EFFECTIVENESS OF CORRUPTION PROOFING (2015-2016)

STUDY

The study presents the findings of corruption proofing carried out by the CAPC between September 1, 2015 - August 31, 2016 on the draft laws registered in the Parliament.

CHIȘINĂU, 2016

This publication is produced as a part of the Project "Corruption proofing of draft legislative acts" implemented by the Centre for the Analysis and Prevention of Corruption with financial support of ***MATRA Rule of Law and Good Governance Programme*** from Kingdom of the Netherlands.

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LIST OF ABBREVIATIONS AND ACRONYMS

CAPC	Centre for the Analysis and Prevention of Corruption
Concept of Cooperation	Concept of cooperation between Parliament and civil society, approved by Parliament Decision no. 373-XVI as of 29.12.2005
NBM	National Bank of Moldova
NAC	National Anticorruption Centre
Expertiza coruptibilității	The process of draft laws and other normative acts expertise in order to assess their compliance with the anti-corruption standards and to identify norms that favour or can favour the appearance of corruptibility elements (factors)
Corruptibility elements	Draft legislative and normative acts provisions, including omissions that generate or can favour symptoms and corruption acts
Guide	Theoretical and practical Guide for conducting corruption proofing of draft legislative acts and other normative acts, developed by CAPC
Law 780/2001	Law on Legislative Acts no 780-XV as of December 27, 2001 (Official Gazette of the Republic of Moldova no. 36-38 as of 14.03.2002)
MoJ	Ministry of Justice
Project	Project „Corruption proofing of draft normative acts”
Parliament Regulatory Act	Parliament Regulatory Act, approved by Law no. 797-XIII as of April 2, 1996 (republished in Official Gazette of the Republic of Moldova, 2007, no. 50, art. 237)

EXECUTIVE SUMMARY

The study is dedicated to assessing the effectiveness of corruption proofing in the Parliament autumn session of 2015 and spring session of 2016 and reflects the main trends and findings regarding the legislative process in this period of time and findings on the quality of laws in terms of corruptibility.

*During the period of September 1, 2015 - August 31, 2016 CAPC performed corruption proofing of **75** draft legislative acts taking over from the Parliament's website. At the moment of this study preparing, **27** of **75** draft laws reviewed by CAPC were passed, **1** rejected and **1** retired. The CAPC experts raised objections on **969** elements of corruptibility, found in the reviewed drafts.*

*Synthesis of corruption proofing reports showed that **the most percentage has the elements of corruptibility** from categories: I. Interaction of the draft with other legislative and regulatory acts - **33%**; II. Manner of exercising public authority duties - **28%** and VII. Linguistic expression - **15%**.*

***The efficiency of corruption proofing reports**, prepared by the CAPC experts, was measured by assessing the acceptance of **380** objections relating to the specific corruptibility elements, identified in the **29** experts reports on draft laws that the Parliament accepted/or retired. Legislator accepted **153** objections, which represents an efficiency coefficient of **40%**. In 2015 – 2016, legislator accepted most frequently to remedy the corruptibility risks detected by CAPC experts in draft laws from the following categories: **IV. Transparency and access to information (100%); V. Accountability and responsibility (71%), VII. Linguistic expressions (44%)**.*

***Areas of legislative interventions**. Members of Parliament, and the Government were concerned, in particular and even equal to three areas: justice and home affairs, economy and trade and budget and finance. Less concerned were areas: education, culture, religion and mass-media, as well as social area. Also during this period there is a greater preoccupation of MPs in the area I. "Justice and internal affairs, human rights and freedoms" and V. "Labour legislation, social insurance and healthcare" compared with the Government, which was more concerned with II and III areas (economy and trade, budget and finance).*

***Justification of draft laws**. During 2015-2016 years the sufficiency of the rationale from the explanatory notes takes disturbing connotations, and CAPC experts have pointed out that in case of 73% of draft laws the argumentation of bills was insufficient.*

***Trends in the process of drafting laws in 2015 - 2016**. Corruption proofing of draft laws identified the following trends in legislative creation area: Parliament applies an inedited modus operandi of draft laws voting; one of the main concerns of the legislator remains the finance and banking areas; quality of laws remains*

unsatisfactory; MPs set a new record concerning the share of the draft laws promoting interests uncorrelated with general public interest.

I. GENERAL CONTEXT. ABOUT PROJECT „CORRUPTION PROOFING"

The Project "Corruption proofing" was launched by CAPC in 2006 and is already implemented during over six stages with financial support of several donors [1].

Project Mission consists of: *„Prevention the spread of corruption in the Republic of Moldova by removing flawed norms from draft laws"*.

Corruption proofing: retrospective view, trends and perspectives

Project Objectives are concentrated on:

- identification of legal provisions that favour or can favour acts of corruption and presentation of recommendations for removing these risks from the draft laws;
- increasing the level of public oversight of the legislative activism of the MPs;
- ensuring the dissemination of balanced information about corruption and discrimination risks of the upcoming legislation from Parliament agenda.

Until present, CAPC has developed four analysis studies on the effectiveness of the corruption proofing mechanism[2] in which there were analysed the main findings of the experts reports prepared by the CAPC experts in the years 2006-2009, 2011 and 2012. Within the Study of 2015[3], (unlike previous assessments developed by CAPC), apart from standard findings on the effectiveness of corruption proofing during a reference period, there were raised compared issues on trends of legislative process in two legislature of the Parliament: XVI (2006-2009) and XIX (2010-2014), and some aspects on trends that were revealed in the years 2013-2014.

During 10 years, CAPC examined over 725 draft laws, mostly of them being taken over from the Parliament website and some expert reports were prepared and offered by CAPC at express request of some public authorities (regularly MoJ and NAC).

This Study refers to **Phase VII – September 1, 2015 – August 31, 2016**, implemented with financial support of ***MATRA Rule of Law and Good Governance Programme from Kingdom of the Netherlands***. Under this stage, CAPC ensured the corruption proofing of draft legislative acts registered in Parliament and of draft regulatory acts on express request of certain authorities; maintained the on-line database on deputies' activism in Parliament; and informed the public about various legislative initiatives under discussion and potential

[1] Description of previous stages of the Project is contained in Chapter I of the Study on the effectiveness of corruption proofing mechanism for 2012, which can be accessed on the CAPC website under section "Publications": http://www.capc.md/docs/Eficienta_expertizei_coruptibilitatii_in_2012.doc;

[2] [2] ***CAPC Study on effectiveness of the corruption proofing mechanism in 2012***: http://www.capc.md/docs/Eficienta_expertizei_coruptibilitatii_in_2012.doc;
CAPC Study on effectiveness of the corruption proofing mechanism in 2011: http://www.capc.md/docs/Studiu_2011.doc;
Study on effectiveness of the corruption proofing of draft legislative acts/others normative acts in 2006-2009:
http://www.capc.md/docs/Studiu_2006-2009.pdf

[3] http://capc.md/docs/STUDIU_EC_28%2004%2015_final.doc

identified corruptibility risks through periodical press conferences and press releases placed on CAPC webpage www.capc.md.

As previous studies, this Study is devoted to assessing the effectiveness of corruption proofing in 2015 - 2016 (*see* ***Chapter II*** *of this Study*) and reflects the main trends and findings regarding the legislative process in this period, including findings on the quality of laws in terms of corruptibility, drawn from several evaluation criteria followed in the experts reports (authors of the draft laws, intervened areas of legislative regulations, level of draft normative acts justification, promotion of interest/causing damages etc.).

The steps followed at carrying out corruption proofing were described in detail in previous studies[4]. It should be remebered that it is about:

- human resources involved in conducting coruption proofing:
  - ✓ **a lot of experts specialised in 5 different fields of legislation** described according to General Classifier of Legislation;
- tools used to perform corruption proofing:
  - ✓ **Guide on corruptibility expert review[5],** developed by CAPC experts and reviewed by the experts of Council of Europe;
  - ✓ **Electronic template for conducting corruption proofing reports: www.raport.capc.md,** electronic template that imposes to the experts to respect form and content conditions, that includes a standard set of questions to be answered by them and which facilitates the work of statistical synthesis of the expertise activity.

The CAPC expert reports follow and analyse several components of the draft law (Sample on how to fill in the Expert Review Report in electronic format is presented in ***Annex no. 1*** of the Study) and cover the following 4 blocks as follows:

I. General assessment
II. Draft law justification
III. Substantive evaluation of corruptibility
IV. Conclusions

Description of analysed components within each block of the Expert review report was highlighted in CAPC previous Studies on the effectiveness of corruption proofing mechanism, and can be also deducted from the structure of the Report shown in ***Annex no. 1*** of this Study.

All findings of the corruptibility expert reports are calculated in a statistical module of electronic report, which enables us to provide a statistical picture of the corruption proofing process, of the proven trends in the law-making process, of some deficiencies, omissions and deviations from the fundamental rigors of the legislative process that are outlined in the below chapters of this Study.

[4] ***Corruption proofing: retrospective view, trends and perspectives*** *(page 6)* http://capc.md/docs/STUDIU_EC_28%2004%2015_final.doc

[5] http://capc.md/docs/guide_capc_rom.doc

During the period of 2015-2016, except for publication on the CAPC website, all expert reports were submitted not only to the Informational and Analytical Department of the Parliament but also to the parliamentary committees, as well as to the MPs e-mail addresses available on the Parliament website.

I. CORRUPTION PROOFING IN 2015-2016

This Chapter provides analysis of the corruption proofing activity conducted during September 1, 2015 - August 31, 2016 from the perspective of the following criteria: legislative intervention areas; authors of draft normative acts; justification level of the drafts, the interests' promotions and damages attested in projects; corruptibility elements identified and their degree of acceptance by the authors of the bills.

