforcement of the Law No. 320 of 27 December 2012 on the activity of Police and Policeman Status, in the chapter regulating the duties of providing to applicants fee-based services and of the Law No. 160 of 22 July 2011 on regulation through authorization the entrepreneurship activity.
AER and NAC expert:	No.904-m of 19 November 2013, Main Inspector Ion Pruteanu
Extracts from the AER:	<p><i>“Reasoning the need to approve this draft decision, the author make a reference to certain legislative and normative acts, which in our vision may serve as legal basis for legalizing the activities of provision of services for fee by the MIA subdivisions and namely: para. (1) art.10 of the Law No. 320/2012 on the activity of Police and Policeman Status, which provides that “Police is financed from the state budget and from other sources not prohibited by law and p. 25 of the Government Decision No. 778/2009 approving the Regulation regarding the organization and operation of the Ministry of Internal Affairs, the structure and limit number of employees of its central apparatus, which provides that “financing of the MIA activity is performed from the state budget, the budget of administrative-territorial units and other financing sources, in line with the legislation.” [...]</i></p> <p><i>The draft covers a number of norms providing the right of the MIA employees to provide certain</i></p>

fee-based services. Based on the analysis of the services to be provided, it results that some subdivisions (Department of Carabineers' Troops, GPI Procurement and Logistics Service, Civil Protection and Exception Situations Service, Police Brigade with Special Destination "Fulger", Border Police Department) deal with entrepreneurial activities (growing and selling production, collecting and selling used metal, of recycled paper, and waste, repairing transportation means, impresario services, etc.). [...]

Some of these activities are appropriate to be carried out within the limit of internal needs of the military subdivisions, and the military people should be involved directly in trainings, in maintaining public order, but not in agricultural activities, livestock activities, or cars' repairing.

*Moreover, the legalization of these activities based on Government Decision is just **disguising the schemes for obtaining illegal revenues by the people responsible for these sectors. For instance, leasing of MIA vehicles, procurement from public money in the detriment of covering other state needs, may be qualified as an irrational use of public money and as a defective budgetary planning of MIA.** [...]*

Another relevant example would be the norms related to the service to be provided by the Service of Civil Protection and Exceptional Situations:

- *Development, review and approval of the draft instructions and technical regulations on civil protection and protection against fires;*
- *Provision, upon the request of the economic units and individuals, of civil protection services and protection against fires;*
- *Provision, upon the request of economic units and individuals, of specialized technical controls for specific object;*
- *Examination upon the request of the applicant of the draft documentation, which is not subject to compulsory review according to the law and provision of consultative assistance for its development, etc.*

These are some of the proposals for provision of fee-based services by the MIA services, which being analyzed in general, are part of the functional duties and do not need to be provided based on fees. Moreover, some of the provisions create directly preconditions for committing corruption acts by the officials responsible for reviewing draft documentation, who could reject the documents submitted by the applicants, invoking violations in concluding such documents and thus creating artificially situations of imposing the economic unit or the interested person to "convince" the official to provide the consultative assistance for developing it".

Identified risks:	Ambiguous content, insufficient reasoning, excessive discretions, promotion of interests, prejudicing the public budget, hindering the citizens from free-of-charge public services.
Status of the draft:	The draft was not promoted subsequently
Cost assessment	To assess the costs, it is necessary to analyze the nomenclature of provided services, amount of fees for these services and volume of services planned to be provided. At the same time, for assessing the prejudice or the volume of irrational use of public means, it is necessary to identify the share of public means' use for purposes which are different from the basic functions.

Corruption risks determined in these drafts refer to the following:

- insufficient reasoning;
- promotion of interests;
- prejudicing the public interest and budget;
- ambiguous content;
- excessive discretions;

- conflict of legal norms;
- lack of regulatory impact analysis;
- lack of economic-financial reasoning;
- hindering the citizens from obtaining free-of-charge public services;
- lack of administrative sanctions;
- ambiguous and defective linguistic formulations.

2.8. Cost of interests

As it was mentioned above, this study aimed to assess the costs of the prejudices which were caused or may be caused through drafts promoting interests. This exercise represented a major challenge for the authors of this study, under the conditions of opaque procedures promoting draft normative and legislative acts, especially when particular/group/corporate interests are at stake and when essential documents and information are missing for assessing the costs (for details, see the section “Costs” for examples included in ***Annex No. 4*** of the Study).

