CENTRE FOR ANALYSIS AND PREVENTION OF CORRUPTION

EFFECTIVENESS OF THE CURRUPTION PROOFING MECHANISM

Study

June 2009

MOLICO proiect contra corupției, spălării banilor și finanțării terorismului în Republica Moldova
European Commission Commission européenne
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Authors of the Study:

Bostan Galina
Cojocaru Cristina
Gurin Corneliu
Ionita Lilia

CAPC experts, who have contributed to the development of this Study by expert proofing draft legislative acts:

Apostol Lilian, *expert in the legislation on labour, social insurance and healthcare*
Armeanic Alexandru, *expert in budget and finance*
Baes Sergiu, *expert in economy and trade*
Creanga Ion, *expert in justice and home affairs, human rights and freedoms*
Ermurache Victor, *expert in budget and finance*
Jigau Radu, *expert in economy and trade*
Mirza Veaceslav, *expert in justice and home affairs, human rights and freedoms*
Nagacevschi Vitalie, *expert in justice and home affairs, human rights and freedoms*
Meresevschi Vladislav, *expert in education*
Marian Silvia, *expert in the legislation on labour, social insurance and healthcare*
Pagoni Domnita, *expert in economy and trade*
Rusu Eugen, *expert in justice and home affairs, human rights and freedoms*
Rosca Nicolae, *expert in economy and trade*

CONTENTS

LIST OF ABBREVIATIONS

CAPC	Centre for Analysis and Prevention of Corruption
CCECC	Centre for Combating Economic Crimes and Corruption
CoE	Council of Europe
MOLICO Project	Joint Project of the European Commission and the Council of Europe against Corruption, Money Laundering and Terrorism Financing in the Republic of Moldova
Concept of Cooperation	Concept of cooperation between the Parliament and the civil society, approved through Parliament Decision No.373-XVI as of 29.12.2005
Areas of expert review	Areas established in Annex No.1 of the CAPC Directions as of 30 June 2006
Directions	Directions on corruption proofing of draft legislative acts, approved by CAPC director through order No.4 as of 30 June 2006
Guidelines	Theoretical and practical guidelines on corruption proofing of draft legislative and other regulatory acts, developed by CAPC and CCECC
Law 780/2001	Law on Legislative Acts No.780-XV as of 27 December 2001 (Official Gazette of the Republic of Moldova, No.36-38 as of 14.03.2002)
Law 317/2003	Law on the Regulatory Acts of the Government and other Central and Local Public Authorities No.317-XV as of 18 July 2003 (Official Gazette of the Republic of Moldova No.208-210 as of 03.10.2002)
Project	"Corruption Proofing" Project

EXECUTIVE SUMMARY

Under the Joint Project of the European Commission and the Council of Europe against Corruption, Money Laundering, and Terrorism Financing in the Republic of Moldova, during the period between October 2006 and January 2009 CAPC performed corruption proofing of 304 draft legislative acts placed on the Parliament's website and 13 draft regulatory acts and enacted regulatory acts at the express request of public authorities. In their reports, the CAPC experts raised objections on 4448 elements of corruptibility, found in the reviewed drafts. At the moment of this study, 258 of 317 draft versions were passed and published in the Official Gazette.

The following ***categories of corruptibility elements frequently identified in draft laws****: deficient norms of submittal and form filling, competing norms and legislative gaps (31.3%), excessive or ambiguous discretionary powers of the public authorities (29.2%) and deficient linguistic wordings (23.8%).*

The efficiency of the corruption proofing reports, *prepared by the CAPC experts, was assessed in terms of the extent to which the Parliament and Government accepted the 3,684 objections relating to the specific corruptibility elements, identified in the 258 drafts reviewed. 1,916 objections of 3,684 were accepted, which represents an efficiency coefficient of 52.01% of the corruption proofing reports, presented by CAPC experts. Two factors were identified that influence the extent to which the CAPC experts' recommendations are accepted by the Legislative. The first one is observance by the Parliament of the terms of cooperation with the civil society. When these terms are not complied with, the efficiency of the CAPC expert reports accounts for 25.5%. The second factor is the quality of the authors that issued the draft laws. The lowest efficiency of the CAPC expert reports was found in the drafts issued by the Intelligence and Security Service (8.5%), Ministry of Information Development (17.6%) and the General Prosecutor's Office (18.2%). On the other hand, in case of the most common authors of the draft laws developed within the Government, such as the Ministry of Justice, the efficiency of the CAPC reports accounts for almost 60%, this authority often requesting the CAPC opinion before submitting the drafts to the Parliament.*

Package of anticorruption laws subject to corruption proofing. *During 2007-2008, the Parliament passed eight new anticorruption laws: Law on Corruption Prevention and Combating, Law on Conflict of Interests, Law on Public Service and the Status of Civil Servants, Law on the Verification of Public Office Holders and Candidates, Code of Conduct for Civil Servants, Law on Transparency in the Decision Making Process, Law on Political Parties and Law on the Money Laundering and Terrorism Financing Prevention and Combating. CAPC performed the corruption proofing of the draft versions of these laws, but the efficiency of the expert review showed a coefficient of only 38.4%, against natural expectations that these laws meet the anticorruption requirements and standards.*

The transparency of the legislative process. *In 2006-2007 the failure to place the informative notes with the text of the draft legislative acts on the Parliament's website was permanently criticized in the CAPC expert reports. As a result of these critics, the practice of posting informative notes on the Parliament's website was considerably influenced, and the number of informative notes placed on the website increased from 41% in 2006 up to 94% in 2008. Although the Parliament became more transparent in terms of the informative notes accompanying the draft laws, posting them regularly on its website, there are still reserves as to a transparent cooperation with the civil society. Thus, during three years of cooperation between the Parliament and CAPC, when CAPC submitted expert*

reports on 304 draft legislative acts, only in one single case the Parliament transmitted a confirmation of the CAPC contribution receipt, specifying the objections that had been taken into consideration. In 29 cases, the Parliament passed laws failing to comply with the 15 working days limit, during which the suggestions and contributions of the civil society representatives may be submitted, as provided for in the Concept of Cooperation.

Justification of draft laws. *Most explanatory notes to the draft laws reviewed were formal and general in nature, without explaining in detail why the draft acts should be passed. Against the requirements of Law 780/2001, the draft acts were passed without outlining "new elements, social, economic and other kind of impact of their implementation" in the explanatory note.*

The implementation of 78% draft laws reviewed by the CAPC experts implied financial and other kind of expenditures, which means that according to Law 780/2001, the financial and economic justification was compulsory. Only 6% of these drafts were accompanied by such a justification.

References to the compatibility of the draft acts with the acquis communautaire and international standards in the text of the explanatory notes and draft laws were made only in 21% of cases, which means that in the remaining 79% of cases the requirement of Law 780/2001 about inclusion of the "references to the corresponding regulations of the community legislation and to the degree of compatibility of the draft legislative act with the regulations in question" in the explanatory notes was not complied with. The presence of the express references to the acquis communautaire in the text of the draft legislative acts did not always imply a veritable adjustment of the national legislation to the community or the international one.

Promotion and impairment of interests against the public interest through draft laws submitted to the Parliament. *Promotion of interests/benefits in the draft legislative acts was confirmed in 55% of cases. 56% of the drafts, through which interests/benefits are promoted, are qualified by experts as being against the public interest. 39% of all draft acts were appreciated as generating impairments, against public interest. A clear trend of the MPs (71%) and of the President of the Republic of Moldova (77%) to submit draft acts promoting/impairing certain interests was noted, being increasingly more visible as compared to the drafts submitted by the Government (46%).*

Extending discretionary powers of the public authorities through draft laws submitted to the Parliament. *Inclusion in the draft acts of regulations on the public authorities activity, through which their discretionary powers are meant to be extended is a typical trend of the drafts coming from the Government (51%) and the President of the Republic of Moldova (85%), while the MPs initiatives in this respect are more rare (36%). Submittal of the legislative drafts by the Government and the President of the Republic of Moldova, through which their own powers are meant to be extended, also represents promotion of interests, but this time of departmental interests of the central public authorities, which are also direct authors of the draft acts promoted by the executive branch of the state power.*

I. GENERAL PROVISIONS

This Study makes a generalization of the efficiency of the Centre for Analysis and Prevention of Corruption (CAPC) activity in the area of corruption proofing of the draft legislative acts, carried out under MOLICO Project. Previously, CAPC has carried a similar study on the efficiency of corruption proofing, which referred to the period between 1 October 2006 and 1 October 2007. As at the moment of the previous study the efficiency of corruption proofing was analyzed only for one year, this study contains a more complex analysis of the expert reviewing activity efficiency with reference to a longer period, of about 3 years (1 October 2006 – 31 January 2009), which allows us to shape a more detailed picture of the efficiency of the new tool of the legislative process in the Republic of Moldova – corruption proofing.

The introductive chapter contains a brief presentation of the preconditions of the corruption proofing (Section I.1), the description of the Corruption Proofing Project, a part of the MOLICO Project (Section I.2), a brief description on how public authorities carry out the corruption proofing work (Section I.3) and an analysis of the essential differences between the expert activity carried out by the empowered public authority and the CAPC (Section I.4).

I.1. Preconditions for corruption proofing

The need for corruption proofing of draft legislative acts was imposed mainly by the deficiencies of the legislative process in the Republic of Moldova.

This process is regulated by: the Constitution of the Republic of Moldova, the Regulations of the Parliament and the Law on Legislative Acts. This kind of regulations may also be found in several other acts, but they have a special character and are not particularly relevant for the subject approached[1].

Although the framework regulations, specified hereinbefore, establish a range of specific requirements for inception, development and promotion of draft legislative acts, often they are not observed. The following points have been identified:

- deficiencies in determining the categories of laws;
- dysfunctions in using the right of legislative initiative;
- major deviations from the requirements imposed by Law 780/2001 on the stages of inception of the draft legislative acts (scientific researches, comparative studies, assessment of the effects of the new provisions are the stages of draft legislative acts development , which are neglected most frequently).

Although on the one hand these deficiencies did not represent a direct precondition for the establishment of the corruption proofing mechanism, these problematic issues of the legislative process prove the presence of serious flaws and of the preconditions for legislative instability. This state of instability, in its turn, affects the integrity of the legal

[1] For instance, Law No 847-XIII as of 24.05.96 on the Budgetary System and Budgetary Process.

system and may deviate the behaviour of those who are addressed by the law, including by favouring some corruptibility states. In addition, it is worth mentioning that according to the survey on the *Evolution of Corruption Perception in the Republic of Moldova*, conducted in 2007 by IMAS INC – Chisinau under MOLICO Project, the "imperfect legislation" was identified as a major factor that fosters corruption (28% of respondents).

I.2. "Corruption Proofing" Project

Corruption Proofing Project, implemented by CAPC, is a continuation of the "Decreasing of the corruption level through civil society implication in the legislative creation process" project, intended for the period of activity of the Parliament of the XVI Legislature and aims at meeting the following objectives:

- decrease the corruption level by removing the legislative and regulatory reasons that favour occurrence, perpetuation or increase of the corruption level;
- ensure real and permanent monitoring of the civil society over the legislative process in the Republic of Moldova and involve representatives of the civil society in this process by providing qualified expert review;
- raise the public authorities' awareness of the need for a mechanism (an institution with the permanent status) for corruption proofing of all regulatory acts.

Since 1 October 2006, the Project is implemented with the support of the Joint Project of the European Commission and the Council of Europe against Corruption, Money Laundering and Terrorism Financing in the Republic of Moldova (MOLICO), co-financed by the European Commission, Swedish International Development Cooperation Agency and the Council of Europe[2].

Under this project, CAPC employed 14 experts, lawyers specialized in various legal areas, who used a special methodology, which they had been trained to apply, and conducted the corruption proofing of the legislative acts prepared and submitted to the Parliament. The input of CAPC experts was transmitted during 15 working days from the moment these projects were placed on the website of the Parliament[3]. These inputs were also placed on the CAPC website (www.capc.md).

Through the Informational Analytical Service of the Parliament Office, the reports on corruption proofing of draft laws were transmitted to the relevant permanent commissions. A number of times the CAPC experts were invited to participate in the meetings of these commissions[4], and the expert reports were invoked by MP when discussing the drafts[5].

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[2] Implementation of the Project was carried out in a few stages. The preparatory activities (theoretical research, development of the relevant acts and recommendations, selection and training of experts etc.), as well as initial activities of the corruption proofing mechanism (drafting the first expert reports) were carried out during 27 March 2006 – 1 October 2006 as part of a pilot project supported by the Eurasia Foundation and funded by USAID.

[3] This term was established on the basis of the Concept of Cooperation between the Parliament and the Civil Society, approved through Parliament Decision no 373-XVI as of 29.12.2005.

[4] The CAPC experts were invited to express their opinion during discussions in the Parliamentary Commissions on the following draft laws: Amending the Law on Public Associations, Amending some Legislative Acts (referring to the annulment of the immunity of judges), on Political Parties, on Public Function and the Status of Public Servants, on the Code of Conduct of the Public Servants etc.

[5] See for example the following stenographs of the Parliament:
http://parlament.md/news/plenaryrecords/07.12.2006/
http://parlament.md/news/plenaryrecords/29.12.2006/
http://parlament.md/news/plenaryrecords/21.12.2006/

I.3. Corruption proofing carried out by public authorities

After launching the CAPC Project on 1 July 2006, the public authorities undertook the new corruption proofing mechanism. On 23 August 2006 the Government of the Republic of Moldova approved, through Decision No.977, the Regulations on the Organization of the Process of Anticorruption Proofing (the Regulations).

The Regulations established the general principles of corruption proofing and its areas, as well as the body responsible for its conduct, and the terms and criteria of its preparation. According to the Government Decision No.977 as of 23.08.2006, the Centre for Combating Economic Crimes and Corruption was appointed as the central authority in charge of corruption proofing of legislative acts. The CCECC set the criteria of corruption proofing conduct after the approval of the Methodology of corruption proofing of draft legislative acts[6].

As the aforementioned Government Decision was conceptualized and developed within record short period of time, the need for a statement at the legislative level of the compulsoriness of the expert review against corruption was realized only after the approval of the Government's regulatory act. This lapse was rectified through adoption of Law No.332-XVI as of 10 November 2006 amending some legislative acts: Law on the Legislative Acts, Law on the Centre for Combating Economic Crimes and Corruption, Law on the Regulatory Acts of the Government and other central and local public authorities. Law No.332/2006 established the compulsoriness of the corruption proofing of draft legislative acts and draft regulatory acts of the Government. From this moment we can speak about institutionalization of corruption proofing in the legislative (legal) system of the Republic of Moldova.

I.4. Similarities and differences between the expert review activity of CAPC and CCECC

At present two institutions are involved in the process of legislative acts corruption proofing: the Centre for Combating Economic Crimes and Corruption – representative of the public authority and the Centre for Analysis and Prevention of Corruption – representative of the civil society.

This is not constitute a doubling or overlapping of competences. The participation of the civil society in the process of legislative creation through submittal of some reports on the

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http://parlament.md/news/plenaryrecords/08.02.2007/
http://parlament.md/news/plenaryrecords/29.03.2007/
http://parlament.md/news/plenaryrecords/14.06.2007/
http://parlament.md/news/plenaryrecords/08.11.2007/
http://parlament.md/news/plenaryrecords/29.11.2007/
http://parlament.md/news/plenaryrecords/15.02.2008/
http://parlament.md/news/plenaryrecords/20.03.2008/
http://parlament.md/news/plenaryrecords/16.05.2008/
http://parlament.md/news/plenaryrecords/03.07.2008/
http://parlament.md/news/plenaryrecords/10.07.2008/
http://parlament.md/news/plenaryrecords/04.12.2008/
http://parlament.md/news/plenaryrecords/19.12.2008/

[6] The current methodology of CCECC was developed together with CAPC and was reviewed by the experts of the Council of Europe.

corruption proofing of legislative acts contributes to building and consolidating of the corruption proofing mechanism, to ensuring observance of transparency and objectivity of the legislative process[7]. The fact that the corruption proofing concept was taken over by representative of public authorities is a clear indicator of the CAPC success, an eloquent example of the non-government sector promoting some efficient public policies and their subsequent acceptance by the State.

The corruption proofing work, performed by CAPC, differs from the CCECC work as following:

a) The CAPC work is independent and aims at external monitoring of the public policies laid down in the texts of draft legislative acts.

b) The CAPC carries out expert reviews of the draft legislative acts already on the agenda of the Parliament, published and available to any interested person (*see Figure 1*). Thus, the CAPC expert review work also gains a public character[8] and intervenes at the stage when the irregularities may be outlined at the most advanced phase of the legislative process, even at the moment of the final examination of the regulatory act.

c) The CAPC expert reviews constitute an additional filter: even if they intervene in some drafts that have already been corruption proofed by CCECC, often some additional irregularities are noticed. It also worth mentioning in this context that the expert review carried out by the CCECC is not compulsory and, if the authors insist and the Government accepts it, the draft may preserve the deficient provisions. The CAPC interventions can outline them and, thus, subject them to a new review.

d) The CAPC reports are drafted by experts from outside of the public authorities, who are not under inherent administrative control and influence. The independence and the fact that the "freedom of creation" is not limited during the expert review process allow outlining more negative elements in the drafts content, not only those strictly identified as corruption-prone elements.

e) CAPC carries out the corruption proofing only for draft legislative acts, while the CCECC experts must also ensure the review of the regulatory acts, the amount of the acts processed by them being much larger.

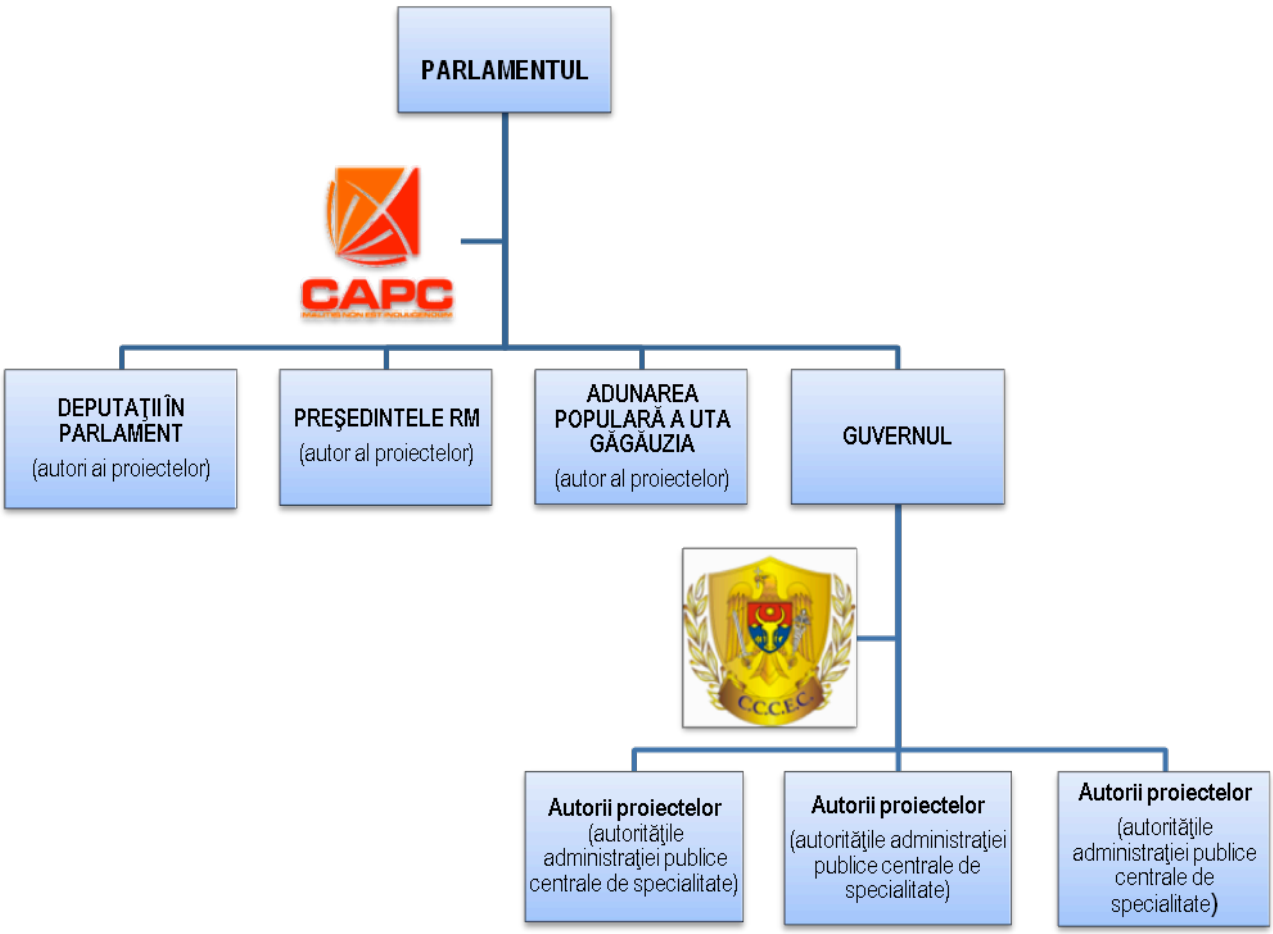
Figure 1 below shows that CCECC intervenes at an early stage of the legislative process, carrying out corruption proofing of the legislative acts and other regulatory acts developed by specialized central public authorities before they are approved by the Government and submitted to the Parliament. Instead, CAPC intervenes with the corruption proofing expert reports at a stage when these drafts are already submitted to the Parliament for review and are not centered only on the drafts initiated by the Government, the corruption proofing expert review being carried out for most of the draft legislative acts, regardless of their author.

Figure 1.

The stages of intervention of CCECC and CAPC during the process of corruption proofing

[7] The statistical and analytical information, presented in this Study, clearly proves the efficiency and usefulness of the CAPC work.

[8] All CAPC expert reports are published on the following website: http://www.capc.md/avize.php



Parliament
Members of Parliament (authors of drafts)
RM President (author of drafts)
People's Assembly of Gagauzia TAU (author of drafts)
Government
Authors of drafts (specialized central public authorities)
Authors of drafts (specialized central public authorities)
Authors of drafts (specialized central public authorities)

Although we outlined some differences between the corruption proofing activity of CAPC and CCECC, these two institutions also develop, under MOLICO Project, a series of joint actions in this area, namely:

a) As from October 2006 till July 2009, the CAPC experts together with representatives of the CCECC Corruption Proofing Directorate organized and carried out 22 trainings for the representatives of central and local public authorities of the Republic of Moldova, their basic aim being to disseminate the Corruption Proofing

Methodology and the Good Practices of CAPC and CCECC in this respect. As part of these trainings around 400 persons – representatives of the subdivisions of the central and local public authorities involved in the development of the regulatory acts – were trained.

b) Due to the generalization of the corruption proofing activity for the period between October 2006 and October 2007, CAPC developed an electronic system for preparation and editing of the expert reports, which allows statistic tracking of this activity. After testing the electronic system within CAPC, the version adapted to the specific needs of the corruption proofing, carried out by CCECC, was transmitted to the specialized subdivision, which is to apply this tool at the level of public authorities[9]. Since July 2009, the CCECC Corruption Proofing Directorate has been drafting expert reports with the help of a new software (electronic system).

[9] The description of the electronic system is shown in Section II.3 of this Study.

II. METHODOLOGY OF THE STUDY

This chapter describes the human resources of the organization involved in the corruption proofing work (Section II.1), internal documents developed by CAPC to facilitate the corruption proofing work (Section II.2), main tools applied to carry out the study (Section II.3) and the sampling of the expert reports prepared by CAPC experts.

II.1. CAPC Human Resources involved in the corruption proofing work

The Project Activities were carried out by 2 project coordinators and 14 experts licensed in the legal area, selected through a public contest and specialized by profile, so that all expertise areas should be covered[10].

The project coordinators selected and downloaded the draft legislative acts from the Parliament's website and sent them to experts. Within 10 calendar days the CAPC experts would draft the expert report and send it to the project coordinators, who would check its compliance with the form and content clauses for the expert report.

The CAPC expert reports were transmitted to the Parliament on the basis of the Concept of Cooperation between the Parliament and the civil society, approved through Parliament Decision No.373-XVI as of 29.12.2005, according to which the civil society organizations submit to the Parliament their contributions within 15 days from the date the draft documents are placed on the Parliament website.

II.2. Corruption proofing guidelines and methodology

The CAPC guidelines regulate the corruption proofing process: the project coordinators and experts' duties, the procedure of selecting and passing the draft acts to expert review, as well as of the expert reports to the Parliament.

Annex no. 1 to the Guidelines established the following areas of expert review:

Area 1. Justice and internal affairs, human rights and freedoms
Area II. Economy and trade
Area III. Budget and finance
Area IV. Education.
Area V. Legislation on labour, social insurance and healthcare.

Annex no. 2 to the Guidelines contains the CAPC Methodology, which served as the basis for conventional classification of the corruptibility elements, by giving examples of their manifestation. Besides, the Methodology establishes the form and content of expert reports.

The CAPC Methodology was the first document that explained the corruption proofing process. Further, the experience accumulated by the CAPC experts became an "active

[10] The list of CAPC experts may be seen on the following website: http://www.capc.md/en/expertise_3/experts/

learning process", during which new elements of corruptibility were detected which complemented their original list *(Annex 2 contains the complemented list of elements).*

The revised list of the corruption elements and their description constituted the study subject of the theoretical and practical guidelines for corruption proofing of the draft legislative acts and other regulatory acts, developed by the CAPC.

II.3. Electronic system of preparation of corruption proofing reports

To be able to follow the efficiency of the corruption proofing reports it was necessary to unify the structure and the requirements for these reports (Section II.3.1). Further, this unification made it possible to develop a software that generates the corruption proofing reports in a standard format, which allowed processing data referring to the experts' findings in an electronic system of statistics records keeping (Section II.3.2). All statistical data used in this study were processed with the electronic system.

II.3.1. Standardizing the expert report

Although main form and content of the expert report were regulated by the Methodology, CAPC promoted a continuous improvement of the structure and quality of reports. Standardization of requirements for corruption proofing reports proved a very efficient method of ensuring quality.

For this purpose CAPC synthesized the best practices used by its experts when preparing the reports and developed a set of unified requirements, any corruption proofing report should comply with. As a result, an "ideal" template for expert reports was created (*see Annex 1*). According to the experts' opinion, this template helps them to prepare expert reports much more efficiently.

The unification of the structure of the expert reports facilitated development of a statistical record keeping system, on the basis of which statistical information could be collected and systematized on the corruption proofing work, carried out by CAPC, which were delivered as part of this Study.

The idea of developing an electronic format for generation of expert reports emerged after the generalization of the expert review work carried out during 2006 – 2007. 14 experts from various areas worked on the corruption proofing reports of CAPC. After the first one hundred reports had been written, it became clear that the different individual approach of each expert provided a uneven quality product at last, needlessly increasing the amount of work of the project coordinator in charge of editing the reports and made almost impossible to systematize the recommendations laid down by experts, as well as to check whether these recommendations were taken into consideration by the authorities in charge (the Parliament). In order to bring to the same level the quality of all CAPC experts' reports, all reports were studied in order to identify the best practices of writing, thus unifying the structure of report writing and this obliged all experts to check for every draft apart the compliance with at least a set of pre-established criteria, but not limited them within those. Having a fixed structure, the idea of developing an electronic system for the preparation of

these reports arose, which would imply communication between the expert and the person in charge for reports editing/approval.

The following basic aims determined the development and implementation of the electronic format of generating corruption proofing expert reports:

- to ensure an updated statistical recording service to verify and quantify the expert review activity;
- to order the corruption proofing work, carried by CAPC experts, and ensure compulsory compliance of the experts with the requirements imposed on expert's reports.

The use of the electronic form of the report brought the following advantages:

- simplification of the work of experts and people in charge of corruption proofing reports editing/approval;
- securing a high and uniform quality of the content of all corruption proofing reports;
- monitoring the workload of all experts, their objections and efficiency, by the person in charge of reports editing/approval
- obtaining updated statistics on the exact number and type of recommendations, referring to the need to exclude the corruption-prone provisions from the draft acts subject to the corruption proofing;
- calculating updated statistics on how efficient the recommendations, referring to the need to exclude the corruption-prone provisions from the draft acts subject to the corruption proofing, were formulated;
- use of the statistical data provided by the system, which allow an ample analysis of the process of regulatory and legislative creation by the authorities, of the trends in promoting corruption risks by the authorities that developed the draft acts.

II.4. The sample of the Study

The findings of this study are based on the analysis of the statistical data referring to the objections of the CAPC experts set out in relation to 317 draft legislative and regulatory acts, of which 304 draft legislative acts placed on the site of the Parliament and 13 draft regulatory acts and regulatory acts in force, the expert review of which was carried out at the express request of the public authorities. Out of these 317 draft acts, 209 had been adopted and 49 had been withdrawn at the moment when the Study was prepared.

The experts formulated objections referring to the corruptibility elements detected in the reviewed draft acts, as well as other objections. In total 4448 elements of corruptibility were identified in the 317 draft acts subject to expert review.

The experts' objections related to corruptibility were described on the basis of 35 elements, included in eight categories, according to the list of corruptibility elements (*see Annex 2*). The record of these elements was kept by five areas of expert review and were totaled. This record keeping allowed understanding the distribution of corruptibility elements in draft acts and their statistic description in Chapter V of this Study. This chapter describes the distribution of corruptibility elements in the 317 draft acts reviewed.

The efficiency of the corruption proofing reports, prepared by CAPC experts, was measured by counting the objections formulated by the experts and accepted by the Parliament in 258 draft acts passed. In total 3,684 objections were formulated in the expert reports on the passed and published draft acts referring to the specific corruptibility elements, of which 1,916 objections were accepted by the Legislature and public authorities. The distribution by expert review areas of the corruptibility-related objections, which were accepted by the Parliament and other public authorities, may be seen in Annex 3 to this Study.

III. PROCESS OF LEGISLATIVE CREATION WITHIN THE EYESHOT OF THE CIVIL SOCIETY

During the corruption proofing of draft legislative acts, the CAPC experts, besides the identification of the potential corruptibility risks, also aimed at checking: the observance, by all players involved in the legislative process, of the requirements imposed by the legislative technique; areas of legislative interventions of the draft laws authors, as well as observance by the Parliament of the principles of cooperation with the civil society.

This chapter shows the quantitative and qualitative aspects, found by CAPC in relation to the draft legislative acts subject to expert review during the period between October 2006 and January 2009 (Section III.1), the authors of the legislative interventions (Section III.2), promotion of one's interests through the legislative way against the public interest (Section III.3) and how the Parliament observes the principles of cooperation with the civil society during the legislative process (Section III.4).