It is necessary to clarify that CAPC has not taken over all the draft laws placed on Parliament's website for corruption proofing. Projects are passed through a first filter by the project coordinator which preliminary assesses if the draft is normative and if apparently contains some corruptibility risks and only after this preliminary assessment the draft is submitted for examination to an expert in the field.

The sample assessment for the period of reference (September 1, 2015 - August 31, 2016) represents **75 draft normative acts**, all of them being taken over from the website of the Parliament.

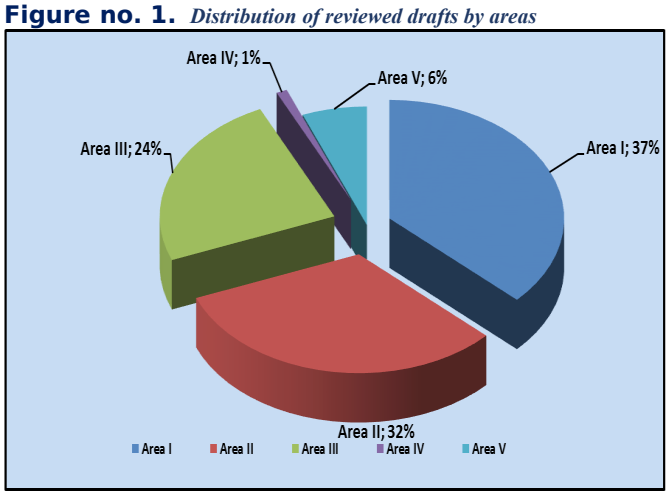
At the moment of this Study writing, from the total of **75** reviewed projects, **27** were already adopted, **1** draft law was withdrawn and **1** draft law was rejected. **46** draft laws are still pending in Parliament.

II.1. Areas of legislative interventions in 2015-2016

Corruption proofing is realized according to those 5 areas of expertise, as follows:

Area I	Justice and internal affairs, human rights and freedoms
Area II	Economy and trade
Area III	Budget and finance
Area IV	Education, culture, religion and mass-media
Area V	Labour legislation, social insurance and healthcare.

Figure no. 1. *Distribution of reviewed drafts by areas*



As it can be seen from ***Figure no.1***, from those **75 draft laws** reviewed in 2015-2016, most were related to the Area I **"Justice and internal affairs, human rights and freedoms" (37%)**, Area II "**Economy and trade**" **(32%)** and Area III **"Budget and finance" (25%).** Meanwhile, the two areas IV **(Education, culture, religion and mass-media)** and V **(Labour legislation, social insurance and healthcare)** remained in this period outside of legislators' attention, in this area

being reviewed only **1** and, respectively, **4 draft laws**.

CAPC constantly monitors since 2006 the trends and areas frequently targeted by legislative interventions, as reflected in the table below.

Table no. 1. Dynamic share of draft laws according to areas of expertise

Year	Area I	Area II	Area III	Area IV	Area V
2015 (2016)	37%	32%	24%	1%	6%
2014	23%	46%	25%	0%	6%
2012	28%	35%	13%	2%	22%
2011	46%	29%	16%	3%	6%
2010	43%	22%	31%	0%	4%
2009	44%	31%	11%	7%	7%
2008	47%	19%	17%	5%	12%
2007	39%	31%	12%	4%	14%

The statistics of the period of 2015-2016 shows once again the tradition founded in previous reports that at the top of legislative concerns remains the **Area I** - ***Justice, home affairs and human rights***, as well as the areas "Economy and trade" and "Budget and finance". The increasing trend of the number of projects in these two areas have been established in the Study of corruption proofing efficiency in 2014[6], when we have been mentioned that *„2014 was sufficiently "prolific" (compared to other years) in draft laws which relate to the Area "Budget and finance". [...] Increasing the number of bills in the Areas II and III could be explained, including the events in the banking system and financial-banking market, so-called "raider attacks" that have impose the need of an operative reacting, including at the legislative level, apparently to stop and warn, in the future, the application of fraudulent schemes in the banking system"*. It seems that the 2014 legislative interventions have not produced the desired effect, namely in 2015-2016 there continued the legislative processes of identification of legal solutions for reviewing the legal framework in the economic and financial fields.

II.2. The authors of the draft normative acts: Government vs. MPs

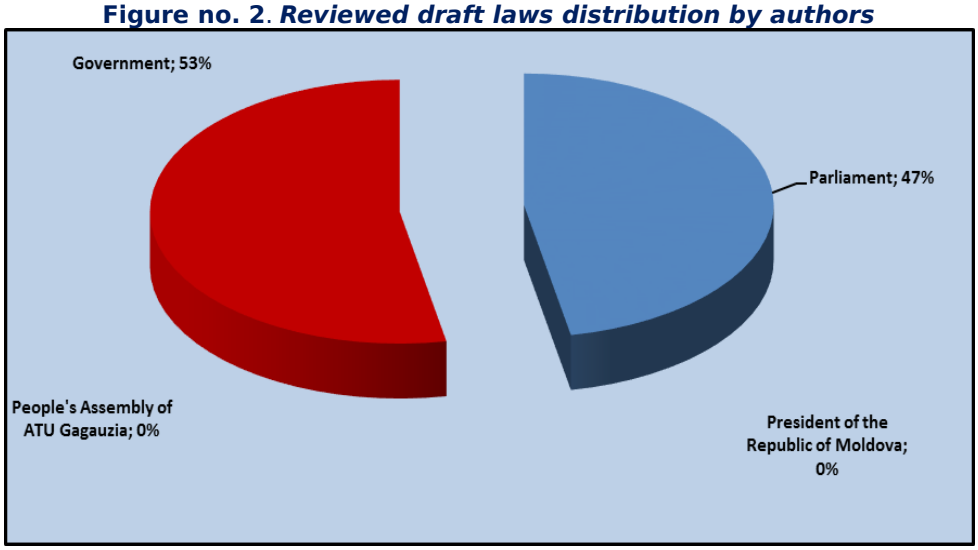
The Constitution of the Republic of Moldova expressly defines four categories of subjects entitled to legislative initiative: the Members of Parliament, the President of the Republic of Moldova, the Government and the People's Assembly of the Autonomous Territorial-Unit of Gagauzia.

In 2015 - 2016 CAPC, from the **total of those 75 draft legislative acts** put under the corruption proofing, **35** were initiated **by MPs**, and **42 bills** were submitted as

[6] http://capc.md/docs/STUDIU_EC_28%2004%2015_final.doc

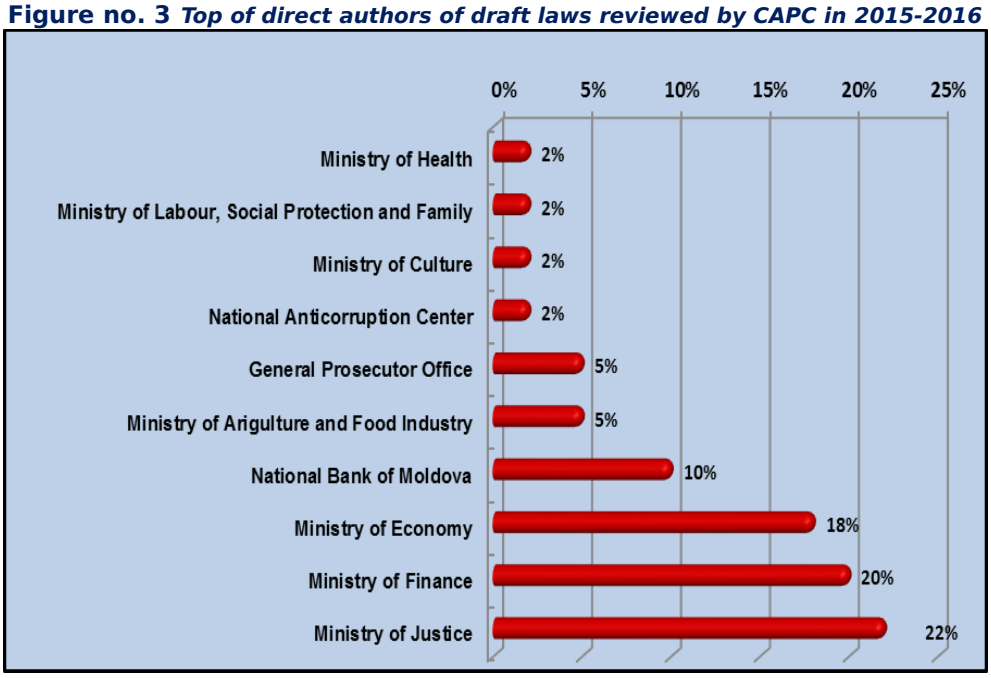
legislative initiative **by the Government**. Compared to previous years, the objects of corruption proofing have not been initiatives which come from the President or People's Assembly of Gagauzia. At the same time, compared to the previous period (2014) we find that the volume of bills submitted by deputies is increasing by **12%** (from 35% in 2014 to 47% in 2015-2016).

Figure no. 2. ***Reviewed draft laws distribution by authors***



In the process of corruption proofing conducting, CAPC also aims the "activism" of authorities that are direct promoters of draft laws. In this context, in terms of Central Public Authorities - direct authors of the draft laws, we built the following top (see ***Figure no. 3*** below).