Annex No. 4 of the study encompasses examples of AER related to drafts qualified as promoting interests, which were systematized depending on the typology of interests, as defined within the present document. It should be mentioned that these examples represent just a part of the drafts promoting interests and do not cover the draft normative and legislative acts subject to AE and qualified by the NAC experts as promoting interests.

As a result of the cost analysis for the draft normative/legislative acts listed in ***Annex No. 4*** of the study, a series of aspects which influenced the quality of the assessment process was deduced. The analysis process has identified **3 big categories** of normative/legislative acts.

1. Normative acts with cost elements subject to costs’ identification and evaluation

The costs of the interests from this drafts were assessed and calculated according to the presented methodology (see the section “Costs” from the case studies presented in the ***Annex No. 4***).

2. Normative acts with cost elements, but which cannot be identified or assessed

To a big extent, in order to perform the identification of costs related to these normative acts, additional information was necessary, but they are missing in the submitted documents (for instance: initial values of a characteristic (number of beneficiaries of entrepreneurship patent for the year x, financial means accumulated as a result of applying the fines for operations without using the cash registers) or their basic values (cylindrical capacity for a vehicle, value of economic units’ fines subject to cancellation, etc.).

3. Normative acts with impossibility to identify the costs. These normative acts either do not contain cost elements in the substance of their activities or the cost of

the respective activities cannot be deduced from their content, due to ambiguity reasons or because of lack of concrete and clear elements of the presented activities.

It should be noted that the problematic aspects mentioned above are valid for the draft normative/legislative acts from all the categories of the interests' typology. Nevertheless, it was noted that category 3 may include normative/legislative acts related to exemption of fiscal fees and customs duties, as well as budgetary favoring of certain public authorities.

Based on the above-mentioned, it may be concluded that the law-making process remains to be affected by substantial drawbacks in relation to sufficiency of reasoning for normative solutions, especially the economic-financial reasoning. The draft normative and legislative acts are not always subject to regulatory impact assessment (whenever it is necessary), as well do not contain the set of necessary acts imposed for certain categories of drafts.

The synthesis of costs for the drafts promoting interests (whenever it is possible to assess) reveals the following:

1. Avoided costs – total value of costs calculated for rejected drafts:

198340,946 thousand MDL

2. Imminent costs – total value of costs for adopted drafts:

371187,304 thousand MDL

Hence, in spite of the difficulties described above, the AE may produce perceptible and quantifiable effects, and this exercise can stop promoting interests and prevent prejudicing the public interest and budget.

THE CONCLUSIONS deriving from this chapter are the following:

- drafts from all categories of the above-mentioned typology were promoting interests in the detriment of the public interest;
- all the drafts have the common element of prejudicing the national public budget;
- none of the drafts promoting interests had a relevant, adequate and sufficient reasoning;
- when it was necessary, the drafts were not accompanied by regulatory impact assessment;
- the majority of drafts promoting interests do not contain mechanisms of subsequent control;
- lack of responsibilities and sanctions is also typical for the category of the drafts promoting interests;
- in case of majority of drafts through which public-private partnerships were established, the compulsory stages and conditions for promoting them were not observed: the feasibility studies were missing, financial calculations were not presented, necessary endorsements and coordination were not obtained (or at least were not published);
- in case of the draft normative acts, through which it was decided to create

industrial parks, a number of gaps at the legislative level is identified, especially in the part related to the correlation between the benefits provided to the administrators of the industrial parks versus the responsibility they have;

- promotion of interests in other categories than those indicated in the above-mentioned typology is occurring in a spontaneous, ad-hoc way, and this already represents an alarming signal for the NAC experts;

- when all the accompanying acts and documents necessary for promoting drafts in distinct areas are missing, it is extremely difficult to assess the costs of potential prejudices, as certain benchmarks which could be identified by experts, may have speculative nature and could distort the reality;

- the AE exercise succeeded to anticipate and avoid an imposing volume of potential prejudices (from rejected or withdrawn drafts), even in relation to those which could not be avoided.