III.1. Legislative initiatives

As part of the substantive assessment of the draft legislative acts subject to the expert review, the CAPC experts aimed at ensuring: typology of the draft legislative acts (integral or on amending/adding to/annulling other legislative acts); areas of corruption proofing in which draft acts intervened; appropriate or wrong determination of the category of legislative acts by authors.

III.1.1 Overview of the initiatives

This Study was carried out on the basis of the expert review of 317 draft legislative acts. 304 of them (95.9%) were taken from the website of the Parliament and 13 draft acts (4.1%) were reviewed at the express request of the Constitutional Court, Ministry of Justice, Centre for Combating of Economic Crimes and Corruption and the Parliamentary Committee for Public Authority, Ecology and Territorial Development.

The drafts taken from the website of the Parliament for corruption proofing accounted for 56.5% from the total number of the draft acts placed on this website during the period between 1 October 2006 and 25 December 2008. 43.5% of draft acts were not corruption proofed by CAPC experts as they did not contain legal norms, referring to the internal organization of the Parliament, to appointment to the public offices, were acts of ratification of the international treaties etc.

Out of all 317 draft legislative acts reviewed, 29.7% were integral draft legislative acts and 70.3% were draft legislative acts amending/adding to/annulling the legislative acts in force.

III.1.2 Legislative initiatives according to the expert review areas

The draft acts reviewed during the period 1 October 2006 and 31 January 2009 were classified by 5 areas of expert review, stipulated in the CAPC Guidelines. The statistical analysis of the draft legislative acts reviewed by areas proved the following distribution (*see Figure 2*).

Figure 2.
Distribution of the drafts by expert review areas

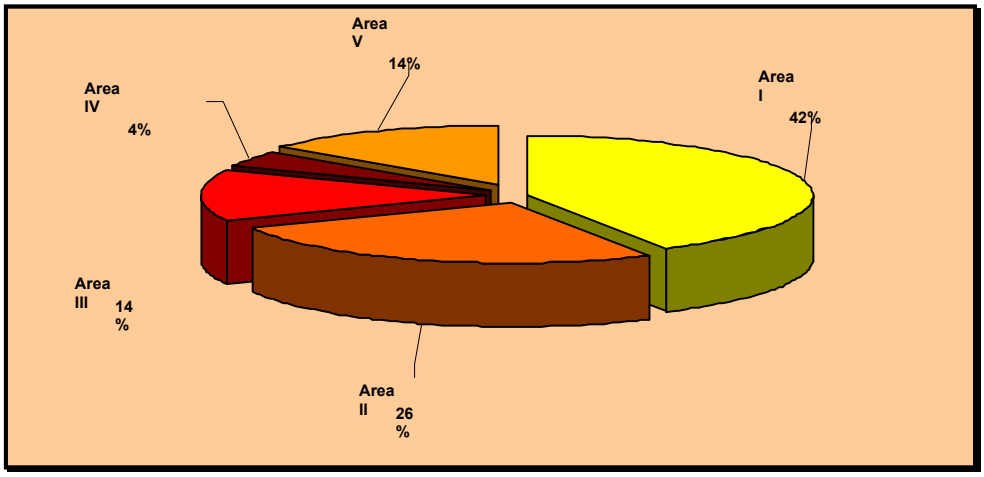


Figure 2 above shows that the biggest share, 42%, of the draft acts belonged to Area I "Justice and internal affairs, human rights and freedoms", followed by Area II "Economy and trade" – 26%, Area III "Budget and finance" and Area V "Legislation on labour, social insurance and healthcare" each one with 14%. Area IV "Education" is the least affected by the legislative interventions - only 4% of the total of the reviewed draft acts.

The follow-up of the legislative interventions in the areas of corruption proofing allowed outlining preferred laws of all the subjects with the legislative initiative right, who had often submitted proposals for amendment and/or addendum to them. We invoke the following laws proposed frequently for amendment and addendums over the past three years as an example[11]:

- Tax Code (20 initiatives);
- Code on Administrative Offences (13 initiatives);
- Criminal Procedure Code (9 initiatives);
- Law on the Remuneration System in the Public Sector (9 initiatives);
- Law on the Pensions of State Social Insurance (8 initiatives);
- Criminal Code (7 initiatives);
- Law on the Status of Judges (7 initiatives);
- Law on the Operative Investigation Work (5 initiatives).

[11] Only the data of the draft acts which were corruption proofed by the CAPC are reproduced. Actually, the number of legislative interventions may be even larger, taking into account the fact that during the period between 1 October 2007 and 1 April 2008, the corruption proofing by CAPC experts was temporarily halted.

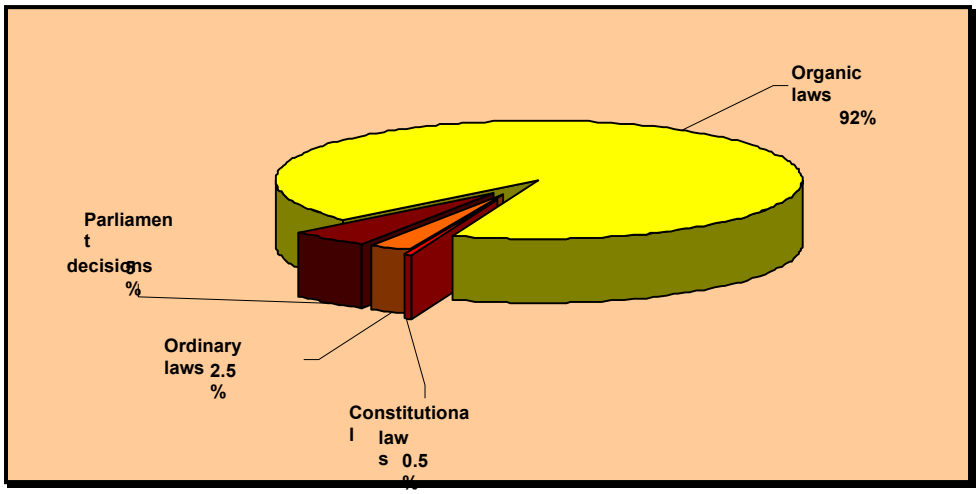
Without doubting the need for the adjustment and updating of the legislative framework to the new realities, we consider that frequent legislative initiatives in certain areas are not particularly appropriate, especially if these laws have been passed recently.[12] We believe that the problem lies at the stage of drafts development and promotion, which are not carried out in accordance with the requirements of the Law on Legislative Acts No.780/2001.

The authors of legislative initiatives fail to meet the legislative technique at the stage of development of both the draft acts themselves, and the explanatory notes. When enforcing such acts (developed in non-compliance with the needed premises), the negative impact becomes obvious: without a detailed study of long-term effects, when the gaps become visible a new amendment is proposed. The "avalanche" of amendments exasperate all those who have to adjust themselves to the new requirements "in process" and are subject to some expensive administrative procedures. The practice shows that these frequent amendments are brought depending on the current circumstances and are not thought for the long term. The CAPC experience has identified the same trend.

III.1.3 Legislative initiatives according to the category of the legislative act

The analysis of the legislative process with a view of determining the legislative acts categories has established that 92% of 304 draft legislative acts registered with the Parliament were attributed to the category of the organic laws, 2.5% - to ordinary laws, 0.5% - to constitutional laws and 5% - to Parliament Decisions (*see Figure 3*).

Figure 3.
Draft acts distribution by categories



Although CAPC has previously criticized the fact that most draft legislative acts are attributed to the category of organic laws, the situation remained the same[13]. The attribution of 24 draft legislative acts to the category of the organic laws was expressly criticized in the CAPC reports, but none of these objections was accepted by the Parliament. We confirm a

[12] For instance:
1. **The Law on the Remuneration System in the Public Sector came into effect on 03.03.2006 and by the moment of the preparation of this Study it had been already amended 15 (!!!) times.**
2. **Criminal Code came into effect on 12 June 2003 and by the moment of preparation of this Study it had been amended 36 (!!!) times, and owing to the impressive number of amendments/addenda in April 2009 it had to be re-published.**

[13] For more information see Annex 1 to the previous CAPC study on corruption proofing efficiency: http://www.capc.md/docs/study_efficiency.doc

vicious practice when the category of the law is determined arbitrarily by the authors of the draft act (most often by the Government) and the Parliament accepts attributing the draft legislative act to the category of the organic law, without referring to the constitutional regulation on the basis of which this area must be regulated through an organic law.

The problem of arbitrary attribution of draft legislative acts to the category of the organic laws became obvious when it was decided to entitle the Government with the right of emitting ordinances. Based on the logics of Article 106/2 from the Constitution of the Republic of Moldova, the Government can emit ordinances in the areas which are not the object of organic laws, but since the overwhelming majority of the laws of the Republic of Moldova are organic, the entitlement of the Government with the right to emit ordinances acquires Utopian and useless connotations, the Government being able to intervene only in insignificant areas.

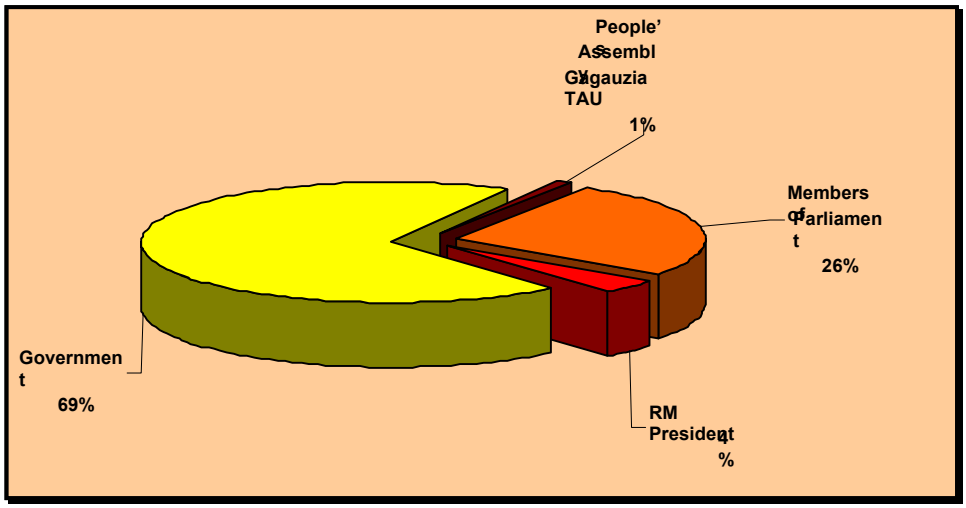
III.2. Authors of legislative initiatives

Article 73 of the Constitution of the Republic of Moldova provides that the right of legislative initiative belongs to:

- Members of Parliament;
- President of the Republic of Moldova;
- Government;
- People's Assembly of Gagauzia territorial autonomous unit.

Once the legislative acts corruption proofing work was generalized, we found that 69% of 304 draft acts taken from the Parliament website and corruption proofed had been initiated by the Government, 26% of draft acts - by the MPs and the initiatives of the President of the Republic of Moldova accounted for 4% of the total number of the draft acts reviewed. The People's Assembly of Gagauzia territorial autonomous unit had initiated 4 draft legislative acts, which account for 1% of the total number of draft acts reviewed by CAPC (*see Figure 4*).

Figure 4.
Share of the legislative initiatives authors



There was identified the following breakdown by expert areas:

- the MPs' intervention in Area I "Justice and internal affairs, human rights and freedoms" accounts for 25% and the Government's one – for 67%, the President's initiatives accounting for 7% and 1% belonging to the initiatives of the People's Assembly of Gagauzia TAU;
- most draft acts in Area II "Economy and trade" and III "Budget and finance" were also initiated by the Government – 82% and, respectively, 71% and the MPs' initiatives accounted for 17% and, respectively, 24%;
- in area IV "Education" one can notice a predominance of the MPs' initiatives, 50% of the legislative initiatives belong to, while 42% and, respectively, 8% belong to the Government and the President;
- in Area V "Legislation on labour, social insurance and healthcare" the Government's initiatives prevail, having a ratio of 51%, the MPs' initiatives account for 42% and the draft acts initiated by the President of the Republic of Moldova and the People's Assembly of Gagauzia territorial autonomous unit had a ratio of 4% and, respectively, 2% (*see Figure 5*).

Figure 5.
Share of the authors' interventions by areas

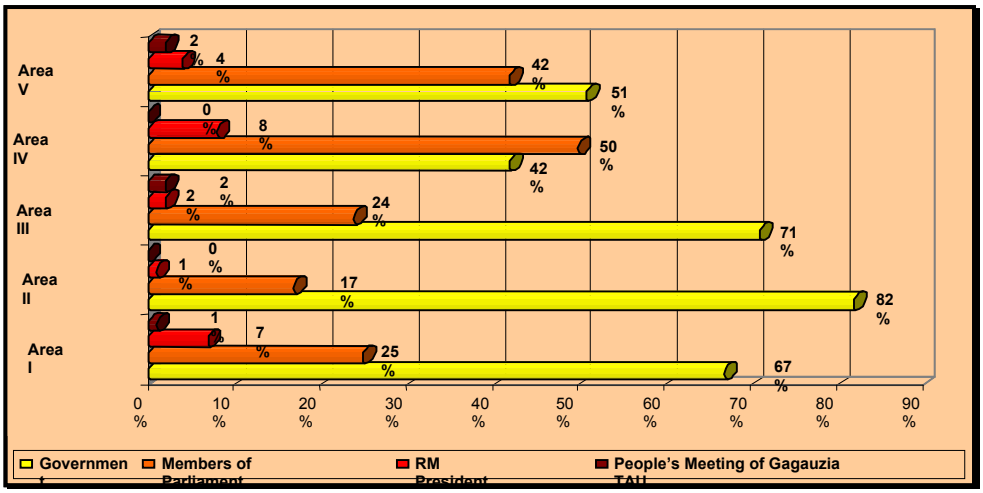


Figure 5 above shows a comparatively minor percentage intervention of the President of the Republic of Moldova in all areas, but the qualitative analysis of the draft laws originating from this subject entitled with the initiative right proved that some draft acts promoted in the tax area, education area and justice area[14] had reformed and restructured these areas conceptually.

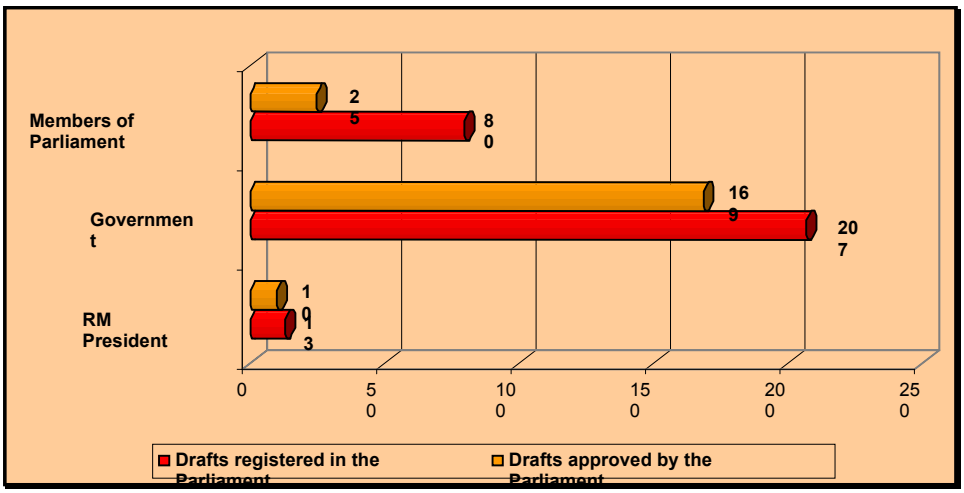
The analysis of use of the MPs' legislative initiatives right in the Parliament proved that number of draft acts initiated by them has not a significant share (only 26% of the total number of the draft acts corruption proofed), the MPs managing to "outstrip" other subjects with the right to legislative initiatives only in Area IV "Education". At the moment of this Study, only 25 (31%) draft legislative acts, which had been submitted by the representatives of the majority faction in the Parliament out of the total number of 80 MPs' initiatives

[14] See also:
- Law No 111/27.04.2008 amending and adding to some legislative acts (tax amnesty and capital legalization),
- draft Code of Education (at the moment of this Study this Code had not yet been published in the Official Gazette of the Republic of Moldova, although it had been passed by the Parliament on 19 December 2008 through Law no 293).
- Law 306/2008 amending and adding to some legislative acts (review of the procedure of appointment of members of the Supreme Council of Magistracy).

reviewed were passed and the initiatives submitted by the representatives of other factions or independent MPs either had not been discussed in the Parliament or had been withdrawn by authors[15].

An absolutely reverse situation was noticed in the case of the initiatives of the President of the Republic of Moldova and the Government: 10 (77%) President's initiatives reviewed by CAPC experts out of the total number of 13 are already passed and 169 out of 207 draft acts initiated by the Government are already passed (*see Figure 6*).

Figure 6.
Rate of draft legislative acts passed by the Parliament



Speaking about the Government, the subject that acts most often as the author of the legislative initiatives, we wondered which authorities of the central public authorities are more "fruitful" in developing draft acts. We could follow this aspect thanks to the statistical record keeping electronic system described in Section II.3 of this Study. Once this stage of the legislative process was analyzed (*see Figure 7*) we found that the most impressive number of draft acts was prepared by: the Ministry of Justice (16%), Ministry of Economy and Trade (13%), Ministry of Agriculture and Food Industry (11%) and Ministry of Finance (10%).

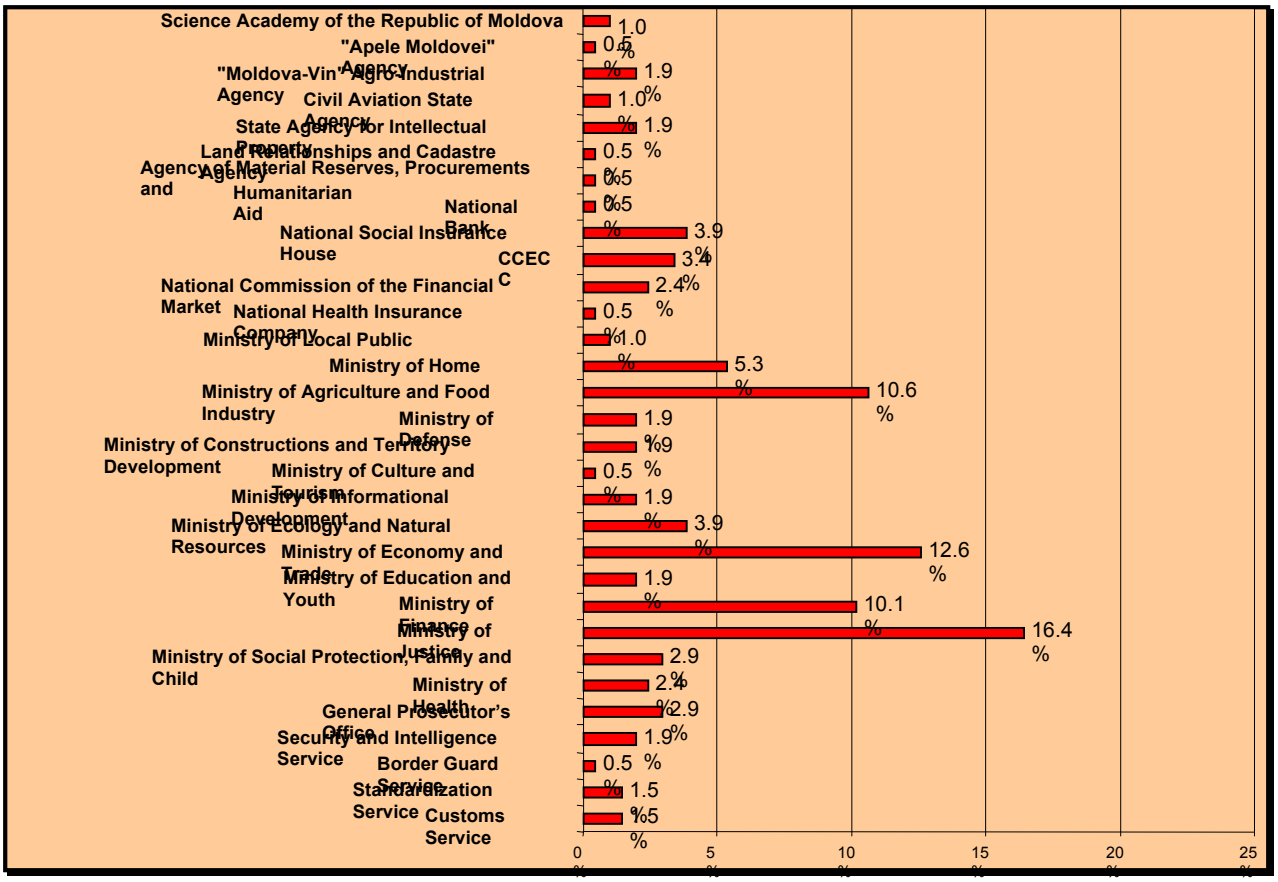
Among the specialized central public authorities that are not involved actively in the process of legislative creation there are: the Ministry of External Affairs and European Integration, Ministry of Reintegration – 0 draft acts; Ministry of Local Public Administration and the Ministry of Culture and Tourism – 1 draft act each one.

The process of legislative creation involves certain authorities and institutions, which according to their statute and operational competencies are not empowered with the function of developing/promoting and submitting to the Parliament draft legislative acts. However, some of them submit draft legislative acts even more often than the subjects expressly empowered by the law. The examples of actors outside the legislative process that intervene are: the Academy of Sciences of the Republic of Moldova - 3 draft acts, State Agency for Intellectual Property – 4 draft acts; the National Commission of the Financial Market – 5 draft acts, the General Prosecutor's Office – 6 draft acts.

Figure 7.

[15] Based on the data available on the Parliament's site: http://www.parlament.md

Draft acts distribution by direct players



As one of the main preconditions for corruption proofing was the fact that, when developing draft legislative acts and other regulatory acts, the authors insert intentionally or unintentionally regulations that allow some discretionary powers for the authorities in charge of laws implementation, the procedure of regulation of the public authorities work was analyzed separately during the draft laws review.

Thus, the regulation of the activity of the public authorities (hereinafter referred to as the regulation of the PA activity) was identified in 155 (49%) draft legislative acts reviewed and was criticized in relation to 113 (73%) of them. Relating 113 draft acts criticized for the deficient manner of the regulation of the PA activity to the number of draft acts initiated by each author we found that 56 (55%) of them were promoted by the Government.

Following the dynamics of public authorities' work regulation during 3 years in light of the draft legislative acts authors (*see Figure 8 below*), we found that the manner of regulation of the PA activity was criticized most often in the draft acts submitted by the Government and the President of the Republic of Moldova, the trend of promoting deficient regulations of the status and powers of the public authorities constantly increasing.

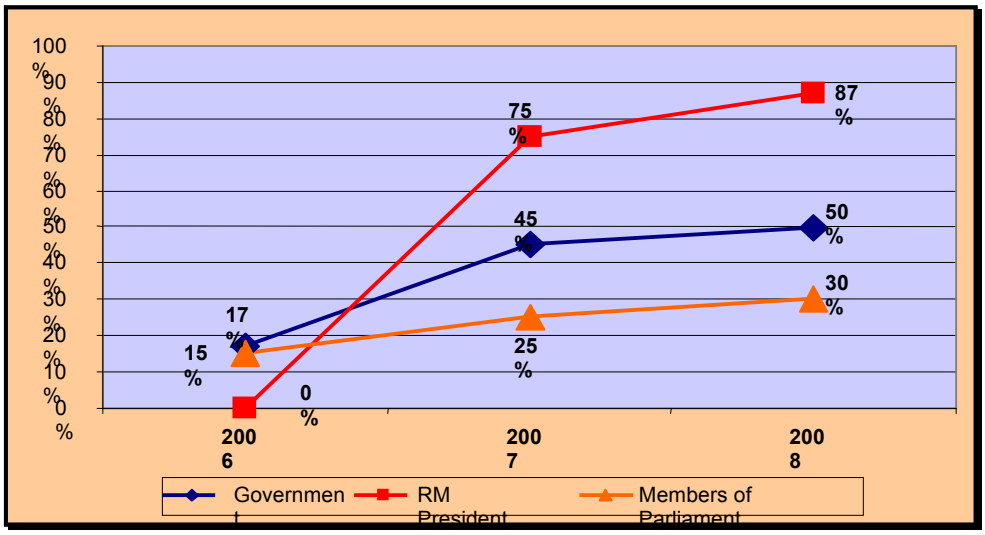
The procedure of the regulation of the PA activity was criticized most often in area IV "Education" and area III "Budget and finance". This situation may be explained by the fact that in these areas there were initiated draft laws that changed the concept of the institutional framework in place[16], establishing new powers and competences for the public

[16] The President's initiatives on the tax amnesty and capital legalization and the Code of Education.

authorities, whose procedure of normative regulation was criticized in the CAPC expert reports. The deficient regulation of the PA activity in the draft laws developed by the Government was criticized particularly within Area III "Budget and finance": the experts expressed objections in 9 cases (82%) of draft acts out of the total of 11 draft acts of the Government which regulate the PA activity in this area.

Figure 8.

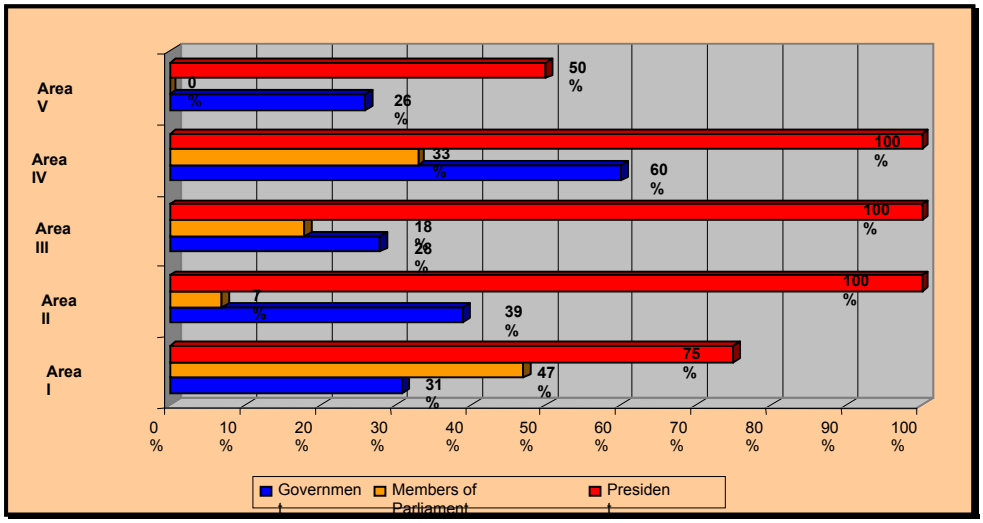
Distribution of the draft acts criticized for their manner of regulation of the PA activity (by years and authors)



As for the MPs' legislative initiatives in the Parliament, criticized for the manner they regulated the PA activity, we found that most often the experts expressed objections relating to the manner of regulating the PA activity in area I "Justice and internal affairs" and in area IV "Education" (*see Figure 9 below*). This state of affairs may account for the fact that most MPs' initiatives were recorded in these 2 areas (30 and 19 respectively). Nonetheless, if we relate the number of the MPs' initiatives criticized for the deficient regulation of the PA activity to the number of the Government's initiatives, we will find the definite priority of the Government in this respect.[17]

Figure 9.

Regulation of the PA activity by the areas



[17] A similar conclusion was also drawn in the previous CAPC study on the efficiency of the corruption proofing mechanism http://www.capc.md/docs/study_efficiency.doc

Examples of a deficient regulation of the PA activity

The **expert report No.295 as of 13.06.2008 to the draft Law on the Court of Accounts**[18] (registered with the Parliament under No.1695 as of 21.05.2008) specifies:
"… the authors did not consider it appropriate to ensure a complex regulation of the organization and operation of the Court of Accounts, as requested in Article 133 of the Constitution. The draft does not define clearly how the Court of Accounts will operate, namely:

- *it does not contain regulate how the CoA Decisions will be passed;*
- *it does not explain the powers of regulatory nature through which the CoA passes compulsory acts;*
- *the control and audit procedures are not clear enough;*
- *no reference is made to the Law on Audit;*
- *no reference is made and no details are presented about the Law on the External Public Audit, which is to be passed, or all these rules are to be passed by the Court of Accounts, while it is not the best option that the Court of Accounts takes the functions of the Parliament".*

The expert report No.361 as of 18.12.2008 to the draft Code of Education[19] (registered with the Parliament under No.3016 as of 23.10.2008) mentioned:
"The draft act contains a special chapter dedicated to the powers of public authorities: Parliament, President, Government, Ministry of Education and Youth, other central and local public authorities.

An important objection refers to the fact that the thorough application of the Code will directly depend on the approval of a considerable number of regulatory acts of the Ministry of Education and Youth (around 50 regulatory acts), as well as of the Government Decisions (about 25 acts).

Additionally, the draft approaches tangentially 7 more institutions/bodies/organizations, whose general statute and duties are not regulated by the Code, this competence being left to the discretion of the Government or the Ministry of Education and Youth (for more information see points 11, 15, 30, 35, 55, 65, 71 from the table below – Detailed analysis of the corruptibility and other risks of the draft)".

Concluding this section, we may state that the regulation of the PA activity, particularly their endowment with the extensive powers of regulation, which are contrary to their statute and allow abusive derogations and interpellations (elements which will be examined in details in Chapter V section V.1.2.) represents a attempt to promote departmental interests of the central public authorities, which most often are the authors of the drafts promoted by the Government or the President.

III.3. Legislative promotion of one's interests against the public interest

When carrying out a substantive assessment of corruptibility, the CAPC experts analyzed separately the promotion of some interests/benefits through the draft legislative acts reviewed. The analysis of this aspect was carried out considering the fact that any legislative act or any other regulatory act may promote certain interests/benefits and these may be general, group or particular. When the expert reports identified some particular or group interests that were promoted, the experts checked whether these actions complied with the criterion of "public interest" – the general society's interest recognized or deduced from the Constitution, laws, international and national acts, general traditions and unwritten laws[20].

Once the experts' findings, presented in 317 expert reports, were generalized, promotion of interests/benefits in draft legislative acts was identified in 172 (54.3%) draft legislative acts.

[18] http://capc.md/ro/expertise/avize/search/295.html
[19] http://capc.md/ro/expertise/avize/search/361.html
[20] *Guidelines*, p.18-19.