Figure no. 3 ***Top of direct authors of draft laws reviewed by CAPC in 2015-2016***



Compared to previous periods we do not find spectacular developments: Ministry of Justice remains constant top leader, with the most legislative initiatives (22%),

followed by the Ministry of Finance (20%) and the Ministry of Economy (18%). However, compared to 2014 we find a decrease of the number of initiatives MJ (38% in 2014). Meanwhile, the number of bills promoted by the Ministry of Finance increased from 14% in 2014 up to 20% in 2015-2016. We reiterate that this trend is predictable, namely because even these authorities have the competence to promote the most important policies in critical areas for Moldova in the light of EU integration aspirations.

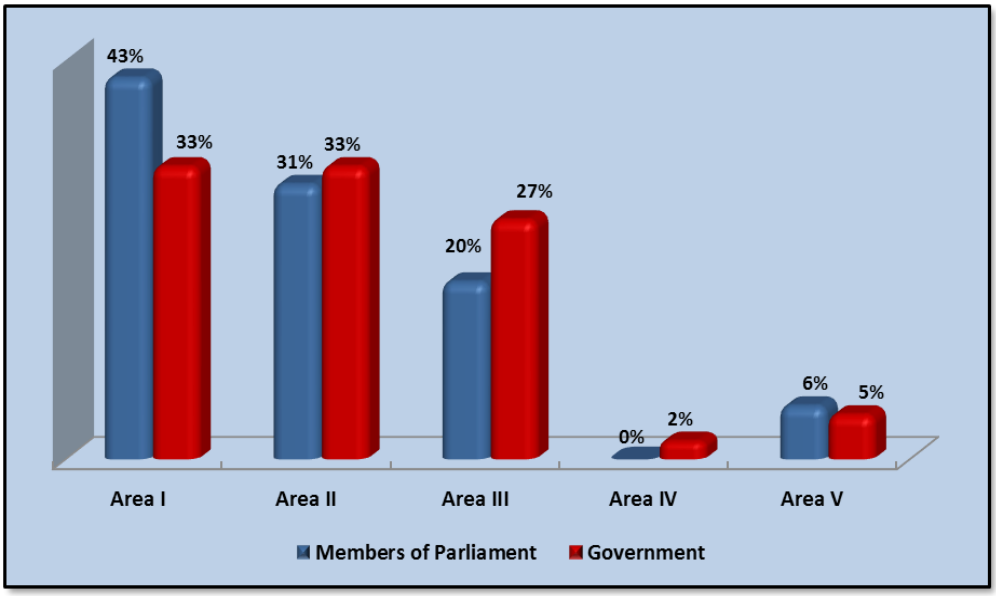
During the evaluated period we attest the entry into the legislative ground of two new authors: NBM and General Prosecutor Office. Although the initiative of those authorities is not objectionable itself, we should repeatedly invoke those referred in the previous study[7] with reference to the authors of the draft laws *"there are some problems regarding the presentation of legislative initiatives, or both the Competition Council, as well National Commission for Financial Market are not part of governmental garnish and are autonomous institutions. In such circumstances, it is important that the draft laws emanating from those authorities to undergo the usual procedural cycle of the legislative process, plus, it must be registered and presented in Parliament as a legislative initiative by the subjects that are expressly authorized with this competence by the Moldovan Constitution".*

Despite the recommendation formulated, we observe that this practice was however maintained and the respective initiatives were promoted with derogations from constitutional provisions. An explanation that seems to be plausible is special concern of the authorities during the last period on issues related to the "theft billion" and the need to come up with appropriate and prompt reactions. A brief analysis of the drafts of these two authorities will be provided in Chapter III of the Study concerning trends in the autumn-winter 2015 and spring-summer 2016 parliamentary sessions.

Like in other years, in 2015-2016 we continued to pursue the areas in which intervene the deputies, respectively the Government. In ***Figure no. 4*** below it can be viewed the main concerns in the legislative area of Members of Parliament versus the Government.

Figure no. 4 ***Legislative interventions areas: MPs vs. Government***

[7] http://capc.md/docs/STUDIU_EC_28%2004%2015_final.doc



Like in 2014 both **Members of Parliament** and **the Government** were concerned, in particular and even equal to three areas: justice and home affairs, economy and trade and budget and finance. Less concerned were educational, cultural, religious and social area. However, in this period of time it can be noticed **a greater preoccupation of MPs to the Area I and Area V** compared to the Government, which was more preoccupied by the **Areas II** and **III** (Economy and trade; Budget and Finance).

The distribution of corruptibility elements identified in the draft laws in relation to their authors highlighted the following situation (see ***Table no.2*** below).

Table no. 2. *Corruptibility elements in draft laws: MPs vs. Government*

Government	Members of Parliament
1. Ambiguous expression (55%) **2.** Legislative gaps (50%) **3.** Concurrent legal provisions (48%) **4.** Specification of duty according to stipulations as “have the right”, “can”, etc. (36%) **5.** Lack/ambiguity of administrative proceedings (35%)	**1.** Concurrent legal provisions (49%) **2.** Legislative gaps (43%) **3**. Ambiguous expression (37%) **4.** Unfeasible provisions (26%) **5.** Lack/ambiguity of administrative proceedings (20%)

In this context, it should be noted the finding from previous studies, according to which both the Government, as well as the deputies allow the presence of some similar corruptibility risks in promoted draft laws.

Compared to previous years, it returns a bad tradition in draft laws promoted by the Government namely the element of corruptibility "***Specification of duty according to stipulations as “have the right”, “can””***, *(36%)*". *The Study on the effectiveness of corruption proofing mechanism in 2012*[8] *noted that "it was attested a change of perspective in case of formulating competencies of public*

[8] http://capc.md/docs/Eficienta_expertizei_coruptibilitatii_in_2012.doc, pag. 19

authorities. Thus, if previously within the contents of bills it could frequently be found words "have the right", "can", then in 2012 this risk of corruptibility has decreased with about 20%". Analysis of expert reports shows that in over 36% of Government projects it was found this element of corruptibility. We will reiterate the danger of this element: *"Determination of competences by the wording "have the rights", "can" is a corruptible manner of determining the competences only when it formulates as rights, the obligations/duties of public authorities and civil servants. Corruptibility of this element lies in the discretion of officials which appears in case of using some permissive determinations of their powers, which were to be established in an imperative manner. This discretion can be abusively used by the official to not perform its legal obligations just due to permissive character of its competencies formulation. Corruptibility risk of these rules increases in case of missing the criteria to determine in which cases the officer "has the right" or "can" and in which cases has the rights and can to not perform his duties".*[9]

We once again reiterate the awareness related to the persistence in bills, legislative initiatives of the Government of corruptibility elements related to: **lack/ambiguity of administrative procedures**. **35%** of bills elaborated by the Government were affected by this risk.

II.3. Justification of draft normative acts

The art. 20 of Law 780/2001 expressly states the elements that should contain the explanatory note: *a) conditions that determined the need to develop the draft act, including the need to harmonize the legislative act with the provisions of the community legislation, the final results sought through the implementation of the new regulations; b) main provisions, the place of the act in the legislative system, outlining the new elements, social, economic and other kind of effects of its implementation; c) references to the corresponding regulations of the community legislation and the level of compatibility of the draft legislative act with the respective regulations; d) economic and financial justification if the implementation of the new regulations requires financial and other kind of expenditures; e) act of regulatory impact analysis, where the legislative act regulating entrepreneurial activity.*

As we previously mentioned, the explanatory note to the draft normative acts must provide a clear vision on the objectives, scope and future regulations. Respectively, publishing explanatory notes gives accessibility to the legislative process, facilitates public understanding of the need and reasons to promote laws.

II.3.1. Publication and availability of draft laws dossier

Since 2006 CAPC constantly monitored the publication of the explanatory notes on the Parliament website within a special section of the expert report. The critics formulated and CAPC insistences, as well as of others exponents of civil society, modified the situation: if in first years only 41% of explanatory notes were posted on Parliament site, in 2015 - 2016, it was no cases when a bill was placed on the website without being accompanied by explanatory note.

In the previous study we welcomed the amendments of 2010 to the Parliament Regulation, regulating the obligation of the standing committee consisting in

[9] Guide on performing corruption proofing. It can be found on: http://capc.md/docs/guide_capc_rom.doc

"placing, according to law, on the Parliament web-site of synthesis of recommendations received during the public consultation, in order to ensure transparency in decision making process". Also, ***Instruction on draft legislative acts' circulation in Parliament[10], approved by Parliament's Standing Bureau Decision no. 30 of 11/07/2012***, provides that *the dossier is completed with the original reports and summaries of the requested standing committee, co-reports and opinions of standing* committees, *General Legal Department's legal opinion, where appropriate, with the Government's opinion, opinions of other authorities, MPs and fractions amendments, civil society proposals and other relevant documents. After introduction in the legislative procedure, the draft legislative act and related documents in electronic version or, where appropriate, on paper, are submitted to the Informational-Analytical General Directorate, which* ***provides scanning and placing all documents and information received (opinions, expertise, reports, co-reports, summaries and other information related to procedural stage) on respective project to be scanned and placed on the official website of the Parliament****.*

The CAPC experts also monitored in this period of time the manner of respecting this provision of the Parliament Regulation and subsequent provisions of the mentioned Instruction. The findings that we have detached from expert reports in this regard are bleak. There were cases of sporadic publishing of documents accompanying the draft law, but these were not completed (alternatively and selectively being published the opinions, usually opinions of MoJ, anti-corruption expert reports of NAC and reports of standing committees). The Parliament continues to ignore this obligation/commitment. We reiterate the remark from the previous Study according to which "***it is important that the Parliament to persevere and put all due diligence to ensure the disclosure of all explanatory notes on its website and of accompanying documents for each draft law, thus providing unconditional access of all stakeholders to documents of general public interest***".