THE RECOMMENDATIONS of this chapter are the following:

- the need for the authors of draft normative and legislative acts to observe the rules regarding the compulsory economic-financial reasoning, as the lack of this reasoning serves as basis for non-registering and non-reviewing the draft;

- a similar conditions should be also fixed in case of the drafts which must be accompanied by regulatory impact assessment;

- in the area of the **public-private partnership**, it is necessary for:

- ❖ all the drafts to be accompanied by an-ex-ante analysis (a realistic anticipation of the new provisions) which would prove the predictability and viability of norms for the purpose of excluding the risk of prejudicing the expressed public interest, especially, by prejudicing the area of state's and territorial administrative units' public property, their budgets and of the society interest expressed by provision of qualitative services for a reasonable, accessible, competitive, and transparent price, as a result of the public-private partnership implementation;

- ❖ all the drafts for public-private partnership of national interest to be coordinated with the National Council for Public-Private Partnership;

- ❖ for every draft of public-private partnership to develop feasibility studies;

- ❖ to ensure the compulsory endorsement by the Public Property Agency, according to the legal procedure, of the feasibility study for the projects of national interest, as well as for those of local interest;

- ❖ to modify the legal framework regulating the area of public-private partnerships by making compulsory the review of terms of reference, as well as of the draft contract between the public partner and the private partner developed by the Commission for selecting the private partner by the authorities with duties in the respective area (e.g., Ministry of Economy, Ministry of Finance, Public Property Agency, Competition Council and other);

- ❖ to implement an efficient and transparent system for implementing,

monitoring, and checking the implementation of public-private partnerships – intensification of the activity of the Public Property Agency by informing the society regarding the carried out public-private partnerships, identification of deficiencies and barriers in the way of efficient fulfilment of public-private partnerships and annual presentation by the Government and civil society of consolidated reports;

- ❖ to increase the transparency of the procedure for developing and adopting the terms of reference and the public-private partnership contract so as to prove that the norms covered in these documents observe the general public interest and do not promote group or individual interests with missing justification of the general public interest;

- in the area of drafts through which **industrial parks** are created, it is necessary to eliminate the drawbacks in the legislative area, which create preconditions for some subjects to avoid the normative framework and to benefit with bad faith from conditions for activity facilitation. Especially, it is important to establish comprehensive regulations, which would guarantee the observance and the balance between the patrimony interests of the state and the volume and nature of facilities the industrial park administrator and resident have, as well as the regulation of the situations after withdrawing the title of industrial park through the perspective of the previous findings regarding the respective topic;

- taking into account that the majority of acts from the typology tackled in this chapter are adopted/approved through derogations from the general rules or establish important benefits for the subject of these drafts, it is appropriate for the mechanisms of subsequent control to be fixed in each of these drafts, and also to provide for adequate and deterrent sanctions for violation of conditions envisaged in the draft normative and legislative acts.

Chapter 3.

CONCLUSIONS AND RECOMMENDATIONS

This chapter reiterates the conclusions and recommendations formulated in chapters 1 and 2 of this study.

CONCLUSIONS:

- the NAC workload in performing the AE activity is constantly increasing from year to year;
 - respectively, the number of draft normative and legislative acts, which avoid the anticorruption expertise is decreasing, with some exceptions for the acts issued by the Government. In case of the Government, it is extremely difficult to follow the path of the drafts promoted by authorities, registered and placed on the agenda of the Government. As a rule, the drafts included on the agenda of the Government may be accessed only one-two days before the meeting of the Cabinet of Ministers;
 - the efficiency of corruption risks' remediation registered a good trend, but drawbacks still exist in relation to the corruption factors from the following categories "Limited access to information, lack of transparency" and "Inadequate responsibilities and sanctions";
 - even though the number of drafts promoting interests is constantly increasing, nevertheless the share of drafts promoting private/group/corporate interests in the detriment of public interest is decreasing;
 - a negative trend is revealed more significantly over the last years (2014-2015): increased number of requests to review drafts in emergency regime, in record deadlines, less than in 10 days. This fact affects indirectly the quality of AER, as well as the efficiency of eliminating the corruption risks by the authors of the drafts (in case of the drafts promoted in urgent and quasi-transparent conditions, the remediation level of the corruption risks identified by the AER is rather small, and in some cases the authors ignore the objections/proposals formulated in the AER; sometimes the drafts' authors even "cheat", invoking lack of any objections and recommendations from the NAC in the respective synthesis);
 - the majority of drafts promoting private interests continue to be submitted namely through such accelerated procedures and with no transparency;
 - drafts from all categories of the above-mentioned typology were promoting interests in the detriment of the public interest;
 - all the drafts have the common element of prejudicing the national public budget;
 - none of the drafts promoting interests had a relevant, adequate and sufficient reasoning;
 - when it was necessary, the drafts were not accompanied by regulatory impact assessment;