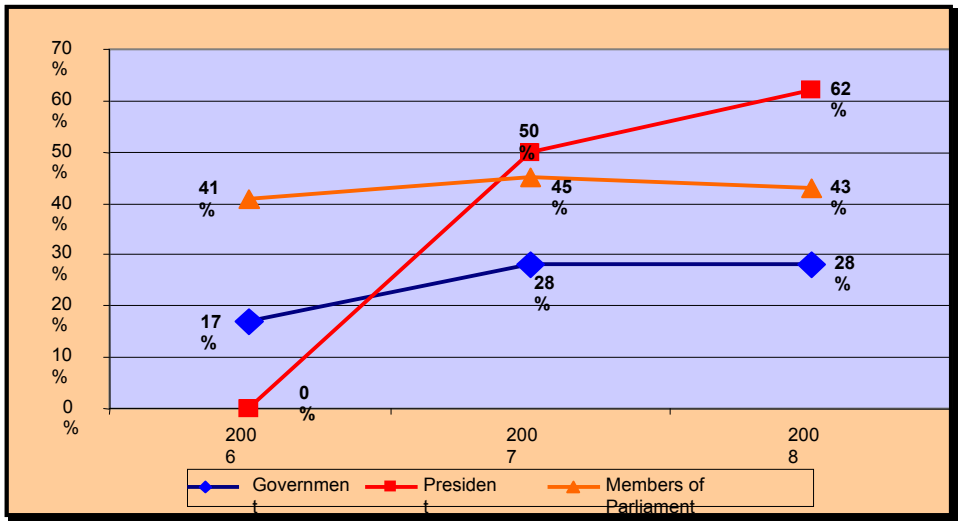
The promotion of interests/benefits was criticized by experts in relation to 96 (30.3%) draft legislative acts. Relating 96 to the total number of 172 draft acts, which were mentioned to promote some interests, we can find a share of 55.8% of cases in which the promotion of interests/benefits through draft laws is qualified by experts as against the public interest.

The promotion of interests in draft legislative acts, broken down by authors, was analyzed statistically relating the number of draft acts in which the promotion of interests was criticized to the total number of draft legislative acts initiated by each author. This analysis proved that the highest share of the draft acts through which interests are promoted (62%) belongs to the draft acts originating from the President of the Republic of Moldova as compared to the initiatives of the Government, criticized for promotion of interests, which accounted for only 28%. Although the legislative interventions of the President of the Republic of Moldova were fewer in number as compared to other authors (13 draft acts as compared to 202 draft acts submitted by the Government), the trend of promotion of interests was constant in most draft acts initiated by this author.

In the previous study on the corruption proofing efficiency (for the period between 1 October 2006 and 1 October 2007) we noticed that the biggest share of the interests-promoting draft acts belonged to MPs. The analysis of this aspect for a 3-year period proved the perpetuation of the same trend. Thus, in 2006 – 41%, in 2007 – 45% and in 2008 – 43% of the draft acts submitted by the MPs were regarded as promoting someone's interests (*for more information see Figure 10 below*).

Figure 10 shows that the share of the draft acts of the Government, regarded as promoting someone's interests, increased from 17% in 2006 to 28% in 2007, this figure for 2008 remaining constant.

Figure 10.
Interest promotion by authors, broken down by years

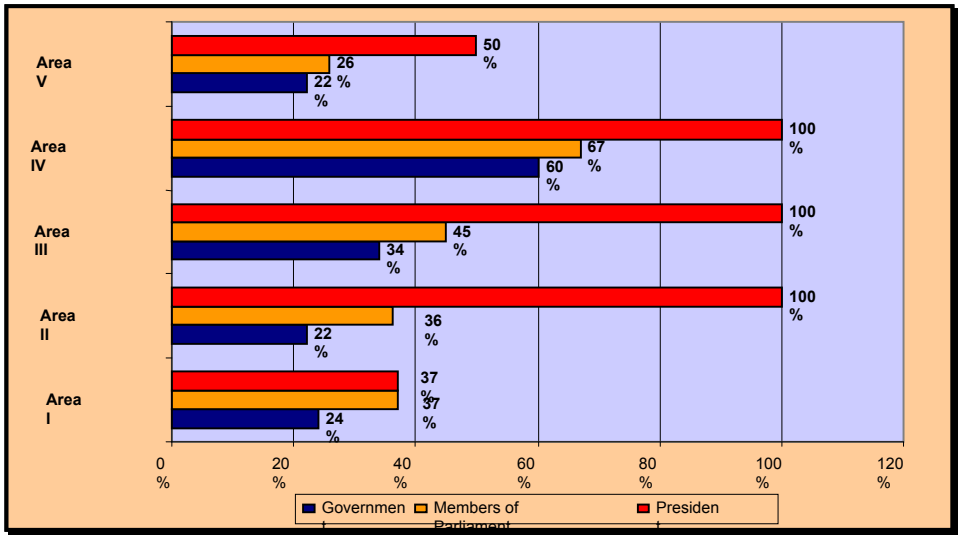


Although in percentage (*see Figure 11*) one can see that the President of the RM promoted most often interests in area IV "Education", area III "Budget and finance" and in area II "Economy and trade"[21], it should be specified that the number of its initiatives was lower as compared to the number of the MPs' or of the Government's (only 1 draft act in each area), but the phenomenon of interest promotion was found in each draft act, which justifies the maximal share of the initiatives promoting the President's interests by areas.

[21] We speak about 3 draft laws: the Code of Education, Law Amending and Adding to of Some Legislative Acts (Tax Amnesty and Capital Legalization) and Law on the Establishment of the Cultural and Landscape Reservation "Orheiul vechi".

The constant trend of the MPs to promote the interests can also be followed by reviewing the areas where they intervened with legislative initiatives, the biggest share of the interests-promoting draft acts being identified in area IV "Education" and area III "Budget and finance".

Figure 11.
Interest promotion by authors, broken down by areas



Examples of interest promotion against public interest

The **expert report No.247 as of 10.07.2007 to the draft Law Amending Article III from Law No.559 as of 25.12.2003 Amending and Adding to the Law of Education on the Prolongation of the Term Allowed to Private Educational Establishment to Adjust to the Accreditation Requirements**[22] (registered with the Parliament under No.2312 as of 19.06.2007) it was mentioned that:

"Seemingly, the draft act amending the law will have a positive impact on the development of the private education in the country. However, a deeper analysis shows that the draft act is promoting the benefits and interest for some private educational establishments which did not comply with the requirements of the Law. Thus, during 2005-2007 Article III from Law No.559 as of 25.12.2003 amending and adding to the Law on Education No.547-XIII as of 21.07.1995 was amended twice so far.

- Law No.141-XVI as of 30.06.05, OG 96-97/15.07.05;
- Law No.256-XVI as of 27.07.06, OG 120/04.08.06.

Based on the review of the draft, we may say that the explanatory note has no information on: - those "some private educational establishments" which did not comply with or did not manage to comply with the provisions of Article III from the Law; - whether during the two years the number of private educational establishments increased, remained the same or decreased; - whether the newly established period is sufficient o not for private educational establishments to comply with the requirements of the Law.

The **expert report No.347 as of 22.10.2008 to the draft Law adding to the Law on the Payment for the Environment Pollution and the exemption from the payment for environment pollution of the importers of some categories of medicine**[23] (registered with the Parliament under No.2806 as of 29.09.2008) specifies that:

"Once the draft act is reviewed, it may be admitted that it promotes indirectly material interests of the providers and importers of pharmaceutical products in plastic package, hiding this interest through "care" for the socially vulnerable layers that need some medicine at lower costs. We shall mention that the long-lasting effect of using the packages of plastic and the negative impact on the environment may have a much more negative effect over the health status of people and the future generation.

It is difficult to measure to what extent the critical observation, formulated by the CAPC experts in relation to the abusive promotion of some interests through draft laws, were accepted as the core of these draft acts is "spoiled" from the very stage of their

[22] http://capc.md/ro/expertise/avize/search/247.html
[23] http://capc.md/ro/expertise/avize/search/347.html

conceptualization. The removal of these flaws is possible only through the political will of the Legislature to over-rule these draft acts in general, but this is beyond the legal area of intervention of the CAPC expert reviews.

Nonetheless, we found that 18 (18.7%) of 96 draft acts in relation to which the expert reports of the CAPC formulated critics referring to the promotion of some individual or group interests had been withdrawn. This allows us to think that their withdrawal was determined inclusively by the critical remarks laid down by CAPC experts.

The promotion within the draft acts of some individual or group interests/benefits has the risk of jeopardizing the interests of other persons. 103 (82.4%) of the draft legislative acts reviewed were regarded by the CAPC experts as generating damage against the public interest.

All draft acts, regarded as harming, were also criticized from the point of view of promotion of some individual or group interests, which confirmed once more the intrinsic relation between the promotion of interests and causing harm.

Examples of impairing the interest against public interest

The **expert report No.317 as of 17.07.2008 to the draft Law on the Establishment of the Historical, Cultural, Natural and Landscape Reservation "Orheiul Vechi"**[24] (registered with the Parliament under No.2092 as of 30.06.2008) stipulated:

"The analysis of the text of the draft law reveals that the Government established some categories of special regimes for management of the property in this reservation (Article 4 para (4), Article 8, Article 10), which may affect the right of individuals and legal entities from the respective settlements. According to Article 54 from the Constitution, the restriction of the right of ownership may be imposed only through law and with the purpose to secure the protection of rights, which is to be proportional to the situation which determined it and this restriction cannot affect the respective right existence. However the draft establishes that the limitation of the individual's rights will be done through a Government Decision. According to the provisions of Article 58 and Article 132 from the Supreme Law, forcing citizens to make financial obligations or any other payments is established through organic law and any other payments are prohibited. In this context, it is necessary to mention expressly the citizens' duties, which will be imposed through Government Decisions or other department regulating acts, owing to the peculiarities of the Reservation management. This mainly refers to the obligations to ensure protection and conservation of the cultural and natural patrimony of the reservation, the special regime of households, settlement of the problems related to land improvement and town planning, limitation of the economic activities and prevention of their negative effects, as well as the financial obligations of the landowners etc. All these peculiarities of activity and management within the reservation require additional expenditures, which will be borne by the inhabitants from the settlements included in the reservation."

III.5. Cooperation of the Parliament with the civil society during the legislative process

As mentioned in the introductory chapter of this Study, it was possible for CAPC to implement the corruption proofing mechanism thanks to the adoption of the Concept Paper on Cooperation with the Civil Society by the Parliament on 29 December 2005. The aim of this paper "*consists in establishment of a permanent, open and efficient cooperation between the Parliament and the civil society. To achieve this purpose, it is necessary to accomplish the following objectives:*

a) objective assessment of the problems the society encounters;

b) the widest possible representation of the opinions of various groups of citizens in the Parliament;

[24] http://capc.md/ro/expertise/avize/search/317.html

c) enhancement of the efficiency of the participatory democracy and the decision-making process;

d) encouragement of civic initiatives;

e) extension and improvement of the legal framework through a widest possible participation of the electorate in this process".

The Concept paper provides for a set of minimal standards of cooperation between the Parliament and the civil society, which shall be observed by other stakeholders involved in this process: "*The Parliament shall submit draft legislative acts, contact data and other relevant information", and "the civil society organizations input shall be taken into account provided that they are submitted within 15 working days from the date the draft legislative acts are placed on the Parliament's website or when the Parliament expressly requests them*".

During 3 years of Corruption Proofing Project implementation, CAPC has been one of the most active representatives of the civil society[25] and had the opportunity to see itself the effectiveness of the cooperation mechanism established in the Concept Paper, monitoring, at the same time, compliance by the Parliament with the principles of cooperation with the civil society.

The summary of the CAPC work proved that the minimal standards of cooperation are not accurately complied with by the Parliament, as important deviations from the terms of delivery of the input from the civil society and sending the input receipt confirming bills were reported.

Although the Concept Paper provided that the standard term of input submittal was 15 working days from the date the draft act was placed on the website of the Parliament and that this term might be reduced only in case of an emergency or if it is obvious that the civil society organizations may express their point of view more operatively, the experience of CAPC proved that these terms and cases of deviation from them were not complied with.

Thus, out of the total of 205 draft acts already passed, taken for expert review by the CAPC from the website of the Parliament, 29 (14%) draft acts were passed by the Parliament as a matter of emergency, the terms of cooperation with the civil society being breached.

The table below shows examples of some laws that were promoted as a matter of emergency, breaching the terms of cooperation with the civil society.

[25] The fact that the CAPC submitted to the Parliament the largest amount of input was mentioned by the former speaker of the Moldova Parliament during the annual conference in December 2006 **"Cooperation between the Parliament and Civil Society"**, who mentioned that *"… according to the data that are available to us, inputs from 9 NGOs was received, most of which sent 1-2 kinds of inputs. The overwhelming majority of the contributors, about 80%, came from one single NGO, namely the Centre for Analysis and Prevention of Corruption (CAPC). The manner through which the CAPC participates in the dialogue between the Parliament and the civil society proved very sustainable. CAPC formed working groups by areas, consisting of national experts who analyze the corruptibility degree of the draft legislative acts.* However, this scheme has a narrow purpose, namely to prevent corruption, which though extended to other areas, for instance, by the scope of the Parliamentary committees, could render more dynamism to the process of cooperation between the Parliament and the civil society..." (http://parlament.md/news/19.12.2006-2/en.html)

Table 1. *Examples of draft laws promoted and passed by breaching the terms of cooperation with the civil society*

Name of the draft law (author of the initiative)	Date the draft act was placed on the Parliament's website	Deadline for submittal of civil society's input	Adoption date	Shortage of days for submittal of civil society's input
Law Amending and Adding to some Legislative Acts (Tax Amnesty and Capital Legalization) (*author – the President of the RM*)	13.04.2007	04.05.2007	27.04.2006	**5 days**
Law on Money Laundering (*author - the Government of the RM*)	09.07.2007	27.07.2006	26.07.2006	**1 day**
Law Amending and Adding to some Legislative Acts (adjusting the legislation to the new law on money laundering (*author – the Government of the RM*))	09.07.2007	27.07.2006	26.07.2006	**1 day**
Law Amending the Law on Notary Activity (*author – the Government of the RM*)	09.12.2008	29.12.2008	25.12.2008	**4 days**
Law on the Prosecutor's Office *(author - the President of the RM)*	09.12.2008	29.12.2008	25.12.2008	**4 days**
Law on securing building of Clinical Hospital of Traumatology and Orthopedics (*author – the President of the RM*)	10.12.2008	30.12.2008	25.12.2008	**5 days**
Law Amending of some Legislative Acts (amendment of the procedure of appointment of the SCM members (*author – the President of the RM*))	12.12.2008	30.12.2008	25.12.2008	**5 days**

Although the shortage of days indicating non-compliance with the terms of cooperation with the civil society seems insignificant (on the average 4 days), it is necessary to invoke the regulations of the Concept Paper according to which "the Parliament shall close the process of consulting on the subject *after the expiry of the deadline for input receipt*" and only afterwards it "passes to other stages of the legislative process". Therefore, the civil society input will be used only if it is transmitted to specialized parliamentary committees before the first reading of the draft acts, but when the draft acts have already considered and adopted by the Parliament (even in the first reading), ignoring the civil society's input by the legislators is inevitable.

It is not clear for what reasons laws (including those mentioned in the table above) were promoted as a matter of emergency and why the terms of cooperation with the civil society were not complied with. However, it was found that non-compliance with the terms usually happens on eve of the parliamentary holiday – in July and December.

The analysis of the Parliamentary activity in "pre-holiday" period proves that the efficiency of the examination and passing of the draft legislative acts increases suddenly, this increase being closely related to the increase in the number of the draft acts submitted to the

Parliament by the subjects entitled with the right of legislative initiative, particularly, of the Government's draft acts.

As to the draft laws reviewed by CAPC experts and passed by the Parliament in non-compliance with the terms of cooperation with the civil society (particularly regarding the draft acts included in the table below), the following should be clarified:

- the draft acts were initiated by the Government or the President;
- all draft acts were identified to promote particular interests in detriment of the public interest;
- a deficient regulation of the public authorities activity was identified in the texts of all draft acts;
- the efficiency of taking into account the objections raised by CAPC was minimal as only a few editorial changes were made in the final versions of the laws, out of all deficiencies stressed by CAPC experts, but which probably were made by editors rather than by representatives of the legislative body.

Another flaw of the cooperation between CAPC and the Parliament was the failure of the latter to send confirmations about the receipt of inputs and to take them into account[26], which did not comply with the Parliament's commitment from point 4.4 of the Concept Paper *"With the view to building coherence and mutual trust, the inputs receipt shall be confirmed"*. Starting from 2006 until January 2009, the CAPC received only one single written response from the Parliament, by which it could follow whether the formulated objections had been considered.

In conclusion of this section, we should mention that the adoption and application of the Concept Paper on the Cooperation of the Parliament with the Civil Society represented a decisive step towards establishment and promotion of the principles of the transparency in decision-making process and offered the civil society the opportunity of monitoring and active involvement in the legislative process. The removal or the attenuation of the aforementioned deficiencies would make the Legislature more transparent and trustworthy for the civil society.

[26] The need to inform representative of the civil society about "the acceptance or (total or partial) decline of the inputs, justifying the decline" is provided in Chapter 4 "Minimal Cooperation Standards" of the Concept Paper and in Article 3 of the Decision of the Parliament Standing Bureau no 2-XVI as of 16 February 2006 http://parlament.md/news/civilsociety/en.html

IV. JUSTIFICATION OF DRAFT LAWS

This chapter examines the experts' findings and objections to the justification of the draft legislative acts reviewed: ensuring access to the explanatory notes by placing them on the Parliament's website and sufficiency of the rationale contained in the explanatory notes (Section IV.1.); generalization of the cases when authors invoked the compatibility of the draft acts with the international standards and acquis communautairs, reflected in the explanatory notes and in the draft legislative acts (Section IV.2); findings formulated by the experts referring to the financial and economic justification of the draft legislative acts reviewed (Section IV.3).

IV.1. Explanatory Note

Article 20 from Law 780/2001 establishes the compulsoriness of the explanatory note to the developed draft acts, which should contain:

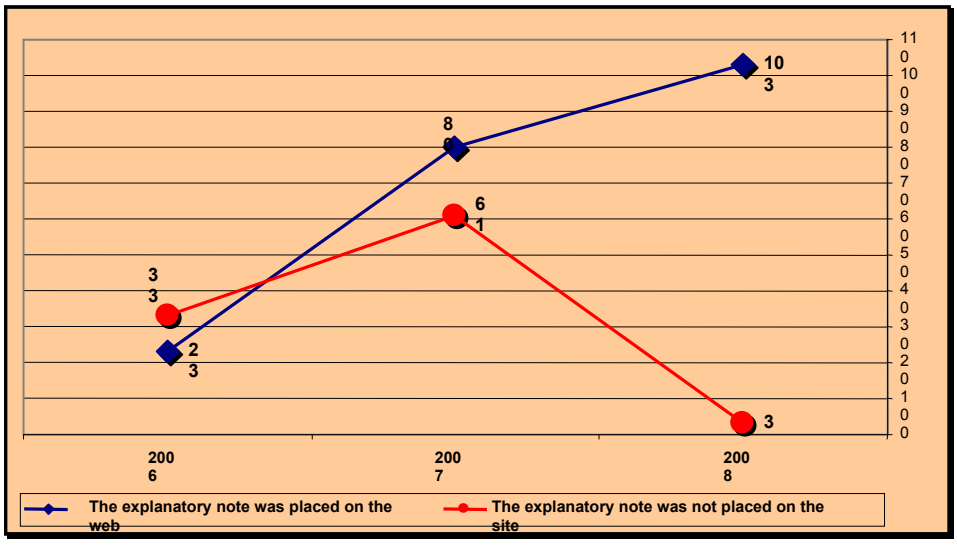
"a) conditions that determined the need to develop the draft act, including the need to harmonize the legislative act with the provisions of the community legislation, the final results sought through the implementation of the new regulations;
b) main provisions, the place of the act in the legislative 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."

IV.1.1. Transparency of the explanatory note

The explanatory notes transparency helps the public opinion to understand the need and the reasons for promotion of the state laws. Moreover, given the fact that it is not possible to place the explanatory note unless it had been prepared *de facto*, the transparency of the justification note is a factor that encourages promotion of well justified laws and, eventually, prevention of legislative inflation.

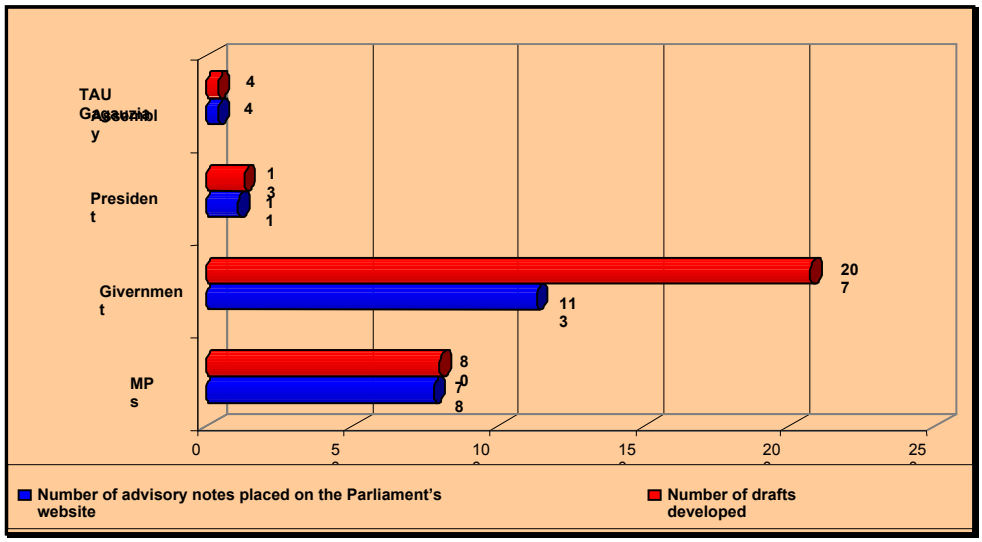
In a special section of the expert report CAPC experts checked whether the explanatory note was in place. The explanatory note was attached to 206 draft acts placed on the Parliament's website out of the total of 304 draft legislative acts reviewed. 98 draft acts were placed on the Parliament's website without an explanatory note, which was constantly criticized in the CAPC expert reports from December 2006 to May 2007. This influenced positively the practice of placing explanatory notes on the Parliament's website and starting from July 2007 there were only a few cases when the explanatory notes to the draft acts placed on the website were not made public together with the draft acts text (*see Figure 12 below*).

Figure 12.
Dynamics of placing the explanatory notes on the Parliament's website



The analysis of the explanatory note transparency in terms of the subjects with the right of legislative initiative (MPs, President of the Republic of Moldova, Government and the People's Assembly of Gagauzia Territorial Autonomous Unit) proved that most often the explanatory notes to the Government draft acts are not placed on the Parliament's website, unlike other subjects with the right of legislative initiative (MPs, President of the Republic of Moldova, People's Assembly of Gagauzia Territorial Autonomous Unit) who had an insignificant number of draft acts whose justification notes had not been placed on the Parliament's website.

Figure 13.
Placement of the explanatory notes on the Parliament's website (by authors)



We have no possibility to identify the reasons of failure to place the explanatory notes to the draft legislative acts developed by the Government (we can only assume them), but we can state with certainty that their placement would make the legislative process more transparent and would contribute to a better understanding of the intention of the draft laws' authors.

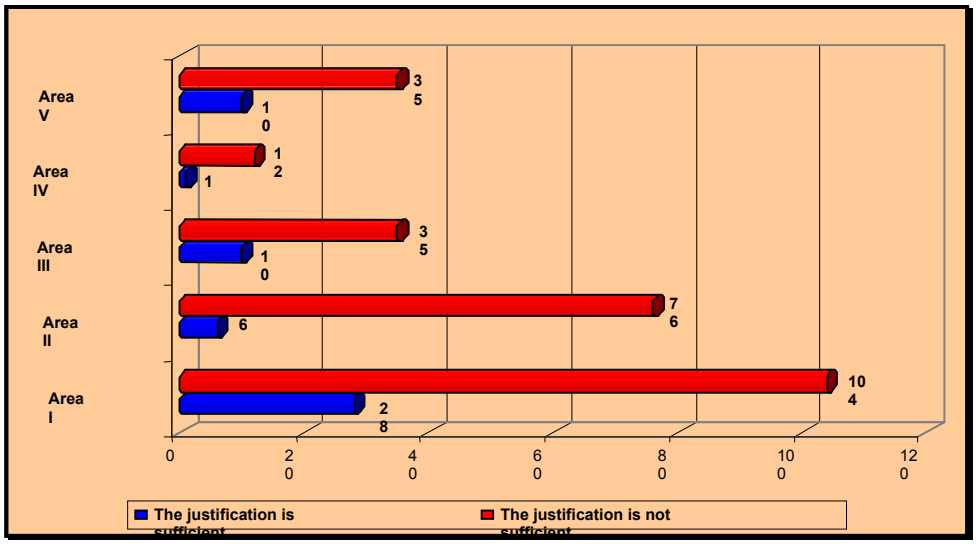
IV.1.2. Sufficiency of the rationale contained in the explanatory note

Another aspect constantly assessed by the CAPC experts when examining the justification of the draft legislative acts was the sufficiency of the rationale of the draft acts contained in the explanatory notes. 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.

Most explanatory notes to the draft laws subject to expert review – 262 (82.65%) – were formal and general in nature, without explaining in detail why the draft documents should be passed.

Analyzing the sufficiency of the rationale in terms of the corruption proofing areas, we found a generally unsatisfactory state and the least sufficient rationale was found for the draft laws from Area II "Economy and trade" (the number of the draft laws that were insufficiently justified was almost 13 times higher that that of the justified ones). In our opinion, this state indicates that the draft laws are developed in haste without a multiple analysis of the causes that determine the development of the laws, its effects etc.

Figure 14.
Sufficiency of the rationale of the draft acts by areas

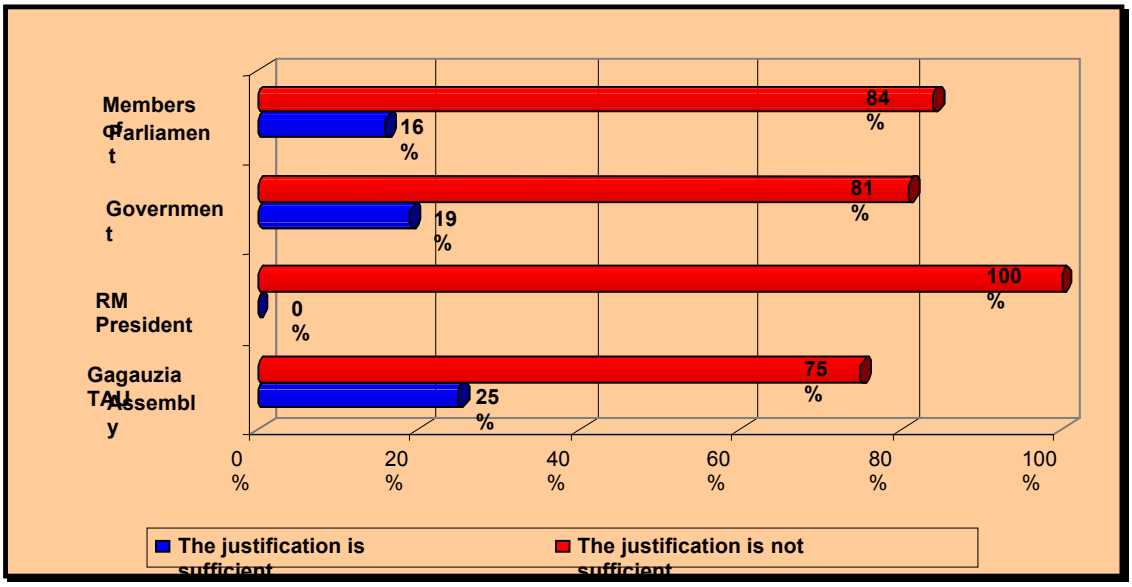


Nonetheless, we must mention some positive trends in the laws development process. Thus, if in the period 2006 - 2007 the laws were often promoted "to execute the Government's orders", today the subjects with the right of legislative initiative increasingly often refer to the legislative planning. At the same time, often the explanatory note continues reproducing fairly the structure of the draft act without *"outlining the new elements, the social, economic and other kind of effects of its implementation"*, according to the requirements of Article 20 of Law 780/2001.

Figure 15 shows the understanding of the subjects with the right of legislative initiative regarding their compliance with the requirements of Law 780/2001 in terms of validity, thoroughness of the reasons invoked to promote the draft act and the explicitness level of the draft law objectives. We can see that the MPs justify their legislative initiatives the best, while the other end is occupied by the President of the Republic of Moldova, who did not justify sufficiently any of his draft laws.

Figure 15.

Sufficiency of draft acts justification by the authors of the legislative initiatives



The sufficiency of the justification of the legislative initiative contained in the explanatory notes to the draft acts has a particular importance, particularly, in the case of integral draft legislative acts. Without a sufficient justification it is difficult to understand not only the logics of the authors, but also the final aims of the draft laws that underlie the establishment of institutions, introduction of new and complex procedures.

Example of insufficient justification included in the explanatory note.

The expert report No.285 as of 14.04.2008 to the draft Law on Verification of the Holders and Candidates to Public Offices *(registered with the Parliament under No.932 as of 14.03.2008) contains the following finding:*

"Promotion of the draft is based on a strategic planning act – point 1.7 of the Action Plan for the implementation of the National Strategy for Corruption Prevention and Combating (PD No.421/16.12.2004). Speeding the promotion of the draft act was mentioned in GD No.1519/29.12.2007 on the implementation of the National Strategy of Corruption Prevention and Combating and the activity of the Centre for Combating the Economic Crimes and Corruption in 2007. Initially, the development and promotion of such a draft act was decided through GD No.900/09.07.2002 according to which the draft act had to be finished ***by 15 July 2002.***

The fact that the draft development and promotion was postponed for 6 years is a serious ground to state the imperfect character of its underlying ideas and feeds the suppositions that the need of new regulations was not enough reasoned from the very beginning. This rationale is not sufficient today, too, as: - the explanatory note does not contain any reference about a preliminary scientific investigation; - there is no justified information on how the lack of the respective regulation affects the operation of the public authorities, the prevention and combating of the negative phenomena within the public services; - the procedure through which the new draft act will help combating the respective negative phenomena is not justified, since most of them are latent and hard to detect."

IV.2. References to the compatibility with the international standards

According to Article 20 of Law 780/2001 cited hereinabove the explanatory note should also 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 proved that only in 11 draft acts (3.5%) out of 317 draft legislative acts reviewed were

made references to acquis communautaire, references to the international standards were found in 41 draft acts (12.9%), and references both to acquis communautair and international standards were made in 15 draft acts (4.7%).

At the same time, the presence of some express references to the acquis communautaire even in the text of the draft legislative acts did not necessarily mean a "synchronization" of the national legislative provisions with the community legislation or the international standards.