We also insist on the need to publish the proposals and objections synthesis to the draft laws between the two readings. We will just mention that CAPC presents practically in a permanent manner the expert reports on the draft laws, registered in the Parliament. Unfortunately, we never know if our objections/recommendations/proposals can be found in the synthesis of the standing committees. From this perspective, we consider extremely important that all objections and proposals synthetizes to the draft laws to be available on Parliament's website so as to know the manner and valuable volume of civil society contribution, including of the CAPC. Moreover, between the bills readings, interesting developments occur, new rules appear, some disappear, and it is not always clear who is the author of such amendments, which were the reasons to revise one or other rule, etc. Therefore, to avoid any speculation about alleged agreements and hidden interests, we strongly recommend to the Parliament to respect the commitment assumed through its activity Regulation and to ensure the entire publication of documents from the dossier accompanying the draft laws.

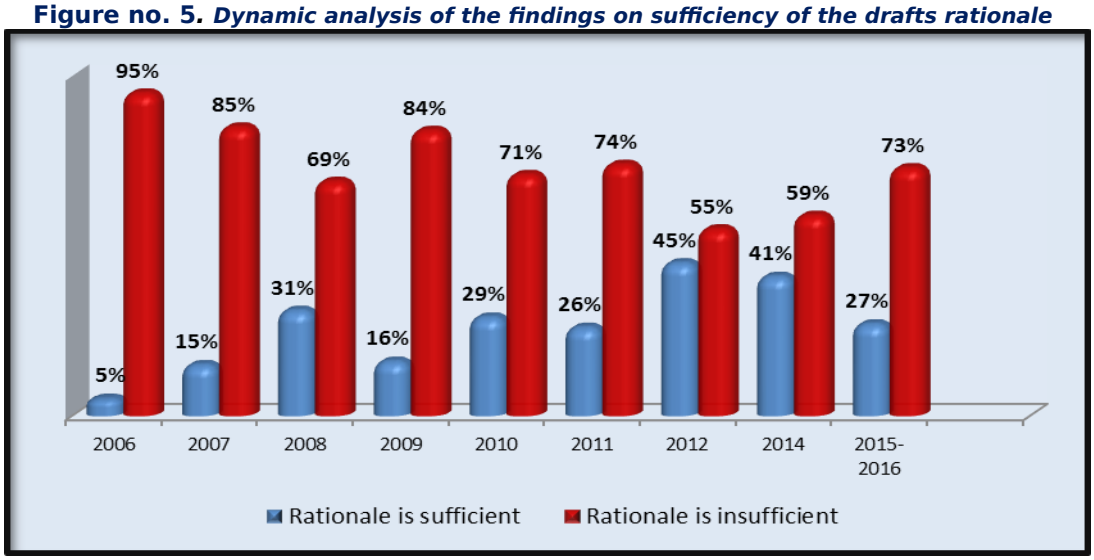
[10] Approved by Parliament Standing Bureau Decision no. 30 of 07.11.2012. It can be viewed on: http://www.parlament.md/CadrulLegal/Instruc%c5%a3iuneprivindcircula%c5%a3iaproiectelordeact/tabid/197/language/ro-RO/Default.aspx

II.3.2 Sufficiency of the rationale contained in the explanatory notes

Another aspect assessed by the CAPC experts when examining the justification of the draft legislative acts was the sufficiency of the rationale of the draft normative acts contained in the explanatory notes since 2006. The sufficiency of the draft acts' rationale was assessed in light of the compliance of the explanatory notes with the requirements imposed by Law 780/2001, the validity and thoroughness of the reasons invoked to promote the draft act, as well as the level of explicitness of the draft act's objectives pursued by the draft law.

For the period 2015 – 2016 we confirm the situation from the ***Figure no. 5*** below.

Figure no. 5. ***Dynamic analysis of the findings on sufficiency of the drafts rationale***



It can be observed that the bills sufficiency of rationale raises worrying connotations and CAPC experts have attested that in case of **73% of the draft laws** the justification is insufficient. This fact is regrettable or previously (2012) we noted positive evolutions when only half of the bills were classified as insufficient explained. It seems that over time, from 2014 until present, the situation degrades and the quality of motivation the legislative solutions is increasingly being criticized in experts' reports.

Below we reproduce two critical examples on sufficiency of draft laws rationale.

<u>Example 1.</u> CAPC Expert Report no. 725 of 05.08.2016 to the draft Law on amending and completing some legislative acts (Criminal Code – *art.55, 64, 126, etc.; Criminal Procedural Code – art. 201, etc.;) (revising the amount of penalties)*[11] (registered in Parliament under no. 269 of 16.06.2016)

Despite the rigors of art. 20 of the Law on legislative acts, the explanatory note does not contain a fundamental and comprehensive analysis of the conditions imposed to draft the bill and of the aims pursued through the implementation of new regulations, and of the main provisions, including the effect of their implementation. [...] the draft law is not explained from economic and financial point of view, also the act is not accompanied by the Act of regulatory impact analysis, the draft having eventual an effect on business activity too (for example: the amendments proposed to the Art.

[11] http://capc.md/ro/expertise/avize/nr-688.html

241 of the Criminal Code – Conducting entrepreneurial activity). Taking into account the fact that, finally, there will essentially increase the amounts (minimum and maximum) of criminal penalties and legal offenses, the draft law had to be preceded by a fundamental and comprehensive analysis of delinquencies and judicial statistics. ***The author is not convincing enough in arguing the draft law. Thus, the issues raised (ineffectiveness of sanctioning mechanisms) could not be generated by the sanctions, which, according to the author, are not sufficiently dissuasive, but by the integrity problems, faced by law enforcement agencies (arbitrary, discretionary and selective activity), and also by the inefficiency of authorities to ensure enforcement of judgments, etc.*** *Efficiency of sanctioning mechanisms is not determined by quantum of sanctions, but by serving of punishment. Moreover, no sanction mechanism is effective if it is not proportionate and it is not perceived as a fair (sanction versus damage, penalty versus real possibilities of execution). In this respect, obviously, it should be taken into account the social and economic realities. But in addition to currency inflation, the authorities should be guided by the real citizens paying capacity (the dynamic of incomes average of the population). Or, punitive mechanisms should not have the aim of greater budget accumulations but should ensure the punishment of an act and prevent a possible recurrence of crime.*

Example 2. CAPC Expert Report no. 711 of 09.06.2016 to the draft Law on completing the *Criminal Procedural Code no. 122-XV of 14.03.2003 (art.93, 262, 273)*[12] (registered in Parliament under no.202 of 11.05.2016) *[...] Within the content of the explanatory note we did not find references to the conditions that imposed the need to give to the State Tax Institution competencies in finding offences. Given arguments would be applied to any other public body, or, the area of crimes regulated by the criminal law covers areas "administered" by various public authorities and institutions. Within the explanatory note there were not reflected any goals pursued through the implementation of new regulations. The content of the explanatory note does not offer a clear view on why the offenses stated in the art. 241-242, 244, 244/1, 250-253 and 335/1 of Criminal Code, and no others, were given into attributions of the State Tax Institution. How this institution could found, for example the transportation, storage or sale of excisable goods without marking them with control stamps or excise stamps (art. 250 of the Criminal Code of RM), the acquiring, alienation in cases that law does not permit, the concealment of pledged goods, leased, seized or confiscated (art. 251 of the Criminal Code of RM) or illegal manufacture of state marking signs, putting into circulation and their use (art. 250/1 of the Criminal Code of RM)? [...] The explanatory note has no reference to an economic and financial justification of the needs of its implementation, which seems strange, since it supposes that in the exercise of new competencies it would be required revisions to the staff, possibly its increase, as well as material and financial insurance of the institution.* [...] ***we find that the explanatory note [...] is a superficial, absolutely insufficient note to promote the bill and presented arguments are devoid of reasoning very accurate and convincing that even this institution has to be the state body to find offenses, particularly of these crimes***".

We reiterate the finding from previous study[13] concerning "the need for a responsible approach towards the process of drawing up the explanatory notes and to ensure their quality, so that the general public, which is the main beneficiary of the law, to know and to understand why at a certain stage "game rules" set by laws should be changed, to know what are the pursued goals and all the potential benefits of new regulations. ***Maintaining an opaque framework to promote***

[12] http://capc.md/ro/expertise/avize/nr-673.html

[13] http://capc.md/docs/STUDIU_EC_28%2004%2015_final.doc

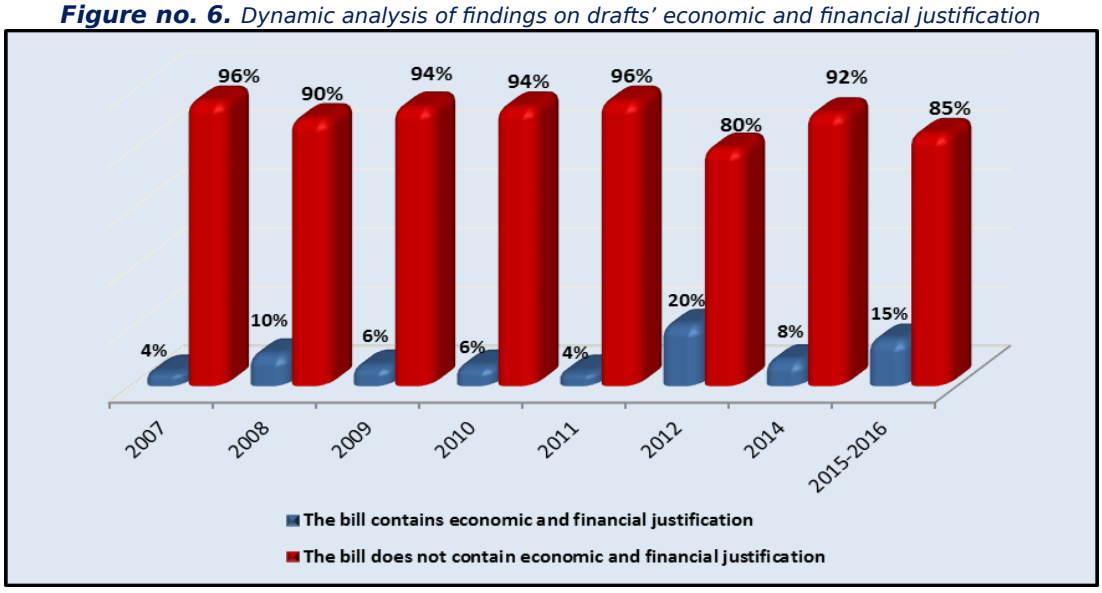
the adoption of draft laws creates multiple suspicions and significantly affects the trust given to elected officials. Moreover, such situation raises doubts to the correctness, opportunity, efficiency and relevance of promoted legislative solutions."