- the majority of drafts promoting interests do not contain mechanisms of subsequent control;
- lack of responsibilities and sanctions is also typical for the category of the drafts promoting interests;
 - in case of majority of drafts through which public-private partnerships were established, the compulsory stages and conditions for promoting them were not observed: the feasibility studies were missing, financial calculations were not presented, necessary endorsements and coordination were not obtained (or at least were not published);
 - in case of the draft normative acts, through which it was decided to create industrial parks, a number of gaps at the legislative level is identified, especially in the part related to the correlation between the benefits provided to the administrators of the industrial parks versus the responsibility they have;
 - promotion of interests in other categories than those indicated in the above-mentioned typology is occurring in a spontaneous, ad-hoc way, and this already represents an alarming signal for the NAC experts;
 - when all the accompanying acts and documents necessary for promoting drafts in distinct areas are missing, it is extremely difficult to assess the costs of potential prejudices, as certain benchmarks which could be identified by experts, may have speculative nature and could distort the reality;
 - the AE exercise succeeded to anticipate and avoid an imposing volume of potential prejudices (from rejected or withdrawn drafts), even in relation to those which could not be avoided.

RECOMMENDATIONS:

- to develop a section on the web page of the Government especially dedicated to draft normative acts promoted by authorities (the web-page of the Parliament may serve as an example, it allows monitoring the path of the drafts registered in the legislative authority);
- to exclude the vicious practice applied by the authors of draft normative and legislative acts of requesting AER in shorter deadlines than the ones set by the law;
- to establish directly the binding nature of the AER for the draft normative acts subject to AE: the draft is not included on the agenda of the Government meeting without the anticorruption expertise. Even though frequently it is invoked that these are only technical, operational, minor, and other drafts, it is important for them to pass through the anticorruption expertise, because in many cases, namely these “inoffensive, operational” drafts represented classical examples of corruptibility, including of interests’ promotion;
- the need for the authors of draft normative and legislative acts to observe the rules regarding the compulsory economic-financial reasoning, as the lack of this reasoning serves as basis for non-registering and non-reviewing the draft;
- a similar conditions should be also fixed in case of the drafts which must be accompanied by regulatory impact assessment;
- in the area of the public-private partnership, it is necessary for:
 - ❖ all the drafts to be accompanied by an-ex-ante analysis (a realistic anticipation of the new provisions) which would prove the predictability and viability of norms for the purpose of excluding the risk of prejudicing

the expressed public interest, especially, by prejudicing the area of state's and territorial administrative units' public property, their budgets and of the society interest expressed by provision of qualitative services for a reasonable, accessible, competitive, and transparent price, as a result of the public-private partnership implementation;

- ❖ all the drafts for public-private partnership of national interest to be coordinated with the National Council for Public-Private Partnership;
 - ❖ for every draft of public-private partnership to develop feasibility studies;
 - ❖ to ensure the compulsory endorsement by the Public Property Agency, according to the legal procedure, of the feasibility study for the projects of national interest, as well as for those of local interest;
 - ❖ to modify the legal framework regulating the area of public-private partnerships by making compulsory the review of terms of reference, as well as of the draft contract between the public partner and the private partner developed by the Commission for selecting the private partner by the authorities with duties in the respective area (e.g., Ministry of Economy, Ministry of Finance, Public Property Agency, Competition Council and other);
 - ❖ to implement an efficient and transparent system for implementing, monitoring, and checking the implementation of public-private partnerships – intensification of the activity of the Public Property Agency by informing the society regarding the carried out public-private partnerships, identification of deficiencies and barriers in the way of efficient fulfilment of public-private partnerships and annual presentation by the Government and civil society of consolidated reports;
 - ❖ to increase the transparency of the procedure for developing and adopting the terms of reference and the public-private partnership contract so as to prove that the norms covered in these documents observe the general public interest and do not promote group or individual interests with missing justification of the general public interest;
- in the area of drafts through which industrial parks are created, it is necessary to eliminate the drawbacks in the legislative area, which create preconditions for some subjects to avoid the normative framework and to benefit with bad faith from conditions for activity facilitation. Especially, it is important to establish comprehensive regulations, which would guarantee the observance and the balance between the patrimony interests of the state and the volume and nature of facilities the industrial park administrator and resident have, as well as the regulation of the situations after withdrawing the title of industrial park through the perspective of the previous findings regarding the respective topic;
 - taking into account that the majority of acts from the typology tackled in this chapter are adopted/approved through derogations from the general rules or establish important benefits for the subject of these drafts, it is appropriate for the mechanisms of subsequent control to be fixed in each of these drafts, and also to provide for adequate and deterrent sanctions for violation of conditions envisaged in the draft normative and legislative acts.

Annexes