Considering the fact that almost 79% of the draft laws "escaped from the filter of the European integration" and if this filtering was carried out it had only a declarative character, we have to mention that there is no real will of the authorities for European integration in legislative terms.

However, there are rare exceptions when the references to the acquis communautaire from the explanatory notes are not just declarative and the draft laws are really compatible with the standards of the community legislation to a great extent.

Example of reference to the compatibility with the international standards

The expert report No.380 as of 16.12.2008 to the draft Law on Asylums in the Republic of Moldova (registered with the Parliament under No.3273 as of 25.11.2008) stipulates:

"the reviewed draft Law on Asylums took over provisions from the following community acts:
A *Council Directive 2005/85/CE as of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status (CELEX32005L0085);*
B. *Council Directive 2001/55/CE as of 20.07.2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof (CELEX32001L0055);*
C. *Council Directive 2003/9/EC as of 27 January 2003 laying down minimum standards for the reception of asylum seekers (CELEX32003L0009);*
D. *Council Directive 2003/86/CE as of 22 September 2003 on the right to family reunification - (CELEX32003L0086);*
E. *Council Directive 2004/83/EC as of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (CELEX32004L0083).*

The draft law did not take directly the provisions from the directives as only the provisions which could be implemented in practice were picked up, to avoid a mechanical copying of the relevant provisions of the acquis communautaire in the national legislation.

IV.2. Financial and economic justification

According to letter d) of Article 20 from Law 780/2001, *"economic and financial justification is compulsory for the draft acts, whose implementation requires expenditures from public resources".*

During the corruption proofing, the CAPC experts paid special attention to the draft acts, whose implementation required financial and other kind of expenditures, but which:

- have no economic and financial justification;
- have an insufficient or formalized economic and financial justification;
- impose expenditures on the subjects of public or private law without consulting/correlating with them or against their interests;

- imply exaggerated expenditures in relation to the public interest[27].

Out of the 317 draft acts reviewed, 248 (78.2%) draft acts implied financial and other kind of expenditures (economic and financial justification is compulsory according to letter d) Article 20 of Law 780/2001), of which only 15 (6%) were economically and financially justified.

Given the "rare" nature of the economic and financial justifications, we believe it would be appropriate to provide some positive examples of draft acts that were accompanied by such justification, as well as an example of critics made by the CAPC experts referring to their lack.

Examples of economic and financial justification included in the explanatory notes to 2 draft laws

Explanatory note to the draft Law on Asylums in the Republic of Moldova (registered with the Parliament under No.3273 as of 12.11.2008):

"This draft law was developed to adjust the national legislation to the acquis communautaire and provides some additional financial expenditures besides those that already exist in the state budget to implement all required standards, the estimated amount being equal to MDL 550,000. Thus, the required financial means will include:

the amounts required to cover operating and maintenance expenditures of the centres, depending on the actual costs and on the limit of the appropriated means;

repair and adjustment of the living conditions to some special needs;

amounts required for the maintenance of the staff of the Directorate for refugees, within the limits of the staff limit;

social assistance provided to minors: their accommodation, establishment of the tutorship and guardianship in the same conditions as for other citizens of the Republic of Moldova, access to the compulsory state education;

all actions of social assistance provided to the families with children, as well as to children that are not accompanied in accordance with the legislation in force:

primary and acute healthcare, as well as the acute healthcare at the pre-hospital and hospital stage in case of acute conditions which jeopardize the life, within the limits of the compulsory health insurance means and the state budget means for the respective year, free-of-charge medical examination (including anonymously) with the purpose to detect HIV virus and SIDA disease at an early stage;

free-of-charge medical examination, for the purpose of public health, to protect the local population;

expert controls, experts' consultations, as well as medical and legal examinations to determine the age, detect the cases of torture, as well as establish the criminal sanity

The explanatory note to the draft Law for Amending and Adding to of Law No.355-XVI as of 23 December 2005 on the Remuneration System in the Public Sector (registered with the Parliament under No.2996 as of 21.10.2008):

"The required additional means to implement the increase of salaries for the teaching staff as of 1 April and 1 September 2009 and raise their average salary to 2009 country planned level – MDL 3140 is estimated to MDL 364.4 million for the implementation months of 2009, and in the annual calculation amount to MDL 862 million. The draft law stipulates also the manner of further increase of the teaching staff salary: from 1 September of each year along the percent increase of the average salary planned for the economy as compared to the real average salary attained in previous year. Thus a clear, transparent and easy to manage system of remuneration of the teaching staff will be implemented.

The changes of the salary norms provided in the draft law will be implemented with using financial resources appropriated for this purpose in 2009."

Example of critics of the lack of economic and financial justification for a draft law

The expert report No.285 as of 14.04.2008 to the draft Law on the Verification of the Holders and Candidates to Public Offices *(registered with the Parliament under No.932 as of 14.03.2008):*

The draft has no economic and financial justification, stipulating only that the implementation of provisions won't request additional expenditures from the State Budget. At the same time, the explanatory note admits that the specialized SIS subdivision will need to be manned, but this will be done "within the limits of the approved staff number". Accordingly, the public financial resources which could

[27] Theoretical and Practical Guidelines for the performance of anti-corruption review of drafts of legislative acts and other legal acts, developed by CAPC and CCECC, page 17.

be saved and channeled for other purposes will be used to apply the new regulations and further they will be requested and provided in the SIS budget as indispensable to ensure the application of the law. Although the explanatory note does not estimate the expected number of beneficiaries and candidates who will be subject to verifications, the need for some additional expenditures indicates also quite a large number of public offices that will fall within the scope of this law (according to some preliminary estimations – a few thousand individuals)".

V. EFFICIENCY OF THE IDENTIFICATION OF CORRUPTIBILITY ELEMENTS

Chapters III and IV have elucidated the findings resulting from the appraisal of draft laws justification and substantive assessment of their corruptibility by the CAPC experts. Yet, the appraisal of the justification and the substantive assessment for the presence of corruptibility elements in the draft laws reviewed refer only to corruption–related aspects valid for the entire text of the draft and, as a rule, do not include specific recommendations for particular provisions. Unlike Chapters III and IV, this Chapter summarizes the CAPC experts' objections referring to concrete provisions of specific draft laws. It describes the corruption-related objections of experts (Section V.1.), the factors that influence the assimilation of objections and recommendations from the corruption proofing report (Section V.2.) and, in the last part of this Chapter, the efficiency of corruption proofing is presented separately for each anti-corruption draft law (Section V.3.).

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

1) the share of objections for each corruptibility element out of the total number of objections made for all elements
   Sample: 4448 objections in total for all corruptibility elements made in 317 expert reports.

2) the extent to which the Parliament/authorities accepted the experts' objections on the corruptibility elements, stipulated in the expert reports
   Sample: 3684 objections in total for all corruptibility elements made in 258 expert reports on legal acts passed by the Parliament and entered into force[28].

V.1. The distribution of corruptibility elements among the drafts reviewed and the efficiency of their identification in expert reports

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

Out of all 4448 objections related to the presence of elements of corruptibility in the drafts reviewed, elements from the following categories have the largest share: I. **Interaction of the draft with other legal and regulatory acts –** 31.3%, II. **Manner of exercising public authority duties –** 29.2% and VII. **Linguistic expression** – 23.8% (*Table 2*).

Table 2. *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*

[28] By 30 May 2009.

No	Categories of corruptibility elements	%	Number
I.	Interaction of the draft with other legal and regulatory acts	31.3%	1391
II.	Manner of exercising public authority duties	29.2%	1299
III.	Manner of exercising rights and obligations	5.2%	230
IV.	Transparency and access to information	2.4%	109
V.	Liability and accountability	4.2%	187
VI.	Control mechanisms	2.1%	94
VII.	Linguistic expression	23.8%	1057
VIII.	Other elements of corruptibility	1.8%	81
TOTAL		**100%**	**4448**

The Parliament accepted 1916 objections, that is 52.01% of the 3684 objections referring to specific elements of corruptibility, formulated in 258 expert reports to draft laws that have already been passed. *Table 3* below shows that the Parliament accepts to remediate the corruptibility risks detected by the experts in draft laws, most frequently in the following categories: VII. - Linguistic expression – 58.7% of cases, III. - Manner of exercising rights and obligations – 54.8% of cases, II. Manner of exercising public authority duties – 54.81% of cases, V. Liability and accountability – 50.3% of cases and I. Interaction of the draft with other legal and regulatory acts – in 47.6% of cases.

Table 3. *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 act	**47.6%**	536	1127
II.	Manner of exercising public authority duties	**54.8%**	604	1102
III.	Manner of exercising rights and obligations	**54.8%**	85	155
IV.	Transparency and access to information	**35.8%**	34	95
V	Liability and accountability	**50.3%**	88	175
VI.	Control mechanisms	**34.5%**	29	84
VII.	Linguistic expression	**58.7%**	517	880
VIII.	Other elements of corruptibility	**34.8%**	23	66
TOTAL		**52.01%**	**1916**	**3684**

Thus, the experts' objections for the presence of corruptibility elements of I, II and VII categories of elements, which have the largest share in the draft laws reviewed (*see Table 3 above*) also have the highest rate of approval by the Parliament.

Taking into account that the following among the most widespread deficiencies of the legislation of the Republic of Moldova in terms of regulations corruptibility: plenty of references to nonexistent or unspecified laws, concurrent legal provisions (*category I. Interaction of the draft with other legislative and regulatory acts*) and ambiguous linguistic expressions susceptible of irregular and abusive interpretations (*category VII. Linguistic*

expressions), it is encouraging the acknowledgement of these risks by the Parliament, as well as its considerable availability to remove them.

We would like also to mention another widespread category of objections, with sensitive implications, especially for public authorities and servants, category II. *Manner of exercising public authority duties.* In Chapter III we concluded that the draft laws with the highest share of elements from this category are promoted by the Government. This trend can be easily understood under the circumstances when the Government has in its subordination the largest amount of authorities in charge of ensuring the implementation of laws. Authorities that are the initial authors of draft laws in the areas that are under their responsibility are tempted to include in the drafts developed by them administrative procedures that the servants can easier abuse of, assigning in this respect excessive competences, in breach of the regulations, admitting waivers, etc. It is also worth mentioning the high approval rate by the Parliament of the objections referring to the corruptibility elements from this category (54.8%), fact denoting a good understanding of this problem.

In the following V.1.1.-V.1.8. sections we present a summary description of elements of each category, the distribution of these elements in the expert reports, the efficiency of their identification in the expert reports, as well as specific examples of objections to the presence of such elements in the expert reports that Parliament took into consideration when passing the respective legislative acts.

V.1.1. Interaction of draft with other legislative and regulatory acts

Category I. "*Interaction of the draft with other legislative and regulatory acts*" includes the following elements of corruptibility:

1. Reference provisions
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

Table 4 below reveals that concurrent legal provisions (13.7%) and reference provisions (9.7%) have the highest rate of corruptibility elements in this category. As regards the experts' objections on the concurrent legal provisions, two thirds of these objections referred to the conflict between the provisions of draft law and other legislative and regulatory acts in force (external conflict), while one third of these objections referred to the existing contradictions between the provisions of the same draft (internal conflict). The internal conflict of provisions included in the draft can be regarded as an indicator of the quality of its development.

Table 4. *Incidence of objections related to elements of corruptibility from category I. "Interaction of the draft with other legislative and regulatory acts"*

No	Categories of elements of corruptibility Elements	%	Number
I.	**Interaction of the draft with other legislative and regulatory acts**	**31.3%**	**1391**
1.	Reference provisions	**9.7%**	431
2.	Regulatory competence transmission provisions	**2.4%**	109
3.	Concurrent legal provisions	**13.7%**	607
4.	Legislative gaps	**4.5%**	200
5.	Unfeasible provisions	**0.4%**	17
6.	Exaggerated costs for legal provision enforcement in relation to the public benefit	**0.2%**	7
7.	Provisions establishing unjustified waivers	**0.4%**	20

According to the data from Table 5 below, within this category of corruptibility elements, the most frequent risks, remedied by the Parliament, are the risks generated by the existence of concurrent legal provisions – 57.7%, of regulatory competence transmission provisions – 55.8%, of legal provisions establishing unjustified waivers – 41.7% and of reference provisions – 40.2%.

Table 5. *The extent to which the Parliament accepted objections referring to corruptibility elements from category I. "Interaction of the draft with other legislative and regulatory acts"*

No	Categories of elements of corruptibility Elements	% of accepted elements	the number of elements accepted	the number of elements formulated
I.	**Interaction of the draft with other legislative and regulatory acts**	**47.6%**	**536**	**1127**
1.	Reference provisions	**40.2%**	146	363
2.	Regulatory competence transmission provisions	**55.8%**	43	77
3.	Concurrent legal provisions	**57.7%**	277	480
4.	Legislative gaps	**33.9%**	60	177
5.	Unfeasible provisions	**25%**	3	12
6.	Exaggerated costs for legal provision enforcement in relation to the public benefit	**33.3%**	2	6
7.	Provisions establishing unjustified waivers	**41.7%**	5	12

The subsections V.1.1.1-V.1.1.7 below show elements of corruptibility from category I, accompanied by particular examples of objections from expert reports.

V.1.1.1. Reference provisions

Distribution within all elements: *9.7%*
Distribution within all draft laws: *22.7%*
Efficiency of element identification: *40.2%*

The reference provisions are the provisions of the draft that refer to the provisions of another article in the same law, to specific provisions in another law/other laws or to another law/other laws as a whole.

Identification of such corruptibility elements is possible if the following legal expressions are used: „in compliance with the legislation in force", „under the law", „in the prescribed manner", „according to the legal provisions/in the area" etc., are used without making reference to a specific act and if, during the evaluation, this act is difficult to identify or cannot be identified at all[29].

Example: *Law on Public Function and Status of Civil Servant, no 158-XVI as of 04.07.2008 (Expert Report No.281 as of 7 May 2008)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Article 19 Work time *(2)At the behest of their heads, public servants, unless otherwise provided, can exceed the normal duration of the work time…*	***Risk:*** *Provisions of reference* *The reference isn't clear, as all public servants can work beyond the working hours. There are no interdictions in the legislation for public servants, these can refer to certain categories of people (pregnant women, mothers with young children, minors), but in this case the provisions of the Labor Code shall be applied.* ***Recommendation:*** *To specify the reference, so that the present law to include most of the needed details and to clearly regulate the settlement of conflict between legal provisions with the same legal power.*	*Article 19 Work time* *(2)At the behest of their heads, public servants can exceed the normal duration of the work time during the holidays and/or weekends, within the limits of 120 hours during a calendar year.* In exceptional cases, these limits can be extended with the consent of public servants' representatives, up to 240 hours.

V.1.1.2. Regulatory competence transmission provisions (white references)

Distribution within all elements:	*2.4%*
Distribution within all draft laws:	*14.5%*
Efficiency of element identification:	*55.8%*

Regulatory competence transmission provisions are the provisions of the draft, that grant to other authorities and subjects, the right and competence to establish independently regulations with legal character, behaviour rules, interdictions.

The regulatory competence transmission provisions generate other high risk elements of corruptibility: enlargement of discretionary powers, random establishment of deadlines for service provision, excessive requirements for exercise of some rights, etc. Identification of such corruptibility elements is possible if the following legal expressions are used: „following the procedure/term set by the (Ministry, another authority/subject)", „according to the conditions established by", „under the conditions established in its Regulations", „other conditions/acts, established by the procedure", etc. are used[30].

[29] Theoretical and Practical Guidelines for the performance of anti-corruption expert review of draft legislative acts and other regulatory acts, developed by CAPC and CCECC, page 20.

[30] Ibid.

Example: *Law on the Court of Accounts No.261-XVI as of 05.12.2008 (Expert report no 295 dated 13.06.2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 22 The Court of Accounts Staff *(4) The terms for the remuneration of the Court of Accounts' staff shall be decided by the Parliament in a special law.*	***Risk:*** *Regulatory competence transmission provisions* *This paragraph contains a provision of regulatory competence transmission and nobody knows if such a law will be passed, but up to then it is not clear how the Court's staff will be paid. It isn't quite clear if the Court of Accounts' employees have currently special allowances provided for in the Law on Remuneration and Government Decision, etc. Therefore, these conditions shall be further maintained.* ***Recommendation:*** *The remuneration shall be maintained in compliance with the Law on Remuneration in the Budgetary Sector.*	*Article 22 The Court of Accounts Staff* *(4) The terms for the remuneration of the Court of Accounts' staff shall be established by law.*

V.1.1.3. Concurrent legal provisions

Distribution within all elements:	*13.7%*
Distribution within all draft laws:	*41.6%*
Efficiency of element identification:	*57.7%*

Concurrent legal provisions signify an incompatibility between draft provisions and other provisions of the draft or the national legislation.

The conflict can appear between the provisions of the draft (internal conflict of provisions) and conflict between the provisions of the draft and regulations of other legislative and regulatory acts (external conflict).

External conflict of legal provisions can appear between legal acts of the same legal power (between two organic laws), between acts of different level (for example – competences of local public authorities of first and second levels), between codes and other legislative acts.

The conflict is an impediment in correct enforcement of legislative provisions and creates preconditions for the enforcement of "convenient" provision in a particular situation, for the subjective and abusive choice of the applicable provision[31].

Example: *Law on the Code of Conduct of Public Officials, No.25-XVI as of 22.02.2008 (Expert report No.284 as of 18 February 2008)*

Text of the draft	*The identified risk and expert's*	*Text of passed law*

[31] *Ibid*, page 19.

	recommendation	
Article 13. Conflict of interests *(1) Public servant shall avoid the conflicts of interest.* *(2) Public servant shall not be included in the same commission, where other public servants are his/her relatives or relatives in-law in accordance with the provisions of the Family Code.* *(3) Any conflict of interest declared by the candidate to public office shall be settled until his/her appointment into office.* *(4) The procedure on the declaration and settlement of conflicts of interest shall be regulated by the legislation on the conflict of interest.*	***Risk:*** *Concurrent legal provisions* *The text of this article shall be coordinated with the provisions of the draft Law on the Conflict of Interest.* ***Recommendation:*** *The contents of this article can be reduced and pruned in order to avoid an overlap with the provisions of another law (draft). But this article stipulating the official's obligation to avoid the conflict of interest and to contribute to its prevention or settlement shall contain an express reference to the detailed provisions of the Law on the Conflict of Interest.*	*Article 12. Conflict of interest* *(1) Public servant shall avoid the conflict of interest.* *(2) Any conflict of interest declared by the candidate to public office shall be settled until his/her appointment into office.* *(3) The procedure on the declaration and settlement of conflicts of interest shall be regulated by the legislation on the conflict of interest.*

V.1.1.4. Legislative gaps

Distribution within all elements:	*4.5%*
Distribution within all draft laws:	*18.9%*
Efficiency of element identification:	*33.9%*

The legislative gaps are the legislator's omissions in regulating aspects of social relationships, which emerge from the objective reality or other provisions of the same act.

The legislative gaps are also called "legislative voids". The danger of this corruptibility element lies in the incertitude it generates in the social relationships, especially those referring to the rights exercise mechanisms, the fulfillment of obligations, the ambiguity of public servants' duties and administrative proceedings they are responsible of etc., situations when the authorities responsible for the enforcement of the respective law can make use of this deficiency to commit abuses.

Example: *Law on Mediation, no 134 as of 14.06.2007 (Expert report No.202 as of 17.04.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 18, para (3): *The mediator shall pay the taxes and state compulsory social and health insurance contributions under the law.*	***Risk:*** *Legislative gaps* *A taxing differentiation is not made – mediation is not an entrepreneurial activity, but it is not included in any specific category (similar to lawyers and notaries).* ***Recommendation:*** *To distinctly regulate the specific of taxing the mediators, which are individuals and legal entities.*	*(2) The mediator shall pay the taxes and state compulsory social and health insurance contributions under the law and shall benefit of state social guarantees provided for in the law.* *(3) The activity of mediator is not an entrepreneurial activity and cannot be related to such an activity.*

V.1.1.5. Unfeasible provisions

Distribution within all elements: 0.4%
Distribution within all draft laws: 4.4%
Efficiency of element identification: 25%

Unfeasible provisions are the provisions that, in virtue of the specific and particular circumstances of the regulated area, cannot be enforced, as they do not correspond to the social reality and relations.

Unfeasible provisions have the same effect as the "false promises". The danger of this corruptibility element lies in the incertitude it generates in the social relationships, especially those referring to the law enforcement mechanisms, situations when the authorities responsible for the enforcement of the respective law can make use of this deficiency to commit abuses.

Example: *Law on the Amendment and Completion of some legislative acts (periodical review of tax policy), no 172-XVI as of 10.07.2008 (Expert report No.304 as of 02.07. 2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Final and transitory provisions ***(1) The present law shall enter into force at the date of its adoption, except for*** *Article III point 31, that shall be enforced starting with 4 May 2007; Article IV, para (5), Article VII, para (2), Articles XII and XV, that shall be enforced starting with 10 August 2007;*	***Risk:*** *Unfeasible provisions* *The provisions of this article stipulate that Article VII of the draft will be enforced starting with 10 August 2007, but this is not possible, as the set date had expired and the law* ***cannot be enforced retroactively****, as provided for in Article 46 of the Law on the Legislative Acts. Consequently, the date of coming into effect of these provisions shall be changed.* ***Recommendation:*** *To edit the provisions of Article XVIII.*	*(1) The present law shall enter into force on the date of publication, except for…Article VII, Article IX, Article XII point 1 and Article XVII, that shall be enforced starting with 1 January 2009.*

V.1.1.6. Exaggerated costs for legal provision enforcement in relation to the public benefit

Distribution within all elements: 0.2%
Distribution within all draft laws: 1.9%
Efficiency of element identification: 33.3%

Exaggerated costs for legal provision enforcement in relation to the public benefit are the financial and material expenditures, from public or private means, needed for the implementation of the provision, the amount of which is higher if compared to the advantages obtained by the society or people as a result of this provision enforcement.

The danger of this corruptibility element lies in the waste of public or private means for low value benefits, advantages and interests. In case when the exaggerated costs are incurred by the private subjects, they are tempted to elude legal requirements, resorting to "cheaper" corrupt methods. On the other hand, when these expenditures shall be made from public

means, the authorities empowered with the implementation of the respective provision can commit abuses or, on the contrary, they turn out to be in the situation when the enforcement of the provision becomes impossible because of the lack of resources.

Example: *Law on Public Patrimony Management and Ownership Change No.121-XVI as of 04.05.2007 (Expert report no 137 dated 05.01.2006)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 21. *The lists of objects non-subject to privatization* (1) Among the objects non-subject to privatization are the public assets, assets of public legal entities, as well as: b) public enterprises that use auto-roads, railway, air, fluvial objects and through tubing, as well as other enterprises of social and/or economic infrastructure and/or for use or national or local interest (group B)	***Risk: Exaggerated costs for legal provision enforcement in relation to the public benefit*** *We think that in terms of opportunity "public enterprises using auto-roads" could be excluded from this restrictive list, fact confirmed by the practice of democratic states, enabling them to settle in principle the problem of roads quality. The more as the draft provides for such possibilities in case of alternative auto-roads (Article 28 para. (1))* ***Recommendation:*** *To exclude the respective provisions.*	*Letter b) was excluded from the final version of the law.*

V.1.1.7. Provisions establishing unjustified waivers

Distribution within all elements:	*0.4%*
Distribution within all draft laws:	*4.7%*
Efficiency of element identification:	*41.7%*

Provisions establishing unjustified waivers are the provisions-exceptions from the established rule, in absence of justified reasons of the need to introduce exceptions.

The provisions establishing unjustified waivers are kind of „legislative gates", that the public servants „can enter" to deny the legitimate requests and claims of citizens. Usually, the danger of this corruptibility element lies in the unjustified discretion of the official or public authority to decide on the application of waiver, determining thus private subjects to motivate the respective official through corruption methods in order to avoid the application of the exception, which influences the term, method or even the possibility to exercise his/her legitimate right or interest.

Oftentimes, the provisions that establish unjustified waivers appear in combination with the provisions of reference (for example: „except for the cases provided for in the legislation in force") or the regulatory competence transmission provisions (for example: „except for the cases stipulated in the Regulations of the responsible public authority").

Example: *Law on Amendment and Completion of the Law No.1134-XIII as of 2 April 1997 on Joint Stock Companies No.163-XVI as of 13.07.2007 (Expert report No.178 as of 14 March 2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 50 para (8) will have the following contents: „(8) The Ordinary General Meeting cannot be called off through a court rule."	***Risk: Provisions establishing unjustified waivers*** *We think that the court exceeds its judicial authority and in consequence acts illegally, when it interdicts or postpones the date of holding the General Meeting.* ***Recommendation:*** *We propose that para (8) be reworded as follows:* *„(8) The court shall not have the right to interdict or to postpone the holding of the General Meeting of shareholders".*	(8) The court shall not have the right to interdict or to postpone the holding of the General Meeting of shareholders.

V.1.2. Manner of exercising public authority duties

The category II of the corruptibility elements *"Manner of exercising public authority duties"* includes the following elements of corruptibility:

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. Parallel duties of law development, law enforcement monitoring and sanctioning
14. Incomplete, 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 deadlines
18. Failure to identify the responsible public authority/subject the provision refers to

Table 6 below shows that the largest share in this category of elements belongs to the lack/ambiguity of administrative proceedings (11.9%), followed by duties that admit waivers and abusive interpretations (4.7%), excessive duties/duties contrary to Regulations (3.7%), enlarged duties of regulation (2.5%), lack of specific terms (2.2%) and specification of duty according to stipulations as "have the right", "can", etc. (1.4%).

Table 6. *Incidence of objections to elements of corruptibility from category II. "Manner of exercising public authority duties"*

No	**Categories of elements of corruptibility** Elements	%	**number**
II.	**Manner of exercising public authority duties**	**29.2%**	**1299**
8.	Enlarged duties of regulation	2.5%	111

9.	Excessive duties/duties contrary to Regulations	3.7%	163
10.	Duties that admit waivers and abusive interpretations	4.7%	211
11.	Parallel duties	0.6%	29
12.	Specification of duty according to stipulations as "have the right", "can", etc.	1.4%	63
13.	Parallel duties of law development, law enforcement monitoring and sanctioning	0.3%	13
14.	Incomplete, ambiguous and subjective grounds of an authority's refusal to carry out certain actions	0.4%	17
15.	Lack/ambiguity of administrative proceedings	11.9%	527
16.	Lack of specific terms	2.2%	96
17.	Establishment of unjustified deadlines	1%	46
18.	Failure to identify the responsible public authority/subject the provision refers to	0.5%	23

Oftentimes, the experts' objections referring to the lack/ambiguity of administrative proceedings (15th element) and the duties that admit waivers and abusive interpretations (10th element) are detected in parallel with the presence of provisions of reference (1st element). This fact is explained through the unwillingness of draft laws authors either to specify the mechanism of certain procedures (for example: examination of a request submitted through a special procedure shall be performed according to the legislation in force; within the timeframe stated by the laws in force, etc.) or to clearly and exhaustively determine the officials' duties (for example: public official shall also exercise other duties provided for in the legislation in force), leaving "gates" to other possibilities of convenient identification by the servant himself/herself both of the procedures under his/her management and other duties that he /s he will have to perform. The corruptibility of such provisions is much more obvious in case of special draft laws or framework laws, as unless the special law can identify coherently and integrally the administrative proceedings and servants' specific duties in the area targeted by the respective law, it is much less likely that another act (unspecified) could entirely complement and define it.

Another frequent combination of corruptibility elements is the plurality of enlarged duties of regulation (8th element) and regulatory competence transmission provisions (2nd element). In this case the authors of respective draft laws establish the so called "halves" of legal rules, leaving at the disposal of authority in charge of implementation (traditionally, the draft author itself) the establishment of the second "half" of the rule, that often turns out to be the half with sensitive character. So, for example, there can be established the circumstances under which people can harness certain rights within an administrative procedure, while exceptions remain to be set by the executive authority through a departmental act. A similar situation occurs also when the powers of an authority are established only in part in the draft, the rest having to be further determined through a Regulations of this authority. The corruptibility dangers of such provisions are obvious, as they show the authors' trend for establishment of convenient rules and rights, the departmental change of which is not so difficult or transparent as the amendment of a law. If the legislator understands the legal importance of certain rights, duties and procedures, then their uncomprehensive regulation and empowerment of public authority with their "complete" regulation cannot be reasoned, as this is how some regulatory duties specific to Parliament are transferred to the respective executive authority. This does not mean that governmental authorities cannot carry out legal activity, but it means only the fact that these authorities must adopt departmental acts only to the extent to which they do not

establish rules that complement the rules provided for in the laws in order to abusively attain a state of own comfort and to establish waivers from the text of the law.

Another quite widespread element from this category is also the specification of duty according to stipulations as "have the right", "can", etc. (12th element). The peril of this element gains momentum any time these stipulations are used to specify the authorities'/officials' duties, as in these cases the officials endow themselves with a discretion that they can easily abuse of and particularly referring to the fact that they can choose to implement or not the legal provisions, in lack of certain criteria that this decision could be built upon.

Table 7 below shows that the highest rate of acceptance by the Parliament belongs to the objections referring to the failure to identify the responsible public authority/subject the provision refers to (73.7%), followed by the approval of objections referring to establishment of duties that admit waivers and abusive interpretations (62.1%), lack/ambiguity of administrative proceedings (59.2%), lack of specific terms (55.8%), as well as the specification of duty according to stipulations as "have the right", „can" (51.8%).

Table 7. *The extent to which the Parliament accepted objections referring to corruptibility elements from category II. "Manner of exercising public authority duties"*

No	**Categories of corruptibility elements** Elements	% of accepted objections	the number of objections accepted	the number of objections formulated
II.	**Manner of exercising public authority duties**	**54.8%**	**604**	**1102**
8.	Enlarged duties of regulation	**45.5%**	46	101
9.	Excessive duties/duties contrary to the Regulations	**41%**	57	139
10.	Duties that admit waivers and abusive interpretations	**62.1%**	113	182
11.	Parallel duties	**48.3%**	14	29
12.	Specification of duty according to stipulations as "have the right", "can", etc.	**51.8%**	29	56
13.	Parallel duties of law development, law enforcement monitoring and sanctioning	**50%**	6	12
14.	Incomplete, ambiguous and subjective grounds of an authority's refusal to carry out certain actions	**30%**	3	10
15.	Lack/ambiguity of administrative proceedings	**59.2%**	260	439
16.	Lack of specific terms	**55.8%**	43	77
17.	Establishment of unjustified deadlines	**50%**	19	38
18.	Failure to identify the responsible public authority/subject the provision refers to	**73.7%**	14	19

The subsections V.1.2.1-V.1.2.11 below show corruptibility elements of the category II, accompanied by particular examples of objections from expert reports.