II.3.3. Economic and financial rationale of draft laws

Within corruption proofing activity, CAPC experts pays particular attention to bills whose implementation needs financial and other expenses, but which: lacked economic and financial justification; have insufficient or formal economic and financial justification; assign costs to public or private subjects of law, without consulting/correlation or contrary to their interests; involve overspending in relation to the public interest.

From projects subject to corruption proofing during 2015 - 2016, **55% were assumed financial and other expenses** (economic and financial justification is mandatory according to letter d) of Article 20 of Law 780/2001), of which **only 15% were justified economic and financial**.

Figure no. 6. *Dynamic analysis of findings on drafts' economic and financial justification*



Related to the authors of the bills, economic and financial rationale was present only in the explanatory notes attached to the draft laws initiated by the Government, while **14 deputies' draft laws**, put under corruption proofing and which supposed expenses **did not contain at all the financial and economic rationale**.

Even if compared to previous years, including 2014, we found that there was an increase of the number of draft laws economically and financially explained, during the evaluated period there were a number of bills with strong financial impact, which did not contain at least a minimal assessment of bills costs and did not offered explanations in respect of the proposed solutions. The most relevant and negative example serves the draft Law on issuing state bonds for satisfying by Ministry of Finance the payment obligations derived from state guarantees no. 807

of 17.11.2014 and no. 101 of 04.01.2015, the purpose of which, according to the explanatory note "*it stemmed from the need to ensure the respect of the Memorandum of agreeing provisions signed between National Bank of Moldova and Ministry of Finance on March 9, 2016 which provides the issuance of state bonds for conducting by the Ministry of Finance of the payment obligations derived from the state guarantees nr.807ss from17.11.2014 and nr.101ss of 01.04.2015. In this regard, according to the draft law, the Ministry of Finance will issue and send to the NBM the bonds at par value, at a fixed interest rate, during up to 25 years in a total volume of up to 13583.7 million lei, with effective interest rate of 5 percent".*

CAPC criticized both the sufficiency of draft law argumentation as well as its economic and financial rationale, as follows.

> **Example of economic and financial rationale criticism of the draft law** is ***the CAPC Expert Report no. 720 of 15.07.2017 to the draft Law on issuing state bonds for satisfying by Ministry of Finance the payment obligations derived from state guarantees no.807 of 17.11.2014 and no.101 of 01.04.2015***[14] **(registered in Parliament under no. 257 of June 8, 2016)**
>
> *Explanatory note does not contain an economic and financial rationale, but it was necessary because the draft law involves major financial expenses. It is about issuing state bonds to reimburse the amount of 13.5 billion lei, remained overdue after the disappearance of the billion and liquidation of Banca de Economii, Unibank and Banca Sociala. Similarly* ***, the author does not perform any calculation on annual rate of 5% as provided in the bill, to the mentioned amount. Or, according to some calculations, the interest that represents about 678 million lei per year, without taking into account the payment of main amount****.*
>
> *Additionally,* ***the author did not bring information and dates on how there have been used the guarantees granted by the Government to the National Bank of Moldova in the period of November 2014 - April 2015. Moreover, the explanatory note does not contain any information on the real situation in the Moldovan banking sector and on the recovering sums of money****.*
>
> *In this context, we reiterate the need of an economic and financial analysis, as part of a bill, but which is lacking in this case and the subjects with the right of legislative initiative shall not use in the argumentation of proposed legislative options. Promoting the bill without an economic analysis, urgently, indicates the fact that it tries to avoid additional barriers in adopting the law, which brings no benefit to the lawmaking process.*

Respecting the tactics of "Chinese drop" applied by CAPC during the corruption proofing of draft laws activity and in its cooperation with Parliament, we insist on recommendations made in previous studies regarding "***the need to elaborate a methodology on evaluation laws cost, including the possibility of developing a software that would allow to individuals less initiated in the financial and economic area (employees of public authorities responsible for drafting and MPs) to conduct an economic and financial assessment of the draft laws costs. We do not insist that this assessment to be accurate, but it is necessary that this evaluation to be when the project***

[14] http://capc.md/ro/expertise/avize/nr-684.html

implementation requires financial expenditures, logistics etc., even if it will be rudimentary, approximate".

II.3.4 Compatibility of legal framework with the acquis communautaire and international standards

A constant aspect pursued in corruption proofing activity is how the drafts authors take care of proposed legislative solutions compatibility with the acquis communautaire and relevant international standards. Such monitoring is required under Article 20 of Law 780/2001 which establishes that the explanatory note should contain "c) references to the correspondent regulations of the community legislation and the level of the compatibility of the draft legislative act with the regulations in question". The CAPC experts outlined in their expert reports the references to the acquis communautaire and to relevant international standards (in the text of the draft act or in the explanatory note).

The generalization of the experts' comments and findings pertaining to the draft legislative acts, which were accompanied by explanatory notes, proved that from the draft legislative acts under examination, in **6 draft legislative acts (8%)** reviewed were made references to the international standards and references both to acquis communautaire and international standards were made in **10 draft legislative acts (13%)**.

In comparison with findings in previous studies, regarding the compatibility with international standards and to the acquis communautaire, during 2015 - 2016, it also continues the same uncertain and stagnation situation at this chapter, the draft laws authors seeking, permanently, the need of harmonization and compatibility of the national legal framework to the international standards and to the acquis communautaire.

We reiterate that, the presence of express references to the acquis communautaire, even in the text of draft laws, did not signify and do not necessarily mean a perfect synchronization and harmonization of national legislative provisions with Community law or international standards. Usually, ensuring compatibility reduces the mechanical handling and insertion of standards and rules, neglecting the regulatory and institutional framework of our country. In this context, we reproduce below an excerpt from a CAPC expert report:

> ***Extract from the expert report no. 677 of March 31, 2016***[15] **to the draft law amending and supplementing some legislative acts (the Law on Internal Trade - art.21'2; Code of Administrative offences – art. 273, 400, 408) (*prohibiting the use of plastic bags*), registered in Parliament under no. 77 of 03.03.2016**
> *The author does not refer within the explanatory note if its provisions meet international standards and does not offer examples of other states practice on the area covered by this bill. The author, in the explanatory note, seems to be limited to declarative statements and simplistic description of the ecological problem in the Republic of Moldova without bringing explanations and synthetizes based on statistical data, surveys etc. and makes no reference to the corresponding Community legislation (European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste; Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004 amending Directive*

[15] http://capc.md/ro/expertise/avize/nr-636.html

94/62/EC on packaging and packaging waste; Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags; Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags' 2014/C 214/08) and to the compatibility of the draft law with these regulations expressly provided for by Art. 20 c) and Art. 23 par. (2) d) of the Law on Legislative Acts No.780/2001.

Moreover, the draft law cited in the example above and the explanatory note to it may be placed in the category "how not to motivate a bill" or the argument of the explanatory note' author that the recall of plastic bags "***it is not a complicated procedure, but it takes little imagination***" is out of any critics.

We reiterate, as cited in previous CAPC studies on the effectiveness of expertise that "such an approach of the harmonization process of the national legal framework to the European regulations risks become declarative, if the connection with real situation in the Republic of Moldova will not be achieved, especially at the application stage of the modern provisions in a less adapted area".

II.4. Damages and interests in the draft normative acts

In assessing period, CAPC experts further analyzed, separately, the promotion of some interests/benefits through the draft legislative acts that were examined.

Following the generalization of experts' findings, the promotion of interests/benefits in draft legislative acts was attested in 47% of them, which represents an increase of **20%** compared to 2014. The promotion of the interests/benefits was criticized by experts as being contrary to the public interest **in 60% of total number of draft legislative acts**, **increasing with 16% compared to 2014**.

Table no. 3. Dates on dynamics of promotion the interests in draft laws

Followed subject	2006-2009	2011	2012	2014	2015-2016
Draft law promotes interests/benefits	**54%**	**47%**	**24%**	**27%**	**47%**
Promotion complies to the public interest	**45%**	**27%**	**63%**	**56%**	**40%**
Promotion is contrary to the public interest	**55%**	**73%**	**37%**	**44%**	**60%**
Draft law does not promote the interests/benefits	**46%**	**53%**	**76%**	**73%**	**53%**

This situation raises concerns, given that the legislative process deviates from the general public interest and is geared to achieve some goals, private interests.

From the perspective of the draft laws authors promoting the general interests contrary to the public interest it is drawing an equally bleak picture.

Table no. 4 Dates on dynamics of drafts' share promoting interests contrary to the public interest: MPs vs. Government

Authors of draft laws	2006-2010	2011	2012	2014	2015-2016
Members of Parliament	**70%**	**52%**	**35%**	**60%**	**74%**

Government	**48%**	**43%**	**20%**	**44%**	**44%**

Within the study presented last year, we mentioned that "during 2006-2010 that interests' promotion has been frequently finding in deputies' drafts (70%) and less in Government drafts (48%). At the same time, during 2011 there was a downward trend for deputies, which in only half of their draft laws (52%) there was promoted certain interests. In Government case, for 2011, there was an insignificant decrease of the draft laws percentage that promotes interests (43%). In 2012 it was noted the same downward trend. It is about a significant reduction of drafts that promotes interests: concerning deputies it is about a diminishing of 17%, and in case of Government this decrease is more perceptible – 23%. With reference to the **2014 year, it can be noticed a consistent increase** of the number of bills that have been promoted interests against the public interest, being attested a percentage increase, practically equal, of the drafts promoting of interest: **with 25% for MPs and 24% for Government**".

During the evaluated period - **2015-2016** - we note that the Government has remained in the same percentage values of promoting interests **(44%)**, while the MPs have significantly excelled. Respectively, during this period we attested **the highest share in 10 years of draft laws promoting of interest: 76% of MPs draft laws** putted under corruption proofing have been criticized for promoting the interests (private, corporate) contrary to the public interest. We reproduce below a few examples of critics on promotion of interests.

> **Example 1 of the Expert Report no. 703 of May 27, 2016 to *the draft Law on amending and supplementing some legislative acts (the Law on Industrial Parks – Art. 11, 12, 15, etc.; Code on Administrative Offences - art.179'1; etc.), initiated by a group of MPs, registered in Parliament under no. 169 of April 20, 2016***
>
> *From the bill text it results express establishment and promotion of certain interests/benefits to the managing enterprise of the industrial park. The draft law grants to the managing company the opportunity to conduct business activities within the industrial park, to achieve practical strategies and programs for the development of the industrial park (p.5 of the draft law on completing the art. 18 para. (1) of Law no. 182/2010 with lit .c/1).* ***Potential danger to the general public interest is determined by the lack of specification in the bill of concrete business activities to be undertaken by the managing company of the industrial park****. However, according to Art. 3 of the Law on Industrial Parks, the managing company main activity is to manage the industrial park.*

> **Example 2 of the Expert Report no. 707 of May 27, 2016[16] to *the draft law on amending and supplementing the Law on private detective and security activity (Art. 3, Annex 2), the initiative of a Member of Parliament, registered in Parliament under no. 200 of May 10, 2016***
>
> *Apparently, from the bill text does not result the express establishment and promotion of certain interests or benefits, by group or individual, unrelated or contrary to the general public interest. However, this seems to be only an appearance, because the amendments follow to extend the area of activity of security agencies, concerning in particular, the activity of fire protection. The activity is governed by Law no. 267 of 09.11.1994 on fire safety. According to this law, installation and/or adjustment, maintenance of automated signaling and firefighting*

[16] http://capc.md/ro/expertise/avize/nr-669.html

and protection of buildings against smoke and notification in case of fire is performed based on a license granted under the Act 451-XV of 30 July 2001 on licensing certain types of activities [...]. However, we have to underline that the list of private detective and security activities (art. 6 of Law no. 283 of 04.07.2003) is exhaustive and does not include activities in the field of fire protection.
In conclusion, **we might suppose that it intends to permit legally carrying out fire safety activity, bypassing the mandatory requirements of the legislation**.
This fact exceeds the public interest and favors only the interest of people currently working in the field of "detective and security".

In case of draft laws initiated by the Government, qualified by experts as promoters of interest, we consider appropriate to invoke again the draft Law on issuing state bonds for satisfying by Ministry of Finance the payment obligations derived from state guarantees.

Example of criticism of draft law economic and financial explanation, *CAPC Expert Report no. 720 of 15.7.2016 on the draft Law on issuing state bonds for satisfying by Ministry of Finance the payment obligations derived from state guarantees no.807 of 17.11.2014 and no. 101 of 01.04.2015*[17] (registered in Parliament under no. 257 of June 8, 2016)

From the bill text results the establishment and promotion of specific interest/benefits. In fact, this bill regulates through special legal rules, the transformation in domestic debt of state guarantees granted by the Government to the National Bank through issuing a credit to those three banks. It could be understood the intentions of the Government arising from the situation with those liquidated three commercial banks, but to redress the negative consequences, we believe that from the beginning it had to be returned by the law enforcement bodies the "missed money" from those who are guilty in this respect.

*In this regard, we consider necessary further detailed examination of the advantages and disadvantages of the bill in relation to the transformation of the domestic debt in state guarantees granted by the Government to the National Bank**. Otherwise, this new financial burden will be placed on the citizens' shoulders, which, according to economic experts' calculations will have to reimburse through higher taxes over a billion lei annually for 25 years. Therefore, the promotion of this bill does not comply with public interest**.*

In light of statistics given above and of findings from experts' reports, we continue to urge that the promotion of interests to the detriment of public interest will throws down the Parliament' credibility and the promotion of "overlaid" draft laws apparently with good intentions fed society's perceptions on the alleged corruptibility of legislators.

II.5. Remediation of corruption risks: between acceptance and ignorance

Analysing the experts' objections, the corruptibility elements were considered in terms of:

1) share of objections for each corruptibility element from the total number of objections formulated for all elements

[17] http://capc.md/ro/expertise/avize/nr-684.html

*Sample: **969** objections in total for all corruptibility elements formulated in **75** expert reports.*

2) extent to which the Parliament/authorities accepted the experts' objections on the corruptibility elements, stipulated in the experts' reports
*Sample: **380 objections** in total for all corruptibility elements made in **27 experts' reports** on legislative acts passed by the Parliament and entered into force and published in the Official Gazette[18] and other **2 draft laws** of which **1** removed bill and **1** rejected bill.*

In order to organize the experts' objections related to corruptibility, 35 corruptibility elements that may refer to these objections were defined and grouped in eight categories:

I. Interaction of the draft with other legal and regulatory acts
II. Manner of exercising public authority duties
III. Manner of exercising rights and obligations
IV. Transparency and access to information
V. Liability and accountability
VI. Control mechanisms
VII. Linguistic expression
VIII. Other elements of corruptibility

From total number of **969** objections related to the presence of corruptibility elements in the reviewed bills, elements from the following categories have the largest share: I. Interaction of the draft with other legal and regulatory acts – **33%**; II. Manner of exercising rights and obligations – **28%** and VII. Linguistic expression – **15%**; (*for details see Table no.5 below and Annex 3 attached to this Study*).

Table no.5. Incidence of objections related to elements of corruptibility in each category out of the total number of objections related to elements of corruptibility in all categories

No.	Categories of corruptibility elements	%	number
I.	Interaction of the draft with other legal and regulatory acts	33%	427
II.	Manner of exercising public authority duties	28%	192
III.	Manner of exercising rights and obligations	9%	65
IV.	Transparency and access to information	2%	10
V.	Liability and accountability	7%	34
VI.	Control mechanisms	1%	5
VII.	Linguistic expression	15%	170
VIII.	Other elements of corruptibility	5%	66
TOTAL		**100%**	**969**

From **380** objections related to concrete corruptibility elements formulated in **29 expert reports** on draft laws that have already been adopted/or were withdrawn/rejected, legislator accepted **153** objections, which represents **40%.**

[18] Until September 20, 2016.

From **Table no. 6** below it can be observed that in 2015 - 2016 the legislator most commonly accepted the remedy of corruptibility risks detected by experts in the draft laws from the following categories: *IV. Transparency and access to information (100%); V. Liability and accountability (71%); VII. Linguistic expression (44%)*.

Table no. 6. *The extent to which the Parliament accepted the objections on elements of corruptibility, formulated by the CAPC experts and grouped by categories of elements*

No.	Categories of corruptibility elements	% of accepted elements	the number of elements accepted	the number of elements formulated
I.	Interaction of the draft with other legal and regulatory acts	**42%**	72	173
II.	Manner of exercising public authority duties	**37%**	26	71
III.	Manner of exercising rights and obligations	**24%**	8	33
IV.	Transparency and access to information	**100%**	1	1
V.	Liability and accountability	**71%**	5	7
VI.	Control mechanisms	**33%**	1	3
VII.	Linguistic expression	**44%**	29	66
VIII.	Other elements of corruptibility	**42%**	11	26
TOTAL		**40%**	**153**	**380**

In 2015 - 2016 there is again a reconfiguration of the top elements taken into account by legislators in relation to previous years, when it was shown a greater openness for taking into account of elements on “Ambiguous linguistic formulations”. However, it should be noted the openness of legislators who agreed to remedy the corruptibility risks related to ensuring “Transparency and access to information”, as well as the risks from the category „Liability and accountability”, risks that previously were frequently ignored and left without remedy.

Although, within the Study of 2014[19], we attested „a change of perspective when formulating public authorities’ attributions”, and the fact that the phrases as “have the right”, “can” record a continuous decline, the CAPC experts’ reports drafted between 2015-2016 attest the return in force of these elements, despite of constant critics. Also, we attest the continuous regress concerning the corruptibility risks arising from "concurrent legal provisions" "legislative gaps", which substantially affect the quality of laws and their predictable character. We reiterate the recommendation of CAPC Study from 2014, according to which: “***it should be clearly noted that only a clear and predictable regulatory framework ensures the effectiveness of its implementation. Otherwise, any good intentions of the legislative forum will fail if they are drafted in a lacunars manner and regulatory details will be "passed" to the implementing authorities, which apparently keep the same tendency to create convenient work conditions at the expense of the citizen***”.