V.1.2.1 Enlarged duties of regulation

Distribution within all elements: *2.5%*
Distribution within all draft laws: *15.1%*
Efficiency of element identification: *45.5%*

Enlarged duties of regulation are the duties that endow a public authority with the rights to legal regulation in areas exceeding their competences. The duties of regulation are considered excessive, if the area of executive authority's legal intervention coincides with the legislator's area of intervention. Or, the executive power bodies have the task to adopt legal acts aimed at enforcing the law and not at completing it.

Usually, the enlarged duties of regulation as an element of corruptibility can be found in draft laws developed by the Government, which allows the authority responsible for the enforcement of this law (the primary draft law developer) to establish convenient rules for themselves. The enlarged duties of regulation frequently occur at the inexhaustive listing of public authorities' rights and obligations, of procedural aspects, etc., the provision including in the end of text a waiver through which provides for the establishment of exceptions other than those envisaged in the law, other rights, obligations, procedural aspects through departmental acts.

Example: *Law on Mediation, no 134 as of 14.06.2007 (Expert report No.202 as of 17.04.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 22, para (6): *The Regulations on the Mediation Council operation shall be approved by the Minister of Justice.*	***Risk: Enlarged duties of regulation*** *The institution that develops the respective Regulations is not specified.* *Abusive influences can be exerted through the exclusive right to develop the regulations in the area.* ***Recommendation:*** *To establish the duty for the development of respective Regulations (by the Mediation Council, the Meeting of Mediators)*	*Article 21 para. (6)* *(6) The Regulations of the Mediation Council shall be approved by the Council.*

V.1.2.2 Excessive duties /duties contrary to Regulations

Distribution within all elements: 3.7%
Distribution within all draft laws: 17.3%
Efficiency of element identification: 41%

Excessive duties/duties contrary to Regulations are the duties that exceed the competences or interfere with the Regulations of the public authority that vest itself with such powers.

Identification of this element is possible after the examination of framework laws that regulate the areas covered by the activity of the executive public authority, as well as the act that determines the status and main duties of this authority.

Example: *Parliament Decision on the Amendment and Completion of the Parliament Decision no 310-XVI as of 27.12.2007 for the Approval of the Regulations on the way of using the measures of subsidizing agricultural producers, No.156 as of 04.07.2008 (Expert report no. 305 dated 04.07.2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Point 2 para (1) *Methodological norms on the conditions for the provision of subsidies shall be approved through the Order of Minister of Agriculture and Food Industry.*	***Risk: Provisions establishing unjustified waivers*** *This provision offers the opportunity to the Ministry of Agriculture and Food Industry to regulate an important problem – the conditions for provision of subsidies, under the circumstances when this authority is empowered to provide subsidies and select the beneficiaries of these subventions. This fact can increase the risk for commission of corruption deeds on the part of officials in order to support certain groups of beneficiaries.* ***Recommendation:*** *We propose that the methodological norms on the conditions for provision of subsidies to be expressly regulated in the Parliament Decision.*	*This point was removed from the final version.*

V.1.2.3 Duties that admit waivers and abusive interpretations

Distribution within all elements: *4.7%*
Distribution within all draft laws: *23.7%*
Efficiency of element identification: *62.1%*

Duties that admit waivers and abusive interpretations are those duties of public authorities that are formulated in an ambiguous manner, generating the opportunity to interpret them in a different way under distinct circumstances, inclusively to interpret them in the preferred version or to give up on them. The unclear formulation of a public authority's duties raises the opportunity for an official to choose the most convenient interpretation of his/her duties, without taking into account other legitimate interests and the spirit of law, that he/she shall comply with in performance of his/her duties.

Example: *Law on the Amendment of the Law on Real Estate Cadastre and the Law on Notary Offices, no. 291-XVI of 19.12.2008 (Expert report no.375 as of 4 December 2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 32 of the Law on Cadastre: *para (3) shall be complemented in the end with the following text: "The term for examination of the request for the registration of privatized real estate on the account of value quotas of the agricultural enterprises assets in case of a large number of co-owners can be extended up to 6*	***Risk: Duties that admit waivers and abusive interpretations*** *Which is the number of co-owners that in the officials' point of view is a „large" number? Leaving at the officials' discretion the identification of the „large number" of co-owners involves an increased risk of corruptibility. At the same time, the*	*The proposed amendment was excluded from the final version of the law.*

moths";	*term of 6 months is capable to compromise the security of civil circuit.* ***Recommendation:*** *To rewrite the provision*	

V.1.2.4 Parallel duties

Distribution within all elements: *0.6%*
Distribution within all draft laws: *7.3%*
Efficiency of element identification: *48.3%*

Parallel duties are those duties of the public authority that are established together with other duties similar or identical with the duties of other public authorities.

Parallel duties create the risk for appearance of the competence conflict between the authorities vested with parallel duties or that both responsible authorities shift off their competences.

Parallel duties also appear in the situations when the adoption of certain decisions is assigned to two or more public authorities (joint decisions). The level of this corruptibility element increases when some legislative norms allow overlapping competences of public servants within the same authority or from distinct public authorities or when several officials are in charge of the same decision or action[32].

Example: *Underground Code, No. 3 of 02.02.2009 (Expert report no. 387 dated 26 January 2009)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Article 9. Competence of local public authorities in the area of underground use and protection *(1) The following shall be within the competence of the first level local public authorities:* *„…d) in case of detecting violations of the conditions of licensing for the underground use, committed by the beneficiary of the underground sector – holder of license, (they) shall notify the Licensing Chamber, with the submission of justifying documents, as for the application of measures provided for in the law;…."* *(2) The following shall be within the competence of the second level local public authorities:* *„…d) in case of detecting violations of the conditions of licensing for the*	***Risk: Parallel duties*** *It is not clear which is the modality for detecting the violations of the licensing conditions, the notification procedure, the procedure, term and conditions for contestation, etc.* *We consider that under the circumstances when the same duty is assigned to two distinct authorities we deal with parallel duties.* ***Recommendation:*** *To review the mentioned provisions by assigning these duties to a single public authority.*	***Article 11. Competence of the Agency for Geology and Mineral Resources*** *The Agency for Geology and Mineral Resources shall have within its competence:* *f) notification of the Licensing Chamber, with the submission of justifying documents in order to take the measures provided for in the legislation, in case of detecting violations of the licensing conditions, committed by the beneficiary of the underground sector, holder of license.*

[32] Corruption proofing methodology, Section 2, point 10, http://capc.md/metodologie.htm

underground use, committed by the beneficiary of the underground sector – holder of license, (they) shall notify the Licensing Chamber, with the submission of justifying documents, as for the application of measures provided for in the law;…."		

V.1.2.5 Specification of duty according to stipulations as "have the right", "can", etc.

Distribution within all elements: *1.4%*
Distribution within all draft laws: *10.1%*
Efficiency of element identification: *51.8%*

Specification of duty according to the stipulations as "have the right", "can" is a corruptible way to identify the competences only when formulated as rights, obligations/duties of public authorities and officials.

The corruptibility of this element lies in the officials' discretion that appears when using such permissive descriptions of their competences, which should be established in an imperative way. This discretion can be used by the officials in an abusive way, so as not to perform his/her legal obligations exactly because of the permissive character of specification of his /her competences.

The corruptibility risk of these provisions increases when there are not criteria to identify under what circumstances the official "has the right" or "can" and in what circumstances he/she has the right and cannot perform the duties.

Example: *Law on the Amendment and Completion of some Legislative Acts (publishing of court rules), No. 258 of 29.11.2007 (Expert report no. 266 dated 29.11.2007)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Supplement to Article 10 para (5) of the Law on the Judiciary Organization *"The definitive decisions of first instance courts, appeal courts may be made public through the agency of mass media".*	***Risk: Specification of duty according to stipulations as "have the right", "can", etc.*** *It is not clear by whom, when and what definitive court decisions are published through the agency of mass media.* ***Recommendation:*** *To specify the subject that has the right to publish the respective decisions, the cases and the categories of decisions that can be made public through the agency of mass media.*	*The proposed amendment was excluded from the version of adopted law.*

V.1.2.6 Parallel duties of law development, law enforcement monitoring and sanctioning

Distribution within all elements: 0.3%
Distribution within all draft laws: 3.8%
Efficiency of element identification: 50%

Parallel duties of law development, law enforcement monitoring and sanctioning is the empowerment of an executive authority with competences to establish rules, to verify their observance and to punish the legal subjects for the violation of these rules. The corruptibility of this element has two sides. On the one hand, the public authority/servant can abusively foster or prejudice, with corruption intentions, the interests of certain people held to apply the rules set by the respective authority. On the other hand, the people under the obligation to observe the rules imposed by the authority can be easily tempted to tamper the representatives of this authority in order to avoid control or sanctioning, because all the competences are cumulated by the same public administration body.

Example: *Law on Public Function and Status of Civil Servant, No. 158-XVI of 04.07.2008 (Expert report no.281 of 7 May 2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 11. Government Office competence *(1) Management of public function and public servants shall be within the competence of the Government Office.* *(2) Government Office shall have the following main competences in the area of public function and public servants management...:* *(3) Government Office is the legal subject that shall has the right to notify the competent administrative law court on the…* *(4) Government Office can notify…*	***Risk:*** *Parallel duties of law development, law enforcement monitoring and sanctioning* *Empowerment of the Government Office (GO) with essential duties in the area of public function management is contrary to the* ***Concept Paper of the Staff Policy in Public Service, PD No.1227-XV as of 18.07.1992*** ***Recommendation:*** *To examine the opportunity to set up an independent Agency in this area, established through a transparent mechanism, subjected to an extended administrative and public control.*	***Article 11.*** *Government Office competence* *(1) Management of public function and public servants shall be within the competence of the Government.*

V.1.2.7 Inexhaustive grounds for the authority's refusal to carry out certain actions

Distribution within all elements: 0.4%
Distribution within all draft laws: 4.1%
Efficiency of element identification: 30%

Inexhaustive grounds for the authority's refusal to carry out certain actions is the partial establishment of cases when an authority can refuse to carry out certain actions, to execute certain obligations.

Usually, the list of the arguments for the refusal to carry out certain actions by an authority is left open either by using reference provisions to an unspecified legislation or regulatory competence transmission provisions that will establish the amendment of the list of the arguments for refusal through an internal administrative act of the public authority.

Example: *Law on Tobacco and Tobacco Products, No.278-XVI as of 14.12.2007 (Expert report no. 276 dated 09.10.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 9 The rights and obligations in processing the tobacco	***Risk:*** *Inexhaustive grounds for the authority's refusal to carry out certain actions*	***Article 9 The rights and obligations in processing the tobacco***
c) to <u>have all the necessary documents</u>	*Here we deal with an ambiguous formulation that allows abusive interpretations, because it is not clear which are the documents that confirm that the ingredients and raw material used meet the requirements of legal and technological documents*	*c) to have all the documents that confirm that the ingredients and raw material used meet the requirements of legal and technological documents;*
	Recommendation: *To review the highlighted provision*	

V.1.2.8 Lack/ambiguity of administrative proceedings

Distribution within all elements: *11.9%*
Distribution within all draft laws: *37.5%*
Efficiency of element identification: *59.2%*

Lack/ambiguity of administrative proceedings is the lacunose or confuse regulation of administrative proceedings managed by public authorities. When administrative proceedings are insufficiently or ambiguously regulated appears the dangerous discretion of the servant responsible of drafting procedural rules convenient to his /her own interests, contrary to public interests.

Lack/ambiguity of administrative proceedings appear when the text of provision stipulates or supposes the existence of a mechanism/procedure, but:

- the provision does not explain it in detail;
- the text uses imprecise reference provisions to unclear laws that would establish these procedures;
- the text uses regulatory competence transmission provisions to transfer the duty for regulation of the administrative procedure or a part of it to the directly responsible authority;
- the text uses ambiguous linguistic expressions to describe them;
- the text establishes officials' discretions referring to distinct aspects of the procedure, without specifying the criteria that he /she should be guided of.

Example: *Law on the Amendment of the Law on Real Estate Cadastre and the Law on Notary Offices, no. 291-XVI of 19.12.2008 (Expert report no.375 as of 4 December 2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*

Article 26 shall be supplemented with the para (3¹), with the following contents:… *"d) the enterprise shall provide to the Enterprise Specialized in Cadastre a guarantee, agreed by the parties, in order to cover the potential losses of the Enterprise Specialized in Cadastre."*	***Risk: Lack/ambiguity of administrative proceedings*** *It would be appropriate that this provision provides for the term for provision of guarantee and its amount (for example, a percentage of the real estate value). Otherwise, this provision involves a high risk of corruptibility.* ***Recommendation:** To edit the provision by establishing clear terms and specific amounts.*	*Article 26, para (3) is supplemented with para (3¹):…* *d) the enterprise shall provide a guarantee of 100% of the standard real estate value in favor of the Enterprise Specialized in Cadastre, estimated for taxation aims, but not exceeding the MDL 200 thousand in order to cover the possible losses caused to the latter.*

V.1.2.9 Lack of specific terms

Distribution within all elements: 2.2%
Distribution within all draft laws: 16.1%
Efficiency of element identification: 55.8%

Lack of specific terms means the lacunose or confuse regulation of administrative terms.

We can talk about the lack of a specific administrative term when it is not established, is not clearly expressed or is established depending on some confuse or ambiguous conditions.

The lack of specific terms always allow abusive interpretations on the part of public servants. Thus, the excessive discretion of official appears in appreciating and establishing terms convenient for him/her in each distinct case, both for his/her own actions and actions of other legal subjects that these terms are applicable to.

***Example:** Law on Amendment of Enforcement Code, No.217 as of 24.10.2008 (Expert report no.323 dated 17.09.2008)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Article 36 para (1) *(1) The creditor shall pay in advance, within the timeframe established by the legal executor, the expenditures for the performance of the execution acts, etc.*	***Risk:** Lack of specific terms* *Which are the criteria for the establishment of the „timeframe" by the executor?* ***Recommendation:** It is proposed to indicate an exact term.*	*Article 36 para (1)* *(1) After the specification of execution acts and the expenditures necessary for their performance, the creditor shall within 7 days since the notification, to pay in advance the mentioned expenditures and shall have the right to claim their further reimbursement from the debtor's account.*

V.1.2.10 Establishment of unjustified deadlines

Distribution within all elements: 1%
Distribution within all draft laws: 9.8%
Efficiency of element identification: 50%

Establishment of unjustified deadlines is the imposing through regulations of too long and too short administrative terms, which makes difficult the exercise of rights and interests, both public and private.

The terms are considered to be too long, when the actions that should be undertaken within these timeframes are very simple and do not require much time. Simultaneously, the followed interest can be of such character that do not supports long periods of wait. When the law grants to the public authority the right to take measures during a long period of time, the interested persons can be tempted to motivate through corrupt ways the expedition of respective measures by the responsible officials.

Terms are considered to be too short, when the actions to be undertaken are too complicated or need longer periods to be carried out than within the set timeframe. The establishment of too short terms for public authority leads inevitably to their violation, and for individuals and legal entities to the complication of the possibilities to fully use their legal rights and interests.

Example: *Law on the Transparency of the Decision Making Process, No.239-XVI as of 13.11.2008 (Expert report no.318 dated 27.06.2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 12 para (2) *The term for submission of recommendations on the draft decisions shall be 10 working days since the publishing of announcement regarding the beginning of the decision making process.*	***Risk: Establishment of unjustified deadlines*** *We consider that this term can be too short when dealing with complex draft decisions. For example, the Concept Paper on the Cooperation of Parliament with the Civil Society (PD No.373/29.12.2005) provides for, in point 4.3.1, a term of 15 working days for the submission of proposals by the civil society on the draft laws placed on the Parliament's website.* ***Recommendation:*** *To replace the term of 10 days in Article 12, para (2) with the term of 15 days.*	***Article 22, para (2)*** *(2) The term for submission of recommendations on the draft decisions shall not exceed 15 working days as of the date of making public the announcement regarding the beginning of drafting the decision, with the possibility to extend it, when necessary.*

V.1.2.11 Failure to identify the responsible public authority /subject the provision refers to

Distribution within all elements: *0.5%*
Distribution within all draft laws: *2.8%*
Efficiency of element identification: *73.7%*

The failure to identify the public authority the provision refers to is the legislator's omission to expressly indicate the public authority stipulated in the legal provision, inclusively when the authority is identifiable from context.

The danger of this corruptibility element is similar to the establishment of parallel duties and could generate conflicts between the public authorities that simultaneously are assumed to be object of the law (especially in case of providing a public authority with rights, powers and prerogatives), or non-recognition by the authorities of the competences conferred through law (in particular when assigning to them some obligations, responsibilities and tasks), that makes it difficult for the individuals and legal entities to exercise their legitimate rights and interests.

The failure to identify the public authority the provision refers to can be identified together with the element of lack/ambiguity of administrative proceedings.

Example: *Law on the Arbitrage, No.23-XVI as of 22.02.2008 (Expert report no. 120 as of 22.12.2006)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 23. Management of evidence *(1) Management of evidence shall be performed during the arbitration court session.* *(2) This can rule that the management of evidence be performed in face of a judge pertaining to the arbitration court.*	***Risk: Failure to identify the responsible public authority/subject the provision refers to*** *Article 23(2) starts with the collocation "this can rule" without being clear from the context of paragraph or the previous paragraph to whom it refers.* ***Recommendation:*** *To indicate the specific subject that the provision refers to.*	*Article 25. Management of evidence* *(1) Management of evidence shall be performed during the arbitration court session.* *(2) Arbitration court can rule that the management of evidence be performed in face of a judge pertaining to it.*

V.1.3. Manner of exercising rights and obligations

Category III of the corruptibility elements ***"Manner of exercising rights and obligations"*** includes the following corruptibility elements:

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

Table 8 below reveals that the excessive requirements for exercise of excessive rights/obligations (3%) and promotion of interests contrary to the public interest (1.1%) have the highest share of corruptibility elements in this category.

Table 8. *Incidence of objections related to elements of corruptibility from category I. "Interaction of the draft with other legislative and regulatory acts"*

No.	**Categories of elements of corruptibility** Elements	%	**number**
III.	**Manner of exercising rights and obligations**	**5.2%**	**230**
19.	Promotion of interests contrary to the public interest	**1.1%**	48

20.	Infringement of interests contrary to the public interest	**0.3%**	14
21.	Excessive requirements for exercise of excessive rights/obligations	**3%**	134
22.	Unjustified limitation of human rights	**0.8%**	34

According to the data from *Table 9* below, in this category of corruptibility elements, the legislator most frequently remedies the risks caused by unjustified limitation of human rights – 69.6%, infringement of interests contrary to the public interest – 60%, excessive requirements for the exercise of human rights – 54.2%, risks related to the promotion of interests contrary to the public interest being remedied rarely – 42.3%.

Table 9. *The extent to which the Parliament accepted objections referring to corruptibility elements from category I. "Interaction of the draft with other legislative and regulatory acts"*

No.	**Categories of elements of corruptibility** Elements	**% of objections accepted**	**the number of objections accepted**	**the number of objections formulated**
III.	**Manner of exercising rights and obligations**	**54,8%**	**85**	**155**
19.	Promotion of interests contrary to the public interest	**42.3%**	11	26
20.	Infringement of interests contrary to the public interest	**60%**	6	10
21.	Excessive requirements for exercise of excessive rights/obligations	**54.2%**	52	96
22.	Unjustified limitation of human rights	**69.6%**	16	23

The subsections V.1.3.1-V.1.3.4 below show the corruptibility elements from the category III, accompanied by particular examples of objections from expert reports.

V.1.3.1 Promotion of interests contrary to the public interest

Distribution within all elements: *1.1%*
Distribution within all draft laws: *7.9%*
Efficiency of element identification: *42.3%*

Promotion of interests contrary to the public interest is the advancement through the agency of law of individual or group interests, to the detriment of the general interest of society acknowledged by the State in order to ensure its welfare and development[33].

The peril of this element lies in the materialization in legal form the priority attainment of some individual and group interests, despite of and to the detriment of other legal subjects' interests. Usually, the promotion of interests is an abusive favouring of individuals and legal entities for attainment of some interests and benefits, supporting them on the basis of certain subjective reasons (in virtue of kinship, friendship or another kind of affinity with the person responsible of the development of draft law) or aimed at influencing (for example, draft laws that are targeted at a special category of electorate).

Oftentimes, this element can be treated as a modality to discriminate all the other legal subjects in a similar legal situation, but that cannot benefit from the positive effects of law provisions serving the interests of favoured individual or group (for example: promotion of drafts of waiver from the general law, in order to exempt specific economic units from the

[33] This definition has used in part the definition of "public interest" included in the CCECC Methodology for the performance of anti-corruption review of legislative and legal acts, adopted through the Director's Order no.47 dated 3 May 2007.

payment of fees; promotion of drafts of forgiving the debts or to remove from the State's exclusive public area of an asset that is the object of interest of certain economic units).

Example: *Law on Public Function and Status of Civil Servant, No. 158-XVI of 04.07.2008 (Expert report no.281 of 7 May 2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Art.33 *Qualification degrees of public servants* *para (10) People that hold the positions of the President of the Republic of Moldova, Parliament or Government member at least for two years. at the expiry of mandate, resignation or revocation, shall be granted the qualification degree of first level State counselor of the Republic of Moldova.*	***Risk:*** *Promotion of interests contrary to the public interest* *The text infringes Article 4, para (3) of the law, as well the civil service principles:* ***legality, professionalism, impartiality, independence, stability.*** *The people concerned do not have the obligations of public servants and cannot have the rights similar to their rights.* *Rights and social guarantees conferred to the respective officials are established in special law (Regulations on the Parliament members, on the Government, on Ensuring the activity of the President of RM).* ***Recommendation: To exclude para (10) from Article 33.***	*Article 33 Qualification degrees of public servants* *The respective paragraph was excluded from the version of the adopted law.*

V.1.3.2 Infringement of interests contrary to the public interest

Distribution within all elements:	*0.3%*
Distribution within all draft laws:	*3.5%*
Efficiency of element identification:	*60%*

Infringement of interests contrary to the public interest is the management through the agency of law of individual or group interests, to the detriment of the general interest of society, acknowledged by the State, in order to ensure its welfare and development[34].

The peril of this element consists in materialization in legal form of the permanent or temporary infringement of interests of some individuals or groups, and this sacrifice does not contribute to the attainment of a general, common interest.

Most of the times this element is identified together with the abusive promotion of group and individual interests, establishment of excessive requirements for exercise of rights and ungrounded limitation of human rights.

Example: *Law on the Transparency of the Decision Making Process, No.239-XVI as of 13.11.2008 (Expert report no.318 dated 27.06.2008)*

[34] This definition has used in part the definition of "public interest" included in the CCECC Methodology for the performance of anti-corruption review of legislative and legal acts, adopted through the Director's Order no.47 dated 3 May 2007.

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 1. *Subject of Regulation* *e present law establishes the applicable es to ensure the transparency of the ision making process within central l local public authorities and regulates ir relationships with the citizens and ir associations, as for the participation the decision making process.*	***Risk:*** *Infringement of interests contrary to the public interest* *The notion of „their associations" restricts the implementation of law only to citizens' associations and it is not clear if all legal entities set up as a result of association are concerned. Civil Code uses the notion of organization and the draft law on the transparency of the decision making process was also using at first the same notion and the motivation of replacement lacks.* ***Recommendation:*** *To replace the notion "associations" with the notion "organization" in the whole text of draft law.*	***Article 1.*** *Subject of Regulation* *The present law establishes the applicable rules to ensure the transparency of the decision making process within central and local public authorities, other public authorities and regulates their relationships with citizens and associations, set up pursuant to the law, with other stakeholders interested in participating in the decision making process.*

V.1.3.3 Excessive requirements for exercise of excessive rights/obligations

Distribution within all elements: 3%
Distribution within all draft laws: 17%
Efficiency of element identification: 54.2%

Excessive rights for the exercise of excessive rights/obligations are the exaggerated requirements established through regulations towards people that harness their rights/perform their obligations during an administrative procedure and/or in face of a public authority. The corruption proofing risk of this element results from the fact that when the person finds it very difficult to meet the set requirements, the temptation to resort to corruption methods in order to ensure the exercise of rights and/or the performance of obligations appears.

The excessive nature of requirements for the exercise of rights/performance of obligations of people appears when there are too many requirements, complicated or difficult to carry out in relation to the nature of right/obligation that is required to be performed or when the burden of these requirements is exaggerated in relation to the performance of public authority (such as the establishment of too high taxes).

The requirements are considered to be excessive also when the list isn't complete and leaves to the servant's discretion the establishment of other requirements to exercise of the right/performance of obligation of individuals or legal entities.

Example: *Law on the Amendment and Completion of some Legal Acts, No.306 as of 13.02.2009 (Expert report no. 394 as of 13.01.2009)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article IV, point 6, regarding Article 19, para (4): *"by <u>open</u> vote of two-thirds of its members".*	***Risk:*** *Excessive requirements for exercise of excessive rights/obligations*	***Article IV, point 6*** *Article 19, para (4) shall be supplemented at the end with the*

	The obligation referring to open vote can lead to intimidation of members that gave their votes for or against some candidates and is a limitation of their rights. ***Recommendation:*** *To maintain the existing regulations that ensure SCM has possibilities for objective and impartial review of refusals and repeated submission of worthy candidates.*	*phrase "by the vote of two-thirds of its members".*

V.1.3.4 Unjustified limitation of human rights

Distribution within all elements:	*0.8%*
Distribution within all draft laws:	*6%*
Efficiency of element identification:	*69.6%*

Unjustified limitation of human rights is the restriction, through the agency of law, of the opportunities to untrammeled exercise of individual rights and liberties, established in the domestic and international legislation.

The danger of this element lies in the abusive undermining by the legislator of guarantees for exercise of the rights set in the Constitution of the Republic of Moldova, special laws and international tools in the area of protection of human rights, in lack of some acceptable grounds for the limitation of these rights, i.e it does not constitute a measure that in a democratic society is necessary for the national security, public safety, economic welfare of the country, maintenance of public order and prevention of criminal deeds, protection of health or ethics, as well as the protection of other people's rights and freedoms[35].

Most of the times, this element is identified together with the failure of draft law provisions to comply with the national and international legislation, excessive requirements for the exercise of excessive rights/obligations and infringement of interests contrary to the public interest.

Example: *Law on Public Function and Status of Civil Servant, No. 158-XVI of 04.07.2008 (Expert report no.281 dated 7 May 2008)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Art.22. ***General obligations of public servant***	***Risk:*** *Unjustified limitation of human rights* *The list of public servants' obligations does not particularly include: protection and promotion of human rights and freedoms.* ***Recommendation:*** *To include the obligation of observance and promoting of human rights.*	***Article 22.*** *General obligations of public servant* *(1) Public servant shall have the following general obligations:* *b) to strictly observe the rights and freedoms of citizens;*

[35] Convention as of 04.11.50 for Protection of Human Rights and Fundamental Freedoms.

V.1.4. Transparency and access to information

Category IV of the corruptibility elements *"Transparency and access to information"* includes the following corruptibility elements:

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

Table 10 below shows that the **lack/insufficiency of transparency in functioning of public authorities (1.1%)** has the largest share in this category of elements.

Table 10. Incidence of objections related to elements of corruptibility from category IV "Transparency and access to information"

No.	Categories of elements of corruptibility Elements	%	number
IV.	**Transparency and access to information**	**2.4%**	**109**
23.	**Lack/insufficiency of access to information of public interest**	0.6%	27
24.	**Lack/insufficiency of transparency in functioning of public authorities**	1.1%	52
25.	**Lack/insufficiency of access to information on the legal act**	0.7%	30

Table 11 below shows that in comparison with the objections formulated in other categories of elements, the objections to the elements of category IV are accepted more rarely, about one in three objections (35.8%). At the same time, we would like to note the reduced sample of objections formulated in relation to the corruptibility elements from category IV. This fact does not make a dint in the importance of respective elements, especially given that the transparency is among the first conditions to prevent the corruption phenomenon. It is possible that when the sample of certain objections is increased, the level of understanding of the importance and acceptance of these objections from the point of view of corruption phenomenon prevention could also be greater.

Table 11. *The extent to which the Parliament accepted objections referring to corruptibility elements from category IV "Transparency and access to information"*

No.	Categories of elements of corruptibility Elements	% of objections accepted	the number of objections accepted	the number of objections formulated
IV.	**Transparency and access to information**	**35.8%**	**34**	**95**
23.	**Lack/insufficiency of access to information of public interest**	**40%**	8	20
24.	**Lack/insufficiency of transparency in functioning of public authorities**	**37%**	17	46
25.	**Lack/insufficiency of the access to information on the legal act**	**31%**	9	29

The subsections V.1.4.1-V.1.4.3 below show the corruptibility elements from category IV, accompanied by particular examples of objections from expert reports.

V.1.4.1 Lack/insufficiency of access to information of public interest

Distribution within all elements: 0.6%
Distribution within all draft laws: 4.7%
Efficiency of element identification: 40%

Lack/insufficiency of access to information of public interest is the omission of regulation or the insufficient regulation of the person's possibility to get familiarized or to be informed on the data, facts, circumstances of personal or general interest and that normally must have to be known without making special efforts.

The presence of this element in draft laws signifies the lack of mechanisms for provisions of information of public interest to interested people so that even if this information is of interest for society it cannot be provided by the authorities because the legislation does not clearly provides for the obligation to provide these data. The consequence of such provisions is to maintain an „obscurity" over the information that regard or can interest a person or the general public. Thus, the subject interested in finding out information will treat mistrustfully and suspiciously the public authority because it supposedly "hides something", considering that servants of the authority could use the information they have access to in private aims, contrary to the public interest. On the other hand, the person interested in information can try to look for other corruption ways to find out the respective information.

This element is oftentimes detected together with the element ambiguous formulation that allows abusive interpretations and lack/ambiguity of administrative proceedings.

Example: *Law on the Transparency of the Decision Making Process, No.239-XVI as of 13.11.2008 (Expert report no.318 dated 27.06.2008)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Article 16, para (2) *The Report on the transparency of the decision making process shall be made public through the placement on the official website, through display at the authority's office in a space available to public and/or through dissemination in mass media*	***Risk: Lack/insufficiency of access to information of public interest*** *The notion of "mass media" is too vague, as it includes all the mass media: written and electronic press, television, radio, etc.* ***Recommendation:*** *It is proposed to rewrite the provision.*	***Article 16*** *(2) The Report on the transparency of the decision making process shall be made public in compliance with the law not later than the end of first quarter following the reporting year.*

V.1.4.2 Lack/insufficiency of transparency in functioning of public authorities

Distribution within all elements: 1.1%
Distribution within all draft laws: 12.3%
Efficiency of element identification: 37%

Lack/insufficiency of transparency in functioning of public authorities is a deficiency of regulation and real assurance of the transparency in functioning of public authorities, thus being concluded that their activity is performed in an obscure framework.