For 2015-2016 years we attest a decline by **9%** of CAPC experts’ reports effectiveness: from **49% in 2014** to **40%** in **2015-2016**. The causes of such situation could be of various origins. Earlier, we have mentioned that if the draft laws promote separate interests, there also decrease the chances that corruptibility

[19] http://capc.md/docs/STUDIU_EC_28%2004%2015_final.doc

objections reported in the CAPC reports will be considered. However, considering the fact that some of the corruptibility objections were related to passed laws in the banking sector and in the area of criminal and criminal procedure legislation, we tend to think that the Parliament has insisted and assumed itself the responsibility for fairness and integrity of these laws provisions, important for correcting some pressing situations, but criticized by CAPC for potential risks which may occur in the implementation of the rules.

III. TRENDS OF LEGISLATIVE PROCESS IN 2015-2016

This chapter is dedicated to the presentation of the legislative process trends identified in the period of September 2015 - August 2016. The trends listed in this chapter are drawn from the findings of the expert reports, as well as from the monitoring of the Parliament plenary sessions and from pursuing deputies' activism.

A new modus operandi of Parliament

During the period of 2015 - 2016, the Parliament began to implement a more inedited procedure of examination, discussion and adoption of draft laws. Thus, at the beginning of each plenary session it is fixed an hour for voting mechanically the draft laws included in the agenda of the plenary session. In these circumstances, the deputies have the discretion to choose: either they are physically present throughout the plenary session or they come only at the vote time. Apparently, such procedure should not attract too much criticism because it supposes that the deputies examined the bills under debate in the standing committees to which they belong and have already determined their vote option on the one or another bill respectively, the presence and participation in debates are no longer interested in. However, it is sometimes dismayed to watch the plenary sessions of Parliament when the bills are presented in a semi-naked hall. Experience shows that in some cases there have been absurd situations, when some of the deputies' amendments

have voted twice: once at the draft law presentation (the proposal was rejected) and the second time, when into the hall it was present the majority of deputies.

In our opinion, such practice is counterproductive and creates the impression that MPs are not interested in exercising their fundamental mission – that of lawmaking. New approach of voting process is not established in Parliament Regulation, therefore the suspicions regarding the indolence of the deputies makes Parliament to lose continuously credibility as long as plenary sessions do not represent a real platform for discussions of the legislative solutions.

Massive and contradictory legislative initiatives in the banking and financial law

As mentioned in previous chapters of the Study, in 2015-2016 legislators were concerned with greater dedication for financial and banking legislation. Apparently, this dedication has been linked to the scandal around the "theft billion" and the need to remedy the presumed inadvertencies and inconsistencies of legal framework. CAPC has reviewed a great part of the initiated bills in this area. CAPC has formulated a set of criticisms to the provisions concerning the documents verifying the legality and appropriateness of regulatory acts of National Commission for Financial Market (NCFM) and National Bank of Moldova and the responsibility of decision makers and officials within the regulators. Being so, even if it was speculated that a part of the responsibility for the events in the banking sector lies with the representatives, decision makers in the sector, the Parliament instead of adopting rules to increase their level of accountability, adopts rules diametrically opposed: it practically saves them from any liability. Within the expert report no. 662 of February 18, 2016[20] we mentioned that *„prohibited rules on the responsibility of management bodies members and staff of NBM and NCFM deviate from the principles of equality and legality, or the board members and staff of other autonomous public authorities have no such interdictions (privileges) [...] these derogating rules and additional guarantees for a determined circle of subjects in accordance with the principle of proportionality must be viewed in relation to their possible risks of danger to third parties, which may be limited in their rights. [...] It is necessary to mention that the recommendations of international bodies referred to by the explanatory note states the need to ensure protection and additional assistance in disputes regarding the actions committed in good faith, but does not provide the deliverance from civil, criminal and administrative liability of the management bodies members and employees of NBM and NCFM"*.

Despite the criticism, the Parliament adopted the draft version proposed by NBM, which, obviously, is the main beneficiary of derogating and privileged rules.

In addition to these two trends, we have to reiterate and a part of earlier trends which basically remained unchanged.

Laws quality

Conducting corruption proofing of draft legislative acts for 10 years demonstrates a constant presence of *corruptibility elements of concurrent legal provisions and Legislative gaps*. This situation, in fact, shows poor quality of draft laws.

[20] http://capc.md/ro/expertise/avize/nr-626.html

We once again reiterate: "*the quality of laws affects their implementation quality, especially the quality of judgments. Consequently, there should be an interdependence between the accountability of judges and parliamentarians (political responsibility) for the laws quality, if the error in the solution of the judge is caused by contradictory legislation, inconsistent, unpredictable or unstable, or if the normative act has been declared unconstitutional, or if Parliament exonerated itself of the obligation to legislate, although it had to do it, in connection with the need to execute the general measures stated by the European Court of Human Rights*".

Approximation of legislation with the acquis communautaire: relative or declarative

Although the governance declares for many years its plenary and irreversible assumption to follow the way of European integration, including through ensuring the compatibility of national legal framework with the acquis communautaire, the generalization of findings of corruption proofing on this element of the legislative process reflects a bleak picture: the approximation of legislation seems to be more declarative.

The analysis of this aspect in experts' reports shows that European standards are taken automatically, usually entirely, but sometimes this takeover is selective and it is not clear how compatible and viable will be these provisions with European vocation on a vacant land and in an institutional framework and, why not, morally unprepared to inoculate these new values. From this perspective, it is important for the legislature to take care that the law approximation process to acquire a systemic nature, well targeted, coherent, consistent and durable.

Civil servants keep margin for manoeuvre

During 2015 - 2016 it has been identified the return in draft laws initiated by the Government of corruptibility element – "*have the right", "can*". As it was noted in previous studies, the representatives of authorities have the temptation to arrogate powers and leave space for manoeuvre, which may eventually generate abuses, including corruptibility situations.

From this perspective, it is very important that within the process of preparing the draft laws, establishing duties and the degree of their expensing to be treated with maximum caution, to be left no space for interpretation and to be allowed none unfounded derogations.

MPs have set a new record concerning the share of draft laws promoting interests

In 2015-2016, over 76% of the deputies' bills were qualified as promoters of interest, i.e. the largest share in the history of corruption proofing performance (previously the largest share was 70% in 2006-2009). CAPC experts noted the need to respect the public interest and the risk of its abolition through private, corporate, cliental interests of MPs. This disturbing trend also contributes to diminish confidence in MPs who seem to be more concerned about their own interests than the interests of those who elected them.

Financial rationale of the dtafr laws

Even if in 2015-2016 it increased the number of draft laws accompanied by economic and financial rationale, their share anyway is not significant (15%). It is regrettable that even the authorities (Ministry of Finance, Ministry of Economy) which have the expertise and infrastructure needed to perform the bills costs do not respect this mandatory rigor of Law 780/2001. We will insist on the findings outlined in previous studies that the "lack of a clear vision on the cost of a bill and the implementation of laws without adequate economic and financial rationale affects significantly their implementation and practically in many cases, these rules are inapplicable. Lack of strategic visions on costs of promoted bills implementation seriously affects the legitimate expectations of the public too - the main recipient of normative acts, expectations that become illusory in the case of non-application of legal norms because of lack of financial support".

IV. CONCLUSIONS

Synthesis of CAPC corruption proofing activity during two parliamentary sessions (autumn 2015 and spring 2016) allowed the formulation of the following conclusions.

Most concerns raised in previous CAPC studies on the effectiveness of corruption proofing were not removed/resolved during the two parliamentary sessions. All aspects constantly pursued in CAPC corruption proofing experts' reports are declining:

- level of justification and sufficiency of the argumentation of the draft normative acts is continuously decreasing;
- transparency of whole dossier accompanying the draft laws still remains a challenge for Parliament: there is not ensured the access to the synthesis of proposals/objections to the bills, including between the two readings, the opinions and reports of parliamentary committees are not always published on the Parliament's website, etc.;
- calculation of laws costs remains a major challenge for the issuing authorities, including institutions that have the expertise and the necessary infrastructure (Ministry of Finance, Ministry of Economy);
- in the area of lawmaking process there are admitted and intervene new subjects: (National Bank of Moldova, General Prosecutor Office), which are not entitled with the right of legislative initiative under the Constitution;
- authorities intervened with controversial solutions to address problems in the banking sector and financial market: instead to empower the representatives of these sectors, they adopt solutions that practically absolve them of any control and accountability;
- it continues to remain outside of attention the education, culture, religious and media, and social/labor law areas. There are some sporadic initiatives for these two areas, but it is regrettable that the authorities are not strategically and planned preoccupied with the modernization of these areas;
- promotion of the interests through the bills has already attain alarming connotations, especially in case of MPs initiatives;
- in the draft laws there reappeared the corruptibility elements that previously seemed to have been removed from the traditions of formulating legislative rules ("have the right", "can"), elements that widen the discretion margin of officials;
- Parliament continues to ignore the corruptibility risks reported in the experts' reports, including of CAPC. During the period covered by this Study, the degree of acceptance and remedying of the corruption risks decreased by 9%.

It should be mentioned that the CAPC, in its activity of corruption proofing, presents concrete recommendations per each reviewed draft law and each corruptibility element identified. We consider that the legislators should take into account the corruptibility risks anticipated by the CAPC experts and to remedy them even at the drafting stage. However, the findings shown above demonstrates the need to continue keeping lawmaking process in the eye of civil society in various ways, including through corruption proofing of draft legislation. Unquestionably, this monitoring tool of drafting laws applicable already over 10 years has demonstrated

its effectiveness and universality through the fact that, on the one hand, provides a “screening” to the process of lawmaking, and on the other hand, by formulating recommendations, contributing to the improvement of quality of laws.

ANNEXES

Annex no. 1: Sample of how to fill in the Expert Review Report in electronic format

Annex no. 2: List of corruptibility elements

Annex no. 3: Efficiency of objections related to the corruptibility

Annex no.1: Sample of how to fill in the Expert Review Report in electronic format

[Date of report submission in Parliament]

EXPERT REVIEW REPORT on

the draft Law *[…]*

Type of the draft act: *[…]* Area: *[…]*

Registered in the Parliament under no. *[…]* as of: *[…]*

General assessment

1. The author of the legal initiative is *[…]*, author himself – *[…]*

2. Category of the proposed legal act: *[…]*, which corresponds/does not correspond to Article 72 of the Constitution and Article 6-11, 27, 35, and 39 of the Law on Legal Acts, No.780-XV as of December 27, 2001?
Insert below the exact text in order to explain what does not correspond or to show other ideas related to this issue

☐ The expert has objections to the category of the legal act

3. The goal of draft promotion.
Point out the aim of the draft that results from the explanatory notes or immediately from the text of the draft (from the Preamble, approval clause or a separate article), if it exists. If you have another opinion or you want to complete the aim stated by the authors, point out expressly this fact.

Draft law justification

4. The explanatory notes to the draft law subject to the expert review *[is/is not]* placed on the Parliament website. We think that in this way the Parliament *[observes/does not observe]* the principle of legal process transparency and principles of cooperation with the civil society. Point out also other ideas/opinions.

Did the Parliament observe the cooperation terms with the civil society?

YES ☐ **NO** ☐

6. Sufficiency of justification.

Write your opinion if the explanatory notes contain sufficient justification of the draft legal act promotion.

Is the justification sufficient? **YES** ☐

NO ☐

7. Compatibility with the community legislation and other international standards.

Mention the existence of references to the community legislation and other international standards in the explanatory notes or in the text of the draft or the absence of these references in case if the expert identified some similar acts.

Does the note/draft contain references to acquis communaitaire?

YES ☐ **NO** ☐ Does the note/draft contain references to other relevant international standards? **YES** ☐ **NO** ☐

8. Economic and financial justification.

State the existence and relevance of the financial and economic justification of draft provisions in the explanatory note.

Does the draft implementation induce financial expenditures? **YES** ☐ **NO** ☐ Does the explanatory note contain the economic and financial justification?

YES ☐ **NO** ☐

Substantive assessment of corruptibility

9. Establishment and promotion of interests/ benefits.

State if the draft establishes and/or promotes group or individual interests or benefits and if in the expert's opinion this fact can be legally justified or not.

Does the draft promote interests, benefits? **YES** ☐

NO ☐

Does the promotion of interests/benefits take place observing the public interest?

YES ☐ **NO** ☐

10. Damages caused by applying the act.

State if the promotion of the act is susceptible to damage any categories and if in expert's opinion fact can be

If applied, will the draft cause damage? **YES** ☐

NO ☐

Does the damage of interests/benefits take place observing the public interest?

YES ☐ **NO** ☐

11. Compatibility of the draft with the national legislation.

Is the draft compatible with the national legislation? **YES** ☐

NO ☐

12. Linguistic formulation of draft provisions.

Does the expert have significant objections on linguistic formulation? **YES** ☐

NO ☐

13. Regulation of the activity of public authorities.

State if the draft refers to public authorities: organization, functioning, competences, etc. and appraises generally these regulations from the perspective of presence or absence of corruptibility elements. Formulate detailed comments on the problematic formulations related to the activity of public authorities provided by the draft in the table with the detailed assessment of potentially corruptible provisions.

Does the draft regulate the activity of public authorities?

YES ☐ **NO** ☐

14. Detailed analysis of potentially corruptible provisions.

In case if corruptibility elements are found in certain provisions of the draft, the expert shall fill in the table below.

No. of objection	Article	Text	Objections	Corruptibility elements	Recommendations

Conclusions

Annexes

Annexes

Annex no.2: List of corruptibility elements

I. Interaction of the draft with other legislative and regulatory acts

1. Provisions of reference
2. Regulatory competence transmission provisions
3. Concurrent legal provisions
4. Legislative gaps
5. Unfeasible provisions
6. Exaggerated costs for legal provision enforcement in relation to the public benefit
7. Provisions establishing unjustified waivers

II. Manner of exercising public authority duties

8. Enlarged duties of regulation
9. Excessive duties/duties contrary to Regulations
10. Duties that admit waivers and abusive interpretations
11. Parallel duties
12. Specification of duty according to stipulations as "have the right", "can", etc.
13. Cumulating of duties to develop laws, to monitor their implementation and to give sanctions
14. Inexhaustive, ambiguous and subjective grounds of an authority's refusal to carry out certain actions
15. Lack/ambiguity of administrative proceedings
16. Lack of specific terms
17. Establishment of unjustified terms
18. Failure to identify the responsible public authority/subject the provision refers to

III. Manner of exercising rights and obligations

19. Promotion of interests contrary to the public interest
20. Infringement of interests contrary to the public interest
21. Excessive requirements for exercise of excessive rights/obligations
22. Unjustified limitation of human rights

IV. Transparency and access to information

23. Lack/insufficiency of access to information of public interest
24. Lack/insufficiency of transparency in functioning of public authorities
25. Lack/insufficiency of the access to information on the legal act

V. Accountability and responsibility

26. The lack of clear accountability of authorities (officials) for the violation of draft provisions
27. The lack of clear and proportionate sanctions for the violation of draft provisions
28. Mismatch between the violation and sanction

29. Confusion/duplication of types of legal liability for the same violation

30. Inexhaustive grounds for liability

VI. Control mechanisms

31. Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public)

32. Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities

VII. Linguistic expression

33. Ambiguous expression that allows abusive interpretation

34. Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena

35. Introduction of new terms that are not defined in the legislation or in the draft

VIII. Other elements of corruptibility

Annex no.3: Efficiency of objections related to the corruptibility

No.	Categories of elements	TOTAL No. of objections accepted in passed/revoked projects	TOTAL No. of objections prepared in passed/revoked projects	TOTAL objections accepted (%)
I.	Interaction of the draft with other legislative and regulatory acts	**72**	**173**	**42%**
1.	Reference provisions	2	11	18%
2.	Regulatory competence transmission provisions	2	10	20%
3.	Concurrent legal provisions	33	63	52%
4.	Legislative gaps	22	57	39%
5.	Unfeasible provisions	1	5	20%
6.	Exaggerated costs for legal provision enforcement in relation to the public benefit	1	4	25%
7.	Provisions establishing unjustified waivers	11	23	48%
II.	Manner of exercising public authority duties	**26**	**71**	**37%**
8.	Enlarged duties of regulation	1	3	33%
9.	Excessive duties /duties contrary to Regulations	1	4	25%
10.	Duties that admit waivers and abusive interpretations	11	26	42%
11.	Parallel duties	1	3	33%
12.	Specification of duty according to stipulations as “have the right”, “can”, etc.	2	10	20%
13.	Cumulation of duties to develop laws, to monitor their implementation and to give sanctions	0	0	0%
14.	Inexhaustive, ambiguous and subjective grounds of an authority's refusal to carry out certain actions	0	0	0%
15.	Lack/ambiguity of administrative proceedings	5	10	50%
16.	Lack of specific terms	1	6	17%
17.	Establishment of unjustified terms	3	5	60%
18.	Failure to identify the responsible public authority/subject the provision refers to	1	4	25%
III.	Manner of exercising rights and obligations	**8**	**33**	**24%**
19.	Promotion of interests contrary to the public interest	3	14	21%
20.	Infringement of interests contrary to the public interest	3	7	43%
21.	Excessive requirements for exercise of excessive rights/obligations	0	3	0%
22.	Unjustified limitation of human rights	2	9	22%
IV.	Transparency and access to information	**1**	**1**	**100%**
23.	Lack/insufficiency of access to information of public interest	0	0	0%
24.	Lack/insufficiency of transparency in functioning of public authorities	1	1	100%
25.	Lack/insufficiency of the access to information on the legal act	0	0	0%
V.	Accountability and responsibility	**5**	**7**	**71%**
26.	The lack of clear accountability of authorities (officials) for the violation of draft provisions	0	1	0%
27.	The lack of clear and proportionate sanctions for the violation of draft provisions	0	0	0%
28.	Mismatch between the violation and sanction	2	2	100%
29.	Confusion/duplication of types of legal liability for the same violation	1	1	100%
30.	Inexhaustive grounds for liability	2	3	67%

VI.	Control mechanisms	**1**	**3**	**33%**
31.	Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public)	1	3	33%
32.	Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities	0	0	0%
VII.	Linguistic expression	**29**	**66**	**44%**
33.	Ambiguous expression that allows abusive interpretation	19	40	48%
34.	Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena	7	16	44%
35.	Introduction of new terms that are not defined in the legislation or in the draft	3	10	30%
VIII.	Other elements of corruptibility	**11**	**26**	**42%**
TOTAL number of accepted objections by areas		**153**	**380**	**40%**