Lack/insufficiency of transparency in functioning of public authorities is detected upon the lack or inappropriate character of:

- the provisions and procedures for assurance of the access of general public to the information regarding the implementation of draft, submission of thematic, periodical reports;
- the provisions on the reporting of the results of public authorities activity in the face of society in general, of civil society organizations;
- the provisions that ensure the information transparency of public authorities through the use of modern information technologies (websites and web resources, the low quality of these ones, open databases, interactive forms for the citizens' or legal entities' applications, etc.)[36].

Example: *Law on the Amendment and Completion of some Legal Acts, No.306 as of 13.02.2009 (Expert report no. 306 dated6 July 2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article III, point 4, para *(4) (4) The products under quarantine, drawn out from the zone were quarantine restrictions were established without the consent of the Phytosanitary Agency, shall be returned, disinfected, confiscated and transmitted to the respective commercial or processing enterprises, or to be eliminated.*	***Risk:*** *Lack/insufficiency of transparency in functioning of public authorities Taking into account that the formulation is ambiguous and provisions on the transparency of decision making process aren't included, the Decision of Ministry on the application of a sanction could be influenced by certain factors, with potential corruption proofing character.* ***Recommendation:*** *To exclude the respective provision*	*The proposed amendment was excluded from the text of the adopted law.*

V.1.4.3 Lack/insufficiency of the access to information on the legal act

Distribution within all elements: *0.7%*
Distribution within all draft laws: *5%*
Efficiency of element identification: *31%*

Lack/insufficiency of the access to information on the legal act is the regulation through legal acts of executive authorities of some aspects of legal interest that aren't made public. This element is detected in case of:

- the provisions and procedures for ensuring the information of people on the rights and obligations they have;
- the provisions for ensuring the access of people to the information needed to exercise the rights and obligations they have[37].

Oftentimes the lack/insufficiency of access to information on legal act is identified in parallel with the regulatory competence transmission provisions.

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[36] Theoretical and Practical Guidelines for the performance of anti-corruption review of drafts of legislative acts and other legal acts, developed by CAPC and CCECC, page 23.

[37] *Ibid.* See also Quentin Reed, "Revised Proposal of Draft "Methodology for performance of anti-corruption review of draft laws" for the Centre for Combating Economic Crimes and Corruption, Republic of Moldova, 9 March 2007", page 4-5.

Example: *Law on Public Patrimony Management and Ownership Change, No.121-XVI as of 04.05.2007 (Expert report no.137 dated 05.01.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 58 Submission of the offer or demand to participate to privatization *(2) By derogation from the para (1) the potential buyers of stocks subject to privatization at the Moldovan Stock Exchange shall file the documents provided for the regulations of Exchange.*	***Risk:*** *Lack/insufficiency of the access to information on the legal act* ***Recommendation:*** *To exclude the respective derogation or to specify how the respective regulations are published.*	***Article 39. Selling of stocks at the Stock Exchange*** *(1) The stocks subject to privatization shall be sold at the Stock Exchange in accordance with the rules of Exchange and procedures established in Regulations, approved by the Government.*

V.1.5. Accountability and responsibility

Category V of corruptibility elements *"Accountability and responsibility"* includes the following elements of corruptibility:

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

This category of elements is more specific to the sanctioning norms, especially the Criminal Code and the Code on Administrative Offences. *Table 12* below reveals that in this category of elements the most widespread are the mismatch between the sanction and violation (1.2%).

Table 12. *Incidence of objections related to elements of corruptibility from category V "Accountability and responsibility"*

No.	**Categories of elements of corruptibility** Elements	%	**amount**
V	**Accountability and responsibility**	**4.2%**	**187**
26.	The lack of clear accountability of authorities (officials) for the violation of draft provisions	0.8%	35
29.	The lack of clear and proportionate sanctions for the violation of draft provisions	0.6%	27
28.	Mismatch between the violation and sanction	1.2%	52
29.	Confusion/duplication of types of legal liability for the same violation	0.7%	32
30.	Inexhaustive grounds for liability	0.9%	41

It is worth mentioning that most objections of CAPC experts referring to the corruptibility elements from this category are referring to the Code on Administrative Offences.

Table 13 below indicates a two-third rate (67.7%) for acceptance of objections referring to the confusion/duplication of the types of legal liability for the same violation. Other objections to elements of this category with a high acceptance rate are: the lack of clear accountability

of authorities (officials) for the violation of draft provisions – 50% and mismatch between the violation and sanction – 50%.

Table 13. *The extent to which the Parliament accepted objections referring to corruptibility elements from category V "Accountability and responsibility"*

No.	Categories of elements of corruptibility Elements	% of objections accepted	the number of objections accepted	the number of objections formulated
V.	**Accountability and responsibility**	**50.3%**	**88**	**175**
26.	The lack of clear accountability of authorities (officials) for the violation of draft provisions	**50%**	14	28
27.	The lack of clear and proportionate sanctions for the violation of draft provisions	**41.7%**	10	24
28.	mismatch between the violation and sanction	**50%**	26	52
29.	Confusion/duplication of types of legal liability for the same violation	**67.7%**	21	31
30.	Inexhaustive grounds for liability	**42.5%**	17	40

The subsections V.1.5.1-V.1.5.5 below show the corruptibility elements from category V, accompanied by particular examples of objections from expert reports.

V.1.5.1 The lack of clear accountability of authorities (officials) for the violation of draft provisions

Distribution within all elements: *0.8%*
Distribution within all draft laws: *7.9%*
Efficiency of element identification: *50%*

The lack of clear accountability of authorities (officials) for the violation of draft provisions is the omission or the ambiguity in regulating the responsibility that a public authority or its officials shall bear for the violation of draft provisions. This deficiency consists in the fact that the provisions referring to the liability of public authorities and officials have a declarative character that leads to the impossibility to enforce these provisions and therefore to the insufficient officials' accountability for the observance of legal provisions.

Oftentimes, the accountability of authorities/officials is stipulated in reference provisions, without even specifying the area of legislation. The element of corruptibility, generated in such a way, is determined by the lack of clear accountability of authorities (officials) for the violation of draft provisions.

Example: The Law on the Authorization and Payment of Interpreters and Translators involved by the Superior Council of Magistracy, Ministry of Justice, Prosecution bodies, Criminal Prosecution Authorities, Law Courts, Notaries, Lawyers and Judicial Executors, *No. 216-XVI of 20.03.2009 (Expert report no.335 as of 26.09.2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Art.8. *(1) Interpreter and translator shall be liable for the falsity of translations and translated documents, for the violation of his/her obligations, for two*	***Risk:*** *The lack of clear accountability of authorities (officials) for the violation of draft provisions* *The formulation of provisions in the*	*Art.8.* *(1) Interpreter and translator shall be liable in conformity with the law for the accuracy of oral and written translations, for two unjustified*

unjustified refusals, within a year, to provide the required services and that purposely had disclosed data on the documents and deeds learned during the performance of duties, in conformity with the law.	*para (1) appears to be confuse when they refer to the falsity of translations and translated documents. If it refers to oral and written translations, this must be expressly stipulated, as any translation can be qualified as act.* ***Recommendation:*** *Para (1) shall be edited*	*refusals, within a year, to provide the required services, for the purpose disclosure of data on the documents and deeds learned during the performance of duties, for violation of other obligations.*

V.1.5.2 The lack of clear and proportionate sanctions for the violation of draft provisions

Distribution within all elements: *0.6%*
Distribution within all draft laws: *6.6%*
Efficiency of element identification: *41.7%*

The lack of clear and proportionate sanctions for the violation of draft provisions is the omission of establishing the sanctions for violation of legal provisions, the ambiguity of sanctions for violations or establishment of too severe or too mild sanctions in relation to the committed infringements.

In lack of some clear sanctions or in presence of some insignificant sanctions for the violation of draft provisions by the legal subjects, the risk appears that these subjects will realize their impunity for the abuses committed during enforcement of the law. On the other hand, if the sanctions for the violation of legal provisions are unclear or disproportionate, the exaggerated discretion of authority applying these sanctions appears.

Example: *Law on the Veterinary Activity, No. 221 of 19.10.2007 (Expert report no.188 as of 20.03.2006)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Article 1 ***The goal and scope of present law*** *Para. (2) natural persons, which are subjects of legal relations, shall be liable for the strict application and observance of legal provisions and sanitary-veterinary norms.*	***Risk:*** *The lack of clear and proportionate sanctions for the violation of draft provisions* *The author does not mention under what circumstances the liability of person emerges, the category of liability, the body responsible of sanctioning and the sanctioning procedure. This omission can favor the commission by the public servant of corruption deeds that will manifest through unilateral and arbitrary selection by him/her of the modality and cases of sanctioning.* ***Recommendation:*** *To exclude para (2) of Article 1 and to include the respective provisions in the Code on Administrative Offences*	*The respective paragraph was excluded from the adopted version of the law.*

V.1.5.3 Mismatch between the violation and sanction

Distribution within all elements: *1.2%*
Distribution within all draft laws: *7.3%*
Efficiency of element identification: *50%*

Mismatch between violation and sanction is establishment of sanctions inappropriate to the peril of committed violations.

The mismatch between violation and sanction is manifested either through establishment of some punishments that are too mild against the regulated violations or through establishment of too severe punishments in case of violations with limited social peril. The peril of this corruption proofing element usually consists in the establishment of too severe sanctions for offences that leads to the inequity of punished subjects, which being aware of the too severe punishment that will have to incur, can try to resort to corruption methods in order to avoid the sanctioning.

Example: *Code on Administrative Offences, No. 218 of 16.01.2008 (Expert report no. 199 dated 06.04.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 41, para (2): The expulsion shall be applied by the law court for deliberate offences.	***Risk:*** *Mismatch between the violation and sanction* *The number of deliberate offences (with intention) is significant and the prejudice caused to the foreign citizen's interests by expulsion can be much higher than the prejudice caused by the offence.* ***Recommendation:*** *To establish expressly that the expulsion is applicable only in case when the sanction of the respective article provides for it expressly.*	*(2) The expulsion can be applied to foreign citizens and stateless persons as complementary sanction in case of offences provided for in Article 58, Article 67 para (4), (5), Article 76, 80, 81, 83, 84, 87, 323, 324, 326, 328, 330-333, 339, 348.*

V.1.5.4 Confusion/duplication of types of legal liability for the same violation

Distribution within all elements: *0.7%*
Distribution within all draft laws: *5%*
Efficiency of element identification: *67.7%*

Confusion/duplication of types of legal liability for the same violation means the establishment of liability for violations that have been already regulated and established other types of liability or the concomitant establishment of several types of liability for the same violation.

Confusion/duplication of types of legal liability for the same violation determines risks of corruption because it gives too large discretion to the body in charge of identification and sanctioning to decide on the type of liability or even to bring to account for both types of liability, while the violator is tempted to resort to corruptive methods to influence this decision.

Example: *Code on Administrative Offences, No. 218-XVI of 16.01.2008 (Expert report no. 199 as of 06.04.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 239 Breaching the way the periodicals and television programs are edited and broadcasted	***Risk:*** *Confusion/duplication of types of legal liability for the same violation* *This activity is an illegal entrepreneurial activity – the liability for this is stipulated in Article 242 of the draft. Similar norms can be also found in Article 125 of the Criminal Code that defines this activity and Article 241 of the Criminal Code.* ***Recommendation:*** *To exclude it.*	*The article was excluded from the passed version of the Code.*

V.1.5.5 Inexhaustive grounds for liability

Distribution within all elements:	*0.9%*
Distribution within all draft laws:	*4.7%*
Efficiency of element identification:	*42.5%*

Inexhaustive grounds for holding liable are those grounds for liability that are ambiguously formulated or their list is left open, so that they allow various interpretations of the cases when the liability appears.

The peril of this element consists in the too large discretion of the authority that would establish the ground for holding liable, discretion that the authority can use in order to make the legal subject susceptible of bringing to responsibility understand that he/she could interpret the ambiguous and/or inexhaustive provision in the detriment of his/her interests. Under these circumstances, the person will look for corrupt methods to stimulate the public servant to interpret favorably the legal provision. Nevertheless, if the authority will not "make the person understand" that has large discretion to interpret the law provisions, the unclear grounds for holding liable can serve itself as an indicator of the possibility to settle the respective issue through the agency of a "private agreement".

Example: *Code on Administrative Offences, No. 218 of 16.01.2008 (Expert report no. 199 dated 06.04.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 231. Creation and operation of telecommunication means susceptible of causing prejudices to health	***Risk:*** *Inexhaustive grounds for liability* *This article contradicts Article 224 of the draft that regulates the activity performed in the area of telecommunications with license (authorization) and without license (authorization) whose activity was suspended or ceased, and the collocation „illegally" isn't enough*	*The article was excluded from the passed version of the Code.*

	clear and ponderable. ***Recommendation:*** *To exclude Article 231 of the draft.*	

V.1.6 Control mechanisms

Category VI of the corruptibility elements *"Control mechanisms"* includes the following elements of corruptibility:

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

Table 14 below shows that the first element of this category, lack/insufficiency of supervision and control mechanisms (1.3%) is more spread in relation to lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities (0.8%).

Table 14. *Incidence of objections related to elements of corruptibility from category VI "Control mechanisms" in the total number of objections referring to corruptibility elements*

No	**Categories of elements of corruptibility** Elements	%	number
VI.	**Control mechanisms**	**2.1%**	**94**
31.	Lack/insufficiency of supervision and control mechanisms	1.3%	56
32.	Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities	0.8%	38

The corruptibility elements from category VI "Control mechanisms", like the elements of the category IV "Transparency and access to information" are rarely encountered in draft laws. Although the remediation of the corruptibility elements from category VI is not less important than the remediation of elements from other categories, we remark that the Parliament is less inclined to accept objections referring to elements from this category.

Table 15. *The extent to which the Parliament accepted objections referring to corruptibility elements from category VI "Control mechanisms"*

No	**Categories of elements of corruptibility** Elements	**% of objections accepted**	**the number of objections accepted**	**the number of objections formulated**
VI.	**Control mechanisms**	**34.5%**	**29**	**84**
31.	Lack/insufficiency of supervision and control mechanisms	**35.8%**	19	53
32.	Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities	**32.3%**	10	31

The subsections V.1.6.1-V.1.6.2 below show the corruptibility elements of the category VI, accompanied by particular examples of objections from expert reports.

V.1.6.1 Lack/insufficiency of supervision and control mechanisms

Distribution within all elements: *1.3%*
Distribution within all draft laws: *8.5%*

Efficiency of element identification: *35.8%*

Lack/insufficiency of supervision and control mechanisms is the omission or inefficiency of provisions referring to supervision and control of the public authority activity in the areas where servants can display personal interests for the commission of abuses or in the areas of increased interest for citizens.

During the assessment of control mechanisms, the provisions regulating the internal and hierarchical superior control and provisions on the reporting of activity results are examined. Also, the procedures for ensuring the public control in the area are important.

This element often manifests in the following circumstances:

- lack of clear control procedures of the draft provisions enforcement;
- lack or inappropriate character of restrictions and/or interdicts that conditions the possibility of public servant to obtain the right to perform activities related to patrimonial and/or financial relationships;
- lack of possibilities for parliamentary, judiciary, administrative control in the area;
- lack of regulations on public control, through civil society organizations, of petitions and claims, etc.[38]

Example: *Law on Mediation, No. 134 of 14.06.2007 (Expert report no.202 as of 17.04.2007)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
Article 22, para (2): *The Mediation Council shall consist of 9 members appointed by the Minister of Justice, out of which at least 7 persons are mediators or belong to scientifical and didactical staff or public organizations.*	***Risk: Lack/insufficiency of supervision and control mechanisms*** *The membership of the Mediation Council is left at the total discretion of the Minister of Justice.* ***Recommendation:*** *To specify the way of Council's setting up (special conditions, election/appointment of most of its members by representative assemblies).*	*(2) The Mediation Council shall consist of 9 members appointed through the Order of the Minister of Justice, based on the results of public contest conducted by the Ministry of Justice. At least 7 members of the Mediation Council shall be mediators or shall belong to scientific and didactical staff or public organizations.*

V.1.6.2 Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities

Distribution within all elements: *0.8%*
Distribution within all draft laws: *6.3%*
Efficiency of element identification: *32.3%*

Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities is the omission or inappropriate character of internal or judicial procedures for contestation of public authorities' decisions and actions, as well as of these authorities' exponents[39].

[38] Theoretical and Practical Guidelines for the performance of anti-corruption review of drafts of legislative acts and other legal acts, developed by CAPC and CCECC, page 24.

[39] Ibid.

The peril of this element lies in the absolute and indisputable discretion of the public authority to address a certain issue of private or public interest, without that interested people could subject the authorities' actions to control.

This element can be identified together with other elements, such as concurrent provisions, legislative gaps, ambiguity of administrative proceedings, lack/insufficiency of the access to data of public interest and unjustified limitation of human rights.

Example: *Law on Political Parties, No. 294 of 21.12.2007 (Expert report no. 145 as of 10.01.2007)*

Text of the draft	***The identified risk and expert's recommendation***	***Text of passed law***
(6)The political party whose activity was suspended by the Ministry of Justice can appeal in court the decision of its activity suspension at the Chisinau Appeal Court, that will present its comments on the legality of Ministry of Justice decision within five days.	***Risk: Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities*** *This term was taken from the provisions of the Law on Administrative Courts, while the obligation to present comments on the legality establishes an imperative provision for the performance and completion of the administrative procedure within this term, situation that restricts unreasonably the duties, quality and even independence of judicial authorities (the term of five days can be too short to determine all the circumstances, summons to court of witnesses, performance of expert reviews, etc).* ***Recommendation:*** *To ensure the legislation consistency.*	*The restrictive term was excluded from the final version of the law.*

V.1.7 Linguistic expression

Category VII of the corruptibility elements *"Linguistic expression"* includes the following elements corruptibility:

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 project

Table 16 below reveals that the first element, "ambiguous expression that allows abusive interpretations" (18.6%) has the largest share in this category of elements, being in general one of the most frequent corruptibility elements in draft laws.

Table 16. *Incidence of objections related to elements of corruptibility from category VII "Linguistic expression"*

No	Categories of elements of corruptibility	%	number

	Elements		
VII.	**Linguistic expression**	**23.8%**	**1057**
33.	**Ambiguous expression that allows abusive interpretation**	18.6%	828
34.	**Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena**	2.6%	114
35.	**Introduction of new terms that are not defined in the legislation or in the project**	2.6%	115

Table 17 below reveals a high level of acceptance by the Parliament of the objections referring to the corruptibility of linguistic expressions (58.7%), used in the drafts. In this category of elements, introduction of new terms that are not defined in the legislation or in the project (63.6%) have the highest rate of consideration of experts' objections, followed by the objections to ambiguous expressions that allow abusive interpretations (58.2%) and use of different terms in relation to the same phenomenon/of the same term for distinct phenomena (58.2%).

Table 17. *The extent to which the Parliament accepted objections referring to corruptibility elements from category VII "Linguistic expression"*

No	**Categories of elements of corruptibility** Elements	**% of objections accepted**	**the number of objections accepted**	**the number of objections formulated**
VII.	**Linguistic expression**	**58.7%**	**517**	**880**
33.	**Ambiguous expression that allows abusive interpretation**	**58.2%**	408	701
34.	**Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena**	**58.2%**	53	91
35.	**Introduction of new terms that are not defined in the legislation or in the project**	**63.6%**	56	88

The subsections V.1.7.1-V.1.7.3 below show the corruptibility elements of the category VII, accompanied by particular examples of objections from expert reports.

V.1.7.1. Ambiguous expression that allows abusive interpretation

Distribution within all elements: *18.6%*
Distribution within all draft laws: *44.5%*
Efficiency of element identification: *58.2%*

The ambiguous expression that allows abusive interpretations is the expression included in the regulation that is unclear or equivocal and thus allows abusive interpretations.

The text of drafts must meet the technical, legal and linguistic requirements, the requirements established in Article 19 of Law 780/2001 and Article 46 of Law 317/2003. The linguistic expressions can be qualified as corruptibility factors to the extent to which it provides opportunities to apply the provision in the preferred interpretation, depending on the interest of the people in charge of implementation and control[40].

Example: The Law on the Authorization and Payment of Interpreters and Translators involved by the Superior Council of Magistracy, Ministry of Justice, Prosecution bodies,

[40] *Ibid*, page 18.

***Criminal Prosecution Authorities, Law Courts, Notaries, Lawyers and Judicial Executors**, No. 216-XVI of 20.03.2009 (Expert report no.335 as of 26.09.2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 7. The rights and obligations of the interpreter and translator *The interpreter and translator shall have the right to:* *a) payment for offered services, under the law;*	***Risk: Ambiguous expression that allows abusive interpretation*** *The expression is not very correct, as the services are provided and not offered. Under the law is a vague reference, as the payment for such services must be established based on this law.* ***Recommendation:** It is proposed to change the word "offered" with the term "provided" and the word "law" with the collocation "this law".*	***Article 6.** The rights and obligations of the interpreter and translator* *The interpreter and translator shall have the right to:* *a) payment for provided services, in compliance with this law;*

V.1.7.2. Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena

Distribution within all elements: *2.6%*
Distribution within all draft laws: *14.5%*
Efficiency of element identification: *58.2%*

The use of different terms in relation to the same phenomenon/of the same term for distinct phenomena is the irregular and inappropriate use of notions in the text of regulation by resorting to synonyms in order to name the same phenomenon and/or by applying the same notion when mentioning distinct phenomena.

The danger of this element consists in the fact that the terminology that is irregularly used can lead to vicious practices of interpretation of the provision meaning and precisely to the approach as distinct phenomena of the same phenomenon due to different name or the approach as the same phenomenon of distinct phenomena because of the confusion of two distinct notions in the text of regulation. As a result, abuses on the part of the public and private sectors exponents can appear.

***Example:** Law on the Amendment and Completion of some Legislative Acts (publishing of court rules), No. 258 of 29.11.2007 (Expert report no. 266 dated 29.11.2007)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Article 10, para (4) of the Law on the Judiciary Organization ***(4) The definitive decisions of first instance courts and appeal courts shall be published on the Appeal Courts website.***	***Risk: Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena*** *The terms „first instance court" is mistaken for „law court". The draft uses a notion different from that provided for in the law.* ***Recommendation:** To replace the notion of "first instance court" with*	***Article 10, para (4) of the Law on the Judiciary Organization*** *(4) The definitive decisions of law courts, appeal courts and Supreme Court of justice shall be placed on the website.*

	the notion "law court".	

V.1.7.3. Introduction of new terms that are not defined in the legislation or in the draft

Distribution within all elements: 2.6%
Distribution within all draft laws: 18.3%
Efficiency of element identification: 63.6%

Introduction of new terms that are not defined in the legislation or in the draft is the use in legislation of non-established terms, which aren't expressly explained in the text of regulation and that aren't widespread that would confer to them a unique and uniform meaning.

The danger of this element lies in the emergence of diverse practices of these terms interpretation, practices that can be also abusive, especially when the public authorities apply provisions that do not contain such terms. Despite this, we mention that such imperfect expressions can be also used to the same extent by the private legal subjects to promote illegitimate interests.

Example: *Law on the Amendment and Completion of the Criminal Code, No. 277 as of 18.12.2008 (Expert report no. 292 as of 11.06.2008)*

Text of the draft	*The identified risk and expert's recommendation*	*Text of passed law*
Unique Article, point 2 ***„Article 196[1]. Illegal <u>withdrawal</u> of the vehicle*** *(1) Illegal withdrawal of the vehicle with no intent to taking possession*	***Risk: Introduction of new terms that are not defined in the legislation or in the project*** *The term „withdrawal" is not common for the Chapter VI of Criminal Code.* ***Recommendation:*** *To substitute the notion "withdrawal" with the notion "theft" or to maintain the term "misappropriation".*	*Article 192[1]. Misappropriation of the vehicle* *(1) Misappropriation of the vehicle with no intent to taking possession*

V.1.8.Other elements of corruptibility

The category VIII *"Other elements of corruptibility"* is the category of elements that are not generically defined in the Methodology and Guidelines. This category was included in order to not restrict the possibilities of CAPC experts to identify new corruptibility risks in the draft reviewed. At the same time, the new elements detected by experts are a source for review and ongoing improvement of the list of already identified elements.

Table 18 below reveals an incidence of 1.8% of experts' objections related to new corruptibility elements.

Table 18. *Incidence of objections related to elements of corruptibility from category VIII "Other elements of corruptibility"*

No.	Categories of elements of corruptibility Elements	%	number
VII.	**Other elements**	**1.8%**	**81**

Table 19 shows a rate of 34.8% of acceptance by the Parliament of the objections formulated by the experts in relation to other corruptibility elements.

Table 19. *The extent to which the Parliament accepted objections referring to corruptibility elements from category VIII "Other elements of corruptibility"*

No	Categories of elements of corruptibility Elements	% of objections accepted	the number of objections accepted	the number of objections formulated
VIII.	**Other elements**	**34.8%**	**23**	**66**

The new elements, identified by experts, were analyzed by CAPC and included in the common list of corruptibility elements that the experts use.

Thus, after the systematization of the most frequently used new elements of corruptibility, CAPC introduced 8 new elements in the list that initially consisted of 27 elements:

- in the category I "Interaction of the draft with other legislative and legal acts":
  - *Unfeasible provisions*
  - *Exaggerated costs for legal provision enforcement in relation to the public benefit*
  - *Provisions establishing unjustified waivers*
- in the category II "Manner of exercising public authority duties":
  - *Failure to identify the responsible public authority/subject the provision refers to*
- in the category IV "Transparency and access to information"
  - *Lack/insufficiency of access to information of public interest*

Alike, a new category III "Manner of exercising rights and obligations" was introduced, including the following elements:

- *Promotion of interests contrary to the public interest*
- *Infringement of interests contrary to the public interest*
- *Excessive requirements for exercise of excessive rights/obligations*[41]
- *Unjustified limitation of human rights*

V.2. Factors influencing the assimilation of corruption proofing objections and recommendations

The in-depth analysis of the efficiency of draft laws corruption proofing made it possible to detect some factors that influence the acceptance by the legislator of the objections indicated in expert reports. In Section V.2. we will examine these factors and namely:

- Observance of cooperation terms with the civil society (sub-section V.2.1.);

[41] This element was in the category II "Manner of exercising public authority duties", but was transferred in the newly established category III "Manner of exercising rights and obligations".

- The quality of draft laws authors (sub-section V.2.2.).

V.2.1. Observance of cooperation terms with the civil society

Another important factor that would influence the extent to which the Parliament accepts the objections referring to the corruptibility risks, indicated in the CAPC Expert reports, is the observance by the Parliament of the cooperation terms with the civil society.

According to the provisions of the Concept Paper on the Cooperation of Parliament with the Civil Society, the civil society organizations shall submit to the Parliament their inputs within 15 days as of the date of draft placement on the Parliament's website. The CAPC experience indicates that the observance of this timeline by the Parliament influences the efficiency of draft laws corruption proofing, performed by the civil society.

Thus, for most of the 253[42] draft laws (87%) submitted to the Parliament during the period between October 2006 and December 2008 and reviewed by CAPC experts, the timeline for cooperation with the civil society was observed and in case of these drafts the efficiency of CAPC expert reviews was 53%, i.e. higher than the average of 52.01% of all expert reports.

Table 20. *The efficiency of corruption proofing depending on the observance of timeline for the cooperation between the Parliament and the civil society*

Parliament's attitude towards the timeline for cooperation with the civil society	**The number of draft laws submitted to Parliament and reviewed**	**% of draft laws submitted to Parliament**	**The number of objections formulated to the reviewed draft laws**	**The number of objections accepted to the draft laws reviewed**	**The corruption proofing efficiency**
The observance of the 15 working days timeline for the cooperation with the civil society	224	87%	3347	1773	**53%**
The failure to observe the 15 working days timeline for the cooperation with the civil society	29	13%	251	64	**25%**

Nevertheless, when the timeline for Parliament's cooperation with the civil society was not observed, the efficiency of CAPC reports was of 25%, that shows that CAPC reports can be useful even after the adoption of laws by the Parliament, at the stage of final editing the text of legal acts.

V.2.2. The quality of draft laws authors

If we take a look at the efficiency of draft laws corruption proofing from the perspective of the legal subjects with the right for legislative initiative, then we see that the highest acceptance rate of the objections formulated by the CAPC experts lies with Members of Parliament (55.5%) and Government (51%), i.e the most frequent authors, while the legislative initiatives from the President of the Republic of Moldova account only for 36.6% of the objections referring to the presence of corruptibility elements.

Table 21. *The efficiency of corruption proofing from the perspective of the subjects with the right for legislative initiative*

The subjects with the right for legislative	**The number of passed/rec**	**The number of pages of**	**The number of**	**The number of objections**	**Corruption proofing**

[42] Of 253 draft laws, 48 were withdrawn later from the Parliament by their authors, including due to the objections presented in CAPC Expert Review Reports.

initiative	alled drafts .	all the drafts	objections formulated to drafts	accepted to drafts	efficiency
Members of Parliament	55	159	384	213	**55.5%**
Government of the Republic of Moldova	187	1608	3102	1583	**51%**
President of the Republic of Moldova	10	91	112	41	**36.6%**

Taking into account that almost three-quarter of all the legislative initiatives belong to the Government of the Republic of Moldova, it is of interest to study the trends for acceptance of objections formulated by the CAPC experts with regard to the identification of corruptibility elements in the drafts of legislative and regulatory documents that come from the immediate authors from the Government.

Table 22. *The efficiency of corruption proofing from the perspective of the quality of the immediate authors from the Government*

Immediate authors from the Government	The number of passed/recalled drafts	The number of objections formulated to drafts	The number of objections accepted to drafts	Corruption proofing efficiency
Ministry of Justice	36	934	559	**55.5%**
Ministry of Economy and Trade	23	420	192	**45.7%**
Ministry of Agriculture and Food Industry	21	179	99	**55.3%**
Ministry of Finance	18	371	224	**60.4%**
Centre for Fighting Economic Crimes and Corruption	10	200	98	**49%**
Ministry of Home Affairs	8	91	65	**70.3%**
National House for Social Insurance	8	16	7	**43.7%**
Ministry of Ecology and Natural Resources	6	151	47	**31.1%**
General Prosecutor's Office	5	66	12	**18.2%**
Ministry of Social Protection, Family and Child	5	10	3	**30%**
Ministry of Health	5	41	22	**53.7%**
National Commission of the Financial Market	5	177	92	**51.2%**
Security and Intelligence Service	4	82	7	**8.5%**
Ministry of Education and Youth	4	23	16	**69.6%**
Ministry of Information Development	3	17	3	**17.6%**
Ministry of Defense	3	17	8	**47.1%**
Ministry of Constructions and Territorial Development	3	87	62	**71.3%**
State Agency for Intellectual Property	3	32	18	**56.2%**

Table 22 above reveals that the Parliament is most reluctant to operate amendments in order to overcome the corruption risks in the drafts submitted by the following immediate authors:

- Security and Intelligence Service – 8.5%;
- Ministry of Information Development – 17.6% and
- General Prosecutor's Office – 18.2%.

On the other hand, there is a high rate of acceptance by the Parliament of objections referring to the presence of corruptibility elements in the draft laws in case of the following authors:

- Ministry of Constructions and Territorial Development – 71.3%;
- Ministry of Home Affairs – 70.3%;
- Ministry of Education and Youth – 69.6%.

Nevertheless, we regard as very important the Parliament's receptivity to the concerns expressed by CAPC experts on the corruptibility elements detected in the drafts of the most frequent immediate authors from the Government, such as:

- Ministry of Justice – 55.5%;
- Ministry of Economy and Trade – 45.7%;
- Ministry of Agriculture and Food Industry – 55.3%;
- Ministry of Finance – 60.4%.

Studying the categories of corruptibility risks that were very rarely[43] (or never) redressed by the Parliament in case of draft laws coming from various authors, the following trends are identified:

- in case of drafts issued by Members of Parliament – the corruptibility elements from the categories "Transparency and access to information" (16.7%) and "Accountability and responsibility" (18.2%) are removed at the very least. Given that this category of authors is among the frequent promoters of interests through draft laws submitted, then the reluctance to exclude precisely these corruption risks becomes clear;

- in case of drafts issued by the President of the Republic of Moldova – the corruptibility elements from the categories "Transparency and access to information" (0%) and "Control mechanisms" (0%) were never excluded. As in case of Parliament members, the President oftentimes appears as an author that promotes interests through the agency of the projects he proposes and that is why redressing of elements from this category becomes a sensible issue;

- In case of draft laws coming from the Government, the situation is another depending on the quality of immediate authors. Thus:

    - In the draft laws developed by the General Prosecutor's Office (GP) and Security and Intelligence Service (SIS) the corruptibility risks from the categories: "Manner of exercising rights and obligations" (0%), "Transparency and access to information" (0%), "Liability and accountability" (0%) and "Control mechanisms" (0%) were never redressed. The risks from the category "Manner of exercising public authority duties" (5.75 in case of GP and 12.5% in case of SIS drafts) are redressed very rarely. In the draft laws developed by the Centre for Combating Economic Crime and Corruption the risks from the category "Control mechanisms" (0%) were never removed and the corruptibility risks from the category "Manner of exercising rights and obligations" were remedied very rarely. Given that the aforementioned bodies have the role of guarantees of the protection of individual rights and freedoms, being endowed with competences and discretions in this respect, the State policy not to eliminate such corruptibility risks from the draft laws regulating the activity of these bodies is regrettable, all the more so as currently the enforcement bodies are bare of a large part of the society's credit;

[43] Less than 30% of cases. For details see the Annex no.5 of this Study.

- In the draft laws of the Ministry of Economy and Trade the corruptibility risks from the categories "Liability and accountability" (28.6%) and "Control mechanisms" (14.3%) are redressed to a lesser extent;

- In case of the Ministry of Finance – the corruptibility elements from the category "Control mechanisms" (14.3%)

- In the draft laws of the Ministry of Agriculture and Food Industry – the corruptibility risks from the category "Liability and accountability" (25%)

- In the draft laws of the Ministry of Ecology and Natural Resources, the corruptibility risks from the category "Liability and accountability" (0%) were never eliminated and the corruptibility risks from the categories "Control mechanisms" (14.3%), "Manner of exercising rights and obligations" (25%) and "Manner of exercising public authority duties" (25%) were seldom redressed;

- In the draft laws of the Ministry of Education and Youth the corruptibility risks from the category "Control mechanisms" (0%) are never redressed;

- In the draft laws of the Ministry of Health the corruptibility risks from the category "Manner of exercising rights and obligations" (20%) are seldom redressed;

- In the draft laws of the Ministry of Social Protection, Family and Child the corruptibility risks from the category "Transparency and access to information" (0%) are never redressed;

- In the draft laws of the Ministry of Information Development the corruptibility risks from the category "Manner of exercising rights and obligations" (0%) were never redressed and those from the category "Manner of exercising public authority duties" (12.5%) only seldom;

- In the draft laws of the State Agency for Intellectual Property the corruption risks from the category "Liability and accountability" (0%) were never redressed.

The above examples prove that, in a quite paradoxical manner, the Parliament is reluctant to eliminate the very sensible corruptibility danger of the activity of authors that develop draft laws, all the more that these drafts most of the times refer to areas of authors' legal influence. The Ministry of Justice can be referred to as a positive example, which is the main subject that develops the draft laws within the Government and develops drafts that do not address their exclusive field of activity. Thus, in the draft laws of the Ministry of Justice, the acceptance rate of objections referring to the corruptibility risks was always higher than 30%.

For more details on the extent to which the Parliament accepted CAPC experts' objections on the presence of corruptibility risks in the draft laws submitted by various authors, see Annex 5 to this Study.

V.3. Case Study: corruption proofing efficiency in case of anti-corruption draft laws promoted in 2007-2008

Lately, the Parliament intensely promoted the replacement of the old anti-corruption legislation with new regulations, also passing new conceptual laws for the Republic of Moldova. Given the compulsoriness of anti-corruption expert review, established in Law 780/2001, as well as the terms of Cooperation of the Parliament with the civil society, it is interesting to monitor the efficiency of the corruption proofing performed by CAPC for each law in part. In the following subsections, a summary "diagnose" of these laws is presented, in terms of the requirements of anti-corruption review, each law being described, taking into account the following aspects:

- existence of anti-corruption review of the draft law;
- the draft law author;
- the goal of draft law advancement;
- relevant international standards for the draft law development;
- draft law justification;
- key objections regarding the corruptibility of some provisions from the draft;
- acceptance of objections regarding the corruptibility of some provisions from the draft;
- observance by the Parliament of the cooperation terms with the civil society;
- conclusions on the efficiency of anti-corruption review performed by CAPC.

From now forward, we will describe the anti-corruption draft laws: Draft Law on Preventing and Fighting Corruption (subsection V.3.1.), draft Law on the Conflict of Interest (subsection V.3.2.), draft Law on Public Function and Status of Civil Servant (subsection V.3.3.), draft Law on Checking Public Servants and Candidates to Public Offices (subsection V.3.4.), draft Law on the Code of Conduct of Public Officials (subsection V.3.5.), draft Law on Decision Making Transparency (subsection V.3.6), draft Law on Political Parties (subsection V.3.7) and the draft Law on Preventing and Fighting Money Laundering and Terrorism Financing (subsection V.3.8.).

V.3.1. Draft Law on Preventing and Fighting Corruption

CAPC reviewed twice the draft Law on Preventing and Fighting Corruption (until the draft examination at the Parliament plenary session and after adopting the draft in I reading), CAPC Expert report no. 244 as of 04.07.1007 and CAPC Expert report no. 289 as of 22.04.2008 being submitted to the Parliament and placed on the CAPC website. CCECC did not perform the anti-corruption review of this draft.

Draft law author	The author of legislative initiative for forwarding the draft law to the Parliament was the Government of the RM, immediate author - CCECC.
Goal of draft law advancement	According to the explanatory note, the goal of the draft was "*to supply the shortcomings of the law in force, which is outdate and practically inapplicable*".

Relevant international standards for the draft law development	The explanatory note stipulated that the „terms of corruption and other terms used in the draft text are in compliance with the international treaties in the area, especially Criminal and Civil European Conventions on Corruption, UN Convention against Corruption". CAPC Expert report mentioned that the definitions used fit for the most part with the international standards from the area of prevention and fighting corruption.
Draft law justification	The explanatory note was made public. The Expert report concluded that the draft law justification included in the explanatory note can be considered sufficient, serious and valid. There was no economic and financial justification of the draft, although the implementation of such legal provisions requests financial resources.
Key objections regarding the corruptibility of some provisions from the draft	The reviewed version of the draft is more relevant than Law No.900 as of 27.06.1996, but it includes provisions with a corruptibility potential, particularly with regard to: - Establishment of liabilities for the violation of draft law provisions, the stipulated various forms being unspecified, that will lead to the emergence of opportunities for convenient interpretation of these provisions, creating dangerous preconditions for the illegal motivation of the bodies establishing the punishment by the interested people in order to obtain the most favourable interpretation; - Lack of specific terms or establishment of some terms that are too short, especially in the Chapter VII "Final Provisions"; - the inefficiency of draft provisions regarding the protection of victims and people with knowledge of corruption deeds commission; - insertion of a large number of imperfect reference provisions, including to inexistent legislation; - the presence in the draft of concurrent provisions with the legislation in force. The draft examination revealed the need in ensuring the legislative compliance of draft provisions and the provisions of some laws in force, precisely through the amendment of the respective laws in force (Code of Conduct of the Public Official and Criminal Code), due to the opportunity of provisions included in the draft.
Acceptance of objections regarding the corruptibility of some provisions from the draft	In 2 CAPC expert reports, 61 objections referring to corruptibility risks were identified. Of the 61 corruptibility risks identified, 23 objections were accepted that indicate an **efficiency of 38%**.
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the cooperation terms with the civil society.

Conclusions on the corruption proofing efficiency: *The draft Law on Preventing and Fighting Corruption has undergone radical changes right before its adoption in final reading. These amendments could not be reviewed by the civil society, because the final version of the law was not made public and the final changes that were introduced in the draft generated other corruptibility risks, especially because of inconsistencies with the provisions of international treaties in the area.*

Thus, even though the Parliament took into account 38% of the corruptibility-related objections, the draft that was evaluated positively for its compliance with international standards, does not maintain the same level for the passed version. We think that the Parliament should have subjected the new version of the draft to the comments of civil society, public authorities and international organizations.

Consequently, the efficiency of the corruption proofing performed by CAPC is less relevant for the final version of the law that was not reviewed at all.

V.3.2. The Draft Law on Conflict of Interest

CAPC reviewed the draft Law on Conflict of Interest, Expert report no. 197 as of 10.04.2007 being submitted to the Parliament and placed on the CAPC website. CCECC did not perform the anti-corruption review of this draft.

Draft law author	The Moldovan Government is the author of legislative initiative for the advancement of the draft law to the Parliament. The immediate author of the project was not identified, because of the lack of the explanatory note where the author had to be indicated.
Goal of draft law advancement	From the draft contents results that the goal of draft is *the regulation of incompatibilities and restrictions imposed to people in exercise of public functions and other functions related to it, settlement of conflicts of interest, as well as the establishment of the way to submit declarations on the conflict of interest.* The CAC Expert report concludes that the regulations and the mechanism proposed for the implementation of the law will not contribute to the plenary achievement of the set goals because of several reasons: the extremely general character of the law; lack of specified and detailed provisions on the procedures and contents of the declaration of interests, of provisions referring to the checking and full publication of these declarations, etc.
Relevant international standards for the draft law development	The draft does not contain references to international standards. At the same time, the review performed by the CAPC detects a set of gaps and mentiones that at the draft development it should have been taken into account such relevant international and regional acts as: - Code of Conduct for Public Officials, Annex to the Recommendation R(2000)10 of the Committee of Ministers of the Council of Europe; - International Code of Conduct for Public Officials, to Annex UN Resolution A/RES/51/59 of 12.12.1996 on the Action against Corruption; - Managing Conflict of Interest in the Public Service: OECD Guidelines, etc. The notions defined in the draft do not fully comply with the terminology and expressions used in the mentioned international documents, fact causing confusions. It was proposed to reformulate the definition of the notion "conflict of interest" in the draft, with the view of adjusting it to the notion used in the Recommendation of the Committee of Ministers of the CE.
Draft law justification	The explanatory note was not made public. The CAPC Expert report concluded that the draft does not comply with the

	requirements of legislative techniques, especially those referring to the conduct of scientific investigations to identify the political, social, economic, financial, legal, etc. consequences of the regulations proposed. The justification of the draft law was not made in accordance with Article 20 of the Law 780/2001, while the lack of a public explanatory note makes it impossible to make comments on its contents. Although the draft requires additional expenditures for its implementation, it did not have an economic and financial justification.
Key objections regarding the corruptibility of some provisions from the draft	In the CAPC Report it was proposed to the Parliament to not pass the draft Law on the Conflict of Interest in the proposed redaction. For the advancement of the draft it is necessary to implement the provisions of Article 19, Article 20 and Article 22 of the Law on Legislative Acts and elimination of regulations that could favor the commission of corruption deeds. The draft needs essential completions, in order to transform it from a general and declarative document in a document with special and detailed provisions and procedures that would contribute to the highlighting, avoidance and settlement of conflicts of interest, to the establishment of the official's liability for the breach of this law provisions, competences and accountability of bodies that will perform, control actions for the observance of this law provisions.
Acceptance of objections regarding the corruptibility of some provisions from the draft	CAPC Expert report indicates 10 objections referring to corruptibility elements in the draft text. Of the 10 corruptibility risks identified, the Parliament accepted 7 objections that indicate a formal **efficiency of 70%**. Nevertheless, having in view that the conceptual objections referring to the full review of the draft weren't taken into consideration; the **real efficiency is 0%**.
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the timeline for cooperation with the civil society, the draft being adopted in first reading on 14 June 2007, after about 3 months after submission. Moreover, public debates on this draft were conducted in the Parliament, with the invitation of civil society representatives.

Conclusions on the corruption proofing efficiency: *The CAPC Report mentioned few objections referring to the exact contents of articles of the draft Law on the Conflict of Interest, because its text needs a major conceptual review. Therefore, although a number of specific objections expressed by CAPC in the Expert report have been accepted, the general objections on the quality of draft and enforcement mechanisms of its provisions weren't taken into account.*

We can conclude that due to these shortcomings, the Law on the Conflict of Interest is not implemented in the Republic of Moldova even 16 months after its entry into force, the situation in the area remaining imperfect.

V.3.3. The Draft Law on Public Function and Status of Civil Servant

CCECC carried out the anti-corruption review of the draft Law on Public Function and Status of Civil Servant, the Expert report of 27.02.2007 being placed on the CCECC website.
CAPC reviewed the draft Law on Public Function and Status of Civil Servant, the Expert report no.281 of 08.05.2008 submitted to the Parliament and placed on CAPC website.

Draft law author	The author of legislative initiative for forwarding the draft law to the Parliament was the Government of the RM, immediate author – Ministry of Justice.
Goal of draft law advancement	According to the text of draft, the regulation goal is *"to ensure the performance of a steady, professional, impartial, transparent and efficient public service in the interest of society and State".* The explanatory note mentions that the draft Law *"was developed in order to fulfill the Implementation Plan of the Central Public Administration Reform Strategy, approved through GD no.1402 as of 30.12.2005"* .
Relevant international standards for the draft law development	In the explanatory note to the draft, references are made to the provisions of the following international standards: - Recommendation No.(2000)6 on the Status of Public Officials in Europe, approved on 24 February 2000 by the Committee of Ministers of the Council of Europe and - the experience of some European Union member states. The CAPC Expert report approaches the problem of compatibility of draft provisions with the acquis communautaire and invokes the critics of Council of Europe experts with regard to the draft. Thus, at the draft development, a number of European regulations weren't taken into account, such as: - Staff Regulations of Officials of the European Communities and the Conditions of Employment of other Servants of the European Communities, adopted through European Council Regulation no.259/68; - Amendment of Staff Regulations of Officials of the European Communities and the Conditions of Employment of other Servants of the European Communities, adopted through European Council Regulation no.723/2004; In consequence, the CAPC stated the incompatibility of the draft with the provisions of acquis communaitaire in the area, various specific examples of failure to comply being presented.
Draft law justification	The explanatory note was made public. The explanatory note contains a partial rationale, highlighting certain new elements that the draft introduces in relation to the Law on Public Service no.443-XIII of 4 May 1995, but it lacks references to the most important and disputable legislative solutions offered by the draft. Therefore, the justification of the draft is regarded by CAPC as insufficient and only partially valid. Although the draft requires additional expenditures for its implementation, it did not have an economic and financial justification.
Key objections regarding the corruptibility of some provisions from the draft	In the Expert report developed by the CAPC it is mentioned that the draft law has a general , inappropriate an less convincing way to approach the most important issues of the public service area, such as: - depolitization and professionalism (deservedly career); - continuity and stability; - coordination, development and implementation of policies in the area; - officials' payroll and social protection, etc. It was also concluded that the draft is affected by a significant number of corruptibility elements, the most important being related to:

	- enlargement of the competences that are discretionary and contrary to the status of Government Office; - advancement of interests of people holding public offices and of the "trustworthy" people of dignitaries; - abundance of provisions of reference and legal formal provisions; - multitude of provisions contrary to the provisions of the laws in force and even contrary to their own provisions; - insufficient regulation of transitory aspects; - inappropriate regulation of mechanisms that must ensure the enforcement of draft provisions, etc.
Acceptance of objections regarding the corruptibility of some provisions from the draft	The CAPC Report indicates 127 objections referring to the presence of corruptibility risks in the draft, out of which 70 objections were accepted, that means an **efficiency of 55.1%.**
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the terms of cooperation with the civil society, the draft being registered on 6 December 2007 and passed in first reading on 13 March 2008.

Conclusions on the corruption proofing efficiency: *The main achievement of the Expert report developed by CAPC was the alignment of the provisions of the draft Law on Public Function and Status of Civil Servant to the provisions of the Concept Paper on the Staff Policy in Public Service, adopted through Parliament Decision No.1227-XV of 18.07.2002. Thus, the extended discretionary competences of the Government Office provided for in the draft and contrary to the Regulations of this institution were excluded. According to the initial provisions of the draft, the Government Office, in order to ensure the management of the public function shall cumulate competences of regulation, control and sanctioning that would lead to increased corruptibility risks.*

Another important achievement of the CAPC Expert report was the withdrawal from the draft of the opportunity for the people that held public offices for at least 2 years to obtain the qualification degree of first level State counselor of the Republic of Moldova upon the expiry of mandate, resignation or revocation. CAPC succeeded in convincing the legislator that this provision is in contradiction with the principles of public function stipulated in the same draft and that the provision allowed even persons revoked/dismissed from this position for allegations, abuses, infringements, etc. to pretend legally to this degree.

V.3.4. The Draft Law on Checking Public Servants and Candidates to Public Offices

CCECC carried out the anti-corruption review of the draft Law on Checking Public Servants and Candidates to Public Offices, the Expert report of 08.03.2007 being placed on the CCECC website.

CAPC carried out the review of the draft Law on Checking Public Servants and Candidates to Public Offices, Expert report no. 285 as of 14.04.2008 being submitted to the Parliament and placed on the CAPC website.

Draft law author	The author of legislative initiative for forwarding the draft law to the Parliament was the Government of the RM, immediate author being the Information and Intelligence Service.

Goal of draft law advancement	The declared goal of the draft is the establishment of the mechanism for checking of public officials and candidates to public offices, aimed at fighting negative phenomena within the public service *"by avoiding that a public office be hold or have access the people that disaccredit the public function"*. In the CAPC opinion, the goal is correlated with the major public interests, but certain included provisions aren't fully correlated, can damage public interests to a quite large extent, inappropriate to the effect of law enforcement.
Relevant international standards for the draft law development	In the text of the draft and explanatory note references to corresponding regulations of the EU community legislation lack, the degree of draft law compatibility with the EU community legislation is not assessed. The draft is not in direct contradiction with the anti-corruption international standards, the proposed goals comply with the provisions of UN Convention against Corruption, but the aspects referring to ensuring the transparency of public authorities activity must be improved.
Draft law justification	The explanatory note to the draft was made public. The CAPC Expert report concludes that the draft development and advancement, postponed for 6 years, is a serious ground to state the imperfect character of its underlying ideas and feeds the suppositions that the need of new regulations was not enough reasoned from the very beginning. According to the CAPC Expert report, the rationale included in the explanatory note is not enough, because reasoned data on how the lack of respective regulation affects the operation of public authorities and prevents and fights negative phenomena within public services are not presented. The draft has no economic and financial justification, stipulating only that the implementation of provisions won't request additional expenditures from the State Budget. Although the explanatory note does not estimate the expected number of beneficiaries and candidates who will be subject to verifications, the need for some additional expenditures indicates also quite a large number of public offices that will fall within the scope of this law (according to some preliminary estimations – a few thousand individuals).
Key objections regarding the corruptibility of some provisions from the draft	According to the CAPC Report, the main deficiencies of the draft are: - the advancement of the draft isn't reasoned enough; - enlargement of checking and enforcement of the new Law on the Public Officials is unconstitutional, as it can be an unjustified limitation of the right to labor and exercise of public function; - in the text, the advisory character of the checking notification and the plenary discretionary right of the solicitant authority to decide upon the acceptance into office must be regulated expressly and in detail.
Acceptance of objections regarding the corruptibility of some provisions from the draft	The CAPC Report stated 48 objections, out of which only 3 were accepted, that is **an efficiency of 6.2%.**
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the terms of cooperation with the civil society, the draft being registered on 14.03.2008 and passed in first reading on 11 December 2008.

Conclusions on the corruption proofing efficiency: *The draft Law on the Checking Public Servants and Candidates to Public Offices generated contradictory debates within the Parliament, various negative aspects being invoked, including those stipulated in the CAPC Expert report.*

The further implementation of an incondite law can cause significant prejudice to people and even to public interests through the use of the respective mechanisms for political purposes, group interests, for intimidation of some servants holding important public offices.

V.3.5 The Draft Law on the Code of Conduct of Public Officials

CAPC reviewed the draft Law on the Code of Conduct of Public Officials, Expert report no.284 of 18.02.2008 being submitted to the Parliament and placed on the CAPC website. CCECC did not perform the anti-corruption review of this draft.

Existence of anti-corruption review of the draft law	CCECC did not perform the anti-corruption review of this draft.
Draft law author	The author of legislative initiative for forwarding the draft law to the Parliament was the Government of the RM, immediate author – Ministry of Justice.
Goal of draft law advancement	According to the provisions of the draft, its goal is *"to establish a set of high professional standards within the public service and informing of citizens on the conduct that public servants must display in order to increase the quality of public services; assurance of a better management in meeting the public interest; contribution to prevention and elimination of bureaucracy and corruption in public administration, as well as creation of a reliable environment of citizens in the public authority".*
Relevant international standards for the draft law development	Neither the draft, nor its justification included in the explanatory note contain any references to international standards that would underlie the draft development. Despite this, as a relevant international standard for the development of this draft could have served: - Recommendation No. R(2000)10 of the Committee of Ministers to the Member States on the Codes of Conduct of Public Officials.
Draft law justification	The explanatory note to the draft wasn't made public. Although it was not placed on the Parliament's website, this draft was put at CAPC disposal by the Parliament representatives, so that its contents could be evaluated. The rationale included in the explanatory note on the need to develop the draft has a general character, many of the solutions proposed in the draft, such as the interdiction for public servant to communicate with mass media, depolitization of public function and bringing to responsibility of public servants that violate the draft provisions needed a more reasoned rationale. Although the draft could require additional expenditures for its implementation, it did not have an economic and financial justification.
Key objections regarding the corruptibility of some provisions from the draft	The CAPC Expert report concluded that the promotion of a Code of Conduct of Public Servants is a welcome legislative measure. It is necessary to coordinate the draft provisions with the provisions of other drafts that are systemically correlated with it: the draft Law on Preventing and Fighting Corruption; the draft Law on Public Function and Status of Civil Servant and

	the draft Law on the Conflict of Interest. The reviewed draft text is affected by corruptibility elements, especially by ambiguous linguistic expressions and absence of clear administrative procedures. For the good implementation of the provisions of this draft, it has to be considerably changed in order to ensure: - clear and appropriate regulation of public officials' liability; - transparency of public authorities and civil servants activity; - the official's allegiance primarily to citizens' interests that the public service serves and then the allegiance to the public authority, as well as setting the citizens' legitimate interests as priority in relation to authority interests.
Acceptance of objections regarding the corruptibility of some provisions from the draft	The CAPC Report identifies 24 objections referring to the presence of corruptibility risks in the draft, out of which 9 objections were accepted, that means an **efficiency of 37.5%.**
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the terms of cooperation with the civil society, the draft being registered on 10.10.2006 and passed in first reading on 11 December 2008.

Conclusions on the corruption proofing efficiency: *The main achievement of CAPC Expert report on the draft Law on the Code of Conduct of Public Officials was to convince the legislator in the need to state the public official's allegiance not only to public authority, but primarily to the citizen of the Republic of Moldova, the interests of which it serves. Another achievement of CAPC Report was the alignment of provisions of this draft with the provisions of other drafts that are systemically correlated with it.*

V.3.6 the Draft Law on the Transparency of the Decision Making Process

CAPC reviewed the draft Law on the Transparency of the Decision Making Process, Expert report No. 318 as of 15.09.2008 being submitted to the Parliament and placed on the CAPC website. CCECC did not perform the anti-corruption review of this draft.

Draft law author	The author of legislative initiative for forwarding the draft law to the Parliament was the Government of the RM, immediate author – Ministry of Justice.
Goal of draft law advancement	According to the authors of the explanatory note that accompanies the draft *"The draft Law is conditioned by the need to set some principles and methods to ensure the transparency of the decision making process within public authorities, create a viable mechanism for the involvement of citizens and their organizations to the development and adoption of decisions".*
Relevant international standards for the draft law development	The explanatory note and the text of draft do not contain references to the compatibility of draft provisions with the EU community legislation or with the international standards set in international conventions. The explanatory note mentions in this respect the compliance of draft provisions with international standards, taking actually in account the international practice, calling down the practice of Romania, Latvia, Estonia, US States Virginia, Alaska, Louisiana, North Carolina.
Draft law justification	The explanatory note to the draft was made public.

	The rationale included in the explanatory note is valid, serious and sufficient. The financial-economic rationale of the draft lacks, although ts implementation could imply expenditures, because the lack of financial resources to ensure the operation of mechanism for public participation to the decision making process can seriously diminish the effect and goals of the law.
Key objections regarding the corruptibility of some provisions from the draft	The CAPC Expert report ascertained that the advancement of such a draft is a solid measure targeted to prevent the corruptibility elements of the decision making process, by assigning to it a transparent character. Nevertheless, the text of the draft is vitiated by several corruption proofing expressions, being necessary to: - extend the application of draft provisions from decision drafts to the text of explanatory notes that accompany them; - substitute the generalized and vague term of "mass media" with more specific expressions in order to avoid the abusive interpretations by officials when it is wanted not to make some decision making processes transparent; - radically change the concept on the officials' legal liability for the failure to observe the draft provisions, so that this liability become clear to the authorities and injured citizens; - exclude the general and abstract provisions of reference to legislation and specify the areas and /or laws that legislator has in view or to replace either with specific mechanisms for draft provisions implementation (when it refers to mechanisms inherent to operation of this draft law and it is illogical to assume that other laws could contain); - appoint all the people responsible of implementing the draft provisions within final and transitory provisions and not only within the Government.
Acceptance of objections regarding the corruptibility of some provisions from the draft	The CAPC Expert Report identifies 45 objections referring to the presence of corruptibility risks, out of which 25 objections were accepted, that means an **efficiency of 55%.**
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the terms of cooperation with the civil society, the draft being registered on 27.06.2008 and passed in first reading on 16 October 2008.

Conclusions on the corruption proofing efficiency: *The CAPC Expert report succeeded to convince the legislator in the need to introduce more improvements in the draft Law on the Transparency of the Decision Making Process, such as: enlargement of draft law provisions from the draft decisions that should have been made transparent and their explanatory notes; establishment of specific measures that authorities should undertake at all the stages for assurance of transparency of the decision making process; the surety of publication on the official websites of public authorities of the draft decisions and rationales in cases when the emergency procedure for adoption of decisions was applied; the establishment of periodicity in the development of public authorities' reports on the transparency of the decision making process; extending the timeline for submission of suggestions and recommendations on the draft decisions from 10 working days to 15 days. Nevertheless, it is regrettable that the Parliament, in lieu of specify the types and cases of liability appearance for the failure to comply with the draft law provisions, excluded fully the regulation of liability in the draft, that could diminish the public authorities' motivation to duly follow the requirements of the Law on the Transparency of the Decision Making Process.*

V.3.7 The Draft Law on Political Parties

CAPC reviewed the draft Law on Political Parties, CAPC Expert report no.145 as of 10.01.2007, being submitted to Parliament and placed on the CAPC website. CCECC did not perform the anti-corruption review of this draft.

Draft law author	The author of legislative initiative for forwarding the draft law is a group of Parliament members. The immediate author couldn't be identified.
Goal of draft law advancement	According to the explanatory note, the draft law *"aims at supplementing and adjusting qualitatively the system of provisions regarding the activity of political parties, with all the regulations and innovations lacking so far in our legislation".*
Relevant international standards for the draft law development	The explanatory note and the draft do not invoke international standards in the area, referring only to the experience of several European states. According to the CAPC Expert report, the draft complies with the international regulations and recommendations in the anti-corruption area, the general consistency of draft provisions with a number of international tools in the area can be noted: - United Nations Convention against Corruption; - Recommendation of the Committee of Ministers of the Council of Europe on the Common Rules against corruption in the funding of political parties and electoral campaigns, etc. In order to ensure the full compliance with the international regulations and practices in the area, the draft needs some additions and amendments.
Draft law justification	The explanatory note was made public. The Expert report found that the justification of the draft, included in the explanatory note is not sufficient. There wasn't made any economic and financial justification of the draft, although the implementation of the law requires about expenditures from the State Budget and of private persons.
Key objections regarding the corruptibility of some provisions from the draft	CAPC formulated essential objections on: - the mechanism to provide state funding; - the lack of some clear and exhaustive provisions about the control of parties activity and their financial sources; - large discretionary competences of the Ministry of Justice.
Acceptance of objections regarding the corruptibility of some provisions from the draft	The CAPC Expert Report identifies 106 objections referring to the presence of corruption risks in the draft, out of which 43 objections were accepted, that means an **efficiency of 44.6%.**
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the terms of cooperation with the civil society, the draft being registered on 20.12.2006 and passed in first reading on 28.12.2006.

Conclusions on the corruption proofing efficiency: *In the final version of the Law on Political Parties a set of aspects referring to the control of parties activity were taken into consideration and a number of excessive discretionary duties of public authorities were regulated more appropriately.*
At the same time, the need to complete the text with provisions referring to the internal control of parties functioning and the need to restrict the abusive promotion of parliamentary parties' interests weren't taken into account.

V.3.8 The Draft Law on Preventing and Fighting Money Laundering and Terrorism Financing

CAPC reviewed the draft Law on Preventing and Fighting Money Laundering and Terrorism Financing, CAPC Expert report no.254 as of 23.07.2007, being submitted to Parliament and placed on the CAPC website. CCECC did not perform the anti-corruption review of this draft.

Draft law author	The author of legislative initiative for forwarding the draft law to the Parliament was the Government of the RM, immediate author - CCECC.
Goal of draft law advancement	The explanatory note accompanying the draft establishes that its goal is "*to facilitate the measures for efficient fighting of money laundering and terrorism financing, to comply with the international undertakings*".
Relevant international standards for the draft law development	The explanatory note envisages the use of the following international standards in the development of the draft: - UN/IMF Model Legislation on Money Laundering and Financing of Terrorism of December 2005 (applicable to civil law systems). - UN Conventions: against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20.12.1988; against Transnational Organized Crime of 15.11.2000; against Corruption of 2003; - European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16.05.2005; - Directive of the European Parliament and the Council on the use of financial system for the purpose of money laundering and terrorist financing no. 2005/60/EC of 26 October 2005; - the FATF 40 recommendations and 9 special recommendations, Assessment Reports developed by the experts of this organization on way of implementation by our State of the regulations in the area, practice of other states, etc." The CAPC Expert report identified a combined system of using the provisions of UN standards and provisions of EU Directive 2005/60/EC, but none of the cases registers a total completion of at least those parts of regulations transposed from a source into another. The analysis of draft reviewed revealed that this comprises less and vague regulations than those provided for in the international references in this context, although these are only minimum standards in the more detailed developments of legislation by states.
Draft law justification	The explanatory note was made public. The CAPC Expert report concluded that the explanatory note in general contains a reasoned rationale, but its validity is vitiated by shortcomings related to the appropriate application of international standards, being

	insufficient to promote the draft in the version proposed by authors, as it did not explain the real need to replace the existing provisions with those proposed by the draft. The draft is not accompanied by any economic and financial justification.
Key objections regarding the corruptibility of some provisions from the draft	The CAPC Expert Report revealed that the draft was significantly affected by the corruptibility risks, as it contains plenty of reference provisions and regulatory competence transmission provisions, too vague expressions. The greatest problem of the draft, according to CAPC review, is the "group" regulation of the duties of various public authorities, failure to specify the provisions applicable to distinct reporting entities in part, as well as of the specific authorities that are responsible of their supervision. The draft grants to the public authorities responsible of supervision excessive duties of regulation, with the risk that these ones will regulate their own competences as convenient for them, providing also to them duties of control and sanctioning. This cumulation of powers generates corruptibility risks. All these shortcomings undermines the achievement of expected results in the area of preventing and fighting money laundering and terrorist financing through the advancement of this draft.
Acceptance of objections regarding the corruptibility of some provisions from the draft	The CAPC Expert Report identifies 71 objections referring to the presence of corruptibility risks, out of which 5 objections were accepted, that means an **efficiency of 7%.**
Observance by the Parliament of the cooperation terms with the civil society	The Parliament has observed the terms of cooperation with the civil society, the draft being registered on 09.07.2007 and passed in first reading on 19 July 2007.

Conclusions on the corruption proofing efficiency: *The Law on Preventing and Fighting Money Laundering and Terrorism Financing is an eloquent example of ignoring by the Parliament of the cooperation terms with the civil society before the parliamentary leave.*

It is regrettable the legislative rush to promote the draft, criticized in the reports of international experts and in the CAPC expert report, especially taking into account the negative appraisal given to the Republic of Moldova by international bodies regarding the prevention and fighting money laundering. Implementation of the Law for almost two years does not allow to highlight any major progress in the area, the evaluations of international institutions indicating over the need to investigate the links between money laundering, corruption and organized crime.

V.3.9 General findings on the efficiency of CAPC review of the anti-corruption laws

We conclude that in case of draft anti-corruption regulations, the Parliament does not always takes into account the outcomes of the corruption proofing performed by the civil society, and the Centre for Combating Economic Crime and Corruption does not perform always their (compulsory) expert review.

Table 23. *The efficiency of corruption proofing of the anti-corruption laws package*

	The	The	Corruption

The draft anti-corruption laws reviewed by CAPC	number of objections formulated in the expert report	number of objections accepted in the expert report	proofing efficiency
draft Law on Preventing and Fighting Corruption	61	23	**38%**
draft Law on the Conflict of Interest	10	7	**70%**
draft Law on Public Function and Status of Civil Servant	127	70	**55.1%**
draft Law on Checking Public Servants and Candidates to Public Offices	48	3	**6.2%**
draft Law on the Code of Conduct of Public Officials	24	9	**37.5%**
draft Law on the Transparency of the Decision Making Process	45	25	**55%**
Draft Law on Political Parties	106	43	**44.6%**
draft Law on Preventing and Fighting Money Laundering and Terrorism Financing	71	5	**7%**
TOTAL	**489**	**188**	**38.4%**

Summarizing this chapter, we conclude that the efficiency of CAPC Expert Review Reports in case of anti-corruption laws is 38.4%, i.e. lower than the average efficiency of 52.01% of all CAPC Reports, although logically the Parliament should be more receptive to the objections regarding the anti-corruption draft laws.

VI. **CONCLUSIONS**

Writing this survey allowed to express the conclusions on the following:

- *Efficiency of corruption proofing mechanism*
- *Parliament openness towards the civil society contributions*
- *The key to the success of corruption proofing implementation by CAPC*
- *Role of corruption proofing related to the performance of the Parliamentary control*
- *The political ambitions and interests diminish the impact of the legislation and affect the trust in authorities*
- *The two-level cleaning filter for draft legal acts: CAPC and CCECC practice of performing corruption proofing*
- *Unsatisfactory quality of the anticorruption law package*
- *Other challenges to prove the efficiency of corruption proofing*
- *New cooperation dimensions of the Parliament with the associative sector*

Efficiency of corruption proofing mechanism

The corruption proofing of draft legal acts confirmed its viability, managing to convince the Parliament about the solidity of concerns expressed regarding to the corruptibility potential of regulations. Applying this new type of expert review during 3 years increased the transparency of the overall legislative process and proved and efficiency of 52.01% of objections accepted by the Parliament.

This accomplishment is only the immediate result, found out at the moment of law publication, expressed by the lack of elements that favor the corruption phenomenon, which were discovered at the draft stage when were subject to CAPC expert review. On long term, the result will be the reduction of opportunities and possibilities of corruption symptoms, abusive interpretation and application of legal provisions by the representatives of civil service.

Only the legal effort itself cannot be enough to mitigate the corruption phenomenon, but this effort can determine essential changes, consisting preliminary obstruction of abusive actions of the servants and other subjects enabled to apply the law, which otherwise would have remained in a relative legality because of the vitiated legal provisions.

Parliament openness towards the civil society contributions

The approval of the Concept Paper on the Cooperation between the Parliament and the civil society permitted to apply the draft legal acts corruption proofing mechanism. Implementation of corruption proofing by CAPC is an example of successful cooperation between the non-governmental sector and the State in the area of corruption prevention by

improving legislation. At the same time, this exercise became a way of monitoring the legislative process by the civil society.

The efficiency of this mechanism shows the sensibility of the legislator to the contributions of the civil society, when these take the form of logical, consistent, and accurate recommendations. Parliament openness towards the civil society was repeatedly confirmed during the process of cooperation with CAPC:

- the criticisms formulated in the corruption proofing reports helped to enhance the Parliament's willingness to place constantly the explanatory notes to draft laws on its website, thus increasing the transparency of the legislative process;
- the CAPC experts were invited to the public debates arranged by the parliamentary commissions on some sensible drafts;
- The Parliament accepted a significant number of CAPC experts' objections, thus showing understanding and liking of the new concept of corruptibility risk, non-approval of which decreases the chances of corrupt practices.

The Parliament acceptance of the objections related to corruptibility was greatest in case of:

- ambiguous linguistic formulations (58.7%), enlargement of discretionary duties of public authorities (54.8%), manner of exercising personal rights and obligations (54.8%), accountability and responsibility (50.3%), and of the deficient reference and regulatory competence transmission provision, concurrent norms and gaps (47.6%);
- integral draft legal acts that shows a greater attention paid to the development of these drafts for their debate in parliamentary meetings, than in the case of amendment/completion/abrogation acts;
- corruptibility elements that can be easily mitigated (by excluding such reference provisions as "according to the legislation in force" and substituting the competences determined though such expressions as "can", "has the right to" with expressions starting with "shall").

When the implementation of draft legislative acts corruption proofing started, the Parliament officials didn't have any description of corruptibility elements and the risks they generate. However, the Parliament perceived and, depending on case, accepted the objections and proposals from the CAPC expert reviews, thus promoting a better understanding of corruptibility elements, ensuring the popularization of their meaning and of the risks posed by the presence of these elements in the legislation.

The key to the success of corruption proofing implementation by CAPC

The Parliament's receptivity was mostly determined by the cogency of the expert review reports submitted by CAPC. The high quality of these inputs was possible because the CAPC involved high qualification and probity experts, due to their ongoing specialization and training, as well as due to the work on standardizing the rules of drafting expert review reports. The interventions of CAPC experts allowed the formulation of some well-grounded objections and proposals on the reviewed drafts, a significant part of objections being considered by the Parliament and thus helping immediately the prevention and combating of corruption phenomenon spreading.

Role of corruption proofing related to the performance of the Parliamentary control

Unlike the drafts initiated by the MPs and other subjects with the right of legislative initiative, most draft legal acts initiated by the Government refer to the activity of the structure of the executive, half of which (51%) exaggerate the duties of public authorities regulated in these drafts. The corruption proofing process emphasizes the intentions of the special central public authorities, direct authors of the drafts, to enlarge their regulation competences, to assign themselves excessive discretionary competences or even contradictory with their status.

Taking into account the aforementioned, the corruption proofing is also an useful tool for carrying out the parliamentary control over the development of draft legal acts by the Government and promotion of departmental interests of its structures in the submitted drafts. We mention with respect to this that the objections of CAPC experts related to the manner of exercising public authority duties were accepted by the Parliament in 54.8% of cases.

The ongoing use of this parliamentary control tool will allow removing from the inception phase the unjustified enlargement of competences and the wide filed of intervention of the specialized central public administration authorities and of various institutions from the area of public law, which sometimes exceed the limits provided by the Constitution and other laws.

The political ambitions and interests diminish the impact of the legislation and affect the trust in authorities

Although often appealing the citizens to observe unconditionally the legislation and to promote the principles of obeying the public order, sometimes the state authorities themselves show unfavorable examples that decrease the overall trust of the general public. The sacrifice or influence over some general principles for the sake of current political-administrative interests contributes neither to the assurance of the impact of regulations promoted in this way, nor to the raise of legal awareness of citizens. The following actions diminish the probity of authorities during the law-making process:

- non-observance of the terms related to substantiate justification of draft legal acts (out of the 317 drafts reviewed by CAPC, the justification is regarded as insufficient in case of 262 drafts, that is 82.6%);
- infringement of the terms on public consultation related to the draft legal acts (the cooperation and consultation terms were not observed in case of 29 drafts, that is 13%);
- promotion of the private interests that contravene the public interests (similar findings were stated in 96 drafts, that is over 56% of the number of drafts that promote certain interests/benefits);
- the discovered tendency of quasi-total neglecting of objections and proposals displayed in the CAPC expert review reports on the drafts developed by some authors (in the drafts developed by the Security and Intelligence Service only 8.5% of the objections were accepted, in the drafts of the Ministry of Information Development – 17.6% of objections, in the drafts developed by the General Prosecutor's Office - only 18.2% of the objections were taken into account).

The two-level cleaning filter for legislative corruptibility elements: CAPC and CCECC practice of performing corruption proofing

The CCECC expert review intervenes at the moment of finishing the drafts within the Government. At this stage, taking into account the objections submitted by the CCECC experts, the text of the drafts still may be changed by the authors before submitting it to the Parliament. Although, being a part of the executive branch, CCECC does not have enough power to prevent the abusive promotion of certain departmental interests by the hierarchically higher executive structures, ones that are at the same level of the hierarchy within the Government or even from lower levels, but having weight in the governmental pyramid.

The CAPC expert reviews are submitted to the draft legal acts displayed on the Parliament website, drafts that were endorsed by the Ministry of Justice, by line ministries, as well as CCECC anticorruption expert review. In the light of the opinions expressed by all these structures, the drafts are amended at the extent the authors think necessary in order to be submitted to the Parliament. Subsequently, almost all the time CAPC carries out the expert review of a different text of the draft legal act, and not of the one the CCECC experts expressed objection towards. CAPC performs an independent expert review of the drafts, submits its objection directly to the legislator and not to the authors, as it happens in the case of CCECC expert reviews. Thus, CAPC sometimes has more efficient possibilities to report and prevent the promotion of inadequate departmental interests, due to the moment of the intervention of its expert review, as well as due to the subject this expert review is submitted to.

In such a situation, the CCECC expert review submitted to the Government when the draft is finished, before submitting it to the Parliament and the CAPC expert review applied to the draft legal acts registered in the Parliament act not as two separate filters, but rather as two levels of a single filter, aimed at removing the legislative corruptibility elements. The existence of these two levels allows both to remove the corruptibility factors and educate the authorities that receive each of these expert reviews, in order not to admit corruptibility risks in the text of developed and promoted legal acts.

Unsatisfactory quality of the anticorruption law package

Separate hopes are always related to the special legislation, with direct anticorruption vocation or determination. The strength and applicability of these regulations, reinforced by efficient institutional mechanisms, are the main factors of anticorruption policy success and it is obvious that there should be paid special attention to the development, promotion, consideration, approval, and application of anticorruption legislation. Under the influence of various factors, the authorities of our country promoted a significant package of laws in the area of corruption prevention and combating, but from the inception phase some deficiencies and disfunctionalities that affected the whole regulation process, diminished the expected impact and continue to feed the remarks related to the lack of willingness of the policy to fight corruption.

Thus, the analysis of corruption proofing efficiency performed by CAPC on the anticorruption law package emphasized a low efficiency of accepting the objections and proposals, accounting for 38.4%, significantly under the general average. Regardless of the optimist or triumphal self-assessments made by the authorities, the failure of several anticorruption laws and the need to improve them are objective realities, highlighted from the very moment of application of these new regulations.

Other challenges to prove the efficiency of corruption proofing

- Although the necessity to ensure the compatibility of the national legal framework with the acquis communaitaire provisions is strongly promoted, the CAPC experience proved that this component is not a special concern of the authors of draft legal acts. Only 26 drafts out of the total number of 317 contained references to the compatibility with the acquis communaitaire. This finding shows the inertness of the authors, who either do not accomplish to ensure, or neglect the importance of aligning the national legal system to the requirements of the European legislation.

- The arguing of draft legal acts does not comply with the expectations of those who would like to know the long term effects of the new provisions. The explanatory notes are superficially, do not contain the impact analysis, and the financial-economic reasoning bear an occasional character, although necessary it is frequently.

All these deficiencies are subject to permanent criticism in CAPC expert review. But their settlement will be possible only by changing the opinion of draft legislative acts' authors and imposing the observance of requirements for development and justification of draft legislative and regulatory acts.

New cooperation dimensions of the Parliament with the associative sector

The implementation of corruption proofing allowed identifying and classifying new elements of legislative corruptibility, with the inefficient character of new provisions, their useless and declaratory character being most frequently criticized. On fact, promotion of such provisions contributes to the legislative inflation, which affects the overall legal system of the Republic of Moldova.

Although these new elements are constantly reflected during the expert review and sometimes are considered, the mechanism applied by CAPC is valid only for the new draft legal acts, the legal acts in force being not covered by the advantages of this expert review.

The legislative inflation should become a major concern of the legislative forum and of the civil society, which can accomplish to decrease its effects by joining efforts in order to provide the legal system with coherence, credibility, and efficiency.

ANNEXES:

Annex 1: Sample of how to fill in the Expert Review Report in electronic format

Annex 2: List of corruptibility elements

Annex 3: Share, frequency of the element in the drafts, share of each element in its category

Annex 4: Efficiency of objections related to the corruptibility by areas of expert review

Annex 5: Efficiency of objections related to the corruptibility according to drafts' authors

Annex 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.

5. Observance of cooperation terms with the civil society.

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 communautaire? **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.

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 legally justified or not.

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

Annex 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. Cumulation 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 3. Share, frequency of the element in the drafts, share of each element in its category

No.	Categories of elements	1. What is the share of objections to this element out of the total number of objections to all elements? **Total number of objections: 4448** %	No	2. How frequently does the element appear in drafts? **Total number of appearances 1420 Total number of drafts: 317** %	No	3. What is the share of the element within its category? **Total no of elements: 4448** %	No.
I.	**Interaction of the draft with other legislative and regulatory acts**	31.3%	1391	24.3%	345	100%	1391
1.	Reference provisions	9.7%	431	22.7%	72	31%	431
2.	Regulatory competence transmission provisions	2.4%	109	14.5%	46	7.8%	109
3.	Concurrent legal provisions	13.7%	607	41.6%	132	43.7%	607
4.	Legislative gaps	4.5%	200	18.9%	60	14.4%	200
5.	Unfeasible provisions	0.4%	17	4.4%	14	1.2%	17
6.	Exaggerated costs for legal provision enforcement in relation to the public benefit	0.2%	7	1.9%	6	0.5%	7
7.	Provisions establishing unjustified waivers	0.4%	20	4.7%	15	1.4%	20
II.	**Manner of exercising public authority duties**	29.2%	1299	33%	468	100%	1299
8.	Enlarged duties of regulation	2.5%	111	15.1%	48	8.5%	111
9.	Excessive duties /duties contrary to Statute	3.7%	163	17.3%	55	12.5%	163
10.	Duties that admit waivers and abusive interpretations	4.7%	211	23.7%	75	16.3%	211
11.	Parallel duties	0.6%	29	7.3%	23	2.2%	29
12.	Specification of duty according to stipulations as “have the right”, “can”, etc.	1.4%	63	10.1%	32	4.8%	63
13.	Cumulation of duties to develop laws, to monitor their implementation and to give sanctions	0.3%	13	3.8%	12	1%	13
14.	Inexhaustive, ambiguous and subjective grounds of an authority's refusal to carry out certain actions	0.4%	17	4.1%	13	1.3%	17
15.	Lack/ambiguity of administrative proceedings	11.9%	527	37.5%	119	40.7%	527
16.	Lack of specific terms	2.2%	96	16.1%	51	7.4%	96
17.	Establishment of unjustified terms	1 %	46	9.8%	31	3.5%	46
18.	Failure to identify the responsible public authority/subject the provision refers to	0.5%	23	2.8%	9	1.8%	23
III.	**Manner of exercising rights and obligations**	5.2%	230	7.7%	109	100%	230
19.	Promotion of interests contrary to the public interest	1.1%	48	7.9%	25	20.9%	48
20.	Infringement of interests contrary to the public interest	0.3%	14	3.5%	11	6%	14
21.	Excessive requirements for exercise of excessive rights/obligations	3%	134	17%	54	58.3%	134
22.	Unjustified limitation of human rights	0.8%	34	6%	19	14.8%	34

No.	Categories of elements	1. What is the share of objections to this element out of the total number of objections to all elements? Total number of objections: 4448 %	No	2. How frequently does the element appear in drafts? Total number of appearances 1420 Total number of drafts: 317 %	No	3. What is the share of the element within its category? Total no of elements: 4448 %	No.
IV.	**Transparency and access to information**	2.4%	109	4.9%	70	100%	109
23.	Lack/insufficiency of access to information of public interest	0.6%	27	4.7%	15	24.8%	27
24.	Lack/insufficiency of transparency in functioning of public authorities	1.1%	52	12.3%	39	47.7%	52
25.	Lack/insufficiency of the access to information on the legal act	0.7%	30	5%	16	27.5%	30
V.	**Accountability and responsibility**	4.2%	187	7%	100	100%	187
26.	The lack of clear accountability of authorities (officials) for the violation of draft provisions	0.8%	35	7.9%	25	18.7%	35
27.	The lack of clear and proportionate sanctions for the violation of draft provisions	0.6%	27	6.6%	21	14.4%	27
28.	Mismatch between the violation and sanction	1.2%	52	7.3%	23	27.9%	52
29.	Confusion/duplication of types of legal liability for the same violation	0.7%	32	5%	16	17.1%	32
30.	Inexhaustive grounds for liability	0.9%	41	4.7%	15	21.9%	41
VI.	**Control mechanisms**	2.1%	94	3.3%	47	100%	94
31.	Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public)	1.3%	56	8.5%	27	59.6%	56
32.	Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities	0.8%	38	6.3%	20	40.4%	38
VII.	**Linguistic expression**	23.8%	1057	17.3%	245	100%	1057
33.	Ambiguous expression that allows abusive interpretation	18.6%	828	44.5%	141	78.3%	828
34.	Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena	2.6%	114	14.5%	46	10.8%	114
35.	Introduction of new terms that are not defined in the legislation or in the draft	2.6%	115	18.3%	58	10.9%	115
VIII.	**Other elements of corruptibility**	1.8%	81	2.5%	36	100%	81
TOTAL		**100%**	**4448**	**100%**	**1420**	**100%**	**4448**

Annex 4: Efficiency of objections related to the corruptibility by areas of expert review

No.	Categories of elements	**Area 1:** Justice and internal affairs, Human rights and freedoms	**Area 2:** Economy and trade	**Area 3:** Budget and finance	**Area 4:** Education, culture, religion, and mass-media	**Area 5:** Labor legislation, social insurance and health protection	**TOTAL number of objections accepted by categories of elements and exact elements**
I.	**Interaction of the draft with other legislative and regulatory acts**	**42.5%**	**49.3%**	**59.7%**	**71.4%**	**51.6%**	**47.6%**
1.	Reference provisions	29%	36%	66.3%	100%	75%	**40.2%**
2.	Regulatory competence transmission provisions	39.1%	61.1%	66.7%	50%	100%	**55.8%**
3.	Concurrent legal provisions	58.4%	59.3%	51.7%	75%	50%	**57.7%**
4.	Legislative gaps	30.2%	32.3%	56.2%	*	75%	**33.9%**
5.	Unfeasible provisions	40%	0%	25%	*	0%	**25%**
6.	Exaggerated costs for legal provision enforcement in relation to the public benefit	0%	66.7%	*	*	0%	**33.3%**
7.	Provisions establishing unjustified waivers	100%	20%	50%	*	0%	**41.7%**
II.	**Manner of exercising public authority duties**	**58.5%**	**53%**	**54.9%**	**32%**	**37.8%**	**54.8%**
8.	Enlarged duties of regulation	47.6%	59.5%	30.8%	50%	50%	**45.5%**
9.	Excessive duties /duties contrary to Regulations	50%	41.3%	28.1%	40%	37.5%	**41%**
10.	Duties that admit waivers and abusive interpretations	66%	55.6%	67.9%	0%	55.6%	**62.1%**
11.	Parallel duties	58.3%	45.4%	50%	*	0%	**48.3%**
12.	Specification of duty according to stipulations as “have the right”, “can”, etc.	39.3%	64.3%	61.5%	*	100%	**51.8%**
13.	Cumulation of duties to develop laws, to monitor their implementation and to give sanctions	83.3%	0%	50%	*	*	**50%**
14.	Inexhaustive, ambiguous and subjective grounds of an authority's refusal to carry out certain actions	20%	40%	*	*	*	**30%**
15.	Lack/ambiguity of administrative proceedings	62.4%	55.6%	66.2%	41.7%	20%	**59.2%**
16.	Lack of specific terms	57.5%	50%	87.5%	0%	33.3%	**55.8%**
17.	Establishment of unjustified terms	38.9%	60%	100%	0%	50%	**50%**
18.	Failure to identify the responsible public authority/subject the provision refers to	66.7%	50%	100%	*	*	**73.7%**
III.	**Manner of exercising rights and obligations**	**58.7%**	**53.6%**	**64.3%**	*	**33. 3%**	**54.8%**
19.	Promotion of interests contrary to the public interest	50%	33.3%	66.7%	*	28.6%	**42.3%**
20.	Infringement of interests contrary to the public interest	50%	50%	100%	*	100%	**60%**
21.	Excessive requirements for exercise	54.8%	55%	75%	*	16.7%	**54.2%**

	of excessive rights/obligations						
22.	Unjustified limitation of human rights	83.3%	62.5%	0%	*	100%	**69.6%**
No.	**Categories of elements**	**Area 1: Justice and internal affairs, Human rights and freedoms**	**Area 2: Economy and trade**	**Area 3: Budget and finance**	**Area 4: Education, culture, religion, and mass-media**	**Area 5: Labor legislation, social insurance and health protection**	**TOTAL number of objections accepted by categories of elements and exact elements**
IV.	**Transparency and access to information**	**28.8%**	**57.1%**	**50%**	**33.3%**	**0%**	**35.8%**
23.	Lack/insufficiency of access to information of public interest	43.7%	0%	100%	*	*	**40%**
24.	Lack/insufficiency of transparency in functioning of public authorities	23.1%	69.2%	33.3%	33.3%	0%	**37%**
25.	Lack/insufficiency of the access to information on the legal act	25%	60%	*	*	*	**31%**
V.	**Accountability and responsibility**	**50%**	**40%**	**62.5%**	**100%**	**50%**	**50.3%**
26.	The lack of clear accountability of authorities (officials) for the violation of draft provisions	40%	50%	100%	100%	0%	**50%**
27.	The lack of clear and proportionate sanctions for the violation of draft provisions	44.4%	33.3%	60%	*	0%	**41.7%**
28.	Mismatch between the violation and sanction	53.5%	25%	25%	*	100%	**50%**
29.	Confusion/duplication of types of legal liability for the same violation	69.2%	33.3%	100%	*	100%	**67.7%**
30.	Inexhaustive grounds for liability	37.1%	100%	75%	*	*	**42.5%**
VI.	**Control mechanisms**	**31.2%**	**34.5%**	**38.1%**	**50%**	*****	**34.5%**
31.	Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public)	33.3%	44.4%	33.3%	50%	*	**35.8%**
32.	Lack/insufficiency of mechanisms for contestation of decisions and actions of public authorities	25%	30%	66.7%	*	*	**32.3%**
VII.	**Linguistic expression**	**61.7%**	**54.1%**	**75.7%**	**33.3%**	**23.3%**	**58.7%**
33.	Ambiguous expression that allows abusive interpretation	61.1%	52.1%	78.1%	40%	26.9%	**58.2%**
34.	Use of different terms in relation to the same phenomenon/of the same term for distinct phenomena	58.9%	65.4%	60%	0%	0%	**58.2%**
35.	Introduction of new terms that are not defined in the legislation or in the draft	67.2%	62.5%	60%	0%	0%	**63.6%**
VIII.	**Other elements of corruptibility**	34.9%	42.9%	28.6%	*	0%	**34.8%**
TOTAL number of accepted objections by areas		**51.8%**	**51.4%**	**58.9%**	**40.3%**	**36. 7%**	**52.01%**

Note: The symbol * (star) used in the previous table means that the respective corruptibility element was not found in the drafts approved in the given area.

Annex 5: Efficiency of objections related to the corruptibility according to drafts' authors

CATEGORIES OF CORRUPTIBILITY ELEMENTS	AUTHORS OF THE DRAFTS SUBJECT TO EXPERT REVIEW																				
	MPs (55 drafts)	*The President of the Republic of Moldova (10 drafts)*	***Government** (187 drafts*)*																		
			Ministry of Justice (36 drafts)	*Ministry of economy and Trade (23 drafts)*	*Ministry of Agriculture and Food Industry (21 drafts)*	*Ministry of Justice (18 drafts)*	*Centre for Fighting Economic Crimes and Corruption (10 drafts)*	*Ministry of Internal Affairs (8 drafts)*	*National House for Social Insurance (8 drafts)*	*Ministry of Ecology and Natural Resources (6 drafts)*	*General Prosecutor's Office (5 drafts)*	*Ministry of Social Protection, Family and Child (5 drafts)*	*Ministry of Health (5 drafts)*	*National Commission of the Financial Market (5 drafts)*	*Security and Intelligence Service (4 drafts)*	*Ministry of Education and Youth (4 drafts)*	*Ministry of Infrmation Development (3 drafts)*	*Ministry of Defense (3 drafts)*	*Ministry of Constructions and Territorial Development (3 drafts)*	*State Agency for Intellectual Property (3 drafts)*
I. Interaction of the draft with other legislative and regulatory acts	58.5%	34.5%	42.6%	46%	37.2%	62.6%	51.6%	69.2%	14.3%	36.6%	15%	50%	71.4%	51.7%	3.4%	75%	33.3%	50%	75.7%	33.3%
II. Manner of exercising public authority duties	57.7%	35.3%	68.9%	49.7%	65.7%	55.7%	58%	63.2%	75%	25%	5.6%	40%	37.5%	46.9%	12.5%	63.6%	12.5%	80%	100%	68.4%
III. Manner of exercising rights and obligations	54.5%	63.6%	89.7%	52%	47%	66.7%	25%	100%	-	25%	0%	-	20%	33.3%	0%	-	0%	-	100%	100%
IV. Transparency and access to information	16.7%	0%	38.2%	33.3%	55.6%	50%	33.3%	-	-	-	0%	0%	-	100%	0%	50%	-	-	100%	-
V. Accountability and responsibility	18.2%	-	63.2%	28.6%	25%	63.6%	47.1%	83.3%	-	0%	0%	-	100%	37.5%	0%	100%	-	33.3%	100%	0%
VI. Control mechanisms	50%	0%	36.4%	14.3%	100%	0%	0%	-	-	14.3%	0%	-	100%	41.2%	0%	50%	-	-	100%	-
VII. Linguistic expression	61.9%	32.3%	71.8%	44.7%	67.7%	77.1%	53.7%	71.4%	60%	37.8%	38.9%	0%	55.6%	68.4%	16.7%	100%	33.3%	0%	51.5%	42.9%
VII. Other elements	25%	66.7%	60%	-	66.7%	28.6%	20%	100%	-	100%	100%	-	0%	0%	-	-	-	-	-	0%
TOTAL	**55.5%**	**36.6%**	**59.8%**	**45.7%**	**55.3%**	**60.4%**	**49%**	**70.3%**	**43.7%**	**31.1%**	**18.2%**	**30%**	**53.7%**	**51.2%**	**8.5%**	**69.6%**	**17.6%**	**47.1%**	**71.3%**	**56.2%**

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* The previous table did not include the authors whose approved or withdrawn legal initiatives were less than 3. Because of this, only 18 out of 30 possible authors of drafts within the Government are in the table.

** In order to facilitate the observation of low mitigation trends of the corruptibility elements found out in the draft legal acts, depending on the authors, the values under 30% in the cells of the table were emphasized.